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(2026) 5 ILRA 10
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.05.2026

BEFORE

THE HON'BLE VINOD DIWAKAR, J.

Matters Under Article 227 No. 12485 of 2025
& Connected with Another Cases

Kundan **...Petitioner**
Versus
State of U.P. & Anr. **...Respondents**

Issue for Consideration

In several petitions, a recurring issue has arisen where Revisional Courts consistently remand matters to trial courts after recording findings on the merits. The impugned orders are set aside as a matter of routine, and trial courts are directed to pass fresh orders taking into account the findings recorded by the Revisional Court. However, trial courts often pass similar orders again, leading to repeated remands. This cycle sometimes recurs multiple times before the matter reaches this Court. The Revisional Court, after applying an independent mind and recording its findings, has unnecessarily burdened the City Magistrate by remanding the matter to be decided afresh.

Head Notes

The Code of Criminal Procedure, 1973- Section 145; The Bharatiya Nagarik Suraksha Sanhita, 2023- Section 438/ 442- The matter has already been pending before the civil court and the civil court has directed the parties to maintain status quo, there is no justification for remanding the matter to the City Magistrate to decide afresh. Moreover, the suit was filed in 2019. No effective order has been passed with respect to the possession and ownership of the land; and as recorded in the inquiry report of the Investigating Officer, there is an imminent threat to the life and property of the parties. Therefore, the City Magistrate's decision to attach the property and hand it over to a neutral third party appears to be just and proper. Furthermore, the recall application was filed subsequent to the institution of the suit, along with an application under Section 5 of the Limitation Act, 1963, by respondent no. 2- Impugned order set aside.

That the routine and repetitive practice of remanding matters, particularly after entering into the merits of the controversy, reflects an avoidable reluctance on the part of the Revisional Courts to finally adjudicate the issues entrusted to them. An order of remand, unless founded upon a compelling legal or procedural necessity, is a significant indicator either of judicial hesitancy in assuming adjudicatory responsibility or of a lack of clarity in the understanding and application of governing legal principles. Revisional jurisdiction is intended to correct jurisdictional and legal errors and, wherever the record is sufficient, the Revisional Court is not only expected but duty-bound to render a conclusive adjudication rather than prolong the lis through mechanical remands.

Held- Repeated remands merely burden the judicial system and yield no meaningful relief to litigants. The Revisional Courts are required to act with greater sensitivity and responsibility, particularly when the trial court records are already available before them, and even otherwise, such records may be summoned if necessary. Unwarranted remands result in unnecessary wastage of judicial time and ultimately defeat the cause of justice. (E-15)

Case Law Cited

Vinay Tyagi v. Irshad Ali [(2013) 5 SCC 762] ; Amit Kapur v. Ramesh Chander [(2012) 9 SCC 460];Ram Sumer Puri Mahant v. State of U.P. and Others [(1985) 1 SCC 427]; Amresh Tiwari v. Lalta Prasad Dubey & Anr. [(2000) 4 SCC 440] ;Surenda Singh & Ors. v. District and Sessions Judge Kanpur & Ors [1996 JIC 1000]; Suvej Singh v. Ram Naresh & Ors. ; 2025 SCC OnLine SC 2743; relied upon M.C. Mehta v. Union of India, 1999 (6) SCC 237; State of U.P. v. Sudhir Kumar Singh (2021) 19 SCC 706, Krishna Dutta Awasthi v. State of Madhya Pradesh (2024) SCC OnLine SC 493; Amit Kapoor v. Ramesh Chander & Another; (2012) 9 SCC 460; State of Andhra Pradesh v. Pituhuk Sreenivasa Rao; (2000) 9 SCC 537;State of U.P. & another (2025) 3 SCC (Cri) 778; Ram Briksh Singh and others v. Ambika Yadav and another, 2004(7) SCC 665; Suvej Singh v. Ram Naresh & others, Civil Appeal No. 14661 of 2025; Madhu Limaye v. State of Maharashtra (1977) 4 SCC 551

List of Acts

The Code of Criminal Procedure, 1973; The Bharatiya Nagarik Suraksha Sanhita, 2023

List of Keywords

Section 438/442; BNSS; Routine practice of remading matters; Revisional Courts; Act with sensitivity and responsibility ; Unwarranted remands ; Unnecessary wastage of judicial time; Ultimately defeat the cause of justice.

Case Arising From

Order dated 09.09.2025 passed by the learned Additional Sessions Judge, Court No. 1, Mathura, in Criminal Revision No. 32 of 2025, titled Dhruv Singh v. State of U.P. and Another, whereby the matter was remanded to the trial court for fresh consideration.

Appearances for Parties

Counsel for Petitioner(s) : Rama Goel Bansal, Shalini Goel
Counsel for Respondent(s) : G.A., Mayank

(Delivered by Hon'ble Vinod Diwakar, J.)

1. Heard Ms. Rama Goel Bansal and Ms. Shalini Goel, learned counsel for the petitioner, Mr. Rahul Chaudhary, learned Amicus Curiae, and the learned A.G.A. for the State-respondent, and perused the record.

2. The present petition has been instituted seeking to set aside the order dated 09.09.2025 passed by the learned Additional Sessions Judge, Court No. 1, Mathura, in Criminal Revision No. 32 of 2025, titled Dhruv Singh v. State of U.P. and Another, whereby the matter was remanded to the trial court for fresh consideration.

3. In brief, the facts are that the petitioner approached the City Magistrate, Mathura, with a complaint under Section 145 Cr.P.C., stating that he owns a marriage home in the name of Kundan Vatika, which comprises rooms, a hall, and a field. The complainant states that he constructed the marriage home on his own land. One room in the corner of the marriage hall was given to the security guard, Dhruv Singh, who began residing therein. The security guard now seeks to usurp the complainant's marriage hall by claiming that he had purchased it from Kundan Singh. The electricity and water connections are in the name of the complainant, Kundan Singh. On receipt of the complaint, the City Magistrate sought a report from the Inspector, P.S. Kotwali. The Inspector submitted a report dated 15.07.2021, stating that both parties are claiming their rights over the

disputed property, that there is a likelihood of a breach of peace, and that an untoward incident may occur between the parties.

4. After hearing both the parties and perusing the record, the City Magistrate, vide order dated 10.08.2021, directed the Police to attach the property and hand over the same to a neutral person so as to avoid any serious conflict between the parties. Aggrieved by the same, respondent no. 2 moved an application on 30.09.2021 for recall of the order dated 10.08.2021. The City Magistrate, Mathura, again sought a report from the Police, pursuant to which a fresh report dated 23.11.2024 was submitted, stating that Civil Suit No. 874 of 2019, titled Dhruv Singh v. Kundan Singh, is pending trial before the Court of Civil Judge (Junior Division), Mathura, and that the trial court, vide order dated 25.09.2023, directed the parties to maintain status quo. After hearing both the parties and upon perusal of the record, the City Magistrate, Mathura, vide order dated 26.12.2024, dismissed the application of respondent no. 2 for recall of the order dated 10.08.2021.

5. Aggrieved by the order dated 26.12.2024, respondent no. 2, on 07.01.2025, preferred a criminal revision along with an application under Section 5 of the Limitation Act, assailing the orders dated 10.08.2021 and 26.12.2024, before the learned District and Sessions Judge, Mathura. The Revisional Court, vide order dated 09.09.2025, allowed the application under Section 5 of the Limitation Act and set aside the orders dated 10.08.2021 and 26.12.2024, with a direction to the City Magistrate, Mathura, to pass a fresh order.

6. The learned Additional Sessions Court has recorded its findings in paragraphs 18, 19, and 20 of the impugned order dated 09.09.2025, wherein it is observed that Civil Suit No. 874 of 2019, titled Dhruv Singh v. Kundan and Others, is pending between the parties, and that the civil court has jurisdiction to adjudicate the substantive rights of the parties regarding ownership and possession. Therefore, the proceedings under Section 146(1) Cr.P.C. were held to be erroneous, and after setting aside the orders dated 10.08.2021 and 26.12.2024, the Revisional Court directed the City Magistrate to decide the proceedings afresh. The Revisional Court, while recording such findings, placed reliance upon Vinay Tyagi v. Irshad Ali1, Amit Kapur v. Ramesh Chander2, Ram Sumer Puri Mahant v. State of U.P. and Others3, Amresh Tiwari v. Lalta Prasad Dubey & Anr.4, and Surenda Singh & Ors. v. District and Sessions Judge Kanpur & Ors5.

7. The order passed by the Revisional Court is detailed, and the Revisional Court has discussed all aspects of the case, except returning findings on the application filed under Section 5 of the Limitation Act by respondent no. 2. There was no legal impediment before the Revisional Court to take a final view on the matter. No reason has been recorded for remanding the matter to the City Magistrate for a fresh decision; only findings on the merits of the case were recorded. If the Revisional Court had found the City Magistrate's order to be erroneous and, while recording its own observations, had set aside the said order, it ought to have decided the matter on merits rather than remanding it for fresh consideration. In several petitions, a recurring issue has arisen where Revisional Courts consistently remand matters to trial courts after recording findings on the merits. The impugned orders are set aside as a matter of routine, and trial courts are directed to pass fresh orders taking into account the findings recorded by the Revisional Court. However, trial courts often pass similar orders again, leading to repeated remands. This cycle sometimes recurs multiple times before the matter reaches this Court. The Revisional Court, after applying an independent

mind and recording its findings, has unnecessarily burdened the City Magistrate by remanding the matter to be decided afresh.

8. Such a procedure is unnecessary and counterproductive. It creates a vicious circle in which matters keep revolving between the trial court and the Revisional Court, and on many occasions, the matter ultimately reaches this Court either against the revisional order or against the subsequent order passed by the trial court pursuant to such remand.

9. Upon examining the impact of this recurring practice on the courts, this Court decided to hear all concerned parties so that the methodology adopted by the Revisional Courts may be examined in detail. A notice was issued to the Registrar General, with liberty to place on record any material regarding the aforesaid practice, and it was left to the learned Registrar General to take an informed decision in this regard.

10. Shri Rahul Chaudhary, Advocate, has been appointed as Amicus Curiae to assist the Court.

11. Shri Manish Goyal, learned Senior Counsel, assisted by Shri Sudhir Malhotra, learned counsel for the High Court, stated that it shall always be the endeavour of the Courts to curtail litigation and not to generate it. Any unnecessary remand gives rise to a fresh round of litigation, which ought to be avoided6. The Courts are already heavily burdened; therefore, once a Court has applied its judicial mind and recorded findings on the merits of the case, in consonance with the principles laid down by the Constitutional Courts, there remains no palpable justification for Revisional Courts to remand the matter with a direction for a fresh decision.

12. Shri Rahul Chaudhary, learned Amicus Curiae, placing reliance upon Section 438 BNSS, 2023 (Section 397 Cr.P.C.), submitted that the object and scope of Section 438 BNSS, 2023 is the calling for of records to exercise the power of revision. Section 438 BNSS, 2023 empowers the High Court and the Sessions Judge to call for and examine the records of any inferior criminal court in order to determine whether the sentence, finding, or order of such inferior court is legal, correct, or proper, and whether the proceedings of such court are regular, so as to prevent miscarriage of justice and the perpetuation of illegality. The High Court, while exercising criminal revisional jurisdiction under Section 442 BNSS, 2023 (Section 401 Cr.P.C.), cannot convert a finding of acquittal into one of conviction. If the High Court believes that an acquittal was erroneous, it would not reverse it; instead, it would remand the matter for re-appreciation of evidence by the trial court.

12.1 The revisional jurisdiction of criminal courts constitutes an important supervisory mechanism within the criminal justice system. Under the provisions of the BNSS, the High Courts and Sessions Courts are vested with revisional powers to examine the correctness, legality, propriety, and regularity of findings, sentences, or orders passed by subordinate criminal courts. The object of revisional jurisdiction is not to provide another tier of appeal, but to ensure that subordinate courts act within the bounds of law and procedure and that miscarriage of justice is prevented.

12.2 Revisional jurisdiction is essentially discretionary and supervisory in nature. Unlike appellate jurisdiction, a Revisional Court ordinarily does not undertake a complete re-appreciation of evidence or substitute its own conclusions merely because another view is possible. The power is primarily exercised to correct jurisdictional errors, patent illegality, procedural irregularity, perversity of findings, or gross miscarriage of justice. The Revisional Court is therefore expected to exercise restraint and intervene only where necessary in the interest of justice.

12.3 An important principle governing revisional jurisdiction is the doctrine of finality of litigation. Judicial proceedings cannot be permitted to continue indefinitely, as endless adjudication undermines certainty, stability, and public confidence in the justice delivery system. Finality of litigation is a foundational principle intended to ensure that disputes attain a conclusive determination after due adjudication. Repeated interference with reasoned judicial findings, particularly through unnecessary remands, defeats this principle and prolongs litigation without sufficient cause.

12.4 The administration of justice does not rest merely upon the adjudication of disputes, but also upon ensuring that litigation reaches its logical and lawful conclusion within a reasonable time. Judicial discipline and procedural propriety demand that Courts exercise their powers in a manner that advances finality of litigation rather than prolonging uncertainty between the parties.

12.5 An unnecessary remand by a superior or Revisional Court often gives rise to a fresh round of litigation, thereby reopening controversies that have already been examined on the merits. Such remands not only delay the delivery of justice but also impose additional financial and procedural burdens upon the litigants. In a justice delivery system where Courts are already facing heavy case pendency, avoidable remands contribute further to judicial backlog and impede the effective administration of justice.

12.6 Where a subordinate Court has applied its judicial mind to the facts and circumstances of the case and has recorded findings on merits, particularly after acting in consonance with the principles laid down by the Constitutional Courts, there ordinarily remains no palpable justification for a Revisional Court to remand the matter merely for a fresh decision. Revisional jurisdiction is primarily supervisory and is intended to correct jurisdictional errors, material irregularities, or manifest illegality. It is not expected to routinely unsettle reasoned findings and direct de-novo adjudication in the absence of compelling circumstances.

12.7 The power of remand must therefore be exercised sparingly and only in cases where the ends of justice genuinely require reconsideration of material issues that could not have been adequately addressed earlier. Mechanical or routine remand orders defeat the principle of judicial economy and undermine public confidence in the efficiency of the justice system. Courts must remain conscious that justice delayed through repeated rounds of adjudication often amounts to justice denied.

12.8 Once findings on merits have been duly recorded after proper appreciation of evidence and applicable legal principles, the Revisional Courts should endeavour to finally adjudicate the

dispute instead of remanding the matter unnecessarily. Such an approach alone would uphold the principles of finality, judicial efficiency, and expeditious dispensation of justice.

12.9 Learned Amicus Curiae has placed reliance7, besides other judgments8, to make out a case that the jurisdiction of the Court under Section 438 BNSS, 2023 can be exercised so as to examine the correctness, legality or propriety of the order passed by the trial court or the Court of SDM, as the case may be. The object of this provision is to set right a patent effect or an error of jurisdiction or law. The next well accepted norm is that the revisional jurisdiction of the higher Court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restriction is that it should not be against an interim or interlocutory order. The order has to keep in mind that the exercise of revisional jurisdiction should not lead to injustice ex-facie.

13. In the present case, as the matter has already been pending before the civil court and the civil court has directed the parties to maintain status quo, there is no justification for remanding the matter to the City Magistrate to decide afresh. Moreover, the suit was filed in 2019. No effective order has been passed with respect to the possession and ownership of the land; and as recorded in the inquiry report of the Investigating Officer, there is an imminent threat to the life and property of the parties. Therefore, the City Magistrate's decision to attach the property and hand it over to a neutral third party appears to be just and proper. Furthermore, the recall application was filed subsequent to the institution of the suit, along with an application under Section 5 of the Limitation Act, 1963, by respondent no. 2.

14. Accordingly, the impugned order dated 09.09.2025 passed by the learned Additional Sessions Judge, Court No. 1, Mathura, in Criminal Revision No. 32 of 2025, titled Dhruv Singh v. State of U.P. and Another, is set aside.

15. The present petition is allowed in the above terms.

16. In all the connected matters, a common question has arisen for consideration before this Court. In each of the cases, the Revisional Courts, after hearing the parties and examining the records, proceeded to set aside the orders passed by the Sub-Divisional Magistrate under Section 164 of BNSS, 2023 [Section 145 Cr.P.C.] and/or by the Magistrates under Section 175(3) of BNSS, 2023 [Section 156(3) Cr.P.C.], while simultaneously recording findings touching upon the merits of the controversy. Despite having undertaken such exercise, the Revisional Courts thereafter remanded the matters back to the trial courts for fresh adjudication in light of the observations recorded in the revisional orders.

17. However, in none of the aforesaid matters did the Revisional Courts assign any cogent reason as to why they were unable to finally adjudicate the controversies themselves while exercising revisional jurisdiction. Once the Revisional Courts had examined the records, heard the parties, and recorded findings touching upon the merits of the disputes, the routine exercise of remanding the matters for fresh consideration ought to have been avoided. Such remand orders, in the absence of any demonstrated legal or procedural necessity, unnecessarily prolong litigation and result in avoidable multiplicity of proceedings.

18. Accordingly, all Revisional Courts in the State of Uttar Pradesh are expected to exercise due restraint and circumspection while remanding matters to subordinate courts for fresh consideration, particularly in proceedings arising under Section 164 of BNSS, 2023 and Section 175(3) of BNSS, 2023, as well as other miscellaneous proceedings of a similar nature. The power of remand is an exception and not the rule. Even Section 442(3) of BNSS, 2023 recognises the limited contours within which revisional jurisdiction is to be exercised. Therefore, remand should be resorted to only in rare and exceptional circumstances where the Revisional Court, for reasons to be specifically recorded, finds itself unable to adjudicate the matter finally on merits.

19. Unfortunately, a contrary practice appears to have developed in the district courts of Uttar Pradesh whereby matters are routinely remanded despite the Revisional Courts having already examined the merits. Such an approach not only burdens the trial courts and the Courts of the Sub-Divisional Magistrate with repetitive proceedings but also contributes to unnecessary docket congestion, thereby adversely affecting the administration of justice. This practice, therefore, deserves to be discontinued.

20. This Court has no hesitation in observing that the routine and repetitive practice of remanding matters, particularly after entering into the merits of the controversy, reflects an avoidable reluctance on the part of the Revisional Courts to finally adjudicate the issues entrusted to them. An order of remand, unless founded upon a compelling legal or procedural necessity, is a significant indicator either of judicial hesitancy in assuming adjudicatory responsibility or of a lack of clarity in the understanding and application of governing legal principles. Revisional jurisdiction is intended to correct jurisdictional and legal errors and, wherever the record is sufficient, the Revisional Court is not only expected but duty-bound to render a conclusive adjudication rather than prolong the lis through mechanical remands.

21. Repeated remands merely burden the judicial system and yield no meaningful relief to litigants. The Revisional Courts are required to act with greater sensitivity and responsibility, particularly when the trial court records are already available before them, and even otherwise, such records may be summoned if necessary. Unwarranted remands result in unnecessary wastage of judicial time and ultimately defeat the cause of justice.

22. The matters in the aforesaid cases are being remitted to the concerned Revisional Courts with the object of sensitizing judicial officers to the settled principle that, once findings on merits have been recorded upon examination of the record and hearing of the parties, it is ordinarily unnecessary to remand the matter for fresh adjudication by the subordinate court. It is expected that, in future, the Revisional Courts shall adopt a more cautious, judicious, and legally sustainable approach while exercising the power of remand, and shall resort to such course only where compelling legal or procedural necessity so warrants.

23. For the aforesaid reasons, the orders under challenge in (1) A-227/1539/2025- Umesh Kumar Upadhyay v. State of U.P. and 5 Others; (2) A-227/12515/2025- Mahtab Husain and Another v. State of U.P. and 4 Others; (3) A-227/12524/2025- Aftab Husain and Another v. State of U.P. and 4 Others; (4) A-227/13115/2025- Deendayal Singh and 5 Others v. State of U.P. and Another; (5) A-227/13746/2025- Rajiv Shukla and Another v. State of U.P. and 2 Others; (6) A-

227/12434/2025- Smt. Hemlata v. State of U.P. and 3 Others; (7) A-227/13129/2025- Ruchi Gupta and 7 Others v. State of U.P. and Another; (8) A-227/14400/2025- Girish Das v. State of U.P. and Another; (9) A-227/5149/2022- Babita v. State of U.P. and 2 Others; and (10) A-227/13622/2025- Asvad v. State of U.P. and Another- are hereby quashed and set aside, with a direction to the respective Revisional Courts to pass fresh orders. In cases where the trial court has already complied with the orders passed by the Revisional Courts and this Court as well, this order shall have no bearing on such cases.

24. Neither Shri Manish Goyal, learned counsel appearing for the High Court, nor Shri Rahul Chaudhary, learned Amicus Curiae, has placed before this Court any judgment or judicial precedent justifying the routine practice of remanding matters to subordinate courts for fresh consideration after having set aside the impugned orders.

25. I place on record my appreciation for the effective assistance rendered and the valuable suggestions advanced by Shri Rahul Chaudhary, learned Amicus Curiae.

26. The Registrar (Compliance) is directed to forthwith circulate a copy of this order to all learned District Judges in the State of Uttar Pradesh. Upon receipt thereof, the learned District Judges shall convene meetings within their respective judgeships for discussion, compliance, and record.

27. A copy of this order shall also be transmitted to the Director, Judicial Training and Research Institute, Lucknow, Uttar Pradesh, for necessary reference and training purposes. The Judicial Training and Research Institute shall ensure that the aforesaid principles are disseminated across all levels of the subordinate judiciary in the State of Uttar Pradesh through periodic refresher programmes and workshops, so as to sensitize judicial officers, particularly those exercising revisional jurisdiction, to the settled legal position that remand ought to be an exception and not the rule.

28. All the connected petitions are disposed of with the aforesaid observations and directions.

(2026) 5 ILRA 17
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 21.05.2026

BEFORE

THE HON'BLE BRIJ RAJ SINGH, J.

Application U/S 482 No. 3475 of 2026
&
Other Connected Cases

Smt. Sadhana Chooramani @ Sadhana Bedi ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Issue for Consideration

Matter pertains to whether the criminal defamation proceedings u/ss. 500/501 IPC, initiated on complaints filed by employees of City Montessori School and supported by witnesses who were likewise employees of said institution, could be said to satisfy the essential ingredients of s. 499 IPC r/w Explanation 4 thereto and whether, in the absence of any such independent estimation, the summoning orders and consequent proceedings were liable to be quashed in exercise of inherent jurisdiction u/s 482 CrPC.

Headnotes

Indian Penal Code, 1860 - ss. 500, 501, Explanation 4 to s. 499 - Code of Criminal Procedure, 1973 - ss. 199, 200, 202 - Constitution of India, 1950 - Article 20(2) - Estimation of others - Scope - Employees as Witnesses - Aggrieved Person - Summoning Order - Complaint Case - Defamation of Institution - Reputation - Essential Ingredients of offence - Independent Witnesses - Quashing of Proceedings - The applicants herein, being office -bearers/associates allegedly involved in organising demonstrations and distributing pamphlets against City Montessori School (CMS) and its founder, Dr. Jagdish Gandhi, on 18.08.2018 and 25.08.2018, came to be proceeded against on the strength of two separate criminal complaints instituted respectively by Pyare Lal Shukla, an Honorary Clerk at CMS, and Surendra Kumar Verma, an Office Secretary at CMS, alleging that the said acts were undertaken with the object of maligning the image and reputation of institution and its founder, pursuant to which the Magistrate, upon recording statements of complainants and witnesses u/ss. 200 and 202 CrPC - The witnesses examined being Vijay Narayan, Ramdas Gupta, and Santosh Tiwari, all likewise employees of CMS - Magistrate summoned the applicants vide orders dated 25.03.2019 and 31.07.2019 to face trial for offences punishable u/ss. 500/501 IPC in Complaint Case Nos. 2668 of 2018 and 2565 of 2018 respectively, pending before the Additional Chief Judicial Magistrate-I, Lucknow, thereby prompting the applicants to invoke the inherent jurisdiction of the High Court u/s 482 CrPC seeking quashing of aforesaid summoning orders and entire proceedings emanating therefrom.

Held: The witnesses, who belong to CMS, cannot be termed as "other persons" in whose estimation the reputation of complainant or the founder of CMS has allegedly been lowered - The complainants are employees of CMS and the witnesses are also employees of the same institution and, they are espousing their own cause - Accordingly, the Court comes to the conclusion that the essential ingredients of s. 499 IPC have not been satisfied in the instant case – Accordingly, applications allowed - Thus, the entire proceedings including the impugned summoning orders are hereby quashed. [Paras 33 to 34] (E-13)

Case Law Cited

Sanjay Dixit v. State of U.P. and Another, **2026:AHC-LKO:2515;** *Business Standard Pvt. Ltd. v. Lohitaksha Shukla,* **2021 SCC OnLine Del 988;** *In re: Arvind Kejriwal and Anr. v. State (NCT of Delhi) and Anr.,* **Order dated 30.09.2024 passed by Apex Court in SLP (Crl.) No . 13279 of 2024;** *Jyoti Kamal and Ors. v. State of U.P. and Another,* **reported in 2026 SCC OnLine All 100;** *Nakkheeran Gopal v. Rajendran,* **2022 SCC OnLine Mad 9871; referred to**

List of Acts

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

List of Keywords

s. 482 Cr.P.C; Summoning order; Complaint case; Defamation can't be instituted by proxy; Reputation; Estimation of others; Explanation 4 to s. 499 IPC; ss. 500 and 501 IPC; Cognizance of offence; Statements of complainant/witness; Double jeopardy; s. 300 Cr.P.C; Article 20(2); Complainant has no locus standi; Aggrieved person; Demonstrations; Pamphlets; Mini-trial; Quashing of criminal proceedings; Employees of CMS; Founder of school; Prohibitory order; Application allowed; Impugned orders quashed.

Case Arising From

ORIGINAL JURISDICTION: Application U/S 482 No. - 3475 of 2026

Connected with

Application U/S 482 No. - 3477 of 2026 And Application U/S 482 No. - 3679 of 2026

From the proceedings of Complaint Case Nos. 2668 and 2565 of 2018 pending before the Magistrate including the impugned summoning orders dated 25.03.2019 and 31.07.2019.

Appearances for Parties

Advs. for the Applicant(s):
Subhash Bisaria, Gaurav Tripathi

Advs. for the Opposite Party(s)
G.A., Aishwarya Saxena, Manish Vaish

(Delivered by Hon'ble Brij Raj Singh, J.)

1. Since the common question of facts and law are involved in all three applications, therefore, with the consent of the parties, they are being heard and decided by a common judgement.

2. The applicant/Smt. Sadhana Chooramani alias Sadhana Bedi in APPLICATION U/s 482 No. 3475 of 2026 has filed the application seeking setting aside of summoning order dated 25.03.2019 in Complaint Case No.2668 of 2018 (Pyarelal Shukla Vs. Sadhna Bedi & Ors.), under Sections 500, 501 of Indian Penal Code (for short ?IPC?), pending in the Court of Additional Chief Judicial Magistrate-I, Lucknow (for short 'Magistrate').

3. The applicants i.e. Smt. Sadhana Chooramani alias Sadhana Bedi and Rajesh Agarwal alias Rajesh Kumar Agarwal, respectively, in APPLICATION U/s 482 Nos. 3477 and 3679 of 2026 have filed the applications seeking setting aside of summoning order dated 31.07.2019 in Complaint Case No.2565 of 2018 (Surendra Kumar Verma Vs. Rajesh Agarwal & Ors.), under Sections 500, 501 of IPC, pending in the Court of the Magistrate.

4. The facts of APPLICATION U/s 482 Nos. 3475 of 2026 are extracted herein-below.

The complainant filed a complaint stating therein that he was employed as a typist at City Montessori School, Station Road Branch, Lucknow (for short 'CMS'), and that several persons, being jealous of the reputation of Shri Jagdish Gandhi (since deceased) on account of better education and discipline imparted by the institution, conspired to malign the image of CMS and its founder, Dr. Jagdish Gandhi. It has been alleged that Rajesh Agrawal, Ritesh Agrawal, Dr. Sunil Bisen, and Sandeep Pandey, had, even prior to the present incident, distributed pamphlets to defame CMS and its founder and had also staged demonstrations. It has further been alleged that, in order to create terror and defile the image of the school and Shri Jagdish Gandhi, on 18.08.2018, after sending an e-mail, Sandeep Pandey asked his supporters to hold demonstrations before CMS. Pursuant thereto, the supporters allegedly held demonstrations and distributed pamphlets. The statements of the complainant and the witnesses were recorded under Sections 200 and 202 of Code

of Criminal Procedure, 1973 (for short 'CrPC'). Thereafter, the Magistrate summoned the applicants to face trial vide the impugned order dated 25.03.2019.

5. The facts of APPLICATION U/s 482 Nos. 3477 and 3679 of 2026 are related to each other and have arisen out of same complaint case which are mentioned below.

The complainant filed a complaint stating therein that he was employed as an Office Secretary at CMS. It has been alleged that Rajesh Agrawal, Ritesh Agrawal, Dr. Sunil Bisen, and Sandeep Pandey had, even prior to the present incident, distributed pamphlets to malign the image of CMS and its founder, Dr. Jagdish Gandhi, and had also staged demonstrations. It has further been alleged that, in order to create terror and defame the school and Shri Jagdish Gandhi, on 18.08.2018 and 25.08.2018, after sending an e-mail, Sandeep Pandey asked his supporters to hold demonstrations before CMS. Pursuant thereto, the supporters allegedly held demonstrations and distributed pamphlets. The statements of the complainant and the witnesses were recorded under Sections 200 and 202 CrPC. Thereafter, the Magistrate summoned the applicants to face trial vide order dated 31.07.2019.

6. Shri Subhash Bisaria, learned counsel for the applicants has submitted that the order sheet reveals that the summons were not served upon the applicant. He has also submitted that the applicant has been residing at Ghaziabad for more than five years after her husband shifted to Ghaziabad.

7. He has further submitted that opposite party no. 2 filed the present complaint case purportedly on behalf of CMS, where he is employed as Office Secretary, despite the fact that an F.I.R. had already been lodged by the school authorities regarding the same incidents dated 18.08.2018 and 25.08.2018, as stated in the complainant's own statement recorded under Section 200 CrPC as well as in the statements of the witnesses recorded under Section 202 CrPC.

8. He has further submitted that with regard to the very same incidents dated 18.08.2018 and 25.08.2018, another Complaint Case No. 2565 of 2018 has also been filed by one Surendra Kumar Verma, who is working as an Office Secretary at CMS. Thus, multiple criminal cases have been instituted in respect of the same incidents.

9. He has further submitted that the name of the applicant has intentionally and mala fidely been implicated in the matter, as she became a victim of rivalry between management factions and was removed from the post of Principal of the school merely to settle personal scores.

10. He has further submitted that under Section 199 CrPC, a Magistrate can take cognizance of an offence of criminal defamation only upon a complaint made by the person aggrieved. A complaint relating to defamation cannot be instituted through a proxy or even by way of general authorization. According to him, the person whose reputation has allegedly been harmed, namely the aggrieved individual, company, or entity, must himself institute the complaint or suit and demonstrate actual harm caused by the alleged defamatory act.

11. He has further submitted that in the present case, institution of multiple complaints in respect of the same incident subjects the applicant to double jeopardy, which is contrary to Section 300 CrPC as well as violative of Article 20(2) of the Constitution of India, 1950.

12. He has further submitted that, even going by the version of the complaint and the statements recorded under Sections 200 and 202 CrPC, at the most, a case of holding peaceful demonstrations before the school premises is made out, which is a democratic right of every citizen and within the ethos of a vibrant democracy.

13. He has further submitted that the name of the applicant neither figures in the allegation relating to sending of the e-mail, as stated in the complaint and the statements recorded under Sections 200 and 202 CrPC, nor is she visible in the photographs filed along with the complaint. According to him, her name has been maliciously implicated on account of rivalry between management factions.

14. He has further submitted that it is well settled that a complaint relating to defamation cannot be instituted by proxy, even with authorization, and the same must be instituted by the person allegedly aggrieved. It has also been submitted that the complainant has no locus standi to file the present defamation complaint on behalf of the school.

15. Shri Subhash Bisaria, learned counsel for the applicants in APPLICATION U/S 482 Nos. 3475, 3477 of 2026 has submitted that both the complaints indicate one fact that both complainants are employees of CMS and they have not been authorised to file the complaints. Similarly, the witnesses whose statements were recorded under Section 202 CrPC are also the employees of the CMS itself. Thus, there is statutory violation of Explanation 4 to Section 499 IPC which provides that reputation should be lowered down in the eyes of estimation of others whereas in the present case, the complainant as well as witnesses are employees of CMS whose reputation has been alleged to be lowered, as per complaints, thus, there is statutory violation of Explanation IV to Section 499 IPC.

16. He has relied on the following judgments :-

(I) Sanjay Dixit Vs. State of U.P. and Another, 2026:AHC-LKO:2515;

(II) Business Standard Pvt. Ltd. v. Lohitaksha Shukla, 2021 SCC OnLine Del 988 and

(III) Order dated 30.09.2024 passed by Hon?ble Apex Court in SLP (Crl.) No . 13279 of 2024 in re: Arvind Kejriwal and Anr. Vs. State (NCT of Delhi) and Anr.

17. Shri R.K.S. Suryavanshi, learned counsel for the applicant in APPLICATION U/S 482 No. 3679 of 2026 has adopted the arguments advanced by Shri Subhash Bisaria, learned counsel.

18. On the other hand, Shri Purnendu Chakravarty, learned Senior Advocate assisted by Shri Shashwat Vidyarthi and Shri Ankit Kumar, Advocates on behalf of opposite party no.2 in APPLICATION U/S 482 Nos. 3475, 3477 of 2026 has submitted that the complaints have been

filed by the complainants who are employees of CMS. The statements under Section 200 CrPC of the complainants have been recorded and thereafter, statements under Section 202 CrPC of the witnesses have been recorded. The contents of the complaints indicate that the reputation of the school i.e. CMS and its founder Dr. Jagdish Gandhi has been lowered in the eyes of public. The pamphlets against CMS and its founder were circulated, which are defamatory in nature. The imputation has been levelled against the CMS and the applicants had assembled at the main gate of CMS, Station Road, Lucknow. The police had intervened in the said demonstraion but the applicants violated the law and order and following which they were arrested.

19. He has further submitted that the applicants were making demonstrations against the school and its founder despite the prohibitory order pased by the Court.

20. He has further submitted that once the statements under Sections 200 and 202 CrPC have been recorded and the Magistrate has issued summons, this Court cannot weigh the evidences and the applications are liable to be rejected.

21. He has further submitted that under Section 482 CrPC, this Court cannot do mini-trial. Once a prima facie offense is made out after a bare perusal of the statements under Sections 200 and 202 CrPC, the trial is to be conducted and no roving enquiry can be done by this Court.

22. To buttress his arguments, he has relied on following judgments :

(I) Sanjay Dixit (Supra); and

(II) Jyoti Kamal and Ors. Vs. State of U.P. and Another, reported in 2026 SCC OnLine All 100.

23. He has submitted that in the case of Sanjay Dixit (Supra), there was no witness examined under Section 202 CrPC whereas in the present case, there are witnesses under Section 202 CrPC, who have supported the complainants? case, therefore, it has been submitted that the judgment passed in case of Sanjay Dixit (Supra) will not be applicable in the present matter.

24. I have heard Shri Subhash Bisaria, learned counsel for the applicants in APPLICATION U/S 482 Nos. 3475, 3477 of 2026, Shri R.K.S. Suryavanshi, learned counsel for the applicant in APPLICATION U/S 482 No. 3679 of 2026, Shri Rao Narendra Singh and Shri Gyanendra Singh, learned Additional Government Advocates for the State/opposite party no.1 in APPLICATION U/S 482 Nos. 3475, 3477 of 2026, Shri Piyush Kumar Singh, learned AGA for the State/opposite party no.1 in APPLICATION U/S 482 No. 3679 of 2026, and Shri Purnendu Chakravarty, learned Senior Advocate assisted by Shri Shashwat Vidyarthi and Shri Ankit Kumar, Advocates on behalf of opposite party no.2 in APPLICATION U/S 482 Nos. 3475, 3477 of 2026.

25. Notice to opposite party no.2 in APPLICATION U/S 482 No. 3679 of 2026 is dispensed with. It is also to be noted that Shri Purnendu Chakravarty, learned Senior Advocate assisted by Shri Shashwat Vidyarthi and Shri Ankit Kumar, Advocates has put in appearance on behalf of complainant/opposite party no.2 in APPLICATION U/S 482 No. 3477 of 2026 and the

complainant/opposite party no.2 of APPLICATION U/S 482 Nos. 3679 and 3477 of 2026 are same.

26. Before proceeding further, it would be apt to peruse the case laws relied upon by learned counsel for the parties as well as the provisions contained in Explanation IV to Section 499 of the Indian Penal Code, which are extracted herein-below:

‘Explanation 4.? No imputation is said to harm a person’s reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

27. Madras High Court in the case of Nakkheeran Gopal v. Rajendran, 2022 SCC OnLine Mad 9871, has considered the proposition of Explanation IV to Section 499 IPC and has observed that it is important to make out the case of defamation as per Explanation 4 is that, only if a person's reputation, character and credit is directly or indirectly, in the estimation of others, is lowered, the offence of defamation would be attracted. Relevant paras are extracted herein-below:

"8. Explanation 4 is relevant here. What is important to make out the case of defamation as per Explanation 4 is that, only if a person's reputation, character and credit is directly or indirectly, in the estimation of others, is lowered, the offence of defamation would be attracted. As rightly pointed out by the learned counsel for the petitioners, the reading of the complaint allegations shows that there is no pleading as to whether respondent's reputation, character and credit is harmed in the estimation of others. Most importantly, the respondent has not cited any witness to speak about his reputation being dented in the estimation of others on reading the article referred in the complaint. Admittedly, no witness was examined to speak about this aspect.

10. The reading of the Complaint shows that the Respondent alleges that the Petitioners in connivance with each other forged the Complainant's Letter head with the sole intention to defame the Complainant and his party and published the article without his knowledge. The allegations are repeatedly made that Respondent's Letterhead is forged and defamatory article was published in the Magazine. However, in the Letters sent to the Petitioners, dated 8.2.2016, it is alleged that Petitioners should have contacted him before publishing the Letter. Publication of the Letter in his Letter pad without his permission is condemnable. It is also claimed that the Xerox copy of Office Letterhead was secured from others and the news was printed. Respondent had taken contradictory stand with regard to the published material in Letterhead. On the one hand, he claims that the Letterhead and the contents are fabricated, on the other hand, he claims that he was not the author of the Complaint and the Petitioner should have got his explanation and permission before publishing the Complaint in the Magazine. Another version is that the Xerox copy of the Letterhead was obtained from someone and the publication was made. The case of the Petitioners is that they got the Complaint impugned from their source and published in the Magazine along with certain other Complaints received against Party Leaders. There is no malice or will in publishing such Letters. It was only their part of job. The Judgments relied and mentioned above make it clear that there should be averment in the Complaint that the allegation made by the Accused were found

to be untrue. Not only that, due to the above imputation, the prestige, image and reputation of the Complainant is lowered in the estimation of the public. Admittedly, there is no averments made in the Complaint on these lines. Therefore, this Court is of the considered view that there is no prima facie case made out to take cognizance of the case against the Petitioners for the offences under Section 469 & 500 read with 501 & 502 of Penal Code, 1860."

28. This Court has also considered legal aspect in the case of Sanjay Dixit (Supra). Relevant paras are extracted herein-below:

‘25. The Supreme Court in the case of Nakkheeran Gopal (supra) has observed that it is mandatory under Section 202 Cr.P.C. when the accused is residing outside the jurisdiction of Magistrate, the issuance of process should be postponed. The Magistrate should either inquire the case himself of direct an investigation to be made by police officer or by such other person, he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. May be investigation by police officer is not required in this case and certainly an enquiry as to whether respondent's reputation is harmed in the estimation of others ought to have been conducted by the Magistrate by examining witnesses which was not done.

26. Section 499 IPC is pertaining to defamation wherein it is provided that whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person. It is thus, clear that defamation as mentioned in the opening part of Section 499 IPC is subjected to exception of Explanation-4 wherein it is provided that no imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

27. In the present case, there is no evidence produced by opposite party no.2 which supports his version so that his image could have been lowered down in the eyes of others. To constitute an offence of defamation, there has to be imputation and admission made in the manner as provided under the provision for knowing or causing harm or having reason to believe that such imputation will harm the reputation of the person about whom it is made.

29. Delhi High Court has considered the issue of an aggrieved person’ in para 28 of Business Standard Pvt. Ltd. (Supra), in which it has been held that defamation of a class or body of persons is also defamation of individual members of that class or body cannot be said to be not maintainable. Relevant paras are quoted herein-below:

‘23. In the present case, the complainant has not led any evidence to establish how his reputation was harmed or his moral or intellectual character was lowered as a result of the said article. However, he has claimed that he has been asked by his friends to leave RSS as a result of this article but he has not brought anyone in the witness box in support of this assertion and

thereby, has failed to prove that article brought any kind of defamation to him or that it has lowered the reputation of RSS in the eyes of his friends or RSS. So, trial court has erred in not applying its mind on this aspect.

24. The complainant claims himself to be Swayamsewak of RSS and its member. But again, he hasn't got any witness examined from RSS or brought any material on record to prove that he is a member of RSS.

28. Learned counsel for petitioners submitted that in Tek Chand Gupta (Supra), the complainant was a member of a body of large size, scope of which was too wide and therefore, the court held that defamation of a class or body of persons is also defamation of individual members of that class or body and a complaint by an individual member of that class or body cannot be said to be not maintainable. However, in the instant case complainant has failed to prove that he is a member of RSS nor he has placed anything on record to prove it and, therefore, he does not fall within the category of ?aggrieved person'

30. In the case of Jyoti Kamal (Supra), this Court has held that in para 26 that mini-trial cannot be done while deciding the case under Section 482 CrPC and if the offense is made out, then the disputed question of fact cannot be gone into. Relevant para is quoted herein-below:

'26. The Court is not required to conduct the mini-trial, at this stage of discharge/quashing of the criminal proceedings. Similarly, in the case of Sampelly Satyanarayana Rao (Supra), Hon'ble Apex Court has observed that while dealing with a quashing petition, the court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at that stage. The court, considering the prayer for quashing does not adjudicate upon a disputed question of fact. Similarly, in the case of Neeharika Infrastructure (P) Ltd. (Supra), law is propounded by Hon'ble Supreme Court that while examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.'

31. An important fact which has come before this Court is that the complainant in APPLICATION U/S 482 No. 3475 of 2026 is Pyare Lal Shukla, who is an Honorary Clerk at CMS. Similarly, in APPLICATION U/S 482 Nos. 3477 and 3679 of 2026, Surendra Kumar Verma is the complainant, who is working as an Office Secretary at CMS. The witness in APPLICATION U/S 482 No. 3475 of 2026 is Vijay Narayan, who is working as a Clerk at CMS, whereas in APPLICATION U/S 482 Nos. 3477 and 3679 of 2026, the witnesses are Ramdas Gupta and Santosh Tiwari, who are working as Honorary Clerk and Officer on Special Duty, respectively, at CMS. For the sake of convenience, the details are being reproduced in tabular form herein-below:

Application before this Court.	**Case Details before the Magistrate**	**Complainant**	**Witness(es)**
APPLICATION U/s 482 No. 3475 of 2026	Complaint Case No.2668 of 2018	Pyare Lal Shukla, Honorary Clerk at CMS	Vijay Narayan, Clerk at CMS

APPLICATION U/s 482 Nos. 3477, 3679 of 2026	Complaint Case No.2565 of 2018	Surendra Kumar Verma, Office Secretary at CMS	1. Ramdas Gupta, Honorary Clerk at CMS 2. Santosh Tiwari, Officer on Special Duty at CMS

32. The allegation in the complaint is that the reputation of the founder of the school, namely Jagdish Gandhi, has been lowered in 'the estimation of others'. However, an important fact which requires for consideration is that the complainant as well as all the three witnesses in the connected cases are employees of City Montessori School. Explanation IV to Section 499 IPC clearly provides that an imputation would amount to defamation only if it lowers the reputation of a person in 'the estimation of others'. Once the witnesses themselves are employees of the school, this Court is required to examine as to how it can be concluded that the reputation of CMS and its founder had been lowered in the estimation of others, as contemplated under Explanation IV to Section 499 IPC. Thus, prima facie, there appears to be a complete departure from the statutory requirements contained in Explanation IV to Section 499 IPC. The offence of defamation is a serious matter and cannot be taken lightly. Rather, the complainant is required to satisfy all the ingredients provided under Section 499 IPC before criminal liability can be attracted.

33. The witnesses, who belong to CMS, cannot be termed as 'other persons' in whose estimation the reputation of the complainant or the founder of the CMS has allegedly been lowered. The complainants are employees of CMS and the witnesses are also employees of the same institution and, they are espousing their own cause. Accordingly, this Court comes to the conclusion that the essential ingredients of Section 499 IPC have not been satisfied in the present case.

34. Keeping in view the aforesaid discussion, the applications are allowed. The entire proceedings of Complaint Case Nos.2668 and 2565 of 2018 pending before the Magistrate including the impugned summoning orders dated 25.03.2019 and 31.07.2019, respectively, are hereby quashed qua the applicants.

35. No order as to costs.

(2026) 5 ILRA 26
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 12.05.2026

BEFORE
THE HON'BLE BRIJ RAJ SINGH, J.

Application U/S 482 No. 8614 of 2024

Smt. Chandrama Devi Agrahari ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Issue for Consideration

Issue pertains to whether the applicant, by omitting to disclose the pendency of a criminal revision filed against the same summoning order, had violated Sub-Rule (5) of Rule 3, Chapter XVIII, Part-III of the Allahabad High Court Rules, 1952, thereby rendering the application under Section 482 Cr.P.C. liable to be dismissed on grounds of suppression of material facts, misstatement and fraud upon the Court.

Headnotes

Code of Criminal Procedure, 1973 - ss. 156(3.), 397/399, 340 - Bharatiya Nagarik Suraksha Sanhita, 2023 - ss. 215, 379 - Suppression and fraud - Perjury - Non-disclosure of pendency of criminal revision against same summoning order - Criminal revision filed by counsel without instructions by client - Applicant's Vakalatnama admittedly on record in revisional proceedings - Allahabad High Court Rules, Rule 3(5) - Violation of - Practice and Procedure - The applicant, former Chairperson of Nagar Panchayat, was summoned along with other accused vide order dated 08.02.2024 in Complaint Case instituted u/s 420 IPC on the allegation that a forged boundary certificate had been issued and signed by her in collusion with the complainant's rivals in a pending civil litigation, and upon non-appearance, a bailable warrant dated 03.08.2024 was also issued against her - Aggrieved by summoning order, a Criminal Revision was filed on her behalf before the District and Sessions Judge, Sultanpur on 08/09.03.2024, in which no interim order was granted, yet the applicant thereafter filed the instant application u/s 482 Cr.P.C. on 18.09.2024 without disclosing the pendency of said criminal revision, obtaining an interim stay of proceedings on 26.09.2024, and it was only after the opposite party filed a counter affidavit dated 04.11.2024 disclosing this fact that the applicant, on 20.11.2024, moved an application for withdrawal of s. 482 application claiming that the revision had been filed by her counsel without instructions, a version disputed by the opposite party who contended that the applicant's own Vakalatnama subsisted in revisional proceedings, thereby raising the question of suppression of material facts and violation of mandatory disclosure requirement under the High Court Rules.

Held: The judgment cited by counsel for applicant in the case of Himalayan Coop. Group Housing Society (infra), it has been held that Lawyers are perceived to be their client's agents - In the instant case, the judgment would not be applicable for the reason that applicant has filed the instant application u/s 482 Cr.P.C. seeking quashing of entire proceedings and summoning order and for the same cause of action, she had already filed a criminal revision before the Sessions Court - Therefore, filing of instant application is in clear violation of Rule 3 (5) of Chapter XVIII, Part-III of Rules of Court - Thus, the applicant is guilty of misrepresentation, fraud and concealment of material facts - Other judgments cited by counsel for applicant are not applicable to the facts of instant case - Therefore, application is rejected with exemplary cost - Since the application u/s 482 Cr.P.C. is rejected on merit, IA No.2 of 2024 (Application for withdrawal of petition) and IA No.5 of 2025 (Application u/s 340 of Cr.P.C. r/w s. 379 of BNSS, 2023) filed by applicant are rejected as infructuous - Consequently, IA No.3 of 2025 (Application on behalf of opposite party no.2 under Rule 3(5) of Chapter XVIII Part-III of Allahabad High Court Rules, 1952 r/w ss. 379 and 215 of BNSS, 2023 for prosecution of applicant is partly allowed. [Paras 26, 28] (E-13)

Case Law Cited

S.P. Chengalvaraya Naidu (dead) by LRs. v. Jagannath (dead) by LRs. and others **(1994) 1 SCC 1;** *Ramjas Foundation and others v. Union of India and others,* **(2010) 14 SCC 38 - referred to**

Himalayan Coop. Group Housing Society v. Balwan Singh and others, **(2015) 7 SCC 373;** *Ganesh Patel v. Umakant Rajoria,* **2022 SCC OnLine SC 2050;** *Asit Kumar v. State of West Bengal and others,* **(2009) 2 SCC 703;** *Vishnu Agarwal v. State of U.P. and another,* **(2011) 14 SCC 813;** *Jaspreet Singh Garewal v. State of U.P. and another,* **2019 SCC OnLine All 3579;** *Keshav Prasad and others v. Consolidation Commissioner, Lucknow and others,* **2024 SCC OnLine All 8146;** *Vikram Bakshi and others v. R.P. Khosla and another*, **2025 SCC OnLine SC 1783 - distinguished**

List of Acts

Allahabad High Court Rules, 1952; Code of Criminal Procedure, 1973; Bharatiya Nagarik Suraksha Sanhita, 2023

List of Keywords

Application u/s 482 Cr.P.C; BNSS, 2023; Chairperson of Nagar Panchayat; Quashing of proceedings; Instruction by client; Bona fide litigant; Complaint case; Summoning order; Client's agent; Bailable warrant; Criminal revision; Withdrawal; Concealment; Suppression; Misstatement; Omission; Fraud; Perjury; Vakalatnama; Rule 3(5) Allahabad High Court Rules, 1952; Declaration; State Legal Services Authority; Infructuous; Application rejected with exemplary costs.

Case Arising From

ORIGINAL JURISDICTION: Application U/S 482 No. - 8614 of 2024

From the proceedings of Complaint Case No.1914 of 2023, Police Station Amethi, District Amethi and the summoning order dated 08.022024 including the bailable warrant dated 03.08.2024 passed by Additional Chief Judicial Magistrate, Room No.20, Sultanpur.

Appearances for Parties

Advs. for the Applicant(s):
Rishad Murtaza, Prafulla Tiwari, Raghvendra Ojha, Sumit Kumar Srivastava, B/S1322

Advs. for the Opposite Party(s):
G.A., Pragati Mehrotra, Rakesh Devi Prasad Kumar

(Delivered by Hon'ble Brij Raj Singh, J.)

1. The present application has been filed seeking quashing of the entire proceedings of Complaint Case No.1914 of 2023, Ghanshyam Soni @ Pappu Vs. Lallu Prasad Soni an others, under Section 420 IPC, Police Station Amethi, District Amethi and the summoning order dated 08.022024 including the bailable warrant dated 03.08.2024 passed by the Additional Chief Judicial Magistrate, Room No.20, Sultanpur.

2. Sri Prafulla Tiwari, learned counsel for the applicant has submitted that earlier the applicant consulted Sri J.N. Mishra, Advocate, for filing a criminal revision against the summoning order dated 08.02.2024, but on being advised to file an application under Section 482 Cr.P.C. before this Court against the summoning order, the applicant orally instructed her counsel not to file the criminal revision before the Sessions Court, but despite the aforesaid instruction, Criminal Revision No.91 of 2024 was filed by the Advocate without informing the applicant, in which no interim order was passed. He has further submitted that on 20.09.2024, the present application under Section 482 Cr.P.C. was filed before this Court challenging the orders dated 08.02.2024 and 03.08.2024 and this Court stayed further proceedings of Criminal Complaint Case No.1914 of 2023, pending before the Additional Chief Judicial Magistrate, Court No.20, Sultanpur vide order dated 26.09.2024.

3. Counsel for the applicant has further submitted that instruction given by the client to his/her Advocate may be oral or written is binding on the counsel, but in the present case in spite of instruction given by the applicant, the counsel had filed the criminal revision before the Sessions

Court without informing to the applicant. It is further submitted that applicant on coming to know about the pendency of the criminal revision being filed in her name through the counter affidavit filed on the behalf of opposite party no.2, which was served on her on 06.11.2024, the applicant being a bona fide litigant, moved an application for withdrawal of the application filed under Section 482 Cr.P.C. to pursue the remedy of criminal revision on 20.11.2024. However, this Court vacated the interim order granted without deciding the application for withdrawal of the application.

4. Counsel for the applicant has further submitted that it is a settled law that a client/litigant cannot at all be made to suffer for the mistake committed by his/her counsel. He has also submitted that the withdrawal application dated 20.11.2024 filed by the applicant is still pending adjudication before this Court and it deserves to be allowed by permitting the applicant to pursue the remedy of criminal revision.

Legal submissions of counsel for the applicant:

5. The contention of counsel for opposite party no.2 that the declaration in terms of Rule 3(5) Chapter XVIII, Part-III of the Allahabad High Court Rules, have not been made by the applicant and there has been material concealment by her in not declaring the pendency of the criminal revision falls on its face as the applicant herself got to know about the pendency of the criminal revision only when she was served the counter affidavit by opposite party no.2 on 06.11.2024 and immediately thereafter the applicant moved an application for withdrawal of the application on 20.11.2024. Therefore, there is no concealment, suppression of material fact or misstatement made by the applicant in terms of Rule 3(5) of Chapter XVIII, Part-III of the Allahabad High Court Rules as the applicant has no knowledge about the pendency of criminal revision at the time of filing the present application under Section 482 Cr.P.C. as she had specifically instructed her counsel not to file the criminal revision against the impugned order dated 08.02.2024. In fact, the applicant shows her bona fide conduct as she herself moved an application for withdrawal of the application under Section 482 Cr.P.C. on 20.11.2024 immediately after she came to know about the pendency of the criminal revision.

6. Counsel for the applicant has further submitted that the applicant is not seeking adjudication of her claim on merits and instead she is seeking withdrawal of the present application as she is now in knowledge of the fact that a criminal revision against the impugned summoning order dated 08.02.2024 is pending before the District and Sessions Judge, Sultanpur and she wishes to pursue the same. He has further submitted that allegation of opposite party no.2 that the interim order dated 26.09.2024 was communicated to the trial court by J.N. Mishra. Advocate is unsustainable as the application by means of which the interim order dated 26.09.2024 was communicated to the trial court was preferred by Sri Nagendra Pratap, Advocate as is evident from the application dated 01.10.2024 annexed as Annexure A-1 to the application dated 16.12.2024 filed by the applicant. Even the Vakalatnama filed on behalf of the applicant is in the name of Sri Nagendra Pratap, Advocate. He has, therefore, submitted that there is no concealment of material fact, omission or misstatement on the part of the applicant and there is no violation of Rule 3(5) of Chapter XVIII, Part-III of the Allahabad High Court Rules, rather the applicant to show her bona fide conduct, she herself moved an application for withdrawal of the application under Section 482 Cr.P.C. on

20.11.2024 immediately after she came to know about the pendency of the criminal revision, therefore, the application for withdrawal of application may kindly be allowed, so that the applicant may pursue her remedy before the Sessions Court in criminal revision.

7. Counsel for the applicant has further submitted that for the fault of the Advocate, the client (applicant) should not suffer because the applicant had instructed her Advocate on the next morning not to file the criminal revision, but he filed the same, therefore, in view of the judgement of the Hon?ble Supreme Court rendered in the case of Himalayan Coop. Group Housing Society Vs. Balwan Singh and others, (2015) 7 SCC 373, the applicant may not be held to be responsible. (Paras 22, 23, 31 and 32).

8. To buttress his argument, counsel for the applicant has placed reliance upon the following judgements:-

1. Himalayan Coop. Group Housing Society Vs. Balwan Singh and others, (2015) 7 SCC 373;

2. Ganesh Patel Vs. Umakant Rajoria, 2022 SCC OnLine SC 2050;

3. Asit Kumar Vs. State of West Bengal and others, (2009) 2 SCC 703;

4. Vishnu Agarwal Vs. State of U.P. and another, (2011) 14 SCC 813;

5. Jaspreet Singh Garewal Vs. State of U.P. and another, 2019 SCC OnLine All 3579

6. Keshav Prasad and others Vs. Consolidation Commissioner, Lucknow and others, 2024 SCC OnLine All 8146; and

7. Vikram Bakshi and others Vs. R.P. Khosla and another, 2025 SCC OnLine SC 1783.

9. On the other hand, Sri Rakesh Devi Prasad Kumar, assisted by Mr. Narendra Chaunan, counsel for opposite party no.2 has submitted that opposite party no.2 is owner of House No.230, which was earlier numbered as House No.163, Ward No.7, Raipur Fulwari, Town area, Amethi, District Amethi. Mr. Lallu Prasad Soni, Lalji Soni, Pujari Lal Soni and Sangam Lal Soni, residents of the same locality, filed Civil Suit No.1375 of 2013 in the Court of Civil Judge (J.D.), Sultanpur against opposite party no.2 and his brothers and after hearing the parties, the said Suit was dismissed with costs by the Civil Judge, Sultanpur vide judgement dated 17.12.2018. Feeling aggrieved with the said judgement, Mr. Lallu Prasad Soni, Lalji Soni, Pujari Lal Soni and Sangam Lal Soni filed Civil Appeal No.08 of 2019 in the Court of District and Sessions Judge, Sultanpur. During the hearing of the aforesaid appeal, Lallu Prasad Soni, Lalji Soni, Pujari Lal Soni and Sangam Lal Soni produced a certificate allegedly issued by the Nagar Panchayat. Opposite party no.2 has alleged that the said certificate was forged and prepared by the said Lallu Prasad Soni, Lalji Soni, Pujari Lal Soni and Sangam Lal Soni in collusion with the applicant and the then Executive Officer of the Nagar Panchayat. In the said certificate, boundary of the house of opposite party no.2 i.e. House No.230 was shown as the boundary of House No.292. The said certificate was signed by the applicant in the capacity of Chairperson of the Nagar Panchayat, Amethi.

10. Counsel for opposite party no.2 has further submitted that after making the necessary complaint to the police authorities, opposite party no.2 filed Criminal Case No.1914 of 2023, under Section 156(3) Cr.P.C. in the Court of Additional Chief Judicial Magistrate, Sultanpur against Mr. Lallu Prasad Soni, Lalji Soni, Pujari Lal Soni and Sangam Lal Soni, including the applicant, on which the Magistrate after considering the complaint and the statement of the complainant, issued summons against the applicant and other accused order dated 08.02.2024. However, despite issuance of the summoning order, applicant and other accused persons did not appear before the Magistrate, therefore, bailable warrant dated 03.08.2024 was issued against them. Feeling aggrieved with the summoning order, applicant filed Criminal Revision No.91 of 2024, under Section 397/399 Cr.P.C. on 07.03.2024 in the Court of District and Sessions Judge, Sultanpur, on which the revisional court passed order on 07.03.2024, whereby the revision was admitted the notices were issued to opposite parties for hearing on stay application and posted the matter to 22.03.2024.

11. It has been submitted by counsel for opposite party no.2 that during the pendency of the aforesaid criminal revision, the applicant filed the present application under Section 482 Cr.P.C. on 18.09.2024 i.e. after six months from the date of filing of the aforesaid criminal revision before this Court for quashing the proceedings of Complaint Case No.1914 of 2023, summoning order dated 08.02.2024 and the order of bailable warrant dated 03.08.2024 issued by the Additional Chief Judicial Magistrate, Sultanpur by making following statement on oath in paragraph-3 of the application, which reads as under:-

"That no other petition under Section-482 of Cr.P.C. Now under Section-528 of BNSS, 2023 is being filed on behalf of the petitioner before this Hon'ble Court and no other petition is being filed on behalf of the petitioner before Hon'ble High Court of Judicature at Allahabad or here at Lucknow Bench, Lucknow on the same set of facts and subject matter"

12. Counsel for opposite party no.2 has further invited the attention of the Court towards Sub-Rule (5) of Rule-3 (Chapter-XVIII, Part-III), of the Allahabad High Court Rules, 1952, which reads as under:-

‘(5) In first paragraph of application under Section 482 Cr.P.C., criminal revision, transfer application or writ petition (or supporting affidavit thereof) it should be mentioned that no earlier application/criminal revision/writ petition has been filed in Allahabad High Court or Lucknow Bench against the impugned order (if any) on the same or related cause of action or seeking the same or related reliefs, and no such criminal revision or transfer application for the same reliefs, and no such criminal revision or transfer application for the same relief was pending in the lower court. If any such application was pending, details of the same are to be furnished. Any substantial omission or misstatement on these facts would result in dismissal of the petition, imposition of costs and prosecution for perjury.?

13. It has been submitted by counsel for apposite party no.2 that in the present application under Section 482 Cr.P.C., the applicant deliberately omitted and did not disclose the pendency of Criminal Revision No.91 of 2014 challenging the same summoning order dated 08.02.2024, which

has been challenged in the present application, as such the applicant has violated the provisions of Sub-Rule (5) of Rule-3 (Chapter-XVIII, Part-III), of the Allahabad High Court Rules, 1952.

14. It has further been submitted by counsel for apposite party no.2 that applicant by suppressing the material fact of pendency of criminal revision, in which no interim order was passed, persuaded this Court to pass an interim order in her favour on 26.09.2024 in the present application. Opposite party no.2 filed counter affidavit dated 04.11.2024 annexing a copy of Criminal Revision No.91 of 2024 along with the order-sheet and the order dated 07.03.2024 passed in it, which was served upon the applicant on 06.11.2024. It is submitted that applicant having realized the fraud, omission and misstatement made by her in the present application, filed an application for withdrawal of application under Section 482 Cr.P.C. on 20.11.2024 mentioning the brief particulars in paragraphs 3, 4 and 5 of the application, in order to mislead this Court. Opposite party no.2 filed reply to the application for withdrawal of application under Section 482 Cr.P.C. on 27.11.2024, specifically denying the averments made by the applicant in the application for withdrawal dated 20.11.2024 and has specifically mentioned in paragraph-5 that Sri J.N. Mishra, Advocate has filed his Vakalatnama on behalf of the applicant in Criminal Case No.1914 of 2023 on 21.08.2024 i.e. prior to filing of the present application under Section 482 Cr.P.C. on 18.09.2024 and he has neither withdrawn his Vakalatnama nor has given ?No Objection Certificate? for filing Vakalatnama by any other Advocate as on 01.10.2024. The applicant has filed her rejoinder affidavit on 16.12.2024 to the reply filed by opposite party no.2 on 27.11.2024.

15. It has further been submitted by counsel for apposite party no.2 that applicant in order to hide her own fraud, omission, misstatement, suppression of facts and documents, filed an application under Section 340 Cr.P.C. read with Section 379 of Bharatiya Nagarik Suraksha Sanhita, 2023 making allegation that opposite party no.2 is continuously trying to mislead this Court by way of submitting false affidavits without any particulars and has not come with clean hands before this Court, hence he is liable to be punished by this Court under Section 340 of Cr.P.C. read with Section 379 of Bharatiya Nagarik Suraksha Sanhita, 2023. It is submitted that in the said application, the applicant has nowhere stated that Sri J.N. Mishra, Advocate is not representing her in Criminal Case No.1914 of 2023 before the Magistrate and further she has not stated anywhere that as on 26.09.2024 (the date of interim order passed by this Court) or as on 01.10.2024, Sri J.N. Mishra, Advocate has given his ?No Objection Certificate? to the applicant and was not representing her in the said criminal case. Therefore, the aforesaid application filed by the applicant Under Section 340 of Cr.P.C. read with Section 379 of Bharatiya Nagarik Suraksha Sanhita, 2023 deserves to be rejected.

16. It is further submitted by counsel for opposite party no.2 that considering the omissions, misstatements, suppression of material facts and documents by the applicant, opposite party no.2 filed an application on 06.02.2025 under Sub-Rule-5 of Rule-3 of Chapter-XVIII, Part-III of the Allahabad High Court Rules, 1952 read with Section 379 and Section 215 of Bharatiya Nagarik Suraksha Sanhita, 2023 for prosecution of the applicant.

Legal Submissions of counsel for opposite party no.2

17. Counsel for opposite party no.2 has submitted that under Sub-Rule-5 of Rule-3 of Chapter-XVIII, Part-III of Allahabad High Court Rules, 1952, it was mandatory for the applicant while filing the present application under Section 482 Cr.P.C. to disclose specifically that no such criminal revision or transfer application for the same reliefs was pending in the lower court. It was mandatory for the applicant under the said Rule to specifically disclose the pendency of Criminal Revision No.91 of 2024 filed against the summoning order, which was also challenged in the present application under Section 482 Cr.P.C. It is further submitted that the said non-disclosure, omission and misstatement on the part of the applicant is in clear violation of the said Rule, which clearly provides that any substantial omission or misstatement of the facts as mandated in the said Sub Rule-5 would result in dismissal of the petition making observations about the substantia omission or misstatement, imposition of costs and prosecution for perjury and in the present case all the aforesaid facts are apparent from the record and the pleadings of the applicant herself.

18. It is further submitted that as mentioned above, the applicant has taken the entire judicial process for granted and having failed to obtain any relief from the Sessions Court, she approached this Court by suppressing the material facts and documents pertaining to criminal revision filed by her before the Sessions Court and at the same time, making omission and misstatement in the present application in violation of the mandatory provisions of Sub Rule-5 of Rule-3 of Chapter-XVIII, Part-III of Allahabad High Court Rules, 1952. It is submitted that applicant is not an illiterate person and at the relevant time, she was Chairperson of Nagar Panchayat, Amethi. It is submitted that Hon'ble Supreme Court has time and again held that no one can be permitted to pollute the stream of justice by suppressing material facts and documents and by omission or misstatement.

19. To buttress his arguments, counsel for opposite party no.2 has placed reliance upon the following judgments:

1. S.P. Chengalvaraya Naidu (dead) by LRs. V. Jagannath (dead) by LRs. and others (1994) 1 SCC 1;

2. Ramjas Foundation and others Vs. Union of India and others, (2010) 14 SCC 38; and

3. Keshav Prasad and others Vs. Consolidation Commissioner, Lucknow and others, 2024 SCC OnLine All 8146.

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

21. After hearing the parties? counsel and going through the record, it is evident that summons were issued against the applicant on 08.03.2024 by the trial court. Thereafter, Criminal Revision No.91 of 2024, under Section 397/399 Cr.P.C. was filed on 09.03.2024 against the summons, in which no interim order was passed. The applicant filed the present application under Section 482 Cr.P.C. during the pendency of the aforesaid criminal revision after six months i.e. on 18.09.2024. Sub-rule (5) Rule 3 of Chapter XVIII, Part-III of the Rules of the Court postulates that criminal revision, transfer application or writ petition (or supporting affidavit thereof), it should be mentioned that no earlier application/criminal revision/writ petition has been filed in Allahabad

High Court or Lucknow Bench against the impugned order (if any) on the same or related cause of action or seeking the same or related reliefs, and no such criminal revision or transfer application for the same reliefs, and no such criminal revision or transfer application for the same relief was pending in the lower court. It is thus clear that it was mandatory for the applicant to disclose the pendency of Criminal Revision No.91 of 2024 in the Sessions Court, in the present application under Section 482 Cr.P.C. in view of the aforesaid Rule of the Allahabad High Court Rules.

22. It is also to be noted that in the aforesaid criminal revision no interim order was granted. The applicant filed the present application under Section 482 Cr.P.C. before this Court and got an interim order on 26.09.2024. The applicant has taken a plea that the Advocate, who was instructed to file criminal revision before the Sessions Court, was orally instructed not to file the criminal revision, but the same was filed on 09.03.2024 in the morning. It is evident that when opposite party no.2 filed counter affidavit disclosing the fact that the aforesaid criminal revision was filed on 08.03.2024 by the applicant, she has filed an application on 20.11.2024 for withdrawal of the present application in order to suppress the fraud, omission misstatement made by her in the present application. Therefore, the act of the applicant is in clear violation of Sub-rule (5) Rule 3 of Chapter XVIII, Part-III of the Rules of the Court.

23. Hon’ble Supreme Court has deprecated such practice in the case of S.P. Chengalvaraya Naidu (supra) and it has been held that a litigant to approach the Court is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party. Paragraphs 1, 7 and 8 of the aforesaid judgement are quoted below:-

‘1. "Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

7. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

8. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants- defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.?

24. Hon?ble Supreme Court in the case of Ramjas Foundation and others (supra) has held that the materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the Court proceedings. In the last 40 years, a new creed of litigants has cropped up. Those who belonged to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the Courts have, from time to time evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tented hands, is not entitled to any relief, interim or final. Paragraphs 10 and 14 of the aforesaid judgement are quoted below:-

‘10. We have considered the respective submissions. In our view, the appeal deserves to be dismissed because the appellants have not approached the Court with clean hands. In Ramjas Foundation v. Union of India, acquisition of the land situated at Sadhora Khurd was challenged on the ground of violation of Section 5-A of the Act and also on the ground that land in question is exempted from acquisition because it is a Wakf property. Another plea taken by appellant No.1 was that if the land belonging to educational and charitable institutions established by Hindus and non-Muslims is not treated as Wakf property, then the exemption clause (d) is liable to be declared void for violation of Article 14 of the Constitution. While rejecting the argument that the acquisition proceedings were vitiated due to violation of Section 5-A of the Act, this Court noted that the appellants had made a patently incorrect statement on the issue of denial of opportunity of personal hearing and observed:

‘As regards the objection of the violation of the mandatory provisions of Section 5-A of the Act in not affording an opportunity of personal hearing while deciding such objections, we granted an opportunity to the learned Additional Solicitor General to place material after examining the original record. We granted this opportunity to the respondents on account of the reason that the writ petition had been dismissed by the High Court in limine without issuing notice to the

respondents and as such the respondents had not been given any opportunity before the High Court to place any material to refute the allegations made by the appellants in this regard. The Additional Solicitor General during the course of the hearing of the matter placed an order of the Land Acquisition Collector, Delhi dated February 23, 1968 which has been taken on record and for the purposes of identification has been marked as Annexure `X'. A copy of the said Annexure `X' was also given to the learned counsel for the appellants. A perusal of the aforesaid order dated March 22, 1968 clearly shows that the Ramjas Foundation Society was represented through Shri Ratan Lal Gupta, Advocate who was given a personal hearing. From a perusal of the aforesaid document Annexure `X' dated February 23, 1968 it is clear that full opportunity of hearing through counsel was afforded to the Ramjas Foundation. It has been further mentioned in this order that the Ramjas Foundation Society was also allowed to file fresh objections if so desired, but Shri Ratan Lal Gupta, learned Advocate for the petitioner Society declined and stated that there was nothing more to add in the previous objection petition. After bringing the said document Annexure `X' to the notice of the learned counsel for the appellants, no satisfactory explanation or argument came forward on behalf of the appellants. The conduct of the appellants in raising the plea that no opportunity of personal hearing was given to the appellants in respect of the objections filed under Section 5-A the Act was totally baseless and factually incorrect and such conduct is reprehensible. It is well settled that a person invoking an equitable extraordinary jurisdiction of the Court under Article 226 of the Constitution is required to come with clean hands and should not conceal the material facts. The objection regarding not affording an opportunity of personal hearing in respect of objections filed under Section 5-A the Act was one of the main planks of the grounds raised in the writ petition as well as in the special leave petition filed before this Court and ought we know if such ground had not been taken this Court would have entertained this appeal or not. The appellants have taken the advantage of obtaining the stay order also from this Court which is continuing for the last 14 years as the special leave petition was filed in 1978 itself.

It may be further noted that a common objection petition under Section 5-A of the Act in respect of both the lands situated in Mubarikabad as well as in Sadhurakhurd was filed on December 11, 1959 through Shri Ratan Lal Gupta, Advocate. The said objections were heard in the presence of Shri Ratan Lal Gupta, Advocate and disposed of by one common order Annexure `X' and we cannot believe an ipse dixit explanation made orally during the course of arguments on behalf of the appellants that they had no knowledge of any personal hearing being given to Shri Ratan Lal Gupta, Advocate. It is also important to note that no such objection was taken in respect of land in Mubarikabad.?

(emphasis supplied)

The Court also criticized appellant No.1 for playing a game of hide and seek and observed:

‘It may be noted that the reference with regard to suit No. 451 of 1971 decided on March 21, 1977 is in respect of the land of petitioners situated in Mubarikabad. It is surprising that though the opportunity was sought for filing a fresh suit, the appellants again filed a Writ Petition No. 106 of 1978 in the High Court on January 7, 1978 which was ultimately dismissed by the High Court in limine on January 31, 1978 by a Division Bench comprising T.P.S. Chawla and Awadh Behari, JJ. In this Writ Petition No. 106 of 1978 the appellants conveniently omitted to mention that the

permission to withdraw the Petition No. 213 of 1973 was granted on the statement of Shri M.C. Gupta that his clients reserved the liberty to file a fresh suit and not writ. Thus no liberty was sought or given for filing a fresh writ petition. In any case there were no fresh ground or circumstances available to the appellants to file a fresh Writ Petition No. 106 of 1978 on January 7, 1978 on identical grounds when the earlier Writ Petition No. 213 of 1973 had been dismissed as withdrawn on March 30, 1977. Nothing had happened between March 30, 1977 and January 7, 1978 for giving a fresh cause of action to the appellants to file the Writ Petition No. 106 of 1978. Awadh Behari, J. had dismissed the suit No. 451 of 1971 by order dated March 21, 1977 in regard to the lands in Mubarikabad and he was also one of the Judges of the Division Bench who passed the impugned order dated January 31, 1978 dismissing the writ petition in limine as he was fully aware of the entire background of this litigation. The appellants are themselves responsible for creating confusion in initiating separate proceedings at different periods of time in respect of the lands situated in Mubarikabad and Sadhurakhurd though challenge to the acquisition proceedings was on common grounds. Learned counsel for the appellants was unable to satisfy in respect of such conduct of hide and seek on the part of the appellants. In case, as sought to be explained by Mr. Tarkunde, learned senior counsel for the appellants, the appellants were depending on the result of the civil suit filed in respect of the lands situated in Mubarikabad there was no justification for filing the Writ Petition No. 213 of 1973 in respect of the land situated in Sadhurakhurd as the suit was not decided in 1973 but was in fact dismissed on March 21, 1977. We find no justification for filing the writ petition in respect of the land situated in Sadhurakhurd in 1973 and subsequently withdrawing the writ petition on March 30, 1977 reserving the liberty to file a fresh suit but thereafter again filing the writ petition on January 7, 1978 instead of suit."

(emphasis supplied)

11. In S.L.P.(C) No. 15017/2000 and connected matters, appellant No.1 had specifically raised a plea that its property is exempted from acquisition because it is a Wakf property, but failed to convince the Court to nullify the acquisition proceedings on that ground.'

25. Similarly, in the case of Keshav Prasad and others (supra), this Court while considering the judgments rendered by the Hon?ble Supreme Court in the cases of S.P. Chengalvaraya Naidu and Ramjas Foundation and others (supra) held that the petition is vague, no personal cause of action has been made out coupled with the fact that the Petition suffers from the concealment of material facts and is an attempt to waste the precious time of the Court by resorting to filing a frivolous petition and if the State Counsel and the Gaon Sabha would not have brought the facts to the notice of the Court, the petitioners would have had a leverage by getting away with concealment and non-disclosure of material facts. Paragraphs 22 and 26 of the aforesaid judgement are quoted below:-

'22. What has been brought on record is an order passed by a Division Bench of this Court wherein the present petitioners had filed a PIL bearing No.667 of 2024 and the Division Bench of this Court by means of order dated 07.08.2024 noticing that the present petitioners had not filed their objections to the basic year Khatauni, hence their case in the shape of a PIL was not maintainable. However, liberty was granted to seek remedy as may be prescribed in law. It is thus urged that all the aforesaid facts which gave a cause of action ought to have been disclosed, hence

non-disclosure leads to misrepresentation and petitioners have definitely not come before the Court with clean hands. Accordingly, the petition deserves to be rejected.

26. This Court had the opportunity to examine such an issue in Bhagwan Das Chela Balram Das Vs. District Magistrate Ambedkarnagar and others, 2023 (1) ADJ 342 [LB] wherein this Court with the aid of decision rendered by the Apex Court relating to the issue of concealment of material facts had noticed as under:-

'In Ram Chandra Singh Vs. Savitri Devi and others; (2003) 8 SCC 319 the Hon?ble Supreme Court has held as under:

"15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud as is well-known vitiates every solemn act. Fraud and justice never dwells together.

16. Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by word or letter.

17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentations may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.

19. In Derry v. Peek, [1889] 14 A.C. 337, it was held:

In an 'action of deceit the plaintiff must prove actual fraud. Fraud is proved when it is shown that a false representation has been made knowingly, or without belief in its truth, or recklessly, without caring whether it be true or false.

A false statement, made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud but does not necessarily amount to fraud. Such a statement, if made in the honest belief that it is true, is not fraudulent and does not render the person make it liable to an action of deceit."

20. In Kerr on Fraud and Mistake, at page 23, it is stated:

"The true and only sound principle to be derived from the cases represented by Slim v. Croucher is this: that a representation is fraudulent not only when the person making it knows it to be false, but also when, as Jessel, M.R., pointed out, he ought to have known, or must be taken to have known, that it was false. This is a sound and intelligible principle, and is, moreover, not inconsistent with Derry v. Peek. A false statement which a person ought to have known was false, and which he must therefore be taken to have known was false, cannot be said to be honestly

believed in. "A consideration of the grounds of belief", said Lord Herschell, "is no doubt an important aid in ascertaining whether the belief was really entertained. A man's mere assertion that he believed the statement he made to be true is not accepted as conclusive proof that he did so."

21. In Bigelow on Fraudulent Conveyances at page 1, it is stated:

"If on the facts the average man would have intended wrong, that is enough."

It was further opined:

"This conception of fraud (and since it is not the writer's, he may speak of it without diffidence), steadily kept in view, will render the administration of the law less difficult, or rather will make its administration more effective. Further, not to enlarge upon the last matter, it will do away with much of the prevalent confusion in regard to 'moral' fraud, a confusion which, in addition to other things, often causes lawyers to take refuge behind such convenient and indeed useful but often obscure language as 'fraud upon the law'. What is fraud upon the law? Fraud can be committed only against a being capable of rights, and 'fraud upon the law' darkens counsel. What is really aimed at in most cases by this obscure contrast between moral fraud and fraud upon the law, is a contrast between fraud in the individual's intention to commit the wrong and fraud as seen in the obvious tendency of the act in question."

22. Recently this Court by an order dated 3rd September, 2003 in Ram Preeti Yadav vs. U.P. Board of High School & Intermediate Education & Ors. reported in JT 2003 (Supp. 1) SC 25 held:

"Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by words or letter. Although negligence is not fraud but it can be evidence on fraud. (See Derry vs. Peek [1889] 14 A.C. 337) In Lazarus Estate vs. Berly [1971] 2 W.L.R. 1149 the Court of Appeal stated the law thus:

"I cannot accede to this argument for a moment "no Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything". The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever."

In S.P. Chengalvaraya Naidu vs. Jagannath 1994 (1) SCC 1 this Court stated that fraud avoids all judicial acts, ecclesiastical or temporal."

23. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous.

24. In Arlidge & Parry on Fraud, it is stated at page 21:

"Indeed, the word sometime appears to be virtually synonymous wit "deception", as in the offence (now repealed) of obtaining credit by fraud. It is true that in this context "fraud" included certain kind of conduct which did not amount to false pretences, since the definition referred to an obtaining of credit "under false pretences, or by means of any other fraud". In Jones, for example, a man who ordered a meal without pointing out that he had no money was held to be guilty of obtaining credit by fraud but not of obtaining the meal by false pretences: his conduct, though fraudulent, did not amount to a false pretence. Similarly it has been suggested that a charge of conspiracy to defraud may be used where a "false front" has been presented to the public (e.g. a business appears to be reputable and creditworthy when in fact it is neither) but there has been nothing so concrete as a false pretence. However, the concept of deception (as defined in the Theft Act 1968) is broader than that of a false pretence in that (inter alia) it includes a misrepresentation as to the defendant's intentions; both Jones and the "false front" could now be treated as cases of obtaining property by deception."

25. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application f any equitable doctrine including res-judicata.

26. In Smt. Shrisht Dhawan vss. M/s. Shaw Brothers 1992 AIR(SC) 1555], it has been held that:

"Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct."

27. In S.P. Chengalvaraya vs. Jagannath [1994 (1) SCC 1] this Court in no uncertain terms observed:

"...The principles of "finality of litigation" cannot be passed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan dodgers and other unscrupulous persons from all walks of life find the court- process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.... A fraud is an act of deliberate deception with the design of security something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage... A litigant, who approaches the Court, is bound to produce all the documents executed by him, which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party."

28. In Indian Bank vs. Satyam Fibers (India) Pvt. Ltd. [1996 (5) SCC 550], this Court after referring to Lazarus Estates (supra) and other cases observed that 'since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court it also amounts to an abuse of the process of the Court, that the Courts have inherent power to set aside an order obtained by practising fraud

upon the Court, and that where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order".

It was further held:

"The judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment or order if it is obtained by fraud on Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers, which are resident in all Courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business."

29. In Chittaranjan Das vs. Durgapore Project Limited & Ors. 99 CWN 897, it has been held:

"Suppression of a material document which affects the condition of service of the petitioner, would amount to fraud in such matters. Even the principles of natural justice are not required to be complied within such a situation.

It is now well known that a fraud vitiates all solemn acts. Thus, even if the date of birth of the petitioner had been recorded in the service returns on the basis of the certificate produced by the petitioner, the same is not sacrosanct nor the respondent company would be bound thereby.""

In A.V. Papayya Sastry and others Vs. Government of A.P. and others; (2007) 4 SCC 221 the Hon?ble Supreme Court has held as under:

‘21. Now, it is well settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Chief Justice Edward Coke proclaimed; "Fraud avoids all judicial acts, ecclesiastical or temporal".

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.

23. In the leading case of Lazarus Estates Ltd. v. Beasley, (1956) 1 All ER 341 : (1956) 1 QB 702 : (1956) 2 WLR 502, Lord Denning observed:

"No judgment of a court, no order of a Minister, can be allowed to stand, if it has been obtained by fraud."

24. In Duchess of Kingstone, Smith's Leading Cases, 13th Edn., p.644, explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be res judicata and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was 'mistaken', it might be shown that it was 'misled'. There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment.

25. It has been said; Fraud and justice never dwell together (fraus et jus nunquam cohabitant); or fraud and deceit ought to benefit none (fraus et dolus nemini patrocinari debent).

26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of 'finality of litigation' cannot be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants.

27. In S.P. Chengalvaraya Naidu (dead) by LRs. V. Jagannath (dead) by LRs. & Ors. (1994) 1 SCC 1 : JT 1994 (6) SC 331, this Court had an occasion to consider the doctrine of fraud and the effect thereof on the judgment obtained by a party. In that case, one A by a registered deed, relinquished all his rights in the suit property in favour of C who sold the property to B. Without disclosing that fact, A filed a suit for possession against B and obtained preliminary decree. During the pendency of an application for final decree, B came to know about the fact of release deed by A in favour of C. He, therefore, contended that the decree was obtained by playing fraud on the court and was a nullity. The trial court upheld the contention and dismissed the application. The High Court, however, set aside the order of the trial court, observing that "there was no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". B approached this Court.

28. Allowing the appeal, setting aside the judgment of the High Court and describing the observations of the High Court as 'wholly perverse', Kuldip Singh, J. stated:

"The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax- evaders, bank-loan- dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation".

(emphasis supplied)

29. The Court proceeded to state: "A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would he guilty of playing fraud on the court as well as on the opposite party".

30. The Court concluded: "The principle of 'finality of litigation' cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants".

31. In Indian Bank v. Satyam Fibres (India) Pvt. Ltd. (1996) 5 SCC 550 : JT 1996 (7) SC 135, referring to Lazarus Estates and Smith v. East Elloe Rural District Council, 1956 AC 336 : (1956) 1 All ER 855 : (1956) 2 WLR 888, this Court stated;

"22. The judiciary in India also possesses inherent power, specially under Section 151 C.P.C., to recall its judgment or order if it is obtained by Fraud on Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the Decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the Constitution of the Tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business".

(emphasis supplied)

32. In United India Insurance Co. Ltd. v. Rajendra Singh and others., (2000) 3 SCC 581 : JT 2000 (3) SC 151, by practising fraud upon the Insurance Company, the claimant obtained an award of compensation from the Motor Accident Claims Tribunal. On coming to know of fraud, the Insurance Company applied for recalling of the award. The Tribunal, however, dismissed the petition on the ground that it had no power to review its own award. The High Court confirmed the order. The Company approached this Court.

In K.D. Sharma Vs. Steel Authority of India Limited and others; (2008 12 SCC 481, the Hon?ble Apex Court has held as under:

‘34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of R.V. Kensington Income Tax Commissioners, (1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136 in the following words:

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

(emphasis supplied)

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating "We will not listen to your application because of what you have done". The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it.

37. In Kensington Income Tax Commissioner, Viscount Reading, C.J. observed:

"...Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the applicant was not candid and did not fairly state the facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that this Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit".

(emphasis supplied)

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play `hide and seek' or to `pick and choose' the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, "the Court knows law but not facts".

In Dalip Singh Vs. State of Uttar Pradesh and others; (2010) 2 SCC 114 Hon'ble the Supreme Court has held as under:

'1. For many centuries, Indian society cherished two basic values of life i.e., `Satya' (truth) and `Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

3. In Hari Narain v. Badri Das AIR 1963 SC 1558, this Court adverted to the aforesaid rule and revoked the leave granted to the appellant by making the following observations:

"It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue and misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

4. In Welcome Hotel and others v. State of Andhra Pradesh and others etc. AIR 1983 SC 1015, the Court held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

5. In G.Narayanswamy Reddi and other v. Governor of Karnataka and another AIR 1991 SC 1726, the Court denied relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act because of the stay order passed by the High Court. While dismissing the special leave petition, the Court observed:

"2. .. Curiously enough, there is no reference in the Special Leave Petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the Special Leave Petitions are liable to be rejected. It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the Special Leave Petitions."

6. In S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others JT 1993 (6) SC 331, the Court held that where a preliminary decree was obtained by withholding an important document from the court, the party concerned deserves to be thrown out at any stage of the litigation.

7. In Prestige Lights Ltd. v. State Bank of India (2007) 8 SCC 449, it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty bound to place all the facts before the court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in R v Kensington Income Tax Commissioners (1917) 1 K.B. 486, and observed:

"In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

In Bhaskar Laxman Jadhav and others Vs. Karamveer Kakasaheb Wagh Education Society and others; (2013) 11 SCC 531 the Hon?ble Supreme Court has held as under:

‘42. While dealing with the conduct of the parties, we may also notice the submission of learned counsel for respondent No.1 to the effect that the petitioners are guilty of suppression of a material fact from this Court, namely, the rejection on 2nd May 2003 of the first application for extension of time filed by the trustees and the finality attached to it. These facts have not been clearly disclosed to this Court by the petitioners. It was submitted that in view of the suppression, special leave to appeal should not be granted to the petitioners.

43. Learned counsel for the petitioners submitted that no material facts have been withheld from this Court. It was submitted that while the order dated 2nd May 2003 was undoubtedly not

filed, its existence was not material in view of subsequent developments that had taken place. We cannot agree.

44. It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision making to the Court. True, there is a mention of the order dated 2nd May 2003 in the order dated 24th July 2006 passed by the JCC, but that is not enough disclosure. The petitioners have not clearly disclosed the facts and circumstances in which the order dated 2nd May 2003 was passed or that it has attained finality.

45. We may only refer to two cases on this subject. In Hari Narain v. Badri Das, AIR 1963 SC 1558 stress was laid on litigants eschewing inaccurate, untrue or misleading statements, otherwise leave granted to an appellant may be revoked. It was observed as follows:

'It is of utmost importance that in making material statements and setting forth grounds in applications for special leave, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. That is why we have come to the conclusion that in the present case, special leave granted to the appellant ought to be revoked. Accordingly, special leave is revoked and the appeal is dismissed. The appellant will pay the costs of the respondent.

46. More recently, in Ramjas Foundation vs. Union of India, (2010) 14 SCC 38 the case law on the subject was discussed. It was held that if a litigant does not come to the Court with clean hands, he is not entitled to be heard and indeed, such a person is not entitled to any relief from any judicial forum. It was said:

'The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case.''

26. The judgement cited by the counsel for the applicant in the case of Himalayan Coop. Group Housing Society (supra), it has been held that Lawyers are perceived to be their client's agents. The law of agency may not strictly apply to the clarinet-lawyer's relationship as lawyers have certain authority and certain duties. In the present case, the said judgement would not be applicable for the reason that applicant has filed the present application under Section 482 Cr.P.C. seeking quashing of the entire proceedings of Criminal Case No.1914 of 2023 and the summoning order and for the same cause of action, she had already filed a criminal revision before the Sessions Court. Therefore, filing of the present application is in clear violation of Sub-rule (5) Rule 3 of

Chapter XVIII, Part-III of the Rules of the Court. Thus, the applicant is guilty of misrepresentation, fraud and concealment of material facts. It is settled law that fraud vitiates all proceedings and one who has committed fraud, cannot claim any relief. Other judgements cited by the counsel for the applicant are not applicable to the facts of the present case. Therefore, the application under Section 482 Cr.P.C. is liable to be rejected with exemplary cost.

27. Accordingly, application under Section 482 Cr.P.C., is rejected with exemplary cost of Rs.1,00,000/- (Rupees One Lakh). Out of the said amount, Rs. 30,000/- shall be paid to opposite party no.2 after due verification and the remaining amount of Rs.70,000/- shall be paid in the account of the State Legal services Authority. The cost shall be deposited by the applicant within two months from the date of pronouncement of the judgment, failing which the same shall be realized as areas of land revenue.

28. Since the application under Section 482 Cr.P.C. is rejected on merit, IA No.2 of 2024 (Application for withdrawal of petition) and IA No.5 of 2025 (Application under Section 340 of Cr.P.C. read with Section 379 of Bharatiya Nagarik Suraksha Sanhita, 2023) filed by the applicant are rejected as infructuous. Consequently, IA No.3 of 2025 (Application on behalf of opposite party no.2 under sub-rule(5) of Rule 3 of Chapter XVIII Part-III of Allahabad High Court Rules, 1952 read with Section 379 and Section 215 of Bharatiya Nagarik Suraksha Sanhita, 2023 for prosecution of applicant is partly allowed.

29. Before parting with, it is to be noted that in most of the applications filed under Section 482 Cr.P.C., this Court has noticed that only pendency of earlier application/criminal revision/writ petition filed in Allahabad High Court or Lucknow Bench against the impugned order (if any) on the same or related cause of action or seeking the same or related reliefs, has been mentioned, whereas according to Rule 3(5), Chapter XVIII Part-III of Allahabad High Court Rules, 1952, pendency of such criminal revision or transfer application for the same reliefs pending in the lower court, should also be mentioned as like the present application.

30. In view of the aforesaid, Registry is directed to strictly adhere to Rule 3(5), Chapter XVIII Part-III of Allahabad High Court Rules, 1952 while passing the applications under Section 482 Cr.P.C. in future without fail.

(2026) 5 ILRA 48
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 06.05.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

Application U/S 482 No. 19215 of 2007

Madhu Singh **...Applicant**
Versus
State of U.P. & Ors. **...Opposite Parties**

ISSUE FOR CONSIDERATION

Whether the applicant being a joint account holder but not a signatory to the dishonoured cheques, can be prosecuted under Section 138 of the Negotiable Instruments Act, 1881?

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 - **Sections 200, 482** - **Negotiable Instruments Act, 1881 - Sections 138, 141 - Indian Penal Code, 1860** - Section 420 : - Application u/s 482 CrPC – against summoning order as well as for quashing the entire proceedings u/s 138 NI Act to the extent of applicant – complaint filed alleging dishonour of two cheques issued from joint account – FIR/complaint under NI Act & IPC – evidence by affidavit and documents – summoning order passed – trial initiated – applicant pleaded that, she is not signatory to cheques, hence no liability – Court finds that, cheques signed solely by co-accused (opposite party no. 2) – Section 141 NI Act applies only to companies/firms, not individuals – held, non-signatory joint account holder cannot be prosecuted – hence, summoning order against applicant unsustainable – proceedings quashed to the extent of applicant – however, trial to continue against co-accused – application is allowed.

(Para – 19, 20, 21)

Application Allowed. (E-11)

CASE LAW CITED

Jugesh Sehgal vs. Shamsher Singh Gogi (2009) 14 SCC 683
Aparna A. Shah vs. Sheth Developers Pvt. Ltd. (2013) 8 SCC 71
Mainuddin Abdul Sattar Shaikh vs. D. Salvi (2015) 9 SCC 622
Alka Khandu Avhad vs. Amar Syamprasad Mishra (2021) 4 SCC 675
Bijoy Kumar Moni vs. Paresh Manna 2024 SCC OnLine SC 3833.

LIST OF ACTS

Negotiable Instruments Act, 1881 - Indian Penal Code, 1860 - Code of Criminal Procedure, 1973.

LIST OF KEYWORDS

Application under section 482, Quashing of proceedings - inherent jurisdiction - Cheque dishonour, joint account, signatory liability, vicarious liability, Section 138 NI Act, quashing of proceedings, summoning order, Section 482 CrPC., Application, allowed.

CASE ARISING FROM

Complaint Case No.958 of 2006 (Hari Om Pathak vs. Rahul & others), later renumbered as Case No.1776 of 2024, pending before Special Court (NI Act), Ghaziabad.

APPEARANCE OF PARTIES

Counsel for Appellant(s): not mentioned.
Counsel for Respondent(s): not mentioned.

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

1. The instant application has been filed for the following reliefs:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to stay the impugned summoning order dated 03.07.2006 passed in Complaint Case No.958 of 2006 (Hari Om Pathak Vs. Rahul & others) under Section 138 of the N.I. Act, Police Station Kavi Nagar, District Ghaziabad.

It is, further prayed that this Hon'ble Court may graciously be pleased to quash the proceedings of Case No.958 of 2006 (Hari Om Pathak Vs. Rahul & others) under Section 138 of the N.I. Act pending in the court of Special Judge, C.B.I., Ghaziabad."

2. The factual matrix of the case is that the complainant/respondent no. 2, Hari Om Pathak, filed a criminal complaint against the applicant Madhu Singh and co-accused Rahul Thind (her friend) under Section 138 of the Negotiable Instruments Act, 1881, as well as under Section 420 IPC, with the allegations that relations between the complainant and Rahul Thind were very cordial ad due to this, the complainant advanced Rs. 3,00,000/- and Rs. 5,00,000/- in December, 2004 as loan for business purposes, on the assurance that the said amount would be repaid within two months, failing which interest @ 18% per annum would be paid.

3. Relying upon the said assurance, the complainant advanced the aforesaid sum to Rahul Thind. However, upon expiry of the stipulated period, the amount was not repaid. Upon repeated demands, Rahul Thind issued two cheques bearing no. 128736 dated 01.04.2006 for Rs. 3,00,000/- and cheque no. 128733 dated 04.04.2006 for Rs. 5,00,000/-, both drawn on HDFC Bank Ltd., Raj Nagar, Ghaziabad, with an assurance that the same would be honoured upon presentation.

4. Acting upon such assurance, the complainant presented the cheques in his bank account; however, both cheques were dishonoured and returned on 08.04.2006 and 13.04.2006 with the remark that the account of the drawer had been closed.

5. Thereafter, upon receiving information from the bank, the complainant consulted his counsel Shri Dhanesh Kumar Sharma, who advised issuance of a legal notice. Accordingly, a statutory notice dated 05.05.2006 was sent through registered post to both accused persons, which was duly served upon them on 22.05.2006. Despite service of notice, the cheque amount was not paid within the statutory period. Instead, a reply containing incorrect and misleading assertions was sent on 22.05.2006.

6. It is the case of the complainant that accused Rahul Thind, with fraudulent intent and with the object of cheating, obtained the aforesaid amount on false assurances and thereafter, deliberately issued cheques which were dishonoured, and even closed the bank account to evade liability. The accused/petitioner Madhu Singh was also jointly and severally liable to repay the loan. On these allegations, the complaint was instituted on 12.06.2006 before the competent court, to summon and punish the accused for offence under Sections 138,141 of the NI Act and Section 420 IPC and for ordering the accused to pay twice the cheque amount with 18% interest per annum.

7. Before the trial court, the complainant submitted his affidavit in evidence under Section 200 Cr.P.C., and produced relevant documentary evidence - the original cheques bearing nos. 128736 and 128733, bank return memos, postal receipts, and a copy of the legal notice issued under Section 138 of the N.I. Act.

8. Upon consideration of the material on record, the trial court, vide impugned summoning order dated 03.07.2006, summoned the accused persons to face trial only under Section 138 of the

N.I. Act. The said order has been challenged only by the accused/applicant Madhu Singh by filing the present application under Section 482 Cr.P.C.

9. Learned counsel for the applicant contended that although the cheques were issued from a joint account maintained by Rahul Thind and Madhu Singh, the same were signed exclusively by Rahul Thind. It is submitted that the applicant Madhu Singh is not a signatory to the cheques and, therefore, no offence under Section 138 of the N.I. Act is made out against her.

10. It is further contended that the present case does not involve vicarious liability under Section 141 of the N.I. Act, which applies only to companies and not to individuals. Hence, only the drawer of the cheque, i.e., the signatory Rahul Thind, can be held liable for dishonour of the cheque.

11. In support of his submissions, learned counsel has placed reliance upon the judgments of the Hon'ble Supreme Court in Aparna A. Shah vs. Sheth Developers Pvt. Ltd. & Another (2013) 8 SCC 71, Jugesh Sehgal vs. Shamsher Singh Gogi (2009) 14 SCC 683 and Alka Khandu Avhad vs. Amar Syamprasad Mishra & Another (2021) 4 SCC 675.

12. Despite sufficient service, none appeared on behalf of the complainant/respondent no. 2.

13. I have heard learned counsel for the applicant and perused the record, as well as the case laws cited.

14. The Apex Court in Jugesh Sehgal (supra) while elaborately considering the essential ingredients constituting an offence under Section 138 of the N.I. Act, held as under:-.

"12. Section 138 of the Act reads as follows:

'138. Dishonour of cheque for insufficiency, etc., of funds in the account.' Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless'

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the

cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation. For the purposes of this section, 'debt or other liability' means a legally enforceable debt or other liability.'

13. It is manifest that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled:

(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;

(ii) the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier;

(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(v) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

Being cumulative, it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act.

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16. The next question for consideration is whether or not in the light of the aforementioned factual position, as projected in the complaint itself, it was a fit case where the High Court should have exercised its jurisdiction under Section 482 of the Code'

17. The scope and ambit of powers of the High Court under Section 482 of the Code has been enunciated and reiterated by this Court in a series of decisions and several circumstances under

which the High Court can exercise jurisdiction in quashing proceedings have been enumerated. Therefore, it is unnecessary to burden the judgment by making reference to all the decisions on the point. It would suffice to state that though the powers possessed by the High Courts under the said provision are very wide but these should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist.

18. The inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. The powers have to be exercised sparingly, with circumspection and in the rarest of rare cases, where the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed. [See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] , Kurukshetra University v. State of Haryana [(1977) 4 SCC 451 : 1977 SCC (Cri) 613] (SCC p. 451, para 2) and State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] .]

19. Although in Bhajan Lal case [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , the Court by way of illustration formulated as many as seven categories of cases, wherein the extraordinary power under the aforestated provisions could be exercised by the High Court to prevent abuse of process of the court yet it was clarified that it was not possible to lay down precise and inflexible guidelines or any rigid formula or to give an exhaustive list of the circumstances in which such power could be exercised.

20. The purport of the expression ‘rarest of rare cases’ has been explained very recently in Som Mittal v. Govt. of Karnataka [(2008) 3 SCC 574 : (2008) 1 SCC (L&S) 910 : (2008) 2 SCC (Cri) 1] . Speaking for the three-Judge Bench, the Hon'ble the Chief Justice said: (SCC pp. 580-81, para 9)

‘9. When the words ‘rarest of rare cases’ are used after the words ‘ sparingly and with circumspection while describing the scope of Section 482, those words merely emphasise and reiterate what is intended to be conveyed by the words ‘sparingly and with circumspection . They mean that the power under Section 482 to quash proceedings should not be used mechanically or routinely, but with care and caution, only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice. The expression ‘rarest of rare cases’ is not used in the sense in which it is used with reference to punishment for offences under Section 302 IPC, but to emphasise that the power under Section 482 CrPC to quash the FIR or criminal proceedings should be used sparingly and with circumspection.’

21. Bearing in mind the above legal position, we are of the opinion that it was a fit case where the High Court, in exercise of its jurisdiction under Section 482 of the Code, should have quashed the complaint under Section 138 of the Act."

15. Further, the Apex Court in Aparna A. Shah (supra), has considered the issue as to whether all joint account holders can be held liable for dishonour of cheque, when a cheque is issued from a joint account. It was held as under:-

"14. In Jugesh Sehgal [(2009) 14 SCC 683 : (2009) 5 SCC (Civ) 482 : (2010) 2 SCC (Cri) 218] , after noting the ingredients for attracting Section 138 on the facts of the case, this Court concluded that there is no case to proceed under Section 138 of the Act. In that case, on 20-1-2001, the complainant filed an FIR against all the accused for the offence under Sections 420, 467, 468, 471 and 406 of the Penal Code, 1860 (hereinafter referred to as ?IPC?) and there was hardly any dispute that the cheque, subject-matter of the complaint under Section 138 of the NI Act, had not been drawn by the appellant on an account maintained by him in Indian Bank, Sonepat Branch. In the light of the ingredients required to be fulfilled to attract the provisions of Section 138, this Court, after finding that there is little doubt that the very first ingredient of Section 138 of the NI Act enumerated above is not satisfied and concluded that the case against the appellant for having committed an offence under Section 138 cannot be proved.

15. In S.K. Alagh v. State of U.P. [(2008) 5 SCC 662 : (2008) 2 SCC (Cri) 686] this Court held: (SCC p. 667, para 19)

?19. - If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself. (See Sabitha Ramamurthy v. R.B.S. Channabasavaradhya [(2006) 10 SCC 581 : (2007) 1 SCC (Cri) 621] .)

16. In Sham Sunder v. State of Haryana [(1989) 4 SCC 630 : 1989 SCC (Cri) 783] , this Court held as under: (SCC p. 632, para 9)

‘9. ‘ The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not.’

17. As rightly pointed out by the learned Senior Counsel for the appellant, the interpretation sought to be advanced by the respondents would add words to Section 141 and extend the principle of vicarious liability to persons who are not named in it.

18. In the case on hand, we are concerned with criminal liability on account of dishonour of a cheque. It primarily falls on the drawer, if it is a company, then drawer company and is extended to the officers of the company. The normal rule in the cases involving criminal liability is against vicarious liability. To put it clear, no one is to be held criminally liable for an act of another. This normal rule is, however, subject to exception on account of specific provision being made in statutes extending liability to others. For example, Section 141 of the NI Act is an instance of specific provision that in case an offence under Section 138 is committed by a company, the criminal liability for dishonour of a cheque will extend to the officers of the company. As a matter of fact, Section 141 contains conditions which have to be satisfied before the liability can be extended. Inasmuch as the provision creates a criminal liability, the conditions have to be strictly complied with. In other words, the persons who had nothing to do with the matter, need not be roped in. A company being a juristic person, all its deeds and functions are the result of acts of

others. Therefore, the officers of the company, who are responsible for the acts done in the name of the company, are sought to be made personally liable for the acts which result in criminal action being taken against the company. In other words, it makes every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, liable for the offence. It is true that the proviso to sub-section (1) of Section 141 enables certain persons to prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent commission of the offence. The liability under Section 141 of the NI Act is sought to be fastened vicariously on a person connected with the company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability.

19. It is not in dispute that the first respondent has not filed any complaint under any other provisions of the Penal Code and, therefore, the argument pertaining to the intention of the parties is completely misconceived. We were taken through the notice issued under the provisions of Section 138, reply given thereto, copy of the complaint and the order issuing process. In this regard, Mr Mukul Rohatgi, learned Senior Counsel for the respondent after narrating the involvement of the appellant herein and her husband contended that they cannot be permitted to raise any objection on the ground of concealing/suppressing material facts within her knowledge. For the said purpose, he relied on Oswal Fats and Oils Ltd. v. Commr. (Admn.) [(2010) 4 SCC 728 : (2010) 2 SCC (Civ) 237] , Balwantrai Chimanlal Trivedi v. M.N. Nagrashna [AIR 1960 SC 1292] , J.P. Builders v. A. Ramadas Rao [(2011) 1 SCC 429 : (2011) 1 SCC (Civ) 227] . Inasmuch as the appellant had annexed the relevant materials, namely, copy of notice, copy of reply, copy of the complaint and the order issuing process which alone is relevant for consideration in respect of complaint under Section 138 of the NI Act, the argument of the learned Senior Counsel for Respondent 1 that the stand of the appellant has to be rejected for suppressing of material facts or relevant facts, cannot stand. In such circumstances, we are of the view that the case law relied upon by contesting Respondent 1 is inapplicable to the facts of the present case.

20. Mr Mukul Rohatgi, learned Senior Counsel for Respondent 1, by drawing our attention to the definition of ‘person’ in Section 3(42) of the General Clauses Act, 1897 submitted that in view of the various circumstances mentioned, the appellant herein being wife, is liable for criminal prosecution. He also submitted that in view of the Explanation in Section 141(2) of the NI Act, the appellant wife is being prosecuted as an association of individual. In our view, all the above contentions are unacceptable since it was never the case of Respondent 1 in the complaint filed before the learned Magistrate that the appellant wife is being prosecuted as an association of individuals and, therefore, on this ground alone, the above submission is liable to be rejected. Since, this expression has not been defined, the same has to be interpreted ejusdem generis having regard to the purpose of the principle of vicarious liability incorporated in Section 141. The terms ?complaint?, ‘persons’, ‘association of persons’, ‘company’ and ‘Directors’ have been explained by this Court in Raghu Lakshminarayanan v. Fine Tubes [(2007) 5 SCC 103 : (2007) 2 SCC (Cri) 455] .

21. The above discussion with reference to Section 138 and the materials culled out from the statutory notice, reply, copy of the complaint, order, issuance of process, etc. clearly show only the drawer of the cheque being responsible for the same.

22. In addition to our conclusion, it is useful to refer to some of the decisions rendered by various High Courts on this issue.

23. The learned Single Judge of the Madras High Court in Devendra Pundir v. Rajendra Prasad Maurya [2008 Cri LJ 777 (Mad)] , following decisions of this Court, has concluded thus:

'7. This Court is of the considered view that the above proposition of law laid down by the Hon'ble Apex Court in the decision of Fine Tubes [(2007) 5 SCC 103 : (2007) 2 SCC (Cri) 455] is squarely applicable to the facts of the instant case. Even in this case, as already pointed out, the first accused is admittedly the sole proprietrix of the concern, namely, ?Kamakshi Enterprises? and as such, the question of the second accused to be vicariously held liable for the offence said to have been committed by the first accused under Section 138 of the Negotiable Instruments Act not at all arise.'

After saying so, the learned Single Judge, quashed the proceedings initiated against the petitioner therein and permitted the Judicial Magistrate to proceed and expedite the trial in respect of others.

24. In Gita Berry v. Genesis Educational Foundation [(2008) 151 DLT 155] , the petitioner therein was wife and she filed a petition under Section 482 of the Code seeking quashing of the complaint filed under Section 138 of the NI Act. The case of the petitioner therein was that the offence under Section 138 of the Act cannot be said to have been made out against her only on the ground that she was a joint account-holder along with her husband. It was pointed out that she has neither drawn nor issued the cheque in question and, therefore, according to her, the complaint against her was not maintainable. The learned Single Judge of the High Court of Delhi, after noting that the complaint was only under Section 138 of the Act and not under Section 420 IPC and pointing out that nothing was elicited from the complainant to the effect that the petitioner was responsible for the cheque in question, quashed the proceedings insofar as the petitioner therein.

25. In Bandeep Kaur v. Avneet Singh [(2008) 2 PLR 796] , in a similar situation, the learned Single Judge of the Punjab and Haryana High Court held that in case the drawer of a cheque fails to make the payment on receipt of a notice, then the provisions of Section 138 of the Act could be attracted against him only. The learned Single Judge further held that though the cheque was drawn to a joint bank account which is to be operated by anyone i.e. the petitioner or by her husband, but the controversial document is the cheque, the liability regarding dishonouring of which can be fastened on the drawer of it. After saying so, learned Single Judge accepted the plea of the petitioner and quashed the proceedings insofar as it relates to her and permitted the complainant to proceed further insofar as against others.

26. In the light of the principles as discussed in the earlier paragraphs, we fully endorse the view expressed by the learned Judges of the Madras [Devendra Pundir v. Rajendra Prasad Maurya, 2008 Cri LJ 777 (Mad)] , Delhi [Gita Berry v. Genesis Educational Foundation, (2008) 151 DLT 155] and Punjab and Haryana [(2008) 2 PLR 796] High Courts.

27. In the light of the above discussion, we hold that under Section 138 of the Act, it is only the drawer of the cheque who can be prosecuted. In the case on hand, admittedly, the appellant is not a drawer of the cheque and she has not signed the same. A copy of the cheque was brought to our notice, though it contains the name of the appellant and her husband, the fact remains that her husband alone had put his signature. In addition to the same, a bare reading of the complaint as also the affidavit of examination-in-chief of the complainant and a bare look at the cheque would show that the appellant has not signed the cheque.

28. We also hold that under Section 138 of the NI Act, in case of issuance of cheque from joint accounts, a joint account-holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account-holder. The said principle is an exception to Section 141 of the NI Act which would have no application in the case on hand. The proceedings filed under Section 138 cannot be used as arm-twisting tactics to recover the amount allegedly due from the appellant. It cannot be said that the complainant has no remedy against the appellant but certainly not under Section 138. The culpability attached to the dishonour of a cheque can, in no case ?except in case of Section 141 of the NI Act? be extended to those on whose behalf the cheque is issued. This Court reiterates that it is only the drawer of the cheque who can be made an accused in any proceeding under Section 138 of the Act. Even the High Court has specifically recorded the stand of the appellant that she was not the signatory of the cheque but rejected the contention that the amount was not due and payable by her solely on the ground that the trial is in progress. It is to be noted that only after issuance of process, a person can approach the High Court seeking quashing of the same on various grounds available to him. Accordingly, the High Court was clearly wrong in holding that the prayer of the appellant cannot even be considered. Further, the High Court itself has directed the Magistrate to carry out the process of admission/denial of documents. In such circumstances, it cannot be concluded that the trial is in advanced stage."

(emphasis supplied)

16. The Apex Court in the case of Mainuddin Abdul Sattar Shaikh vs. D. Salvi (2015) 9 SCC 622, held as under:-

"9. From a bare reading of Section 138 of the NI Act, the following essentials have to be met for attracting a liability under the section. The first and foremost being that the person who is to be made liable should be the drawer of the cheque and should have drawn the cheque on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for discharge in whole or part, of any debt or other liability. We see that from the bare text of the section it has been stated clearly that the person, who draws a cheque on an account maintained by him, for paying the payee, alone attracts liability."

(emphasis supplied)

17. Similarly, the Apex Court in Alka Khandu Avhad (supra), reiterated that in the case of a joint bank account, only the person who has signed the cheque can be prosecuted for its dishonour. It was held as under:-

"8. We have heard the learned counsel appearing on behalf of the respective parties at length, considered material on record and also considered the averments and allegations in the complaint. It emerges from the record that the dishonoured cheque was issued by original Accused 1 husband of the appellant. It was drawn from the bank account of original Accused 1. The dishonoured cheque was signed by original Accused 1. Therefore, the dishonoured cheque was signed by original Accused 1 and it was drawn on the bank account of original Accused 1. The appellant herein-original Accused 2 is neither the signatory to the cheque nor the dishonoured cheque was drawn from her bank account. That the account in question was not a joint account. In the light of the aforesaid facts, it is required to be considered whether the appellant herein-original Accused 2 can be prosecuted for the offence punishable under Section 138 read with Section 141 of the NI Act'

9. On a fair reading of Section 138 of the NI Act, before a person can be prosecuted, the following conditions are required to be satisfied:

9.1. That the cheque is drawn by a person and on an account maintained by him with a banker.

9.2. For the payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability.

9.3. The said cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account.

10. Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. Section 138 of the NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque.

11. Now, so far as the case on behalf of the original complainant that the appellant herein-original Accused 2 can be convicted with the aid of Section 141 of the NI Act is concerned, the aforesaid has no substance.

12. Section 141 of the NI Act is relating to the offence by companies and it cannot be made applicable to the individuals. The learned counsel appearing on behalf of the original complainant has submitted that ?company? means any body corporate and includes, a firm or other association of individuals and therefore in case of a joint liability of two or more persons it will fall within 'other association of individuals' and therefore with the aid of Section 141 of the NI Act, the appellant who is jointly liable to pay the debt, can be prosecuted. The aforesaid cannot be accepted. Two private individuals cannot be said to be 'other association of individuals'. Therefore, there is

no question of invoking Section 141 of the NI Act against the appellant, as the liability is the individual liability (may be a joint liabilities), but cannot be said to be the offence committed by a company or by it corporate or firm or other associations of individuals. The appellant herein is neither a Director nor a partner in any firm who has issued the cheque. Therefore, even the appellant cannot be convicted with the aid of Section 141 of the NI Act. Therefore, the High Court has committed a grave error in not quashing the complaint against the appellant for the offence punishable under Section 138 read with Section 141 of the NI Act. The criminal complaint filed against the appellant for the offence punishable under Section 138 read with Section 141 of the NI Act, therefore, can be said to be abuse of process of law and therefore the same is required to be quashed and set aside."

(emphasis supplied)

18. The Apex Court in the case of Bijoy Kumar Moni vs. Paresh Manna and Another 2024 SCC OnLine SC 3833, held as under:-

?39. What invariably follows from a perusal of the aforesaid provisions is that it is only the drawer of the cheque who can be held liable under Section 138. Section 141 is an exception to this scheme of the NI Act and provides for vicarious liability of persons other than the drawer of the cheque in cases where the drawer of the cheque under Section 138 is a corporate person.

40. The question as to whether a person who was not the drawer of the cheque upon an account maintained by him could be held to be liable for an offence under Section 138 of the NI Act fell for the consideration of this Court in the case of P.J. Agro Tech Ltd. v. Water Base Ltd. reported in (2010) 12 SCC 146. The Court construed the provision strictly and answered the question in the negative. The relevant observations are reproduced hereinbelow:

‘11. From the submissions made on behalf of the respective parties, it is quite apparent that the short point for decision in this appeal is whether a complaint under Section 138 of the 1881 Act would be maintainable against a person who was not the drawer of the cheque from an account maintained by him, which ultimately came to be dishonoured on presentation.

xxx xxx xxx

13. From a reading of the said section, it is very clear that in order to attract the provisions thereof a cheque which is dishonoured will have to be drawn by a person on an account maintained by him with the banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part of any debt or other liability. It is only such a cheque which is dishonoured which would attract the provisions of Section 138 of the above Act against the drawer of the cheque.

14. In the instant case, the cheque which had been dishonoured may have been issued by Respondent 11 for discharging the dues of Appellant 1 Company and its Directors to Respondent 1 Company and the respondent Company may have a good case against Appellant 1 Company for recovery of its dues before other fora, but it would not be sufficient to attract the provisions of

Section 138 of the 1881 Act. The appellant Company and its Directors cannot be made liable under Section 138 of the 1881 Act for a default committed by Respondent 11. An action in respect of a criminal or a quasi-criminal provision has to be strictly construed in keeping with the provisions alleged to have been violated. The proceedings in such matters are in personam and cannot be used to foist an offence on some other person, who under the statute was not liable for the commission of such offence.'

41. In Jugesh Sehgal v. Shamsher Singh Gogi reported in (2009) 14 SCC 683, this Court emphasised on the importance of the dishonoured cheque having been drawn by the accused person on an account held in his name for the offence to be made out and held thus:

'22. As already noted hereinbefore, in Para 3 of the complaint, there is a clear averment that the cheque in question was issued from an account which was nonexistent on the day it was issued or that the account from where the cheque was issued 'pertained to someone else'. As per the complainant's own pleadings, the bank account from where the cheque had been issued, was not held in the name of the appellant and therefore, one of the requisite ingredients of Section 138 of the Act was not satisfied. Under the circumstances, continuance of further proceedings in the complaint under Section 138 of the Act against the appellant would be an abuse of the process of the court. In our judgment, therefore, the decision of the High Court cannot be sustained.'

42. The aforesaid discussion makes it clear that as per the legislative scheme it is only the drawer of the cheque who is sought to be made liable for the offence punishable under Section 138 of the NI Act?"

(emphasis supplied)

19. From the aforesaid judicial pronouncements, it is evident that Section 141 of the N.I. Act, which deals with vicarious liability, is applicable only to companies and partnership firms and not to individuals. Consequently, joint bank account holders cannot be prosecuted unless they are signatories to the dishonoured cheque.

20. In the present case, it is not disputed that the cheques in question were issued from a joint bank account maintained by Rahul Thind and Madhu Singh. However, it is equally undisputed that the cheques were signed solely by Rahul Thind. Therefore, in light of the settled legal position, the applicant Madhu Singh, not being a signatory to the cheques, cannot be held liable for the offence under Section 138 of the N.I. Act. Moreover, a perusal of the complaint reveals that the allegations are primarily directed against Rahul Thind, and no specific role has been attributed to the applicant Madhu Singh, except that she is jointly and severally liable to repay the loan. Even on this ground, no prima facie case is made out against her.

21. In view of the aforesaid facts and legal position, this Court is of the considered opinion that the trial court erred in summoning the applicant Madhu Singh to face trial under Section 138 of the N.I. Act. The summoning order, to that extent, is unsustainable in law and is liable to be quashed.

22. Accordingly, the application is allowed.

23. The proceedings of complaint Case No. 958 of 2006/ New No.1776 of 2024 (Hari Om Pathak vs. Rahul Thind & others) under Section 138 NI Act, P.S. Kavi Nagar, District Ghaziabad, pending before the Special Court(NI Act), Ghaziabad, insofar as they relate to the applicant Madhu Singh, are hereby quashed.

24. Interim order, if any, stands vacated.

25. It is made clear that the proceedings against co-accused Rahul Thind shall continue in accordance with law, and the trial court shall be at liberty to proceed against him, in accordance with law.

(2026) 5 ILRA 61
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 12.05.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

Application U/S 482 No. 21503 of 2015

Rahul Kushwaha **...Applicant**
Versus
State of U.P. & Anr. **...Opposite Parties**

Issue for Consideration

Issue pertains to whether the criminal proceedings u/ss. 306, 354 and 506 IPC, along with the impugned summoning and revisional order, warranted quashing u/s 482 Cr.P.C., for want of a prima facie case, particularly the absence of a proximate nexus between the alleged acts of harassment and the deceased's suicide.

Headnotes

Indian penal Code, 1860 - ss. 306, 354, 506 - Code of Criminal Procedure, 1973 - ss. 156(3), 200, 202, 164, 161 - Summoning order and dismissal of revision challenged - Quashing of criminal proceedings - Abetment of suicide - Proximate nexus - Mens rea - Delay in lodging FIR - Effect of - The applicant, a Physics teacher was alleged to have persistently harassed, made indecent gestures towards, and attempted to outrage the modesty of minor daughter of first informant pressurising her for private tuitions and threatening to fail her in examinations upon refusal, culminating in an incident on 25.03.2011 wherein he allegedly entered her examination hall without invigilation duty, misbehaved with her and snatched her answer-book, followed by a further incident of alleged molestation on 02.04.2011, after which, despite complaints to the Principal, police and the SSP Ghaziabad, no FIR was promptly registered, and it was only pursuant to an application u/s 156(3) Cr.P.C. that FIR registered on 26.11.2011, nearly four months after she allegedly consumed poison and died by suicide on 29.07.2011 without any post-mortem or inquest having been conducted - The investigation culminated in two final reports finding no offence, both of which were rejected upon protest petitions, whereafter the ACJM treated the matter as a complaint case, recorded evidence u/ss. 200 and 202 Cr.P.C., and

summoned the applicant, which summoning order, having been dismissed in revision, was challenged by applicant before the High Court under Section 482 Cr.P.C. seeking quashing of the entire proceedings.

Held: It is apparent that there is a time gap of almost 3 months between the last act of harassment allegedly committed by accused on victim on 2.4.2011 and 29.7.2011, when the victim allegedly committed suicide by consuming poison - It is undisputed, that during the above duration, the victim remained in her house with her family members, and during this period there was no harassment, no contact with the accused - Further, the cause of death of the victim is also not proven - There is no evidence on record to presume that she committed suicide by consuming poison - It is further apparent that about 4 months after the death of victim, an application was moved by complainant for getting registered the FIR against the accused, which was allowed, and then a FIR was registered - There is no explanation by the complainant why she waited from 29.7.2011 till 15.11.2011 for approaching the Court in order to get the FIR registered - Further, all the alleged incidents occurred in the school, but the complainant has not examined any student of school or friend of victim in order to prove the allegations - The Principal of School, who was an important witness, has also not been examined by complainant - No injury report, statement u/ss. 164 or 161 CrPC of victim is available to corroborate the allegations of misbehaviour by accused - Further, the complainant and the witnesses examined by her u/s 202 CrPC are not eyewitnesses of alleged illegal acts committed by accused in the school, upon the victim - Accordingly application allowed, all proceedings quashed. [Paras 30, 33, 34, 36] (E-13)

Case Law Cited

Neeharika Infrastructure Private Limited v. State of Maharashtra and Others **(2021) 19 SCC 401 (By Three Judges);** *Veena Mittal v. State of UP* **in Criminal Appeal No.122 of 2022 decided on 24.01.2022;** *Mahmood Ali and others v. State of UP and others* **(2023) 15 SCC 488;** *Prakash and Others v. State of Maharashtra and Another* **2024 SCC OnLine SC 3835;** *Abhinav Mohan Delkar v. State of Maharashtra and Others* 2025 **SCC OnLine SC 1725 - referred to**

List of Acts

Indian penal Code, 1860; Code of Criminal Procedure, 1973

List of Keywords

Application u/s 482 Cr.P.C; s. 156(3) Cr.P.C; Physics Teacher; Private tuitions; Principal of School; Protest petition; Modi Nagar; Complaint case; Summoning order; Criminal revision; Mens rea; Instigation; Abetment; Proximate link; Nexus; Suicide; Outraging modesty; First information report; Autopsy; Panchayatnama; Viscera analysis; Abuse of process of law; Application allowed.

Case Arising From

ORIGINAL JURISDICTION: Application U/S 482 No. - 21503 of 2015

From the Revisional Order dated 13.03.2015 passed by learned Additional Sessions judge, Court No.14, Ghaziabad in Criminal Revision No.22 of 2015 and Summoning Order dated 21.10.2014 passed by learned Additional Chief Judicial Magistrate, Court No. 05, Ghaziabad in Complaint Case No.49 of 2012, P.S. Modi Nagar, District Ghaziabad.

Appearances for Parties

Advs. for the Applicant(s):
Abhilasha Singh, Ashutosh Yadav, Deepak Rana, Dharmendra Singhal, Rajesh Kumar Srivastava, S. Lal, Shivendra Raj Singhal

Advs. for the Opposite Party(s):
Akhilesh Chandra Shukla, Govt. Advocate, Kartikeya Bhargava, Swapnil Sinha

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

1. The present application has been filed for the following reliefs:-

"1. Allow this application; and/or,

2. Quash the impugned order dated 13.03.2015 passed by the learned Additional Sessions judge, Court No.14, Ghaziabad in Criminal Revision No.22 of 2015, Rahul Kushwaha v. Geeta Bainsla; and/or,

3. Quash the impugned order dated 21.10.2014 passed by the learned Additional Chief Judicial Magistrate, Court No.05, Ghaziabad in Complaint Case No.49 of 2012, Geeta Bainsla v. Rahul Kushwaha u/s 306,354,506 IPC, P.S. Modi Nagar, District Ghaziabad; and/or,

4. Quash entire proceedings of Complaint Case No.49 of 2012, Geeta Bainsla v. Rahul Kushwaha u/s 306,354,506 IPC, P.S. Modi Nagar, District Ghaziabad pending in the court of the learned Additional Chief Judicial Magistrate, Court No.05, Ghaziabad; and/or,

5. Direct both the subordinate courts below to decide and dispose of the bail application of the petitioner on the same day; and/or,

6. Stay further proceedings of Complaint Case No.49 of 2012, Geeta Bainsla v. Rahul Kushwaha, u/s 306,354,506 IPC, P.S. Modi Nagar, District Ghaziabad pending in the Court of ACJM, Court No.05, Ghaziabad during the pendency of the present criminal misc. application before the Hon'ble Court; and/or,

7. Pass such order or further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The factual matrix of the case is that Km. Jyoti was the minor daughter of the first informant, Smt. Geeta Baisla, and was studying in Class XI at TRM School Modi Nagar at the relevant time. It is alleged that the applicant, Rahul Kushwaha, who was employed therein as a teacher of Physics, had developed an improper and lustful interest in Km. Jyoti and, from time to time, made indecent gestures towards her and attempted to outrage her modesty, which conduct was resisted and protested by her.

3. It is further alleged that the applicant repeatedly pressurized Km. Jyoti to take private tuition from him, which she declined. Upon such refusal, he allegedly threatened that he would fail her in the examinations and would also have her family eliminated. It was further asserted that the applicant used to boast that his uncle, Babli @ Gyanchand, was a political leader and that his relative, Dabbu, was a notorious criminal who wielded terror in Modi Nagar.

4. According to the first informant, Km. Jyoti used to disclose these incidents to her mother, and the matter was also brought to the notice of the Principal of the aforesaid school. The Principal allegedly assured the family that no untoward incident would occur with Km. Jyoti. However, it is

alleged that on account of the complaint having been made, the applicant developed animosity towards Km. Jyoti and threatened to fail her in the examination unless she submitted to his demands.

5. It is further alleged that on 25.03.2011, while Km. Jyoti was appearing in her examination, the applicant, despite not being assigned invigilation duty in that room, entered the examination hall, behaved indecently with her, snatched her answer-book, and threatened that unless she established contact with him, he would not allow her to pass the examination. He is also alleged to have used obscene language and issued threats. On account thereof, Km. Jyoti raised an alarm and telephonically informed the first informant, whereupon the latter reached the school along with police personnel. A complaint was again made to the Principal, who reprimanded the applicant, and Km. Jyoti was thereafter permitted to continue her examination. It is alleged that while leaving, the applicant threatened that he would avenge the said incident.

6. The first informant further alleged that despite complaints being made to the police, no action was taken, as the applicant had, by use of influence, obstructed any legal proceedings against him. Again, on 02.04.2011, the applicant allegedly attempted to outrage the modesty of Km. Jyoti, regarding which another complaint was made to the Principal. It is further alleged that in retaliation, the applicant, in collusion with his associates, fabricated false injuries and procured registration of an FIR against Naresh the brother of the first informant, at Police Station Modi Nagar.

7. It is further stated that her husband arrived on leave on 18.04.2011 then the entire incident was disclosed to him, then her husband submitted an application on 19.04.2011 to the Senior Superintendent of Police, Ghaziabad seeking registration of an FIR at Police Station Modi Nagar, on which FIR was ordered to be registered. It is alleged that on 20.04.2011 at about 7:00 p.m., the applicant along with his accomplices came to the residence of the first informant and threatened her with dire consequences unless she withdrew her complaint. Another representation was thereafter submitted to the SSP Ghaziabad, who ordered arrest of the accused persons, but again no action ensued.

8. It is further alleged that Km. Jyoti subsequently reappeared in the examination and her answer-book was evaluated by other teachers, whereupon she passed the examination. However, the applicant and his associates allegedly continued attempts to implicate the family in false cases. According to the first informant, due to the persistent harassment and defamation caused by the conduct of the applicant, the reputation and mental peace of Km. Jyoti stood gravely affected, and ultimately on 29.07.2011 she committed suicide.

9. It is the further case of the first informant that despite attempts, the FIR regarding the said incident was not registered. It is alleged that the police neither conducted inquest proceedings nor post-mortem examination of the deceased. Consequently, the first informant was constrained to move an application under Section 156(3) Cr.P.C. on 15.11.2011, which was allowed on 19.11.2011, and pursuant to the order of the court, an FIR being Case Crime No.781 of 2011 came to be registered on 26.11.2011 against the applicant under Section 306,354,506 IPC at P.S. Modi Nagar, District Ghaziabad.

10. After investigation, a final report was submitted on 09.01.2012, which was challenged by the first informant by means of a protest petition dated 17.02.2012. The said protest petition was allowed by the A.C.J.M., Court No.5, Ghaziabad on 01.09.2012, and further investigation was directed. Upon further investigation, yet again final report was submitted on 28.01.2013 on the ground that the first informant had not informed the police promptly, no treatment was undertaken and the body of the deceased Km. Jyoti has been cremated surreptitiously and that no post-mortem had been conducted to prove that she died due to the poisoning, hence the applicant has not committed any offence.

11. A second protest petition was thereafter filed on 20.03.2013, which was allowed. By order dated 10.05.2013, the learned ACJM, court no.5, Ghaziabad rejected the final report and treated the protest petition as a complaint case. Thereafter, the first informant, Smt. Geeta Baisla, was examined under Section 200 Cr.P.C., and her witnesses, namely Naresh (PW-1), Gyanendra (PW-2), Shyamo (PW-3), and Sunita (PW-4), were examined under Section 202 Cr.P.C.

12. All the aforesaid witnesses deposed that at the relevant time Km. Jyoti was studying in TRM Public School, Modi Nagar, where the applicant taught Physics. They stated that the applicant used to harass Km. Jyoti, made indecent gestures, pressurized her to take tuition from him, and threatened that if she refused, he would fail her in examinations. It has further come in evidence that due to such behaviour, Km. Jyoti remained under severe mental stress and used to narrate the incidents to her mother and other family members.

13. The witnesses further deposed that complaints were made to the Principal, who assured that no untoward incident would take place in the school. However, owing to such complaints, the applicant allegedly became hostile towards Km. Jyoti and threatened to ruin her reputation by using his political influence.

14. It was also stated that on 25.03.2011, while Km. Jyoti was appearing in an examination, the applicant, though not posted as invigilator in that room, entered the hall, misbehaved with her, snatched her answer-book, and declared that he would not permit her to sit in the examination. This incident was reported to the Principal, and upon receiving information, Smt. Geeta Baisla also reached the school. Police personnel were called, whereafter the applicant was reprimanded and Km. Jyoti was permitted to continue the examination.

15. The witnesses further stated that the oppressive conduct and indecent behaviour of the applicant continued thereafter. Again on 02.04.2011, the applicant acted indecently with Km. Jyoti and attempted to molest her, which was complained to the police and Principal, which angered the applicant, who alongwith his accomplices managed to get fabricated false injuries on his body and in collusion with the police, got registered a false report against complainant's brother Naresh. It was further stated that complainant's husband, who was in Army, arrived home on 18.04.2011 on leave, who was told about this, who complained to SSP Ghaziabad on 19.04.2011, on which Police Station Modi Nagar was directed to register FIR, which angered the applicant. It was also alleged that the applicant alongwith his accomplices visited the residence of the first informant on 20.04.2011 at about 7:00 p.m. and threatened her with dire consequences if she continued to pursue complaints against him. It has also been stated that the applicant managed to have Km. Jyoti

declared failed in the examination and her result withheld, though subsequently, upon complaint by the first informant, she was allowed to reappear and passed with good marks.

16. All the witnesses consistently asserted that the applicant, bearing hostility on account of resistance offered by the first informant and her family, continued to harass and defame Km. Jyoti for illicit relations, and being unable to bear such sustained humiliation and mental persecution, she ultimately committed suicide by consuming poison on 29.07.2011. It was further asserted that Km. Jyoti was compelled to commit suicide by the applicant.

17. It is pertinent to note that on the basis of the aforesaid statements of the complainant and her witnesses, the applicant was summoned to face trial by the learned A.C.J.M., Court No.5, Ghaziabad, vide order dated 21.10.2014 under Sections 306, 354 and 506 IPC. The said summoning order was challenged by the applicant by filing Criminal Revision No. 22 of 2015, which came to be dismissed by the learned Additional Sessions Judge, Court No.14, Ghaziabad, vide order dated 13.03.2015. By means of the present application, both the aforesaid orders have been assailed.

18. Learned counsel for the applicant submitted that the allegations levelled by the first informant are wholly false and devoid of substance. It was contended that the police investigated the matter twice and, finding no truth in the allegations, submitted final reports, which were erroneously rejected by the Magistrate. It was further submitted that although the first informant alleged harassment since April 2011, no prompt FIR was lodged. It was also argued that the alleged acts of harassment occurred in April 2011, whereas the suicide took place on 29.07.2011, and therefore there existed no live nexus or proximate link between the alleged conduct and the act of suicide.

19. It was further contended that since Km. Jyoti allegedly committed suicide at her parental residence, it was incumbent upon the family members to inform the police and ensure post-mortem examination and viscera analysis, which alone could have conclusively established poisoning as the cause of death. In the absence of such evidence, the prosecution case is rendered doubtful. It was even suggested that there was sufficient material to infer that Km. Jyoti may have died in an incident of honour killing at the hands of her own family members. It was lastly submitted that even if the entire prosecution version is accepted at face value, no offence under Section 306,354 and 506 IPC is made out. Accordingly, it was prayed that the application under Section 482 Cr.P.C. be allowed and the criminal proceedings be quashed.

20. Per contra, learned AGA submitted that from the statements recorded under Sections 200 and 202 Cr.P.C., a prima facie case clearly emerges that Km. Jyoti was subjected to persistent harassment, indecent conduct, and repeated attempts were made to molest her, which cumulatively drove her to commit suicide. It was submitted that at the present stage the Court is not required to conduct a mini-trial, nor to appreciate the defence of the accused or adjudge the likelihood of conviction. It was contended that sufficient prima facie material exists to justify the summoning order and continuation of proceedings. Accordingly, it was prayed that the application be rejected.

21. I have heard learned counsel for the parties and perused the record.

22. The Apex Court in the case of Neeharika Infrastructure Private Limited vs. State of Maharashtra and Others (2021) 19 SCC 401 (By Three Judges), while delineating the scope of inherent jurisdiction under Section 482 Cr.P.C. and enumerating the circumstances in which criminal proceedings may be quashed, held as under:

'13.1. Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences.

13.2. Courts would not thwart any investigation into the cognizable offences.

13.3. However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on.

13.4. The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482CrPC is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court.)

13.5. While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

13.6. Criminal proceedings ought not to be scuttled at the initial stage.

13.7. Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule.

13.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by Section 482CrPC.

13.9. The functions of the judiciary and the police are complementary, not overlapping.

13.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

13.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

13.12. The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no

substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.

13.13. The power under Section 482CrPC is very wide, but conferment of wide power requires the Court to be cautious. It casts an onerous and more diligent duty on the Court.

13.14. However, at the same time, the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in R.P. Kapur [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] and Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , has the jurisdiction to quash the FIR/complaint.

13.15. When a prayer for quashing the FIR is made by the alleged accused, the Court when it exercises the power under Section 482CrPC, only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

23. The Apex Court in the case of Veena Mittal vs. State of UP in Criminal Appeal No.122 of 2022 decided on 24.01.2022, held as under:-

‘6. ..It is well-settled that at the stage when the High Court considers a petition for quashing criminal proceedings under Section 482 of the CrPC, the allegations in the FIR must be read as they stand and it is only if on the face of the allegations that no offence, as alleged, has been made out, that the Court may be justified in exercising its jurisdiction to quash...

24. The Apex Court in the case of Mahmood Ali and others vs. State of UP and others (2023) 15 SCC 488 while elucidating the parameters governing the exercise of inherent jurisdiction under Section 482 Cr.P.C. in cases alleging false, frivolous, and vexatious criminal proceedings, held as under:-

‘11. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the court owes a duty to look into the FIR with care and a little more closely.

12. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance etc. then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the

averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.

13. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

25. The Apex Court in the case of Prakash and Others vs. State of Maharashtra and Another 2024 SCC OnLine SC 3835, while expounding the essential prerequisites for the invocation of Section 306 read with Section 107 of the IPC, has held as under:

'13. Section 306 of the IPC has two basic ingredients-first, an act of suicide by one person and second, the abetment to the said act by another person(s). In order to sustain a charge under Section 306 of the IPC, it must necessarily be proved that the accused person has contributed to the suicide by the deceased by some direct or indirect act. To prove such contribution or involvement, one of the three conditions outlined in Section 107 of the IPC has to be satisfied.

14. Section 306 read with Section 107 of IPC, has been interpreted, time and again, and its principles are well-established. To attract the offence of abetment to suicide, it is important to establish proof of direct or indirect acts of instigation or incitement of suicide by the accused, which must be in close proximity to the commission of suicide by the deceased. Such instigation or incitement should reveal a clear mens rea to abet the commission of suicide and should put the victim in such a position that he/she would have no other option but to commit suicide.

15. The law on abetment has been crystallised by a plethora of decisions of this Court. Abetment involves a mental process of instigating or intentionally aiding another person to do a particular thing. To bring a charge under Section 306 of the IPC, the act of abetment would require the positive act of instigating or intentionally aiding another person to commit suicide. Without such mens rea on the part of the accused person being apparent from the face of the record, a charge under the aforesaid Section cannot be sustained. Abetment also requires an active act, direct or indirect, on the part of the accused person which left the deceased with no other option but to commit suicide.

16.***

17. This Court held that abetment involves the mental process of instigating a person or intentionally aiding a person in doing of a thing. Therefore, without a positive act on the part of the accused to instigate or aid a person in committing suicide, conviction cannot be sustained. This

Court further observed that the intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 of IPC, there has to be a clear mens rea to commit the offence. Abetment also requires an active act or direct act which led the deceased to commit suicide seeing no other option and that act must have been intended to push the deceased into such a position that he committed suicide. However, this Court has cautioned that since each person reacts differently to the same provocation depending on a variety of factors, it is impossible to lay down a straightjacket formula to deal with such cases. Therefore, every such case has to be decided on the basis of its own facts and circumstances.

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25. Relying on the decision in the case of Sanju @ Sanjay Singh Sengar vs. State of MP (2002) 5 SCC 371, this Court in the case of Gurjit Singh vs. State of Punjab(2020) 14 SCC 264 set aside the conviction under Section 306 of the IPC as it was clear from the evidence on record that there was a time gap of about two months between the last visit of the deceased to her parents with regard to the illegal demand for money by the accused-appellant and the date of commission of suicide by the deceased. As such, this Court held that there was nothing on record to show that there was a proximate nexus between the commission of suicide and the illegal demand made by the accused-appellant. This Court observed as follows:

'36. It could further be seen from the evidence on record that the time gap between the last visit of the deceased to her parents with regard to the illegal demand and the date of commission of suicide is about two months. As such, there is nothing on record to show that there was a proximate nexus between the commission of suicide and the illegal demand made by the appellant. In Sanju v. State of M.P. [Sanju v. State of M.P., (2002) 5 SCC 371 : 2002 SCC (Cri) 1141] this Court found that there was time gap of 48 hours between the accused telling the deceased 'to go and die' and the deceased 'committing suicide'. As such, this Court held that there was no material to establish that the accused had abetted the suicide committed by the deceased.'

26. Thus, this Court has consistently taken the view that instigation or incitement on the part of the accused person is the gravamen of the offence of abetment to suicide. However, it has been clarified on many occasions that in order to link the act of instigation to the act of suicide, the two occurrences must be in close proximity to each other so as to form a nexus or a chain, with the act of suicide by the deceased being a direct result of the act of instigation by the accused person.

27. This Court in the case of Mohit Singhal (supra) reiterated that the act of instigation must be of such intensity and in such close proximity that it intends to push the deceased to such a position under which the person has no choice but to commit suicide. This Court held that the incident which had allegedly driven the deceased to commit suicide had occurred two weeks prior and even the suicide note had been written three days prior to the date on which the deceased committed suicide and further, there was no allegation that any act had been done by the accused-appellant therein in close proximity to the date of suicide. This Court observed as follows:

'11. In the present case, taking the complaint of the third respondent and the contents of the suicide note as correct, it is impossible to conclude that the appellants instigated the deceased to

commit suicide by demanding the payment of the amount borrowed by the third respondent from her husband by using abusive language and by assaulting him by a belt for that purpose. The said incident allegedly happened more than two weeks before the date of suicide. There is no allegation that any act was done by the appellants in close proximity to the date of suicide. By no stretch of imagination, the alleged acts of the appellants can amount to instigation to commit suicide. The deceased has blamed the third respondent for landing in trouble due to her bad habits.

12. Therefore, in our considered view, the offence punishable under Section 306 IPC was not made out against the appellants. Therefore, the continuation of their prosecution will be nothing but an abuse of the process of law.'

(emphasis supplied)

26. The Apex Court in the case of Abhinav Mohan Delkar vs. State of Maharashtra and Others 2025 SCC OnLine SC 1725, has authoritatively held that for the offence punishable under Section 306 read with Section 107 of the IPC to be attracted, the sine qua non is the existence of a proximate and live link between the alleged act of abetment and the commission of suicide; in other words, there must be a direct and immediate act or conduct of incitement which, in its natural and consequential chain, compels the victim to take the extreme step of suicide. It is quoted as under:-

'22. What comes out essentially from the various decisions herein before cited is that, even if there is allegation of constant harassment, continued over a long period; to bring in the ingredients of Section 306 read with Section 107, still there has to be a proximate prior act to clearly find that the suicide was the direct consequence of such continuous harassment, the last proximate incident having finally driven the subject to the extreme act of taking one's life. Figuratively, 'the straw that broke the camel's back'; that final event, in a series, that occasioned a larger, sudden impact resulting in the unpredictable act of suicide. What drove the victim to that extreme act, often depends on individual predilections; but whether it is goaded, definitively and demonstrably, by a particular act of another, is the test to find mens rea. Merely because the victim was continuously harassed and at one point, he or she succumbed to the extreme act of taking his life cannot by itself result in finding a positive instigation constituting abetment. Mens rea cannot be gleaned merely by what goes on in the mind of the victim.

23. The victim may have felt that there was no alternative or option, but to take his life, because of what another person did or said; which cannot lead to a finding of mens rea and resultant abetment on that other person. What constitutes mens rea is the intention and purpose of the alleged perpetrator as discernible from the conscious acts or words and the attendant circumstances, which in all probability could lead to such an end. The real intention of the accused and whether he intended by his action to at least possibly drive the victim to suicide, is the sure test. Did the thought of goading the victim to suicide occur in the mind of the accused or whether it can be inferred from the facts and circumstances arising in the case, as the true test of mens rea would depend on the facts of each case. The social status, the community setting, the relationship between the parties and other myriad factors would distinguish one case from another. However harsh or severe the harassment, unless there is a conscious deliberate intention, mens rea, to drive another person to suicidal death, there cannot be a finding of abetment under Section 306.

24. We have already seen that even a rebuke to 'go, kill yourself'; often a rustic expression against distasteful conduct, cannot by itself be found to have the ingredients to charge an offence of abetment to suicide. There is no uniformity in how different individuals respond and react under pressure. Many stand up, some fight back, a few runaway and certain people crumble and at times take the extreme step of suicide. To put the blame on the pressure imposed and the person responsible for it, at all times, without something more to clearly discern an intention, would not be the proper application of the penal provisions under Section 306.

(emphasis supplied)

27. From the above law laid down by the Apex Court, it is evident that to sustain a charge under Section 306 IPC it must necessarily be proved that the accused person has contributed to the suicide by the deceased by some direct or indirect act. It is important to establish proof of direct or indirect acts of instigation or incitement of suicide by the accused, which must be in close proximity to the commission of suicide by the deceased. Further, such instigation or incitement should reveal a clear mens rea to abet the commission of suicide and should put the victim in such a position that he/she would have no other option but to commit suicide. In order to link the act of instigation to the act of suicide, the two occurrences must be in close proximity to each other so as to form a nexus or a chain, with the act of suicide by the deceased being a direct result of the act of instigation by the accused person.

28. It is further apparent that the victim may have felt that there was no alternative option, but to take his life, because of what another person did or said; which cannot lead to a finding of mens rea and resultant abetment on that other person. What constitutes mens rea is the intention and purpose of the alleged perpetrator as discernible from the conscious acts or words and the attendant circumstances, which in all probability could lead to such an end. The real intention of the accused and whether he intended by his action to at least possibly drive the victim to suicide, is the sure test. However harsh or severe the harassment, unless there is a conscious deliberate intention, mens rea, to drive another person to suicidal death, there cannot be a finding of abetment under Section 306.

29. From the evidence on record it is evident that the victim Km. Jyoti was studying in class XI at the relevant time, in the school in which the accused/applicant was a teacher of physics, who as per the prosecution case, continuously harassed, molested her, was trying to outrage her modesty, which was resisted by the victim. As per the statement of the witnesses the accused pressurised the victim to take private tuitions from him, to which she declined. The above acts and conduct of the accused were also brought to the notice of the Principal of the school, on which he reprimanded the accused and assured the parents of the victim that her safety will be ensured. In the protest petition and statements of the above witnesses, the last act of such harassment was meted out to the victim on 2.4.2011 by the accused in the school. Thereafter, there was no contact between the victim and the accused, the victim remained in her house with her parents and relatives, where she allegedly committed suicide on 29.7.2011 by consuming poison.

30. It is apparent that prima-facie there is no evidence on record to prove that the accused had the mens rea or he ever intended or instigated the victim to commit suicide. It is further apparent that there is a time gap of almost 3 months between the last act of harassment allegedly committed

by the accused on victim on 2.4.2011 and 29.7.2011, when the victim allegedly committed suicide by consuming poison. It is undisputed, that during the above duration, the victim remained in her house with her family members, and during this period there was no harassment, no contact with the accused. It is apparent that there was no proximity between the alleged acts of harassment, indecent behaviour, molestation, attempt to outrage modesty committed by the accused and the act of suicide. It is well settled that if there is no proximity or nexus between the alleged acts of harassment which drove the victim to commit suicide and the act of suicide, then no offence of abetment or instigation to suicide is made out under Section 306 IPC.

31. In the protest petition and the evidence of witnesses, it is disclosed that the complainant and her husband met S.S.P. Ghaziabad and brought to his notice the above criminal acts of the accused by giving application on 19.4.2011, on which he directed the Police Station Modi Nagar to register FIR, but no such FIR in reality was registered against the accused. Even after the alleged suicidal death of the victim on 29.7.2011 no FIR was got registered by the complainant promptly. Eventually on 15.11.2011, an application under Section 156(3) CrPC was moved by the complainant before the competent criminal court, which was allowed on 19.11.2011, and thereafter, FIR being Case crime No. 781 of 2011 under Section 306, 354, 506 IPC was registered on 26.11.2011 against the accused at Police Station Modi Nagar, District Ghaziabad. It is apparent that there is a fatal delay on the part of the complainant in registering the FIR, which makes the whole prosecution case doubtful.

32. It is further apparent that the victim at the time of alleged suicide was residing in her house, who was not taken to any doctor/hospital for treatment, no intimation regarding this was given to the police. It is very surprising that if the victim had consumed poison then at least she should have been taken to the hospital for treatment but no such effort was made by the complainant or her relatives. Further, if the victim had died and had this information been given to the police, then the autopsy would have been performed for ascertaining the cause of death, but since no information was given to the police, neither panchayatnama was prepared nor autopsy was performed. It is further apparent that the body of the victim was surreptitiously cremated by the complainant and her relatives. In view of the above facts, there is no prima-facie evidence on record to prove that the victim committed suicide by consuming poison.

33. It is apparent that prima-facie the complainant has failed to prove that there was any mens rea or instigation on the part of the accused to force the victim to commit suicide. Further, the cause of death of the victim is also not proven. There is no evidence on record to presume that she committed suicide by consuming poison. It is further apparent that about 4 months after the death of the victim on 29.7.2011, an application was moved by the complainant under Section 156(3) CrPC on 15.11.2011 for getting registered the FIR against the accused before the competent Court, which was allowed on 19.11.2011, and then a FIR was registered on 26.11.2011 against the accused. There is no explanation by the complainant why she waited from 29.7.2011 till 15.11.2011 for approaching the Court in order to get the FIR registered in this matter. The complainant has not furnished any plausible explanation for the above delay, which is fatal.

34. It is further apparent that the victim has died, who could have proved the alleged offence under Section 354 IPC. Further, all the alleged incidents of harassment, indecent behaviour,

molestation and attempt to outrage the modesty of victim occurred in the TRM School, Modi Nagar, District Ghaziabad but the complainant has not examined any student of the school or friend of the victim in order to prove the above allegations. The Principal of the School, who was an important witness, has also not been examined by the complainant. No injury report, statement under Section 164 or 161 CrPC of the victim is available to substantiate or corroborate the above allegations of misbehaviour by the accused. Further, the complainant and the witnesses examined by her under Section 202 CrPC are not eyewitnesses of the alleged illegal acts committed by the accused in the school, upon the victim. This is not a case where the incident occurred in a desolate place, where no witness was present. As per the prosecution case, the alleged incidents occurred in a school, where there was no dearth of witnesses, but still, no witness who was present in the school at the relevant time, has been examined by the complainant, in support of her case.

35. Therefore, in the considered opinion of this Court, for the reasons mentioned aforesaid, the offence punishable under Section 306, 354 and 506 IPC is prima-facie not made out against the accused/applicant Rahul Kushwaha. Therefore, the continuation of his prosecution will be nothing but an abuse of the process of law. Accordingly, the application deserves to be allowed.

36. The instant application under Section 482 CrPC is allowed. Consequently, the proceedings of complaint Case No. 49 of 2012, new No. 2608 of 2019, Geeta Bainsla versus Rahul Kushwaha under Section 306, 354 and 506 IPC, P.S. Modi Nagar, District Ghaziabad pending before the ACJM Court No. 5, Ghaziabad and all incidental proceedings thereto are hereby quashed.

(2026) 5 ILRA 74
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 19.05.2026

BEFORE

THE HON'BLE BRIJ RAJ SINGH, J.

Application U/S 528 BNSS No. 1880 of 2026

Shatrughan Kumar **...Applicant**
Versus
Narcotics Control Bureau **...Opposite Party**

ISSUE FOR CONSIDERATION

Whether the cognizance order passed by the Special Judge, NDPS Act, Lucknow, without affording the accused an opportunity of hearing under Section 223(1) BNSS, is valid in law ?

HEADNOTES

Criminal Law – Bharatiya Nagarik Suraksha Sanhita, 2023 - Section – 223(1), 528 – Prevention of Money Laundering Act, 2002 – Section 44(1)(b) – Narcotic Drugs and Psychotropic Substances Act, 1985 – Section - 36A(1)(d):- Application u/s 528 BNSS – for quashing the cognizance order – complaint filed by NCB under NDPS Act – offences u/s 8(c), 20, 27A, 29 – cognizance taken without affording opportunity of hearing as mandated under Section 223(1) BNSS – applicant pleaded violation of statutory right – NCB argued charges already framed and no prejudice caused – Court finds Section 36A(1)(d) NDPS is pari materia with Section 44(1)(b) PMLA, hence pre-cognizance hearing mandatory – denial of

hearing vitiates cognizance – held, impugned order set aside – hence application allowed – applicant directed to appear before Special Judge with objections, order to be passed afresh after hearing both parties.

(Para – 20, 21)

Application Allowed. (E-11)

CASE LAW CITED

Kushal Kumar Agarwal v. Enforcement Directorate, 2025 SCC OnLine SC 1221
Pushpraj Bajaj v. Union of India, 2025 SCC OnLine Pat 3148
Tutu Ghosh v. Enforcement Directorate, 2025 SCC OnLine Cal 5924

LIST OF ACTS

Bharatiya Nagarik Suraksha Sanhita, 2023 - Prevention of Money Laundering Act, 2002 – Narcotic Drugs and Psychotropic Substances Act, 1985.

LIST OF KEYWORDS

Application under section 528, BNSS, NDPS Act, Cognizance, Complaint, Opportunity of Hearing, Special Judge, NCB, Section 223, Section 36A, PMLA, Pre-cognizance stage, Violation, Set aside.

CASE ARISING FROM

Sessions Case No. 1078 of 2025, arising out of NCB Case No. 01 of 2025, under Sections 8(c), 20, 27A, 29 NDPS Act.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Syed Tamjeed Ahmad, Adil Abbas, Saurabh Sharma (Counsel)
Counsel for Respondent(s): Shri Sajeet Singh.

(Delivered by Hon'ble Brij Raj Singh, J.)

1. The present application has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS') seeking following reliefs:-

(i) Setting aside of the impugned cognizance order dated 14.07.2025 passed by the Special Judge, NDPS Act, Lucknow (hereinafter referred to as 'Special Judge') in Sessions Case No. 1078 of 2025, arising out of NCB Case No. 01 of 2025 dated 14.07.2025, under Sections 8(c), 20, 27A and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), on the ground that at the pre-cognizance stage, the applicant was not afforded opportunity of hearing as envisaged under Section 223(1) of BNSS.

(ii) Quashing of the entire proceeding of Session Case No.1078 of 2025 (Supra) pending before the Special Judge.

2. At the outset, learned counsel for the applicant has submitted that he does not want to press the present application insofar as it relates to relief no.(ii) seeking quashing of the entire proceeding of Session Case No.1078 of 2025.

3. Learned counsel for the applicant has submitted that the impugned cognizance order dated 14.07.2025 has been passed in violation of the statutory mandate contained in the first proviso to Section 223 of BNSS.

4. He has further submitted that BNSS came into force with effect from 01.07.2024 and the first proviso to Section 223 of BNSS categorically mandates that no Court shall take cognizance of an offence upon a complaint without affording the accused an opportunity of hearing.

5. He has further submitted that, in the present case, it is undisputed that the opposite party instituted a complaint on 14.07.2025, i.e., on a date when the provisions of Section 223 of BNSS were in force. Consequently, the Special Judge was under a statutory obligation to adhere to the mandate contained in the first proviso to Section 223 of BNSS before taking cognizance.

6. He has further submitted that, in terms of Section 36A(1)(d) of NDPS Act, in matters arising under the said Act, the trial court may take cognizance either upon a police report in the nature of a charge-sheet or upon a complaint instituted by an authorized officer. According to learned counsel, in the present case, the proceedings emanate from a complaint instituted by Narcotics Control Bureau (hereinafter referred to as 'NCB') and, therefore, strict compliance of the provisions contained in Section 223 of BNSS was mandatory.

7. He has invited attention of this Court towards Section 36A(1)(d) of NDPS Act, which provides that a Special Court may, upon perusal of police report of the facts constituting an offence under NDPS Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

8. He has further submitted that Section 36A(1)(d) of NDPS Act is at par with enacted provision of Section 44(1)(b) of Prevention of Money-Laundering Act, 2002 (hereinafter referred to as ?PMLA?) which also provides that a Special Court may, upon a complaint made by an authority authorised in this behalf under PMLA take cognizance of an offence under section 3, without the accused being committed to it for trial. Provided that after conclusion of investigation, if no offence of money-laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court.

9. Learned counsel for the applicant has placed reliance on following judgments :-

I. Kushal Kumar Agarwal v. Enforcement Directorate, , reported in 2025 SCC OnLine SC 1221;

II. Pushpraj Bajaj v. Union of India, reported in 2025 SCC OnLine Pat 3148; and

III. Tutu Ghosh v. Enforcement Directorate, reported in 2025 SCC OnLine Cal 5924

10. On the other hand, Shri Sajeet Singh, learned counsel for the NCB has submitted that accused-applicant was remanded on 14.07.2025 and on that date, impugned cognizance order was also passed wherein the Special Judge has observed that " सुना तथा परिवाद के साथ संलग्न समस्त प्रपत्रों को अवलोकन किया ".

11. He has further submitted that charges were framed vide order dated 08.08.2025, a copy whereof has been taken on record. According to him, the applicant did not challenge the impugned

cognizance order even prior to framing of charges, though he had the opportunity to do so before the charges were framed. It has thus been submitted that, after framing of charges, it cannot be construed that the applicant was not afforded an opportunity of hearing.

12. I have heard Shri Syed Tamjeed Ahmad, Shri Adil Abbas, and Shri Saurabh Sharma, learned counsel appearing for the applicant, and Shri Sajeet Singh, learned counsel for the NCB.

13. Before proceeding further, it would be appropriate to reproduce certain relevant provisions of the BNSS, PMLA and NDPS.

14. Section 223(1) BNSS is reproduced herein-below:- ‘223(1). A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate: Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard.’

15. Section 36A(1)(d) NDPS is reproduced herein-below:- "(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial."

16. Section 44(1)(b) NDPS is reproduced herein-below:- "(b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence under section 3, without the accused being committed to it for trial. Provided that after conclusion of investigation, if no offence of moneylaundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court."

17. In the case of Kushal Kumar Agarwal (Supra), which pertains to PMLA, Hon'ble Supreme Court has held that the provisions of Chapter XVI, containing Sections 223 to 226, will also apply to a complaint under Section 44 of the PMLA. Relevant paras are extracted herein-below:- "4. Section 223 of the BNSS corresponds to Section 200 of the Criminal Procedure Code, 1973 (hereinafter referred to as ?the CrPC?). However, a proviso similar to the proviso to sub-section (1) of Section 223 does not find place in Section 200 of the CrPC.

5. This Court has taken a consistent view that a complaint filed by the Enforcement Directorate under Section 44 (1)(b) of the PMLA will be governed by Sections 200 to 204 of the CrPC. This view has been taken by this Court in the cases of Yash Tuteja v. Union of India and Tarsem Lal v. Enforcement Directorate. Therefore, the provisions of Chapter XVI, containing Sections 223 to 226, will also apply to a complaint under Section 44 of the PMLA. As the complaint has been filed after 1st July, 2024, Section 223 of the BNSS will apply to the present complaint."

18. Similarly, in the case of Pushpraj Bajaj (Supra), Patna High Court has observed as follows:-

"Now the contention of the Directorate of Enforcement for not affording opportunity of hearing to the petitioner is merely an irregularity for taking cognizance under Section 210 of BNSS and in support thereof Section 506(e) of BNSS has been referred. But Section 210 of BNSS is not a stand alone provision. It has to be read in conjunction with Section 223 of BNSS."

19. In the case of Tutu Ghosh (Supra), observations of Calcutta High Court are relevant, which are extracted herein-below:- "30. Upon hearing learned counsel, it transpires that several important questions have been raised by the parties, which can be summarised as follows:

(i) Whether violation of the first proviso to Section 223, BNSS vitiates the order of taking cognizance and consequential proceedings.

(ii) Whether absence of the words 'including any complaint filed by a person authorised under Special Law', as enumerated in Section 210 (1) (a) of the BNSS, in Section 223, BNSS excludes operation of the first proviso to Section 223 to cognizance in respect of such complaints.

(iii) Whether the accused has a burden to show 'prejudice' and 'miscarriage of justice' to vitiate an order taking cognizance on the ground of depriving the accused of pre-cognizance opportunity of hearing.

(iv) Whether complaints under the PMLA are in the nature of charge sheets and not ?complaints' under Sections 210 and 223 of the BNSS.

(v) Whether the concessions given by the ED and divergent stands taken by it in previous cases can be taken note of while deciding the issues involved herein.

(i) Whether violation of the first proviso to Section 223, BNSS vitiates the order of taking cognizance and consequential proceedings. 42. Accordingly, this issue is answered in the affirmative, holding that the denial of opportunity of hearing to the accused persons/petitioners prior to taking cognizance under Section 210, BNSS, is fatal to such cognizance and vitiates the order of cognizance itself, along with the subsequent proceedings undertaken in pursuance thereof.

(ii) Whether absence of the words 'including any complaint filed by a person authorised under Special Law', as enumerated in Section 210 (1) (a) of the BNSS, in Section 223, BNSS excludes operation of the first proviso to Section 223 to cognizance in respect of such complaints. 50. Hence, this issue is held in the negative. The absence of the words 'including any complaint filed by a person authorised under any Special Law' in Section 223 of the BNSS does not have the impact of exclusion of the operation of the first proviso to Section 223(1) in respect of complaints under Special Laws. (iii) Whether the accused has a burden to show 'prejudice' and 'miscarriage of justice' to vitiate an order taking cognizance on the ground of depriving the accused of pre-cognizance opportunity of hearing. 65. Accordingly, this court is of the firm view that the denial of the right of prior hearing, as enumerated in the first proviso to Section 223 of the BNSS, is sufficient to vitiate the order taking cognizance, without any further requirement on the part of the accused to prove prejudice and/or miscarriage of justice. In fact, the very denial of the right constitutes the prejudice and miscarriage of justice."

20. After going through record, it appears that case of the applicant is squarely covered by the judgments of Supreme Court and High Courts as mentioned above for the reason that Section 36A(1)(d) of NDPS is pari materia with Section 44(1)(b) of PMLA.

21. A perusal of the impugned cognizance order indicates that " सुना तथा परिवाद के साथ संलग्न समस्त प्रपत्रों को अवलोकन किया ". which means that opportunity of hearing was not granted to the applicant before taking cognizance. The applicant could have been afforded an opportunity of hearing by calling objection and thereafter, order could have been passed in a speaking manner. But in the present case, the impugned order does not indicate any such compliance, therefore, it cannot be said that compliance of Section 223(1) of BNSS has been made.

22. For the reasons aforesaid, the application is allowed. The impugned order dated 14.07.2025 is hereby set aside qua the applicant.

23. Applicant is directed to appear along with objections, if any, before the Special Judge on 29.05.2026, who will pass an order immediately, in accordance with law, after affording opportunity of hearing to both the parties in terms of the proviso to Section 223(1) of BNSS.

(2026) 5 ILRA 79
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 29.05.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 528 BNSS No. 1918 of 2026

Rameez Nemat **...Applicant**
Versus
State of U.P. & Ors. **...Opposite Parties**

Issue for Consideration

Issue pertains to whether the charge-sheet and the consequent summoning order u/s 3(1) of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 were sustainable in law, in the absence of any material establishing the essential ingredients of "gang" u/s 2(b) of Act r/w Rule 3 of Gangster Rules, 2021, namely, disturbance of public order or commission of offence for undue temporal, pecuniary, material or other advantage.

Headnotes

Indian Penal Code, 1860 - ss. 323, 504, 506, 327, 307 & 447 - U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 - ss. 2(b), 3(1), 5(3)(a), - U.P. Gangsters and Anti-Social Activities (Prevention) Rules, 2021 - Rules 3(1), 16, 17 - Indian Evidence Act, 1872 - s. 114 - Gang - Ingredients of - Public order - Distinction from law and order - FIR - Veracity of facts - Joint meeting of District Magistrate and Superintendent of Police - Non-mention of date under signature of District Magistrate - Presumption of regularity - Approval of Gang-Chart - Summoning order - Challenged - Validity of - The applicant along with co-accused was named in an FIR dated 21.07.2024, alleging formation of an organized gang indulging in land-grabbing,

assault and murder for temporal and pecuniary gain, with the gang-chart, approved by District Magistrate in a joint meeting with Superintendent of Police on 18.07.2024, showing the applicant's involvement in Case Crime No. 183 of 2022 (assault-related offences) and Case Crime No. 467 of 2023 (murder u/s 302 IPC), pursuant to which a charge-sheet was submitted and the Special Judge (POCSO Act) took cognizance and summoned the applicant vide order dated 30.07.2025 - The applicant challenged both the charge-sheet and summoning order primarily on the ground that gang-chart, though ostensibly based on information gathered during patrolling on 20.07.2024, had in fact already been prepared and forwarded by the very same Inspector-in-Charge on 07.07.2024, rendering the FIR's narration false on its face, and further contended that mandatory ingredients of "public order" or "undue pecuniary advantage" were neither pleaded nor established by any material on record.

Held: In the instant case, there is no material that the act alleged by the petitioner had the effect of disturbing the even tempo of life of community or the public at large, as distinguished from the act directed against the victims of offences - The requirement of s. 2(b) of Gangsters Act and Rule 3 (1) (a) of Gangster Rules, 2021, is not fulfilled - In absence of petitioner having been charged for the offence of extortion or attempt to make extortion of money, it cannot be said that merely because the petitioner is an accused for an offence u/s 302 IPC, the said offence was committed for gaining any pecuniary advantage - The Superintendent of Police has forwarded the gang-chart and District Magistrate approved the same without recording a satisfaction regarding fulfilment of conditions of s. 2(b) of Gangsters Act and Rule 3(1) of Gangsters Rules, 2021 - The learned trial Court has taken cognizance of offence in a mechanical manner, without recording a satisfaction regarding fulfilment of conditions of s. 2(b) of Gangsters Act and Rule 3(1) of Gangsters Rules, 2021, which vitiates the order taking cognizance of offence and summoning the accused - Thus, application allowed, impugned orders quashed. [Paras 35, 38 to 40] (E-13)

Case Law Cited

Vinod Bihari v. State of UP & Anr: **2025 SCC Online SC 1216;** *Gabbar Singh @ Devendra Pratap Singh @ Rajesh Singh v. State of U.P.:* **2026 SCC Online SC 451;** *Sanni Mishra @ Sanjayan Kumar Mishrav. State of U.P.:* **2023 SCC Online All 2975;** *Abdul Latif @ Mustak Khan v. Sate of U.P.:* **2024:AHC:119716-DB;** *Sukarmpal @ Amit Jat v. State of U.P.:* **2024 SCC OnLine All 5848;** *Subhash Bhandari v. District Magistrate:* **(1987) 4 SCC 685;** *U.P. v. Kamal Kishore Saini:* **(1988) 1 SCC 287;** *Abhayraj Gupta v. Central Jail,* **2021 SCC OnLine All 900 - referred to**

List of Acts

U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986; U.P. Gangsters and Anti-Social Activities (Prevention) Rules, 2021; Indian Evidence Act, 1872; Indian Penal Code, 1860

List of Keywords

Application u/s 528 BNSS; Charge-sheet; Summoning order; Gang-chart; Gangster; Presume to be gang; Public order; Pecuniary and Undue temporal advantage; Investigation; Inspector-in-charge; Superintendent of police; District Magistrate; Approval; Joint meeting; Notification; Malice; Patently false; Sanction; Case diary; Cognizance of a offence in a mechanical manner; Unsustainable in law; Application allowed; Impugned orders quashed.

Case Arising From

ORIGINAL JURISDICTION: Application U/S 528 BNSS No. - 1918 of 2026

From the charge-sheet dated 09.07.2025 filed in FIR No. 181/2024 lodged at Police Station Tulsipur, District Balrampur. Also order dated 30.07.2025 passed by Special Judge (POCSO Act), Balrampur whereby the Court has taken cognizance and summoned the petitioner to face trial.

Appearances for Parties

Adv. for the Applicant(s):

Ruby Choudhary

Adv. for the Opposite Party(s):
G.A.

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

1. Heard Sri B. A. Khan Senior Advocate assisted by Sri S. A. Hussain and Ms. Ruby Choudhary, the learned counsel for the applicant and Sri G.D. Bhatt, the learned AGA-I for the State of U.P.

2. By means of the instant petition, the petitioner has challenged the validity of a charge-sheet dated 09.07.2025 filed in furtherance of FIR No. 181/2024 lodged at Police Station Tulsipur, District Balrampur for the offence under Section 3(1) of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to as 'the Gangsters Act') against the applicant Ramiz Nemat and another accused person Rizwan Zaheer. The petitioner has also challenged the validity of an order dated 30.07.2025 passed by the Special Judge (POCSO Act), Balrampur whereby the Court has taken cognizance of the aforesaid offence and has summoned the petitioner to face trial.

3. The aforesaid FIR was lodged on 21.07.2024 at 00:40 hours by the Ashok Singh, the Inspector-in-Charge of the police station, stating that while the complainant was engaged in patrolling his police station area in his government jeep along with Head Constable Ashok Yadav, Constable Sumit Bhalla and Constable Shubham Sahu, he came to know that there is an organized intra-district gang of the applicant Ramiz Nemat and the other accused Rizwan Zaheer is its member. The members of this gang commit offences like land grabbing, make fatal assaults and commit murders for gaining temporal and pecuniary advantages. The accused persons had committed offences under Sections 323, 504, 506, 327, 307 & 447 IPC by putting a gun on the chest of one Abdul Mahmood Khan in the year 2002, regarding which Case Crime No. 183/2022 is lodged in Police Station Tulsipur, in which a charge-sheet has been submitted on 05.11.2022. The petitioner Ramiz Nemat had killed one Shakeel Ahmad on 06.10.2023 for grabbing Rs. 25 lakh, regarding which Case Crime No. 467/2023 has been lodged for the offence under Section 302 IPC at Police Station Kokhraj, District Kaushambi, in which a charge sheet has been submitted on 23.05.2024. The complainant stated that the aforesaid facts prima facie establish that the petitioner has an organized gang and he is habitual of committing offences mentioned in Chapter XVI of the Indian Penal Code (IPC) and Chapter VI of the Bhartiya Nyay Sanhita (BNS) and he commits offences in collaboration with the co-accused person Rizwan Zaheer. Due to terror of the accused persons, no person can gather the courage to lodge a report against them.

4. The FIR states that a gang-chart has been approved by the District Magistrate, Balrampur after the recommendation of the higher officials. The gang-chart annexed with the FIR mentions the Petitioner's name as gang leader and the other accused Rizwan Zaheer is mentioned as its member. The gang-chart shows involvement of the applicant in two cases- (1) Case Crime No. 183 of 2022, under Sections 323, 504, 506, 327, 307 & 447 IPC, Police Station Tulsipur, District Balrampur and (2) Case Crime No. 467 of 2023, under Section 302 IPC, Police Station Kokhraj, District Kaushambi. The other accused-Rizwan Zaheer is shown involved in a solitary case bearing

Case Crime No. 183 of 2022, under Sections 323, 504, 506, 327, 307 & 447 IPC. The other offence under Section 302 IPC mentioned in the gang-chart is said to have been committed by the petitioner alone and the other member of the gang is not alleged to be involved in committing that offence.

5. Strangely, the Inspector In-charge, Police Station Tulsipur had himself prepared the gang-chart on 07.07.2024 stating that the petitioner and the other gang member Rizwan Zaheer have formed an organized gang. They are active at the District level as well as inter-District level. They commit offences and commit murders for gaining temporal and pecuniary advantages. The complainant had mentioned in the gang-chart that the gang-leader (the petitioner) had killed one Mohd. Shakeel at a place within the jurisdiction of Police Station, Kokhraj, District Kaushambi on 06.10.2023 in connection with monetary transactions related to the sale-purchase of property, regarding which Case Crime No. 467 of 2023, under Section 302 IPC has been lodged at Police Station, Kokhraj, District Kaushambi, in which a charge-sheet has been submitted on 23.05.2024. Earlier also, Case Crime No. 183 of 2022, under Sections 325, 504, 506, 327, 307 & 447 IPC, Police Station Tulsipur, District Balrampur was lodged against the petitioner as well as co-accused Rizwan Zaheer wherein a charge-sheet has been submitted on 15.11.2023. The complainant - Inspector-in-Charge has written that he had prepared the gang-chart after proper scrutiny of the attached documents and there was sufficient ground to institute proceedings under the Gangsters Act.

6. A charge-sheet dated 09.07.2025 has been submitted after investigation in furtherance of the aforesaid FIR as per which, the investigation was carried out by the Inspector In-Charge, Police Station Pachpedwa and he found that the allegation levelled in the FIR regarding the offence under Section 3(1) of the Gangsters Act was established against the petitioner Rameez Nemat and the co-accused Rizwan Zaheer.

7. The learned Special Judge (POCSO Act) took cognizance of the offence by means of an order dated 30.07.2025 which states that the charge-sheet has been submitted before the court for taking cognizance. The learned defence counsel has not submitted any written or oral objections. The trial court has noted that the Inspector In-Charge, Pachpedwa has submitted the charge-sheet on 09.07.2025 and the supervising authority has forwarded the same with an endorsement dated 15.07.2025 that the charge-sheet be sent to the Court. The trial court has noted that sufficient evidence is available in the case diary for making out a case for trial of the accused persons. Accordingly, the trial court took cognizance of the offences and the petitioner was summoned to face the trial.

8. It has inter alia been pleaded in the petition challenging the validity of the charge-sheet and the summoning order that earlier also an FIR bearing Case Crime No. 54 of 2022 was lodged by the Inspector-in-Charge, Police Station Tulsipur, District Balrampur at Police Station Tulsipur, District Balrampur for the offence under Section 3(1) of the Gangsters Act against six persons, including the petitioner Rameez Nemat and the other accused person Rizwan Zaheer, stating that when the complainant was involved in patrolling in his area on 31.03.2022, he came to know that Rizwan Zaheer (co-accused in the present case) has formed an organized gang along with other accused persons. This gang caused murder of former Chairman Firoz @ Babu on 04.01.2022, for

establishing their political clout and winning elections. FIR bearing Case Crime No. 2/2022, under Sections 302 & 120B IPC was lodged against unknown accused persons in this regard. During investigation, name of the leader and members of the gang came to light and a charge-sheet was submitted against them on 13.03.2022. During triple level Panchayat Elections, a gang members committed another incident on 26.04.2022, regarding which Case Crime No. 93/2021 was lodged for the offences under Sections 147, 149, 332, 353, 504, 506, 393, 307, 427 & 435 IPC and Section 7 of the Criminal Law Amendment Act. On 26.04.2021, FIR bearing Case Crime No. 94/2021 was lodged for the offences under Sections 147, 149, 435, 427, 323, 504, 506 IPC and a charge-sheet has already been submitted. On 16.08.2020, the accused persons committed another offence regarding which Case Crime No. 195/2020 was lodged under Sections 323/506 IPC and a charge-sheet has been submitted in that matter also. The gang-chart annexed with the said FIR was prepared on 24.03.2022 and it shows involvement of the applicant and the other co-accused person in the aforesaid three offences. Rest of the four persons accused in Case Crime No. 54/2022 were shown to be involved in a solitary case bearing Case Crime No. 2/2022, under Sections 302/120B IPC, Police Station Tulsipur, District Balrampur.

9. It has also been pleaded that while the petitioner was already in jail, another FIR was lodged against him on 30.10.2024, i.e. Case Crime No. 299/2024, under Sections 308(5), 351(3) & 61 BNS, Police Station Kotwali Nagar, District Balrampur, in which the petitioner has been granted interim anticipatory bail by means of an order dated 11.06.2025 passed by a Coordinate Bench of this Court in Anticipatory Bail Application No. 653 of 2025.

10. It has further been pleaded in the petition that gang-chart has been prepared in violation of the provisions contained in Rule 5(3)(a) of the Gangsters Act and 16(1) and 17 of the UP Gangsters and Anti-Social Activities Prevention Rules, 2021.

11. The State has filed a counter affidavit stating that the Special Judge (POCSO Act) was conferred with the powers of the Special Judge (Gangsters Act) and, therefore, cognizance and summoning order has been passed in the exercise of jurisdiction conferred upon the court. It has further been stated that the gang-chart was approved in a joint meeting of the District Magistrate Balrampur and Superintendent of Police, Balrampur held on 18.07.2024. Minutes of the meeting have been annexed as Annexure No. CA-1, wherein it is recorded that the Superintendent of Police insisted for granting approval to the gang-chart keeping in view the public interest. The District Magistrate examined the gang-chart and the annexed documents. The gang-chart mentions two criminal cases in which charge-sheet has been submitted. The Superintendent of Police informed about the criminal history of the accused persons and their criminal activities. After perusal of the material available on record and the criminal history of the accused persons, the District Magistrate found sufficient grounds for approval of the gang-chart and, accordingly, he approved it.

12. It has also been stated in the counter affidavit that the petitioner Rameez Nemat is involved in as many as 10 criminal cases, which are as follows:-

Sl. No.	Case Crime No.	Sections	Police Station	District	Result	Status in Court

1.	93/21	147/149/332/353/504/506/393/307/427/435 IPC & 7 CL. Act	Tulsipur	Balrampur	Charge Sheet dated 05.10.2021	Acquitted on 29.11.2025
2.	94/21	147/149/435/427/323/504/506 IPC	Tulsipur	Balrampur	Charge Sheet dated 28.05.2021	Next date for evidence 19.05.2026
3.	02/22	302/120B IPC	Tulsipur	Balrampur	Charge Sheet dated 13.03.2022	Arguments complete, next date fixed is 07.05.2026
4.	54/22	3(1) of the UP Gangster Act	Tulsipur	Balrampur	Charge Sheet dated 17.09.2022	Next date for arguments is 12.05.2026
5.	Nil/22	3(2) National Security Act dated 19.05.2022	Tulsipur	Balrampur	Approval rejected by Advisory Board dated 28.06.2022	
6.	183/22	323/504/506/327/307/447 IPC	Tulsipur	Balrampur	Charge Sheet dated 05.11.2022	Next date for arguments is 12.05.2026
7.	467/23	302 IPC	Kokhraj	Balrampur	Charge Sheet dated 23.05.2024	Next date for charge is 12.05.2026
8.	181/24	3(1) of the UP Gangster Act	Tulsipur	Balrampur	Charge Sheet dated 09.07.2025	Next date for charge is 07.05.2026
9.	186/24	419/420/467/468/471/120B IPC	Tulsipur	Balrampur	Charge Sheet dated 26.01.2025	Next date for charge is 19.05.2026
10.	299/24	308(5)/351(3)/61 BNS	Kotwali Nagar	Balrampur	Under consideration	

13. The petitioner has filed a rejoinder affidavit refuting the averments made in the counter affidavit.

14. Although the learned Counsel for the petitioner had initially submitted that cognizance of an offence under the Gangsters Act can be taken only by the Special Judge, Gangsters Act and the Learned Special Judge, POCSO Act does not have to take cognizance of the offence under the Gangsters Act, but after the State filed the counter affidavit and the learned AGA-I produced a copy of the Notification whereby jurisdiction in respect of the offence under the Gangsters Act has been conferred upon the Special Judge POCSO Act, Balrampur, he did not press this submission.

15. The learned counsel for the petitioner has submitted that the narration made in the FIR that the complainant Inspector-in-Charge came to know about the existence of the gang and its criminal activities during patrolling on 20.07.2024, is patently false as the Inspector-in-Charge himself had prepared and forwarded the gang chart on 07.07.2024. It indicates that the story narrated by the complainant police officer is false on the face of the FIR itself and it implies malice on the part of the police authorities.

16. The learned Counsel for the petitioner has further submitted that the Superintendent of Police has forwarded the gang-chart on 16.07.2024. The meeting of the District Magistrate and the Superintendent of Police is alleged to have taken place on 18.07.2024. The Superintendent of Police has signed the minutes of meeting mentioning the date of signing as 18.07.2024 whereas the District Magistrate has not mentioned the date of putting his signatures on the minutes of the meeting, which shows that in fact no meeting of the Superintendent of Police and District Magistrate was held and the District Magistrate has approved the chart in a mechanical manner without holding a meeting with the Superintendent of Police.

17. The learned counsel for the petitioner has placed reliance upon a judgment of the Hon'ble Supreme Court in the case of Vinod Bihari v. State of UP & Anr: 2025 SCC Online SC 1216 and Gabbar Singh @ Devendra Pratap Singh @ Rajesh Singh v. State of U.P.: 2026 SCC Online SC 451 and three decisions rendered by Division Benches of this Court in Sanni Mishra @ Sanjayan Kumar Mishrav. State of U.P.: 2023 SCC Online All 2975, Abdul Latif @ Mustak Khan v. Sate of U.P.:2024:AHC:119716-DB and Sukarmpal @ Amit Jat v. State of U.P.:2024 SCC OnLine All 5848.

18. After perusing the minutes of meeting of the Superintendent of Police and the District Magistrate annexed with the counter affidavit, I am satisfied that the meeting was held and I turn down the submission of the learned Counsel for the petitioner that the gang-chart has not been approved in a joint meeting of the District Magistrate and the Superintendent of Police.

19. Although the District Magistrate ought to have mentioned the date under the signatures put on the minutes of the meeting, like the Superintendent of Police has done, the mere non-mention of the date under the signature would not conclusively establish that no meeting of the District Magistrate and the Superintendent of Police was held.

20. Further, Section 114 of the Evidence Act provides as follows: -

'114. Court may presume existence of certain facts. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural

events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume

* * *

(e) that judicial and official acts have been regularly performed;

Similarly, Section 119 of Bhartiya Sakshya Adhiniyam, 2023 provides that: -

119. Court may presume existence of certain facts. (1) The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume that-

(e) judicial and official acts have been regularly performed;

Therefore, it has to be presumed that the meeting of the District Magistrate and the Superintendent of Police was held in a regular manner.

21. Now I proceed to examine whether the allegations levelled in the FIR and the material collected during investigation justify the submission of the charge-sheet and whether there was sufficient ground before the trial Court for taking cognizance of the offence under the Gangsters Act.

22. The allegations levelled in the FIR are that that while the complainant Inspector-in-charge of the Police Station was engaged in patrolling his police station area, he came to know that there is an organized intra-district gang of the applicant Ramiz Nemat and the other accused Rizwan Zaheer is its member. The members of this gang commit offences like land grabbing, make fatal assaults and commit murders for gaining temporal and pecuniary advantages. They are involved in Case Crime No. 183/2022 under Sections 323, 504, 506, 327, 307 & 447 IPC, Police Station Tulsipur, and the petitioner Ramiz Nemat is involved in Case Crime No. 467/2023 under Section 302 IPC, Police Station Kokhraj, District Kaushambi. The complainant stated that the aforesaid facts prima facie establish that the petitioner has an organized gang and he is habitual of committing offences mentioned in Chapter XVI of the Indian Penal Code (IPC) and Chapter VI of the Bhartiya Nyay Sanhita (BNS) and he commits offences in collaboration with the co-accused person Rizwan Zaheer. Due to terror of the accused persons, no person can gather the courage to lodge a report against them.

23. The gang-chart annexed with the FIR mentions the Petitioner's name as gang leader and the other accused Rizwan Zaheer is mentioned as its member. The gang-chart shows involvement of the applicant in two cases- (1) Case Crime No. 183 of 2022, under Sections 323, 504, 506, 327, 307 & 447 IPC, Police Station Tulsipur, District Balrampur and (2) Case Crime No. 467 of 2023, under Section 302 IPC, Police Station Kokhraj, District Kaushambi. The other accused-Rizwan Zaheer is shown involved in a solitary case bearing Case Crime No. 183 of 2022, under Sections 323, 504, 506, 327, 307 & 447 IPC. The other offence under Section 302 IPC mentioned in the gang-chart is said to have been committed by the petitioner alone and the other member of the gang is not alleged to be involved in committing that offence.

24. Strangely, the Inspector In-charge, Police Station Tulsipur had himself prepared the gang-chart on 07.07.2024 and had forwarded the same to his higher authorities. stating that the petitioner and the other gang member Rizwan Zaheer have formed an organized gang. They are active at the District level as well as inter-District level. They commit offences for gaining temporal and pecuniary advantages. The complainant had mentioned in the gang-chart that the gang-leader (the petitioner) had killed one Mohd. Shakeel at a place within the jurisdiction of Police Station, Kokhraj, District Kauhambi on 06.10.2023 in connection with monetary transactions related to the sale-purchase of property, regarding which Case Crime No. 407 of 2023, under Section 302 IPC has been lodged at Police Station, Kokhraj, District Kaushambi, in which a charge-sheet has been submitted on 23.05.2025. Earlier also, Case Crime No. 183 of 2022, under Sections 323, 504, 506, 327, 307 & 447 IPC, Police Station Tulsipur, District Balrampur was lodged against the petitioner as well as co-accused Rizwan Zaheer wherein a charge-sheet has been submitted on 15.11.2022. The complainant - Inspector-in-Charge has written that he had prepared the gang-chart after proper scrutiny of the attached documents and there was sufficient ground to institute proceedings under the Gangsters Act.

25. It is strange that the Inspector In-Charge who had himself prepared gang-chart on 07.07.2024 and had forwarded the same to the Circle Officer, has written in the FIR lodged on 21.07.2024 that he came to know about the existence of the gang and involvement of its members in commission of offences namely Case Crime No. 183 of 2023 and Case Crime No. 467 of 2023, during patrolling in the area on 20.07.2024. Therefore, I find force in the submission of the learned Counsel for the petitioner that the narration made in the FIR that the complainant Inspector-in-Charge came to know about the existence of the gang and its criminal activities during patrolling on 20.07.2024, is patently false as the Inspector-in-Charge himself had prepared and forwarded the gang chart on 07.07.2024. It indicates that the story narrated by the complainant police officer is false on the face of the FIR itself and it implies malice on the part of the police authorities.

26. A charge-sheet dated 09.07.2025 has been submitted after investigation in furtherance of the aforesaid FIR as per which, the investigation was carried out by the Inspector In-Charge, Police Station Pachpedwa and he found that the allegation levelled in the FIR regarding the offence under Section 3(1) of the Gangsters Act was established against the petitioner Rameez Nemat and the co-accused Rizwan Zaheer.

27. The learned Special Judge (POCSO Act) took cognizance of the offence by means of an order dated 30.07.2025 which states that the charge-sheet has been submitted before the court for

taking cognizance. The learned defence counsel has not submitted any written or oral objections. The trial court has noted that the Inspector In-Charge, Pachpedwa has submitted the charge-sheet on 09.07.2025 and the supervising authority has forwarded the same with an endorsement dated 15.07.2025 that the charge-sheet be sent to the Court. The trial court has noted that sufficient evidence is available in the case diary for making out a case for trial of the accused persons. Accordingly, the trial court took cognizance of the offences and the petitioner was summoned to face the trial.

28. Before proceeding any further, it would be appropriate to have a look at the definition of 'gang' as set out in Section 2(b) of the Act of 1986, which reads thus: -

'(b) 'Gang' means a group of persons, who acting either singly or collectively, by violence, or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person, indulge in anti-social activities, namely….[…]

29. Section 2(b) of the Act of 1986 should be read alongwith Rule 3 of the U.P. Gangster and Anti-Social Activities (Prevention) Rules, 2021 (hereinafter referred to as the 'Gangster Rules 2021□), which provides as follows: -

'3. Conditions of criminal liability.- (1) The offences mentioned in sub sections (i) to (xxv) of clause (b) of Section 2 of the Act shall be punishable under the Act only if they are:

(a) committed for disturbing public order; or

(b) committed by causing violence or threat or display of violence, or by intimidation, or coercion or otherwise, either singly or collectively, for the purpose of obtaining any unfair worldly, economic, material, pecuniary or other advantage to himself or to any other person.

30. In Vinod Bihari Lal v. State of U.P.: 2025 SCC OnLine SC 1216, the Hon'ble Supreme Court carried out a detailed analysis of the provisions of the Gangsters Act and the Rules and the relevant passage of the judgment is being reproduced below: -

'20. The definition of □gang□ under Section 2(b) of the Act of 1986 comprises the following essentials;

i. A group of persons i.e., there can be no gang of one person;

ii. The group of persons, acting either individually or collectively, indulges in anti-social activities as enumerated in clauses (i) to (xxv) of Section 2(b);

iii. Indulgence in such anti-social activities is by means of violence, or threat, or show of violence, or intimidation, or coercion, or otherwise;

iv. Use of such means is with the object of disturbing public order, or gaining any undue temporal, pecuniary, material or other advantage for himself or any other person.

21. It is apparent that the definition of the term 'gang' is not attracted by mere association with a miscreant group. For such a group to metamorphize into a gang, it must engage in anti-social activities enumerated in clauses (i) to (xxv) of Section 2(b), and these must be committed for the object mentioned thereunder. In essence, a group of persons falls within the ambit of Section 2(b) only when the requirements set forth in Rule 3 are satisfied.

22. This Court in Shraddha Gupta v. State of Uttar Pradesh, reported as (2022) 19 SCC 57, held that an accused can be termed as gangster when he as a member of a gang, has indulged in any of the enumerated anti-social activities, whether by means expressly stated or otherwise, with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person. The relevant observations are reproduced hereinbelow:

'25. A group of persons may act collectively or any one of the members of the group may also act singly, with the object of disturbing public order indulging in anti-social activities mentioned in Section 2(b) of the Gangsters Act, who can be termed as 'gangster'. A member of a 'gang' acting either singly or collectively may be termed as a member of the 'gang' and comes within the definition of 'gang', provided he/she is found to have indulged in any of the anti-social activities mentioned in Section 2(b) of the Gangsters Act.

xxx

27. As per the settled position of law, the provisions of the statute are to be read and considered as it is. Therefore, considering the provisions under the Gangsters Act, 1986 as they are, even in case of a single offence/FIR/charge-sheet, if it is found that the accused is a member of a gang and has indulged in any of the anti-social activities mentioned in Section 2(b) of the Gangsters Act, such as, by violence, or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person and he/she can be termed as gangster within the definition of Section 2(c) of the Act, he/she can be prosecuted for the offences under the Gangsters Act.

(Emphasis in original)

23. A Full Bench of the High Court of Allahabad in Ashok Kumar Dixit v. State of U.P., reported as 1987 SCC OnLine All 203, while deciding on the constitutional validity of the Act of 1986 noted that the term gang means a group of persons who by violence, or threat, or show of violence, or intimidation, or coercion, or otherwise indulge in anti-social activities with the object of disturbing public order or gaining any undue temporal or pecuniary material or other advantage for himself. The relevant observations are reproduced hereinbelow:

12.Section 2(b) defines the term 'Gang' to mean a group of persons who by violence, or threat, or show of violence or intimidation or coercion etc. indulge in anti-social activities with the

object of disturbing public order of gaining any undue temporal or pecuniary material or other advantage for himself. S. 2(b) read as a whole necessarily brings in the concept of violence or intimidation or coercion etc. which is resorted to for gaining material advantage. Then we have cl. (c) of S. 2 which defines the word Gangster. It means a member or leader or organiser of a group which indulges in the kind of activities set out under the various sub-clauses of cl. (b) of S. 2, by use of violence or threat or show of violence or intimidation etc. S. 3(i) lays down the penalty for being the member or leader or organiser of a group which engages or indulges in the kind of unsocial activities enumerated under S. 2(b) by use of violence etc.

(Emphasis in original)

24.A more lucid exposition of the essential requirements was provided in the recent decision of Sukarmpal v. State of U.P., reported in 2024 SCC OnLine All 5848. The relevant observations are reproduced hereinbelow:

‘11. From the definition of gang under Section 2(b) of the Gangster Act, it is clear that merely becoming a member of a gang will not be punishable unless the gang falls within the purview of Section 2(b) of Gangster Act and for the punishment of the member or organizer or leader of a gang under the Gangster Act, conditions mentioned in Rule 3 must be fulfilled, which prescribes that offence mentioned in Sub-section (i) to (xxv) of Section 2(b) of the Gangster Act must be committed for disturbing public order or committed by causing violence or threat or coercion or otherwise for the purpose of obtaining unfair trustworthy, pecuniary, economic, material or other advantage. Therefore, merely because a person has committed any offence mentioned in Sub-section (i) to (xxv) of sub-section (b) of Section 2 of the Gangster Act will not itself come within the purview of the Gangster Act unless he is member of a gang falling under Section 2(b) of Gangster Act.

12. Even the Rule 4(2) of the Gangster Rules itself provides that, if a member of a gang has committed any offence which comes within the purview of the Act along with any other members then he will be presumed to be a gang. Therefore, punishing a person under the Gangster Act basic condition to be a member of a gang under Section 2(b) of the Gangster Act must be satisfied.

13. Rule 6 of the Gangster Rules also provides that at the time of preparation of gang chart, it must be mentioned that act of gang falls within the purview of Section 2(b) of the Gangster Act. Therefore, it is clear that for bringing an offence within the purview of Gangster Act, it must be committed by a member of a gang for the object mentioned in Section 2(b) of the Gangster Act by doing the activities mentioned in Sub-Section (i) to (xxv) of Clause (b) of Section 2 of the Gangster Act. Therefore, if any offence is committed whether the same falls within the category of Sub-Section (i) to (xxv) of Section 2(b) of the Gangster Act or not, that will not come within the purview of the Gangster Act unless the same is done with the object mentioned in Section 2(b) of the Gangster Act.

(Emphasis in original)

25. From the above exposition of law, a group of persons may be said to constitute a gang only when they, either singly or collectively, indulge in any of the anti-social activity enumerated in clauses (i) to (xvv) of Section 2(b), by means specified therein, or otherwise, and most importantly, with the object of disturbing public order, or securing any undue temporal, pecuniary, material or other advantage for himself or any other person.

* * *

30. The contents of the chargesheet reflect a casual and cavalier attitude on the part of the investigating agency, as it discloses nothing beyond what was already stated in the subject FIR. Further, it remains obscure how the investigating authorities could assert that the offence under Section(s) 2 and 3 respectively stands proved against the appellant sans enclosing any documentary proved. We strongly disapprove of this practice and cast it into the cold storage wherein the investigating authority proclaims an offence to be proved . We would like to remind that the role of investigating agencies is strictly circumscribed to conducting an impartial investigation into the alleged crime; the guilt or the innocence of the accused is for the trial court to determine.

31. It is noteworthy to mention that the subject FIR was registered after approximately a year from the date of the registration of the first base FIR. In the three base FIRs - FIR No. 726/2017, FIR No. 761/2017, and FIR No. 244/2017, respectively, the allegations against the appellant pertain to offences under Chapters 16, 17 and 22 of the IPC and thus, may fall within the scope of anti-social activities itemized under Section 2(b). Even assuming, for the sake of argument, that these acts were committed by any of the means specified therein, they do not, even in the remotest possibility, appear to us that they had been committed with the object of disturbing public order or to gain any undue temporal, pecuniary, material or other advantage for himself or any other person.

* * *

36. In the facts and circumstances of the case, more particularly, in view of the vague and general allegations levelled in the subject FIR, requiring the appellant to stand trial would amount to nothing but an abuse of the process of law. Non-interference in such a case would result in miscarriage of justice.

* * *

59. We also deem it necessary to make certain observations regarding the investigation conducted pursuant to the approval of the gang-chart and the registration of the subject FIR under the Act of 1986 respectively. Rule 20 mandates that, during the course of investigation, evidence pertaining to the elements of economic, material, and worldly benefits must be specifically collected. Upon being satisfied that credible, substantial, and logically coherent evidence has been compiled in accordance with the requirements of the Act, the Additional Superintendent of Police shall forward the report to the Senior Superintendent of Police/Superintendent of Police for sanction.

60. In the present case, the sanction order merely states that, based on the examination of the evidence collected, the accused were found to be involved in the commission of offences under the IPC by forming a gang with the objective of deriving economic and monetary benefits, and that a prima facie case exists for filing a chargesheet under Section(s) 2 and 3 of the Act of 1986.

31. The judgment in the case of Vinod Bihari Lal (supra) was followed in Gabbar Singh v. State of U.P., 2026 SCC OnLine SC 451, in which the Hon'ble Supreme Court further held that: -

'11. We fall back upon the principle that when a particular thing is to be done, it should be done in the manner stipulated; here statutorily prescribed, or not at all. Especially when at stake is the liberty of an individual, precious to all and possible of breach only in accordance with law. More so in the precarious nature of the law, which permits mere naming of a person, as a gangster and automatic condemnation, which perilous consequences we leave to be considered in an appropriate case.

32. The difference between public order and law and order was considered by the Hon'ble Supreme Court in Subhash Bhandari v. District Magistrate: (1987) 4 SCC 685. There was a tender for the supply of ballast in PWD. It was alleged that on account of the appellant's terror no other person submits any tender against him and he obtained tenders at rates of his choice. If any other person submitted his tender, the appellant terrorized him. However, another person submitted tender at a lower rate, which was accepted. For this reason the appellant bore a grudge against the complainant. For this reason, the appellant and his accomplices fired at the complainant with intention of killing him and they threw hand-grenades which fell on the car of the complainant. Consequently, there was a commotion. Traffic was obstructed and public tranquility was disturbed. In the backdrop of the above mentioned facts, the Hon'ble Supreme Court proceeded to formulate the question to be decided as follows:

'8. The main question which falls for decision is whether the act referred to in the grounds of detention is directed against certain individuals creating a law and order problem or the reach and potentiality of the act is so deep as to disturb the society to the extent of causing a general disturbance of public tranquility.

The aforesaid question was decided by the Hon'ble Supreme Court in the following manner:

9. It has now been well settled by several decisions of this Court (the latest one being Gulab Mehra v. State of U.P. [(1987) 4 SCC 302] judgment which was pronounced by us on September 15, 1987) that public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order or it affects public order. It has also been observed by this Court that an act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Therefore it is the impact, reach and potentiality of the act which in certain circumstances affect the even tempo of life of the community and thereby public order is

jeopardized. Such an individual act can be taken into consideration by the detaining authority while passing an order of detention against the person alleged to have committed the act.

10. In the instant case the alleged act of assault by firearms is confined to the complainant Surya Kumar and not to others. It is an act infringing law and order and the reach and effect of the act is not so extensive as to affect a considerable members (sic number) of the society. In other words, this act does not disturb public tranquillity nor does it create any terror or panic in the minds of the people of the locality nor does it affect in any manner the even tempo of the life of the community. This criminal act emanates from business rivalry between the detenus and the complainant. Therefore such an act cannot be the basis for subjective satisfaction of the detaining authority to pass an order of detention on the ground that the impugned act purports to affect public order i.e. the even tempo of the life of the community which is the sole basis for clamping the order of detention.

(emphasis supplied)

33. In State of U.P. v. Kamal Kishore Saini: (1988) 1 SCC 287, the Hon'ble Supreme Court held that: -

12.... whether an act relates to law and order or to public order depends upon the effect of the act on the life of the community or in other words the reach and effect and potentiality of the act; if so put as to disturb or dislocate the even tempo of the life of the community, it will be an act which will affect public order.

13. In the instant case, the criminal acts referred to in Ground 1 are to the effect that on 4-6-1985 at about 11 p.m. some persons informed the complainant that his brother had been shot by some persons and when the complainant reached the spot he found his brother Vishnu Narain Awasthi lying in a pool of blood and he had already died. Crime Case No. 109 of 1985 under Section 302 IPC was registered at Ghazipur Police Station. This incident is confined to individual persons and it is private crime as distinct from public crime. It does not in any way affect the even tempo of the life of the community nor does it affect the peace and tranquillity of people of that particular locality where the crime has been committed. So far as the second crime referred to in Ground 2 is concerned, it is to the effect that the complainant went to Lucknow Jail along with his son, Ram Kumar and son-in-law, Nand Kishore to see an accused in the District Jail. They could not meet the accused. Ram Kumar and Nand Kishore proceeded towards home in one rickshaw while the complainant was coming by another rickshaw. When they reached a little distance from the jail near the residence of the Jail Superintendent at about 1.45 p.m. the detenus Rajiv Hazra and Kamal Kishore Saini along with another one Anandi Shukla said to be the accomplice of one Ram Gopal, came on a scooter, stopped it and challenged Ram Kumar and Nand Kishore and the complainant. They fired at them. The complainant, Ram Kumar and Nand Kishore ran helter-skelter. The accused chased Ram Kumar and fired twice or thrice and in consequence of it Ram Kumar fell dead on the spot and Nand Kishore and the rickshaw-puller sustained injuries. On these basis Crime Case No. 222 of the 1985 under Sections 302/307 IPC was registered on 13-6-1985. This firing was made in a public street during the daytime. This incident does affect public order as its reach and impact is to disturb public tranquillity and it affects the even tempo of the life of the

people in the locality where the incident is alleged to have occurred. Therefore, the finding of the High Court with regard to this incident that it did not disturb in any way the public order is not legal and valid.

34. The difference between public order and law and order has been considered in a judgment rendered by a Division Bench of this Court in Abhayraj Gupta v. Central Jail, 2021 SCC OnLine All 900, in which after considering various precedents on the point, the Division Bench concluded that: -

'32. The law which has emerged from the precedents on this point is that public order is said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order or a disturbance to public order. It means therefore that the question whether a person has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society, which depends the facts of each particular case.

35. In the present case, there is no material that the act alleged by the petitioner had the effect of disturbing the even tempo of the life of the community or the public at large, as distinguished from the act directed against the victims of the offences. There is no material to establish that offences committed by the petitioner or his gang disturb the society to the extent of causing a general disturbance of public tranquillity. There is no material to establish that the acts alleged had been committed for disturbing public order. Therefore, the requirement of Section 2(b) of the Gangsters Act and Rule 3 (1) (a) of the Gangster Rules, 2021, is not fulfilled.

36. The other contingency in which a person may be tried for an offence under Section 2(b) of the Gangsters Act, read with Rule 3(1)(c) of the Gangsters Rules, 2021 is that the offence was committed with the object of gaining any undue temporal, pecuniary, material or other advantage.

37. Besides a bald allegation levelled in the FIR that the petitioner Ramiz Nemat had killed one Shakeel Ahmad on 06.10.2023 for grabbing Rs. 25 lakh, regarding which Case Crime No. 467/2023 has been lodged for the offence under Section 302 IPC at Police Station Kokhraj, District Kaushambi, in which a charge sheet has been submitted on 23.05.2024, there is no material available on record to even prima facie establish that the petitioner had committed the aforesaid offence for any pecuniary advantage. There is no charge for the offence of extortion in that case.

38. In absence of the petitioner having been charged for the offence of extortion or attempt to make extortion of money, it cannot be said that merely because the petitioner is an accused for an offence under Section 302 IPC, the said offence was committed for gaining any pecuniary advantage.

39. The investigating officer has committed the charge-sheet without recording satisfaction that the offences mentioned in the gang-chart were committed for disturbing public order or with the object of gaining any undue temporal, pecuniary, material or other advantage. The Superintendent of Police has forwarded the gang-chart and the District Magistrate has approved the same without recording a satisfaction regarding fulfilment of the conditions of Section 2(b) of the Gangsters Act and Rule 3(1) of the Gangsters Rules, 2021.

40. The learned trial Court has taken also taken cognizance of the offence in a mechanical manner, without recording a satisfaction regarding fulfilment of the conditions of Section 2(b) of the Gangsters Act and Rule 3(1) of the Gangsters Rules, 2021, which vitiates the order taking cognizance of the offence and summoning the accused to face the trial, for which reason the summoning order is unsustainable in law.

41. In view of the foregoing discussion, the petition is allowed. The charge-sheet dated 09.07.2025 filed in furtherance of FIR No. 181/2024 lodged at Police Station Tulsipur, District Balrampur for the offence under Section 3(1) of the Gangsters Act against the applicant Ramiz Nemat and co-accused Rizwan Zaheer and the order dated 30.07.2025 passed by the Special Judge (POCSO Act), Balrampur taking cognizance of the aforesaid offence and summoning the petitioner to face trial, are quashed. The necessary consequences to follow.

(2026) 5 ILRA 95
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD27.05.2026

BEFORE

THE HON'BLE SAURABH SRIVASTAVA, J.

Application U/S 528 BNSS No. 15843 of 2026

Sanjeev Gaur & Anr. **...Applicants**
Versus
State of U.P. & Anr. **...Opposite Party(s)**

ISSUE FOR CONSIDERATION

Whether parallel proceedings i.e. one under Section 340 Cr.P.C. before the High Court and another FIR leading to charge sheet and cognizance before the Magistrate can simultaneously continue for the same alleged forged authority letter, or whether the FIR proceedings are barred.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Sections 195(1)(b)(ii), 340, 482 - Indian Penal Code, 1860 – Sections 419, 420, 467, 468, 471, 120B - Constitution of India – Article - 20(2), 227: - Application u/s 528 BNSS – against charge sheet and cognizance order as well as seeking relief of quashing entire proceedings – FIR lodged - alleging forged Vakalatnama/authority letter – offences under Sections 419, 420, 467, 468, 471, 120B IPC – investigation – statement of co-accused implicating applicants – no recovery of original documents – charge sheet filed – summoning order issued – trial initiated – meanwhile, connected proceedings under Section 340 Cr.P.C. already pending before High Court on same allegations – applicants pleaded double jeopardy and statutory bar under Section 195(1)(b)(ii) Cr.P.C. – Scope

of Section 195(1)(b)(ii) Cr.P.C. and Section 340 Cr.P.C. – Court finds two parallel proceedings for identical cause of action impermissible, rendering FIR prosecution redundant – judicial discipline requires preference to High Court's Section 340 Cr.P.C. proceedings – held, charge sheet and cognizance order unsustainable – hence, impugned proceedings quashed only against the applicants – application allowed.

(Para – 19, 20, 21)

Application Allowed. (E-11)

CASE LAW CITED

Iqbal Singh Marwah v. Meenakshi Marwah (2005 AIR SC 2119)
Kapil Agarwal v. Sanjay Sharma (2021 AIR SC 1241)
Sheila Sebastian v. R. Jawaharaj (2018 AIR SC 2434)
Mohammed Ibrahim v. State of Bihar (2009 (8) SCC 751)
Ashok Gulabrao Bondre v. Vilas Madhukar Rao Deshmukh (2023 (9) SCC 539)
Parbatbhai Aahir v. State of Gujarat (2017 9 SCC 641)
Vasanthi v. Umesh G.D. (2024 SCC Online 15256)

LIST OF ACTS

Code of Criminal Procedure, 1973 – Indian Penal Code, 1860 – Constitution of India.

LIST OF KEYWORDS

Application under section 528, Forgery, Vakalatnama, Authority Letter, Section 340 Cr.P.C., Double Jeopardy, Judicial Discipline, Abuse of Process, Cognizance, Charge Sheet, Quashing Proceedings.

CASE ARISING FROM

Case Crime No. 167 of 2024, PS Cantt, Allahabad - Charge sheet dated 10.09.2025 - Cognizance order dated 17.09.2025 in Case No. 415 of 2025 (State v. Sanjeev Gaur).

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Ms. Sakshi Srivastava assisted by Sri Naveen Kumar Srivastava, Sri Shivanshu Mehta.
Counsel for Respondent(s): Shri Sri Siddhartha Srivastava, Senior Counsel assisted by Sri Atul Tej Kulshrestha, A.G.A.

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

1. Heard Ms. Sakshi Srivastava, assisted by Sri Naveen Kumar Srivastava and Sri Shivanshu Mehta, learned counsels appearing on behalf of applicants and Sri Siddhartha Srivastava, learned Senior Counsel assisted by Sri Atul Tej Kulshrestha, learned counsel for opposite party no. 2 and learned AGA for State.

2. Present application has been preferred with prayer to quash entire proceedings of Case no. 415 of 2025 (State vs. Sanjeev Gaur) pending before learned court of Additional Chief Judicial Magistrate, Court no. 5, Allahabad in pursuance of the charge sheet dated 10.9.2025 as well as cognizance order dated 17.9.2025 in Case Crime no. 167 of 2024 under sections 419, 420, 467, 468, 471 and 120B IPC, PS- Cantt, District Allahabad.

3. Entire proceeding of Case no. 415 of 2025 (State vs. Sanjeev Gaur) arising out of Case Crime no. 167 of 2024 in pursuance to sections 419, 420, 467, 468, 471 and 120B of IPC, has been challenged on the specific grounds taken up by learned counsel for applicants that both the

applicants are the partners in M/s Swear Health Care Pvt. Ltd. who extended letter of authorization in favour of their one of the employee i.e. Rajesh Kumar son of Sri Raghunath Verma resident of Mahanti Ka Purwa, Maharajganj, Ayodhya, Uttar Pradesh for filing affidavit, vakalatnama on behalf of M/s Swear Health Care Pvt. Ltd. at Allahabad High Court on dated 12.4.2024 which is appended along with instant affidavit in support of the Application at page no. 164, but before that a Petition under Article under Section 227 no. 1997 of 2024 (M/s Anondita Healthcare and another vs. Faiz Mohammad and 4 others) have already been filed before the letter of authority issued at the behest of applicants in favour of Mr. Rajesh Kumar.

4. The specific allegation which is apparent from the narration of the FIR is against Rajesh Kumar along with applicants also and after conducting detailed investigation, concerned Investigating Officer preferred charge sheet against 4 accused wherein applicants are one of them. It is also submitted that the entire allegations whatsoever has been put forward has been investigated and it was found that co-accused namely Rajesh Kumar preferred Petition under Article 227 no. 1997 of 2024 by way of putting forged signature over vakalatnama and issued instruction to his counsel at the behest of applicants for filing under the title of M/s Anondita Healthcare and another whereas it is opposite party no. 2 who is the proprietor of M/s Anondita Healthcare who never instructed any of the accused to prefer Writ Petition on their behest at the same time, it is also apparent on face of record that no vakalatnama has ever been executed at the behest of M/s Anondita Healthcare by the informant at the stage of filing above mentioned Writ Petition and the same has been procured, manufactured with the ulterior motive by the person who is the co-accused, on the specific instructions so issued by applicants as mentioned by learned counsel for opposite party no. 2.

5. Learned counsel for the applicants submitted that in respect of the same allegation proceedings under Section 340 Cr.P.C. has already been initiated by co-ordinate Bench of this Court while issuing order dated 13.3.2024 in the aforesaid petition which is reproduced as under:

"1. Heard Shri Neeraj, Advocate appearing on behalf of the petitioners and Shri Prateek Kumar, Advocate appearing on behalf of the applicants in application u/s 340 Cr.P.C.

2. Petitioner - M/S Anondita Health Care through its Proprietor Anupam Ghosh has moved this application u/s 340 Cr.P.C. with the allegation that the present petition has neither been filed by the applicant and has never authorized the Rajesh Kumar to file the present petition.

3. It has been stated by learned counsel for the applicants that Rajesh Kumar, who has signed the petition and given the affidavit, was never authorized by the applicant to file the present writ petition. It has also been stated that Vakalatnama annexed along with petition was never executed by the applicants. It has been further stated that applicant has not engaged Shri Neeraj or any other Advocate to file the present petition. Vakalatnama which is on the record has been identified by Shri Vaibhav Mittal, Advocate (Reg. No.3594/98, Mobile No. 9412326013, 9899060924).

3. Learned counsel for the applicants is permitted to implead Mr. Vaibhav Mittal, learned counsel, who has identified the Vakalatnama filed along with this petition as well as deponent namely Rajesh as opposite parties to the application.

4. Issue notice to the respondents/opposite parties in application u/s 340 Cr.P.C.

5. Steps be taken by the applicants in application u/s 340 Cr.P.C., within a week.

6. Office is directed to allot a regular number to the application filed u/s 340 Cr.P.C.

7. Shri Neeraj, learned counsel for the petitioners, who has filed this petition, shall be present before this Court on the next date when the matter is listed.

8. List this matter on 15.4.2024.

9. Whenever the case is listed next, name of Shri Prateek Kumar, Advocate be shown in the cause list.

10. Opposite parties may file their reply to the application filed u/s 340 Cr.P.C. before next date fixed. "

6. Over the said proceedings which is heavily relied upon by learned counsel for the applicant that two proceedings for same cause of action cannot be permitted in the eye of law and as such summoning of the applicants especially in Case Crime no. 167 of 2024 vide order dated 17.9.2025 passed by learned concerned court is not permissible, since the proceedings has already been initiated by co-ordinate Bench of this Court vide order dated 13.3.2024 and the applicant may not be put for initiating prosecution again which has been denied in catena of judgments rendered by Hon'ble Apex Court that no person can be put to trial and be convicted in shape of double jeopardy.

7. Learned counsel for applicants argued that the entire prosecution arises out of an alleged forged vakalatnama and affidavit filed before this Court in proceeding under Article 227 of the Constitution of India, therefore, the matter is squarely covered by Section 195(1)(b)(ii) of Cr.P.C. and cognizance could have been taken up only upon a complaint by the concerned Court after following the mandatory procedure under Section 340 Cr.P.C. and in support of this argument she relied upon judgment rendered by Hon'ble Supreme Court in case of Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another reported in 2005 AIR SC 2119.

8. It is further submitted that admittedly, an application under Section 340 Cr.P.C. filed by opposite party no. 2 is already pending before this Court and no finding regarding forgery has yet been recorded, despite this statutory bar, the police has independently registered FIR and filed charge sheet, rendering entire prosecution without jurisdiction. In the event this Court, subsequently directs prosecution under Section 340 Cr.P.C. the applicants would effectively face prosecution twice for the same alleged act, offending the constitutional safeguard against double jeopardy under Article 20(2) of the Constitution.

9. It has also been argued that the prosecution's own documents demolish the allegations that the authority letter i.e. dated 12.4.2024 is being made part of the Case Diary during the investigation that authorized co-accused Rajesh Kumar to file vakalatnama and affidavit on behalf of M/s Swear Healthcare Pvt. Ltd. and not on behalf of opposite party no. 2 or M/s Anondita

Healthcare and even from the date of authorization letter, the said writ petition was already filed and disposed of. Even if the applicants authorized co-accused Rajesh Kumar only to file petition on behalf of M/s Swear Health Care and after that also the applicants had no role to play in this writ petition. Even the Call Detail Records do not place the applicants at Prayagraj/Allahabad on the date of filing the alleged writ petition, rather, only co-accused Rajesh Kumar was present there. Applicant no. 1 is a retired Group Captain of the Indian Air Force with no criminal antecedents. The prosecution has failed to establish any wrongful gain, inducement or mens rea essential for offences under sections 419, 420, 467, 468 and 471 IPC. Even the Forensic Science Lab examination could not give any conclusive opinion regarding the alleged signatures due to non-availability of original documents. The prosecution is thus based merely on conjectures and statements of co-accused, which have no substantive evidentiary value. The dispute between the parties are admittedly a long-standing commercial rivalry and the present proceedings are a clear abuse of criminal process to give a civil dispute a criminal colour.

10. Learned counsel for applicants relied upon following judgments rendered by Hon'ble Supreme Court which are as under:

i. Kapil Agarwal and others Vs. Sanjay Sharma and others reported in 2021 AIR(SC) 1241, paragraph no. 6 :

" 6. However, at the same time, if it is found that the subsequent FIR is an abuse of process of law and/or the same has been lodged only to harass the accused, the same can be quashed in exercise of powers under Article 226 of the Constitution or in exercise of powers under Section 482 Cr.P.C. In that case, the complaint case will proceed further in accordance with the provisions of the Cr.P.C.

6.1 As observed and held by this Court in catena of decisions, inherent jurisdiction under Section 482 Cr.P.C. and/or under Article 226 of the Constitution is designed to achieve salutary purpose that criminal proceedings ought not to be permitted to degenerate into weapon of harassment. When the Court is satisfied that criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon accused, in exercise of inherent powers, such proceedings can be quashed.

6.2 As held by this Court in the case of Parbatbhai Aahir v. State of Gujarat (2017) 9 SCC 641, Section 482 Cr.P.C. is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any Court; or (ii) otherwise to secure the ends of justice. Same are the powers with the High Court, when it exercises the powers under Article 226 of the Constitution."

ii. Sheila Sebastian Vs. R. Jawaharaj and another etc reported in 2018 AIR (SC) 2434, paragraph no. 25:

"25. Keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot

be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made..."

iii. Mohammed Ibrahim Vs. State of Bihar reported in 2009 (8) SCC 751.

iv. Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another reported in 2005 AIR SC 2119

11. Learned Senior Counsel appearing on behalf of opposite party no. 2 while raising his arguments relied upon judgment rendered by Hon'ble Apex Court in case of Iqbal Singh Marwah (supra) wherein certain distinction has been made by Hon'ble Apex Court and has been demonstrated in detail by learned Senior Counsel assisted by Sri Atul Tej Kulshrestha. The distinction placed by learned Senior Counsel is firstly, the matters wherein certain forgery has been made in the documents while preparation or manufacturing before filing the same in Court of law and as such those documents which are prepared outside of the Court will not come under the ambit of custodial legacy. Secondly, the documents wherein the manipulation, addition, alteration has been made which are under the definition of custodial legacy and are available inside the Court. The proceedings under Section 340 Cr.P.C. as submitted by learned Senior Counsel will be permissible only in both the categories but the right available in favour of opposite party no. 2 is to prefer FIR/complaint wherein allegations are regarding the documents which have been prepared before filing the same in court of law which is the case in hand and apparent from the narration of the FIR.

12. Learned senior counsel for opposite party no. 2 also argued that the co-accused Rajesh Kumar in his statement under Section 161 Cr.P.C. clearly admitted that he was instructed by the applicants for filing the case before this Court on behalf of M/s Anondita Health Care, however, the same is not denied by the applicants and as such the same amounts to admission by the applicants. Further instead, the applicants admitted in para 42 of the affidavit filed in support of instant case, that the filing of the petition in the name of M/s Anondita Health Care was a bona fide mistake. Further the authority letter dated 12.04.2024 is yet another attempt of the applicants to mislead this Court as prior to issuing same, another authority letter was issued by the applicants in favour of same Rajesh Kumar on 25.01.2024 (page 75 of the counter affidavit) however same is consciously withheld by the applicants. In the withdrawal application filed by the Rajesh Kumar on the instruction of applicants in Matter under Article 227 no. 1997 of 2024 (M/s Anondita Health Care and another Vs. Faiz Mohammad and others) it is nowhere pleaded that the case was filed in the name of M/s Anondita Health Care was a bona fide mistake.

13. Learned senior counsel for opposite party no. 2 contended that since the false documents were prepared before filing case before this Court, as such private complaint is maintainable and in support of this argument he relied upon judgment rendered by Hon'ble Apex Court in case of Iqbal Singh Marwah (supra), paragraph no. 23, 33 and case of Ashok Gulabrao Bondre Vs. Vilas Madhukar Rao Deshmukh reported in 2023 (9) SCC 539, paragraph no. 17.

14. He further submitted that since the offences are distinct, i.e. under Section 340 of Cr.P.C. and in the FIR lodged by opposite party no. 2, as such both can proceed and are not hit by double

jeopardy. In support of this argument he relied upon judgment rendered by Hon'ble Supreme Court in case of Iqbal Singh Marwah (supra), paragraph no. 23, 24, 25, 26 and case of Vasanthi vs. Umesh G.D. reported in 2024 SCC Online 15256, paragraph no. 3.6, 6.1, 8.1, 8.3, 8.5.

15. Sri Sandeep Kumar, learned AGA who defended the stand taken up by the State submitted that once the person who signed the vakalatnama was not authorized by opposite party no. 2 and at the same time who preferred the petition under Article 227 no. 1997 of 2024, without having any instructions issued by petitioner, the person is liable to be prosecuted and summoning order issued by learned concerned court is having no infirmity. The person who has been referred by learned AGA is the accused and the same has been summoned also. Sri Sandeep Kumar, further submitted that the authority letter is the sole ground for implication of the applicants who authorized co-accused to prefer affidavit and filing whatever is required at the behest of applicants before this Court.

16. After hearing rival submissions extended by learned counsels for the parties and the grounds taken up through written submission submitted by both the learned counsels, one thing is crystal clear that before initiative taken up by opposite party no. 2 for lodging complaint in shape of registration of FIR at Case Crime no. 167 of 2024 on dated 13.8.2024, the matter in pursuance to Section 340 Cr.P.C. has already been taken up over an application preferred under Section 340 Cr.P.C. by co-ordinate Bench of this Court vide order dated 13.3.2024.

17. Sri Siddharth Srivastava, learned Senior Counsel assisted by Sri Atul Tej Kulshrestha, learned counsel for opposite party no. 2 although elaborated attraction of sections 419, 420, 467, 468, 471 and 120B IPC against the applicants and tried to satisfy this Court over the issue that how two parallel proceedings in pursuance to same allegation once initiated by co-ordinate Bench of this Court over Application under Section 340 Cr.P.C. preferred at the behest of opposite party no. 2 and second in pursuant to Case Crime no. 167 of 2024 can proceed. The arguments, so raised by learned Senior Counsel appearing on behalf of opposite party no. 2, if taken into consideration for justifying the entire proceedings which has been put under challenge through instant application, will amount to contrary to the order dated 13.3.2024 passed by co-ordinate Bench of this Court through which proceedings under Section 340 Cr.P.C. has already been initiated wherein after considering the issue involved therein reply to the application filed under Section 340 Cr.P.C. has already been invited, the dates and events are not at all disputed which clearly shows that in spite of order dated 13.3.2024 passed by co-ordinate Bench of this Court, opposite party no. 2 preferred First Information Report which has been registered at Case Crime no. 167 of 2024 on dated 13.8.2024 i.e. much later to the order dated 13.3.2024 passed by co-ordinate Bench of this Court.

18. The distinction which has been argued by learned Senior Counsel appearing on behalf of opposite party no. 2 in respect of fraud, forgery committed outside of the Court and if the same has been committed with the documents available with the court specifically in terms of Section 195(1)(b)(ii) of Cr.P.C. has already been answered by Hon'ble Apex Court in case of Iqbal Singh Marwah (supra) wherein the accused was acquitted on the ground of Section 195(1)(b)(ii) of Cr.P.C., but the facts of instant matter is slightly different. In the instant matter it is the opposite party no. 2 who preferred an application under Section 340 Cr.P.C. before this Court itself whereupon after preliminary satisfaction co-ordinate Bench of this Court passed the order dated

13.3.2024 and there is hardly any dispute that it is the opposite party no. 2 only who preferred FIR registered on dated 13.8.2024, meaning thereby two parallel proceedings for same cause of action has already been opted by opposite party no. 2 and without waiting for outcome of the first option availed by opposite party no. 2 in shape of preferring application under Section 340 Cr.P.C. wherein the reply has already been invited by co-ordinate Bench of this Court vide order dated 13.3.2024 and the stage of inquiry directed by co-ordinate Bench of this Court is yet to arrive on the basis of adjudication pending before this Court in respect of the same documents which has been alleged as forged and fictitious although preferred and prepared by other accused than the applicants, during pendency of the adjudication by this Court, inquiry has already been conducted by way of submitting charge sheet against the applicants on dated 10.9.2025 whereupon cognizance of offence has been taken up by learned concerned court. The option availed by opposite party no. 2 for filing application under Section 340 Cr.P.C. before this Court now almost rendered infructuous since the second option availed by opposite party no. 2 culminated up to the level of initiating trial against applicants who have already been summoned vide order dated 17.9.2025 passed by learned court of Additional Chief Judicial Magistrate, Court no. 5, Prayagraj hence, the initial proceedings over an application under Section 340 Cr.P.C. became redundant and virtually rendered infructuous, if the proceedings of Case Crime no. 167 of 2024 shall be permitted to continue before learned court concerned who took cognizance of offence and summoned the applicants in respect of the same.

19. Herein the instant matter, once the proceedings has already been initiated by co-ordinate bench of this Court over an application preferred at the behest of opposite party no. 2 under Section 340 Cr.P.C. wherein objection has already been invited by the applicants in respect of the same issues/reference of same documents which has been alleged to be forged, fictitious in shape of vakalatnama, authority letter etc., the judicial discipline demands that inquiry which has already been conducted by concerned Investigating Officer in pursuance to Case Crime no. 167 of 2024 without considering that the similar issue has already been raised by opposite party no. 2 before this Court by way of filing application under Section 340 Cr.P.C. wherein no direction has ever been issued for conducting inquiry and the matter is pending only at the stage of exchange of pleadings and as such report submitted after conducting inquiry in shape of charge sheet dated 10.9.2025, seems to be bad in the eye of law since during inquiry this fact has never been brought to the knowledge of the concerned Investigating Officer at the behest of opposite party no. 2 being informant that proceeding under Section 340 Cr.P.C. has already been initiated before this Court for same cause of action wherein the similar issue has been brought to the notice of this Court at the behest of opposite party no. 2 and as such two parallel proceedings has already been initiated and so far as the issue argued by learned Senior Counsel appearing on behalf of opposite party no. 2 that complaint can be filed by aggrieved person in respect of the documents if forged, manufactured outside of the proceedings of the court as decided by Hon'ble Supreme Court in case of Iqbal Singh Marwah (supra) is concerned, at the same time, the factual position of the instant matter has never been discussed by Hon'ble Apex Court that which proceedings will prevail, if adopted by complainant simultaneously by way of lodging FIR and preferring Application under Section 340 Cr.P.C. before lodging FIR wherein High Court invited objection after considering the application preferred at the behest of the informant/applicant. The facts of instant matter is slightly different in respect of the issue involved herein and the issue is as under:

"If an application under Section 340 Cr.P.C. preferred by an aggrieved person before High Court wherein objection has been invited, justification of the proceedings initiated by the same person after gap of considerable period of time by way of lodging FIR for same issue, will be maintainable or not?"

20. The above mentioned issue is hereby answered that once the High Court has already invited objection over an application preferred at the behest of opposite party no. 2 under Section 340 Cr.P.C., for similar set of facts and allegations FIR which has been lodged by the same person later on to the order passed by High Court through which objection has been invited wherein inquiry has been conducted, charge sheet has been preferred and cognizance of offence taken up along with the entire proceedings are not permissible. Once the consideration has already been made by co-ordinate Bench of this Court vide order dated 13.3.2024 and the charge sheet preferred before learned court of Additional Chief Judicial Magistrate, Court no. 5, Prayagraj on dated 10.9.2025 whereupon cognizance of offence has been taken up by learned court of Additional Chief Judicial Magistrate, Court no. 5, Prayagraj on dated 17.9.2025 are hereby in fact rendering order dated 13.3.2024 virtually infructuous and the same cannot be permitted considering the judicial discipline that once the matter has already been took up by High Court and invited objection over an Application under Section 340 Cr.P.C. on similar set of facts and on same allegations, inquiry has been conducted and cognizance of offence has been taken up by subordinate court and as such the arguments raised by Ms. Sakshi Srivastava, learned counsel appearing on behalf of applicants is quite convincing in respect of initiation of the proceedings under Section 340 Cr.P.C. at the behest of opposite party no. 2 wherein objection has been invited the same has to be given preference over any proceedings whatsoever has been conducted by subordinate court in respect of the same facts and allegations against the applicants.

21. In view of above mentioned facts and circumstances, entire proceedings of Case no. 415 of 2025 (State vs. Sanjeev Gaur) arising out of Case Crime no. 167 of 2024 under sections 419, 420, 467, 468, 471 and 120B IPC, PS- Cantt, District Allahabad which includes charge sheet dated 10.9.2025, cognizance/summoning order dated 17.9.2025 are hereby set aside only in respect of applicants herein.

22. The application u/s 528 BNSS stands allowed accordingly.

(2026) 5 ILRA 103
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 08.05.2026

BEFORE

THE HON'BLE VIVEK KUMAR SINGH, J.

Application U/S 528 BNSS No. 25601 of 2025

Praveen Pal **...Applicant**
Versus
State of U.P. & Ors. **...Opposite Parties**

Issue for Consideration

Issue pertains to whether after charges have been framed by the trial court, an accused can seek his discharge or an alteration of charge by filing an application u/s 216 Cr.P.C./s. 239 B.N.S.S., particularly when his earlier application for discharge u/s 227 Cr.P.C. had already been rejected and correspondingly, whether the rejection of such an application by trial court, refusing to alter the charge from s. 376(3) IPC/POCSO Act to a lesser offence on the ground that the victim was major at the time of incident, suffered from any illegality warranting interference u/s 528 B.N.S.S.

Headnotes

Indian Penal Code, 1860 - s. 376(3) - The Protection of Children from Sexual Offences Act, 2012 - ss. 3, 4(2) - Code of Criminal Procedure, 1973 - ss. 164, 216, 227 - Bharatiya Nagarik Suraksha Sanhita, 2023 - ss. 239 - Juvenile Justice Act, 2015 - s. 94 - Alteration of charge - Maintainability of application by applicant - Scope and Power - Interpretation of - The instant application was preferred by applicant seeking quashing of order dated 19.5.2025, whereby his application u/s 216 Cr.P.C./s. 239 B.N.S.S. for alteration of charge was rejected, as also the order dated 5.4.2023 framing charges against him registered on basis of first information report lodged on 15.2.2022 alleging that the victim had been subjected to rape about six to seven years prior thereto when she was aged about sixteen years, had been filmed in an obscene video and blackmailed, and had subsequently suffered a miscarriage on administration of medicine by applicant - During investigation, the victim variously described her age as twenty-two years before the Investigating Officer and twenty-five years in her statement, a charge-sheet was submitted - The applicant's application for discharge founded on the plea that the victim's high-school certificate disclosed her date of birth as 17.7.1997 rendering her major, was rejected and charges were framed on 5.4.2023 - During trial, the victim deposed that the incident occurred on 13.3.2016, which, read with her date of birth, would make her a major at the relevant time - On this basis, the applicant moved a fresh application u/s 216 Cr.P.C./s. 239 B.N.S.S. seeking alteration of charge, which was rejected by trial court vide the impugned order dated 19.5.2025, thereby occasioning the filing of application before the High Court.

Held: If there was an omission in framing of charge and it comes to the knowledge of court trying the offence, power is always vested in the court, as provided u/s 216 Cr.P.C. / 239 B.N.S.S. to either alter or add the charge and that such power is available with the court at any time before the judgment is pronounced - The application preferred by applicant-accused before the trial court was rightly rejected since it was not incumbent upon the trial court to pass an order u/s 216 Cr.P.C. / 239 B.N.S.S. on the application moved by applicant-accused - The learned trial court has not committed any illegality, perversity or ambiguity in rejecting the application dated 10.3.2025 filed on behalf of applicant-accused u/s 216 Cr.P.C. / 239 B.N.S.S. [Paras 16, 17] (E-13)

Case Law Cited

P. Yuvaprakash v. State Rep. By Inspector of Police **(Criminal Appeal No. 1898 of 2023) decided on 18.7.2023;** *P. Kartikalakshmi v. Sri Ganesh and another* **(2017) 3 SCC 347;** *Director of Revenue Intelligence Vs. Raj Kumar Arora and others),* **Criminal Appeal No. 1319 of 2013 with Criminal Appeal No. 272 of 2014, judgement dated April 17, 2025;** *K. Ravi vs. State of Tamil Nadu and another* **reported in 2024 SCC OnLine SC 2283;** *Thakur Ram and others vs. State of Bihar*, **reported in AIR 1966 SC 911 - referred to**

List of Acts

Code of Crimal Procedure, 1973; Bharatiya Nagarik Suraksha Sanhita, 2023; Indian Penal Code, 1860; Juvenile Justice Act, 2015; The Protection of Children from Sexual Offences Act, 2012

List of Keywords

Application u/s 528 BNSS; Discharge; Alteration/Addition of charge; Charge-sheet; s. 216 Cr.P.C/ s. 239 BNSS; Charges framed; First Information Report; Age of victim; Medical Report; High School Certificate; Date of Birth; Major; Minor; Prejudice; Vested in the court; Before judgment is pronounced; Enabling Provision; Application dismissed.

Case Arising From

ORIGINAL JURISDICTION: Application U/S 528 BNSS No. 25601 of 2025

From the Judgment and Orders dated 19.5.2025 and 5.4.2023 passed by Additional District and Session Judge / Special Judge (POCSO Act), Court No. 13, Kanpur Dehat in S.T. No. 459 of 2022 arising out of Case Crime No. 57 of 2022, Police Station Shivli, District Kanpur Dehat.

Appearances for Parties

Advs. for the Applicant(s):
Arun Kumar Singh, Himanshu Singh

Advs. for the Opposite Party(s)
Dipak Srivastava, G.A.,

(Delivered by Hon'ble Vivek Kumar Singh, J.)

1. Heard Sri Arun Kumar Singh, learned counsel for the applicant, Sri Deepak Srivastava, learned counsel appearing for the opposite party no. 2 and Sri Mohd. Afzal, learned counsel appearing for the State.

2. Present application under Section 528 B.N.S.S. has been filed for quashing the orders dated 19.5.2025 and 5.4.2023 passed by Additional District and Session Judge / Special Judge (POCSO Act), Court No. 13, Kanpur Dehat in S.T. No. 459 of 2022 (State vs. Praveen Pal) arising out of Case Crime No. 57 of 2022, under Sections 376(3) IPC and Section 3/4(2) of POCSO Act, Police Station Shivli, District Kanpur Dehat.

3. In brief, the facts of the case are that the first information report was lodged by the opposite party no. 2 on 15.2.2022 under Sections 376, 313, 354, 452, 323, 506 IPC and Section 3/4 of POCSO Act. The date of incident was not mentioned in the aforesaid first information report, registered as Case Crime No. 57 of 2022 at Police Station Shivli, District Kanpur Dehat. It is alleged in the first information report that the victim was subjected to rape by the applicant 6-7 years ago. The victim, in the first information report, claimed that she was aged about 16 years at the time of the alleged incident. Her obscene video was made by the applicant and she was being blackmailed by the applicant. Later the victim conceived, however, the applicant gave a medicine to the victim / informant and after the administration of medicine, she suffered miscarriage. Several other allegations were levelled in the first information report. The Investigating Officer recorded statement of the victim, wherein she claimed to be aged about 22 years and stated that the incident took place 5-6 years ago. In her statement, recorded under Section 164 Cr.P.C. on 18.2.2022, the victim claimed herself to be aged about 25 years and stated that the incident took place 6-7 years ago. The Investigating Officer after due investigation submitted charge-sheet in this case on 17.4.2022 under Sections 376, 313, 354, 452, 323, 506 IPC read with Section 3/4 of POCSO Act.

4. It is further submitted by the learned counsel for the applicant that as per high-school certificate, the date of birth of the victim / informant was 17.7.1997, therefore, she was more than 24 years of age at the time of lodging of first information report. The applicant claimed discharge under Section 227 Cr.P.C., however, his discharge application was rejected by the learned trial court vide order dated 27.3.2023 and charges were framed against the applicant on 5.4.2023 under Sections 376(3), 506 IPC and Section 3/4(2) of POCSO Act. The applicant pleaded not guilty and claimed to be tried.

5. It is further submitted that the victim / informant was examined in the trial court on 23.6.2023, 11.3.2024 and 3.4.2024. In her examination in chief, she stated that the incident took place on 13.3.2016. As per her high-school certificate, her date of birth was 17.7.1997. Therefore, as per statement of the victim, her age was 18 years, 7 months and 26 days at the time of the alleged incident and at the time of lodging of first information report, her age was 24 years 6 months and 28 days. The victim was a major girl at the time of alleged incident and that, as per her medical report, she was aged about 25 years. The provisions of POCSO Act would not be applicable in this case and charge under Section 376(3) IPC is liable to be altertered. Therefore, an application under Section 216 Cr.P.C. / 239 B.N.S.S. was moved by the applicant on 10.3.2025 and it was prayed that charge be altered but the same application was wrongly and illegally rejected by the learned trial court vide order dated 19.5.2025. It is also submitted that the age of the victim would be determined as per Section 94 of Juvenile Justice Act, 2015.

6. In support of his submissions learned counsel for the applicant has placed reliance on a judgment of Hon'ble Supreme Court in the case of P. Yuvaprakash vs. State Rep. By Inspector of Police (Criminal Appeal No. 1898 of 2023) decided on 18.7.2023.

7. Per contra, learned A.G.A. as well as learned counsel appearing for the opposite party no. 2 vehemently opposed the prayer made by the learned counsel for the applicant and submitted that the victim was a minor girl at the time of alleged incident and the applicant moved discharge application under Section 227 Cr.P.C., which was rightly rejected by the learned trial court vide order dated 27.3.2023 and charges were framed. Now, the applicant is raising the same plea, which was taken by him at the time of discharge. The present application is not maintainable. It is further submitted that the applicant has no right to seek such addition or alteration by filing any application as a matter of right. It is the court only, who may exercise its power under Section 216 Cr.P.C. / 239 B.N.S.S. for addition or alteration of the charges. To buttress his submission, learned counsel appearing for the opposite party no. 2 has placed reliance on a judgment of Hon'ble Supreme Court in the case of P. Kartikalakshmi vs. Sri Ganesh and another (2017) 3 SCC 347.

8. I have heard the rival submissions of learned counsel for the parties and have perused the record.

9. The question arises here as to whether, after the charges are framed by the trial court, the accused could be discharged or his charges could be altered through an application filed by the accused under Section 216 Cr.P.C. or 239 B.N.S.S. To understand it, Section 216 Cr.P.C. and 239 B.N.S.S. are reproduced hereunder:-

"**216 Cr.P.C.**

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

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

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

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

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

239 B.N.S.S.

"239. Court may alter charge.?(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

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

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

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

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

10. The Hon'ble Supreme Court, in its recent judgement dated April 17, 2025 passed in Criminal Appeal No. 1319 of 2013 with Criminal Appeal No. 272 of 2014 (Director of Revenue

Intelligence Vs. Raj Kumar Arora and others) has elucidated the scope of Section 216 CrPC, as follows:

143. Under this provision, any Court is empowered to alter or add to any charge framed against the accused, at any time before the judgment is pronounced. Therefore, an outer time limit is set i.e. the power conferred upon the Courts cannot be exercised after a decision is pronounced in the matter. Although the provision does not expressly provide for the stage of the trial after which the power under Section 216 CrPC can be exercised, yet logic and rationale obviously requires it to be exercised after a charge has been framed by the Trial Court under Section 228 CrPC. For if no charge has been framed, there arises no occasion to add or alter it. As a natural corollary, if an accused has already been discharged under Section 227 CrPC, no application or action under Section 216 CrPC would be maintainable.

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

145. This Court in Anant Prakash Sinha v. State of Haryana and Another reported in (2016) 6 SCC 105 summarised the principles as regards Section 216 CrPC. Herein, charges were framed against the appellant-husband for the commission of offences punishable under Sections 498-A and 323 IPC. During the pendency of the matter, the informant wife had filed an application under Section 216 CrPC for framing an additional charge under Section 406 IPC against both the husband and the mother-in-law on the ground that there was an express complaint with regard to the misappropriation of her entire Stridhan and other articles. Hence, it was contended that the accused persons had committed criminal breach of trust, however, a charge sheet was not filed in respect of the said offence. The application was allowed by the Trial Court and subsequently, the Revisional Court upheld the framing of charge under Section 216 CrPC IPC only against the appellant-husband. This Court while agreeing with the High Court summarised the principles underlying Section 216 CrPC as follows:

i. First, the test for exercise of power under Section 216 CrPC is that it must be founded on the material available on record and therefore, it can be on the basis of the complaint or the FIR, or other accompanying documents or materials brought on record during the course of the trial. The charge which has been framed by the Trial Court must therefore be in accord with the materials available before him.

ii. Secondly, the power must not be construed in a restricted manner to mean that unless evidence has been let in, the charges that have already been framed cannot be altered. The Court is

empowered to change or alter the charge framed, if it finds that there is a defect or that something has been left out in the order framing charge.

iii. Thirdly, it is obligatory for the Court to ensure that no prejudice is caused to the accused due to the addition or alteration of charge. The accused must be informed and made aware of the new charge as also the case against him so that he can understand the defence that can be led on his behalf.

The relevant observations are reproduced hereinbelow:

'18. From the aforesaid, it is graphic that the court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence comes on record. It is not to be understood that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of Section 216 CrPC.

19. In addition to what we have stated hereinabove, another aspect also has to be kept in mind. It is obligatory on the part of the court to see that no prejudice is caused to the accused and he is allowed to have a fair trial. There are in-built safeguards in Section 216 CrPC. It is the duty of the trial court to bear in mind that no prejudice is caused to the accused as that has the potentiality to affect a fair trial. It has been held in Amar Singh v. State of Haryana [Amar Singh v. State of Haryana, (1974) 3 SCC 81 : that the accused must always be made aware of the case against him so as to enable him to understand the defence that he can lead. An accused can be convicted for an offence which is minor than the one he has been charged with, unless the accused satisfies the court that there has been a failure of justice by the non-framing of a charge under a particular penal provision, and some prejudice has been caused to the accused.

(Emphasis supplied)

146. In another decision of this Court in Nallapareddy Sridhar Reddy v. State of A.P. reported in (2020) 12 SCC 467, the scope of powers under Section 216 was elaborated. It was stated that the power under this provision to alter a charge is an exclusive and wide-ranging power and this is clear from the fact that it may be exercised at any time before the judgment is pronounced, meaning also at a stage wherein the evidence and arguments are completed and the judgment is reserved. It was further stated that if the Court is of the opinion that there was an omission in the framing of charge or if the existence of the factual ingredients constituting another offence is also inferred from a prima facie examination of the material brought on record, the alteration or addition of a charge can be done. Such material brought on record must have a direct nexus with the ingredients of the alleged offence. This Court cautioned that the power under this provision must be exercised judiciously and observed as follows:

‘21. From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words ?at any time before judgment is pronounced? in sub-section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused.’

(Emphasis supplied)

11. The Hon'ble Supreme Court in the case of P. Kartikalakshmi (supra) has elucidated the power of the Court under Section 216 Cr.P.C. and held that power under Section 216 Cr.P.C., vested in the Court, is exclusive to the Court and there is no right in any party neither de facto complainant nor accused nor prosecution to seek such addition or alteration by filing an application as a matter of right. Relevant paragraph nos. 6 to 8 of the said judgment are quoted herein below :-

"6. Having heard learned counsel for the respective parties, we find force in the submission of learned senior counsel for respondent no.1. Section 216 Cr.P.C. empowers the Court to alter or add any charge at any time before the judgment is pronounced. It is now well settled that the power vested in the Court is exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right. It may be that if there was an omission in the framing of the charge and if it comes to the knowledge of the Court trying the offence, the power is always vested in the Court, as provided under Section 216 Cr.P.C. to either alter or add the charge and that such power is available with the Court at any time before the judgment is pronounced. It is an enabling provision for the Court to exercise its power under certain contingencies which comes to its notice or brought to its notice. In such a situation if it comes to the knowledge of the Court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need be passed for that purpose. After such alteration or addition when the final decision is rendered, it will be open for the parties to work out their remedies in accordance with law.

7. We were taken through Sections 221 and 222 CrPC in this context. In the light of the facts involved in this case, we are only concerned with Section 216 CrPC. We, therefore, do not propose to examine the implications of the other provisions to the case on hand. We wish to confine ourselves to the invocation of Section 216 and rest with that. In the light of our conclusion that the power of invocation of Section 216 CrPC is exclusively confined with the Court as an enabling

provision for the purpose of alteration or addition of any charge at any time before pronouncement of the judgment, we make it clear that no party, neither de facto complainant nor the accused or for that matter the prosecution has any vested right to seek any addition or alteration of charge, because it is not provided under Section 216 CrPC. If such a course to be adopted by the parties is allowed, then it will be well-nigh impossible for the criminal court to conclude its proceedings and the concept of speedy trial will get jeopardised.

8. In such circumstances, when the application preferred by the appellant itself before the trial court was not maintainable, it was not incumbent upon the trial court to pass an order under Section 216 CrPC. Therefore, there was no question of the said order being revisable under Section 397 CrPC. The whole proceeding, initiated at the instance of the appellant, was not maintainable. Inasmuch as the legal issue had to be necessarily set right, we are obliged to clarify the law as is available under Section 216 CrPC. To that extent, having clarified the legal position, we make it clear that the whole proceedings initiated at the instance of the appellant was thoroughly misconceived and vitiated in law and ought not to have been entertained by the trial court. As rightly pointed out by the learned Senior Counsel for Respondent 1, such a course adopted by the appellant and entertained by the court below has unnecessarily provided scope for protraction of the proceedings which ought not to have been allowed by the court below."

12. In a recent decision of Hon'ble Supreme Court in K. Ravi vs. State of Tamil Nadu and another reported in 2024 SCC OnLine SC 2283, Hon'ble Supreme Court had categorically observed that Section 216 Cr.P.C. does not give any right to the accused to file a fresh application seeking discharge after the charge has been framed by the Court. In the above case, several accused persons were charge-sheeted under Sections 147, 148, 323, 324, 307 and 302 of the IPC respectively. The respondent no. 2 - accused filed an application for discharge under Section 227 Cr.P.C. which was dismissed by the Sessions Court. After charges were framed, the respondent no.2 along with the other accused then filed an application under Section 216 Cr.P.C. seeking alteration of charge, which was also dismissed. In revision, the High Court, however, set aside the charge framed against the respondent no. 2, while holding that an accused cannot seek a discharge under the garb of modification/alteration of charge through Section 216 Cr.P.C. application. Hon'ble Supreme Court also highlighted that it has become routine practice for the accused to file an application under Section 216 Cr.P.C. after their application for discharge under Section 227 Cr.P.C. is dismissed, sometimes in ignorance of the law but also on other occasions with the sole intent of derailing the trial. The relevant observations are as thus:

‘7. From the above conspectus of events, it clearly transpires that the Respondent No. 2 after having failed to get himself discharged from the Sessions Court as well as from the High Court in the first round of litigation, filed another vexatious application before the Sessions Court under Section 216 of Cr. P.C., after the framing of charge by the Sessions Court, for modification of the charge. The Sessions Court having dismissed the said application, the Respondent No. 2 preferred the Revisional Application before the High Court under Section 397 and 401 of Cr. P.C. The High Court in its unusual impugned order, discharged the Respondent No. 2 (A-2) from the charges levelled against him, though his earlier application seeking discharge was already dismissed by the Sessions Court and confirmed by the High Court and that position had attained finality. [...]

xxx xxx xxx

11. It is trite to say that Section 216 is an enabling provision which enables the court to alter or add to any charge at any time before judgment is pronounced, and if any alternation or addition to a charge is made, the court has to follow the procedure as contained therein. Section 216 does not give any right to the accused to file a fresh application seeking his discharge after the charge is framed by the court, more particularly when his application seeking discharge under Section 227 has already been dismissed. Unfortunately, such applications are being filed in the trial courts sometimes in ignorance of law and sometimes deliberately to delay the proceedings. Once such applications though untenable are filed, the trial courts have no alternative but to decide them, and then again such orders would be challenged before the higher courts, and the whole criminal trial would get derailed. Suffice it to say that such practice is highly deplorable, and if followed, should be dealt with sternly by the courts.'

(Emphasis supplied)

13. In the opinion of this Court, Section 216 Cr.P.C. empowers the court to alter or add any charge at any time before the judgment is pronounced. It may be that if there was an omission in the framing of the charge and if it comes to the knowledge of the court, the power is always vested in the court, as provided under Section 216 Cr.P.C. to either alter or add the charge and that such power is available with the court at any time before the judgment is pronounced. It is an enabling provision for the court to exercise its power under certain contingencies, which comes to its notice or brought to its notice. In such a situation, if it comes to the knowledge of the court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need to be passed for that purpose. After such alteration or addition, when the final decision is rendered, it will be open for the parties to work-out their remedies, in accordance with law.

14. The Hon'ble Supreme Court had held in Thakur Ram and others vs. State of Bihar, reported in AIR 1966 SC 911; that the power available under Section 216 Cr.P.C. can be exercised only by the court on its own and no party has any right to seek for passing any order under the said provisions.

15. In the above judgments, the Hon'ble Supreme Court has held that the court may alter or add any charge under Section 216 Cr.P.C. and no party can seek such addition or alteration of the charge as a matter of right by filing an application. It is the trial court which would decide whether an appropriate charge has been framed or not, at the appropriate stage of the trial. On a consideration of broad probabilities of the case, the total effect of the evidence and documents adduced, the trial court must satisfy itself that the exercise of power under Section 216 Cr.P.C. / 239 B.N.S.S. is necessary. The provision has been enacted with the solitary object to ensure a fair and full trial to the accused in each case.

16. If there was an omission in framing of the charge and it comes to the knowledge of the court trying the offence, power is always vested in the court, as provided under Section 216 Cr.P.C. / 239 B.N.S.S. to either alter or add the charge and that such power is available with the court at any time before the judgment is pronounced. The application preferred by the applicant-accused

before the trial court was rightly rejected since it was not incumbent upon the trial court to pass an order under Section 216 Cr.P.C. / 239 B.N.S.S. on the application moved by the applicant-accused.

17. The learned trial court has not committed any illegality, perversity or ambiguity in rejecting the application dated 10.3.2025 filed on behalf of the applicant-accused under Section 216 Cr.P.C. / 239 B.N.S.S.

18. Resultantly, the instant application filed under Section 528 B.N.S.S., being misconceived and devoid of merits, is dismissed. No order as to costs.

(2026) 5 ILRA 113
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 15.05.2026

BEFORE

THE HON'BLE CHAWAN PRAKASH, J.

Application U/S 528 BNSS No. 43284 of 2025

Vipin Kumar Malhotra **...Applicant**
Versus
State of U.P. & Anr. **...Opposite Parties**

ISSUE FOR CONSIDERATION

Whether the allegations made in the complaint filed by Doctor disclose the offence of criminal defamation under Section 500 IPC against the applicant and whether the summoning order and revisional order are sustainable?

HEADNOTES

Criminal Law – Bharatiya Nagarik Suraksha Sanhita, 2023 - Section – 528 - Code of Criminal Procedure, 1973 - Section 200, 202, 156(3), 482 - Indian Penal Code, 1860 - Sections - 499, 500, 193, 120-B, 304B, 498A – Dowry Prohibition Act, 1961 – Section - 3, 4:- Application u/s 528 BNSS – for quashing of summoning order, revisional order as well as entire complaint case – allegation that applicant published a newspaper article titled *"Dr. Akshay's Prescription Used, Accused Granted Bail in Snigdha Case"* – opposite party no.2 (Doctor) filed complaint under Section 500 IPC – offence of defamation alleged – investigation revealed contradictions in statement – complainant's evidence and witnesses did not establish applicant's role in publication – call detail records showed fabrication – chargesheet filed in connected dowry death case – summoning order issued – trial initiated – connected case status pending – Applicant pleaded that news article was not published by him and complaints were filed in good faith – Magistrate failed to consider Exception VIII to Section 499 IPC – Principles governing summoning orders and quashing proceedings – scope and exceptions – Court finds no evidence linking applicant to publication and complaints supported by investigation – summoning an accused requires prima facie evidence, which is absent here – held, no offence under Section 500 IPC disclosed – hence, summoning and revisional orders quashed – proceedings against applicant set aside – application allowed.

(Para – 15, 21, 22, 23, 24, 25)

Application Allowed. (E-11)

CASE LAW CITED

No any case is cited

LIST OF ACTS

Bharatiya Nagarik Suraksha Sanhita, 2023 - Code of Criminal Procedure, 1973 - Indian Penal Code, 1860 - Dowry Prohibition Act, 1961.

LIST OF KEYWORDS

Application under section 528, Quashing of proceedings, inherent jurisdiction, Defamation, Summoning Order, Quashing, Good Faith Exception, Court Proceedings Exception, Dowry Death, False Complaints, Reputation, Newspaper Article, Prima Facie Case.

CASE ARISING FROM

Complaint Case No. 907 of 2024, Police Station Lalkurti, District Meerut, under Section 500 IPC, arising out of allegations of defamation against Dr. Akshay Jain following publication of a news article and filing of complaints by the applicant.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Anil Mullick
Counsel for Respondent(s): Shri Hari Keshav, A.G.A.

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

1. Heard Mr. Anil Mullick, learned Counsel for the applicant, Mr. Hari Keshav, learned Counsel for opposite party no.2 and learned A.G.A. for the State.

2. This application under Section 528 BNSS has been filed to quash the summoning order dated 06.04.2024, passed by the Judicial Magistrate/Additional Civil Judge (Junior Division), Court No. 1, District Meerut, and the entire proceedings of Complaint Case No. 907 of 2024 under Section 500 I.P.C., Police Station Lalkurti, District Meerut, as well as the order dated 10.09.2025 passed by the Additional Sessions Judge, Court No. 3, Meerut, in Criminal Revision No. 419 of 2024.

3. According to the facts, Dr. Akshay Jain, the opposite party No. 2/complainant filed the subject complaint in the Court of Judicial Magistrate/Additional Civil Judge (Junior Division), Court No. 1, District Meerut, alleging that the applicant published an article in the edition dated 9th July 2023 of the Dainik Jagran newspaper as a news item titled "Dr. Akshay's Prescription Used; Accused Granted Bail in Snigdha Case." The applicant also filed false and baseless complaints against him on the Chief Minister Portal, Prime Minister Portal, and several other platforms. Accordingly, the Chief Medical Officer, Meerut, was directed to inquire into the matter. He further alleged that after investigation, the entire matters/complaints were found to be false and baseless. These acts of the applicant brought down his reputation in the eyes of the public at large; thus, the applicant was liable to be prosecuted for criminal defamation punishable under Section 500 IPC.

4. The learned Magistrate, after considering all the averments made in the complaint, statements of opposite party No. 2 and witnesses (Uttam Saini, Jamuna Das, and Bilal Rizvi) under Sections 200 and 202 Cr.P.C., and documents filed with the complaint, summoned the applicant under Section 500 IPC vide order dated 06.04.2024. Thereafter, the applicant challenged the said summoning order by filing Criminal Revision No. 419 of 2024, but the same was dismissed by the Additional Sessions Judge, Court No. 3, Meerut vide order dated 10.09.2025. The order dated

06.04.2024, passed by the Judicial Magistrate, and the order dated 10.09.2025, passed by the Additional Sessions Judge, are assailed in the present application.

5. Learned Counsel for the applicant submits that the learned Magistrate committed a serious error in taking cognizance of the complaint, which fails to disclose the commission of any offence. He further submitted that even if the entire case, as presented by opposite party No. 2, is accepted or believed to be true, none of the ingredients constituting the offence of defamation as defined in Section 499 of IPC and made punishable under Section 500 of IPC are disclosed. He pointed out that the applicant has no connection with the said news article, and nowhere, either in the news item or in the complaint, is it stated that the news item was published by the applicant. The news item published in the newspaper concerns court proceedings, which are fully covered by Exception IV of Section 499 IPC.

6. He further submitted that the learned Magistrate failed to consider Exception VIII of Section 499 IPC. The applicant filed these complaints against opposite party No. 2 in good faith, as charge sheets under Sections 193 and 120-B IPC were filed against him. All the complaints made to the Chief Minister Portal, Prime Minister Portal, etc., were filed in good faith without malice. He further submitted that summoning any person in a criminal case is a serious matter, and criminal law cannot be set into motion as a matter of course. The Magistrate must carefully scrutinize the evidence brought on record and determine whether any offence is prima facie made out. The Magistrate may even personally put questions to the complainant and his witnesses to elicit answers to find out the truth of the allegations and then examine if any offence is prima facie committed by all or any of the accused. In the present case, the learned Magistrate has committed a serious error in passing the summoning order, as no prima facie case is made out against the applicant. Even the learned Revisional Court has not passed the impugned order in accordance with the facts of this case. Accordingly, the summoning order, as well as the order passed by the Revisional Court, is liable to be set aside.

7. Per contra, learned counsel for opposite party No. 2 vehemently opposed the arguments submitted by learned counsel for the applicant repuler and stated that opposite party No. 2 is a senior and renowned doctor of Meerut city. He has been successfully, diligently, and honestly running his medical practice from Arogya Clinic, B-13, Adarsh Nagar, Meerut for many years. He enjoys a rich legacy that is enviable, having been established by a person of unimpeachable character and reputation. The defamatory news article and mala fide complaints made against him by the applicant have had a serious and adverse impact on his reputation. The said news article was widely circulated and caused considerable harm to him. As a result, his reputation was significantly tarnished, and his credibility has been undermined in the eyes of his clients and the public. He further submitted that in light of the substantial reputational damage caused, he preferred a complaint under Section 200 Cr.P.C. against the applicant for committing criminal defamation. He underwent examination and also produced three witnesses. The learned Magistrate, after careful consideration of the defamatory nature of the said news article and the complaints made against him, issued summons against the applicant.

8. He further submitted that he had a long-standing relationship with the family of the applicant. The applicant's daughter, Snigdha, was married to Udit Arya, who was being treated by

Dr. Geetanjali. Dr. Geetanjali prescribed some medicine. However, Udit Arya was unable to read or understand the medicines and requested opposite party no.2 to write them clearly on his letterhead. Thereafter, opposite party No. 2 wrote the medicines clearly on his letterhead in good faith. After some time, Snigdha died due to dengue. Subsequently, the applicant lodged an F.I.R. as Case Crime No. 310 of 2022 against Udit Arya, Rakesh Arya, Madhu Arya, and Shubham Arya under Sections 498A and 304B IPC. Later, all the accused persons were granted anticipatory bail by the High Court. Thereafter, the applicant filed complaints against him before different forums and also got the said news articles published to cause defamation. The learned Magistrate has not committed any illegality in passing the summoning order, as a prima facie case is made out against him. Even the learned Additional Sessions Judge has not committed any illegality by dismissing the said criminal revision and submitted that this application is liable to be dismissed.

9. Having heard the learned counsel appearing on both sides and having gone through the material available on record, the only question for determination is whether the allegations made in the complaint filed by opposite party No. 2 make out the offence under Section 500 IPC or not.

10. Section 499 of the Indian Penal Code reads thus:

‘499. Defamation.’

Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

Explanation 1.- It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.- It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.- An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.- No imputation is said to harm a person’s reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Fourth Exception.- Publication of reports of proceedings of Courts. It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Eighth Exception.- Accusation preferred in good faith to authorised person. It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

11. Before appreciating the rival contention, it is necessary to look out into the specific allegation raised in the complaint against the applicant which are extracted in English as under:

‘1. The petitioner/complainant is a senior and well-known physician in Meerut city and has been successfully, diligently, and honestly running his medical practice under the name "Arogya Clinic" at B-13 Adarsh Nagar, Meerut, for many years. The petitioner/complainant enjoys a good reputation in the field of medicine in Meerut district and surrounding areas and is always ready to provide social service, treatment, and assistance to poor and needy patients. The petitioner/complainant is also an income taxpayer.

2. Upon reading the news published on page 6 of the daily newspaper Dainik Jagran dated 09-07-2023 titled "Dr. Akshay’s Prescription Used, Accused in Snigdha Case Got Bail," the petitioner/complainant was surprised. In it, Snigdha's father (Vipin Kumar Malhotra) accused the petitioner/complainant of colluding with the accused in the Snigdha case to secure bail for them and improperly issuing a prescription for Snigdha’s treatment. The news also revealed that Vipin Kumar Malhotra and his family lodged a false complaint against the petitioner/complainant with the Chief Medical Officer (CMO), following which the petitioner/complainant was asked for clarification. Due to the news publication and the petition submitted to the CMO office, the petitioner/complainant suffered severe defamation within the medical community and in Meerut district and surrounding areas, seriously damaging his reputation and standing. After the publication of the news and circulation of the petition among the people, many discussions took place via phone and in person, and the petitioner/complainant was viewed with suspicion, causing considerable harm to his social reputation and tarnishing his prestige.

3. The accused also filed false complaints against the petitioner/complainant on the Honorable Chief Minister of Uttar Pradesh’s Lucknow portal, the Prime Minister’s portal, and several other platforms. In response, the Meerut Division authorities requested an investigation report from the Chief Medical Officer, Meerut, regarding these complaints. This information spread throughout the medical community, causing significant defamation and disgrace to the petitioner/complainant. However, after a thorough investigation, the Chief Medical Officer found the complaints by the accused to be baseless and untrue and gave a clean chit to the petitioner/complainant. The letter from the Chief Medical Officer, Meerut, to the Commissioner, Meerut Division, dated 13-06-2023, is attached regarding this matter.

4. The actual facts of the case are as follows: Snigdha’s husband, Udit Arya’s paternal aunt, Mrs. Anita Jain, wife of Mr. A.K. Jain, is the petitioner/complainant’s younger brother’s wife. Therefore, there are personal relations between the petitioner/complainant and Udit Arya’s family. Snigdha’s father, Vipin Kumar Malhotra (accused), had some issues during pregnancy, and Dr. Gitanjali Bendre, who was treating her, was not available that day. She had prescribed some medicines over the phone, but the spellings were incorrect and thus unreadable. Subsequently, on 10-09-2022, Udit Arya contacted the petitioner/complainant to obtain the correct spellings of those

medicines prescribed for Snigdha and informed him about her condition. Knowing this, on 10-09-2022, the petitioner/complainant wrote the correct spellings of the medicines prescribed over the phone by Dr. Gitanjali on his letterhead, which was also his duty as a physician. These medicines were not harmful to the patient in any way.

5. It is stated that the petitioner/complainant later became aware that on 19-09-2022, Snigdha contracted dengue. Due to no fetal heartbeat being detected on ultrasound, she was initially admitted to S.D.S. Hospital and, on the same day, transferred to Nutirma Hospital. There, her husband Udit Arya and two of Udit's friends arranged a jumbo pack of platelets due to Snigdha's very low platelet count. However, the fetus could not be saved. On 20-09-2022, Snigdha gave birth to a stillborn baby and remained admitted to Nutirma Hospital until 25-09-2022. After being discharged on 25-09-2022, Snigdha was taken by her parents to their home in Defence Colony, where she continuously remained unwell from 25-09-2022 until 22-10-2022, when she tragically passed away. Throughout this entire period, from 25-09-2022 to 22-10-2022, Snigdha did not receive proper medical treatment, which possibly led to an increasing infection in her body.

6. It is stated that Vipin Kumar Malhotra and his family members, Mrs. Beenu Malhotra and Mohit Malhotra, with the intention of exerting undue pressure and blackmail, filed a case against Udit Arya, his family members, and the petitioner/complainant's brother's wife, Anita Jain, at the Gangangar police station under Sections 498A and 304B of the Indian Penal Code, alleging dowry death due to Snigdha's illness-related natural demise. In this case, all the accused were granted anticipatory bail by the honorable court, which recognized Snigdha's death as natural. Copies of the bail orders and the First Information Report (FIR) are attached. Notably, Snigdha's post-mortem report indicates sepsis (septicemia) as the cause of death. The post-mortem report is attached.

7. It is stated that, keeping in mind the above incidents and with malice, Vipin Kumar Malhotra, Mrs. Beenu Malhotra, and Mohit Malhotra have been making false and defamatory statements, holding press conferences, and filing complaint petitions against the petitioner/complainant to blackmail and defame him and his family, causing severe damage to the petitioner/complainant's reputation and dignity in society. As a result, the petitioner/complainant has suffered serious defamation and harm to his reputation. Moreover, he has endured severe mental distress due to having to continuously explain these matters to members of society and acquaintances.

8. It is stated that the accused, Vipin Kumar Malhotra, filed a false case against the petitioner and others at the A.C.J.M. Court No. 5, Meerut, through petition number 1141/2023 (Vipin Kumar Malhotra vs. Udit Arya and others) under Section 156(3) of the Code of Criminal Procedure, registered at Civil Lines police station. For investigation, the Civil Lines police visited the petitioner's house and clinic, causing great humiliation and defamation before the colony and the entire nursing home staff. Later, the court dismissed Vipin Kumar Malhotra's petition. Subsequently, Vipin Kumar Malhotra filed a criminal supervision petition number 543/2023 before the District and Sessions Judge, Meerut, which was dismissed by the Court of Special Judge (Prevention of Corruption Act), Meerut, on 12-12-2023. Copies of both orders are attached.

9. It is stated that Vipin Kumar Malhotra, Mrs. Beenu Malhotra, and Mohit Malhotra are continuously defaming and maligning the petitioner/complainant by exerting undue pressure without any cause, solely for the purpose of blackmail. By doing so, they have committed an offense under Section 500 of the Indian Penal Code. In the interest of justice, it is necessary that they be punished.

Therefore, it is humbly requested that a summons be issued under Section 500 of the Indian Penal Code against the accused Vipin Kumar Malhotra, Mrs. Beenu Malhotra, and Mohit Malhotra, and that they be punished.

12. The statement of opposite party no.2 recorded under Section 200 Cr.P.C. is as under:

'I have been practicing medicine for the past 44 years. There is a hospital named 'Giripush Arogya Hospital' located in Adarsh Nagar. The opposing parties are members of the same family with whom I had a long-standing relationship. The opposition used to visit our home frequently. The daughter of Opponent No. 1, Snigdha, was being treated by Dr. Geetanjali, who also prescribed some medicines. However, Udit Arya was unable to read or understand those medicines and requested that the prescriptions be written clearly on official letterhead. In good faith, I wrote the medicines clearly on my letterhead for Udit Arya.

After some time, due to adverse circumstances such as dengue, the daughter of Opponent No. 1 passed away, an event unrelated to my treatment. Nonetheless, on July 9, 2023, the opposing parties published a statement in the daily newspaper Dainik Jagran alleging that my prescriptions contributed to their daughter's death and accusing me of assisting the accused in this case. They also claimed that I conspired with the accused and provided those medicines solely to help the accused obtain bail. These allegations appeared in the Meerut edition of the national newspaper Dainik Jagran (page 6) on July 9, 2023.

This publication has tarnished my reputation and harmed my standing in the community. I reported the matter to the police station, but no action was taken. As a result of their complaints, the police have repeatedly summoned me unnecessarily, causing mental harassment.

I have nothing further to add."

13. It is an undisputed fact that a First Information Report, Case Crime No. 310 of 2022, under Sections 304B, 498A I.P.C., and Section 3/4 of the Dowry Prohibition Act, was registered against Udit Arya, Rakesh Arya, Madhu Arya, and Shubham Arya at Police Station Ganga Nagar, District Meerut. After investigation, charge-sheet No. 185 of 2023 was filed on 08.08.2023. Subsequently, the applicant, being unsatisfied with the said investigation, approached the higher authority. The D.G.P., vide his letter No. DG Meerut (19) 2023/4419 dated 08.08.2023, transferred the investigation to District Bulandshahr. The Circle Officer (Crime), Bulandshahr, commenced the investigation and filed a charge-sheet under Section 498A, 304B I.P.C. read with Section 4 of the Dowry Prohibition Act against Udit Arya, Rakesh Arya, and Madhu Arya. The accused, Udit Arya, filed Anticipatory Bail Application No. 4560 of 2023, and the Co-ordinate Bench of this Court allowed the said application vide order dated 03.05.2023.

14. On 09.07.2023, a news article titled "Dr. Akshay's Prescription Used; Accused Granted Bail in Snigdha Case" was published on Page No. 6 of Dainik Jagran, Meerut Edition. A copy of the said news item is annexed with this application as Annexure-7, the English transcribed form of which is as follows:

'Dr. Akshay's Prescription Used; Accused Granted Bail in Snigdha Case

Jagran Correspondent, Meerut - All five accused in the dowry harassment case involving Snigdha have been granted anticipatory bail by the court. During the bail hearing, the accused stated that Snigdha was taken to Dr. Akshay Jain from September 8 to September 19, 2023. His prescription was also submitted to the court. However, Snigdha's father claimed that despite her illness, she was not given proper treatment, which ultimately led to her death. Medicines were provided only after a phone conversation with Dr. Geetanjali Bora Bendre.

Following the accused's presentation of Dr. Akshay Jain's prescription in court, the deceased's father filed an application to register a case against the doctor. It has been alleged that the prescription was fabricated and submitted to the court through collusion. CO Sadar Dehat Devesh Kumar stated that the prescription of Dr. Akshay Jain is currently under investigation as per the court's orders. A charge sheet is being prepared against all the accused in this case. Dr. Jain has confirmed that a response regarding this matter has been submitted to the Chief Medical Officer (CMO) on his behalf.

15. A perusal of the said news article reveals that the source was the Jagran Correspondent, Meerut, and it is general news, commonly reported in other crime reports. The article does not state anywhere that it was published by the applicant or his family members. Furthermore, the applicant (father of the deceased Snigdha) has filed an application in the Court regarding the involvement of opposite party no. 2 in the dowry case.

16. After filing the complaint, opposite party no. 2 had himself examined under Section 200 Cr.P.C., and also examined Jamuna Das (PW-1), Bilal Rizvi (PW-2), and Uttam Saini (PW-3). In the statements of opposite party no. 2 under Section 200 Cr.P.C. and of witnesses under Section 202 Cr.P.C., it is not proved that the applicant was responsible for publishing the said news article. In other words, it can be concluded that opposite party no. 2 has not produced any evidence before the concerned Court that the applicant was responsible for the publication of the said news article.

17. As for the complaints made by the applicant to the Chief Minister Portal, Prime Minister Portal, etc., the sole allegation of opposite party no. 2 is that these complaints were filed by the applicant with malicious intent to harm the reputation. Opposite party no. 2 has admitted in the complaint itself and in his statement under Section 200 Cr.P.C. that the applicant's daughter was married to Udit Arya. She was receiving treatment from Dr. Geetanjali, who prescribed some medicine; however, Udit Arya was unable to read or understand the medicines. Subsequently, at Udit Arya's request, opposite party no. 2 wrote the medicine on his letterhead.

18. It is also an admitted fact that the applicant registered a First Information Report as Case Crime No. 310 of 2022 against Udit Arya (son-in-law), Rakesh Arya, Madhu Arya, and Shubham

Arya under Sections 304B, and 498A I.P.C. and Section 3/4 of the Dowry Prohibition Act at Police Station Ganga Nagar, District Meerut. After investigation, a charge-sheet under Section 498A, 304B I.P.C., and Section 3/4 of the Dowry Prohibition Act was filed. Being unsatisfied with the investigation, the applicant approached higher authorities. Subsequently, the D.G.P., U.P., vide his letter No. DG Meerut (19) 2023/4419 dated 08.08.2023, transferred the investigation to District Bulandshahr. The extracts of the said report are as follows:

'Senior Superintendent of Police, District Bulandshahr,

Kindly be informed that on 23.10.2023, the complainant Mr. Vipin Kumar Malhotra, son of the late Shadillal, resident of B-28 Defense Colony, Ganganagar, Meerut, filed case no. 310/2022 at Ganganagar Police Station, District Meerut, under Sections 498A and 304B of the IPC and Sections 3 and 4 of the Dowry Prohibition Act against the following accused:

1. Udit Arya (husband), son of Rakesh Ary

2. Mrs. Madhu (mother-in-law), wife of Rakesh Ary

3. Shubham Arya (brother-in-law), son of Rakesh Ary

4. Rakesh Arya (father-in-law), son of Omprakash Arya, residents of 105 Kornak Colony, Roorkee Road, Meeru

5. Anita Jain (aunt), wife of Dr. Ajay Jain, resident of B-13 Adarsh Nagar, Begambagh, Lalkurti Police Station, District Meerut,

alleging that the complainant□s daughter, Snigdha, was demanded 6 million rupees and a vehicle and was subjected to harassment. Due to the harassment, she had a miscarriage. On 21.10.2022, she was assaulted and locked in a room. When the complainant brought his daughter home, her condition worsened, and she died while being taken to the hospital. A registration was made regarding her death, and the investigation has been conducted by me, the Area Crime Officer.

During the investigation of the above case, Dr. Akshay Jain, son of the late Mr. Girilal Jain, resident of B-13 Adarsh Nagar, Lalkurti, District Meerut, stated that the medicine prescribed for Snigdha by Dr. Geetanjali Bendre was not understood by the medical store owners; therefore, Udit Arya approached Dr. Akshay Jain to obtain the correct spelling of the medicine or to have the prescription made. However, contrary to this statement, the examination of the Call Detail Record (CDR) of Udit Arya□s phone number 8454045412 reveals that Udit Arya did not visit Dr. Akshay Jain on 10.09.2022 to get the prescription made because the location of Udit Arya□s phone was not near Dr. Akshay Jain□s Giripushp Arogya Hospital, and there was no phone conversation between Udit Arya and Dr. Akshay Jain. There is a contradiction between Dr. Akshay Jain□s statement and the location and call logs in Udit Arya□s CDR. Therefore, it appears that the prescription was fabricated by Dr. Akshay Jain to benefit the above-named accused in this case. Since Mrs. Anita Jain, wife of Dr. Ajay Jain, resident of B-13 Adarsh Nagar, Begambagh, Lalkurti Police Station, District Meerut, is the sister of accused Rakesh Arya, son of Omprakash Arya, and the wife of Dr.

Ajay Jain, the younger brother of Dr. Akshay Jain, Anita Jain appears to be involved in the false/fake prescription prepared by Dr. Akshay Jain on 10.09.2022.

Therefore, your honor is requested to kindly take action against Mr. Akshay Jain, son of the late Mr. Girilal Jain, and Mrs. Anita Jain, wife of Dr. Ajay Jain, residents of B-13 Adarsh Nagar, Lalkurti, District Meerut.

19. The Investigating Officer obtained the call detail report of Udit Arya and opposite party no.2 and found that Udit Arya did not visit Dr. Akshay Kumar Jain on 10.09.2022 to obtain the prescription because Udit Arya's location was not found near Dr. Akshay Kumar Jain's hospital. Furthermore, there was no telephonic conversation between Udit Arya and opposite party no. 2. The Investigating Officer found that it appears the prescription was prepared by opposite party no.2 on 10.09.2022.

20. The allegations made by the applicant in the complaints are duly supported by the said investigation. Moreover, it cannot be said that the complaints were filed with the intention to harm the reputation of opposite party no.2.

21. The principles governing the summoning of an accused in a criminal case, as well as the parameters for quashing criminal proceedings, are well-settled. Summoning an accused in a criminal case is a serious matter, and criminal law cannot be set into motion as a matter of course. It is not necessary that the complainant bring only two witnesses to support allegations in the complaint to initiate criminal proceedings. The order of the Magistrate summoning the accused must reflect an application of mind to the facts of the case and the applicable law. The Magistrate must carefully scrutinize the evidence brought on record and determine whether any offence is prima facie established. The Magistrate may even personally put questions to the complainant and witnesses to elicit answers to ascertain the truthfulness of the allegations and then examine if any offence is prima facie committed by any or all of the accused.

22. When an accused seeks quashing of either the FIR or criminal proceedings on the ground that such proceedings are manifestly frivolous, vexatious, or malicious, the Court is duty-bound to examine the matter with greater care. It will not suffice for the Court to consider only the averments made in the FIR/complaint to ascertain whether the necessary ingredients to constitute the alleged offence are disclosed. In frivolous or vexatious proceedings, the Court has a duty to consider additional circumstances emerging from the case record, beyond the averments, and, if necessary, with due care and circumspection, to read between the lines. While exercising its jurisdiction under Section 482 CrPC or Article 226 of the Constitution, the Court need not restrict itself to the stage of the case but is empowered to consider the overall circumstances leading to the initiation/registration of the case as well as the materials collected during the investigation.

23. Based on the material available on record, there is no evidence to prove that the applicant was responsible for the publication of the said news article. Furthermore, there is no evidence to prove that the complaints were made with malicious intent to harm the reputation of Dr. Akshay Kumar Jain. Additionally, opposite party no. 2 has not filed any evidence to prove that the applicant had conducted any press conference.

24. Considering the overall facts and circumstances, it can be said that no prima facie case is made out against the applicant. The learned Magistrate passed the summoning order in a very casual manner and did not properly consider the facts of this case.

25. Accordingly, the application under Section 528 B.N.S.S. is allowed. The summoning order dated 06.04.2024 passed by the Judicial Magistrate/Additional Civil Judge (Junior Division), Court No. 1, District Meerut, in Complaint Case No. 907 of 2024, under Section 500 I.P.C., Police Station Lalkurti, District Meerut, along with the entire proceedings of the aforesaid complaint case, as well as the revisional order dated 10.09.2025 passed by the Additional Sessions Judge, Court No. 3, Meerut in Criminal Revision No. 419 of 2024, are hereby quashed.

(2026) 5 ILRA 123
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.05.2026

BEFORE

THE HON'BLE ROHIT RANJAN AGARWAL, J.

Contempt Application (Civil) No. 3434 of 2026

Aalha Charasiya & Ors. ...Petitioners
Versus
Sri Varun Kumar Jha & Ors. ...Respondents

Issue for Consideration

Whether the opposite Party for willful disobedience of the judgment and order dated 05.05.2026 passed by this Court in Civil Misc. Writ Petition No.15902 of 2026

Head Notes

The Contempt of Courts Act, 1971- Section 12- The applicants had filed Civil Misc. Writ Petition No.15902 of 2026, which was disposed of vide order dated 05.05.2026. Copy of the said order was served to the opposite party through registered post on 07.05.2026, but the said direction has not been complied with by the opposite party till date- Prima facie, a case has been made out for punishing the opposite party for willful disobedience of the judgment and order passed in the aforesaid writ petition.

Held- The opposite party is granted three months' further time to comply with the order dated 05.05.2026 passed by this Court in Civil Misc. Writ Petition No.15902 of 2026 from the date of production of a certified copy of this order- The opposite party shall comply with the directions of the writ court and intimate the applicants the order through the self-addressed envelop within a week thereafter. **Application disposed of.** (E-15)

(Para 3, 4, 5 & 7)

Case Law Cited

List of Acts

The Contempt of Courts Act, 1971

List of Keywords

Section 12; Contempt of Court Act; Prima facie case made out; Opposite Party granted further time; to comply with the order passed by the High Court

Case Arising From

Contempt application has been filed under Section 12 of the Contempt of Courts Act for punishing the Opposite Party for willful disobedience of the judgment and order dated 05.05.2026 passed by this Court in Civil Misc. Writ Petition No.15902 of 2026.

Appearances for Parties

Counsel for Applicant(s) : Arvind Kumar Mishra, Surendra Kumar Chaubey
Counsel for Opposite Party(s) :

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

1. Heard learned counsel for the applicants.

2. The present contempt application has been filed under Section 12 of the Contempt of Courts Act for punishing the Opposite Party for willful disobedience of the judgment and order dated 05.05.2026 passed by this Court in Civil Misc. Writ Petition No.15902 of 2026.

3. It is contended that applicants had filed aforesaid writ, which was disposed of vide order dated 05.05.2026. Copy of the said order was served to the opposite party through registered post on 07.05.2026, but the said direction has not been complied with by the opposite party till date.

4. Prima facie, a case has been made out for punishing the opposite party for willful disobedience of the judgment and order passed in the aforesaid writ petition.

5. However, no notice is issued to the opposite party at this stage. The opposite party is granted three months? further time to comply with the order dated 05.05.2026 passed by this Court in Civil Misc. Writ Petition No.15902 of 2026 from the date of production of a certified copy of this order.

6. The applicants shall supply a duly stamped registered envelope addressed to the opposite party and another self-addressed envelope to the office within one week from today. The office shall send a copy of this order along with the self-addressed envelope of the applicants with a copy of contempt application to the opposite party within one week thereafter and keep a record thereof.

7. The opposite party shall comply with the directions of the writ court and intimate the applicants the order through the self-addressed envelop within a week thereafter.

8. In case, the opposite party does not comply with the order, it would be open to the applicants to approach this court again.

9. With the aforesaid observations, this application is finally disposed of at this stage.

(2026) 5 ILRA 125
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 27.05.2026

BEFORE

THE HON'BLE RAJNISH KUMAR, J.
THE HON'BLE MRS. BABITA RANI, J.

Criminal Appeal No. 206 of 1989
& Connected with other case

Laxmi Kant @ Pappu (dead) ...Appellants
Versus
State of U.P. ...Respondent

Issue for Consideration

Matter pertains to whether the conviction of the surviving appellant under Ss. 302/34 of the Indian Penal Code, 1860 could be sustained solely on the basis of the last seen theory and other circumstantial evidence when the prosecution failed to establish a complete chain of circumstances beyond reasonable doubt - whether the order forfeiting the motorcycle to the State under S. 452 of the Code of Criminal Procedure, 1973 was sustainable or the vehicle was liable to be released to its owner upon conclusion of the trial. (Paras 1, 2, 56)

Headnotes

Criminal Law - Criminal Procedure - Homicide - Circumstantial Evidence - Last Seen Theory - Disposal of Property - Indian Penal Code, 1860 - Ss. 302, 34 and 120-B - Code of Criminal Procedure, 1973 - Ss. 374(2), 437-A, 452 and 454 - Evidence of last seen together is a weak kind of evidence and cannot by itself sustain conviction unless the chain of circumstances is complete and excludes every hypothesis consistent with the innocence of the accused - conviction on the basis of last seen together can be recorded only where the time gap between the accused and the deceased being last seen together and the recovery of the dead body is so small that the possibility of any person other than the accused being the author of the crime becomes impossible - power under S. 452 Cr.P.C. is to be exercised after conclusion of the trial and, unless circumstances demand otherwise, property should ordinarily be released to its owner - prosecution failed to prove motive or establish a complete chain of circumstances - testimonies of the last seen witnesses were found inconsistent and improbable - conviction under Ss. 302/34 I.P.C. and order of forfeiture of the motorcycle set aside. (Paras 42, 44, 50, 51, 52, 55, 56, 60)

Held: The evidence of last seen together is a very weak kind of evidence and conviction cannot be made only on the basis of evidence of last seen together without considering the circumstantial evidence and the chain of circumstances complete in the manner in which they refer only and only towards the guilt of the accused and there is no hypothesis consistent with the innocence of the accused - the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established and those circumstances on the basis of which inference of guilt is drawn should be of a definite tendency unerringly pointing towards the guilt of the accused only - each of these circumstances so proved must form a complete chain without any break to clearly point to the guilt of the accused and exclude every hypothesis except the one to be proved - conviction on the basis of the theory of last seen together can be made where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so short that the probability of any person other than the accused being the author of the crime becomes impossible - the learned trial court recorded the conviction without considering and appreciating the material on record appropriately and merely on the basis of surmises and conjectures - once the trial concluded, unless

the circumstances so demand, the vehicle should have been released in favour of the owner particularly when he was not involved in the crime in any manner - Appeals allowed. (Paras 42, 44, 51, 52, 55, 60) (E-7)

Case Law Cited

Pakala Narayana Swami Vs. Emperor; **(1939) 26 AIR PC 47***; Sharad Birdhichand Sarda Vs. State of Maharashtra;* **AIR 1984 SC 1622;** *Chetan v. State of Karnataka;* **(2025) 9 SCC 31***; State of Goa v. Sanjay Thakran;* **(2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162***; Bodhraj v. State of J&K;* **(2002) 8 SCC 45 : 2003 SCC (Cri) 201***; Ramreddy Rajesh Khanna Reddy v. State of A.P.;* **(2006) 10 SCC 172 : (2006) 3 SCC (Cri) 512***; Chandrabhan Sudam Sanap Vs. State of Maharashtra;* **(2025) 7 SCC 401***; Karakkattu Muhammed Basheer Vs. State of Kerala;* **(2024) 10 SCC 813***; Nevada Properties Pvt. Ltd. Through Its Directors Vs. The State Of Maharashtra and Another;* **(2019) 20 SCC 119***; N. Madhavan v. State of Kerala;* **(1979) 4 SCC 1 : 1979 SCC (Cri) 883***; Union of India Vs. Ganpati Dealcom (P) Ltd.;* **(2023) 3 SCC 315.**

List of Acts

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

List of Keywords

Circumstantial evidence; last seen together; chain of circumstances; motive; homicidal death; dying declaration; hostile witness; benefit of doubt; forfeiture of property; motorcycle.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal No. 206 of 1989 under S. 374(2) of the Code of Criminal Procedure, 1973 and Criminal Appeal No. 336 of 1989 under S. 454 of the Code of Criminal Procedure, 1973 against the judgment and order dated 04.03.1989 passed by the Sessions Judge, Hardoi in Sessions Trial No. 209 of 1987.

Appearances for Parties

Advs. for the Appellant:
Shri Rajiv Kumar Bajpai; Ms. Suparna Mishra;
Shri Anand Yadav holding brief of Shri Katyayan Mishra.
Advs. for the Respondents:
Shri Pawan Kumar Mishra, Additional Government Advocate.

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

(1) Criminal Appeal No. 206 of 1989 under Section 374 (2) of the Code of Criminal Procedure, 1973 (here-in-after referred to as 'Cr.P.C.') has been filed by convicts/appellants, Laxmi Kant alias Pappu and Sunil Kumar, assailing the judgment and order dated 04.03.1989 passed by Sessions Judge, Hardoi, in Sessions Trial No. 209 of 1987; State Versus Laxmi Kant alias Pappu and others, emanating from Case Crime No. 183 of 1986, under Sections 302/34 of the Indian Penal Code, 1860 (here-in-after referred to as 'I.P.C.') (against accused Laxmi Kant @ Pappu and Sunil Kumar) and under Section 302/120B I.P.C. (against all accused persons), Police Station Shahabad, District Hardoi, by which appellants, Sunil Kumar and Laxmi Kant @ Pappu (since deceased), have been convicted and sentenced under Section 302 I.P.C. read with Section 34 I.P.C. for life imprisonment and a fine of Rs.5,000/- each, which shall be paid to father of deceased on deposit and in case of default in payment of fine, they will suffer further imprisonment for one year and in view of this sentence, no separate sentence has been passed under Section 302 I.P.C. read with Section 120-B I.P.C. However, co-accused Natthu Lal and Sri Kant have been acquitted under Section 302 I.P.C. read with Section 120-B I.P.C.

(2) Criminal Appeal No. 336 of 1989 under Section 454 Cr.P.C. has been preferred by appellant, Puttoo Lal Trivedi, assailing the judgment and order dated 04.03.1989 (supra), by which Motor Cycle, bearing registration No. U.S.W. 8137 (Rajdoot), of the appellant, Puttoo Lal Trivedi, has been forfeited in favour of the State.

(3) Both Criminal Appeal No. 206 of 1989 and Criminal Appeal No. 336 of 1989, arising out of one and the same judgment and order dated 04.03.1989, have been clubbed, heard and are being decided together by means of this common judgment and order.

(4) It is pertinent to mention that during pendency of Criminal Appeal No. 206 of 1989, convict/appellant no.1, Laxmi Kant alias Pappu, died, therefore, Criminal Appeal No. 206 of 1989 filed on behalf of convict/appellant no.1, Laxmi Kant alias Pappu, stood abated by means of order dated 15.02.2024 passed by a Co-ordinate Bench of this Court. Thus, Criminal Appeal No. 206 of 1989 only survives on behalf of convict/appellant no.2, Sunil Kumar.

(5) It is also pertinent to mention that while entertaining Criminal Appeal No. 336 of 1989, this Court, while admitting and summoning the trial Court□s record, suspended the operation of the order regarding forfeiture of the motor cycle during pendency of the appeal and further directed to give the motor cycle in the custody of the appellant after obtaining sufficient security to the satisfaction of the Chief Judicial Magistrate, Hardoi, by means of order dated 26.04.1989 and as informed by learned counsel for the appellant, the custody of vehicle was taken by the appellant.

Facts of the case

(6) The case of the prosecution, in short, is that complainant, Pran Nath Shukla son of Shri Shyamcharan, resident of Mohalla Dilerganj, police station Shahabad, district Hardoi, had submitted a written report at police station Shahabad, district Hardoi, on 03.11.1986, alleging therein that his son, Deepak Kumar, runs a shop of electrical goods, which is situated in the house of Natthulal Mishra, resident of Mohalla Dilerganj, Kasba Shahabad. Some rumours were spreading for a few days alleging an illicit relations of the daughter of Natthu Lal Mishra, who got married in Pali, with his son Deepak Kumar, aged about 17 years, as she used to visit frequently. Due to this, the family members of Natthu Lal were keeping enmity internally, although apparently they maintained cordial relations. Yesterday i.e. on 02.11.1986, at about 6:30 in the evening, Laxmi Kant alias Pappu son of Natthu Lal, took his son Deepak Kumar, who was wearing kurta-paijama, on a Rajdoot motorcycle and in front of the house of Janardan Gupta in Mohalla Dilerganj near the peepal tree, Sushil Kumar Singh and Rajni Kant Srivastava saw them and also had a talk with them and since then his son did not return back home. In the morning, he (complainant) met Laxmi Kant in front of his house and he inquired about his son Deepak Kumar, but he refused to tell anything. Thereafter, he went in search of his son Deepak Kumar among Natthulal□s relatives and his several relatives, but no whereabout of him was found. Laxmi Kant had also left his home since morning, therefore, he has suspicion that Laxmi Kant and his associates would have disappeared his son and killed him or they would kill him. Report may be registered and legal action may be taken.

(7) On the basis of the aforesaid report (Ext. Ka.1), initially a check F.I.R., bearing Case Crime No. 183 of 1986, under Section 364 I.P.C. was registered against accused Laxmi Kant alias Pappu and his associates on 03.11.1986 at 07:10 p.m. at Police Station Shahabad, district Hardoi.

(8) The investigation of the case was entrusted to S.I. Jagdamba Prasad Mishra. He, after recording statement of the witnesses including complainant-Pran Nath Shukla, Rajni Kant and Sushil Kumar, inspected the place, where he was lastly seen and prepared the site-plan. However, whereabouts of complainant's son Deepak Kumar could not be traced on that day.

(9) In the meantime, Home Guard Kamal Prakash, who was on duty at Police Station Kotwali, Shahjahanpur, saw a dead body near Jamaur culvert on 03.11.1986. He went to police station Kanth, District Shahjahanpur and informed about it, on the basis of which, an entry was made in G.D. No. 10 at 08:15 a.m. on 03.11.1986 at police station Kanth, district Shahjahanpur. Thereafter, S.I. Ram Lakhan Singh, S.S.I. Hariraj Tyagi, Constable Virpal Singh, Constable Digambar Singh Constable Jagvir Singh and Constable Rampal Singh were sent for the spot with relevant papers. Head Moharrir S.K. Sharma also accompanied them. They reached the spot, but the dead body could not be identified by anybody.

(10) In the meantime, Village Chowkidar Ram Krishna reached the police station Kanth, district Shahjahanpur on 03.11.1986 at 03:30 P.M and an entry was made in G.D. No. 22 therein and a Case Crime No. 238 of 1986, under Section 302 I.P.C. was registered on the basis of information noted down in G.D.No. 10 and the information was given by R.T. Set to the authorities. This report was handed over to Village Chowkidar Ram Krishna, who was also sent to the spot. The investigation of Case Crime No. 238 of 1986 was entrusted to S.I. Ram Lakhan Singh. He prepared the inquest report of unknown dead body, photo lash, challan lash, letter to C.M.O., letter to R.I. and sealed the dead body and sent it to mortuary, Shahjahanpur for post-mortem examination alongwith Constable Jagvir Singh and Constable Virpal Singh. He collected blood stained soil and plain soil and prepared recovery memo. He also recovered a pair of sandals of the deceased Deepak Kumar and memo of it was prepared. On 04.11.1986, Constable Vir Pal Singh along with Constable Jagvir Singh returned to Police Station Kanth and deposited the clothes of the deceased.

(11) The post-mortem of the dead body in unknown was conducted on 04.11.1986, at 03:00 P.M., by Dr. R.S. Malviya at Sadar Hospital, Shahjahanpur. He found that the age of the deceased was about 18 years and his probable time of death was about one and half day. In the post-mortem report, following ante-mortem injuries have been noted :-

1. Fire arm wound of entry round 2 c.m. diameter, margins inverted with blackening 4 c.m. round wound, margin on outer side left thigh 11 c.m. below anterior superior iliac spine left, directed radially.

2. Fire arm wound of exit 1/2 c.m. diameter margins inverted on inner side of left thigh upper part, 4 c.m. below root of penis, dialated to left side probing proved that wound is communicated to injury no.1

3. Abrasion 1 c.m. x 0.5 c.m. on upper part of left scrotum adjacent to injury no.2.

4. Echimosis seen in left scrotum.'

He also appended a note that on pursuing a track of bullet, it was found to transverse through muscles in front of left thigh bone horizontal and 2 wads and 3 metallic pieces were removed from thigh and 4 metallic pieces were removed from left scrotum which was opened and was found to have haetoma and ruptured haetoma was also found in pubic region.

On internal examination, he found that stomach was empty. He also took out from the body of deceased one sweater, one kurta, one baniyan, one janeo, one paizama, one underwear and one metallic ring. The finger prints were also taken in his presence.

(12) On 04.11.1986, father of the deceased, Pran Nath Shukla, on getting information in regard to unknown dead body, reached the mortuary, Shahjahanpur. By that time, post-mortem of the dead body of the deceased was done. S.S.I. Hariraj Singh Tyagi, who accompanied S.I. Ram Lakhan Singh, had shown the unidentified dead body to the father and other relatives including Ashok Kumar Tewari. Upon seeing, complainant Pran Nath Shukla had identified the unknown dead body as his son Deepak Kumar and the dead body of the deceased Deepak Kumar was handed over to him. An entry in this respect was made in G.D. No. 22 at 06:55 p.m. on 04.11.1986. Thereafter, S.S.I. Hariraj Singh Tyagi along with other Constable returned to P.S. Kanth and an entry was made in G.D. at 07:45 P.M. on 04.11.1986, noting therein that the dead body of Deepak Kumar was given to his father and the offence commenced at Shahabad and ended at Jamaur culvert within that police station but the investigation will be done by police station Shahabad.

(13) The Investigating Officer S.I. Ram Lakhan Singh, thereafter, made a report to higher authorities on 04.11.1986 that the offence relates to Police Station Shahabad, therefore, papers be sent to police station Shahabad for investigation. Thereafter, further investigation of the case was conducted by S.I. Jagdamba Prasad Mishra of Police Station Shahabad. In the course of investigation, he found one motor cycle, bearing registration no. USW 8137, (Rajdoot black), standing in the house of aunt Smt. Vimla Misra of Sunil Kumar on 05.11.1986 and upon inquiry of it, Smt. Vimla Misra stated that her nephew Sunil Kumar in the night along with one of his friend left the motor cycle. He took the motor cycle in possession and prepared memo of recovery. On 07.11.1986, at 06:50 A.M., the case property, which was taken during investigation by S.I. Ram Lakhan Singh of Police Station Kanth, district Shahjahanpur was brought by Constable Kamlesh Chandra and was deposited in the Malkhana of Police Station Shahahbad and entry to this effect was made in G.D. No. 11. Thereafter, on 15.01.1987, Constable Rajendra Prasad Misra took the case property of Crime No. 183 of 1986 from Malkhana Shahabad to Sadar Malkhana, Hardoi and an entry to this effect was also made in G.D. No. 13. Thereafter, the case property was sent for chemical examination and Serologist's report. After completing the investigation, S.I. Mahak Singh had filed charge-sheet No. 145 of 1986 dated 31.12.1986 under Sections 364, 302 and 120-B I.P.C. against accused Laxmi Kant alias Pappu, Sri Kant, Natthu Lal and Sunil Kumar.

(14) Learned Magistrate took cognizance on the aforesaid charge-sheet and committed the case to the Court of Sessions on 11.05.1987, where the case was registered as Sessions Trial No.

209 of 1987. Learned Sessions Judge, by means of order dated 23.05.1987, had framed charges against accused Laxmi Kant and Sunil Kumar under Sections 302 read with Section 34 I.P.C. and against all accused, Laxmi Kant, Sri Kant, Natthu Lal and Sunil Kumar, under Sections 302 read with Section 120-B I.P.C. All the accused persons denied the charges and pleaded for trial. Hence trial commenced.

(15) The prosecution, in order to prove its case, examined 12 witnesses in oral evidence, which are as under :-

P.W.1	Rajnikant	Last seen witness
P.W.2	Pran Nath Shukla	Complainant/father of the deceased Deepak Kumar
P.W.3	Subhash Chandra Rastogi	Witness of criminal conspiracy
P.W.4	Smt. Krishna Kumari	Sister of complainant Pran Nath Shukla/witness of last seen
P.W.5	Chhotey	Resident of village Jamaur (Hostile)
P.W.6	Ram Pal	Resident of village Jamaur
P.W.7	Dr. R.S. Malviya	Conducted post-mortem of the dead body of the deceased and prepared the autopsy report
P.W.8	Rajendra Singh	Head Constable. He proved various G.D. Entries (Ex. Ka-5 to Ka-9).
P.W.9	S.I. Ram Lakhan Singh	Investigating Officer of Case Crime No. 238 of 1986, Police Station Kanth, District Shahjahanpur and prepared inquest report etc.
P.W.10	S.I. Jagdish Prasad Mishra	Investigating Officer of Case Crime No. 183 of 1986, Police Station Shahabad, District Hardoi.
P.W.11	Naubar Singh	Head Constable. He prepared the check F.I.R., bearing Case Crime No. 183 of 1986 and proved various G.D. Entries.
P.W.12	Mahak Singh	Investigating Officer, who submitted charge-sheet

(16) In order to prove its case, the prosecution also placed on record and proved the following documentary evidence :-

Ext. Ka.1	Written Report submitted by complainant Pran Nath Shukla (P.W.2)
Ext. Ka.2	Copy of Memo of identification of dead body of the deceased Deepak Kumar by his father, complainant (P.W.2) at the post-mortem house in the presence of witnesses and the dead body was handed over to him for cremation.

Ext. Ka.3	Memo prepared by the Investigating Officer S.I. Jagdamba Prasad Mishra regarding two letters (Ext. IV and V) given by the complainant (P.W.2)
Ext. Ka.4	Post-mortem report
Ext. Ka.5	Copy of G.D. No. 10 at 08:15 A.M. dated 03.11.1986
Ext. Ka.6	Copy of G.D. No. 22 dated 03.11.1986 at 03:30 P.M.
Ext. Ka.7	Copy of G.D. No. 22 dated 04.11.1986 at 06:55 P.M.
Ext. Ka.8	Copy of G.D. dated 04.11.1986 at 07:45 P.M.
Ext. Ka.9	Copy of G.D. No. 21 at 09:45 a.m.
Ext. Ka.10	Noting of S.I. Ram Lakhan Singh to the Head Moharrir of Police Station Kanth
Ext. Ka.11	Inquest Report of unknown dead body
Ext. Ka.12	Photo Lash of unknown dead body
Ext. Ka.13	Challan Lash of unknown dead body
Ext. Ka.14	Letter to Civil Surgeon, Shahjahanpur for post-mortem of the unknown dead body
Ext. Ka.15	Memo of blood stained soil and plain soil
Ext. Ka.16	Recovery Memo of two sandles of the unknown dead body
Ext. Ka.17	Letter dated 04.11.1986 sent by S.I. Ram Lakhan Singh
Ext. Ka.18	Recovery memo of Motorcycle, bearing registration No. USW 8137 (Rajdoot black)
Ext. Ka.19	Copy of G.D. No. 37 dated 05.11.1986 at 08:20 P.M.
Ext. Ka.20	Site Plan of the place where Rajni Kant Srivastava and Sushil last seen deceased with Laxmi Kant
Ext. Ka.21	Site plan of the place, where the dead body of the deceased was found
Ext. Ka.22	Statement of Chhotelal under Section 161 Cr.P.C.
Ext. Ka.23	Copy of G.D. No. 17 at 08:10 a.m.
Ext. Ka.24	F.I.R. vide Case Crime No.183/1986, Police Station Shahabad, District Hardoi
Ext. Ka.25	Copy of G.D. Entry dated 03.11.1986, Police Station Shahabad, District Hardoi
Ext. Ka.26	Copy of G.D. No. 11 dated 07.11.1986 at 06:50 A.M.
Ext. Ka.27	Copy of G.D. No. 14 dated 07.11.1986 at 07:30 a.m.
Ext. Ka.28	Copy of G.D. No.23 at 09:30 dated 10.12.1986
Ext. Ka.29	Copy of G.D. No. 13 dated 15.01.1987 at 09:50 P.M.
Ext. Ka.30	Report of Chemical Examiner and Serologist
Ext. Ka.31	Affidavit of Malkhana Moharrir K.S. Dixit

Ext. Ka.32	Charge-sheet

(17) Apart from above, the prosecution, in order to prove its case, has also produced following material exhibits and proved it:-

Ext. I, II, III, IV and V	Love letters adduced by complainant (P.W.2)
Ext. VI	Papers relating to Motorcycle, bearing registration No. U.S.W. 8137

(18) After recording the evidences of prosecution witnesses, the following two Court witnesses were summoned and examined:-

C.W.-1	Smt. Shahida Begum	Principal, Modern Montessori School, Shahabad. Proved that Usha Devi was a teacher.
C.W.-2	Usha Devi	Sister of accused/appellant Laxmi Kant

(19) Thereafter, the statements of accused persons were recorded under Section 313 Cr.P.C., wherein they denied the incident. Accused Laxmi Kant alias Pappu stated nothing except denial. Accused Srikant stated that out of the enmity of shop, he has been falsely implicated. He had purchased the house of maternal grandfather of witness Subhash and as such he has been falsely implicated. Accused Natthu Lal stated that Subhash Rastogi (P.W.3) was living in the house of complainant Pran Nath. The witness Rajni Kant has worked as a peon under the complainant Pran Nath, who was Naib Tehsildar and witness Smt. Krishna Kumari is the real sister of Pran Nath. He also stated that his daughter had given private examination of B.A. after passing Intermediate and she also took education in Tara Pathak Intermediate College, Shahjahanpur. Accused Sunil Kumar stated that sister's son of the complainant Pran Nath, namely, Govind Saran had a dispute with his brother in Loco and as a result of this, he has been falsely implicated in the incident.

(20) In defence, three witnesses were examined, which are as under :-

D.W.1	Puttu Lal Trivedi	Father-in-law of accused Laxmi Kant alias Pappu/owner of the Motor Cycle Rajdoot USW 8137
D.W.2	Shyam Lal	Head Clerk of Loco Shed
D.W.3	Jagdish Prasad	Witness of fact that accused Srikant was on duty at Railway Station Balamau in the night of 28/29.10.1986

(21) After hearing the learned Counsel for the parties and considering the evidence and material on record, learned trial Court, by means of the impugned judgment and order dated 04.03.1989, acquitted the accused Nathhu Lal and Sri Kant but convicted and sentenced the accused Laxmi Kant alias Pappu and Sunil Kumar, under section 302 read with Section 34 I.P.C. to undergo life imprisonment and a fine of Rs.5,000/- each. In the event of default of fine to undergo one year additional imprisonment. The learned trial Court has also provided that the motor cycle

No. U.S.W. 8137 Rajdoot, which has been used in the commission of the crime, shall stand forfeited in favour of State.

(22) Feeling aggrieved by the impugned judgment and order dated 04.03.1989, convicts/appellants, Laxmi Kant alias Pappu, and Sunil Kumar have preferred Criminal Appeal No. 206 of 1989, whereas appellant, Puttoo Lal Trivedi, owner of Motor Cycle No. U.S.W. 8137 Rajdoot, has preferred Criminal Appeal No. 336 of 1989, seeking release of the said vehicle in his favour.

(23) No appeal against the order of acquittal of accused Natthu Lal and Sri Kant has been preferred either on behalf of the State or complainant, as informed by learned A.G.A.

Arguments

(24) Heard Shri Anand Yadav, Advocate holding brief of Shri Katyayan Mishra, learned Counsel for the appellant in Criminal Appeal No. 336 of 1989, Shri Rajiv Kumar Bajpai, Advocate assisted by Ms. Suparna Mishra, learned Counsel for the appellant in Criminal Appeal No. 206 of 1989 and Shri Pawan Kumar Mishra, learned Additional Government Advocate for the State.

Submissions of appellants in Criminal Appeal No.206 of 1989

(25) Learned counsel for the appellants in Criminal Appeal No.206 of 1989 submitted that the impugned judgment and order has been passed without considering the evidence and material on record appropriately and without making out the chain of circumstances complete against the appellants because the case rests only on circumstantial evidence. He further submitted that the investigation was tainted, which does not inspire confidence, therefore, on the basis of said tainted investigation, neither the charge sheet could have been filed nor the trial could have proceeded and convicted the appellants. Thus, he submitted that the impugned judgment and order is liable to be set aside and the appellants are liable to be acquitted.

Submissions of appellant in Criminal Appeal No.336 of 1989

(26) Learned counsel for the appellant in Criminal Appeal No.336 of 1989 submitted that the learned Trial Court has illegally held that the motor cycle in question bearing No. U.S.W. 8137 (Rajdoot) was used by the accused persons in committing the crime and forfeited the same, whereas neither the same was recovered on the pointing out of any of the accused nor the witnesses to the recovery of the said motor cycle were produced. He further submitted that the prosecution has failed to prove that the motor cycle was used in the crime, therefore, it could not have been forfeited. Thus, he submitted that the impugned judgment and order to the extent of forfeiting the motor cycle of the appellant is liable to be set aside and the appeal is liable to be allowed.

Submissions on behalf of State

(27) Learned A.G.A. vehemently opposed the submissions of learned counsel for the appellants. He submitted that the P.W.-1 had told P.W.-2 that he had seen Deepak going with

Laxmi Kant on a motor cycle to Shahjahanpur and he had also told the number of motor cycle to the Investigation Officer and also deposed before the Court. He further submitted that the P.W.-4 has proved that he had seen and talked to Deepak lastly with Laxmi Kant @ Pappu and Sunil when they were going towards Shahjahanpur in the evening of 02.11.1986 at about 07:30 - 08:00 and, thereafter, Deepak has been found dead on the next morning. He further submitted that P.W.-5, in his statement recorded under Section 161 Cr.P.C., which was placed on record by the Investigating Officer and proved as Ex. Ka-22, had stated that Deepak had told him that his name is Deepak and Pappu and Sunil Mishra have brought deceiving him and fired on him and, thereafter, he was not found alive, therefore, the said statement of the deceased should be treated as dying declaration, which is sufficient proof against the appellant. Thus, he submits that though the P.W.-5 has been declared hostile in the Court but the aforesaid statement of the deceased is to be treated as dying declaration in view of the judgment rendered in the case of Pakala Narayana Swami Vs. Emperor; (1939) 26 AIR PC 47. He further submitted that the motor cycle was also recovered from the house of relative of Sunil. Thus, he submits that chain of circumstances is complete and the learned Trial Court has rightly and in accordance with law, after considering the material and evidence on record, has convicted the appellants by passing a reasoned and speaking order. There is no illegality or error in the impugned judgment and order, which may call for any interference by this Court. Thus, he submits that the appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

(28) We have considered the submissions of learned counsel for the parties and perused the records.

Analysis in Criminal Appeal No.206 of 1989

(29) The son of the complainant, namely, Deepak Kumar was doing a business of electric goods in a shop situated in Mohalla Dilerganj, which was owned by accused Natthu Lal. Deepak Kumar disappeared on 02.11.1986 around 06:30 PM, thereafter, his whereabouts were not known. When he did not return, in the intervening night of 02/03.11.1986, he was searched by his father Pran Nath i.e. the complainant. He came to know from Rajni Kant Srivastava and Sushil Kumar Singh that they had seen his son alongwith son of accused Natthu Lal, namely Laxmi Kant @ Pappu going on a motor cycle at about 06:30 PM on 02.11.1986 in front of house of Janardan Gupta near a Pipal Tree and his son was wearing kurta and paizama at that time. They had also talked with them and, thereafter, he did not return. The complainant met the accused Laxmi Kant in front of his house on next morning and he enquired about Deepak Kumar but he showed ignorance and refused to tell him anything. Thereafter, he went for search of his son Deepak Kumar among his relatives and relatives of Natthu Lal but he could not get the whereabouts of his son and the accused Laxmi Kant had also left his house, therefore, he doubted that Laxmi Kant and his associates have done away his son Deepak Kumar on account of his illicit intimacy with daughter of Natthu Lal, who was married in Pali and on account of which rumour, Natthu Lal and his family kept enmity and grudge in their hearts, however, they were not showing it. Thus, on the basis of aforesaid facts and with the aforesaid allegations, the F.I.R. was lodged by the complainant on 03.11.1986 at 07:10 PM, a corresponding entry of which was made in the G.D. No.34 at 07:10 PM. The investigation started, however, in the meantime dead body of the deceased was found on Jamaur culvert, Shahjahanpur in the morning of 03.11.1986 and his post-mortem was conducted in

unknown on 04.11.1986. On the same day in the evening, father of the deceased went to mortury in Shahjahanpur in search of his son and found his dead body. Accordingly, investigation proceeded and after completion of investigation into the matter, charge sheet was filed against the accused persons, upon which, cognizance was taken by the learned Magistrate and the case was committed to the Court of Sessions for trial, where the charge was framed, however, the same was denied by the accused persons and pleaded for trial. Consequently, the trial commenced.

(30) The first circumstances, which has been produced by the prosecution to show the complicity of accused in the commission of offence is that deceased was lastly seen in the company of accused Laxmi Kant alias Pappu and he was going with them, which was seen by P.W.1 and one Sunil Kumar. P.W.2 is only hearsay witness. There is no dispute that said Sushil Kumar was not examined by prosecution, reason best known to the prosecution. This fact is also not disputed that next day the dead body of deceased was found near Jamaur culvert, Shahjahanpur and his death was caused by firearm and his death occurred at about 09:00 p.m., same day on which he was lastly seen i.e. on 02.11.1986 itself. Therefore, homicidal death on 02.11.1986 has not been raised in challenge and the only fact in issue between the parties is complicity of accuseds. For the purpose of judicious and righteous dispensation of justice and give the observations thereof, it is always beneficial to bring on record the brief resume of evidence of factual witnesses.

(31) Rajni Kant appeared as P.W.-1. He stated that he knows the accused Laxmi Kant, who resides in his area and the deceased Deepak Kumar. On 02.11.1986 i.e. the next day of Deepawali around 06:30 in the evening, he alognwith Sushil Kumar was standing in front of house of Janardan Gupta, when Laxmi Kant and Deepak Kumar came on a motor cycle from the north. The motor cycle was being driven by Laxmi Kant and the number of the motor cycle was U.S.W. 8137, which was Rajdoot motor cycle of black colour. Sushil Kumar Singh stopped them and asked, then Deepak told that he is going to Shahjahanpur with Laxmi Kant. On being asked about the motor cycle, Laxmi Kant informed that his motor cycle has some fault and this is the motor cycle of one of his relatives, then both of them went towards the Ghas Mandi in the south. Thereafter, he has not seen Deepak alive.

(32) In cross-examination, the P.W.-1 deposed that he is working as Moharrir with an Advocate in Tehsil Shahabad. However, he was not registered as Moharrir. The complainant Pran Nath was an Ameen in Tehsil Shahabad. When he worked with Ram Hari, then Pran Nath was Naib Tehsildar. Explaining about the place he was standing, he stated that he was standing in front of the house of Janardan Gupta. He further deposed that none came from the neighbourhood of Janardan, when they saw and met Deepak. He along with Sushil was going to market. Deepak and Laxmi Kant met about 100 meters away from the house of Sushil. He knew Deepak as he was residing in his Mohalla. However, he had no friendship with him rather Sushil Kumar had friendship with Deepak. He had not stopped Deepak and Laxmi Kant rather it was Sushil, who had stopped and asked them about their going and it was then that Deepak had told that they are going to Shahjahanpur. On a query of Sushil regarding motorcycle, Laxmi Kant told that it is of his relative but the name of relative was not asked. While they were talking, none of the Mohalla had passed from there. He further deposed that this fact was shared by him with police. He also deposed that he knows father of Laxmi Kant, who has retired and running a shop of pumping set. He further deposed that they had met at 06:30 PM when it was dark and the lights were on; and after talking

with Laxmi Kant and Deepak, he along with Sushil proceeded towards market. He further deposed that Sushil Kumar had told of their meeting with Deepak to his father at 08:30 on the next morning near Jawahar Lal School, which is at a distance of 40 meters on the west side of the road and he was also present at the relevant time. Sushil had met near the school. He had also told Pran Nath in regard to the memory about number of the motor cycle and since he had seen the motor cycle, therefore, it was but natural. On a query by the Court, he deposed that there was nothing special in the motor cycle, however, since they were going on it, therefore, he could notice the number of motorcycle and it remained in memory. He denied the suggestion that he would not have seen the motor cycle and the number. He also denied the suggestion that he does not know Laxmi Kant and gave false evidence under pressure of Pran Nath.

(33) The complainant, Pran Nath appeared as P.W.-2. He deposed that Deepak was his son, who was aged about 17 years at the time of incident. At the time of incident, he was runnig an electric goods shop under the name and style of Vinay Electric House. The shop was in front of the Co-operative Bank. His shop was in one of the shops of Natthu Lal. There are four shops in the house of Natthu Lal, out of which, one was of his son, one shop was of fertilizer, one shop was of pumping set, which was looked after by Natthu Lal himself and in fourth shop, there was a tailor. Deepak was doing business for the last six months and paid rent in each month. He further deposed that Natthu Lal had two sons, namely, the accused Laxmi Kant @ Pappu and Srikant and had three daughters, out of which two have been married. One has been married in Pali and another in Umrauli. The daughter, who was married in Pali, was teaching in Modern Montessori School in Shahabad. Laxmi Kant is married and name of his father-in-law is Puttu Lal, who is resident of Shahjahanpur. The accused Srikant is servant in Railway and resides in Roza Railway Colony. Fourth accused Sunil, who is present in Court, resides with his brother Sushil, who works in Railway in Roza. He further deposed that it was a rumour for the last 15 □ 20 days that Deepak had developed illicit relations with Usha, who was married in Pali but it could not be confirmed. He further deposed that Deepak had gone from his house wearing kurta, paizama and sweater lastly on 02.11.1986, whereas in the first information report, lodged by himself, he had mentioned that he was seen by Sushil Kumar Singh and Rajni Kant Srivastava in front of house of Janardan Gupta going on Rajdoot motor cycle with Laxmi Kant @ Pappu wearing kurta and paizama.

(34) He further deposed that when his son did not return till morning of 03.11.1986, then, he started his search. Sushil Kumar and Rajni Kant met him in front of Jawahar Lal School and told that Deepak Kumar had gone to Shahjahanpur with Laxmi Kant on black motor cycle but number of motor cycle was not told by them, therefore, he asked from Laxmi Kant but he did not tell anything and, thereafter, Laxmi Kant did not meet. He had searched Deepak among his relatives as well as of his and Natthu Lal and when Deepak did not meet, he lodged the F.I.R. at the Police Station Shahabad and proved the written tehrir as Ex. Ka-1.

(35) In view of above, from the evidence of P.W.-1 and P.W.-2, it is apparent that on the one hand, P.W.-1 has deposed that the deceased Deepak Kumar had met him and Sushil Kumar Singh going on a motor cycle towards Shahjahanpur and they had met in front of house of Janardan in his Mohalla but on the other hand, the evidence of P.W.-2 does not indicate that the deceased Deepak had gone with Laxmi Kant @ Pappu from home, whereas the house of Deepak was at a distance of 100 steps from the place, where P.W.-1 and Sushil Kumar Singh had seen Deepak with Laxmi Kant

@ Pappu. The P.W.-2 has deposed to have asked from Laxmi Kant about Deepak after P.W.-1 and Sushil Kumar Singh told him that they had seen Deepak with him, whereas in the first information report, it was mentioned by him that he met Laxmi Kant in front of his house on the very next morning and asked about Deepak Kumar, who denied to tell anything about him. The evidence of P.W.-1 also shows that Sushil Kumar Singh was friend of Deepak and he had talked to Deepak and told the complainant about last seen but he has not been examined. It is also apparent from the evidence of P.W.-1 and P.W.-2 that they were known to each other as working in Tehsil and P.W.-1 must have been subordinate to P.W.-2 and Sushil Kumar Singh, who was friend of Deepak Kumar and an independent witness, has not been produced. It is also apparent from evidence of Investigating Officer P.W.-10 that number of motor cycle was told by him and other two witnesses told that they do not recollect, thus, P.W.-1 had not told the number to the Investigating Officer. The P.W.-2 has also deposed that number was not told by P.W.-1 and Sushil Kumar Singh. Hence Sushil Kumar was a material witness, who has been withheld.

(36) The learned Trial Court has recorded a finding, upon consideration of evidence of P.W.-1, that he is a reliable witness and he had seen Deepak lastly with accused Laxmi Kant going towards Shahjahanpur on motor cycle on the ground that he does not bore any enmity, living in same Mohalla or vicinity, and there was an occasion of 'Deepawali' festival to be present in market, but failed to consider that he had seen Deepak and Laxmi Kant in colony and not in market and if the finding of occasion of 'Deepawali' festival for their presence is to be considered to hold reliability of his testimony, then it should also have been considered that P.W.-1 has also deposed that none had passed from the said place, when they saw Deepak and Laxmi Kant, whereas on the 'Deepawali' festival people used to come out of houses and meet and go to the houses of others in Mohalla, particularly in the evening, therefore, absence of anybody else and withholding Sushil Kumar Singh coupled with the fact that P.W.-1 and P.W.-2 were working in same office and P.W.-1 must have been subordinate to P.W.-2 casts doubt about testimony of P.W.-1.

(37) The P.W.-2 further deposed that he continued to search his son Deepak and went to Shahjahanpur on 04.11.1986 and at mortuary, he came to know that post-mortem was conducted of an unknown body and clothes were sealed. He saw and identified the dead body of Deepak. Four other persons were with him in search. The dead body was given in his custody by the Inspector of Police Station Kanth, District Shahjahanpur and a supurdgi memo was prepared, which was signed by him and proved as Ex. Ka-2. He further deposed that he went to Chhaya Kua, Shahjahanpur to arrange for a vehicle, where Sri J.P. Mishra, S.O., Shahabad met him and he had a talk with him. It is very strange that whenever any material information was to gather or given to some person connected with the case, they met P.W.-2 with co-incidence. Rajni Kant and Sushil Kumar Singh met in front of school during search on the next day of last seen by them for information of going of Deepak with Laxmi Kant @ Pappu and Sri J.P. Mishra, the Investigating Officer of F.I.R. at Police Station Shahabad, after dead body was found. The said Investigating Officer has admitted in his evidence that he came to know about death of Deepak at Chhaya Kunwa, Shahjahanpur.

(38) The P.W.-2 further deposed that Deepak was wearing kurta, paizama and sweater, whereas he had mentioned in the F.I.R. that P.W.-1 and Sushil Kumar had seen him in kurta and paizama, although sweater was also recovered from the body of deceased, which is recorded in post-mortem report but it remained unexplained as to how P.W.-1 and Sushil Kumar Singh had

seen in Kurta and Paizama only on the same day that too at a short distance of 100 steps from house, which also creates doubt about testimony of P.W.-1.

(39) The motive of murder has been shown in the rumour of illicit relation of the deceased with the sister of Laxmi Kant. To prove the said motive, the complainant has placed on record the aforesaid love letters, alleged to have been written by sister of Laxmi Kant, who appeared as C.W.-2. However, their placing on record, as discussed above, creates doubt about their recovery.

(40) P.W.-2 had deposed that as per his inference Usha had written letters to Deepak and two letters were recovered from the shop of Deepak, which he had handed over to the Inspector of Police Station Shahabad on 11.11.1986, in regard to which, he had prepared a memo before him, which has been marked as Ex. Ka-3. Thereafter, as recorded in the evidence of P.W.-2, he went out of the Court and brought certain more letters and told that he had got certain more letters, which he placed on record and the same were marked as Ex-1, Ex.-2 and EX.-3. The Court has further recorded that a copy of the letters be kept on record and the other letters be traced out as they are not available in file. On the next date i.e. after three days, when his cross-examination resumed, he deposed that the letters, which were handed over by him to Sub Inspector on 11.11.1986 are before him and were marked as Ex.4 and Ex.5 and a memo of which is Ex. Ka-3. However, the said two letters were placed on record by him on the same day because he deposed that the two letters, which have been placed on record today, were found on 10.11.1986 in the drawer of show-case in the shop of Deepak and the remaining were found after 10-15 days, when the shop was vacated. They were recovered in a copy of passbook of Co-operative Bank, which was kept at other place behind the electric goods. The two letters were handed over by him to the Inspector, when he met in front of Police Station Shahabad and his statement was recorded at that time.

(41) The Sub Inspector, Sri J.P. Mishra, who appeared as P.W.-10, has deposed that on 11.11.1986, the complainant Pran Nath had come to the police station and filed two letters written by Pushpa to the deceased, which are on record as Ex.-4 and Ex.-5 and the corresponding memo is Ex. Ka-3. However, in the cross-examination by the Court, he stated that the complainant Pran Nath had given two love letters i.e. Ex.-4 and Ex.-5 in front of police station, which were entered by him in C.D. and not in the G.D. of the police station. However, there is no mention of the recovery memo and it has also not been mentioned that on account of shortage of paper, the entry of recovery memo is not being prepared but the names of the witnesses are mentioned. In regard to which, it is mentioned on the memo that they are witnesses. He further deposed that he had not made any over writing under his signature in Ex. Ka-3. By mistake '12.11.86' was written, which was written as '11.11.86' and '12.11.86' above remained written. It is wrong to say that he made a forged entry in Ex. Ka-3. This paper was submitted by the Incharge Inspector on 12.11.86, which is 11.11.86. Thus, there is contradiction in regard to the place, where two letters were handed over by the complainant to the Inspector and it has also not been clarified as to who were the witnesses called by him and if they were called, as to why their statements were not recorded and if their statements could not have been recorded, why they were called. Be that as it may, P.W.-2 admitted that he placed on record the said two letters recovered from the drawer of shop of Deepak on the date of his further cross-examination, which in itself creates doubt on the recovery memo of same, which deepens in view of evidence of Investigating Officer. The recovery of three letters separately

by P.W.-2 from the same shop and the manner of placing them on record also creates doubt. Learned Trial Court failed to consider it.

(42) The learned Trial Court, examined Smt. Shahida Begum, the Principal of the Modern Montessori School as C.W.-1 and Smt. Usha Devi as C.W.-2 and, considering the evidence of C.W.-1, has recorded a finding only to the effect that one lady Usha was a teacher at the time when she was principal. However, it could not be proved that she was the sister of Laxmi Kant @ Pappu. The learned Trial Court, considering the evidence of C.W.-2 Smt. Usha Devi, has held that she can not be held to be a reliable witness at all. However, during her examination on oath, she was make to write but after considering her writing, the learned Trial Court has recorded a finding that what she has written makes one to believe that the education standard is either not up to the mark or the witness deliberately twisted and made such writing which may not make any sense and the Court can not be guided by such writing at all. Even thereafter proceeded to consider her handwriting under Section 73 of the Indian Evidence Act, 1872 and recorded a finding that I have tried to find out certain alphabets of Usha 'Da' of Devi which have been repeated in the love letters. Even in the handwriting 'Phu' of 'Phool' as well as 'La' of 'Phool' and 'Gu' of 'Gulab' are the letters, which have been repeated in the handwriting. The pen pressure twist had distorted mostly in the writing before this Court, but when examined by magnifying lens, they bear similarity. However, I do not check these letters as authentically as argued by the prosecution. However, considering her cross-examination, in which, she has come to know about the murder of Deepak Kumar only four days after, the learned Trial Court has recorded a finding that this is possible only when she has sympathetic vibrations in herself for such a young boy of 18 years of age. However, from the aforesaid findings, it is clear that no conclusive finding could be recorded that the letters placed on record by the complainant were written by C.W.-2 to the deceased Deepak Kumar. Thus, this Court is of the view that since no conclusive finding could be recorded on the basis of records and evidence that the aforesaid letters were written by the C.W.-2 to the deceased Deepak Kumar, the motive shown by the prosecution for the murder of the deceased is not proved. Rumour can not take place of proof to record a finding of motive and guilt. However, even if the motive is not proved, it can not be a ground to discard the prosecution case if the prosecution is otherwise able to prove it's case, though motive is an important factor, particularly in the case of circumstantial evidence.

(43) In view of above, P.W.-1, P.W.-2 and P.W.-3 have not named the appellant, Sunil Kumar. However, P.W.-4, Smt. Krishna Kumari, who is aunt (बुआ) of the deceased, has named the appellant, Sunil Kumar and deposed two instances of last seen. She admitted that the complainant, Pran Nath Shukla is her brother and deceased Deepak is his son. She further deposed that Laxmi Kant and Sunil were friends and they were also friend of Deepak and they used to come and go together to her house in the Roza Junction Railway Colony. Sri Kant, who is brother of Laxmi Kant, is also working at Roza Junction and lives in her colony. Sushil, who is brother of the accused Sunil, is working in Railway and resides in the same colony. Her husband is also working in Railway and the house, in which she resides, is allotted in his name. She further deposed that who so ever comes from Shahjahanpur, used to go from front of her house and there is an electric pole in front of her house. She had further deposed that on 02.11.1986 at 07:30 - 08:00 in the night, while she was standing near the gate of the door of her house, she saw Laxmi Kant and Deepak going on motor cycle towards the north. Laxmi Kant was riding the motor cycle while Deepak was

his pillon rider. After 15-20 minutes, they returned and she was waiting for them because Deepak normally used to come to her house. When they returned, Sunil was also on the motor cycle and Deepak was sitting in between Laxmi Kant and Sunil. She stopped Deepak and as the motor cycle slowed down, he told that he would come tomorrow and they went towards Shahjahanpur.

(44) In the cross-examination, she stated that she was standing on the door because she was giving fodder to her cow. She also deposed that the house of Sunil is at a distance from her house and she does not know as to who resides near the house of Sunil. She further stated that she had not tried to search Laxmi Kant and Deepak on the next day. However, on 4.11.1986, she sent her children to enquire, however, admittedly, she did not go and when the children told her, she kept quite. She also stated that children were sent to the quarter of brother of Laxmi Kant. She has also deposed that she had got searched on 04.11.1986 at 04:00 in the evening and at 05:00 in the evening the Inspector had come. However, she had not sent any information to the police. She has also deposed that on 04.11.1986, one of a relative of Deepak, namely, Ashok Tiwari had come and asked for Deepak, then she informed that Deepak had come. However, she does not know Ashok Tiwari and she had met on the said day only. Thus, her evidence shows that she was not only aunt of the deceased Deepak, but had deep affection for him, therefore, she waited for him to return for about 15 - 20 minutes. However, even after gathering information from the house of Sunil and Sri Kant, she had not informed to police. The learned Trial Court has rejected the objection of defence that she is a related witness on three grounds firstly persons is expected to visit the house of a relative on the occasion of Deepawali, secondly she, having a cow is not disputed and she being a lady of fifty years, it is not unnatural that she would have come out to give fodder to cow and in colonies or quarters being a small cattle are tied outside and there was sufficient light and thirdly she had deposed that whenever Deepak used to come to his friend's house, he visited her, but failed to consider that as per own testimony of P.W.- 4, Deepak had not visited her house and findings have been recorded mainly on presumption. Even otherwise her evidence testifies only the last seen together which can not be sufficient to hold guilty.

(45) From the evidence of P.W.4, it has emerged in her evidence that she saw the deceased on two occasions, firstly, he was with the accused Laxmikant and secondly he was seen with Laxmikant and Sunil. Although we concur the finding of learned trial Court that tethering of cattle and some how probability of her presence on account of cattles, on the place of occurrence, may be respected, but one more factor which constraints us to ponder upon is that as per P.W.4, the deceased was seen by her on two occasions repeatedly, but if we analyze the situation like a prudent person, then, it appears that probability of happening and given version of P.W.4 Smt. Krishna Devi is altogether does co-exist and, therefore, does not appeal to our mind. Reason is not for to seek. It is not disputed that accused Sunil and P.W.4 reside in same colony and are acquainted with each other, then, in such situation, had the accused was having common intention to kill the deceased, then, we do not think in persepective of any person of ordinary prudence, will repeatedly pass through in front of house of P.W.4, as there was every liklihood of being seen, specifically, when they had another way to go to their destination. Therefore, the evidence of P.W.4, as put forth is highly improbable.

(46) Chhote appeared as P.W.-5. He had also named the appellant Sunil Kumar in his statement under Section 161 Cr.P.C., which has been placed on record by the Investigating Officer

as Ex. Ka-22. This statement was recorded on 05.11.1986, in which, he stated that he was fishing in the river about 150 yards (gaj) away from the place of incident in the night of Pareva, when he heard the sound of 2 - 3 fires and before that he heard 'Pappu don't kill'. Upon hearing the noise of fire, Rampal also came from his field and then he, Rampal and his nephew Ramkishan went to the place of occurrence. When they reached there, two persons ran towards south on the motor cycle, which was parked on the south of bridge. They went near the injured, who told his name Deepak and that Pappu and Sunil Mishra have shot him bringing him there deceiving him. He asked to take him to the hospital but on account of fear of being implicated, they ran away and did not tell it to anybody. The incident was stated of 08:30 - 09:00 in the night. He admitted in his examination-in-chief before Court that he was fishing in river Makshi at 08:00 in the night about 14 months ago, when his nephew Ramkishan was with him. He had heard the noise of fire, thereafter, Rampal had come from his field and all the three ran away. He had not seen any injured there. Thus, he was declared hostile. In the cross-examination, he admitted that his statement was recorded by the Inspector on the 3rd day but he had not told that he had heard 'Pappu don't kill'. He also denied to have given any statement that they had gone to meet the injured, who has told the aforesaid.

(47) Rampal appeared as P.W.-6, who also admitted that he was at his field when he had heard sound of fires and upon hearing the same, he alongwith Chhote and Ramkishan, who were fishing in the Bakshi river, ran away from there. He had not seen the injured and the motor cycle. He also deposed that the Inspector had recorded his statement on the next day, which was given by him as the false thing was told by the Inspector and on account of fear, he had told that. In the cross-examination, he admitted that he had come with the police personnel. He has also stated that earlier he has not given the evidence on account of fear of the Inspector and the police personnel.

(48) In view of above, the P.W.-5 and the P.W.-6 have turned hostile and the P.W.-6 has also stated that he had given statement to the police on account of the fear and as a false thing was told to him by police. No further cross-examination was made from him in this regard. So far as the statement of P.W.-5 under Section 161 Cr.P.C. is concerned, which has been placed on record, the same is not considerable for the reason that he has denied before the Court to have given any such statement. It is also noticed that in the statement under Section 161 Cr.P.C., he stated that he heard 'Pappu don't kill' from a distance of 150 yards (gaj), which is highly improbable and evidence of P.W.-6 shows that the police had got their statement misleading them, which may be to solve the case and show good work. Even otherwise the statement under Section 161 Cr.P.C. cannot be relied for any purpose except for contradicting him in cross-examination under Section 162 Cr.P.C. in the manner provided under Section 145 of the Indian Evidence Act, 1872. The judgment in the case of Pakala Narayana Swami Vs. Emperor (Supra) is of no assistance to learned A.G.A. and distinguishable on the facts of the present case. The learned Trial Court has placed reliance of testimony of P.W.-5 and P.W.-6 on the ground that they had heard sound of fire in the night of 02.11.1986 near the culvert, where the dead body was found on next morning but it cannot be a ground to hold the appellant guilty.

(49) In view of above, the P.W.-5, Chhote and the P.W.-6, Ram Pal, the star witnesses of prosecution have turned hostile, therefore, there is no eye witness account of crime and the case rests on the evidence of 'last seen together' only as P.W.-1 had deposed that he had seen the deceased Deepak lastly with Laxmi Kant @ Pappu going on a motor cycle towards Shahjahanpur

but he had neither seen nor named the only surviving appellant, Sunil Kumar, therefore, his testimony is not of any assistance to the case of prosecution in regard to the appellant Sunil Kumar. The P.W.-4, Smt. Krishna Kumari has deposed that she had seen Sunil Kumar going with deceased Deepak Kumar and Laxmi Kant @ Pappu from Roza Railway Colony in front of her house around 07:30 - 08:00 in the night on 02.11.1986, when he was sitting in between Laxmi Kant @ Pappu and Sunil Kumar, who was residing in her colony, when Deepak had told her from the motor cycle that he would come on the next day and they went towards Shahjahanpur. The next day dead body of Deepak was found on Jamaur culvert on Shahjahanpur - Jalalabad Road but it has not been proved by any of the witness that Jamaur culvert falls on the way in between Roza Railway Colony and Shahjahanpur. The evidence of P.W.-10, S.I. Jagdamba Prasad Mishra shows that he had gone with S.I. Ram Lakhan Singh on the place of occurrence in front of Jamaur on the Pulia of Bakshi Nala on Shahjahanpur - Jalalabad Road and, after inspection, prepared the site plan on his pointing out, whereas the F.I.R. was lodged on the information given by Watchman Ram Kishore and site-plan has not been prepared on his pointing out, therefore, place of recovery of dead body also remained unproved by any cogent evidence because he has also not been produced.

(50) The evidence of 'last seen together' is very weak kind of evidence and conviction cannot be made only on the basis of evidence of 'last seen together' without considering the 'circumstantial evidence' and chain of circumstances complete in the manner, in which they refer only and only towards the guilt of the accused and there is no hypothesis of innocence of the accused. The 'circumstantial evidence' is to be seen on the touchstone of 5 golden principles (Panchsheel) laid down by the Hon'ble Supreme Court, in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra; AIR 1984 SC 1622. The said 5 golden principles are as under:-

"(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

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

(3) The circumstances should be of a conclusive nature and tendency;

(4) They should exclude every possible hypothesis except the one to be proved; and

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

(51) In view of above, the normal principle is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established and that those circumstances on the basis of which inference of guilt is drawn, should be of a definite tendency unerringly pointing towards the guilt of the accused only. The circumstances, on the basis of which inference of guilt is sought to be drawn after considering cumulatively, should form a complete chain showing that in all human probability, the crime was committed by the accused only. However, if

the prosecution fails to show and prove the chain of circumstances and exclude every hypothesis other than the guilt of the accused, the conviction on the basis of 'circumstantial evidence' cannot be made and it will not sustain. The conviction can be made on the basis of theory of 'last seen together', where time gap between the pointing of time, when accused and deceased was seen last alive, and, when the deceased is found dead is too short and the probability of other than accused being the author of crime becomes impossible. However, the time gap between both the incident is to be seen on the facts and circumstances of each case and the evidence of last seen together can not be rejected merely because there is long period.

(52) The Hon'ble Supreme Court, in the case of Chetan v. State of Karnataka; (2025) 9 SCC 31, considered the issue of 'last seen' theory and held that conviction on the basis of 'last seen together' can be made only if the gap between the 'last seen' and the recovery is so short that the inference of anybody else is not possible. However, it cannot be said in every case that evidence of last seen together is to be rejected merely because the time-gap is for a considerable long period. The relevant paragraphs 86 and 87 are extracted herein below:-

"86. In this regard, the learned Senior Counsel has relied on the decision of this Court in State of Goa v. Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] wherein this Court held that: (SCC p. 775, paras 31-32)

'31. Before we analyse the evidence of PW 11 Dinesh Adhikari, who was working as a domestic help in the bar and restaurant Iguana Miraj, PW 14 Calvert Gonsalves, who was said to be in the company of A-1 and D-1 on the evening of 27-2-1999 outside the lounge of the restaurant and PW 6 Amit Banerjee, who was working as Receptionist of Hotel Seema, we would refer to certain decisions of this Court on the point of 'last seen together'. It is a settled rule of criminal jurisprudence that suspicion, however grave, cannot be substituted for proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of circumstantial evidence. This Court has applied the abovementioned general principle with reference to the principle of last seen together in Bodhraj v. State of J&K [Bodhraj v. State of J&K, (2002) 8 SCC 45 : 2003 SCC (Cri) 201] as under: (SCC p. 63, para 31)

'31. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.'

32. In Ramreddy Rajesh Khanna Reddy [Ramreddy Rajesh Khanna Reddy v. State of A.P., (2006) 10 SCC 172 : (2006) 3 SCC (Cri) 512] this Court further opined that even in the cases where time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead is too small that possibility of any person other than the accused being the author of the crime becomes impossible, the courts should look for some corroboration.'

87. However, it may be noted that this Court also observed in the aforesaid decision of Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] that it cannot be said in all cases that the evidence of last seen together is to be rejected merely because the time-gap is for a considerable long period, as stated in para 34 of the aforesaid decision which is reproduced herein as below: (SCC p. 776)

'34. From the principle laid down by this Court, the circumstance of last seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time-gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time-gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time-gap between the accused persons and the deceased last seen together and the crime coming to light is after (sic of) a considerable long duration. There can be no fixed or straitjacket formula for the duration of time-gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the accused, being the author of the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time-gap would not affect the prosecution case.'

(53) In the aforesaid case of Chetan v. State of Karnataka (Supra), the Hon'ble Supreme Court also considered as to when the conviction can be made on the basis of circumstantial evidence. The relevant paragraphs 131 to 134 are extracted herein below:-

"131. The present case is clearly one that is founded on circumstantial evidence. By its very nature, circumstantial evidence as opposed to direct evidence, is the inference one draws from the existence of a fact based on certain established fact/circumstance. This process invariably involves intuitive reasoning, proper understanding of human behaviour and psychology. This reasoning has to be rational, probative and which accords with the natural human behaviour. At the same time, there will always be certain subjective elements, which however, cannot be in the nature of surmise or conjecture. The inference may not lead to absolute certainty as we are dealing with human behaviour and reconstructing a past incident in hindsight. Naturally, when evaluating the proven circumstances for drawing certain inferences therefrom, a logical, rational and pragmatic approach

must be adopted without being too technical, pedantic, or seeking absolute proof, for this principle of circumstantial evidence is not based on statutory provision.

132. Thus, based on lived human experiences and human behaviour, if any supposition of fact is clearly inferable from an established fact, the inferred position of fact should be adopted as correct. Law does not require that a fact requires to be proved on absolute terms bereft of all doubts. What law contemplates is that for a fact to be considered proven, it must eliminate any reasonable doubt. Reasonable doubt does not mean any trivial, fanciful or imaginary doubt, but doubt based on reason and common sense growing out of the evidence in the case. A fact is considered proved if the court, after reviewing the evidence, either believes it exists or deems its existence probable enough that a prudent person would act on the assumption that it exists.

133. It is also settled that where the evidence is circumstantial in nature, the circumstances from which the inference of guilt is to be drawn, should be fully established. In other words, each of the circumstances from which certain inferences are sought to be drawn, is required to be proved in accordance with law, and there cannot be any element of surmise and conjecture, and each of these circumstances so proved must form a complete chain without any break to clearly point to the guilt of the accused person. The court has to examine the cumulative effect of the existence of these circumstances, which would point to the guilt of the accused, though any single circumstance may not in itself be sufficient to prove the offence. Thus, if the combined effect of all these circumstances, each of which has been independently proved, establishes the guilt of the accused, then the conviction based on such circumstances can be sustained. These circumstances so proved must be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved.

134. Thus, if upon evaluation of a set of proved circumstances consistent with understandable and socially recognised human behaviour, as a cumulative consequence, a clear and definitive pattern emerges which irresistibly points to the culpability of the accused person, we see no reason why we should not accept such an inferred conclusion to be correct to fasten criminal liability on the accused. On the other hand, if such an inference is sought to be assailed on the ground of any doubt, the doubt must be a reasonable one consistent with human behaviour under the circumstances of the case and not fanciful, abstract speculation or imagination."

(54) Similar view has been taken by the Hon'ble Supreme Court in the cases of Chandrabhan Sudam Sanap Vs. State of Maharashtra; (2025) 7 SCC 401 and Karakkattu Muhammed Basheer Vs. State of Kerala; (2024) 10 SCC 813.

(55) The P.W.-3 Subhash Chandra Rastogi was produced to prove the conspiracy by Sri Kant and to dispute the same, the evidence of D.W.-2 and D.W.-3 was adduced. However, they have lost their relevance as the learned Trial Court has discarded the evidence of P.W.-3 and acquitted Sri Kant, which has not been challenged either by the State or complainant.

Conclusion

(56) Adverting to the facts of the present case, it is apparent on record that evidence in case in hand is of 'last seen together' and the 'circumstantial evidence' together with same does not prove the guilt of the appellants as the chain of circumstances is not complete as discussed above, coupled with the facts that evidence of P.W.-4 does not inspire confidence and the evidence of 'last seen' adduced by P.W.-1 also creates doubt, even otherwise it is not in regard to the surviving appellant Sunil Kumar. Thus, this Court is of the view that the learned Trial Court has recorded the conviction without considering and appreciating the materials on record appropriately and merely on the basis of surmises and conjectures and the post-mortem report has been considered relying on the rumour of illicit relations of the deceased Deepak with the sister of Laxmi Kant @ Pappu and letters to be of Usha, whereas it could not be proved but relied on presumption and without any cogenct evidence, therefore, the only surviving appellant Sunil Kumar is entitled for benefit of doubt and acquittal accordingly and the impugned judgment and order is not sustainable in the eyes of law and liable to be set aside.

Analysis in Criminal Appeal No.336 of 1989

(57) The Criminal Appeal No.336 of 1989 has been filed because the motor cycle bearing No. U.S.W. 8137 (Rajdoot) has been forfeited to the State of U.P. on the ground that it has been used in commission of crime. Section 452 Cr.P.C. provides 'Order for disposal of property at conclusion of trial'. Sub Section (1) of Section 452 Cr.P.C. provides that on conclusion of inquiry or trial in any Criminal Court, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence. Thus, the Criminal Court has ample power to pass suitable order for disposal of property, which has been used for commission of any crime under Section 452 Cr.P.C. by either of three modes viz, destruction, confiscation or delivery to any person claiming to be entitled to possession.

(58) The Hon'ble Supreme Court, in the case of Nevada Properties Pvt. Ltd. Through Its Directors Vs. The State Of Maharashtra and Another; (2019) 20 SCC 119, has held that the words, ‘may make such order as it thinks fit’ in Section 452 vests the court with the discretion to dispose of the property in any of the three modes specified, namely, destruction, confiscation or delivery to the person entitled to be in possession thereof or otherwise. The relevant paragraph 23 is extracted herein below :-

"23. Section 452 states that when an inquiry or trial in a criminal court concludes, the court may make an order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming himself to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which an offence appears to have been committed or which has been used for the commission of any offence. The context is wide, albeit the words, ‘may make such order as it thinks fit’ in Section 452 vests the court with the discretion to dispose of the property in any of the three modes specified, namely, destruction, confiscation or delivery to the person entitled to be in possession thereof or otherwise (see N. Madhavan v. State of Kerala [N. Madhavan v. State of Kerala, (1979) 4 SCC 1 : 1979 SCC (Cri) 883]). However, an order under Section 452 is not an order determining title or ownership but that of the right to

possession, and therefore where serious claims to ownership are put forward, it would be best if the criminal courts directs the parties to establish their claim before the civil court. The criminal court can, however, pass appropriate order of interim nature as it may be appropriate."

(59) The Hon'ble Supreme Court, in the case of Union of India Vs. Ganpati Dealcom (P) Ltd.; (2023) 3 SCC 315, has held that Section 452 Cr.P.C. has inbuilt safeguards of in personam criminal forfeiture, wherein confiscation occurs at the end of the trial and the confiscation is to be determined at an evidential standard of 'beyond reasonable doubt' and are dependent on the result of the criminal trial. The relevant paragraph 115 is extracted herein below :-

"115. Under the IPC, forfeiture is recommended to be a form of punishment under Section 53. Accordingly, the Code of Criminal Procedure, 1973 provides for a mechanism for interim custody and forfeiture at the conclusion of trial under Section 451CrPC (in personam forfeiture), which reads as under:

'451. Order for custody and disposal of property pending trial in certain cases. When any property is produced before any criminal court during any inquiry or trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation. 'For the purposes of this section, 'property' includes' (a) property of any kind or document which is produced before the court or which is in its custody,

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

452. Order for disposal of property at conclusion of trial. '(1) When an inquiry or trial in any criminal court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

The aforesaid provisions under the CrPC have inbuilt safeguards of in personam criminal forfeiture, wherein confiscation occurs at the end of the trial. Under these provisions, confiscation is to be determined at an evidential standard of 'beyond reasonable doubt' and are dependent on the result of the criminal trial."

Conclusion

(60) Adverting to the facts of the case, P.W.-1 has deposed that he had seen Laxmi Kant @ Pappu and Deepak Kumar going on a Rajdoot motor cycle having No. U.S.W. 8137. The P.W.-4, Smt. Krishna Kumari has also deposed that she had seen Laxmi Kant @ Pappu and Deepak Kumar

and only surviving appellant, Sunil Kumar going on a motor cycle but she had not given number and make of the motor cycle. The P.W.-1 had not told the number of motor cycle to P.W.-2, when he met on the next day of missing of the deceased Deepak and Sushil Kumar Singh, who is said to have told number, as deposed by P.W.-2, has not produced. The said motor cycle was recovered from Kamalnayanpur on 05.11.1986 and witnessed by the aunt of the accused Sunil Kumar and the recovery memo in this regard was prepared, which has been proved as Ex. Ka-18 by Investigating Officer and only on this ground, a finding has been recorded that it was used in the crime and, therefore, the same has been forfeited in favour of the State but without considering that witness to recovery has not been examined and recording any reason as to why it could not be delivered to the owner i.e. Puttoo Lal Trivedi, who was neither accused nor witness in the case in hand, even if the vehicle was used in the crime, whereas we are of the view that once the trial concluded, unless the circumstances so demand, the vehicle should have been released in favour of the owner, particularly when he was not involved in the crime in any manner. Thus, this Court is of the view that this appeal is also liable to be allowed and the judgment is liable to be set aside to the said extent and Rajdoot Motor Cycle is liable to be released in favour of the appellant, which is in his custody in compliance of an interim order passed by this Court.

Order

Criminal Appeal No.206 of 1989

(61) Criminal Appeal No.206 of 1989 is allowed. The impugned judgment and order dated 04.03.1989 passed against surviving appellant no.2-Sunil Kumar by learned Sessions Judge, Hardoi in Sessions Trial No. 209 of 1987 is hereby set-aside. The sole surviving appellant no.2-Sunil Kumar is herby acquitted. He is on bail. He need not surrender. His bail bonds are cancelled and sureties are discharged.

(62) However, appellant Sunil Kumar is directed to file personal bond and two sureties each in the like amount to the satisfaction of the court concerned in compliance with Section 437-A of the Code of Criminal Procedure, 1973, within fifteen days from today.

Criminal Appeal No. 336 of 1989

(63) Criminal Appeal No. 336 of 1989 is allowed. The impugned judgment and order dated 04.03.1989 forfeiting the Rajdoot Motor Cycle bearing registration No. U.S.W. 8137 in favour of the State is also hereby set-aside. Consequently, since Motor Cycle, bearing registration No. U.S.W. 8137 (Rajdoot), has already been in the custody of the appellant Puttoo Lal Trivedi in compliance of the interim order dated 26.04.1989 passed by a Co-ordinate Bench of this Court, we provide that the said motorcycle shall stand released in favour of the appellant-Puttoo Lal Trivedi. The sureties/bond furnished under the interim order dated 26.04.1989 passed by this Court for release of motorcycle are/is discharged.

(64) Let a copy of this order alongwith trial Court's record be transmitted to the Court concerned forthwith and in any case within a week from today for necessary information and further action.

(2026) 5 ILRA 149
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 27.05.2026

BEFORE

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

Criminal Appeal No. 924 of 2018

Hareram Chaudhary ...Appellant
Versus
State of U.P. ...Respondent

Issue for Consideration

Matter pertains to whether the conviction and sentence of the appellant under S. 302 of the Indian Penal Code, 1860 and S. 3/25 of the Arms Act, 1959 can be sustained based on reliable ocular evidence corroborated by medical evidence and recovery of firearm notwithstanding the delay in lodging the First Information Report. (Paras 1, 18, 24, 25, 27)

Headnotes

Criminal Law - Murder - Delay in lodging First Information Report - Appreciation of ocular evidence - Recovery of firearm - Indian Penal Code, 1860 - S. 302 - Arms Act, 1959 - S. 3/25 - Code of Criminal Procedure, 1973 - Ss. 161, 313, 374(2) - Indian Evidence Act, 1872 - S. 27 - Delay in lodging the First Information Report explained on account of fear, panic and confusion prevailing after the occurrence - Delay, when satisfactorily explained, not fatal to the prosecution case - Reliable and trustworthy ocular evidence corroborated by medical evidence inspires confidence - Motive assumes little significance where direct eyewitness account is found reliable, though prosecution also established motive - Recovery of firearm pursuant to disclosure statement admissible under S. 27 of the Evidence Act duly proved - Minor contradictions and omissions in the testimony of witnesses and lapses on the part of the Investigating Officer not sufficient to discredit the otherwise trustworthy prosecution case - Conviction under S. 302 IPC and S. 3/25 of the Arms Act affirmed - Appeal dismissed. (Paras 24, 26, 27, 33, 39, 43, 47, 50, 51, 57, 59-61)

Held: A cumulative appreciation of the evidence on record establishes that the delay in lodging the First Information Report has been satisfactorily explained in view of the fear, panic and confusion prevailing immediately after the occurrence and such delay by itself cannot be a ground to discard the prosecution case - Motive loses its significance where the prosecution case rests upon reliable ocular evidence and in the present case the prosecution has, in any event, established the existence of motive - The evidence of the eyewitnesses is natural, consistent and trustworthy and stands fully corroborated by the medical evidence regarding the manner of occurrence and the injuries sustained by the deceased - Mere omission or lapse on the part of the Investigating Officer in preparing the site plan or conducting investigation cannot enure to the benefit of the accused when the substantive evidence on record inspires confidence - Minor contradictions and discrepancies which do not affect the core of the prosecution case are inconsequential - The recovery of firearm made pursuant to the disclosure statement of the appellant under S. 27 of the Indian Evidence Act, 1872 has been duly proved and the defence version suffers from material inconsistencies - On an overall appreciation of the evidence on record, the prosecution has proved its case beyond reasonable doubt and no interference with the conviction and sentence recorded by the trial court is called for. (Paras 27, 28, 33, 34, 39, 40, 44, 47, 48, 50, 51, 57, 59, 60) (E-7)

Case Law Cited

Tara Singh and Others Vs. State of Punjab; **AIR 1991 SC 63***; State of Himachal Pradesh Vs. Gian Chand;* **(2001) SCC(CRI) 980***; Baldev Singh Vs. State of Punjab;* **(2014) 12 SCC 473***; Palani v. State of Tamil Nadu;* **(2020) 16 SCC 401***; Subhash Aggarwal Vs. The State of NCT of Delhi;* **(2025) 8 SCC 440***; Jai Prakash Versus State of Uttar Pradesh and others;* **(2020) 17 SCC 632***; Baban Shankar Daphal and Others Vs. The State of Maharashtra;* **2025 SCC Online 137***; Birbal Nath Vs. State of Rajasthan and Others;* **(2024) 15 SCC 190***; Rammi Vs. State of M.P.;* **(1999) 8 SCC 649***; Anter Singh Vs. State of Rajasthan;* **(2004) 10 SCC 657***; Mohammed Inayuttillah v. The State of Maharashtra* **(AIR 1976 SC 483);** *Udai Bhan v. State of Uttar Pradesh* **(AIR 1962 SC 1116)**

List of Acts

The Code of Criminal Procedure, 1973; The Indian Penal Code, 1860; The Arms Act, 1859; The Explosives Act, 1884; Criminal Law Amendment Act, 1908; The Indian Evidence Act, 1872

List of Keywords

Murder; Delay in First Information Report; Ocular evidence; Eyewitness; Medical evidence; Motive; Firearm; Recovery; Disclosure statement; Appreciation of evidence; Investigating Officer; Site plan; Contradictions; Benefit of doubt

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal filed under S. 374(2) of the Code of Criminal Procedure, 1973 against the judgment and order dated 29.03.2018 passed by the Additional Sessions Judge (Fast Track), Court No. 36, Barabanki in Sessions Trial No. 301 of 2015 arising out of Case Crime No. 67 of 2015, Police Station Kothi, District Barabanki.

Appearances for Parties

Advs. for the Appellant:
Shri Vivek Shukla, Amicus Curiae.
Advs. for the Respondents:
Shri Aatreya Tripathi, A.G.A. for the State;
Shri Yogeshwar Sharan Srivastava, for the complainant.

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

(1) The instant criminal appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (here-in-after referred to as 'Cr.P.C.') has been filed by the accused/convict/appellant, Hareram Chaudhary, assailing the judgment and order dated 29.03.2018 passed by learned Additional Sessions Judge (Fast Track), Court No.36, Barabanki, in Sessions Trial No. 0000301 of 2015; State Versus Hareram Chaudhary, emanating from Case Crime No. 67 of 2015, under Section 302 of the Indian Penal Code, 1860 (here-in-after referred to as 'I.P.C.') and Section 3/25 of the Arms Act, Police Station Kothi, District Barabanki, whereby accused/appellant has been convicted and sentenced to undergo under Section 302 I.P.C. to life imprisonment and a fine of Rs.10,000/- and under Section 3/25 of Arms Act to 3 years R.I. and a fine of Rs.2,000/-. In default of payment of fine to undergo additional six months imprisonment. All the sentences have been directed to run concurrently and the period already undergone by the accused/appellant shall be adjusted in the sentence awarded by trial Court.

(2) The prosecution case, in short, is that complainant, Suryakant Mani, resident of Purshottam Dham Ashram, police station Kothi, district Barabanki had submitted a written report (Ext. Ka.1) at

police station Kothi, district Barabanki on 16.05.2015, alleging therein that Thakur Ram Sahai Singh, who was the Head Secretary of the institution Thakur Sadanand Tatvagyan Parishad, was sleeping in the threshing ground (खलियान) in the intervening night of 15/16.05.2015, when at about 02:00 a.m., Hareram Chaudhary son of Damodar Chaudhary shot in his head and Pratap Chandra resident of Raisanda was exhorting from behind and Anand Bhatt resident of Virat Nagar, Nepal, Durgesh Pandey and Premdas resident of Haridwar were saying मारो बचने ना पाये (hit, do not escape). He, Arvind Ji, Anil Ji and Bandhu Ji, Ram Niwas Gupta and Vineet Gupta resident of 39/1532A, Shiv Ashram, S.P. Mukherjee Marg and several other ashram residents had also seen them in the light of a generator.

(3) On the basis of the aforesaid written report (Ext. Ka.1), F.I.R., bearing Case Crime No. 67 of 2015, under Section 302 I.P.C., was registered at police station Kothi, district Barabanki on 16.05.2015 at 01:00 p.m. against accused Hareram Chaudhary, Pratap Chandra, Anand Bhatt, Ram Niwas Gupta, Durgesh Pandey, Prem Das and Vineet.

(4) The investigation of the case was conducted by S.I. Shri Rai Sahab Yadav. He reached the spot, prepared the inquest report of the dead body of the deceased Thakur Ram Sahai Singh, challan lash, photo lash, letter to Reserve Inspector, letter to C.M.O., site plan and also recorded the statement of the complainant under Section 161 Cr.P.C. On 25.05.2015, he arrested the accused Hareram Chaudhary and on his pointing out recovered revolver (तमंचा) and also prepared the site plan of the place from where the revolver was recovered. On 17.05.2015, he received the post-mortem report of the deceased Thakur Ram Sahai Singh.

(5) The post-mortem of the dead body of deceased Thakur Ram Sahai Singh was performed at District Hospital, Barabanki by Dr. Shailendra Kumar Singh on 16.05.2015 at 07:30 P.M. He found the following ante-mortem injuries on the dead body of deceased Thakur Ram Sahai Singh :-

1. Fire arm entry wound size 1 cm x 1 cm with an area of blackening & burning size 3 cm x 2 cm present on head, 11 cm above from right ear.

2. Fire arm exit wound size 2 cm x 2 cm present on the hard palate of oral cavity with laceration of tongue and fracture of premolar & molar of upper & lower jaw of mouth with laceration of gums of adjacent area of Left side.

On Opening :-

‘ Ecchymosis present underneath above mentioned Injuries.

‘ There is fracture of posterior part of right parital bone, base of skull Lt. side & anteriority. There is laceration of meninges & brain matter with collection of coagulated blood & fluid in cranial cavity & brain matter.

On external examination, Dr. Shailendra Kumar Singh found that post mortem staining was present on his back and rigor mortis was present on all over body. On internal examination, he

found that both lungs, kidneys and spleen were congested; digested food and gases were present in small intestine; faecal matter and gases were present in large intestine; liver was congested.

Dr. Shailendra Kumar Singh had opined date of death of deceased about half to one day and as per his opinion, cause of death was due to coma as a result of ante-mortem firearm injury. Time since death was about half to one day.

(6) During investigation, the Investigating Officer S.I. Rai Sahab Yadav found the involvement of one Pawan Rai alias Pawan Yadav also in the incident, but he absconded, due to which proceedings under Section 82 Cr.P.C. was undertaken. However, the involvement of named accused in the F.I.R., Pratap Chandra, Anand Bhatt, Ram Niwas Gupta, Durgesh Pandey, Premdas and Vineet was not found in the incident, therefore, their names were dropped. On 06.07.2015, the Investigating Officer S.I. Rai Sahab Yadav was transferred.

(7) The further investigation of the case was entrusted to S.I. Shri B.P. Yadav. He, after going through the investigation done by earlier Investigating Officer and after collecting the further incriminating evidence, filed charge-sheet against the accused Hareram Chaudhary under Section 302 I.P.C. and Section 3/25 of the Arms Act on 19.08.2015.

(8) The learned Chief Judicial Magistrate took cognizance on the aforesaid charge-sheet and committed the case to the Court of Sessions on 21.08.2015, where the case was registered as Sessions Trial No. 0000301 of 2015; State of Vs. Hareram Chaudhary. The learned trial Court framed charges under Section 302 I.P.C and Section 3/25 of the Arms Act against the accused Hareram Chaudhary on 21.11.2015. The accused Hareram Chaudhary denied the charges and claimed to be tried.

(9) In order to prove its case, the prosecution examined eight witnesses, who are as under :-

P.W.1-Suryakant Mani	Complainant
P.W.2-Bandhu Ji	Eye witness
P.W.3-Constable Pankaj Kumar Dwivedi	Prepared computerized check F.I.R.
P.W.4-Dr. Shailendra Kumar Singh	Conducted post-mortem of the deceased and prepared the report
P.W.5-S.I. Rai Sahab Yadav	1st Investigating Officer
P.W.6-S.I. B.P. Yadav	2nd Investigating Officer
P.W.7-Constable Dilbahar Yadav	Official witness of arrest of the accused and recovery of weapon of assault
P.W.8-H.C. Rampati Sonkar	Official witness and proved Ext. Ka. 13 and Ext. Ka. 14

(10) Apart from the aforesaid, the prosecution had also produced the documentary evidence and proved it, which are as under :-

Ext. Ka. 1	Written Report
Ext. Ka. 2	Check F.I.R.
Ext. Ka. 3	Post-mortem report
Ext. Ka.4	Site plan of the place of incident
Ext.Ka.5	Site plan of the place of recovery of weapon of assault
Ext.Ka.6	Recovery memo (Torch)
Ext. Ka. 7	Recovery memo (country made pistol)
Ext. Ka. 8	Challan lash
Ext. Ka. 9	Photo lash
Ext. Ka. 10	Letter to R.I.
Ext. Ka. 11	Letter to C.M.O.
Ext. Ka. 12	Charge-sheet
Ext. Ka. 13	G.D. Entry
Ext. Ka. 14	Panchayatnama
Ext. Ka. 15	Forensic Science Laboratory Report

(11) The prosecution had also produced the material exhibits, which are as under :-

Material Ext. 1	Mobile
Material Ext. 2	Mosquito net
Material Ext. 3	Torch
Material Ext. 4	Recovered country made pistol
Material Ext. 5 Material Ext. 6	Two empty cartridges
Material Ext. 7	Empty article
Material Ext. 8Material Ext. 9	Test Fire Cartridge
Paper Nos. B25/2 to B25/4	The charge-sheet submitted before the Court of the Chief Judicial Magistrate, Motihari includes true copies of documents numbered 43/07
	Orders dated 26.06.2015, 21.08.2015 and 27.11.2017 passed in Case No. 1098/14 by the learned Magistrate
List B-30	N.C.R. No. 158/11 dated 21.10.2011 under Sections 504, 506 I.P.C. and carbon copy of Police Station GD Police Station Kothi, Barabanki from List B-31

(12) After evidence of prosecution, the statement of the accused Hareram Chaudhary was recorded under Section 313 Cr.P.C., in which he stated that the incident is false; the case has falsely

been lodged; he did not commit any murder and on that day, he had not gone to the Ashram. He stated that the case has been lodged with delay; FIR has been manipulated; and the post-mortem report has been wrongly prepared on the basis of police papers. No recovery has been made from him. A false recovery memo has been prepared and the charge-sheet has been filed without proper investigation on incorrect facts. He also stated that the place and time of arrest have wrongly been shown; he was arrested from the house of Ram Pravesh in village Paigambarpur, Tola Bihar. He is innocent, on account of which, false evidence has been given against him. The report is unclear. Due to opposition to illegal activities taking place in the Ashram, he has been falsely implicated. He also stated that several criminal cases were pending against the deceased Dr. Ram Sahai Singh and he was a witness in the murder case of Saint Gyaneshwar Maharaj. Ram Sahai Singh turned hostile in that case. Due to this, the followers of Saint Gyaneshwar Maharaj and related parties bore enmity against the deceased. Many people were hostile towards him and throughout the country, those connected with the Ashram including its servants (sevadar) and office bearers, were involved in litigation. All of them have been falsely implicated. He also stated that on the night when the murder took place in the Ashram, no one in the Ashram had any information. The complainant and witness Anil Giri were in Lucknow on the night of the incident. The complainant came to know the next day and after taking legal advice, he lodge a false case. No person from the Ashram witnessed the incident nor gave any testimony.

(13) On behalf of defence, three witnesses had adduced oral evidence, who are as under :-

D.W.1	Ashutosh Kumar Rai
D.W.2	Rampravesh Prasad
D.W.3	Ram Vilas Mahto

(14) In addition to the aforesaid, the defence has also produced documentary evidence, which are as under:-

List B-43/1 Paper No. B-43/2 to Paper No.B-43/3	True copy of F.I.R., bearing Case Crime No. 181 of 2008, under Sections 147, 148, 149, 286, 34 I.P.C. and Section 7 of Criminal Law Amendment Act and Section 3/5 of Explosives Act presented in District Court Sultanpur.
Paper No.B-43/4 to Paper No.B-43/5	True copy of charge-sheet in Case Crime No. 181 of 2008

Paper No. B-43/6 to Paper No.B-43/7	True copy of chik F.I.R., bearing Case Crime No. 2571 of 2006, under Section 307 I.P.C. Section 5 Explosive Act and 7 Criminal law Amendment Act, District Court, Haridwar.
Paper No.B-43/8 to Paper No. B-43/9	True copy of charge-sheet in Case Crime No. 2571 of 2006
Paper No. B-43/10 to Paper No.B-43/11	True copy of the summoning order dated 03.03.2012 passed in Complaint Case no. 882 of 2011, 2155 of 2014; Murari Vs. Ram Sahai, under Section 504, 506 I.P.C., police station Kotwali Haridwar by Civil Judge (Senior Division)-II, Haridwar
Paper No. B-43/12 to Paper No. B-43/16	True copy of the complaint case No. 882 of 2011, 2155 of 2014.

(15) After hearing the learned Counsel for the parties and considering the evidence and material on record, learned trial Court convicted and sentenced the accused Hareram Chaudhary by means of the impugned judgment and order dated 29.03.2018 in the manner as disclosed in paragraph-1 here-in-above.

(16) Feeling aggrieved, the instant appeal has been filed by the appellant.

Arguments

(17) Heard Shri Vivek Shukla, learned Amicus Curiae for the appellant, Shri Aatreya Tripathi, learned A.G.A. for the State and Shri Yogeshwar Sharan Srivastava, learned counsel for the complainant.

Submission on behalf of the appellant:

(18) Learned Amicus Curiae appearing for the appellant submitted that the impugned judgment and order passed by the learned Trial Court is bad in the eyes of law and suffers from manifest illegality and is liable to be set aside. He further submitted that the Trial Court wrongly and illegally discarded the defence version as well as the evidence adduced by the defence and recorded conviction contrary to the evidence available on record. He further submitted that there was an inordinate delay in lodging the FIR, which has not been satisfactorily explained by the

prosecution, even then the Trial Court erroneously accepted such explanation because many vehicles and persons were present in the Ashram, even then the deceased was neither taken to hospital nor any information was given at police station. He further submitted that although seven persons including the present appellant were named in the FIR, but the Investigating Officer submitted charge-sheet only against the appellant and exonerated the remaining accused persons on the basis of the same set of statements and material collected during investigation, which itself creates doubt on the prosecution story.

(19) Learned Amicus Curiae further submitted that as per prosecution story, the appellant was armed with a firearm and made fire at the deceased by the same and though a weapon was recovered but no ballistic examination report was obtained. He further submitted that the recovery was false and the appellant has been falsely implicated in the same. He further submitted that the golden principle of presumption of innocence of the guilty has not been followed because the impugned judgment shows that learned trial Court had made a view of guilt of the appellant since the beginning and convicted the appellant without any cogent evidence regarding complicity of the appellant.

(20) Learned Amicus Curiae further submitted that learned trial Court failed to consider that there was no motive to commit such heinous offence and the prosecution also miserably failed to prove its case beyond all reasonable doubt against the appellant as required under law. Even then, the Trial Court accepted the prosecution evidence on the presumption of previous bad character of the accused as adduced by the prosecution, whereas there was no material evidence available on record corroborating the same. Thus, submission is that the impugned judgment and order suffers from vice of not only misreading of the evidence and material on record but also non-reading of relevant and necessary evidence, which has all along been available negating the alleged culpability of the appellant. The Trial Court also failed to consider that the prosecution had not examined an important witness, who disclosed that the complainant was at Lucknow at the time of the incident. He also submitted that learned trial Court has also failed to consider the legal position and the relevant laws and passed the impugned judgment and order against the weight of evidence. In any case, the sentence is too severe. Hence, the findings recorded by the Trial Court are grossly perverse.

(21) On the basis of above, learned Amicus Curiae submitted that the impugned judgment and order passed by learned trial Court is not sustainable in the eyes of law and is liable to be set-aside.

Submission on behalf of the State :

(22) Learned A.G.A. vehemently opposed the submissions advanced by learned Amicus Curaie appearing on behalf of the appellant. He submitted that the learned Trial Court rightly and in accordance with law appreciated the evidence on record and passed a well-reasoned and speaking judgment and order convicting and sentencing the appellant. He submitted that Thakur Ram Sahai Singh was the head of the Institution and all the decisions were being taken by him, therefore, on account of his death, there was a confusion among the other disciples and residents of the Ashram. However, in the morning when all assembled in the Ashram, they were unable to decide amongst themselves as to what course ought to have been adopted in such circumstances. Thereafter, on the

advise of the 'panchas', it was resolved that all of them are eye witnesses and an offence has been committed in the Ashram in their presence and failure to report the same itself would be improper, therefore, the F.I.R. should be lodged. Everyone present there agreed that the F.I.R. ought to be lodged and then at about 11:00 AM, they went to have the report registered. Thus, there was no delay in lodging the F.I.R. and the delay, if any, has satisfactorily been explained. He further submitted that motive has been proved by the P.W.1 in cross-examination and no evidence to the contrary was adduced by the defence. The delay in lodging the F.I.R. has also been properly explained as there was confusion among the disciples looking to the death in the Ashram and head of Ashram and the threats extended by the accused persons. He further submitted that P.W.-1 and P.W.-2 are eye-witnesses to the occurrence and their presence at the place of incident could not be doubted. Their testimonies fully corroborates the prosecution case. He also submitted that once the prosecution case stands proved by reliable ocular evidence, motive loses significance. He further submitted that minor discrepancies or inconsistencies in the testimonies of prosecution witnesses are natural on account of lapse of time and perception and observation, which differs person to person, therefore, the Trial Court rightly ignored such contradictions and inconsistencies. He further submitted that the recovery of the firearm was made in accordance with law, pursuant to the disclosure statement made by the appellant, which does not suffer from any illegality. Thus, submission is that the impugned judgment and order has rightly been passed in accordance with law and there is no illegality or error in it, which may call for any interference by this Court. The appeal has been filed on misconceived and baseless grounds, which lacks merit and liable to be dismissed.

Analysis

(23) We have cogitated on the submissions advanced by learned counsel for the parties and perused the records.

(24) The case of the prosecution is that the occurrence took place in the intervening night of 15/16.05.2015 at about 02:00 AM at Purushottam Dham Ashram under the Police Station Kothi, District Barabanki. Thakur Ram Sahai Singh was the Head Secretary of the Institution Thakur Sadanand Tatvagyan Parishad. He was sleeping on the threshing ground (khaliyan). At about 02:00 A.M., accused/appellant-Hareram Chaudhary fired a shot at his head and Pratap Chandra resident of Raisanda was exhorting from the back and Anand Bhatt, Durgesh Pandey and Prem Chand were also exhorting (ekjks cpus u ik;s) and we, Arvind Ji, Anil Ji and Bandhu Ji, saw Ram Nivas Gupta and Vineet Gupta, Shiv Ashram fleeing away in the night in the light of generator. Many other residents of Ashram have also seen.

(25) The first information report was lodged on 16.05.2015 at 13:00 hours at Police Station Kothi District Barabanki with the aforesaid allegations, on the basis of a written report submitted by the complainant, Suryakant Mani (P.W.-1) in regard to the incident taken place at 02:00 AM. Learned Amicus Curiae laid much emphasis that there was an inordinate delay in lodging the F.I.R. and there is no plausible explanation for the same and the conduct of the complainant and the residents of the Ashram is also against the natural conduct, which creates doubt on the prosecution case and suggests the possibility of consultation, deliberation and embellishment, which has vehemently been opposed.

(26) To consider the aforesaid submissions of learned Counsel for the parties, we have examined the evidence adduced before the learned Trial Court. The complainant appeared as P.W.-1. He had got registered the First Information Report on the basis of the written complaint i.e. Ex. Ka-1. The P.W.-1 in regard to the delay in lodging of F.I.R. has deposed that he himself, Bandhu Ji (P.W.-2) and Anil Ji had gone to lodge the F.I.R. He had given the F.I.R. after writing under his hand and, thereafter, the police had come and the inquest of the deceased was conducted before him. In the cross-examination, he stated that upon the sudden and tragic death of Thakur Ram Sahai Singh, the information was spread in the village Risanda and the adjoining area during night but no one came at that time. By the morning people had assembled. During night none of them went to the police station to inform the authorities because the Head of the Institution, who used to take all the decision was murdered and the assailants had also threatened of dire consequences, therefore, they were in shock and fear. In the morning, when all the people gathered in the Ashram, they were still in confusion and did not proceed. However, on the advise of the panchas, it was resolved that all of them are eye witnesses and an offence has been committed in the Ashram and failure to report the same, would itself be improper, therefore, the F.I.R. should be lodged. Everyone present there including Bandhu Ji, Anil Ji, Arvind Ji, Ram Dhyan Ji and Anand Ji and several others agreed that the F.I.R. ought to be lodged, whereupon at about 11:00 AM they went to register the report. He denied the suggestion that he was in Lucknow on the date and time of the incident on account of which the first information report was lodged belatedly. P.W.-2 Bandhu Ji deposed in coherence to P.W.-1 and, in his cross-examination, stated that Thakur Ram Sahai Ji, the deceased was the Head of the Ashram. There were several kind of vehicles in the Ashram but Thakur Ram Sahai Singh Ji had died on the spot after being shot, therefore, he was not taken anywhere. On the question as to why the information to the police was not given promptly, P.W.-2 deposed that when the head of the family had been killed and threats had been extended that if anyone came out, he too would be killed, nobody could venture out in such a situation. He further deposed that at that time no one could understand as to what ought to be done. When all the people gathered together in the morning after prayer, it was only then it could be decided that the report of the offence be lodged and, accordingly, he alongwith P.W.-1 went the police station and the F.I.R. was lodged by P.W.-1.

(27) A cumulative reading of the evidence of P.W.-1 and P.W.-2 indicates that on account of the sudden occurrence, in which the head of the institution was killed, there was an atmosphere of fear, panic and confusion in the ashram. The threats of dire consequences, if anybody comes out, was also extended. In such a situation nobody rushed to the police station for lodging the F.I.R. However in the morning, when all assembled, then on the advise of the 'panchas', the decision could be taken to lodge the F.I.R. as the heinous crime was committed before the eyes of the inmates of the ashram and, accordingly, the first information report was lodged. There is nothing unnatural in it. The learned Trial Court, after considering the evidence and material on record, has recorded a finding that it is proved from the evidence of P.W.-1 and P.W.-2 that the deceased Ram Sahai Singh had died and after his death nobody was capable of taking decision, therefore, on the advise of the panchas the decision was taken to lodge the F.I.R. Accordingly, the complainant proceeded to the police station at 11:00 AM and filed a written report, on the basis of which, the F.I.R. was lodged at 01:00 P.M. Thus, the delay has sufficiently been explained.

(28) The delay in lodging the F.I.R. cannot be a sole ground to discard the prosecution case outrightly because the F.I.R. is lodged only to set the criminal prosecution in motion. Though it is not disputed that delay in lodging the F.I.R creates a doubt about the consultation, concoction and embellishment in the prosecution version, therefore, the same is liable to be explained. In case the delay in lodging the F.I.R. is explained sufficiently and evidence on record is not much against the version of F.I.R., the prosecution case cannot be thrown out on this ground alone.

(29) The Hon'ble Supreme Court, in the case of Tara Singh and Others Vs. State of Punjab; AIR 1991 SC 63, held that the delay in giving the F.I.R. by itself cannot be a ground to doubt and reject the prosecution case outrightly. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report and after all it is but natural in these circumstances for them to take some time to go to the police station for giving the report. The relevant portion of paragraph 4 is extracted below:-

"4. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report. Of course the Supreme Court as well as the High Courts have pointed out that in cases arising out of acute factions there is a tendency to implicate persons belonging to the opposite faction falsely. In order to avert the danger of convicting such innocent persons the courts are cautioned to scrutinise the evidence of such interested witnesses with greater care and caution and separate grain from the chaff after subjecting the evidence to a closer scrutiny and in doing so the contents of the FIR also will have to be scrutinised carefully. However, unless there are indications of fabrication, the court cannot reject the prosecution version as given in the FIR and later substantiated by the evidence merely on the ground of delay. These are all matters for appreciation and much depends on the facts and circumstances of each case....."

(30) The Hon'ble Supreme Court, in the case of State of Himachal Pradesh Vs. Gian Chand; (2001) SCC(CRI) 980, has held that delay in lodging the F.I.R. cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report, whereas the delay has the effect of putting the Court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not and if the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the Court, the delay can not by itself be a ground for disbelieving and discarding the entire prosecution case. A cool thought may precede lodging of the F.I.R.

(31) The Hon'ble Supreme Court, in the case of Baldev Singh Vs. State of Punjab; (2014) 12 SCC 473, held that there cannot be any doubt that delay in lodging of the F.I.R. often results in embellishment as well as the introduction of a distorted version of what may have actually

happened, but the facts of each case have to be examined to find out whether the delay in lodging the F.I.R. is fatal for the prosecution case.

(32) The Hon'ble Supreme Court, in the case of Palani v. State of Tamil Nadu; (2020) 16 SCC 401, held that delay in setting the law into motion by lodging the complaint is normally viewed by the courts in suspicion because there is possibility of concoction of evidence against the accused and in such cases, it becomes necessary for the prosecution to satisfactorily explain the delay in registration of F.I.R. The relevant portion of paragraph 19 is extracted herein below:-

"19. Delay in setting the law into motion by lodging the complaint is normally viewed by the courts in suspicion because there is possibility of concoction of evidence against the accused. In such cases, it becomes necessary for the prosecution to satisfactorily explain the delay in registration of FIR. But there may be cases where the delay in registration of FIR is inevitable and the same has to be considered. Even a long delay can be condoned if the witness has no motive for falsely implicating the accused....."

(33) Adverting to the facts of the present case, we are of the view that delay in lodging F.I.R. has satisfactorily been explained and the learned Trial Court has also rejected the contention in this regard. Thus, the contention of learned Amicus Curiae in this regard is liable to be repelled only and repelled accordingly.

(34) The motive plays an important role in committing the crime. However, motive looses its significance in the case of ocular evidence. Learned Amicus Curiae for the appellant submitted that there was no motive to commit such heinous crime and the prosecution has also miserably failed to prove the motive but the learned Trial Court has failed to consider it. The contention has been opposed by the other side. The motive remains locked in the mind of an accused, therefore, it is very difficult in each and every case to prove it by any cogent evidence. It can be deduced by the evidence, material on record and the conduct of the parties. Before commenting on the facts of the present case, it would be apt to discuss the law on the point.

(35) The Hon'ble Supreme Court, in the case of Subhash Aggarwal Vs. The State of NCT of Delhi; (2025) 8 SCC 440, has held that motive remains hidden in the inner recesses of the mind of the perpetrator, which cannot, oftener than ever, be ferreted out by the investigation agency. It has also been held that a strong motive does not by itself result in a conviction and the absence of motive on that sole ground cannot result in an acquittal, when the eyewitnesses are convincing. The relevant paragraphs 28, 29 and 33 are extracted herein below:-

"28. However, it was also noticed in Kishanpal [State of U.P. v. Kishanpal, (2008) 16 SCC 73 : (2010) 4 SCC (Cri) 182] that even if there may be a very strong motive for the accused to commit a particular crime, it does not lead to a conviction by itself, if the eyewitnesses are not convincing or the chain of circumstances is not complete.

29. The declaration in the cited decisions and the decisions relied on therein, is to the effect that if the case is built solely upon circumstantial evidence, absence of motive will be a factor that weighs in favour of the accused. Just as a strong motive does not by itself result in a conviction, the

absence of motive on that sole ground cannot result in an acquittal. When the eyewitnesses are not convincing, a strong motive cannot by itself result in conviction, likewise when the circumstances are very convincing and provide an unbroken chain leading only to the conclusion of guilt of the accused and not to any other hypothesis; the total absence of a motive will be of no consequence.

33. Motive remains hidden in the inner recesses of the mind of the perpetrator, which cannot, oftener than ever, be ferreted out by the investigation agency. Though in a case of circumstantial evidence, the complete absence of motive would weigh in favour of the accused, it cannot be declared as a general proposition of universal application that, in the absence of motive, the entire inculpatory circumstances should be ignored and the accused acquitted.

(36) Adverting to the facts of the case, when we examined the records, we found that P.W.-1 has deposed that the appellant Hareram Chaudhary came in the Ashram in the year 2006 and after marrying his wife in the year 2008, when he came with his wife, he stayed in the Ashram for two years but he was not living there according to the conduct/rules of the Ashram. In the year 2010, Hareram Chaudhary started living outside the Ashram after constructing a hut. P.W.-2 Bandhu Ji, has also deposed that the deceased Ram Sahai Singh was the Head Secretary of the Institution. The accused wanted that if Secretary would be removed from the way, he could take possession of the Ashram and its property and commercialize it and for this reason, Ram Sahai Ji was murdered.

(37) In view of above, it appears that due to Hareram Chaudhary, having married and living in the Ashram with his wife, he was not considered in conformity with the discipline of the Ashram, therefore, he started residing outside the Ashram in a hut. Thus, it can be inferred that on account of conflict in this regard with the Head of Institution, he would have to live outside Ashram. Evidence of P.W.-2 also shows that the appellant was ambitious to possess the management of Ashram.

(38) The dispute or conflict with the Head of Institution and the appellant lends support by his statement under Section 313 Cr.P.C., in which he has stated that the case has been lodged on account of enmity as he was opposing the illegal activities going on in the Ashram. However, he has not disclosed as to what kind of illegal activities were going on in the Ashram. He has further stated in response to question No.12 that the deceased was a witness in the case of murder of the Sant Gyaneshwar, who established the Ashram, but he had not given the evidence, therefore, many disciple of Sant Gyaneshwar were angry with him and the complainant had also enmity with the deceased. It has also been stated that the deceased had enmity with many persons as he was the office bearer of all the Ashram in the country and many persons were falsely named in the cases, which were going on against him. It has further been alleged that neither anybody has seen the incident nor anybody came to know about the death of the deceased in the night of his murder in the Ashram. The complainant and the witness Anil Giri were in Lucknow in the night of incident and on the next day, on being informed, came and lodged a false case in consultation with embellishment.

(39) In view of above, upon considering the evidence of P.W.-1 and P.W.-2 and statement of the appellant/accused under Section 313 Cr.P.C., it is apparent that the appellant had remained attached with the Purushottam Dham Ashram. However, on account of his conduct against the principles of the Ashram, he had to leave the Ashram and was residing out of the Ashram in a hut.

He has also admitted the enmity on account of wrong activities in the Ashram. However, he fails to disclose any such activity. It is also apparent on record that a case under Section 396 I.P.C. was pending against the appellant in the Court at Motihari, Bihar, in which the charge sheet was filed and the appellant was absconding. By means of the order dated 26.06.2015 passed in the said case, it has been reported to the Court that the appellant is lodged in the Barabanki Prison. The prosecution has thus proved that the appellant had suspicion that the deceased Ram Sahai Singh had got executed the warrant against him from the Court at Bihar. The enmity has been admitted by the appellant/accused in his statement. Thus, the motive to commit the crime cannot be disputed. The learned Trial Court, considering the aforesaid evidence and the law on the point, had recorded a finding that there is sufficient evidence on record to prove the motive and there is no reason to disbelieve the same. Even otherwise, even if the motive is not proved or there is any doubt about the motive and the occurrence is proved by ocular evidence, the prosecution case cannot be thrown out on this ground. The contention in this regard of learned counsel for the appellant is not tenable and is hereby rejected.

(40) The next argument advanced by learned counsel for the appellant was that seven persons were named in the F.I.R. but, except the appellant, names of all the persons have been dropped during investigation, therefore, the prosecution story itself is doubtful. The contention of learned counsel for the appellant is misplaced and not tenable for the reason that if no prima facie evidence was found against him and the Investigating Agency has dropped his name, it can not be said that the charge sheet was wrongly and illegally been filed against the appellant only. The dropping of the names of the other persons has not been challenged and if it would have been challenged, it could have been examined in the appropriate proceedings. However, it cannot give any benefit to the appellant as his case was to be considered on the basis of the evidence and material on record and if the prosecution is able to prove the charge against the appellant beyond reasonable doubt, there was no question of acquittal on this ground. Thus, the contention in this regard is not tenable.

(41) Now we proceed to consider the next argument and the issue as to whether there are material contradictions in the evidence of prosecution witnesses, which may have any effect on prosecution case.

(42) We have carefully examined the testimonies of P.W.-1 and P.W.-2. In the F.I.R., they were mentioned as eye-witnesses of the incident and had seen alongwith others, the accused/appellant firing on the deceased in the light of generator and identified them. There is no dispute regarding source of light as 3 - 4 bulbs were alight by the generator. The complainant, Suryakant Mani, (P.W.-1), in examination-in-chief, while reiterating the recitals contained in the written report, stated that the incident took place in the intervening night of 15/16th May, 2015 at about 02:00 AM. At that time, he was present in the threshing ground (khalihan) of the Ashram and was engaged in the cleaning work of the Ashram. Thakur Ram Sahai Singh, the Head Secretary of the Ashram, was sleeping in the threshing ground at a distance of about 5□6 steps from him. Arvind Ji, Bandhu Ji, Anil Ji and several other devotees were also present there. At about 2:00 in the night, accused persons, Hareram Chaudhary, Pratap Ji, Durgesh Pandey, Premdas, Anand Bhatt (of Nepal), Vinay Gupta alias Vineet Gupta and Ram Niwas Gupta came from the southern side. As soon as they arrived, Hareram Chaudhary fired a shot at the head of Thakur Ram Sahai Singh. All of them were exhorting and shouting □ekjks cpus u ik;s□ (hit, may not be spared). A generator

was running there for service work and in its light, he identified all these persons. Two days later of the incident, a programme of Bhagwat Avataran Mahotsav was scheduled, for which they were making preparation. He did not give any information anywhere. In the morning, he along with Bandhu Ji and Anil Ji went to the police station, where he scribed and submitted the application after affixing his signature thereon. He proved the written report (Ext. Ka.-1). Thereafter, the police came at the place of occurrence and saw the dead body. The inquest proceedings were conducted in his presence. He made his signature on the inquest report. He also proved his signature on the inquest report. He also deposed that his statement was recorded.

(43) P.W.-1 was extensively cross-examined by the defence regarding incident, place of incident, reason for presence there, source of light, conduct of accused/appellant, manner of assault and the distance from where he had seen the incident and also suggested that he was not present in the Ashram at the time of the incident, but was at Param Tatva Dham Ashram, Sarvodaya Nagar, Lucknow, and had come in the morning after receiving information of the occurrence. However, his testimony is consistent with the examination-in-chief and nothing could be extracted, which may create any doubt about his testimony including presence etc. Thus, what emerges from the evidence of P.W.-1 is that though he was a person associated with the Ashram and was also connected with the Ashram situated at Sarvodaya Nagar Lucknow, he was present at Lucknow at the time of incident. It emerges from the evidence of P.W.-1 that the incident occurred in the intervening night of 15/16 May, 2015 at about 02:00 AM in the threshing ground (khalihan) of the Ashram, where the complainant and several other persons were present and engaged in routine cleaning and preparatory work on account of preparation of Bhagwat Avataran Mahotsav after two days. The deceased, who was the Head Secretary of the Ashram, was sleeping at a short distance of about 5□6 steps from the complainant (P.W.-1) and other persons, namely Bandhu Ji, Arvind Ji, Anil Ji and several devotees were also present at the spot at that time. It further emerges that the accused persons, namely Hareram Chaudhary, Pratap Ji, Durgesh Pandey, Premdas, Anand Bhatt (of Nepal), Vinay Gupta alias Vineet Gupta, and Ram Niwas Gupta, suddenly arrived from the southern side, crossed a drain, and immediately began exhorting to kill the deceased and not to spare him, upon which, the appellant, Hareram Chaudhary fired a shot at the head of Thakur Ram Sahai Singh, resulting in his instantaneous death on the spot. It also emerges that a generator was running at the place of occurrence, providing sufficient light, in which the witness clearly identified the accused. The witnesses remained at the spot in a state of fear and confusion owing to the sudden killing and the threats extended by the accused persons. In the morning, after deliberation among the persons present, including the complainant (P.W.-1) and other witnesses, a collective decision was taken to report the matter to the police and thereafter, P.W.-1 went to the police station along with others at 11:00 AM, prepared the written report and got the F.I.R. registered. P.W.-1 has also explained the surrounding circumstances of the Ashram, its layout, the presence of various structures, lighting arrangements, and the ongoing preparations, to support his presence and identification of the accused persons at the time of occurrence and nothing could be extracted in this regard, which may create any doubt about it.

(44) However, in the site plan (Ext. Ka.-4) prepared by the Investigating Officer, the place of presence of the witnesses and their distance from the deceased has not been specifically shown. On this count alone, the testimony of P.W.-1 cannot be brushed aside because lapses or omissions on the part of the Investigating Officer cannot, by themselves, demolish the prosecution case and

should not be taken in favour of the accused. Our this view is fortified by the decision of Hon□ble Supreme Court, in the case of Jai Prakash Versus State of Uttar Pradesh and others; (2020) 17 SCC 632, wherein it has been held that any omission on the part of the investigating officer cannot go against the prosecution case. If the investigating officer has deliberately omitted to do what he ought to have done in the interest of justice, it means that such acts or omissions of investigating officer should not be taken in favour of the accused.

(45) The testimony of P.W.-1 is corroborated by the testimony of P.W.-2, who was also examined by the prosecution and named in the First Information Report as an eyewitness. From the statement of P.W.-2, it is evident that this witness along with P.W.-1 and other persons was filling husk in the threshing ground, where the deceased Ram Sahai Singh was sleeping. A generator was running at the place of occurrence for cleaning work and for providing light. This witness has also deposed regarding the presence of P.W.-1 and other witnesses at the spot. In the light of the generator, this witness saw accused Hareram Chaudhary firing at Ram Sahai Singh. The gunshot injury was caused on the head of the deceased and he died at the spot itself. The defence extensively cross-examined P.W.-2 and attempted to show that P.W.-1 was not present at the place at the time of the incident and that the statement of P.W.-2 was contradictory to that of P.W.-1. However, nothing could be extracted, which may create any doubt about his testimony and presence on spot at the time of incident. Thus, his testimony clearly not only proves the presence of P.W.-1 on the spot at the time of occurrence but also affirms the presence of the others as well. The description of the place of occurrence given by P.W.-1, on the basis whereof the Investigating Officer prepared the site plan (Ext. Ka.-4), also finds corroboration from the statement of P.W.-2.

(46) P.W.-2 also deposed that in the Ashram, the morning aarti takes place between 6:00 AM and 7:00 AM. When the aarti had concluded, all the persons in the Ashram came to know about the death of Ram Sahai Singh and then, all the persons of Ashram went to the place of occurrence. The learned Trial Court has appreciated this evidence of P.W.-2 and recorded finding that from this statement of P.W.-2, it does not emerge that P.W.-2 came to know of the incident only between 6:00 AM and 7:00 AM, rather this statement of P.W.-2 merely indicates that after the aarti, all the persons residing in the Ashram became aware of the incident. The expression all persons clearly refers to those other persons in the Ashram apart from the eyewitnesses to the occurrence. P.W.-2 had already stated that at the time of the incident, about 60 to 100 persons had come to the Ashram in connection with the festival programme. Thus, there is no contradiction between the testimony of P.W.-1 and P.W.-2 and contradiction, if any, is natural, which proves that there is no concoction and embellishment in his testimony.

(47) In view of the foregoing discussion, we are in full agreement with the findings recorded by the learned Trial Court that P.W.-1 and P.W.-2 were natural witnesses, whose presence at the place of occurrence stands fully established from the evidence on record. Their testimonies are consistent, cogent, and mutually corroborative on all material particulars, including the time and place of occurrence, the manner of assault, the source of light at the spot, and the identity of the accused. Nothing substantial has been brought out in their cross-examination, so as to render their presence doubtful or to discredit their otherwise trustworthy version. The post-mortem report and the injuries in particular are also in corroboration to the prosecution case and witnesses, which shows the entry wound of fire arm on head 11 cm above right ear and exit wound on left side of

mouth. We, therefore, find no reason to differ from the well-considered conclusion arrived at by the learned Trial Court in placing reliance upon their evidence.

(48) The Hon'ble Supreme Court, in the case of Baban Shankar Daphal and Others Vs. The State of Maharashtra; 2025 SCC Online 137, has held that minor contradictions or inconsistencies in testimony do not necessarily render it unreliable, as long as the core facts remain intact. The Court has to discern truth by considering evidence in it's totality and not by isolating individual inconsistencies to discredit entire evidence. The relevant paragraphs 35 and 36 are extracted herein below:-

"35. The Trial Court gave undue weight to minor discrepancies in the eyewitness accounts, such as variations in their descriptions of the sequence of events or the exact number of blows inflicted. It is a well-established principle of law that minor contradictions or inconsistencies in testimony do not necessarily render it unreliable, as long as the core facts remain intact. The role of the court is to discern the truth by considering the evidence in its totality and not by isolating individual inconsistencies to discredit an entire narrative. The Trial Court erred by focusing excessively on trivial discrepancies, thereby losing sight of the broader picture and the compelling evidence against the accused.

36. The High Court appropriately invoked the principle that when direct evidence, such as eyewitness testimony, is credible and reliable, it must be given due weight unless there are compelling reasons to disbelieve it. In this case, the eyewitnesses were independent and had no motive to falsely implicate the accused. Their testimony was consistent with the overall circumstances of the case and was corroborated by the medical evidence.

(49) The Hon'ble Supreme Court, in the case of Birbal Nath Vs. State of Rajasthan and Others; (2024) 15 SCC 190, has held that lengthy cross-examination of a witness may invariably result in contradictions. But these contradictions are not always sufficient to discredit a witness. Similar view was in Rammi Vs. State of M.P.; (1999) 8 SCC 649.

(50) Learned Amicus Curiae for the appellant has also challenged the arrest of the accused/appellant and the recovery of cartridges as well as the recovery of country made pistol, which has been shown on his pointing out on the ground that the appellant has been shown to have been arrested from near the Ashram and the recovery has been made thereafter but in fact he was apprehended from Bihar while he was attending a ceremony and, thereafter, a false recovery of cartridge and country made pistol has been shown. The case of the prosecution is that the accused/appellant married in 2008 and started living in the Ashram alongwith his wife but in 2010, he left the Ashram and started living outside the Ashram in a hut. After the incident, he fled away to Bihar and returned to take away his wife and children when on information from reliable source, he was arrested in the night of 25.05.2015 and on the basis of his disclosure statement and pointing out, a country made pistol of .315 bore allegedly used in the crime was recovered. He was arrested by the Investigating Officer, Rai Sahab Yadav (P.W.-5), who has proved the same and the recovery memo (Ex. Ka-7) of weapon on his pointing from a distance of about 500 meters from the Ashram. The recovery memo reveals that on the said date, Investigating Officer SI Rai Sahab Yadav (P.W.5) along with SI Brijesh Singh, Constables Hira Singh Yadav, Baijnath Yadav, Anjani

Tiwari, Dilbahar Yadav and driver Constable Mohd. Maqsood Ahmad departed from the police station on 24.05.2015 at about 11:00 PM through Government Jeep bearing registration No. UP41G-0139 and were present at Kaserganj crossing, where informer came and informed that the accused would come through Raisanda Ashram on the Amserua Tikriya road to take away his wife and children. In pursuance thereof, the police team arrested the accused/appellant on the Tikriya Amserua road and from his possession, a sum of Rs. 1,210/- was recovered. Thereafter, on the pointing out of the accused, a country-made pistol concealed beneath dry grass and leaves under the pipe of a culvert situated near Sati Baba turn, in the field of Pipermint of Pyare Lal, was recovered. The pistol was already wrapped in a piece of cloth. A recovery memo was prepared accordingly. The arrest of the appellant and recovery of Rs.1,210/- from him and country made pistol in pursuance of disclosure statement by appellant of committing crime from same has been proved by P.W.-7; Constable Dil Bahar Yadav also, who was with Investigating Officer. A lengthy cross-examination was made from him on this issue but nothing could be extracted, which may create even a doubt on his testimony. The defence has nowhere even attempted to suggest that the wife and family of accused Hareram Chaudhary was not residing outside the Raisanda Ashram. In such circumstances, the prosecution version that the accused, after the incident, had come there on 25.05.2015 to take away his family and was arrested and aforesaid recoveries were made cannot be said to be improbable.

(51) The confession in police custody can not be proved under Section 26 of the Indian Evidence Act, 1872, but when any recovery is made in furtherance of a disclosure statement made by accused, it becomes the relevant fact and upon proved before Court of law, it can not be discarded. The Hon'ble Supreme Court, in the case of Anter Singh Vs. State of Rajasthan; (2004) 10 SCC 657, has dealt with the various requirements of Section 27 of The Indian Evidence Act, 1872 and placing reliance on the extra judicial confession. The relevant paragraphs 14 to 16 are extracted hereinbelow:-

"14.The expression "provided that" together with the phrase "whether it amounts to a confession or not" show that the section is in the nature of an exception to the preceding provisions particularly Section 25 and 26. It is not necessary in this case to consider if this Section qualifies, to any extent, Section 24, also. It will be seen that the first condition necessary for bringing this Section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly" relates "to the fact thereby discovered" and is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be

indirectly or remotely related to the fact discovered. (See Mohammed Inayuttillah v. The State of Maharashtra (AIR 1976 SC 483).

15. At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact, now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this, as noted in Palukuri Kotayya's case (supra) and in Udai Bhan v. State of Uttar Pradesh (AIR 1962 SC 1116).

16.The various requirements of the Section can be summed up as follows:

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by accused's own act.

(4) The persons giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible"

(52) One of the arguments of learned Amicus Curiae for the appellant was that an important witness, who had disclosed in his statement under Section 161 Cr.P.C. that the complainant was at Lucknow at the time and date of the incident and not in the Ashram has not been produced and only interested witnesses have been produced. Considering this argument learned Trial Court has recorded that the statements of prosecution witnesses were recorded on different dates by the Investigating Officer. The statement of the complainant; Suryakant Mani, who appeared as P.W.-1, was recorded on 16.05.2015 and statement of the second eye witness Bandhu Ji, who appeared as P.W.-2, was recorded on 18.05.2015. Thereafter on different dates the statements of the witnesses were recorded and the last statement was recorded on 03.06.2015, which was of Bankey Lal. Since the statement of other witnesses were recorded after a long gap of the date of incident, therefore, the possibility of their being win over cannot be denied, particularly when the prosecution witnesses, P.W.-1 and P.W.-2 have deposed in their evidence before the Court that at the time of incident everybody was shocked and under fear, therefore, they could not go to the police station in

the night. The prosecution had contended that no witness was ready to give the evidence against the accused in the Court, therefore, they were got discharged. The learned Trial Court, on the basis of an order dated 09.01.2017 passed in the case by the learned Trial Court, has recorded a finding that on the application of the prosecution, the said witnesses were discharged. It has also been recorded that on the said application, no objection was made by the defence. It has also been recorded that the defence has not moved any application to produce any of the said witnesses. The statements under Section 161 Cr.P.C. of the P.W.-1 and P.W.-2 were recorded immediately after the incident and their statements are in support of the first information report and the facts and circumstances of the incident and their evidence before Court is also consistent with the same, therefore, there is no plausible and valid reason to discard their evidence.

(53) The learned Trial Court also on the basis of the material placed on record by the defence has recorded that many cases of criminal nature were pending against the deceased Ram Sahai Singh, out of which, two were of murder. Thereafter, learned Trial Court, after considering the cases pending against the appellant in different Courts, recorded that on account of the criminal history of the appellant and he was also absconding in a case under Section 396 I.P.C., the witnesses whose statement were recorded under Section 161 Cr.P.C. were trying to save themselves from giving evidence on account of which they have not been examined by the prosecution. Thus, the statements under Section 161 Cr.P.C of the said witnesses looses their efficacy. This Court is in agreement with the aforesaid findings recorded by the learned Trial Court.

(54) The defence examined three witnesses to show that the accused was arrested from Bihar and false arrest and recovery have been shown. D.W.-1, Ashutosh Kumar Rai, deposed that he works in the shop of Pratibha Marble and Granite situated at Lucknow and for the last 10-12 years, he has been visiting Raisanda Ashram in connection with religious preaching, where he became acquainted with the accused. According to him, on 21.05.2015, the police of Police Station Kothi, Rai Sahab Yadav, brought him to Police Station Kothi and thereafter took him to Bihar by jeep, where, in village Paigampur, on 22.05.2015, they arrested Hareram Chaudhary from a function and brought him back to Police Station Kothi in the evening, after which he was released. In cross-examination, he stated that when the police had taken out him from the shop, neither the owner of the shop informed the local police nor informed his family members. He stated that he had no knowledge, as to whether there was any ceremony relating to the death anniversary (tehravi) at the house of Ram Pravesh Prasad or not. He further stated in cross-examination that the accused was not arrested on his pointing out, rather the police personnel had reached Baba Hareram (accused/appellant) through mobile and laptop.

(55) D.W.-2 Ram Pravesh Prasad stated that accused Hareram Chaudhary had come to his village for religious preaching and had come on 22.05.2015 to attend the death anniversary ceremony of his father, for which he had invited him. At about 11:00 12:00 noon, a white vehicle arrived, in which one person was in police uniform while the others were in plain clothes. They took away Hareram Baba, who was sitting on a cot at his door. In cross-examination, he stated that he has not brought death certificate of his father. He admitted that he had neither informed any local police officer that Hareram Chaudhary had been arrested from his door nor did he ask those persons as to where they were taking the accused.

(56) D.W.-3 Ram Vilas Mahato stated that he knew the accused as a religious preacher. On 22.05.2015, he had gone to attend the death anniversary ceremony of the father of Ram Pravesh Prasad, where Hareram Chaudhary had also come. At about 11:00-12:00 noon, 5□6 persons came in a white vehicle and took Hareram away without informing anyone. In cross-examination, he stated that he did not know how Ram Pravesh had invited Hareram Chaudhary. He further stated that on 22.05.2015, a religious recital (Bhagwat) was being held at the house of Baniya during the daytime, in which he had gone. He was present in the said programme from day to night and also eat there.

(57) The aforesaid evidence of D.W.-1, D.W.-2 and D.W.-3 shows that there are material contradictions and inconsistencies in their evidence, therefore, it is not safe to rely on them, where there is consistent evidence of Investigating Officer and P.W.-7, coupled with recovery, which stands proved. Learned Trial Court, considering the evidence of D.W.-1, D.W.-2 and D.W.-3, has recorded a finding that on perusal of their statement, it emerges that they have given different and inconsistent statements. There is no documentary proof on record to show that the accused was a religious preacher. P.W.-2 Bandhu Ji stated that Hareram Chaudhary used to live outside the Ashram in ordinary attire. After the occurrence, when he was sent to jail, he started living in the dress of a saint. It has also come on record that a charge-sheet under Section 396 of the Indian Penal Code is pending against accused Hareram Chaudhary in a Court in the State of Bihar, in which he has been shown absconding. No rebuttal of this evidence has been made by the defence. Thus, learned trial Court came to conclusion that there is no reason to disbelieve the prosecution witnesses regarding the fact that after the occurrence, the accused had gone to Bihar and on 25.05.2015, he came towards the Ashram situated at Raisanda to meet his family members, where he was arrested and a firearm was recovered from his possession. In regard to the plea taken by the defence that the accused was a religious preacher, learned trial Court, on appreciating the evidence on record, recorded the finding that no question was put by the defence to any prosecution witness, rather, from the statements of the witnesses it only appears that the accused had earlier lived in the Raisanda Ashram, but later on, due to his conduct contrary to discipline, he had to leave the Ashram premises, therefore, the evidence adduced by the defence to show that the arrest and recovery of the accused were falsely shown, is not trustworthy and the same does not discredit the prosecution evidence relating to the arrest and recovery of the accused. This Court is in agreement with the findings recorded by learned trial Court in regard to arrest of accused and recovery of weapon of assault. Even otherwise, even if the recovery fails and prosecution proves it's case beyond reasonable doubt, it can not be a ground of acquittal.

(58) Coming back to the facts of the present case, it is clearly established that deceased Thakur Ram Sahai Singh, who was the Head Secretary of the Ashram and of all Ashram connected therewith across the country, was murdered in the intervening night of 15/16 May, 2015 while he was sleeping in the open threshing-ground area within the Ashram premises. At the time of the incident, P.W.-1 and P.W.-2 were present at the spot and were engaged in the work of the Ashram. Cleaning work and storing of husk were being carried out by them, because two days later a birth anniversary programme was to be held in the Ashram and therefore, work in the Ashram was continuing even during the night. Arrangements for lighting had been made through a portable generator, where labourers were working. At that time, deceased Thakur Ram Sahai Singh was

lying down and accused Hareram Chaudhary fired at the head of the deceased with a firearm, due to which he died on the spot. The accused was seen by P.W.-1 and P.W.-2.

(59) The statement of P.W.-1 and P.W.-2 has also been supported by the medical evidence. P.W.-4 Dr. Shailendra Singh, who conducted the post-mortem of the dead body of the deceased, stated that a shot was fired from behind at the head of the deceased, which broke his jaw and exited outward. The post-mortem report (Ext. Ka.3) also mentions same two injuries, which have been supported by P.W.4. The other details of the incident as narrated by P.W.1 and P.W.2 does not contain any contradiction. Other official witnesses have proved lodging of F.I.R., inquest, post-mortem, investigation etc. and nothing could be extracted to doubt their testimony. Thus, on an overall analysis of evidence and material on record, this Court is of the view that the prosecution has proved it's case beyond all reasonable doubt and the learned Trial Court has passed the impugned judgment and order after considering all the evidence and material on record and dealing with all aspects minutely, therefore, it does not suffer any error, illegality or perversity.

(60) In view of above, we are in full agreement with the reasoning assigned by the Trial Court. Thus, it does not call for any interference by this Court. The appeal has been filed on baseless and misconceived grounds, which is liable to be dismissed and is, accordingly, dismissed.

(61) Consequently, the impugned judgment and order passed by the learned trial Court is hereby confirmed and the sentence is affirmed. The appellant is in jail. He shall serve out the sentence awarded by the trial Court by means of impugned judgment and order.

(62) Let the Trial Court's Record along with a copy of this order be transmitted to the trial Court concerned forthwith or in any case within two weeks from today.

(2026) 5 ILRA 170
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 05.05.2026

BEFORE

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

Criminal Appeal No. 1022 of 1984

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

Issue for Consideration

Matter pertains to whether the prosecution established the guilt of the appellant beyond reasonable doubt for the offences punishable under Sections 302/34 and 386/34 I.P.C. - whether the First Information Report was ante-timed - whether the ocular testimony of P.W.3 Bhagirathi is reliable and duly corroborated by the medical evidence - whether appellant Sati Ram was the son of the deceased Ram Charan or of co-accused

Madho so as to establish motive for the crime - and whether the facts proved constitute an offence punishable under Section 302 I.P.C. or Section 304 Part II I.P.C. (Paras 29-33, 42-46, 55-62, 72-77)

Headnotes

Criminal Law - Murder and Extortion - Appreciation of evidence - Reliability of sole eyewitness - Ocular and medical evidence - Defective investigation - Indian Penal Code, 1860 - Ss. 302/34 and 386/34 - A defective investigation does not by itself vitiate the prosecution case where the prosecution otherwise proves the guilt of the accused by reliable ocular evidence duly corroborated by the medical evidence - In the instant case, the appellants, along with two unknown persons, entered the tubewell Kothari during the night, overpowered the deceased and his wife, obtained the thumb impressions of the deceased on blank papers, stuffed cotton into his nostrils, pressed a pillow over his mouth and tightened an angaucha around his neck, resulting in his death by asphyxia - The testimony of P.W.3 Bhagirathi was found natural, reliable and fully corroborated by the medical evidence - Conviction of the appellant under Ss. 302/34 and 386/34 IPC affirmed. (Paras 40, 62, 72, 73, 76, 77)

Held: The prosecution has successfully proved its case beyond reasonable doubt. It has been established that the appellants along with two unknown persons entered the Kothari, overpowered the deceased and P.W.3 Bhagirathi and thereafter obtained the thumb impression of the deceased on blank papers. The appellants pressed a pillow over the mouth of the deceased, stuffed cotton into his nostrils and tightened an angaucha around his neck causing injuries which resulted in his death. The medical evidence clearly establishes that the cause of death was asphyxia resulting from a combination of smothering as well as strangulation and fully corroborates the ocular testimony of P.W.3 Bhagirathi. Merely because the Investigating Officer failed to collect the bulb or committed lapses during investigation, the prosecution case cannot be discarded when the ocular and medical evidence establish the guilt of the accused beyond reasonable doubt. The testimony of P.W.3 Bhagirathi is natural, reliable and trustworthy and proves that the appellants along with two unknown persons committed the crime. Since the blank papers on which the thumb impressions were obtained could have been converted into valuable security, the ingredients of the offence punishable under Section 386/34 I.P.C. also stand established. The Trial Court has correctly appreciated the evidence on record and rightly convicted the surviving appellant Sati Ram for the offences punishable under Sections 302/34 and 386/34 I.P.C. (Paras 62, 66, 68, 72, 73, 76, 77) (E-7)

Case Law Cited

Deshraj Singh & Others v/s The State, **1986 L.L.J. 263 (D.B.);** *Jagdish vs. State of U.P.,* **1999 (38) ACC 491***; Bachchi Lal and others vs. State of U.P.,* **2019 (5) ADJ 809***; Brij Bihari Bind and Others vs. State of U.P.,* **2025 (1) ADJ 635***; Radhe Sharan vs. State of U.P.,* **2015 (2) ADJ 72;** *Lavkush vs. State of U.P.,* **2025 (1) ADJ 309***; Sanjay vs. State of U.P.,* **2022 (5) ADJ 458***; Ravindra Pandey vs. State of U.P., 2019 (1) ADJ 466; Saya Prakash vs. State of U.P.,* **2022 (3) ADJ 76***; Deny Bora vs. State of U.P.,* **2014 (87) ACC 681***; State of Haryana vs. Lakhveer Singh and another,* **AIR 1990 SC 2154***; Raghunath Singh and others vs. State of U.P.,* **2018 (7) ADJ 658***; Munna Singh vs. State of U.P.,* **2022 (2) ADJ 220;** *Mohd. @ Billa vs. State of Rajasthan,* **(2010) 2 SCC 486.**

List of Acts

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

List of Keywords

Murder; Extortion; Asphyxia; Strangulation; Smothering; Eyewitness; Ocular testimony; Medical evidence; Common intention; Tubewell; Thumb impression; Property dispute; Defective investigation

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal preferred under Section 374(2) of the Code of Criminal Procedure, 1973, against the judgment and order dated 30.03.1984 passed by Sri S.L. Adarsh, IIIrd Additional Sessions Judge, Azamgarh in Session Trial No. 368 of 1982 convicting the appellants under Sections 302/34 and 386/34 of the Indian Penal Code.

Appearances for Parties

Advs. for the Appellant:
Mr. Preet Pal Singh Rathore.
Advs. for the Respondent:
Mr. Anil Kumar Mishra along with Mr. Deepak Mishra,
learned Additional Government Advocates.

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

1. This criminal appeal has been preferred, under Section 374(2) Code of Criminal Procedure, 1973, (in short Cr.P.C.), by appellants, namely Madho, son of Baliraj, and Sati Ram son of Madho, both residents of Village Jalalpur Mahawal, Police Station Kaptanganj, District Azamgarh, against the judgment and order dated 30.03.1984, passed by Sri. S.L. Adarsh, IIIrd, Additional Sessions Judge, Azamgarh, in Session Trial No.368 of 1982, under Sections 386/34 and 302/34 of the Indian Penal Code (in short 'I.P.C.'), Police Station Kaptanganj, District Azamgarh.

2. By the impugned judgment and order, appellants, Madho and Sati Ram were held guilty of the offence under Sections 386/34 and 302/34 I.P.C. Each of them were sentenced to undergo five year's rigorous imprisonment for offence punishable under Section 386/34 IPC and imprisonment for life for offence punishable under Section 302/34 IPC. It was further directed that both the sentences shall run concurrently.

3. Feeling aggrieved by the impugned judgment and order, the present appeal has been filed by both the convicts. During the pendency of this criminal appeal, appellant No.1, Madho, died and the appeal against him stood abated vide order dated 22.03.2022. Therefore, the appeal has now been heard only in respect of the surviving appellant, Sati Ram.

4. Brief facts of the prosecution case are that the informant, Ramdhani, son of Munnar Ram, resident of Rampur, Police Station Maharajganj, District Azamgarh, presently residing at Naipura, Police Station Atrauliya, District Azamgarh, submitted a written application (tehrir), Ext. Ka-1, before the In-charge, Police Station Atrauliya, District Azamgarh, stating therein that he was married to Bhuwari, daughter of Ram Charan @ Chandu Verma, son of Baliraj Verma, resident of village Naipura, about 15 years ago. He, alongwith his wife, settled in village Naipura to look after his parents-in-law. As a result, his father-in-law's brother, Madho, developed a grudge against him, and he had earlier got his son Sati Ram's name wrongly entered in school records showing parentage of Ram Charan @ Chandu Verma to usurp the Ram Charan @ Chandu Verma's property. The informant's father-in-law, after knowing this evil design of his brother Madho, got his entire property transferred in the name of the informant and his wife, Smt. Bhuwari, about 4-5 months ago, and a mutation case in this regard is pending before the Tehsildar, Phulpur. Due to all the above reasons, Madho and his son, Sati Ram, developed enmity against the informant and his father-in-law and had occasionally asked him to leave the property and go away. Today, during the night, his parents-in-law were sleeping at in tubewell situated in the village Nebuadih, keeping doors open. There was light both inside and outside the tubewell. At about 4:00 a.m., Madho and Sati Ram along with two unknown persons, came there, and he could identify their faces. They stuffed cotton into his father-in-law's nostrils, turned his face downward, pressed it against a pillow, and started taking his thumb impression. His mother-in-law started screaming, but one of

the miscreants muffled her mouth with his hand to prevent her from screaming. His father-in-law overturned and struggled to escape. In the process, he sustained some injuries. Thereafter, they again pressed his face against a pillow after stuffing cotton in his nostrils, causing his death. They also took thumb impression of his left hand on some papers. As soon as his mother-in-law got a chance, she screamed, and at the same time, the informant and his co-villagers, Ram Garib son of Balesher, Ram Shakal son of Budhi Ram, and Rajbali son of Ram Deo, were going towards the tubewell to irrigate their respective fields. Upon hearing the noise, they proceeded towards the tubewell, flashing their torches. Then Madho and Sati Ram, alongwith two unknown persons, came out from inside the tubewell and ran towards the western side. The informant and his companions recognized and identified them in the light outside the tubewell and from the flash of torches. His father-in-law's dead body was lying at the tubewell, where his mother-in-law and many villagers were present.

5. Upon this written application, an FIR under Case Crime No. 125 of 1982, under Sections 302 and 384 I.P.C. was lodged at Police Station Atraulia on 23.08.1982 at 9:55 A.M. against Madho, Sati Ram and two unknown persons. The investigation commenced and the Investigating Officer reached at the place of occurrence, where he collected cotton thrust into the nostrils of the deceased and the pillow bearing spots of liquid spilled from the nose and mouth and prepared its recovery memo (Ext. Ka-4). The Investigating Officer also inspected the torch and gave it in supurdagi and the supurdaginama (Ext. Ka-11) was prepared. The inquest of the deceased was prepared along with related papers and the body was sent for post-mortem. The post-mortem of the deceased was conducted, wherein the doctor found five ante-mortem injuries and the cause of death was opined as asphyxia as a result of strangulation. The Investigating Officer recorded the statements of the informant and other witnesses, inspected the place of occurrence and prepared the site-plan (Ext. Ka-10).

6. After collecting the evidence, the Investigating Officer filed the charge-sheet before the concerned Magistrate, who took cognizance of the offence and summoned the accused. The accused appeared before the concerned Court and were furnished with copies of the relevant prosecution papers under Section 207 Cr.P.C. Thereafter, the case was committed to the Court of Sessions for trial. The accused appeared before the Court of Sessions, where charge under Sections 302/34 and 386/34 I.P.C. were framed against them, to which they pleaded not guilty and claimed to be tried.

7. The prosecution has examined six witnesses to prove its case, namely, P.W.1 Ram Dhani, P.W.2 Ram Sakal, P.W.3 Bhagirathi, P.W.4 Ram Autar Rai (S.O.), P.W.5 Dr. S.N. Sinha and P.W.6 Constable, Brijendra Nath Singh.

8. Out of these witnesses, P.W.-1 Ram Dhani is the informant and an eyewitness of the incident. He said that his father-in-law, Chandu @ Ram Charan, had three brothers, namely Bhaggal and Madho. Bhaggal had died prior to the informant's marriage and his widow had left him. Bhaggal had no daughter by the name of Gulaichi, but Madho lodged a case showing Gulaichi as Bhaggal's daughter in order to grab his property. Gulaichi lost the case. The accused, Madho, had two sons, namely Sati Ram and Daya Ram. Chandu had no son and had only one daughter, Bhuwari, who is married to the informant. Madho got the parentage of his son, Sati Ram, changed

in the school records to show him as the son of Chandu @ Ram Charan, in order to grab his share of the property. He further said that he originally belongs to village Rampur, Atraulia, Bhairodaspur, Police Station Maharajganj and to take care of his parents-in-law, he started living in village Naipura alongwith them. Ram Charan @ Chandu's wife is Bhagirathi. Chandu had a tubewell situated about one furlong in the north-western direction from his house. His parents-in-law used to sleep at the tubewell to guard it, in a kothari behind the wall of the tubewell. The informant and his wife used to sleep in Chandu's house in village Naipura. The accused, Madho and Sati Ram, lived in village Jalalpur, which is 3-4 miles away from village Naipura in the south-eastern direction. The informant also stated that he was taking care of the agricultural work of his father-in-law and was permanently settled in village Naipura for the last 5-6 years. The accused, Madho, developed a grudge against him regarding agricultural work. His father-in-law had executed a sale deed of his land situated in villages Jalalpur and Basi about 4-5 months prior to his murder and another sale deed in favour of the informant's wife for land situated in Atrait, Nebuadih and Atraha. His father-in-law had not executed any sale deed in respect of the land situated in Mubapur. The accused Madho used to warn him to leave the land and vacate the place and also warned his father-in-law that he would face the consequences, if he disposed of the property. After the execution of the sale deeds, the informant filed an application for mutation and his name was mutated about 4-6 days after the murder of his father-in-law. He further said that his father-in-law was murdered at about 4:00 a.m. at night. He was awakened by Rajbali at about 4:00 a.m. to go to the tubewell for irrigation. He went towards the tubewell alongwith Rajbali, who was carrying a torch. On the way, Ram Gareeb and Ram Shakal met and accompanied them. When they had proceeded further and were about 50 steps away from the tubewell, they heard his mother-in-law screaming. There was a bulb lit at the tubewell, both inside and outside. Upon hearing the scream, they moved forward and saw the accused Madho and Sati Ram, alongwith unknown persons, whom he could identify, coming out of the kothari of the tubewell and running towards the western side. Ram Gareeb, Ram Shakal and Rajbali were carrying torches, which they flashed and identified the accused in the light of the torches and electricity. They chased the accused, but the accused fled away. They entered in the kothari at tubewell, where he saw his father-in-law lying on a cot and his mother-in-law weeping in the kothari. His mother-in-law told him that while they were sleeping, the accused Sati Ram and Madho alongwith two other persons, came there. They pressed Chandu's mouth with a pillow, stuffed cotton into his nostrils and one person climbed over him. Sati Ram strangulated his neck with a Angaucha and Madho forcibly obtained the thumb impression on some blank papers. P.W.3 Bhagirathi also stated that one of the persons, whom she did not know, gagged her mouth and continued to assault her. P.W.1 Ram Dhani has said that after leaving the dead body in the presence of the witnesses, he returned to his house and wrote a written application, which has been proved as Ext. Ka-1. He also said that he submitted the said application at Police Station Atraulia, where the FIR was lodged.

9. In cross-examination, P.W.1 Ram Dhani deposed that his parents are no more and there is no person in his house. Occasionally, he goes to his village, where he has 5 1/2 bighas of ancestral land. Ram Charan and Madho had equal shares of land in Nebuadih. Once Gulaichi had lodged a case against both Madho and Ram Charan and the case was dismissed. He has filed a photostate copy of the Kutumb Register of village Atrait, in which the name of Sati Ram is entered and his own name is not there. His name is entered in the Kutumb Register of village Rampur. Madho was 2-3 years older than Ram Charan. Ram Charan had executed three sale deeds, two in his favour and

one in favour of his wife. Nobody objected in the mutation proceedings. Ram Garib, who is a marginal witness of a sale deed, is also a witness in this case. Shyam Lal's tubewell is about 200 meters away from the disputed tubewell. Shyam Lal does not live at his tubewell. At the time of the incident, he was standing to the south of the tubewell, which has only one door. Nobody can see from outside, anything inside the kothari. He saw the accused for the first time from a distance of 25-30 steps. The accused were coming out from the madai (small hut), thereafter he said that the distance between them and the accused was about 15-20 steps. All the three witnesses had torches in their hands, which they flashed and identified the accused in the light of the torches and the bulb. He did not see any weapon or country-made pistol in accused persons possession. They chased the accused for 25-30 steps but could not catch them. He himself wrote the written application at his house. He reached the police station at about 9:45 a.m. alone, on foot. The Inspector came to the place of occurrence at about 11:00 a.m. accompanied by him. The Inspector recorded his statement at the tubewell. He did not see the accused killing the deceased. It is true that his mother-in-law narrated the incident to him and, after consulting her, he lodged the report. He denied the suggestion that he himself killed the deceased and falsely implicated the accused. He also denied that he got the sale deed of the property of the deceased executed with the help of an impostor.

10. P.W.2 Ram Sakal, is an eyewitness to the incident and said that, on the fateful day, at about 4:00 a.m., he was going towards Shyam Lal's tubewell to irrigate his field. Shyam Lal's tubewell was closed, so he was returning home. On the way, Raj Bali, Ram Dhani, and Ram Gareeb met, and he accompanied them. After reaching near the sugarcane field, he heard the scream of Ram Dhani's mother-in-law. The scream was coming from Ram Dhani's tubewell, and she was crying that her husband had been murdered. He himself, Ram Gareeb and Raj Bali were carrying torches. After hearing the scream, they ran towards west and flashed their torches and saw four persons came running from the side of the tubewell. Out of them, two persons were identified in the flash of the torch. There was no other source of light. He identified Madho and Sati Ram, who are present in Court. He could not identify the other two miscreants. After returning to Ram Dhani's tubewell, they saw Ram charan lying dead on a cot. There was no injury mark on his body, except a mark on his left thumb. Ram Charan□s wife stated that he was killed by Sati Ram, Madho and others.

11. In cross-examination, P.W.2 Ram Sakal deposed that Madho is elder to him. Sati Ram and Madho do not live in his village. Madho's house is about one to one-and-a-half miles away from his house. Shyam Lal's tubewell is situated at a distance of one bigha to the north of his house. A bulb was lit at Shyam Lal's tubewell. He has said that he saw the accused from a distance of about 25 steps while they were running. There was only one entrance to the south of the tubewell. There was no exit to the north and east. The accused fled towards west and were chased from south. It was dark when he left his house. Everyone questioned the widow and she stated that Sati Ram and Madho had killed the deceased. The Inspector came at about noon and called him at about 1:00 p.m. and recorded his statement. The Investigating Officer took the bulb in his possession and obtained his signature on some papers.

12. P.W.3 Bhagirathi is also one of the eyewitness to the incident and said that she was living in village Naipura alongwith her husband. Her father-in-law's name was Balraj, who had only one son, Ram Charan. The accused, Madho, lives in Jalalpur. She has only one daughter, Bhuwari and

no other issue. Bhuwari was married to Ram Dhani. During consolidation, the names of her husband and Madho were entered in the property, situated in villages Naipura and Jalalpur. After her daughter Bhuwari's marriage, she started living with her and her son-in-law. Ram Charan had transferred his land to Bhuwari and Ram Dhani. The accused, Sati Ram had got entered his parentage (father's name as Ram Charan) in his school records. Execution of sale deeds, in favour of Bhuwari and Ram Dhani, annoyed the accused. On the fateful day, she was sleeping at her tubewell alongwith her husband. For the last eight years, since the installation of the tubewell, they used to sleep there, while her daughter and son-in-law lived in the house which is inside village Naipura. A blue bulb was lit outside the tubewell. She and her husband were sleeping on a cot. The door of the tubewell was open then four persons entered and overpowered her husband, who was lying asleep on the cot. When she raised an alarm, one of the persons caught hold of her. One of the assailants stuffed cotton into her husband's nostrils, wrapped an angaucha around his neck and overturned him on the cot, while two persons, including Sati Ram, climbed over his back. They forcibly obtained his thumb impressions on some papers and tightened the anagucha around his neck, as a result of which he died. Out of those four persons, Madho and Sati Ram are present in Court.

13. In cross-examination, P.W.3 deposed that Sati Ram never lived in village Naipura. Ram Dhani has agricultural land in village Rampur. She never went to Tehsil to execute a sale deed. No money transaction took place in her presence and she has no knowledge of it. Ram Dhani came and told her about the property of which he executed the sale deed. Madho is her Jeth. Bhuwari□s marriage was solemnized with the help of Madho. As Madho was elder to Ram Charan, in that sense, he was the maalik (owner). Both families lived at both places. She further stated that after the demarcation of fields, a dispute arose with Madho and others, and thereafter Madho and Ram Charan started cultivating their land, separately. Madho was living separately. The house was also partitioned. Madho had constructed three kotharis in the house, which are now in her son-in-law's possession. She said that Ram Dhani cultivates Madho's field in village Naipura after Madho was roped into this case. After the death of her husband, Madho used to harass her daughter and son-in-law. Her husband had told her that Sati Ram had got his parentage wrongly entered. After the execution of the sale deed, Madho never came to her or her husband. She further said that she now sleeps at the tubewell. There is a small room at the tubewell. She was sleeping on a cot made of bamboo. It was hot and rainy season. It rained during the night, about 2-3 hours before dawn. They used to keep the door open due to the heat. At that time, she and her husband were sleeping on the cot. When the Investigating Officer came, she was weeping and was not in her senses. She denied the suggestion that she was deposing before the Court under pressure from Ram Dhani. She stated that she lives with both her daughter and her son-in-law. She further said that when the accused and two unknown persons reached the tubewell, they were empty-handed and had no weapons. The miscreants dragged her away from the cot and forced her to sit near the northern wall by muffling her mouth. She was not beaten and could not identify the person who caught hold of her. She said that the entire episode was over within half an hour and during this period, she was forced to keep sitting. Two persons climbed onto the cot and one person was taking signatures. Sati Ram alongwith one person were on the cot. She further said that upon her first scream, Ram Dhani, Ram Garib, Ram Sakal, and Rajbali reached there. The Investigating Officer did not find any angaucha at the spot, as the accused had taken it away with them. Her husband was not beaten with a stick (danda).

14. P.W.4 Ram Avtar Rai (S.O.), is the Investigating Officer of this case. He has said that the FIR of this case was scribed by Head Constable Yadunandan Singh and he is well versed with his handwriting and signature. He has proved the chik FIR as Ext. Ka-2 and the copy of G.D. No. 12 dated 23.08.1982 at 9:55 hours as Ext. Ka-3. He said about the investigation carried out by him and said that he recorded the statement of the informant at the Police Station and proceeded to the place of occurrence, reaching there at 11:00 a.m. The inquest and related papers were prepared at the spot, which are proved as Ext. Ka-5 and Ext. Ka-6. He has also proved the letters to the C.M.O. and R.I. as Ext. Ka-7 and Ext. Ka-8. He further said that cotton from the nostrils of the deceased and the pillow was taken into possession, sealed and a recovery memo was prepared, which he proved as Ext. Ka-9. He has further said that the dead body was sent to the mortuary for post-mortem through Constable Virendra Prasad and Constable Brijendra Nath Singh. He inspected the place of occurrence at the pointing out of the informant and the widow of the deceased and prepared the site-plan, which he proved as Ext. Ka-10. He inspected the torches of the witnesses and gave them in supurdagi and prepared the supurdaginama, which is proved as Ext. Ka-11. After completing the investigation, he submitted the charge-sheet against both the accused, which he proved as Ext. Ka-12.

15. In cross-examination, P.W.4 deposed that Ext. Ka-9 was not scribed in his presence at the Police Station. The special report of the crime was sent to Sadar on the same day. He denied the suggestion that the words 'दबाकर नाक में रूई डालकर' were added in the FIR with different ink. He said that he had inspected the bulb at the tubewell but did not take it into his possession. He further denied the suggestion that the FIR was lodged ante-timed. The witness proved the pillow and the cotton taken from the nostrils of the deceased as Ext.-1 and Ext.-2 respectively.

16. P.W.5, Dr. S.N. Sinha has conducted the autopsy of the deceased, Ram Charan @ Chandu. He said that on 24.08.1982, he was posted as Medical Officer in Sadar Hospital, Azamagarh, where the dead body of the deceased was brought by Constables, Virendra Prasad and Brijendra Nath Singh for post-mortem. He conducted post-mortem at 1:30 p.m. The body of the deceased was average, built. Rigour mortis had passed from upper limb and was present in lower limb. The body had swollen and the skin was peeling from places. There was vomiting from mouth and nose. Bloody froth was coming out from mouth and nose. Mouth was half open, half tongue was coming out, eyes were closed and swollen, nasal membrane was congested. There was a mark of pad ink over left thumb. He found following ante-mortem injuries:-

'(i) Contusion of left eye including both eye lids.

(ii) Contusion 5 cm x 4 cm on left eye temple region.

(iii) Abrasion 1 cm x 0.08 cm left side back just above middle of illiac crust.

(iv) Abrasion 0.6 cm x 0.2 cm on the root of dorsum.

(v) Contusion front and back of neck.'

During internal examination, the skull membranes beneath the injuries were congested. The walls of lungs were congested. The trachea and larynx were congested and filled with blood. Both lungs were congested. Semi-digested food was present in the stomach. The intestines were filled with gas and fecal matter.

17. In the opinion of the doctor, the cause of death was asphyxia as a result of strangulation. He said that death could have occurred on 23.08.1982 at about 4:00 a.m. He proved the post-mortem report as Ext. Ka-13. He further said that if a person is lying on his right side and beaten with a cane, injury no. 2 could be caused. Injury nos. 3 and 4 could be caused by a fragment of danda. Injury no. 5 could be caused if a person is pressed with a split bamboo (fate bamboo). This injury could not be caused by a wide stick. The deceased could have died on 22.08.1982 between 11:00 p.m. and 12:00 midnight. If a person is lying on his back and beaten, all the injuries could not caused. If a pillow is pressed, injury no. 5 could be caused. If the neck was tightly pressed with a gamchha, injury no. 5 could be caused and a clear ligature mark would be present. However, there was no ligature mark over injury no. 5.

18. P.W.6 Constable Brijendra Nath Singh is a formal witness who took the dead body of the deceased for post-mortem examination. He said that on 23.08.1982, at about 11:00 a.m., he reached the place of occurrence to take the dead body. He denied the suggestion that he had taken the dead body on 24.08.1982 at about 8:00 a.m.

19. The prosecution has produced following documentary evidence i.e. Ext. Ka-1 written report, Ext. Ka-2 FIR, Ext. Ka-3 carbon copy of G.D., Ext. Ka-4 Panchyatnama (inquest report), Ext. Ka-5 photo nash, Ext. Ka-6 Form No.13, Ext. Ka-7 letter to C.M.O. Ext. Ka-8 Form No.33, Ext. Ka-9 recovery memo of Cotton and Pillow, Ext. Ka-10 site plan, Ext. Ka-11 recovery memo of torch, Ext. Ka-12 Charge-sheet, Ext. Ka-13 Post-mortem report, Ext. Ka-14 Mutation Case No.337, Ext. Ka-15 copy of mutation case, Ext. Ka-16 and Ext. Ka-17 sale deed, Ext. Ka-18 transfer certificate of Satiram Verma, Ext. Ka-19 Kutumb Register, Ext. Ka-20 copy of order of settlement officer consolidation in appeal No.230, Ext. Ka-21, copy of corrected voter list for the year 1982 and Ext. Ka-22 copy of complaint case no.144 of 1983.

20. After the closure of prosecution evidence, the statements of accused were recorded under Section 313 Cr.P.C. Appellant Madho admitted that Ram Charan @ Chandu and Baggal were the real brothers of accused Madho. It was admitted that Ram Charan had no son and had only one daughter, Bhuwari, who was married to Ram Dhani. It was denied that Sati Ram is Madho's son. It was admitted that Ram Charan and Madho had joint property in Atrait, Nebuadih, Mubapur, Jalalpur, Basi and other places. Accused Madho said that he had lodged a complaint against Ram Dhani and others, but he could not see properly and could not read the copy of the complaint. Accused Sati Ram said that he is not Madho's son and is son of Ram Charan. Bhuwari is Ram Charan's daughter and Ram Dhani is her husband. It was admitted that Ram Charan and Madho had separate properties in Mauza Atrait, Nebuadih, Mubapur, Jalalpur, Basi and other places.

21. The accused has examined Dr. Vinod Tripathi as D.W. 1 in their defence and have filed following documentary evidence:-

‘ (i) Querry from Tehsildar, Phulpur, Ext.Kha-2.

(ii) Extract of voters list, Ext.Kha-2.

(iii) Extract of birth and death register, Ext. Kha-4.

(iv) Extract of khasra for 1390f., Ext. Kha-5.

(v) Extract of kutumb register of the family of accused, Madho, Ext;Kha-6.

(vi) Extract of khatauni of Rajbali, Ext. Kha-7.

(vii) Extract of Khasara for 1390F, Ext;Kha-8 ‘

22. D.W.1, Dr. Vinod Tripathi, has said that on 07.08.1982 at about 9:00 a.m., he examined accused Madho’s eyes in District Jail, Azamgarh, on the direction of the District Judge and prepared a report, which is marked as Ext. Kha-1. He found cataracts in both eyes. He was of the opinion that the patient could recognize capital letters from a distance of more than one meter, meaning thereby that he could read the top line of the vision chart. The left eye vision was recorded as ‘PL + PR’, meaning perception of light and projection of rays. The vision of the right eye was 1/60 at that time. In the left eye, there was only a sense of light. Such a patient would be able to see to a limited degree with the right eye in darkness, as light is reduced under such conditions. However, the patient cannot see with the left eye in darkness. The type of cataract he found would take not less than three months to develop.

23. In cross-examination, D.W.1 said that, except for recognizing people, all other functions of the eye were normal. The accused, Madho was not diabetic. According to him, cataract develops naturally and a noticeable difference can be seen within 10-15 days. In his opinion, the cataract in the left eye was mature even before 15 days. The patient could read the top letters of the chart from a distance of one meter but stated that he could not read the remaining letters.

24. D.W.1 further explained that there is no subjective scale to determine a patient’s vision. In such cases, vision is noted based on the letters that the patient can read and identify. A patient in this condition can recognize an unknown person under electric light or a torch’s flash and can move independently on a familiar path.

25. The Learned Trial Court, after examining the evidence, found that the prosecution had proved its case beyond reasonable doubt. The FIR was lodged promptly and the place of occurrence was established. The eyewitnesses have supported the prosecution case and their testimony was consistent, reliable, and trustworthy. There were no contradictions between the ocular and medical evidence. Motive for the appellants to commit the crime was also established. Therefore, the appellants were found guilty, and accordingly convicted and sentenced to the terms indicated above.

26. We have heard Mr. Preet Pal Singh Rathore, learned Counsel for the appellant and Mr. Anil Kumar Mishra alongwith Mr. Deepak Mishra, learned Additional Government Advocates for the State and perused the record.

27. It is submitted on behalf of the appellant that the learned Trial Court has appreciated the evidence on record incorrectly and has come to the wrong conclusion of guilt of the appellant. The FIR was ante-timed, which raises suspicion over the prosecution case. The ocular testimony is not supported by the medical evidence. There are major contradictions in the oral testimony of the witnesses of fact. The appellant had no motive to commit the murder of the deceased and the prosecution has failed to prove any motive for the appellant to commit the crime. As per the prosecution, the appellants were empty-handed, therefore, they had no intention or motive to commit the murder of the deceased and, at the most, they had the intention to take the left thumb impression of the deceased on blank papers. There was no injury on the body of the deceased which was sufficient, in the ordinary course of nature, to cause his death.A Case under Section 302 I.P.C. is not made out, and at the most it would fall under Section 304 (2) I.P.C. It is highly unnatural that the appellants would commit the crime without concealing their identity. The appellants have no criminal history. P.W.1 Ram Dhani and P.W.2 Ram Sakal are interested witnesses and their testimonies are not reliable. The presence of P.W.3 Bhagirathi at the place of occurrence is highly doubtful and if she was present while her husband was murdered, then the assailants could not have spared her to create evidence against themselves. In view of the above, the learned Trial Court failed to appreciate the evidence in the correct manner and has thus passed the illegal judgment, which is liable to be set aside.

28. On the other hand, it is submitted on behalf of the State that the prosecution case is proved beyond reasonable doubt. The FIR is prompt and not ante-timed. The witnesses of fact are natural witness and their presence at the spot is proved. Their testimony regarding the incident is consistent and trustworthy. The appellants had a motive to commit the crime to grab the land of the deceased. There are no major contradictions in the ocular and medical evidence. Thus, the prosecution case is proved beyond reasonable doubt and the appeal has no force and is liable to be dismissed.

29. It is settled law that in a criminal case, the burden of proof lies upon the prosecution to prove its case beyond reasonable doubt. In the present case, it is not in dispute that informant, Ram Dhani is the son-in-law of the deceased. It is also not in dispute that deceased, Ram Charan @ Chandu had two brothers, namely Madho and Bhaggal. It is further not in dispute that after the death of Bhaggal, his property came into the share of the deceased Ram Charan and appellant No.1, Madho. It is also not disputed that P.W.3, Bhagirathi, is the widow of the deceased, Ram Charan.

30. The first contention raised on behalf of the appellant is that the FIR is ante-timed and after consultation, the appellant has been falsely roped into this case. It is further contended that at the top of front page of inquest report, the details of the case crime number and FIR are written in different ink and handwriting, which shows that the FIR is ante-timed. It is also submitted that no case crime number or section is mentioned in recovery memo or post-mortem report which also shows that the FIR was lodged at a later point of time.

31. We do not agree with this submission advanced on behalf of the appellants. There is no requirement, under the law, that the case crime number and sections be mentioned in the recovery memo or the post-mortem report. The doctor, who conducted post-mortem, was not asked whether the FIR or other police papers were brought with the dead body. So far as the inquest report is concerned, the details of the case crime number and sections are mentioned at the top of the front page and in the first half of the second page. The appellant has not put any question to the Investigating Officer, before whom the inquest was prepared, regarding whether the details of the case crime number and sections were written in different ink and handwriting and if so, when and how. Had such a question been put to the Investigating Officer, he would have been in a position to explain the same. Without putting any such question to the Investigating Officer, the argument in this regard has no force. Further, a bare perusal of inquest report does not give any indication that the case crime number and FIR is written in different ink and handwriting.

32. A perusal of record shows that the incident occurred on 23.08.1982 at 4:00 a.m. and the FIR was lodged on 23.08.1982 at 9:55 a.m., meaning thereby, the FIR was lodged within five hours of the incident. As per the chik FIR, the distance of the Police Station from the place of occurrence is 07 miles. The informant, Ram Dhani is the son-in-law of the deceased. He has said that after the incident, he came to his house, wrote down the tehrir and then went to the Police Station on foot. He has also stated that he reached the Police Station at 9:45 a.m., and thereafter, the chik FIR was lodged. The chik FIR and the General Diary, having the gist of the FIR, have been proved by the I.O. He has said that the special report of the case was sent to Sadar on the same day and Sadar is situated about 40 kilometers from Police Station Atrauliya. The chik FIR shows that it was sent from the Police Station on the next day, i.e., 24.08.1982 and there is no time mentioned, when it was sent. The initials of the Circle Officer do not bear any date on the chik FIR. There is a faded seal of the court over it, which has faded perhaps due to lapse of time, and the signature and date of the concerned Magistrate are not visible over it. As the paper is very old and in bad condition so no observation can be made in this regard. So far as date below initials of Circle Officer is concerned it amounts to lapse, and nothing else, so no adverse inference can be drawn due to it, as held by a Division Bench of this Court in Deshraj Singh & Others v/s The State 1986 L.L.J. 263 (D.B.) that absence of date beneath the initials of the Circle Officer on the endorsement for sending the F.I.R. to the court. This could be an omission on the part of the Circle Officer by not writing down the date below his initials and this omission does not lead to any presumption.'

33. As per the prosecution, the inquest of the deceased was prepared at the place of occurrence from 11:00 a.m. to 12:15 p.m. A perusal of the inquest report (Ext. Ka-4) shows that the case crime number is mentioned at the top of the first page and on the second page, it is stated that after information of the said crime reached at the police station, the concerned police officers proceeded to the place of occurrence. Thereafter panchas were arranged and the inquest was prepared alongwith connected papers. This indicates that at-least, the FIR had been lodged before 11:00 a.m. if not at 09.55 a.m., as mentioned in FIR, because the case crime number is mentioned on both the first and second pages of the inquest report. Therefore, there is no such undue delay to raise such suspicion. It also does not mean that the FIR is anti timed.

34. It is argued on behalf of the appellants that, on the second page of the inquest report, the sentence 'दबाकर नाक में रूई डालकर' has been added later, which raises suspicion about the date and time

of preparation of inquest. We do not agree with this submission. The I.O. has denied that these lines have been added later and a bare perusal of it also indicates that the above line appears to have been written simultaneously with the other contents. Beside this, it does not make any difference to the prosecution case because it is mentioned in the inquest, that there was pad ink on the left-hand thumb and cotton was thrust in both nostrils, which tallies with the contents of the chik FIR.

35. Learned Counsel for the appellants has relied upon a decision of the Division Bench of this Court, reported in 1999 (38) ACC 491, Jagdish vs. State of U.P., wherein it was held that if there is a delay in the dispatch of the dead body for post-mortem examination, an adverse inference may be drawn regarding the existence of the FIR. On the basis of the aforesaid decision, learned counsel for the appellants has submitted that in the present case, the post-mortem was conducted on the next day after 12 noon and the doctor found that the body was swollen with peeling of the skin. It has been argued that generally it takes more than three days for the skin to peel off from a dead body, therefore, the condition of the body does not match the alleged date and time of the incident.

36. We do not agree with this submission, as the incident occurred in the month of August, which is a month of rain and humidity. In such humidity, the condition of a dead body would deteriorate rapidly. The constable who had taken the body for post-mortem has stated on oath that he took the body on the same day and reached the police lines in the evening, but as the R.I. was not available, so he handed over the body to the doctor on the next day at about 12 noon. In the meantime the body was kept wrapped in cloth, which may have further deteriorated the condition of the body. The delay in sending the dead body to the doctor has been satisfactorily explained by the prosecution. There is no evidence and in its absence, it is hard to believe that the police personnel, the Investigating Officer and the doctor, all of them would collude with the first informant to fabricate false evidence in order to implicate the appellants in this case.

37. Learned Counsel for the appellants has also relied upon a decision of the Division Bench of this Court in 2019 (5) ADJ 809, Bachchi Lal and others vs. State of U.P., wherein the crime number and detail of the FIR and the G.D. entry were not mentioned in the inquest report and the witnesses of fact were found unreliable. Then, it was held that the FIR was ante-timed and the possibility of false implication could not be ruled out on account of previous enmity between the parties. As a result, the conviction and sentence was set aside. He also relied upon a decision of the Division Bench of this Court in 2025 (1) ADJ 635; Brij Bihari Bind and Others vs. State of U.P., wherein the inquest report did not contain any case crime number. In that case, the deceased was killed in a bomb attack, there were contradictions in the testimonies of the public witnesses and the doctor had stated that the chik FIR was not accompanying the dead body. Under those circumstances, the appeal was allowed.

38. The facts of the above decisions are entirely different which do not give any benefit to the appellant in this case. In the present case, the case crime number and the sections are mentioned in the inquest report and P.W.3, Bhagirathi, an eye-witness, has been found reliable and trustworthy. There is no evidence which may raise any suspicion that the appellants have been falsely implicated. The Investigating Officer has stated that the special report was sent on the same day and on this point, he has not been cross-examined, so the submission in this regard has no force. No question was put to the doctor, who conducted the post-mortem of the deceased, as to whether the

chik FIR and copy of G.D. accompanied the dead body or not. Therefore, mere argument in this regard has no force.

39. It is also alleged on behalf of the learned Counsel for the appellants that there was no source of light, as claimed by the prosecution. The torches were not produced before the Court and the bulb was not collected by the Investigating Officer. It is further contended that it was a dark night and therefore, there was not sufficient visibility for any witness to see the crime and identify the assailants. In support of this contention, learned Counsel for the appellants has relied upon a decision of the Division Bench of this Court in 2015 (2) ADJ 72; Radhe Sharan vs. State of U.P. and 2025 (1) ADJ page 309; Lavkush vs. State of U.P. In both these cases there were material contradictions in testimonies of witnesses of fact and there was other material infirmity in prosecution evidence, beside sufficient evidence with regard to source of light.

40. We do not agree with the submission of the learned Counsel for the appellants. The main source of light was bulb, which was on, both inside and outside the Kothri and it has come in evidence that it was on at the time of the incident. If the Investigating Officer did not collect the bulb, it is a lapse on his part which amounts to defective investigation. Merely on this ground, the prosecution case cannot be doubted when, on the basis of oral and ocular evidence, it stands proved beyond reasonable doubt.

41. So far as the place of occurrence is concerned, as per the prosecution, the deceased was murdered in a kothari at his tubewell in Village Nebuadih, Police Station Atrauliya, District Azamgarh. The appellants have not disputed this place of occurrence. P.W.1 Ram Dhani, P.W.2 Ram Sakal and P.W.3 Bhagirathi have stated on oath that the incident occurred at the tubewell in Village Nebuadih. The dead body was found over the cot there and at the same place inquest of the deceased was prepared. The Investigating Officer has prepared the site-plan, in which the same place of occurrence is shown. In view of the above, the place of occurrence is established.

42. As per the prosecution, appellant Sati Ram is the son of co-appellant Madho and both of them are named in the FIR alongwith two unknown persons. It is the prosecution case that the deceased had no son and had only one daughter, who was married to the informant, Ram Dhani. The prosecution alleges that both the appellants, Sati Ram and Madho, attempted to grab the property of the deceased, Ram Charan, because he had no son and therefore committed his murder. The appellant, Sati Ram, denies that he is the son of Madho and instead claims that he is the son of deceased, Ram Charan. This is a very important factor, as it must be determined whether Sati Ram is the son of Madho or son of Ram Charan. If it is found that he is the son of Ram Charan, then the prosecution story would become doubtful because, being a son, he would not, in ordinary course, commit murder his own father to grab his property, which would come to him by succession. In this regard, P.W.1 Ram Dhani has stated on oath that Sati Ram is the son of Madho. P.W.3 Bhagirathi, the wife of the deceased Ram Charan, has also said on oath that appellant Sati Ram is the son of Madho. She has further said that she had no son and has denied that appellant Sati Ram is her son.

43. It is pertinent to mention that appellant Madho, in his statement under Section 313 Cr.P.C., admitted that the deceased, Ram Charan had no son, but denied that Sati Ram is his son. The

appellant Sati Ram, however, claims that he is the son of Ram Charan. It is also relevant to mention that the defence did not cross-examine P.W.1 Ram Dhani and P.W.3 Bhagirathi on the point whether Sati Ram is the son of Madho. By not cross-examining these witnesses on the said point, it may be presumed that the defence has admitted the statements of P.W.1 and P.W.3 to the effect that Sati Ram is the son of Madho. It is further relevant to note that there is no reason why P.W.3 Bhagirathi would disown appellant Sati Ram as her son, if he actually is so. There is no evidence to show that P.W.3 Bhagirathi has any enmity against the appellants or that she is under any pressure from the first informant, Ram Dhani, her son-in-law.

44. Beside this, both parties have filed certain documentary evidence in support of their contentions. On behalf of the prosecution, the voter list (Ext. Kha-21) of Jalalpur has been filed, which shows Sati Ram as the son of Madho. Ext. Ka-22 is Complaint Case No. 124 of 1983, which was filed, after the incident of the present case, on behalf of the appellant Madho, in which it is stated that Ram Charan has one daughter and Ram Dhani murdered Ram Charan and has falsely implicated Madho and his son in this case. Therefore, in the said complaint case, the appellant Madho has admitted that Sati Ram is his son, as Sati Ram is a co-accused alongwith Madho in the present case. Consequently, Madho admits that Sati Ram is his son.

45. On the other hand, the defence has not examined any witness to prove this fact. So far as the documentary evidence is concerned, the defence has filed the voter list of the year 1979, in which the name of Sati Ram is not mentioned. However, it may be noted that Sati Ram had not attained the age of 21 years at that time (as the minimum age for adult franchise was 21 years), because in his statement under Section 313 Cr.P.C., recorded in year 1983, the appellant Sati Ram has said that he is 19 years old. The defence has also produced another document, namely the Birth and Death Register of year 1966 (Ex. Kha-3), which shows that a son was born to deceased Ram Charan. On this basis, it is argued on behalf of the appellant that Sati Ram is the son of Bhagirathi (P.W.3) and deceased, Ram Charan. We do not agree with this submission because this fact was not clarified from Bhagirathi when she was examined on behalf of the prosecution in court. Had she been cross-examined on this point, she could have explained whether she gave birth to a baby boy or not and if so, what happened to her son. By not cross-examining her on this point and merely filing Ext. Kha-3 does not help the defence case that Sati Ram is the son of Ram Charan. The appellants have also filed the Kutumb Register (Ext. Kha-6), which shows that the name of Sati Ram is not mentioned in Madho's family, but this fact does not establish that Sati Ram is the son of Ram Charan. On the other hand, appellant Madho, in his complaint filed after the incident, has admitted that Ram Charan had a daughter and has indirectly admitted that Sati Ram is his son.

46. Therefore, in view of the above discussion, we come to the conclusion that the appellants have not been able to prove that Sati Ram is the son of the deceased Ram Charan, whereas the prosecution has proved, by oral and documentary evidence that Sati Ram is the son of Madho.

47. It has come in evidence that the deceased had no son and had agricultural property in his name. The appellants, Madho and his son Sati Ram were his close relatives. Therefore, the prosecution's case is that they wanted to grab the deceased's property and that is why they murdered Ram Charan after taking his thumb impression on blank papers. Though this is a case of direct evidence, in which the deceased's wife and other witnesses have alleged to have witnessed

the incident, so motive loses its significance in the present case. However, there is force in the contention of the prosecution that the appellants had a motive to commit this murder. It is submitted on behalf of appellant that the first informant himself committed murder as he wanted that all the property be transferred in his name but the deceased had transferred some part of property to his daughter. Thus, being annoyed, the first informant himself committed murder. We do not agree with this submission, as there is no evidence in support of this contention. Though it has come in evidence that the first informant took possession of three rooms of appellant Madho and also cultivated crops on his land when he was in jail in this case. But this evidence do not suggest any hint that the first informant had developed any grudge against the deceased which could prompt him to commit his murder.

48. It is also relevant that, according to the evidence of P.W.3, in particular, in order to grab Ram Charan's property, Madho had recorded his son Sati Ram's parentage as Ram Charan in school records so as to project Sati Ram as Ram Charan's son. When Ram Charan came to know of this, he attempted to safeguard his property and executed sale deeds in favour of his daughter and son-in-law, in respect of a part of the property.

49. It is argued on behalf of the appellants that if the deceased had already sold his property in favour of his daughter and son-in-law, then there was no reason for the appellants to murder him. However, this contention has no merit. There is no evidence to show that the deceased had sold his entire property in favour of his daughter and son-in-law. The evidence indicates that a portion of his property still remained with him, therefore, the appellants had a strong motive to murder him so as to prevent him from disposing of the remaining property.

50. Now let us examine the evidence of the three eyewitnesses produced by the prosecution. Out of them, P.W.1 Ram Dhani, is the first informant as well as the son-in-law of the deceased. P.W.2 is Ram Sakal. As per prosecution, both of them are eyewitness who were present near the place of occurrence at an odd hour of the night. They saw the accused running away, thereafter, they chased the accused but could not capture and later reached the tubewell, where they found the deceased dead and his wife, P.W.3 Bhagirathi was sitting beside him. P.W.3, Bhagirathi, is stated to have been present inside the Kothari where the deceased was done to death. Thus, P.W.3 Bhagirathi is an eyewitness to the incident, while P.W.1, Ram Dhani and P.W.2, Ram Sakal are witnesses who saw the accused fleeing from the place of occurrence immediately after the incident.

51. So far as the evidence of P.W.1 and P.W.2 is concerned, they are chance witnesses, as the incident occurred at 4:00 a.m. on 23.10.1982 at the tubewell of the deceased, which was situated outside the village. At such an odd hour, P.W.1, Ram Dhani and P.W.2, Ram Sakal would not have been normally present there. With regard to the evidence of chance witnesses, it is settled law that their testimony cannot be outrightly rejected, but it must be scrutinized carefully.

52. According to the prosecution, the first informant and his co-villagers, Ram Garib, Ram Shakal and Rajbali were going towards the tubewell to irrigate their respective fields. The prosecution has not examined Rajbali in court. P.W.2, Ram Sakal has stated that he went to the tubewell of Shyam Lal to take water, but the tubewell was closed, so he was returning back and on the way, met the other eye-witnesses. The above testimony is not reliable because the witness has

admitted that in the evening he did not have any talk with Shyam Lal regarding taking water from his tubewell, though Shyam Lal was present at his home till 9:00 p.m. When he had no such talk with Shyam Lal, it was not expected of the witness to reach the tubewell in anticipation that it would be open.

Further, the site-plan shows that Shyam Lal's tubewell is near the abadi, so if P.W.2 Ram Sakal had gone to Shyam Lal□s tubewell, then on his way back home, he had no occasion to go towards the place of occurrence and meet the first informant and other witnesses on the way. Therefore, it appears that P.W.2 Ram Sakal is not a reliable witness and his presence near the place of occurrence is highly doubtful.

53. P.W.1, Ram Dhani has said that Rajbali awakened him at 4:00 a.m. and asked him to accompany to the tubewell for irrigation. Thereafter, he proceeded towards the tubewell and, on the way, met Ram Garib and Ram Sakal. However, the prosecution has not examined Rajbali. It has come in the statement of P.W.3, Bhagirathi, that it had rained during the night, therefore, there was no occasion for the first informant and Ram Dhani to go to the tubewell to irrigate their fields. Further, P.W.1, Ram Dhani and P.W.2, Ram Sakal have stated that from a distance of about 15-20 steps, they saw the accused alongwith two unknown persons running from the deceased's tubewell, from where they heard cries. They chased them upto some distance but could not capture them.

54. It has come in evidence that the accused were unarmed, so the witnesses had no threat to their lives or to their persons. Therefore, absence of any sincere effort to catch the assailants on their part is not natural conduct. Further, they stated that they saw the accused running and flashed their torches at the accused persons, but it would have been difficult for them to recognize the persons while chasing them from behind. In view of the above, the testimony of P.W.1 and P.W.2 is highly unreliable, and their presence near the place of occurrence is highly doubtful. It appears that they reached at the spot after the incident was over.

55. Now, the testimony of P.W.3, Bhagirathi, remains. As per the prosecution, she was sleeping on the same cot with her husband, the deceased Ram Charan, in the Kothari of the tubewell when the appellants and two unknown persons came there and committed the crime. P.W.3 is an old village woman. She has supported the prosecution case, and there are no material inconsistencies in her testimony.

56. Learned Counsel for the appellants has submitted that the testimony of the prosecution witnesses is doubtful, therefore, no reliance can be placed upon it. In this regard, he has relied upon a decision of the Division Bench of this Court in Sanjay vs. State of U.P., 2022 (5) ADJ 458. He has further submitted that P.W.-3, Bhagirathi, has introduced a new version regarding the manner of the murder of the deceased, which is contrary to the post-mortem report, as such, her testimony is not reliable and trustworthy. In this regard, he has also placed reliance upon the decisions of the Division Bench of this Court in Ravindra Pandey vs. State of U.P., 2019 (1) ADJ 466; Saya Prakash vs. State of U.P., 2022 (3) ADJ 76; and Deny Bora vs. State of U.P., 2014 (87) ACC 681.

57. It is also argued on behalf of the appellants that it is not normal in North India for a woman to accompany her husband to the tubewell at night. Therefore, her presence at the spot has been fabricated to strengthen the prosecution case.

58. We do not agree with this submission. It has come in evidence that P.W.3 Bhagirathi had one daughter who was married to the first informant, Ram Dhani. Ram Dhani and her daughter used to live in their house in the village, while Bhagirathi accompanied her husband to guard the tubewell and used to stay there at night with him. Both of them were elderly persons, and if Bhagirathi accompanied her husband, it is not unnatural. She was the most suitable companion of the deceased, especially when her presence was not required in the house where her daughter and son-in-law resided.

59. It is further submitted on behalf of the appellants that it was the rainy season and, especially in hot and humid weather, it was not normal for the deceased and Bhagirathi to sleep in the Kothari of the tubewell. We do not agree with this submission either. It has come in evidence that the tubewell was near the fields, and due to the humid weather, the doors were kept open. There was also an apprehension of insects and mosquitoes outside, giving reason for them to sleep inside the Kothari.

60. It is also argued that Bhagirathi's presence at the place of occurrence is doubtful because, if the assailants were known or related to the deceased, they would have covered their faces, and also not causing any harm to Bhagirathi is unnatural. We do not agree with this submission. It has come in evidence that one of the assailants caught hold of Bhagirathi while the others committed the crime. It depends upon the mind of the criminals how they act and there is no rule that the assailants must kill all the persons present at the place of occurrence. If their purpose was achieved by taking the thumb impression of the deceased on blank papers and also by killing him, then merely because they spared Bhagirathi, no reasonable doubt can be raised about the prosecution case.

61. P.W.3, Bhagirathi, has stated that she was caught hold of by one of the assailants and was forced to sit by the northern wall of the Kothari, with her face towards the south. The Investigating Officer has depicted this position in the site plan (Ext. Ka-10), which shows that her face was towards the cot where the deceased was sleeping, so she had a clear view of what was happening there.

62. It has come in her evidence that bulb was on, inside and outside the Kothari and that there was electricity in the village that night. It is argued on behalf of the appellants that the Investigating Officer did not collect any evidence to know that electricity was available during the night, nor did he collected the bulb which was said to have been lit at the time of the occurrence; therefore, the source of light is doubtful, and the witness had no opportunity to identify the actual assailants. We do not agree with this submission because the witness has stated that there was electricity during the night, and Bhagirathi, in particular, has stated that the bulb was lit inside and outside the Kothari when the offence was committed. The failure to collect the bulb is merely a lapse on the part of the Investigating Officer. It is settled law that a defective investigation does not vitiate the prosecution case when it stands fully proved by reliable ocular and medical evidence. In the present

case, P.W.3, Bhagirathi, has supported the prosecution case and has proved that the appellants, alongwith two unknown persons, committed the crime.

63. It is submitted on behalf of the appellants that the Investigating Officer used two case diaries, which is impermissible under law and that no date is mentioned below the initials of the Circle Officer, in the FIR. It is also contended that the original copies of the case diary, except the inquest report, post-mortem report, charge-sheet and site plan, are not available. Ext. Ka-7 is not part of the paper book or the trial court record. Similarly, Ext. Ka-5 (photo nash) is also not part of the paper book or the trial court record, which raises suspicion over the prosecution case.

64. We do not agree with this submission. The above documents, exhibited as Ext. Ka-5 and Ka-7, were put to the witness and duly proved by the prosecution. The purpose of maintaining case diary is only for the purpose to refresh the memory of the Investigating Officer, when he is called by the Court as a witness. There is no evidence that during trial the case diary was not available before the trial court and there is also no evidence that any prejudice has been caused to the appellant due to it. Therefore, the absence of the original case diary has no adverse effect on the prosecution's case.

65. It has been argued on behalf of the appellants that the presence of appellant Madho at the place of occurrence is doubtful, as evidence suggests that he was suffering from cataract in both his eyes and while lodged in jail, his eyes were operated upon by D.W.1, Dr. Vinod Tripathi. The said witness has stated that Madho had no vision in his left eye and very poor vision in his right eye. Therefore, Madho's involvement in the crime was not possible. We do not find merit in this submission. D.W.1, Dr. Vinod Tripathi, performed the cataract surgery on appellant Madho and discharged him on 03.03.1983. Thus, the operation was conducted in February 1983, whereas the incident took place on 23.08.1982. This indicates that the surgery in Madho's eyes was performed approximately six months after the incident. D.W.1 has stated that it will take three months to develop this kind of cataract. Cataract develops slowly. Therefore, it can not be said with certainty that at the time of incident Madho's vision in his eyes was nil or negligible. The doctor has also said that such kind of patient can catch and identify a known person in electricity and flash of torch and it is hard to tell how much vision would be in case of cataract and upto which distance a patient can see.

66. Further, it is relevant to mention that the appellant underwent cataract surgery after his arrest in connection with the crime. It has come on record that, at the time of his eye test, the patient's vision was noted on the basis of what he claimed he could see with both eyes. Therefore, it is possible that the appellant, Madho, may have misstated his visual capacity while reading the letters to create doubt over the prosecution case. Consequently, the submissions made on behalf of the appellants have no force.

67. It is also submitted on behalf of the appellants that the statement of P.W.3 is contrary to the prosecution case. According to the prosecution, the deceased was killed by pressing a pillow over his mouth and thrusting cotton in his nostrils, whereas Bhagirathi has stated that an gamchha was wrapped around his neck and pulled, as a result of which the deceased died of strangulation. Therefore, the statement of Bhagirathi is not reliable.

68. We do not agree with this submission because the FIR was lodged by Ram Dhani, who is not an eyewitness to the incident. In fact, it was Bhagirathi who was present in the Kothari, where the deceased was murdered. Thus, she was in a better position to observe what was happening at the time of the incident. It is also to be noted that P.W.3, Bhagirathi, has stated that the accused had thrust cotton into her husband□s nostrils and wrapped an angaucha around his neck and pulled it, as a result of which her husband died. Therefore, the appellants not only strangulated the deceased but also pressed a pillow over his mouth and thrust cotton into his nostrils to stop him from breathing. Therefore, in the present case, smothering and strangulation took place simultaneously.

69. In this connection, another argument advanced by the appellants is that the ocular evidence is not supported by the medical evidence; therefore, the prosecution case is doubtful. It is argued on behalf of the learned Counsel for the appellants that there is no explanation for the five other injuries sustained by the deceased. In support of this contention, learned Counsel for the appellants has relied upon a decision of the Supreme Court in AIR 1990 SC 2154, State of Haryana vs. Lakhveer Singh and another, wherein there were material contradictions between the ocular and medical evidence. He has also relied upon the decisions of the Division Bench of this Court in 2018 (7) ADJ 658, Raghunath Singh and others vs. State of U.P.; 2022 (2) ADJ 220, Munna Singh vs. State of U.P.; and 2015 (2) ADJ 72, Radhe Sharan vs. State of U.P. on the same point.

70. In this regard, the oral evidence has already been discussed. So far as the medical evidence is concerned, as per the post-mortem report, the deceased sustained five injuries on his body. Out of them, two injuries were in the nature of contusions over the left eye and left temple. There were two abrasions over the left hip and the base of the left thumb. The fifth injury was a contusion over the front and back of the neck, including its middle part. There was also a contusion over the upper part of the chest extending to the back of the neck. The subcutaneous tissues underneath the muscles of the neck were congested. The nature of the above injuries supports the prosecution case, as it has come in evidence that when he was overpowered by assailants, while lying on the cot, the deceased tried to save himself. At the time of the incident, he was pulled upside down, a pillow was pressed on his mouth and cotton was thrust into his nostrils. In a struggle to attempt to save himself, the deceased might have struggled, as a result he could have sustained the above injuries. Besides, the injuries around the neck support the prosecution case that an angaucha was wrapped and tightened around his neck.

71. In the opinion of the doctor, the cause of death was asphyxia as a result of strangulation. It is argued on behalf of the appellants that, in cases of strangulation, a ligature mark would appear around the neck, which is absent in the present case. The doctor has also stated that if an gamchha is wrapped around the neck, a ligature mark would usually occur. Therefore, the medical evidence does not support the ocular evidence.

72. We do not agree with this submission because the deceased was an old person, and multiple injuries on his body show that he struggled desperately. Smothering occurs when the face, or at least the nose or mouth, is covered to block the airway and prevent breathing. In the present case, an attempt was made to smother the deceased by pressing a pillow over his mouth and stuffing cotton in his nostrils, and an attempt to strangulate him by wrapping an gamchha around

his neck was also made. In both smothering and strangulation, the result is asphyxia, which is loss of breath, and in both cases, death occurs due to cessation of breathing.

73. In view of the above, the peculiar facts of the case show that the object of the accused was to kill the deceased after obtaining his thumb impressions on some papers. The opinion expressed by the doctor is only an opinion and is not binding. Therefore, under the peculiar facts of the present case, the cause of death was asphyxia resulting from combination of smothering as well as strangulation.

74. The Investigating Officer collected cotton from both nostrils of the deceased and also recovered a pillow bearing some liquid stains, which may have come from the nose and mouth when they were pressed with the pillow. In view of the above, the ocular testimony is supported by the medical evidence. Even if the prosecution case is accepted, the intention and motive to commit murder cannot be established, as the alleged motive was only to obtain the thumb impression of the deceased on blank papers. The injuries were not such as could have caused death in the ordinary course of nature, therefore, at the most, an offence under Section 304 (II) IPC is made out and not under Section 302 IPC.

75. Learned Counsel for the appellants has submitted that appellant Sati Ram is not a previous convict and has no criminal history, therefore, he may be given the benefit of the Probation of Offenders Act, 1958. In this regard, learned Counsel for the appellants has relied upon a decision of the Supreme Court reported in (2010) SCC 486; Mohd. @ Billa vs. State of Rajasthan.

76. We do not agree with the submissions, as it is a clear-cut case of murder. The appellants, along with two unknown persons, reached at the spot at an odd hour of the night, pounced upon the deceased and after obtaining his thumb impressions on some papers, pressed a pillow over his mouth, thrust cotton in his nostrils, and strangulated him with an angaucha, causing injuries that resulted in his death at the spot. Therefore, the offence clearly falls within the category of murder, which is punishable under Section 302 IPC.

77. In view of the above discussion, we come to the conclusion that the prosecution has been able to prove its case beyond reasonable doubt. It has been proved that the appellants alongwith two unknown persons, entered the Kothari, overpowered the deceased and Bhagirathi and thereafter took his thumb impression on blank papers. They pressed a pillow over his mouth and stuffed cotton in his nostrils and also wrapped an angaucha around his neck and pulled it, causing injuries which resulted in his death on the spot. Therefore, appellant Sati Ram is guilty of the offence punishable under Section 302 I.P.C. Further, since the blank papers upon which the thumb impression was taken could have been converted into valuable security, so he is also guilty of the offence punishable under Section 386/34 I.P.C. Hence, the Trial Court has correctly appreciated the evidence on record and reached at the right conclusion regarding the guilt of the appellant, Sati Ram.

78. Thus, the present appeal lacks merit and is, accordingly, dismissed. The conviction and sentence of the appellant, Sati Ram, as recorded in the impugned judgment and order dated 30.03.1984, are hereby affirmed. The appellant, Sati Ram, is on bail. His personal bond and bail

bonds are cancelled and the sureties discharged. He is directed to surrender before the Trial Court within three weeks from today to undergo the remaining part of his sentence, failing which the Trial Court shall adopt coercive measures to secure his presence.

79. Let a copy of this order be forwarded to the Trial Court concerned along with the Trial Court record for information and necessary compliance.

(2026) 5 ILRA 191
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 27.05.2026

BEFORE

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

Criminal Appeal No. 1466 of 2001

Gram Lodhi @ Salig Ram ...Appellant
Versus
State of U.P. ...Respondent

Issue for Consideration

Matter pertains to whether the prosecution proved the charge under Ss. 452 and 302 IPC beyond reasonable doubt, particularly in view of the plea that the FIR was ante-timed, the prosecution failed to establish the motive, the testimony of the alleged eye-witnesses was unreliable, there were material contradictions between the ocular and medical evidence, the source of light and identification of the assailant were not satisfactorily proved, and whether the conviction recorded by the Trial Court was sustainable. (Paras 32-50).

Headnotes

Criminal Law - Appreciation of Evidence - Sustainability of Conviction - Indian Penal Code - Ss. 302, 452 - Code of Criminal Procedure, 1973 - Ss. 157(1), 162, 174, 313, 374(2) - Bharatiya Nagarik Suraksha Sanhita, 2023 - S. 481 - FIR found to be ante-timed on account of suspicious circumstances including the description of the informant as wife of late deceased, inconsistency regarding the preparation of the written report, unexplained overwriting in the inquest, discrepancy in the General Diary entries, and failure to establish prompt forwarding of the special report to the Magistrate - Ante-timed FIR rendered the prosecution case doubtful and entitled the accused to the benefit of doubt. (Paras 33-40).

Criminal Law - Murder - Place of Occurrence - Indian Penal Code - S. 302 - Code of Criminal Procedure, 1973 - S. 174 - Recovery of blood-stained earth, plain earth and bullet from the courtyard, preparation of site-plan, and ocular evidence established the place of occurrence - However, establishment of the place of occurrence by itself was insufficient to sustain the conviction in the absence of reliable evidence identifying the assailant. (Paras 41, 50).

Criminal Law - Murder - Motive - Indian Penal Code - S. 302 - Alleged land dispute relied upon as motive was neither satisfactorily proved nor of such a nature as would necessarily impel the commission of the offence - Failure to establish the alleged motive further weakened the prosecution case. (Paras 42, 50).

Criminal Law - Appreciation of Evidence - Chance Witness - Indian Penal Code - S. 302 - Code of Criminal Procedure, 1973 - S. 162 - Evidence of the alleged chance witness required careful scrutiny - Presence of the witness at the place of occurrence at midnight was highly doubtful,

the alleged source of light was not proved, and material improvements in his testimony rendered it unreliable. (Para 44).

Criminal Law - Appreciation of Evidence - Non-examination of Independent Witness - Indian Penal Code - S. 302 - Failure to examine the independent witness who was allegedly present at the time of occurrence, coupled with contradictions regarding his presence, assumed significance when the examined eyewitnesses were found unreliable - Unexplained omission raised doubt about the prosecution case. (Paras 45, 47).

Criminal Law - Appreciation of Evidence - Identification of Assailant - Indian Penal Code - S. 302 - Where the occurrence took place at midnight and the prosecution failed to establish a reliable source of light, and the ocular version regarding the manner of assault was inconsistent with the medical evidence, identification of the assailant became doubtful - Testimony of the alleged eyewitness was held unreliable. (Paras 46-47).

Criminal Law - Ocular and Medical Evidence - Indian Penal Code - S. 302 - Material contradictions between the ocular version and the post-mortem findings regarding the seat and number of firearm injuries remained unexplained - Such inconsistencies materially affected the credibility of the prosecution version and created reasonable doubt. (Paras 49-50).

Criminal Law - Benefit of Doubt - Appeal Against Conviction - Indian Penal Code - Ss. 302, 452 - Code of Criminal Procedure, 1973 - S. 374(2) - Cumulative effect of ante-timed FIR, failure to prove motive, unreliable ocular evidence, doubtful identification, non-examination of independent witness and contradictions between ocular and medical evidence established that the prosecution failed to prove its case beyond reasonable doubt - Conviction and sentence set aside and the appellant acquitted. (Paras 50-55).

Held: The prosecution failed to prove its case beyond reasonable doubt - The FIR was not lodged at the time mentioned therein and was ante-timed which rendered it doubtful and gave rise to the possibility of false implication and improvement in the prosecution case - Though the place of occurrence stood established, the alleged motive was neither proved nor of such a nature as would prompt the commission of the offence - The testimony of the alleged eye-witnesses was not reliable and trustworthy as the presence of one witness near the place of occurrence was highly doubtful and there was no reliable evidence that the other witness was in a position to identify the appellant at the time of the incident - The prosecution failed to establish a sufficient source of light and the non-examination of the independent witness without any sufficient reason raised further doubts over the prosecution case - There were major contradictions between the ocular and medical evidence which remained unexplained - The Trial Court failed to appreciate the evidence on record correctly and erred in holding the appellant guilty - The conviction was based on incorrect appreciation of facts and evidence and the conclusion of guilt was based on conjectures - The impugned judgment and order were liable to be set aside and the appellant was entitled to acquittal - appeal allowed. (Paras 40-50, 51-55). (E-7)

Case Law Cited

Meharaj Singh (L/Nk.) v. State of U.P., **(1994) 5 SCC 188***; Hem Raj v. State of Haryana,* **A.I.R. 2005 S.C. 2110***.*

List of Acts

Indian Penal Code; Code of Criminal Procedure, 1973; Bharatiya Nagarik Suraksha Sanhita, 2023

List of Keywords

Ante-timed FIR; Appreciation of evidence; Benefit of doubt; Ocular evidence; Medical evidence; Contradictions; Eyewitness; Chance witness; Interested witness; Independent witness; non-examination of witness; Source of light; Identification of assailant; Motive; Murder; Recovery of blood-stained earth; Inquest; Post-mortem report; Conviction; Acquittal.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal under S. 374(2) of the Code of Criminal Procedure, 1973 against the judgment and order dated 16.03.2001 passed by the IInd Additional Sessions Judge, Hamirpur in Session

Trial No. 159 of 1998, arising out of Case Crime No. 251 of 1998, whereby the appellant was convicted under Ss. 302 and 452 IPC.

Appearances for Parties

Advs. for the Appellant:
Not mentioned in the extracted judgment.
Advs. for the Respondents:
Ms. Divya Ojha learned Additional Government Advocate-I (for the State).

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

1. The instant Criminal Appeal, under Section 374 (2) Cr.P.C., has been preferred by appellant/convict Gram Lodhi alias Salig Ram son of resident of Village- Mothi Katra, Police Station- Garautha, District- Jhansi, against the judgment and order dated 16.03.2001 passed by IInd Additional Sessions Judge, Hamirpur in Session Trial No. 159 of 1998, arising out of Case Crime No. 251 of 1998 (State Vs. Gram Lodhi alias Salig Ram), under Sections 452, 307 and 302 IPC, Police Station- Rath, District- Hamirpur.

2. By the impugned judgment and order, appellant Gram Lodhi alias Salig Ram has been convicted and sentenced to undergo imprisonment for life for the offence punishable under Section 302 Indian Penal Code (in short 'IPC'). He has also been convicted and sentenced to undergo 5 years' rigorous imprisonment for the offence punishable under Section 452 IPC, and it was directed that both the sentences shall run concurrently.

3. Brief facts of the prosecution case are that informant Smt. Vidya Devi wife of late Chetram, daughter of Nathhu resident of village Kasba Khera, Police Station- Rath, District- Hamirpur, submitted a written application (tehrir) (Ext. Ka-6) dated 15.06.1998 before the Incharge Police Station- Rath, District- Hamirpur, stating therein that she lives in her father's house in Village- Kasba Khera since last 30 years, because she has no brother. Yesterday i.e. 14.06.1998, while all the family members were sleeping in courtyard after taking dinner, she awoke when accused Gram jumped in her house from the house ruins at 12 O' Clock midnight. The accused shot at her husband Chetram by pistol with the intention to kill. Upon scream, the accused ran away. Her dewar Bahadur, who came to invite them, was sleeping outside the house, saw and challenged him. Some neighbors also reached there but Gram could not be caught. About 11 months ago there arose a dispute between the accused and her husband over his husband's bua's land situated in Village- Kheri Kadaura, Police Station- Garautha, District- Jhansi and accused Gram shot at her husband due to the above dispute. The bullet had hit at her husband's chest. She, her father and some villagers admitted her husband in District Hospital, Rath for treatment and she has come to lodge the report. Upon this information FIR under case crime No. 251 of 1998, Section 452, 307 IPC was registered at Police Station- Rath at 02.00 a.m. and the investigation commenced.

4. Injured Chetram succumbed to the injuries in hospital and the case was converted to Section 302 IPC. The Investigating Officer reached at the place of occurrence and collected plain earth and blood-stained earth and a bullet and prepared its fard baramadgi (Ext. Ka-3). He also inspected a lantern and handed it over in possession and prepared its supurdaginama (Ext. Ka-2). The inquest of the deceased was prepared alongwith related papers. The body of the deceased was sent for post-

mortem. In post-mortem six ante-mortem injuries were found and in the opinion of the doctor the cause of death was shock and hemorrhage due to ante-mortem injuries. The Investigating Officer recorded statements of informant and other witnesses and after completion of investigation filed charge-sheet under Section 452, 307 and 302 IPC before Chief Judicial Magistrate Hamirpur.

5. The concerned court took cognizance of the offence and summoned the accused. He appeared before the court. He was furnished copies of relevant prosecution papers under Section 207 Cr.P.C. and thereafter, the case was committed to the Court of Sessions for trial.

6. The accused appeared before the Court of Sessions where charge under Sections 452, 302 IPC was framed against him to which he pleaded not guilty and claimed to be tried.

7. Prosecution has examined seven witnesses to prove its case, to wit, P.W. 1 Vidya Devi (informant), P.W. 2 Arjun Singh, P.W. 3 Ballu, P.W. 4 Dayawati, P.W. 5 Dr. D.C. Tiwari, P.W. 6 Amar Singh and P.W. 7 Dharampal Singh.

8. P.W. 1 Vidya Devi (informant) has said that she knows the accused since before the incident. Her father had no son, so after her marriage she kept living in her maika alongwith her husband. About one year and a month ago at about 12 midnight she and her husband were sleeping in the courtyard of her house and her dewar Bahadur was sleeping on a cot in another room keeping door open. Some person jumped inside the courtyard as a result she and her dewar awoke. Accused Gram fired at her husband with tamancha, upon her cry he fled from the spot. She identified accused in the light of a lantern lit near Lord Shankar's worship place in her courtyard. Soon thereafter, she, her dewar and other villagers brought her husband, in tempo, to Rath District Hospital and got him admitted. Thereafter, she went to Police Station- Rath where she got her application (tehrir) (Ex.Ka-1) written by her sister Dayawati and lodged the FIR. She has further said that about a year since before the incident, there arose a dispute and maarpeet between the accused and her husband regarding his bua□s land. Due to the above enmity the accused killed her husband.

9. In cross-examination P.W.1 Vidya Devi has said that she does not remember that her husband was convicted in the case under Section 25 Arms Act. She admitted that her husband Chetram was lodged in Hamirpur Jail after her marriage, but she does not remember for how many years he was kept in jail. He does not know Jairaj dacoit and has no knowledge that her husband was a member of his gang. She does not know that Jairaj was killed in Police encounter. It is correct that her husband appeared before the Court but she does not know that Police wanted to kill him. She was living with her husband since last 30-31 years. She went to Rath Hospital by the Taj Mohd's tempo along with ex-Pradhan Munnawar, Ramesh Pundit and her sister Dayawati. Ext. Ka-1 was written by her sister and she had taken paper and pen from her house. It took half an hour to reach Rath. The doctor soon thereafter, attended her husband in the hospital and she went to the police station, which is at a little distance from hospital. The Constable went to the hospital and when she returned to the hospital her husband had died. As her husband was seriously injured so she had taken him firstly to District Hospital, Rath. At about 7-8 p.m. they had taken meal. Blood had splattered on the ground at the place where her husband was murdered. He was shot while in lying condition. The Inspector had taken blood from the spot in his possession. Within 2-3 minutes

after the accused fled from her house, the villagers came there. Prior to this incident the accused had visited her house along with her husband on many occasions.

10. P.W. 2 Arjun Singh, has said that he knows the accused since before the incident. The deceased was murdered inside his house in the night. He had gone to attend Akhand Ramayana in nearby Village Padra and was returning to his village at about 12 midnight. As soon as he reached Chetram's house he heard sound of fire from inside the house. He was carrying torch and saw in its light, the accused Gram jumping from behind the house carrying a tamancha. He hid himself behind the beetle shop. Soon thereafter, he heard weeping and crying from Chetram's house so he went there and saw Chetram lying in the courtyard drenched with blood. Vidya and Chetram were present there. Soon, thereafter, he left for his house.

11. In his cross-examination P.W. 2 Arjun Singh, has said that after about four days the Inspector called him and inquired from him about the incident and got his signature over a paper. He had told the Inspector that he had gone to village Padra to participate in Akhand Ramayan in Chowkidar Julmi's house. He does not know the reason why it is not mentioned in his statement. He went to Village Padra alone and did not tell about this act to anybody else except the Inspector. Earlier he has stood as a witness in Hari Kishun Dimar's murder. He saw accused jumping over the wall of Chetram's house, soon thereafter he flashed torch over the accused. Chetram's family members were saying that Gram had shot at the deceased and he himself said to the villagers that he saw Gram running from behind the house.

12. P.W. 3 Bablu, has said that the next day after the incident, the Inspector came to Chetram's house and while inspecting the place of occurrence had taken in his possession a lantern which was lit at the time of the incident and prepared its superdaginama (Ext. Ka2). The Inspector also collected sample of plain earth and blood-stained earth and a bullet in his possession and sealed it and prepared its fardbaramadgi (Ext. Ka3). He has also said that he has brought the said lantern today in court which was lit under the neem tree in the courtyard. When the Inspector took the lantern in his possession, it was burning and there was kerosene oil in it. He is brother-in-law of Chetram and Viday Devi is his sister. After getting the news of the death of Chetram, he reached in the morning.

13. In his cross-examination he has said that Vidya Devi is his real sister and then said that she is his neighbour and not her real sister.

14. P.W. 4 Smt. Dayawati is the younger sister of the informant. Smt. Dayawati has said that about one year and three months ago her (bahnoi) Chetram was murdered, who along with her sister was living in her parents house in village Kasba Khera. She came to know of her bahnoi's murder the same night. Thereupon she went to her sister's house. Her bahnoi was taken to Rath Hospital the same night. She also accompanied them in Hospital with her sister Vidya Devi where her sister dictated the application (tehrir) Ext. Ka-1 and had put thumb impression over it. She has proved tehrir as Ext. Ka-1.

15. In her cross-examination, P.W. 4 has said that on the fateful night her parents also came to know that Chetram was shot and her father along with some villagers went to Rath Hospital, where

her bahnoi was brought. The Police was not there and an Inspector came there in the morning at about 8.00 a.m. The distance between Rath Hospital and police station Rath is about one furlong.

16. P.W. 5 Doctor D.C. Tiwari, has stated that on 15.06.1998 he was posted as Medical Officer in Rath Hospital. Constable Vinod Prajapati and Constable Ballu Lal Yadav brought dead body of deceased Chetram before him for post-mortem. He conducted the post-mortem at 05.00 p.m. He has stated that the body was average build and was aged about 40 years. Rigor mortis was present over the body. He found following ante-mortem injuries:-

i. Firearm wound of entry 1.5cm x 1.5cm through and through to the left of chest 2.5 c.m. below the shoulder. The margins of the wound were inverted. Blackening and tattooing was present in an area of 3 c.m.

ii. Firearm wound of exit 2cm x 3 cm x gutter shaped, muscle deep on the left arm, 2 c.m. above from the left wrist joint.

iii. Lacerated firearm wound of exit 2 c.m. x 2 c.m x on left side of chest 5.5 c.m. lateral from medial, 9 c.m. from collarbone margins of wound were everted.

iv. Abrasion 2.5 c.m. x 2 c.m. on the top of the right shoulder.

v. Abrasion 2.5 c.m. x 1 c.m. on the right buttock.

vi. Abrasion 1.5 c.m. x 1 c.m. on the back of right elbow.

17. In internal examination, sixth rib under injury no. 1 was fractured and left lung was lacerated and full of blood. There was semi digested food in the stomach, small intestine was empty and large intestine was filled with gases and fecal matter. In his opinion the cause of death was shock and hemorrhage as a result of ante-mortem injuries and the death would have been caused about half a day ago. He has opined that the death could have occurred on 15.06.1998 at 02.00 a.m. He has further stated that there may be a margin of six hours on either side regarding the time of death. P.W. 5 Doctor D.C. Tiwari, has proved post-mortem report as Ext. Ka-4, and has stated that injury no. 1, 2 and 3 could have caused by fire from tamancha.

18. In his cross-examination P.W. 5 Dr. D.C. Tiwari, has said that injury no. 1 and 2 could have been caused by different fires. The entry wound and exit wound of both these injuries are different. Injury no.1 could have been caused from a distance of about three feet. There was no blackening or tattooing found on injury no. 2. The deceased could have taken food about 2-3 hours before his death.

19. P.W. 6 Inspector Amar Singh, is the second I.O. and has conducted part investigation of this case. He has stated that earlier the case was investigated by S.I. Dharampal Singh. The case was registered under Section 307 I.P.C. and after the death of the deceased it was converted into offence under Section 302 I.P.C and thereafter, he took over the investigation. He recorded statements of witnesses and submitted charge-sheet, which he proved as Ext. Ka-5.

20. In his cross-examination P.W.6 has said that the name of witness Arjun Singh is not mentioned in FIR. He recorded statement of witnesses Bahadur on 18.06.1998. He did not took into possession the torch, from which Arjun Singh saw the incident.

21. P.W. 7 S.I. Dharampal Singh, is the first Investigating Officer of this case. He has stated about the investigation he carried out and said that the scribe of chik FIR remained posted with him and he is well versed with his handwriting and signature. As a secondary witness, he has proved the chik FIR as Ext. Ka-6 and G.D. No. 5 dated 15.06.1998 as Ext. Ka-7. He has stated that he reached at the place of occurrence and inspected it at the instance of informant Smt. Vidya Devi and prepared its site-plan which he proved as Ext. Ka-8. He collected sample of plain earth and blood-stained earth and the bullet from the place of occurrence and prepared its fard baramadgi, which he proved as Ext. Ka-3. He also took into possession the lantern which was lit at the time of incident and thereafter, gave it in the supurdagi to Ballu and prepared its supurdaginama which he proved as Ext. Ka- 2. Thereafter, he reached Hospital Rath because it came to his knowledge, that injured Chetram has scummed to his injuries in the Hospital. When he reached at the Hospital the inquest was already prepared by Amar Singh Rathore.

22. In his cross-examination he has said that the deceased had died in the night of 14/15.06.1998. The accused had jumped inside the house from the southern wall as was told by the informant. The above wall was about 3-4 feet high and it was damaged. He has shown the place from which the blood was found.

23. In re-examination he has said that he had heard at the gate of the Police Station that the dead body of deceased Chetram was brought to the District Hospital, Rath. Thereafter, he reached at the District Hospital, Rath where Incharge I.O. Amar Singh was present along with inquest and at his direction he prepared the inquest report and other related papers. In his earlier statement he has mistakenly said that the inquest was prepared by S.I. Amar Singh.

24. In his cross-examination he has said that except for underwear there was no other cloth present over the dead body. He has mentioned the injuries in the inquest, which he found during examination of the dead body. There is over writing over the time of the FIR in the inquest and he cannot tell the digit over the writing.

25. The prosecution has produced following documentary evidence:-

Written report as Ext. Ka-1; Recovery memo of lantern as Ext. Ka.2, recovery memo of blood-stained and plain earth as Ext. Ka.3; postmortem report as Ext. Ka.4; a charge-sheet Ext. Ka.5; a chik FIR Ext. Ka.6; G.D. No. 5 dated 15.06.1998 Ext. Ka.7; Site plan Ext. Ka.8; Panchayatnama Ext. Ka.9; G.D. No. 33 Ext. Ka.10; photo nash Ext. Ka.11; letter to the CMO Ext. Ka.12 and Letter to the hospital Ext. Ka.13.

26. After closure of prosecution evidence, the statement of appellants was recorded, under Section 313 Cr.P.C., in which he has admitted that it is true that witnesses Vidya Devi, Arjun Singh and Dayawati know him since before the incident. Smt. Vidya Devi is the elder sister of Smt. Dayawati. Deceased Chetram belonged to Moti Katra, Police Station- Garautha, District- Jhansi. It

is also correct that Smt. Vidya Devi came to her village on many occasions. Rest of the prosecution case was denied and he has said that due to enmity he has been falsely implicated in this case. His nephew Jaipal had beaten Charan Singh, the son of Vidya Devi's sister Raj Kumari in a Kabaddi match. Due to the above enmity Vidya Devi has falsely implicated him in this case. The apellants have not produced any evidence in defence.

27. After hearing the learned Counsel for the parties and perusing the record, the learned Trial Court came to the conclusion that the prosecution has been able to prove its case beyond reasonable doubt and the charge against the appellant has been proved. It was observed that the FIR was prompt. The eye-witness are reliable and trustworthy and their evidence is consistent. The ocular evidence is supported by medical evidence. Accordingly, the appellant was convicted and sentenced to the term as indicated above.

28. We have heard rival submissions of learned Counsel for the parties and perused the record.

29. It is submitted on behalf of the appellant that the FIR is ante-timed. There is cutting and over writing over the time on first page of the inquest of the deceased and as per prosecution at the time when the informant had lodged the FIR at the Police Station, the deceased was alive and was admitted in the Hospital but the first informant has written her name and address as Smt. Vidya Devi wife of 'Late Chetram', which goes to show that at the time of lodging the FIR, the deceased had already died and thus the FIR was lodged ante-timed giving rise of suspicion over the prosecution case.

30. It is also submitted that the prosecution has not examined any independent witness. All the witnesses of fact are related and thus they are highly interested witness, so their testimony is not reliable. It is also submitted that the deceased had criminal history and there were many heinous cases pending against him. He was a member of Jairam dacoit's gang and had several inimical persons, who would have committed his murder and the appellant has been falsely implicated in this case.

31. Per contra, Ms. Divya Ojha, learned Additional Government Advocate-I has submitted that the prosecution case is proved beyond reasonable doubt. P.W. 1 Vidya Devi is deceased's wife and she is natural witness. Her testimony is consistent and trustworthy. There was motive for the appellant to commit this murder because about 11 months prior to this incident a fight had occurred between the deceased and appellant in respect of a land. The ocular testimony is supported with the medical evidence. There was lantern burning at the time of the incident and the I.O. had inspected it and handed over it in the possession of witness Ballu. So there was a source of light in which the incident was witnessed by the eye-witnesses. The FIR was lodged promptly, after two hours of the incident and there was no delay in lodging the FIR. Some overwriting on the first page of the inquest over the time of the FIR, would not render it suspicious and it does not mean that the FIR was lodged ante-timed. P.W. 2 Arjun Singh is the witness who saw the appellant running from the back side of the house of the deceased soon after the incident and when the witness entered inside the deceased's house he saw the deceased in injured condition. Therefore, prosecution has proved its case beyond reasonable doubt and thus this appeal has no force and is liable to be dismissed.

32. In view of the submissions of both the parties and the evidence on record, let us see whether the prosecution has been able to prove its case beyond reasonable doubt.

33. The first submission on behalf of the appellant is that the FIR is ante-timed. In this regard, the prosecution case is that the alleged incident occurred on 14/15.06.1998 at 12'O clock midnight in the courtyard of first informant Vidya Devi in Village- Kasba Khera, Police Station- Rath, District- Hamirpur. As per chik FIR the distance from the place of occurrence to the police station is 8 km. The FIR was lodged by the first informant i.e. Vidya Devi at 02.00 a.m. Therefore, the FIR was lodged after two hours from the incident. It has come in the statement of P.W. 1 Vidya Devi that after the incident she took her husband to hospital at Rath, because he was seriously injured and after admitting him in hospital she went to Police Station Rath, which was about a furlong away from the hospital. It is the prosecution case that the written application was scribed by P.W. 4 Dayawati, who is the real sister of first informant, Vidya Devi. According to prosecution, the FIR was lodged under Sections 452, 307 IPC at Police Station- Rath.

34. P.W. 4 Dayawati, who is the scribe of the written application (tehrir) Ext. Ka-1, has said that she is married woman and her address is Village- Bhadarra, Police Station- Haryaspur District- Chhattarpur, Madhya Pradesh. She has said that it takes almost two hours by bus to reach from Bhadarra to Kasba Khera. She has said that in the night it came to her knowledge that her bahnoi was murdered, thereupon, she went to the informant's house. The above statement of P.W. 4, as well as other attending circumstances, raises suspicion over the FIR that it was actually lodged promptly or not.

35. First of all, if the above statement of P.W. 4 is believed that it takes 2 hours by bus to reach from her place to village Kasba Kheda, then she could not have reached at the informant's house before 02.00 a.m., (presuming that she was informed soon after the incident at 12 midnight, though it is not made clear at which time, by which source and from whom she came to know of the incident) and according to prosecution the F.I.R. was lodged at 2 a.m. and before that the first informant took her husband to hospital which, according to her (P.W.1) took half an hour, and after admitting her husband in hospital she got the tehrir scribed by her sister (P.W.4). As per prosecution P.W.4 Dayawati remained with the first informant from her house to hospital and then to the police station. Thus, the above duration of time shows that it was not at all possible to lodge the F.I.R. so promptly at 2 a.m. According to P.W. 4 upon hearing news of her bahnoi's murder she went to her sister's (first informant's) house but the prosecution case is that till the time FIR was lodged, the deceased was alive. Thus, the above statement of P.W. 4 regarding receiving news of death of deceased raises suspicion over the prosecution case whether the deceased was alive when FIR was lodged. It means that the death of deceased had occurred much earlier than is shown by the prosecution.

36. Further, it is relevant that in the first information report the first informant Vidya Devi has addressed herself as wife of □late□ Chetram. If at the time of lodging the first information report Chetram was alive then there was no occasion for the first informant to address herself as wife of 'late' Chetram. The prosecution has failed to explain why the first informant had addressed herself so, when as per her own version her husband was alive when the first information report was lodged. It also raises suspicion that the FIR was actually lodged at the time mentioned by the

prosecution. It is also to be noted that according to P.W. 1 Vidya Devi, the written application (tehrir) was scribed by her sister outside the police station whereas, as per P.W. 4 Dayawati she had written it in the Hospital at the dictation of the first informant. So the place at which the written application was written is also not established. Beside this, P.W. 1 has said that she had taken with her pen and paper from her house. It is very unnatural that in such a condition, when the husband of the first informant was critically injured and needed immediate medical help and also the first informant had immediately taken him for treatment to the Hospital then she will take pen and paper from house with her.

37. Here, it is relevant to note that the inquest of the deceased was prepared from 08.10 a.m. to 10.30 a.m. at Police Station- Rath, District- Hamirpur. There is over writing over the first page of the inquest at the time of the FIR. The scribe of inquest (P.W. 7) S.I. Dharam Pal Singh was asked to explain about this overwriting but he failed to explain it. It is also relevant that over the second page of the inquest, G.D. No. 10 dated 15.06.1998, time 06.10 a.m., Case Crime No. 251 of 1998, Sections 452 and 307 IPC is entered whereas the present case was lodged at G.D. No. 5, time 02.00 a.m., on 15.06.1998. Regarding the above discrepancy, it is submitted on behalf of the State that G.D. No. 10 is, by which due to the death of deceased Chetram, the case was converted under Section 302 IPC and then the inquest of the deceased was prepared. We do not agree with this submission because, if by G.D. No. 10 the case was converted from Section 307 IPC to Section 302 IPC then Section 302 IPC would have been mentioned in it (and not section 307 IPC), thus this discrepancy also raises doubt over the prosecution case.

38. The prosecution has filed copy of G.D. No. 10 which shows that the doctor at PHC Rath, gave a written information to the Police Station- Rath that at 02.10 a.m. that deceased Chetram was brought dead. It means that deceased Chetram had died before 02.10 a.m. and looking into the statements of P.W. 2 Vidya Devi and P.W. 4 Dayawati, regarding the time they had taken in reaching the hospital and Police Station- Rath, it is highly improbable that they could have reached there if the incident had occurred at 12.00 midnight as alleged by the prosecution. Here, it is also relevant to mention that the prosecution has not filed any evidence to show that special report of the case was sent to the higher authorities at the earliest. The chik FIR Ext. Ka-6 shows that in the column regarding when the FIR is sent from the police station, 'Jaanewali Daak' (return post) is mentioned which means in the chik FIR also the date and time has not mentioned when the FIR was sent from the police station. At the front page of the chik FIR below the signature of CJM the date mentioned is 25.06.(1998), it means that the concerned CJM has put his signature over this chik FIR on 25.06.1998 i.e. about 10 days after the chik FIR was lodged. The prosecution has failed to explain how this happened and under what circumstances, the chik FIR was produced before the CJM after 10 days from lodging the FIR whereas according to Section 157 (1) Cr.P.C. upon registration of FIR the officer-in-charge Police Station was required to forthwith send report to concerned Magistrate. The above lapse renders FIR loose its evidentiary value and entitles the appellant the benefit of doubt.

39. The Supreme Court in Meharaj Singh (L/Nk.) v. State of U.P., (1994) 5 SCC 188, has observed in para 12 as under:

"FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an after thought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR, was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offered a satisfactory explanation for the delay in dispatch or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared u/s 174 Cr.P.C. is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in embryo and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante timed to give it the colour of a promptly lodged FIR."

40. Looking into all these factors and from the discussions made above, it is clear that the FIR was not lodged at the time mentioned in it and it was ante-timed. As the FIR is ante-timed, so there is every possibility of false implication and improvement in the prosecution case.

41. So far as the place of occurrence is concerned, it is not disputed by the defence. P.W. 1 has said that her husband was shot while he was sleeping in the courtyard of his house. .P.W. 2 Arjun Singh, has also said that at the sound of fire he saw appellant coming out of the house and when he entered into the informant□s house he saw the deceased lying in the courtyard drenched in blood. The Investigating Officer has prepared site-plan at the pointing out of the informant and he found blood-stained earth at the place of occurrence which he collected and also a bullet from there and prepared its fard baramadagi, thus, the place of occurrence is established in this case.

42. According to prosecution, the appellant had committed murder of the deceased because about one year prior to this incident a dispute arose between the appellant and the deceased regarding the purchase of a property of deceased's Bua's land in Jhansi. P.W. 1 has said that both appellant and deceased wanted to purchase the property and in this regard a dispute arose between them. A panchayat was also held but she could not tell what was the result of this panchayat and the date and time when the alleged panchayat was held. It has come in evidence that the said property was still not sold and was being used by her husband's Bua. Though, in a case based on direct evidence the motive does not play every vital role, but if it is not alleged as a fact which had impelled the appellant to commit the offence then the prosecution is required to prove that fact also as any other fact to prove its case. In the present case, the alleged motive is neither proved nor, if

believed to be true, is of such a nature which would prompt the appellant to commit murder of the deceased.

43. The prosecution has produced four witnesses of fact, out of them P.W. 4 Dayawati is not an eye-witness of the incident, she is the sister of the first informant and reached at the place of occurrence after getting news of the incident. P.W. 3 Ballu is also not an eye-witness and before him fard baramadagi regarding collecting the sample of blood-stained earth, plain earth and a bullet was prepared and the lantern, which was allegedly lit at the time of the incident, was inspected by the I.O. and supurdaginama was prepared. Thus, he is also a formal witness.

44. Now the statement of P.W. 1 Vidya Devi and P.W. 2 Arjun remains. So far as P.W. 2 Arjun Singh is concerned he is not named in the FIR as a witness. It is settled law that simply because a person is not named as a witness in the FIR, does not in itself render his testimony unreliable. There is no pre-condition that to rely a witness his name should be there in the FIR. P.W. 2 Arjun Singh is also not an eye-witness of the incident but according to the prosecution, he saw the appellant coming out of the house of the first informant soon after the incident. From the evidence of P.W. 2 Arjun Singh his testimony is not reliable. He is a chance witness and thus his testimony has to be scrutinized carefully to lend any credence thereupon. According to him, he is not a resident of Village- Kasba Khera, where the incident occurred but he resides in another village and had gone to a different village while passing through village Kasba Khera to attend a function of Akhand Ramayana at Mallu Chowkidar's house. According to prosecution after taking meal he was returning at about 12 midnight when he saw the appellant coming out of the house of the first informant. The presence of this witness at such an odd hour alone near the place of occurrence is highly doubtful. According to P.W. 2 Arjun Singh, the wall from which the appellant was seen jumping outside the house, was about 50-60 steps away from the road, from where he flashed torch at him. It has come in evidence that there was no moon light and it was a dark night. In such a scenario, it was not possible for P.W. 2 Arjun Singh to identify the appellant by a flash of torch from a distance of 50-60 steps. The alleged torch was neither shown to the I.O. nor it was produced before the court, thus there is no evidence of alleged source of light in his hand. According to P.W. 2 Arjun Singh he knew the appellant since before the incident because he had seen him at the deceased's house on some occasions. It is relevant to mention that the appellant is resident of District- Jhansi. The alleged incident took place in District- Hamirpur. P.W. 2 Arjun Singh is not the resident of village- Kasba Khera where the deceased lived, so it would be co-incidence that Arjun Singh had seen the appellant on some earlier occasions at deceased Chetram's house. It raises suspicion that P.W. 2 Arjun Singh knew the appellant since before the incident and his presence near the place of occurrence is highly doubtful. According to P.W. 2 Arjun Singh he went to attend the Akhand Ramayana and was returning from there, after taking meal but the said fact was not told to the Investigating Officer. It was first time the witness has said it before the Court, so this seems that it is a significant improvement and in view of Explanation to Section 162 Cr.P.C., the above statement amounts to contradiction which raises suspicion over his testimony.

45. According to the prosecution, deceased's younger brother Bahadur was also present in the house when the alleged incident occurred but the prosecution has not examined him in support of the case. According to the chik FIR Bahadur was sleeping outside the house when the alleged incident occurred but P.W. 1 Vidya Devi has stated on oath that at the time of incident Bahadur

was sleeping 4-5 steps away from them in a room inside the house with doors open. Both these facts are contradictory to each other.

46. Now the testimony of P.W. 1 Vidya Devi remains, she has supported the prosecution case that it was the appellant who jumped inside the courtyard from the backside of the house and shot at her husband and thereafter, fled away in the same direction. It has come in evidence that the backyard of the house of the informant had damaged walls and at some places the height of the wall was 4-5 feet, so a normal person can enter the courtyard from this place. P.W. 1 Vidya Devi has said that she identified the appellant in the light of lantern lit near the place of occurrence. As the alleged incident has occurred in night, so the source of light is very important in this case. In FIR the source of light is not mentioned. The first informant in her statement has said that lantern was lit at the time of occurrence. It was about 12 midnight when the alleged incident occurred. Even if it is assumed that there was a lantern lit at the time of incident, generally in villages the flame of lantern is slowed down as dim to save fuel at such odd hour of night while going to sleep, unless otherwise required. In such a dim light it was hard to identify the assailant particularly when P.W. 1 Vidya Devi has stated in her FIR that the assailant shot at Chetram over his chest whereas as per post-mortem report the deceased was shot at back of the chest, therefore, when P.W. 1 Viday Devi could not see the part of body at which her husband was shot by the assailant then how it could be believed that she saw the face of the assailant clearly.

47. In view of the above discussion, the testimony of P.W. 1 Vidya Devi is also not reliable and trustworthy. It is hard to believe that she identified the assailant in the dark, thus, her testimony is not reliable. The prosecution has not produced another independent witness Bahadur, and has not assigned any reason for his non-examination. When the eye -witnesses examined (P.W.1 and P.W.2) are found unreliable then non-examination of independent witness, like Bahadur, without any sufficient reason, raises doubts over the prosecution case. Similar view was expressed by Supreme Court in Hem Raj v. State of Haryana, A.I.R. 2005 S.C. 2110, in which it was held that □An unexplained omission to examine independent eye-witness would create an adverse inference particularly when the eye- witnesses actually produced were not found to be reliable and there were serious doubts about their presence at the spot.'

48. P.W.1 is a relative witness (wife of the deceased) so naturally she in an interested witness also. She knew the appellant since before the incident and has alleged enmity as a motive for the appellant to commit murder of the deceased. Enmity is a double edged weapon and due to enmity an offence may be committed and similarly due to enmity a person can also be falsely implicated in a case. In the instant case, it is hard to believe that without any proper motive, the appellant, who resides in another district would plan to commit murder of the deceased in his house residing in another district and would come alone to shoot the deceased. It has come in evidence that the deceased had spent some time in jail. P.W. 1 Vidya Devi has herself admitted that her husband, the deceased, had remained in jail and had surrendered before the court. She has not denied the suggestion of the defence that her husband was a member of Jairaj□s gang and police was after him so he surrendered and went to jail. Looking into the above it is clear that the deceased had criminal antecedents and due to this it cannot be ruled out that he may be killed by somebody else. In the instant case the incident occurred at night with no proper source of light, so it may be

possible it was a blind murder and the first informant did not knew the assailant, so to take advantage of alleged enmity, the appellant was falsely implicated in this case.

49. It is submitted on behalf of the appellant that there are major contradictions in ocular and medical evidence. In this regard, perusal of evidence shows that according to P.W.1 Vidya Devi her husband Chetram was shot over his chest, but as per post-mortem report of the deceased the fire arm wound of entry was on the back of the chest. There were three firearm injury wounds as found by the doctor (one entry wound and two exit wounds). The prosecution case is that the deceased was shot only one fire. The doctor P.W. 5, D.C. Tiwari, has said that injury no. 1 and injury no. 2 could be caused by different fires and the entry and exit of wounds of both these wounds are different. The above statement goes to show that the deceased sustained two gunshot wounds, and even if it is assumed that there was only one gunshot wound then the prosecution has failed to explain, how injury no. 2 was caused to the deceased. It has come in evidence that injury no. 1 was firearm wound of entry and injury no. 3 was firearm wound of exit and both these wounds corresponded each other. Then how injury no. 2 was caused to the deceased is not cleared by the prosecution. Beside this, the deceased has also sustained three abrasions over right shoulder, right buttock and elbow of left hand. How these injuries were caused to the deceased is also not well explained. Thus, the injuries found at the time of post-mortem over the body of the deceased totally rules out the prosecution case. In view of the above the testimony of P.W. 1 Vidya Devi is not reliable and trustworthy. There are major contradictions in ocular and medical evidence, which raises suspicion over the prosecution case.

50. In view of the above discussion, we come to the conclusion that the prosecution has failed to prove its case beyond reasonable doubt. The FIR was lodged ante-timed. The presence of P.W. 2 Arjun Singh near the place of occurrence is highly doubtful. The sufficient source of light is not established and there is no reliable evidence that P.W. 1 Vidya Devi was in a position to identify the appellant at the time of incident. There are major contradictions in ocular and medical evidence. The motive to commit the crime is also not proved, therefore, the learned Trial, Court failed to appreciate the evidence on record correctly, and erred in reaching at the conclusion by holding the appellant guilty and thus, illegally convicted and sentenced the appellant.

51. Therefore, the conviction recorded by the learned trial court is based on incorrect appreciation of facts and evidence, and the conclusion of guilt of appellant is based on conjectures. Thus, the impugned judgment and order is liable to be set aside, and the appellant deserves to be acquitted of the charge framed against him.

52. In view of the above, the instant criminal appeal is, accordingly, allowed. We set aside the judgment and order dated 16.03.2001 passed by IInd Additional Sessions Judge, Hamirpur in Session Trial No. 159 of 1998, arising out of Case Crime No. 251 of 1998 (State Vs. Gram Lodhi alias Salig Ram), under Sections 452, 307 and 302 IPC, Police Station- Rath, District- Hamirpur and acquit the appellant Gram Lodhi Alias Salig Ram of the charge under Section 452, 302 IPC.

53. Appellant Gram Lodhi Alias Salig Ram is on bail. His bail bonds and personal bonds are cancelled and the sureties discharged. Appellant Gram Lodhi Alias Salig Ram, need not surrender.

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

55. Let a copy of this order be sent to the learned Trial Court concerned alongwith the Trial Court record for information and necessary compliance.

(2026) 5 ILRA 205
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 27.05.2026

BEFORE

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

Criminal Appeal No. 1533 of 2017

Jagdish **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to the sustainability of the conviction and sentence of the appellant under S. 302 I.P.C. based on circumstantial evidence and the last seen together theory, the completeness of the chain of circumstances, the effect of the alleged delay in lodging the F.I.R., and the rejection of the plea of alibi. (Paras 22, 29, 33, 34, 40, 49)

Headnotes

Criminal Law - Murder - Circumstantial evidence - Last seen together - Plea of alibi - Delay in lodging F.I.R. - Indian Penal Code, 1860 - S. 302 - Code of Criminal Procedure, 1973 - Ss. 157, 374 - Indian Evidence Act, 1872 - Ss. 8, 106 - Evidence of last seen together by itself being a weak piece of evidence, conviction can be sustained only where the chain of circumstances is complete and excludes every hypothesis except the guilt of the accused - Evidence relating to the last seen furnished by prosecution witnesses found consistent and corroborative of the prosecution case - Medical evidence establishing death due to asphyxia resulting from ante-mortem throttling fully supported the prosecution version - Recovery of matchbox and beedi bundle from the place of occurrence, coupled with other proved circumstances, corroborated the presence of the accused - Evidence regarding demand of Rs.1400/- received under the Janani Suraksha Yojana constituted the prosecution motive and absence of stronger motive was not fatal where the chain of circumstances stood conclusively established - Plea of alibi not proved as the short distance between the place of occurrence and the alleged place of work did not exclude the possibility of the accused reaching the place of occurrence and returning - Delay, if any, in lodging the F.I.R. stood satisfactorily explained and did not affect the prosecution case - Chain of circumstances found complete and pointing only towards the guilt of the accused - Conviction under S. 302 I.P.C. affirmed and appeal dismissed. (Paras 25, 28-40, 43-49, 53-58)

Held: Conviction based on circumstantial evidence is sustainable where the chain of circumstances is complete and excludes every hypothesis except the guilt of the accused - Evidence of last seen together by itself is a weak piece of evidence and requires corroboration by other incriminating circumstances - Evidence

relating to the last seen furnished by P.W.1 and P.W.2 remained consistent, trustworthy and corroborated not only each other but also the prosecution case and the medical evidence - The cause of death being asphyxia resulting from ante-mortem throttling fully supported the prosecution version - The circumstances from which the conclusion of guilt was drawn stood fully established and were consistent only with the hypothesis of the guilt of the accused and excluded every possible hypothesis consistent with innocence - Recovery of the matchbox and beedi bundle from the place of occurrence, coupled with the short time-gap between the accused and the deceased being last seen together and the discovery of the dead body, constituted an important incriminating circumstance - Evidence regarding demand of Rs.1400/- under the Janani Suraksha Yojana furnished the prosecution motive and, in any event, absence of a stronger motive could not discredit an otherwise complete chain of circumstantial evidence - Delay, if any, in lodging the F.I.R. stood satisfactorily explained and mere non-examination of the child witnesses who first noticed the dead body did not render the prosecution case doubtful - Mere relationship of prosecution witnesses with the deceased was not a ground to discard otherwise reliable and trustworthy evidence - Plea of alibi was not established and, having regard to the short distance between the alleged place of work and the place of occurrence, the accused could have gone to his in-laws' house and returned before commencement of the threshing work - The proved circumstances formed a complete chain pointing only towards the guilt of the accused and established that he alone was the author of the crime - Conviction and sentence under S. 302 I.P.C. warranted no interference. (Paras 25, 28-40, 43-49, 53-58) (E-7)

Case Law Cited

Marudanal Augusti v. State of Kerala; **1980 SCC (Cri) 985***; Ishwar Singh versus State of U.P.;* **AIR 1976 SC 2423***; Sharad Birdhichand Sarda Vs. State of Maharashtra;* **AIR 1984 SC 1622***; Padala Veera Reddy versus State of Andhra Pradesh;* **AIR 1990 SC 79***; Shivaji Sahebrao Bobade & Anr vs State Of Maharashtra;* **1973(2) SCC 793***; Harendra Narain Singh Etc vs State Of Bihar;* **1991 SCC (CRI) 905;** *State Of U.P vs Satish;* **2005 (51) ACC 941 SC***; Arjun Marik and Others v. State of Bihar;* **1994 SCC (Cri) 1551***; Mani Ram versus State of U.P.;* **2004(48) ACC 767***; Jaydeb Patra & Ors. versus State of West Bengal;* **2013(3) JIC 548(SC);** *Nishar Ali versus State of U.P.;* **AIR 1987 SC 366***; Chetan v. State of Karnataka;* **(2025) 9 SCC 31***; Bodhraj v. State of J&K;* **(2002) 8 SCC 45***; Ramreddy Rajesh Khanna Reddy v. State of A.P.;* **(2006) 10 SCC 172***; State of Goa v. Sanjay Thakran;* **(2007) 3 SCC 755***; Padala Veera Reddy versus State of Andhra Pradesh and others;* **AIR 1990 SC 79***; Harendra Narain Singh and others versus State of Bihar;* **1991 SCC (Cri) 905***; Arjun Malik and others versus State of Bihar;* **1994 Supp (2) SCC 372***; Subhash Aggarwal versus State of NCT of Delhi;* **2025(8) SCC 440***; Jan Mohammad v. State of Bihar; Suresh Chandra Bahri v. State of Bihar; Arjun Malik and Others versus State of Bihar;* **1994 Supp (2) SCC 372***; Ishwar Singh versus State of U.P.;* **AIR 1976 SCC 2423***; Mani Ram and Others versus State of U.P.;* **1994 Supp (2) SCC 289***; Shivaji Sahabrao Babode and Another versus State of Maharashtra;* **(1973) 2 SCC 793***; Mukesh and Another versus State(NCT of Delhi) and others;* **(2017) 6 SCC 1***; Joydeb Patra and others versus State of West Bengal;* **203 AIR SCW 2744***; State of U.P. versus Satish;* **(2005) 3 SCC 114***.*

List of Acts

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

List of Keywords

last seen together; circumstantial evidence; asphyxia; throttling; motive; alibi; demand of money; girl childbirth.

Case Arising From

APPELLATE JURISDICTION: Criminal appeal assailing the judgment and order dated 29.10.2014 passed by Special/Additional Sessions Judge, Court No.4, Raibareli, in Sessions Trial No. 536 of 2008 emanating from Case Crime No. 145 of 2008.

Appearances for Parties

Advs. for the Appellant:

Rajesh Kumar Dwivedi (Amicus Curiae)

Advs. for the Respondents:
Pawan Kumar Mishra (A.G.A.)

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

(1) The instant criminal appeal under Section 374 of the Code of Criminal Procedure, 1973 (here-in-after referred to as 'Cr.P.C.') has been filed by the accused/convict/appellant, Jagdish, assailing the judgment and order dated 29.10.2014 passed by Special/Additional Sessions Judge, Court No.4, Raibareli, in Sessions Trial No. 536 of 2008; State Versus Jagdish, emanating from Case Crime No. 145 of 2008, under Sections 302 of the Indian Penal Code, 1860 (here-in-after referred to as 'I.P.C.'), Police Station Fursatganj, district Raebareli, whereby learned trial Court convicted and sentenced the accused/appellant to undergo under Section 302 I.P.C. to life imprisonment and a fine of Rs.10,000/-. In default of payment of fine to undergo additional one year's simple imprisonment. It has also been provided that on payment of fine, the same would be disbursed to the children of the deceased.

(2) The prosecution case, in brief, is that complainant, Ramdeen, had submitted written report (Ext. Ka.1) at police station Fursatganj, district Raebareli, on 30.04.2008, alleging therein that he is resident of village Khairhana, police station Fursatganj. His in-laws house is in village Tinera, hamlet of Tendua. He along with his children is living in village Tinera. His daughter Anita Devi was married about three years ago to Jagdish son of Babulal, resident of village Guru Ka Purwa, hamlet of Tendua. His daughter is the mother of a child. After the birth of a girl child, his son-in-law remains angry with his daughter and used to say to his wife to give the government money Rs. 1400/- received on the birth of girl. On 29.04.2008, at about 8:00 in the evening, his son-in-law came to his house and stayed there. His daughter prepared food and served it to him. After some time, he (accused Jagdish) told to his daughter that he needed to go for defecation and asked her to bring water in a mug (lota). His daughter, being simple in nature, brought water. He, then, told her to come along with the mug (lota) of water. Both, his daughter and his son-in-law, went towards the northern fields. Today on 30.04.2008, small children of village came to his house and informed his wife that the dead body of her daughter Anita Devi was lying in the field of Dadan. He and his wife went there and saw their daughter lying dead. His son-in-law has killed his daughter by pressing her neck with his hands and there were several injuries on her body and blood had also come out. Report may be written and necessary action may be taken.

(3) On the basis of aforesaid written report (Ext. Ka.1), F.I.R., bearing Case Crime No. 145 of 2008, under Section 302 I.P.C. was registered at police station Fursatganj, district Raebareli on 30.04.2008 at 10:30 A.M.

(4) The investigation was conducted by S.I. Prem Pal Singh. He, after recording the statement of complainant, his wife Prema Devi and other witnesses, had prepared the site plan on the pointing out of complainant on 30.04.2008 itself. On 30.04.2008, Naib Tehsildar Tiloi Rampal Tiwari had prepared the inquest report of the dead body of the deceased (Ext. Ka.2) in the presence of witnesses. On 30.04.2008 itself, Bhai Brand matchbox with some sticks and Heera Motor brand bidi bundle with 12 bidi was recovered from the place of occurrence and recovery memo (Ext. Ka.6) of the same was prepared. Photo lash (Ext. Ka.3), challan lash Form No. 13 (Ext. Ka.4) and

letter to C.M.O. (Ext. Ka.5) were also prepared and the dead body of the deceased was sent for post-mortem.

(5) The post-mortem of the dead body of the deceased Anita Devi was conducted on 01.05.2008 at 02:30 P.M. by Dr. M.K. Gupta and Dr. N.K. Saxena at District Hospital, Raebareli. He found the following ante-mortem injuries on the dead body of the deceased Anita Devi :-

1. Multiple small abraded contusion on left side of neck, joint below the left side of lower border of mandibles in an area of 8 cm x 5 cm. Total 7 in number size varies from 4 cm x 1 cm to 1.5 cm x 1 cm.

2. Abraded contusion 3 cm x 1.5 cm present on the right side of neck, 4 cm below the lower border of right side of mandible.

(i) On external examination, it was found that the deceased was aged about 22 years and was average built female body; both eyes were closed; mouth was semi open; tongue was partially protruded; bloody discharge/coming out of mouth and both nostrilo. Post-mortem staining was present over the front of abdomen. Rigor Mortis passed off the upper extremities and passing off lower extremities. Distension of abdomen present.

(ii)On internal examination, it was found that under the head and neck, on dissection of tissues below the abraded contusions, the subcutaneous tissues is ecchymosed and extravasation of blood present at places; membranes congested; brain congested and pulpy; pleura congested; membranes of larynx, tranchea and bronchi deeply congested and trachea rings were broken; both lungs congested; right side of heart was full and left side empty; 200 ml. of semi-digested food material present in stomach; pasty material with gas was present in small intestine; faecal material with gases in large intestine; gallbladder, spleen and kidneys were congested; bladder was empty.

(iii)The cause of death was asphyxia as a result of ante-mortem throttling.

(6) The Investigating Officer S.I. Prem Pal Singh arrested the accused Jagdish on 01.05.2008 and recorded the statement of other witnesses. He, on the basis of collected evidence and material, submitted charge-sheet against the accused Jagdish under Section 302 I.P.C. on 11.11.2008.

(7) Learned Chief Judicial Magistrate, Raebareli took cognizance on the aforesaid charge-sheet and committed the case to the Court of Sessions, where the case was registered as Session Trial No. 536 of 2008: State Vs. Jagdish. The Sessions Judge, Raebareli, by means of order dated 11.11.2008, framed charge against the accused/appellant Jagdish under Section 302 I.P.C. He denied the charge and claimed for trial.

(8) In order to prove its case, the prosecution examined six witnesses, which are as under :-

P.W.1-Ramdeen	Complainant/father of the deceased
P.W.2-Smt. Prema	Mother of the deceased/wife of the complainant

Devi	
P.W.3-Ram Pal Tiwari	Nayab Tehsildar, who prepared inquest report
P.W.4-Dr. M.K. Gupta	Conducted post-mortem of the dead body of the deceased and prepared post-mortem report along with Dr.N.K. Saxena
P.W.5-Constable 347 Ishwar Lal	Prepared check F.I.R.
P.W.6-S.I. Prem Pal Singh	Investigating Officer

(9) Apart from aforesaid witnesses, the prosecution placed on record the relevant documents and proved it, which are as under :-

Ext.Ka.1	Written Report
Ext. Ka. 2	Inquest Report
Ext. Ka. 3	Photo Nash
Ext. Ka. 4	Challan Nash Police Form No. 13
Ext. Ka.5	Letter to C.M.O.
Ext. Ka. 6	Recovery Memo (bidi bundle and matchbox)
Ext. Ka.7	Post-mortem report
Ext. Ka. 8	Check F.I.R.
Ext. Ka. 9	Copy G.D. Rapart No. 19 dated 30.04.2008
Ext. Ka.10	Site plan
Ext. Ka.11	Charge-sheet

(10) The prosecution has also placed on record four material exhibits and proved it, which are as under :-

Material Exhibit Ka 1	Clothe bundle
Material Exhibit Ka 2	Polythene
Material Exhibit Ka 3	'Do Bhai' matchbox brand and match stick
Material Exhibit Ka 4	Heera Motor Brand bundle and bidi

(11) After completion of evidence of prosecution, the statement of the accused Jagdish was recorded under Section 313 of Cr.P.C., wherein he denied the prosecution story as false and concocted and stated that a false case has been registered against him due to enmity. He further stated that the deceased Anita Devi used to say that he should stay at her parental home because her parents are old. On the day of the incident, he was at his ancestral village and was processing/threshing the wheat of Thakur Man Singh. On the day or night of the incident, he

neither went to his matrimonial home nor had any such thought nor he demanded any money from his wife. He has falsely been implicated. He further stated that he and his family members had given all the jewellery to his wife. In order to usurp those ornaments, either his in-laws conspired against him or the deceased was killed by robbers for the jewellery.

(12) In defence, two witnesses have been produced, who are as under :-

D.W.1	Smt.Bhagwan Dei:Mother of the accused Jagdish
D.W.2	Man Singh

(13) After hearing learned Counsel for the parties and considering the evidence and material on record, the learned trial Court convicted and sentenced the accused Jagdish by means of the impugned judgment and order dated 29.10.2014 in the manner as stated in paragraph-1 here-in-above in this order.

(14) Heard, Shri Rajesh Kumar Dwivedi, learned Amicus Curiae for the convict/appellant and Shri Pawan Kumar Mishra, learned A.G.A. for the State.

(15) Learned Amicus Curiae for the appellant submitted that the impugned judgment and order has been passed on the basis of surmises and conjectures, without considering the evidence and material on record and dealing it appropriately. He further submitted that there was an inordinate delay in lodging the F.I.R., which has been lodged with consultation, concoction and embellishments and in violation of Section 157 Cr.P.C. He further submitted that the exact time of incident has not been mentioned and there is no explanation for the delay. He also submitted that the place of occurrence is doubtful, as no blood was found on the spot and there is no eye witness account. He further submitted that no bangles or lota were recovered from the place of alleged incident. Thus, the case is based on circumstantial and last seen evidence. The time gap assumes significance in a case of last seen evidence and the time gap between the last seen and the recovery of dead body is sufficient for intervention by some other person and committing the crime. He further submitted that P.W.1 and P.W.2 are related and interested witnesses, and no independent witness has been produced in support of the prosecution case. It was also contended that although the dead body was recovered on the pointing out of certain children, yet none of the child was examined during course of trial. Even otherwise, the submission is that there are major contradictions in the evidence of the prosecution witnesses, which the learned trial court failed to consider. He further submitted that behaviour of the appellant towards his wife was good, which has also been admitted by P.W.1 and, therefore, no motive for committing the alleged crime could be established against the appellant.

(16) He further submitted that P.W.2 has improved the prosecution case during the trial. Learned trial court has also failed to consider the statement recorded under Section 313 Cr.P.C. and the evidence of the defence witnesses. The case hinges upon circumstantial evidence and the chain of circumstances was not complete in the manner so as to refer towards the guilt of the appellant only, on account of which the appellant could have been convicted.

(17) On the basis of above, learned counsel for the appellant submitted that the impugned judgment and order is not sustainable in the eyes of law and liable to be set aside.

(18) He relied on Marudanal Augusti v. State of Kerala; 1980 SCC (Cri) 985, Ishwar Singh versus State of U.P.; AIR 1976 SC 2423, Sharad Birdhichand Sarda Vs. State of Maharashtra; AIR 1984 SC 1622, Padala Veera Reddy versus State of Andhra Pradesh; AIR 1990 SC 79,Shivaji Sahebrao Bobade & Anr vs State Of Maharashtra; 1973(2) SCC 793,Harendra Narain Singh Etc vs State Of Bihar;1991 SCC (CRI) 905, State Of U.P vs Satish;2005 (51) ACC 941 SC,Arjun Marik and Others v. State of Bihar;1994 SCC (Cri) 1551,Mani Ram versus State of U.P.;2004(48) ACC 767, Jaydeb Patra & Ors. versus State of West Bengal;2013(3) JIC 548(SC) and Nishar Ali versus State of U.P.; AIR 1987 SC 366.

(19) Learned AGA vehemently opposed the submissions of learned counsel for the appellant. He submitted that the impugned judgment and order has rightly been passed in accordance with law and there is no illegality or error in it. He further submitted that the case is based on circumstantial evidence and 'last seen' theory and the chain of circumstances are complete in the manner that they refer to the guilt of the accused-appellant only. In such cases, delay in lodging the F.I.R. is immaterial. Even otherwise, the same stands sufficiently explained in the facts and circumstances of the case. He also submitted that a related witness cannot, in all cases, be said to be an interested witness. Even otherwise, the relative would not falsely implicate an innocent person, that too, who was his son-in-law and husband of his daughter, after admitting that his behaviour was good, leaving out the actual culprit. He also submitted that the motive regarding the demand of Rs.1400/- received by the deceased on account of the birth of a girl child, stands duly proved on the basis of the evidence as well as the statement of the appellant recorded under Section 313 Cr.P.C., which has not been denied by him. He also submitted that the injuries mentioned in the post mortem report have corroborated the prosecution case, as the trachea rings were broken, which is common in cases of throttling, and cause of death was asphyxia resulting from anti mortem throttling. He further submitted that the defence witnesses have been produced to prove the plea of alibi, however, the distance between the place in respect of which the alibi has been claimed and the house of in-laws/place of incident is only about one to one and a half kilometers, therefore, in the facts and circumstances of the case, the plea is not tenable either on facts or in the eyes of law and the same has rightly been rejected by the learned trial court.

(20) On the basis of above, learned AGA submitted that the impugned judgement and order convicting the appellant has rightly been passed in accordance with law by means of a reasoned and speaking order and he has accordingly been sentenced. There is no illegality or error in the impugned judgment, which may call for any interference by this Court. The appeal is liable to be dismissed with cost.

(21) We have considered the submissions of learned counsel for the parties and perused the records.

(22) The first information report was lodged on 30.04.2008 at 10:30 a.m. on the basis of a written report alleging therein that the appellant, who is the son-in-law of the complainant, had come to his house on 29.04.2008 at about 8:00 p.m. and stayed there. The complainant's daughter

prepared the food and served it to him. After some time, the appellant told his daughter that he is in need of going for defecation and asked her to bring water and accompany him. Accordingly, both the daughter and son-in-law went towards the northern fields. On 30.04.2008, some children from the village came to the complainant's house and informed his wife that the dead body of their daughter was lying in the field of Dadan. Upon receiving the information, he and his wife went there and found their daughter lying dead. Consequently, he lodged the F.I.R. alleging therein that his son-in-law, i.e., the appellant had killed his daughter by throttling her with his hands. Several injuries were found on her body and blood had also come out. In pursuance thereof, the investigation was conducted and a charge sheet was submitted against the appellant, upon which cognizance was taken by the learned trial court and the case was committed to the court of session. The learned Sessions Judge, after framing charge and upon denial thereof by the appellant, proceeded with the trial. Accordingly, the prosecution opened it's case.

(23) The prosecution produced Ramdeen, the complainant, as P.W.1. He deposed that the deceased Anita Devi was his daughter, who had been married to the appellant Jagdish, resident of Guru Ka Purwa. hamlet of Tendua, Police Station Furstaganj, District Raebareli. The village of the appellant is situated at a distance of about 1 kilometer from his village. He further deposed that at about one and a half years ago, his son-in-law Jagdish had come to his house at about 8:00 p.m. and had taken food in his house in the night. While sitting at the door, he told that he needs to go for defecation and asked his daughter Anita to bring water in a lota, which she did. Thereafter both of them went towards the northern fields. However, they did not return during the night. Upon making enquiries about them during the night, he came to know that they have gone towards the northern side.

(24) Smt. Prema Devi, wife of the complainant P.W.1 and mother of the deceased, appeared as P.W.2. She stated that she knows the accused, who is her son-in-law and her daughter Anita was married to him. The incident had happened about three years and two months ago. After becoming pregnant, her daughter Anita was living at her house in Tinera. A girl child was born to her daughter about one and a half months prior to the incident. On the date of the incident, the accused had come to her house at about 7-8 p.m. and had taken food there. Thereafter, her husband, son-in-law and she herself were sitting on the door, when her son-in-law Jagdish stated that he need to go for defecation and asked her daughter Anita to bring water in a lota. When she brought the water, Jagdish asked her daughter to accompany him. Accordingly, both of them went towards the northern side and thereafter did not return during the night. They made enquiries about them, but their whereabouts could not be known, therefore, they assumed that they might have gone to his house and would return but did not come back.

(25) In view of above, the evidence relating to the last seen given by P.W.1 and P.W.2 is consistent and corroborative not only to each other but to the prosecution case in F.I.R., and nothing could be extracted in the cross examination, which may create any doubt about the prosecution's last seen evidence. However, in defence, the appellant adduced the evidence of Bhagwan Dei, the mother of the appellant as D.W.1 and Maan Singh as D.W.2 to prove that Jagdish was present at his home in Guru ka Purwa, hamlet of Tendua on the date of the incident i.e. 29/30.4.2008.

(26) D.W.1 stated that her son had not gone to his in-laws house on the date of the incident and that he was present at his house in Guru ka Purwa, hamlet of tendua on the date of incident i.e. 29/30.4.2008. He was engaged in threshing wheat at the place of Thakur Man Singh of her village. The threshing work was being carried out in the threshing field (Khalihaan) of Man Singh, and Thakur Man Singh was also present there. She further deposed that on the next day, a person from the village informed that her daughter-in-law had gone somewhere. According to her, her son was not involved in the murder of his daughter-in-law and had been falsely implicated. In the cross examination, she denied the suggestion that her son Jagdish had gone to his in-laws' house on 29.04.2008 at about 8:00 p.m. and had taken food prepared by Anita. She further deposed that the threshing process was being carried out by an electric motor and machine. Being illiterate, she could not tell as to at what time the electricity had come. However, the electricity had come at about 7-8 p.m. and the threshing work continued throughout the night. She further deposed that the threshing work had started at about 8:00 p.m.and that Man Singh, she herself and her daughter and son-in-law were all engaged in the said work but her daughter and son-in-law have not been examined.

(27) Man Singh appeared as D.W.2. He deposed that he knows the accused Jagdish, who resides in his village. The house of Jagdish was situated at a distance of two and a half bighas from his own house. He further deposed that Jagdish was an agricultural labourer and own no agricultural field. Jagdish was engaged in threshing wheat at his place on 29/30.4.2008. At that time, his sister, brother-in-law and mother Bhagwan Dei and he himself were present there and the threshing of wheat was being carried out with the aid of electric power. Jagdish had done the threshing work throughout the day and night of 29/30.4.2008 and had not gone anywhere else. In the cross examination, he stated that in-laws' house of Jagdish is situated in Tinera, which is about one and a half kilometers from his place. He further stated in cross examination that the threshing work had started after 9:00 p.m., when the electricity had come. He came to know about the incident on the next day when the police had come in the village. The police had not made any enquiry from him and he cannot tell as to when the police had reached the house of Jagdish.

(28) In view of above, it is apparent that the threshing of wheat at the place of Man Singh had started after 9:00 p.m., whereas the accused- appellant had come to the complainant's house at about 8:00 p.m.and after taking food, had gone alongwith his wife towards the northern fields and thereafter did not return. Admittedly, the distance between the village of the complainant and that of the appellant is about one and a half kms. Thus, having regard to the distance and the time gap during which the accused-appellant was last seen by the complainant and P.W.2 and considering that the threshing of wheat started later in the night at the place of Man Singh, the presence of the appellant at his in-laws house i.e. the house of the complainant cannot be doubted.

(29) In view of above, it is a case which hinges upon the evidence of 'last seen together'. The evidence of 'last seen together' is very weak kind of evidence and conviction cannot be made only on the basis of evidence of 'last seen together' without considering the 'circumstantial evidence' and chain of circumstances complete in the manner, in which they refer only and only towards the guilt of the accused and there is no hypothesis of innocence of the accused.

(30) The Hon'ble Supreme Court, in the case of Chetan v. State of Karnataka; (2025) 9 SCC 31, considered the issue of 'last seen' theory and held that conviction on the basis of 'last seen together' can be made only if the gap between the 'last seen' and the recovery is so short that the inference of anybody else is not possible. However, it cannot be said in every case that evidence of last seen together is to be rejected merely because the time-gap is for a considerable long period. The relevant portion of paragraphs 86 and 87 are extracted herein below:-

"86. .....we would refer to certain decisions of this Court on the point of 'last seen together'. It is a settled rule of criminal jurisprudence that suspicion, however grave, cannot be substituted for proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of circumstantial evidence. This Court has applied the abovementioned general principle with reference to the principle of last seen together in Bodhraj v. State of J&K [Bodhraj v. State of J&K, (2002) 8 SCC 45 : 2003 SCC (Cri) 201] as under: (SCC p. 63, para 31)

'31. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.'

32. In Ramreddy Rajesh Khanna Reddy [Ramreddy Rajesh Khanna Reddy v. State of A.P., (2006) 10 SCC 172 : (2006) 3 SCC (Cri) 512] this Court further opined that even in the cases where time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead is too small that possibility of any person other than the accused being the author of the crime becomes impossible, the courts should look for some corroboration.'

87. However, it may be noted that this Court also observed in the aforesaid decision of Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] that it cannot be said in all cases that the evidence of last seen together is to be rejected merely because the time-gap is for a considerable long period, as stated in para 34 of the aforesaid decision which is reproduced herein as below: (SCC p. 776)

'34. From the principle laid down by this Court, the circumstance of last seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time-gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time-gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time-gap between the accused persons and the deceased last seen together and the crime coming to light is after (sic of) a considerable long

duration. There can be no fixed or straitjacket formula for the duration of time-gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the accused, being the author of the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time-gap would not affect the prosecution case.'

(31) The 'circumstantial evidence' is to be seen on the touchstone of 5 golden principles (Panchsheel) laid down by the Hon'ble Supreme Court, in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra; AIR 1984 SC 1622. The said 5 golden principles are as under:-

"(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

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

(3) The circumstances should be of a conclusive nature and tendency;

(4) They should exclude every possible hypothesis except the one to be proved; and

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

(32) In the aforesaid case of Chetan v. State of Karnataka (Supra), the Hon'ble Supreme Court also considered as to when the conviction can be made on the basis of circumstantial evidence. The relevant paragraphs 131 to 134 are extracted herein below:-

"131. The present case is clearly one that is founded on circumstantial evidence. By its very nature, circumstantial evidence as opposed to direct evidence, is the inference one draws from the existence of a fact based on certain established fact/circumstance. This process invariably involves intuitive reasoning, proper understanding of human behaviour and psychology. This reasoning has to be rational, probative and which accords with the natural human behaviour. At the same time, there will always be certain subjective elements, which however, cannot be in the nature of surmise or conjecture. The inference may not lead to absolute certainty as we are dealing with human

behaviour and reconstructing a past incident in hindsight. Naturally, when evaluating the proven circumstances for drawing certain inferences therefrom, a logical, rational and pragmatic approach must be adopted without being too technical, pedantic, or seeking absolute proof, for this principle of circumstantial evidence is not based on statutory provision.

132. Thus, based on lived human experiences and human behaviour, if any supposition of fact is clearly inferable from an established fact, the inferred position of fact should be adopted as correct. Law does not require that a fact requires to be proved on absolute terms bereft of all doubts. What law contemplates is that for a fact to be considered proven, it must eliminate any reasonable doubt. Reasonable doubt does not mean any trivial, fanciful or imaginary doubt, but doubt based on reason and common sense growing out of the evidence in the case. A fact is considered proved if the court, after reviewing the evidence, either believes it exists or deems its existence probable enough that a prudent person would act on the assumption that it exists.

133. It is also settled that where the evidence is circumstantial in nature, the circumstances from which the inference of guilt is to be drawn, should be fully established. In other words, each of the circumstances from which certain inferences are sought to be drawn, is required to be proved in accordance with law, and there cannot be any element of surmise and conjecture, and each of these circumstances so proved must form a complete chain without any break to clearly point to the guilt of the accused person. The court has to examine the cumulative effect of the existence of these circumstances, which would point to the guilt of the accused, though any single circumstance may not in itself be sufficient to prove the offence. Thus, if the combined effect of all these circumstances, each of which has been independently proved, establishes the guilt of the accused, then the conviction based on such circumstances can be sustained. These circumstances so proved must be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved.

134. Thus, if upon evaluation of a set of proved circumstances consistent with understandable and socially recognised human behaviour, as a cumulative consequence, a clear and definitive pattern emerges which irresistibly points to the culpability of the accused person, we see no reason why we should not accept such an inferred conclusion to be correct to fasten criminal liability on the accused. On the other hand, if such an inference is sought to be assailed on the ground of any doubt, the doubt must be a reasonable one consistent with human behaviour under the circumstances of the case and not fanciful, abstract speculation or imagination."

Similar view has been expressed by Hon'ble Supreme Court, in the case of Padala Veera Reddy versus State of Andhra Pradesh and others; AIR 1990 SC 79 and Harendra Narain Singh and others versus State of Bihar; 1991 SCC (Cri) 905.

(33) In view of above, the normal principle is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established and that those circumstances on the basis of which inference of guilt is drawn, should be of a definite tendency unerringly pointing towards the guilt of the accused only. The circumstances, on the basis of which inference of guilt is sought to be drawn after considering cumulatively, should form a complete chain showing that in all human probability, the crime was committed by the accused only. However, if

the prosecution fails to show and prove the chain of circumstances and exclude every hypothesis other than the guilt of the accused, the conviction on the basis of 'circumstantial evidence' cannot be made and it will not sustain. The conviction can be made on the basis of theory of 'last seen together', where time gap between the pointing of time, when accused and deceased was seen last alive, and, when the deceased is found dead is too short and the probability of other than accused being the author of crime becomes impossible. However, the time gap between both the incident is to be seen on the facts and circumstances of each case and the evidence of last seen together can not be rejected merely because there is long period.

(34) Adverting to the facts of the present case, it is now required to be examined as to whether the chain of circumstances are complete and whether the medical evidence supports the prosecution case or not. The prosecution case is that the deceased was murdered during the intervening night of 29/30.4.2008 by pressing her neck. P.W.4, the medical officer, who has conducted the post mortem examination, has supported the prosecution case and has deposed that the cause of death was asphyxia, resulting from anti mortem throttling. In his cross examination, he stated that the deceased could have died at any time during the intervening night of 29/30.4.2008 and there can be difference of 12 hours on either side. He further deposed that no injury of any sharp edged weapon was found on the body of the deceased, however, seven abrasion marks were present on the left side of the neck, which according to him, have come on account of pressing of the neck. However, hyoid bone of the deceased was not fractured and that approximately 200 ml of semi digested food was found in the stomach of the deceased.

(35) P.W.1 and P.W.2, both have deposed that the accused-appellant had come to their house at about 8:00 p.m. in the night and thereafter he had taken the food prepared by their daughter. Thereafter, on his asking, their daughter went with the accused-appellant towards the fields situated on the northern side, where she was found dead. Thus, the aforesaid evidence of P.W.4 has proved the date and time of the incident, which corroborates the prosecution case. Further, a match box and a bundle of beedis were recovered from the place of incident, where the deceased was found. P.W.1 has deposed in his evidence that his son-in-law/ the appellant used to smoke beedi. Thus, the presence of the accused-appellant at the place of occurrence could not be disputed, particularly when there was no cross examination on this issue. It has also been argued that since no blood, broken bangles or lota was recovered at the place of alleged incident, therefore, the place of occurrence itself becomes doubtful. The inquest report of the deceased indicates that ten sky coloured bangles were found in the hands of the deceased. P.W.4 has not indicated in his evidence that any injury was found in the hands of the deceased and even the post mortem report does not indicate any injury on the hands of the deceased, therefore, the question of any injury on the hands or the recovery of blood and broken bangles from the spot does not arise.

(36) The learned trial court, after considering the evidence and material on record, has recorded a finding that no cross examination of D.W.4 was conducted in regard to any injury on the hands of the deceased. Since ten bangles were found in both hands of the deceased, as recorded in the inquest report, it was natural that no broken bangles were found at the place of occurrence. It has also been recorded in the evidence of P.W.4,that the blood had come from the nose and the mouth, however,he has neither disclosed the quantity of blood nor any cross examination has been made on this point and since, in cases of throttling, small quantity of blood comes from nose and

mouth, which remains on the body itself, blood may not have been found on the spot because there was no excessive bleeding. Thus, since there was no open injury to the deceased, the place of incident cannot be doubted on this ground alone, that the blood was not found on the spot. This Court does not find any illegality or error in the findings recorded by the learned trial court in this regard.

(37) It was also submitted by learned counsel for the appellant that the behaviour of the appellant towards his wife was good, therefore, there was no motive for the appellant to kill and once the motive could not be proved for committing the alleged crime, the conviction could not have been made on the basis of the evidence adduced by the prosecution, in the case of circumstantial evidence. P.W.1 and P.W.2 both have deposed in their evidence that their daughter Anita had given birth to a female child, on account of which a cheque of Rs.1400/- was given to her by the Government, which was received by her from the hospital. The accused-appellant was demanding the said amount not only from the deceased but also from her parents. The said amount was not received by Anita, therefore, they asked the appellant that since she has not received the said amount, how she can give it to him but he was not satisfied with the explanation and it was alleged that she was murdered on account of non-payment of Rs.1400/-. It has also been deposed by P.W.2 in her evidence that though the bank account was opened, the pass book of which was placed on record, but the amount was not transferred. It was argued that merely for Rs.1400/-, the accused-appellant could not have killed his wife. It is settled in law that the motive remains locked in the mind of the accused and it is very difficult to produce any cogent evidence to prove it. It is true that motive may have an important role in the case of circumstantial evidence but it is trite in law that if the guilt of the accused is proved by circumstantial evidence conclusively, mere doubt or absence of motive cannot be a ground for acquittal. The Hon’ble Supreme Court, in the case of Arjun Malik and others versus State of Bihar; 1994 Supp (2) SCC 372, has held that mere absence of proof of motive for commission of crime cannot be a ground to presume the innocence of an accused if the involvement of the accused is otherwise established.

(38) The Hon'ble Supreme Court, in the case of Subhash Aggarwal versus State of NCT of Delhi; 2025(8) SCC 440, has held that the motive remains hidden in the inner recesses of the mind of the perpetrator, which cannot, oftener than ever, be ferreted out by the investigation agency. Though in a case of circumstantial evidence, the complete absence of motive would weigh in favour of the accused, it cannot be declared as a general proposition of universal application that, in the absence of motive, the entire inculpatory circumstances should be ignored and the accused acquitted. Therefore when the circumstances are very convincing and provide an unbroken chain leading only to the conclusion of guilt of the accused and not to any other hypothesis; the total absence of a motive will be of no consequence. The relevant paragraphs 29 and 31 are extracted hereinbelow:-

29. The declaration in the cited decisions and the decisions relied on therein, is to the effect that if the case is built solely upon circumstantial evidence, absence of motive will be a factor that weighs in favour of the accused. Just as a strong motive does not by itself result in a conviction, the absence of motive on that sole ground cannot result in an acquittal. When the eyewitnesses are not convincing, a strong motive cannot by itself result in conviction, likewise when the circumstances

are very convincing and provide an unbroken chain leading only to the conclusion of guilt of the accused and not to any other hypothesis; the total absence of a motive will be of no consequence.

30. We extract paragraph 17 from a three-judge bench decision,Jan Mohammad v. State of Bihar; which also is of vintage flavour, succinctly putting forth the proposition:

'Motive is a relevant fact under the Evidence Act(Section 8). It is an important element in a chain of presumptive proof where the evidence is purely circumstantial, but it may lose importance in a case where there is direct evidence by witnesses implicating the accused. In a case such as the present where the prosecution evidence itself shows that the relations between the deceased and the appellants were cordial, the absence of an apparent motive, though not necessarily fatal to the prosecution case, may reasonable be regarded as a fact in favour of the accused. We think, therefore, that the attempt to prove a motive against any of the appellants has failed.[sic]

31. Suresh Chandra Bahri v. State of Bihar held that in a case based on circumstantial evidence, proof of motive would 'supply a link in the chain of circumstances but allthe same, absence of motive cannot be a ground to altogether reject the prosecution case. Para 21 reads as follows:

'21. At the very outset we may mention that sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the court that the accused was guilty of the offence charged with. But it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime."

(39) It is not in dispute that the cheque of Rs.1400/- was received by the deceased on account of the birth of a daughter. D.W.2, in his cross examination, has stated that it is true that an amount of Rs.1400/- is paid by the Government under the Janani Suraksha Yojana for medical betterment. He further stated that he cannot tell as to whether Jagdish was pressurizing his wife Anita for an amount of Rs.1400/- or not. The accused-appellant in his statement under Section 313 Cr.P.C., in response to the question no.4 regarding demand of the cheque amount of Rs.1400/-, has not denied the same and merely stated that birth of daughter is admitted. Thus, it could not be disputed that the accused-appellant was demanding Rs.1400/- from his wife and was also pressurizing her for the same. D.W.2, in his cross examination, has deposed that the appellant Jagdish is landless. It has also been deposed by him that he is an agricultural labourer, who has no agricultural field. Thus, admittedly, there was no source of income of the accused-appellant except the labour. Therefore, in this backdrop also possibility of demand of aforesaid amount of Rs.1400/- and murder for the same cannot be ruled out. The learned trial court, after considering the evidence and material on record, has recorded a finding that now-a-days when the crimes are being committed for small things, it cannot be said that the accused would not kill the deceased for Rs.1400/-. Learned trial court, after

considering the defence plea that the deceased was killed by her maternal relatives, recorded a finding that the deceased was only daughter of her parents, therefore, there was no question of benefit of the land of the parents of the deceased going to any other family member in near future, as the parents are alive. This Court does not find any illegality or error in the findings recorded by the learned trial court.

(40) A plea regarding delay in lodging the F.I.R. and delay in sending to the concerned magistrate has also been raised on behalf of the appellant. The plea is misconceived and not tenable for the reason that as deposed by P.W.1 and P.W.2, the deceased had gone with the accused-appellant in the night on 29.04.2008 and died during the intervening night of 29/30.4.2008 and the dead body of the deceased was found in the morning on 30.04.2008 on the information given by some children to the P.W.2, which was given by them at about 6:00-7:00 in the morning. P.W.2 further deposed that upon receiving the information about the dead body of the deceased, he went to the fields of Ram Pyare, where the dead body was lying. Thereafter he called his brother Parmanand, who is resident of Khairana and got report written from him. Thereafter he went to the police station and submitted the written report at about 9:00 a.m. He has further deposed that he remained in the police station for about an hour. The report has been lodged at about 10:30 a.m. Thus, this Court is of the view that there is no delay in lodging the F.I.R. and delay, if any, has been sufficiently explained by the prosecution. The records also reveals that the F.I.R. was forwarded to the concerned magistrate after registration on 01.05.2008. Even otherwise unless any cogent evidence of constructive effect on prosecution on this ground is shown, it cannot be a ground to doubt the prosecution case or reject it. The learned trial court has also recorded a finding that the deceased had died during the intervening night of 29/30.4.2008 and after recovery of the dead body in the morning of 30.04.2008, F.I.R. was lodged at about 10:30 a.m. Thus, there is no delay in lodging the F.I.R. Even otherwise, mere delay in lodging the F.I.R. in each and every case, cannot be a ground for rejecting the prosecution case.

(41) The Hon'ble Supreme Court, in the case of Marudanal Augusti v. State of Kerala; 1980 SCC (Cri) 985, has held that the High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the F.I.R. is held to be fabricated or brought into existence long after the occurrence and any number of witnesses could be added without there being anything to check the authenticity of their evidence.

(42) The Hon'ble Supreme Court, in the case of Arjun Malik and Others versus State of Bihar; 1994 Supp (2) SCC 372, has held that the forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest despatch which intention is implicit with the use of the word "forthwith" occurring in Section 157, which means promptly and without any undue delay. The purpose and object is so obvious which is spelt out from the combined reading of Sections 157 and 159 Cr.PC. It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the progress of the investigation. Similar view was taken in Ishwar Singh versus State of U.P.(supra).

(43) The plea has also been taken that none of the children, who gave the information about the dead body, were examined and there are major contradictions in the prosecution evidence. Mere

non production of any child i.e. witness cannot be a ground for rejecting the prosecution case, if it is proved by other reliable witnesses. Even otherwise, the appellant had also not filed any application to summon any child which could have been done by him. However, the prosecution case has been proved by the prosecution witnesses beyond reasonable doubt, which is corroborated by the medical evidence as well as the defence witnesses produced by the accused-appellant, therefore, the contention of learned counsel for the appellant is not tenable.

(44) The Hon'ble Supreme Court, in the case of Ishwar Singh versus State of U.P.; AIR 1976 SCC 2423, has held that Of course, non-examination of some witnesses would not matter if the witnesses examined unfolded the prosecution case fully. But it is well established that witnesses essential to the unfolding of the narrative on which the prosecution is based must be examined.

(45) So far as the alleged contradictions in the testimony of the prosecution witnesses and interested witnesses being relatives of deceased are concerned, the minor contradiction in the evidence cannot be sole ground to discard the evidence of the prosecution witnesses. The evidence of relatives cannot be discarded merely on the ground of relative as it cannot be said that the witness being relative is an interested witness because the relative would not implicate an innocent person leaving the actual culprit.

(46) The Hon'ble Supreme Court, in the case of Arjun Malik and others versus State of Bihar; 1994 Supp (2) SCC 372, has held that mere relationship of the witnesses cannot be the sole basis to discard the evidence if it is otherwise found to be believable and trustworthy. However, when the Court has to appreciate the evidence of any interested witnesses it has to be very careful in weighing their evidence. In other words the evidence of an interested witness requires greater care and caution while scrutinising his evidence. The Court has to address to itself whether there are any infirmities in the evidence of such a witness; whether the evidence is reliable and trustworthy and whether the genesis of the crime unfolded by such evidence is probable or not. If the evidence of any interested witness or a relative on a careful scrutiny is found to be consistent and trustworthy, free from infirmities or any embellishment there is no reason not to place reliance on the same.

(47) The Hon'ble Supreme Court, in the case of Mani Ram and Others versus State of U.P.; 1994 Supp (2) SCC 289, has held that where the direct evidence is not supported by the expert evidence then the evidence is wanting in the most material part of the prosecution case and, therefore, it would be difficult to convict the accused on the basis of such evidence. If the evidence of the prosecution witnesses is totally inconsistent with the medical evidence this is a most fundamental defect in the prosecution case and unless this inconsistency is reasonably explained it is sufficient not only to discredit the evidence but the entire case.

(48) The Hon'ble Supreme Court, in the case of Shivaji Sahabrao Babode and Another versus State of Maharashtra;(1973) 2 SCC 793, has held that even if a witness is not reliable, he need not be false and even if the Police have trumped up one witness or two or has embroidered the story to give a credible look to their case that cannot defeat justice if there is clear and un- impeachable evidence making out-the guilt of the accused. Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between, □may be□ and 'must be' is long and divides vague conjectures from sure conclusions. The Hon'ble

Supreme Court has further held that Proof of motive satisfies the judicial mind about the likelihood of the authorship but its absence only demands deeper forensic search and cannot undo the effect of evidence otherwise sufficient. The relevant paragraphs 19 and 20 are extracted hereinbelow:-

"19. Now let us sum up the whole case in the light of the evidence we have found to be of worth. We must observe that even if a witness is not reliable, he need not be false and even if the Police have trumped up one witness or two or has embroidered the story to give a credible look to their case that cannot defeat justice if there is clear and un- impeachable evidence making out-the guilt of the accused. Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ,may be' and 'must be' is long and divides vague conjectures from sure conclusions. Informing ourselves of these important principles we analyse the evidence found good by us. In our view there is only one eye-witness, P.W. 5, Vilas. Even if the case against the accused hangs on the evidence of a single eye-,witness it may be enough to sustain the, conviction given sterling testimony of a competent, honest man, although as a rule of prudence courts call for corroboration. It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs. We are persuaded that the PW 5 is a witness for truth but in view of the circumstances that he is interested, we would still want corroboration in this case to reassure ourselves. And that we have in this case.

20. The earlier discussion leaves unscathed the dying declaration and incriminating discoveries and the only question is whether they are sufficient to reinforce the essential facts bearing on the appellants' direct involvement in the crime. The accused, we feel convinced, are reasonably proved to have murdered Heriba. But counsel argues that no animus against the victim has been made out and motiveless malignity militates against natural human condut. Proof of motive satisfies the judicial mind about the likelihood of the authorship but its absence only demands deeper forensic search and cannot undo the effect of evidence otherwise sufficient. Motives of men are often subjective, submerged and unamenable to easy proof that courts have to go without clear evidence thereon if other clinching evidence exists. In the case on hand the enmity with Sita Ram being active and admitted,,the pique against Hariba, his loyal dependent, is understandable. While striking the deceased he was asked in a tell-tale manner, whether he would still stay at Vasti (Kadamwadi, with Sita Ram). That betrays the motive. We affirm the finding of the High Court."

(49) The appellant had taken a plea of alibi on the ground that he was engaged in threshing/processing wheat at the place of Thakur Man Singh in his ancestral village on the day of incident and he had not gone to his in-laws house on that day or night, in regard to which the defence witnesses were also examined. However, statement under Section 313 Cr.P.C. indicates that there is no plea that at the time of incident, he has not gone to his in-laws house for doing threshing/processing of wheat. Thus as discussed above, the appellant has failed to establish the plea of alibi. It is settled in law that a plea of alibi is liable to be proved by the person, who is claiming the same. The learned trial court, after considering the evidence adduced by the parties, and the plea of alibi taken by the appellant, which could not be proved, has recorded a finding that in the facts and circumstances of the case and the evidence of the defence witnesses, it cannot be

said that the accused Jagdish was present at every moment and minute for threshing work on 29/30.4.2008 at the place of D.W.2 and he had not gone anywhere else. In this regard, there is contradiction in the statement of the defence witnesses also and there is a difference of at least one hour in commencement of the threshing work in evidence of D.W.1 and D.W.2, therefore, looking to the short distance between the place of incident and the threshing site, it cannot be said that the said distance could not have been covered within a period of one hour. Consequently, the plea of alibi taken by the accused-appellant is neither believable nor tenable in the eyes of law. This Court is in agreement with the findings recorded by the learned trial court. Looking to the short distance, the appellant could have gone to his in-laws house and reached back by the time of start of threshing/processing. The Hon'ble Supreme Court, in the case of Mukesh and Another versus State(NCT of Delhi) and others; (2017) 6 SCC 1, observed that it is well settled in law that when a plea of alibi is taken by the accused, the burden is upon him to establish the same by positive evidence after the onus as regards the person on the spot is established by the prosecution.

(50) The Hon'ble Supreme Court, in the case of Joydeb Patra and others versus State of West Bengal; 203 AIR SCW 2744 relied by learned counsel for the appellant, has held that the burden to prove the guilt of the accused beyond reasonable doubt is on the prosecution and it is only when this burden is discharged that the accused could prove any fact within his special knowledge under Section 106 of the Indian Evidence Act to establish that he was not guilty. There cannot be any dispute to the principle which is settled in law. The relevant paragraph 8 is extracted hereinbelow:-

"8. We are afraid, we cannot accept this submission of Mr. Ghosh.This Court has repeatedly held that the burden to prove the guilt of the accused beyond reasonable doubt is on the prosecution and it is only when this burden is discharged that the accused could prove any fact within his special knowledge under Section 106 of the Indian Evidence Act to establish that he was not guilty."

(51) The Hon'ble Supreme Court, in the case of Nishar Ali versus State of U.P.; AIR 1987 SC 366, relied by learned counsel for the appellant, has held that it is a cardinal principle of criminal jurisprudence that the innocence of an accused person is presumed till otherwise proved. There cannot be any dispute to this principle and the contention of learned counsel for the appellant that the trial court proceeded on assumption of his guilt is misconceived and not tenable.

(52) The Hon'ble Supreme Court, in the case of State of U.P. versus Satish; (2005) 3 SCC 114, relied by learned counsel for the appellant, has held that the principle of proportion between crime and punishment is a principle of just desert that serves as the foundation of every criminal sentence that is justifiable. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. This principle is also not in dispute and sentence is to be awarded considering the nature and manner of committing crime and various factors and the statutory provision of sentence. In the instant case, the sentence has rightly been awarded looking to the nature and manner of crime and the statutory provision. There is no illegality or error in it.

(53) In view of above, it is apparent that it is a case of 'last seen together' and circumstantial evidence and the circumstances in the present case refer towards the guilt of the accused-appellant only,and that he is the author of crime. The learned trial court has disclosed the circumstances leading to the guilt of the accused-appellant, which is extracted hereinbelow:

"पी.डब्लू.1 व पी.डब्लू 2 दोनों ने दिनांक 29.04.2008 की रात अभियुक्त द्वारा मृतका को साथ ले जाने के स्पष्ट कथन किये है। अगले दिन सुबह मृतका की लाश मिलती है। चिकित्सीय आख्या के अनुसार मृतका की दिनांक 29/30.04.2008 को रात किसी समय गला घोंटकर हत्या की गयी है। अतः मृतका के साथ मृत्यु पूर्व अंतिम व्यक्ति अभियुक्त ही है। अभियुक्त तथा वादी मुकदमा के मध्य पूर्व में कोई विवाद या झगडा होने का कथन बचाव पक्ष की ओर से नही किया गया है। अतः वादी पक्ष द्वारा असल अपराधी को छोडकर अभियुक्त अर्थात अपने दामाद को झूठा फंसाने का भी कोई मामला नही बनता है । डी.डब्लू. 1 जो अभियुक्त की मां व मृतका की सास है, अपनी मुख्य परीक्षा में कहती है कि घटना के बाद अगले दिन उसके गांव के एक व्यक्ति ने मृतका के कही भाग जाने की खबर दी थी। ऐसी स्थिति में व्यक्ति तुरन्त मृतका के मायके जाकर मालूमात का प्रयास करता है परन्तु बचाव पक्ष की ओर से ऐसा किये जाने का कोई कथन नही है जबकि बचाव पक्ष के अनुसार अभियुक्त व मृतका के मध्य मधुर सम्बन्ध थे। इसके अतिरिक्त ऐसा भी कोई साक्ष्य बचाव पक्ष की ओर से नहीं आया है कि डी.डब्लू. 2 ने विवेचना के दौरान अभियुक्त के थ्रेसिंग कराने हेतु उसके यहां उपस्थित होने का कथन विवेचक को दिया हो या देने का प्रयास किया हो अथवा पुलिस उच्चाधिकारियो को सूचना प्रेषित की गयी हो। यह भी साक्ष्य में आया है कि मायके में प्रसव के सम्बन्ध में मृतका अपने माता पिता के साथ घटना के समय रह रही थी। रात्रि में घर से ही अभियुक्त मृतका को ले जाता है इसलिए मृतका के माता पिता ही स्वाभाविक साक्षी हो सकते है। अतः किसी अन्य व्यक्ति का स्वतन्त्र साक्षी के रूप में प्रस्तुत ना करना अभियोजन मामले को संदेहास्पद नही बनाता है ।"

(54) Thus, in view of the discussion made here-in-above and considering the overall facts and circumstances of the case, this Court does not find any illegality or error in the impugned judgment and order. The learned trial court has passed the impugned judgment and order in accordance with law by a reasoned and speaking order after considering the material and evidence on record appropriately, by means of which the appellant has been convicted. The appeal has been filed on misconceived and baseless grounds, which lacks merit and is liable to be dismissed.

(55) The appeal is, accordingly, dismissed. The conviction of the appellant as recorded by the learned trial court is upheld. The sentence awarded is also maintained. The appellant is in jail. He shall serve out the sentence awarded by the trial court.

(56) Let a copy of this judgment and the trial court's record be transmitted to the Court concerned forthwith or in any case within two weeks, for information and necessary action.

(57) Before parting with the order, this Court records the valuable assistance provided by Mr. Ankit Singh, Research Associate, in preparation of this judgment and finding out case laws applicable in the present case.

(58) Sri Rajesh Kumar Dwivedi, learned Amicus Curiae was appointed to represent the appellant/accused. We put on record the words of appreciation for able assistance rendered by him, therefore, we quantify the remuneration of Rs.15,000/- for him. Let the same be paid by the concerned expeditiously.

(2026) 5 ILRA 225
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 26.05.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE JAI KRISHNA UPADHYAY, J.

Criminal Appeal No. 2089 of 2023
& Connected with other cases

Babloo Dubey @ Vishnudhar Dubey ...Appellant
Versus
State of U.P. ...Respondent

Issue for Consideration

Matter pertains to whether the prosecution had established the guilt of the accused appellants beyond reasonable doubt for the offences punishable under Ss. 147, 148, 307/149, 302/149 and 504 of the Indian Penal Code and S. 3/25 of the Arms Act in view of the material inconsistencies between the ocular and medical evidence, the doubtful place and time of occurrence, the legality and evidentiary value of the recovery, the absence of identification of one of the accused, the plea of alibi, and the overall credibility of the prosecution evidence, warranting interference with the judgment of conviction and sentence recorded by the Trial Court. (Paras 32-41)

Headnotes

Criminal Trial - Appreciation of Evidence - Ocular and medical evidence - Indian Penal Code, 1860 - Ss. 147, 148, 307/149, 302/149 and 504 - Arms Act, 1959 - S. 3/25 - Where the ocular version regarding the manner of assault materially conflicted with the medical evidence, the prosecution witnesses gave inconsistent versions regarding the place of occurrence, and the site plan itself indicated a different place of occurrence, the prosecution version became extremely doubtful and could not be held to have proved the guilt of the accused beyond reasonable doubt - Benefit of doubt extended - Conviction set aside. (Paras 32, 33, 39, 40, 41)

Evidence - Recovery - Indian Evidence Act, 1872 - S. 27 - Recovery of firearms - In the absence of any disclosure statement preceding the alleged recovery, and where the FSL report did not connect the recovered firearms with the bullet recovered from the body of the deceased or the empty cartridges recovered from the place of occurrence, the recovery was held to be bad in law and incapable of lending support to the prosecution case. (Paras 32, 38)

Evidence - Identification of accused - Criminal Trial - Where an accused was not named in the FIR and no Test Identification Parade was conducted, coupled with the absence of dock identification during trial, the prosecution failed to establish his identity in accordance with law, rendering the conviction vulnerable. (Para 34)

Evidence - Electronic evidence - Indian Evidence Act, 1872 - S. 65-B - Call detail records - Call detail reports not accompanied by the certificate required under S. 65-B, not duly proved and not exhibited could not be relied upon in evidence. (Para 35)

Criminal Procedure - First Information Report - Code of Criminal Procedure, 1973 - S. 157 - Delay in forwarding the police report to the Magistrate and cuttings in the inquest report, by themselves, were not sufficient to conclude that the FIR was ante-timed, the lapses not being of such nature as to vitiate the prosecution case on that ground alone. (Para 36)

Criminal Trial - Benefit of doubt - Appreciation of evidence - Where the cumulative effect of the inconsistencies in the prosecution evidence, doubtful place and time of occurrence, infirm

recovery, failure of identification, and defence evidence created reasonable doubt regarding the prosecution version, the prosecution failed to establish the guilt of the accused beyond reasonable doubt and the impugned judgment of conviction and sentence deserved to be set aside - Appeals allowed and accused acquitted. (Paras 37-41)

Held: The prosecution was required to establish the guilt of the accused appellants beyond reasonable doubt. Upon appreciation of the entire evidence on record, the prosecution version was found to suffer from material inconsistencies and infirmities. The ocular version with regard to the manner of assault was not in consonance with the medical evidence, inasmuch as the prosecution witnesses initially maintained that both the shots were fired on the head whereas the post-mortem disclosed one firearm injury on the head and another on the chest and the medical evidence indicated that both injuries could have been caused from the same firearm. The prosecution witnesses also gave contradictory versions regarding the place of occurrence and the site plan prepared on the pointing out of the informant did not support the prosecution case consistently. The evidence regarding the alleged bhoomi poojan and the presence of witnesses at the spot also created doubt. The call detail records relied upon by the defence could not be treated as substantive evidence in the absence of compliance with S. 65-B of the Evidence Act, though the surrounding circumstances remained relevant while appreciating the credibility of the prosecution version. Delay in forwarding the FIR to the Magistrate, by itself, was not sufficient to hold that the FIR was ante-timed or fabricated, as mere delay in compliance with S. 157 CrPC does not vitiate the prosecution case unless prejudice is shown. However, the prosecution case could not be accepted merely because the delay was not fatal. The recovery of firearms was not in accordance with law, there was no disclosure statement preceding the recovery, no independent witness was associated with the recovery, and the FSL report did not connect the recovered firearms with the empty cartridges or the bullet recovered from the body of the deceased, thereby rendering the recovery incapable of lending assurance to the prosecution case. The prosecution also failed to establish the identity of one of the accused in accordance with law as he was neither named in the FIR nor identified in a Test Identification Parade or in Court. The defence evidence regarding the plea of alibi assumed significance and, when considered with the acquittal of the said accused under one of the charges by the Trial Court, further weakened the prosecution version. Upon cumulative assessment of the ocular evidence, medical evidence, documentary evidence, recovery, identification, defence evidence and the surrounding circumstances, the conclusion recorded by the Trial Court was found not to be in accordance with law and the evidence on record. The prosecution failed to establish the guilt of the accused appellants beyond reasonable doubt and they were entitled to the benefit of doubt. Consequently, the impugned judgment of conviction and sentence deserved to be interfered with, the criminal appeals were allowed, the conviction and sentence imposed upon the accused appellants were set aside and they were honourably acquitted of all the charges framed against them. (Paras 32-41) (E-7)

Case Law Cited

Tukesh Singh v. State of Chattisgarh, **2025 SCC OnLine SC 1110***; State of U.P. v. Arun Kumar Gupta,* **(2003) 2 SCC 202***; Lakshmi Singh v. State of Bihar,* **(1976) 4 SCC 394 : 1976 SCC (Cri) 671 : AIR 1976 SC 2263;** *Meharaj Singh v. State of U.P.,* **(1994) 5 SCC 188***; Syed Ibrahim v. State of A.P.***, (2006) 10 SCC 601***; Nisar Ali v. State of U.P.* **[1957 SCR 657 : AIR 1957 SC 366 : 1957 Cri LJ 550];** *Gurcharan Singh v. State of Punjab* **[AIR 1956 SC 460 : 1956 Cri LJ 827]***; Sohrab v. State of M.P.* **[(1972) 3 SCC 751 : 1972 SCC (Cri) 819];** *Ugar Ahir v. State of Bihar* **[AIR 1965 SC 277 : (1965) 1 Cri LJ 256]***; Zwinglee Ariel v. State of M.P.* **[(1952) 2 SCC 560 : AIR 1954 SC 15 : 1954 Cri LJ 230]***; Balaka Singh v. State of Punjab* **[(1975) 4 SCC 511 : 1975 SCC (Cri) 601];** *State of Rajasthan v. Kalki* **[(1981) 2 SCC 752 : 1981 SCC (Cri) 593]***; Krishna Mochi v. State of Bihar* **[(2002) 6 SCC 81 : 2002 SCC (Cri) 1220]***; Sucha Singh v. State of Punjab* **[(2003) 7 SCC 643 : 2003 SCC (Cri) 1697]***; Zahira Habibulla H. Sheikh v. State of Gujarat* **[(2004) 4 SCC 158 : 2004 SCC (Cri) 999];** *Ram Udgar Singh v. State of Bihar* **[(2004) 10 SCC 443 : 2004 SCC (Cri) Supp 550]***; Gorle S. Naidu v. State of A.P.* **[(2003) 12 SCC 449 : 2004 SCC (Cri) Supp 462];** *Gubbala Venugopalaswamy v. State of A.P.* **[(2004) 10 SCC 120 : 2004 SCC (Cri) 1764];** *Pohlu v. State of Haryana,* **(2005) 10 SCC 196;** *Subramanya v. State of Karnataka,* **(2023) 11 SCC 255.**

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Indian Evidence Act, 1872; Arms Act, 1959; Police Act,1861

List of Keywords

Murder; Ocular evidence; Medical evidence; Appreciation of evidence; Place of occurrence; Time of occurrence; Contradictions; Interested witness; Test Identification Parade; Dock identification; Recovery; Disclosure statement; Forensic Science Laboratory; Ballistic evidence; Call Detail Records; Electronic evidence; S. 65-B certificate; Delay in forwarding FIR; Ante-timed FIR; Alibi; Benefit of doubt; Acquittal; Criminal appeals.

Case Arising From

APPELLATE JURISDICTION: Arising out of the judgment and order dated 13/17.02.2023 passed by the Additional Sessions Judge/Special Judge (Anti Corruption Act), Court No. 1, Gorakhpur, in Session Trial No. 19 of 2015, Session Trial No. 290 of 2015, Session Trial No. 445 of 2015, Session Trial No. 234 of 2017, arising out of Case Crime No. 463 of 2014, and Session Trial No. 252 of 2015, arising out of Case Crime No. 519 of 2014, and Session Trial No. 253 of 2015, arising out of Case Crime No. 520 of 2014, Police Station Khorabar, District Gorakhpur, whereby the appellants were convicted and sentenced under the provisions of the Indian Penal Code and the Arms Act, and the criminal appeals questioning the validity and sustainability of the said judgment and order were heard together, Criminal Appeal No. 2089 of 2023 being treated as the leading case.

Appearances for Parties

Advs. for the Appellant:

Shri Manish Tiwari, Senior Advocate; Shri Pranav Tiwari; Shri Atharva Dixit; Shri Rahul Mishra; Shri Raghuvansh Mishra; Shri N.I. Jafri, Senior Advocate; Shri Sadrul Islam Jafri; Shri Sanjeev Kumar Singh.

Advs. for the Respondents:

Shri C.B. Dhar Dubey; Shri Muni Raj Mehrotra, Additional Government Advocates; Shri Amit Daga, Senior Advocate; Shri Ankit Srivastava; Shri C.P. Pandey; Shri V.C. Shukla.

(Delivered by Hon'ble Siddhartha Varma, J.
&
Hon'ble Jai Krishna Upadhyay, J.)

1. Since these criminal appeals arise out of same case crime number, they have been heard together and are being decided by a common judgment and order. Criminal Appeal No. 2089 of 2023 is being treated as a leading case.

2. The validity and sustainability of the judgment and order dated 13/17.2.2023 passed by the Additional Sessions Judge / Special Judge (Anti Corruption Act) Court No.1 Gorakhpur, in Session Trial No.19 of 2015 (State of U.P. Vs. Govind Yadav and another), Session Trial No. 290 of 2015 (State of U.P. vs. Rinku @ Rajiv Yadav and another), Session Trial No. 445 of 2015 (State of U.P. vs. Rajan Yadav), Session Trial No. 234 of 2017 (State of U.P. vs. Bablu Dubey @ Vishnudhar Dubey), arising out of Case Crime No. 463 of 2014 under Sections 147, 148, 307/149, 302/149 IPC, Session Trial No. 252 of 2015 (State of U.P. vs. Govind Yadav), arising out of case crime no. 519 of 2014, under Sections 3/25 Arms Act and Session Trial No. 253 of 2015 (State of U.P. vs. Suresh Yadav), arising out of case crime no. 520 of 2014, under Sections 3/25 Arms Act, P.S. Khorabad, District Gorakhpur whereby the appellants Govind Yadav, Suresh Yadav, Rinku @ Rajiv Yadav, Monu Yadav, Rajan Yadav have been convicted and sentenced to undergo imprisonment for life under Section 302/149 IPC with a fine of Rs.50,000/- each, to undergo two

years imprisonment under Section 147 IPC, to undergo three years imprisonment under Section 148 IPC, to undergo seven years rigorous imprisonment under Section 307/149 IPC with a fine of Rs. 20,000/- each., appellant Babludhar Dubey @ Vishnudhar Dubey has been convicted and sentenced to undergo imprisonment for life under Section 302/149 IPC with a fine of Rs.50,000/-, to undergo two years imprisonment under Section 148 IPC, to undergo two years imprisonment under Section 504 IPC, to undergo seven years rigorous imprisonment under Section 307/149 IPC with a fine of Rs. 20,000/-., appellants Govind Yadav and Suresh Yadav have also been convicted and sentenced to undergo three years rigorous imprisonment for the offence under Sections 3/25 Arms Act.

3. All sentences were directed to run concurrently with default clauses.

4. Upon an incident, which had occurred on 8.8.2014 wherein the informant Shiv Pratap Yadav @ Sadhu Yadav son of Ram Vriksh Yadav, resident of Behiahata Dakshin, Police Station Cantt., District Gorakhpur, had got lodged a First Information Report (in short 'FIR') with regard to it. It was informed that the informant had gone to a particular plot of land which belonged to his bhabhi Sunita, wife of Raju Yadav since the year 2007. The purpose of being there on the plot in question on 8.8.2014 was that the foundation had to be laid for the construction of a house and that was to be done in the presence of the informant, his elder brother Raju Yadav and relatives Rajesh Yadav and Manish Yadav. At the particular point of time when the work of diging of pit for conducting Pooja etc. was going on and around 10.00 a.m. Govind Yadav, Suresh Yadav and his two real brothers, whose names were not known to the informant, alongwith Bablu Dubey and one unknown person reached the place of incident. They all were carrying revolvers and pistols and started abusing the first informant and the other persons of the informant's side. Not only that they also asked them to leave the place and go away. This was resisted by Raju Yadav, brother of the informant and upon this Bablu Dubey exhorted the others to fired upon him and he himself and Govind Yadav and Suresh Yadav came there near the deceased i.e. Raju Yadav and from their fire arms they fire on the head of the deceased and upon this the other accused persons also started firing with an intention to kill. The deceased, however, died instantaneously. The accused Bablu Dubey had also snatched away the licensed pistol of the deceased from his waist and thereafter the other accused while firing, in order to create terror in the area and thereafter fled from the place of the incident. The informant, upon the incident having taken place phoned up the Senior Superintendent of Police, Gorakhpur to give this message to him. Thereafter, they took the deceased to the hospital where the doctor declared him dead.

5. Upon lodging the FIR, the police got into action and a panchayatnama was conducted. The panchas present were Ram Kewal Yadav, Sita Ram Yadav, Ramesh Yadav, Pappu Yadav and Amarjeet Yadav. In the opinion of the panchas, the deceased had died on account of the firing which was done on him. Thereafter, the body was sent for post mortem on 8.8.2014 and in the post mortem report following injuries were found :

'1. Firearm entry wound present on the left side of the face, size 0.9 cm x 0.9 cm, which was circular in shape, going inwards, and had blackening. And the wound was 9 cm outside the angle of the mouth. On dissecting the wound, the inner dermis (leather) of the skin and flesh, and the bone of the face were fractured. The lower part of the skull was grazed/lacerated and a dark blood clot

was present there. In the right part of the back of the skull (occipital) lower part, the size of the wound was 1.5 cm x 1.5 cm, the margins of which were everted (protruding outwards). When a probe was passed between the entry wound and the exit wound of the bullet, both wounds communicated with each other. Both these wounds are through and through.

2. Firearm entry wound in the lower part of the left chest, which was 7.5 cm below the nipple, and whose size was 0.9 cm x 0.9 cm, having inverted margins and blackening. On dissecting this, there was a dark blood clot in the skin, fascia, and muscle, there was an abrasion between the two ribs. Inside it, the lungs and pleura were ruptured (lacerated) and in the side chest cavity and around the lungs, one litre of dark blood clot was present. An iron bullet was found from the posterior part of the right chest, which was lodged between the fascia and muscle.'

The immediate cause for the death of the deceased was hemorrhage and shock and ante mortem firearm injuries.

6. The police got into action. The Investigating Officer had from the place of occurrence recovered two live cartridges of 7.65 mm (32 bore) and one empty cartridge and recovery memo Ext. ka-2 was prepared on 8.8.2014 itself. The plain and bloodstained soil was also recovered and was kept in separate boxes on the same date. Thereafter, the arrest had taken place on 9.9.2014 and on the pointing out of the accused one country made pistol and two live cartridges 7.65 mm (32 bore) and one country made revolver with one empty cartridge embedded in it and two live bullets of 32 bore were recovered from the pointing out of accused Govind Yadav and accused Suresh Yadav. Recovery memos were prepared and were exhibited as Ext. ka-12. In the recovery memo itself it was stated that there was no independent witness of the recovery. Needless to mention, there was no disclosure statement also. Thereafter, the empty cartridge, which was recovered from the place of incident, the empty cartridge which was recovered from the country made revolver and the bullet which was recovered from the chest of the deceased alongwith the live cartridges recovered from the place of incident were sent to the Forensic Science Laboratory. After completing necessary formalities, the police submitted charge sheets. The matter was committed to the Court of Sessions for trial.

7. Accused appeared and charges were framed by the Sessions Judge, Gorakhpur on 1.5.20215 against accused Suresh Yadav, on 14.9.2015 against accused Rajan Yadav, on 10.7.2015 against accused Rinku @ Rajiv Yadav and Rajan Yadav under Sections 147, 148, 307/149 and 302/149 IPC and on 29.5.2015 and 11.6.2015 against accused Govind Yadav and Suresh Yadav under Sections 3/25 Arms. On 5.11.2016 charges against accused Bablu Dubey @ Vishnu Dhar Dubey were framed under Sections 148, 307/149, 302/149, 396, 504 IPC. The accused persons pleaded not guilty and claimed to be tried.

8. To bring home the charges against the accused, the prosecution produced as many as nine witnesses in oral evidence. They are (P.W.1) Shiv Pratap Yadav @ Sadhu Yadav, informant, (P.W.2) Brijesh Kumar Yadav, (P.W.3) Dr. Awadhesh, (P.W.4) S.I. Shailendra Yadav, (P.W.5) S.I. Mahendra Kumar, (P.W.6) I.O. Jitendra Pal Singh, (P.W.7) I.O. Ram Pal Yadav, (P.W.8) I.O. Pramod Kumar Singh and (P.W.9) S.I. Narsingh were examined.

9. In documentary evidence, written report Ex. Ka-1, recovery memo regarding two live cartridges and one empty cartridge 7.65 bore Ext. ka-2, memo regarding bloodstained and plain soil Ext. ka-3, inquest report Ext. ka-5, letter to R.I. Ext. ka-6, challan lash Ext. ka-7, letter to CMO Ext. ka-8, photo nash Ext. ka-9, chik FIR Ext. ka-10, site plan Exl. ka-11, memo regarding recovery of murder weapon Ext. ka-12, site plan of recovery Ext. ka-13, docket Ext. ka-14 to Ext. ka-17, charge sheet Ext. ka-18 and Ext. ka-19, FSL report Ext. ka-19 and Ext. ka-20, report police station Ext. ka-21, charge sheet Ext. ka-22, docket Ext. ka-23, site plan Ext. ka-24, prosecution approval Ext. ka-25 and Ext. ka-26, charge sheet Ext. ka-27 and Ext. ka-28, copy GD Ext. ka-29, chik FIR Ext. k-30 and copy GD Ext. ka-31 were examined and proved. In addition, recovery pistol material Ext.1, two live cartridges material Ext. 2, country made revolver 32 bore material Ext. 3 and empty cartridge and live cartridge material Ext. 4 were also proved.

10. The incriminating evidence and circumstances were put to the accused persons under Section 313 Cr.P.C. wherein they claimed the entire prosecution evidence as false and fabricated and stated that the case was prosecuted out of conspiracy and malice.

11. In defence evidence, D.W.-1 Dharmendra Mishra, DW-2 Ram Ujagir Tripathi, DW-3 Deen Dayal Gupta, DW-4 S.I. Dhirendra Kumar and DW-5 Pandit Mithlesh Chaudhary were produced.

12. PW-1 - Shiv Pratap Yadav @ Sadhu Yadav had appeared before the Court and in his examination-in-chief he had stated that he had three brothers. The eldest was Rajesh Pal, then there was Raju Yadav (deceased) and he himself was the third brother. He had stated that his bhabhi Sunita wife of Raju Yadav (deceased) had purchased in the year 2007 a piece of land from one Gulab Yadav, who was the father of some of the accused persons. The incident had occurred on 8.8.2014 at around 10.00. a.m. and the bhoomi poojan was to be done on that particular date and with regard to that he himself alongwith his brother Raju Yadav and relative Brijesh Yadav (PW-2) alongwith Manish Yadav (not examined) and Rajesh Yadav (not examined) were present. He had stated that while the pit was being dug, the accused Govind Yadav, Suresh Yadav, Rinku Yadav, @ Rajiv Yadav and Monu Yadav, all sons of Gulab Yadav alongwith Babludhar Dubey, who was accompanied by Rajan Yadav (six in number) came on the spot with revolvers and pistols and all six of them asked his brother Raju Yadav not to commence with the foundation and pooja. The brother of the informant resisted the threat and therefore Babludhar Dubey exhorted all the others to commit the crime and at that point of time Suresh Yadav and Govind Yadav with an intention to kill the brother of the informant fired on him and he fell down bleeding and at that point of time Babludhar Dubey took out licensed pistol from waist of the deceased. Thereafter the accused persons with an intention to kill the first informant and the other persons also fired towards them and after creating a terror in the area and after having threatened fled the place of incident. He has stated that he had also rung up the S.S.P., Gorakhpur at that point of time and thereafter had taken the injured brother in his Scorpio car to the hospital where he was declared dead. He had stated that thereafter he had got the FIR typed out and after signing the same lodged it. The statement of PW-1 was recorded at the police station itself on that date and he accompanied the police to the place of the incident and showed the site to the Investigating Officer. He also proved the FIR. In his cross-examination he had stated that Suresh Yadav, Govind Yadav, Rinku @ Rajiv Yadav and Monu were four brothers. The names of Rajiv @ Rinku and Monu he was knowing from before the

incident. He had stated that amongst those, who were present Brijesh Yadav was a relative and that he lived around 7-8 kilometers away and was doing business of milk and was also his brother-in-law. He had stated that the land belonged to his bhabhi Sunita alone and that it was not in his name. To lookafter the plot of land he never used to visit but his elder brother Raju always used to go there and since the year 2007 itself boundary wall was constructed without any dispute. Upon a suggestion being made that the land was also his, he had stated that it was wrong to say so. The plot of land had a gate on the western boundary and that the boundary had a height of 4-1/2 feet. The boundary was not all over the plot but only in the front. About the fact that the bhoomi poojan was to take place he had stated that the relatives were informed only one day prior to the date of incident and from amongst the relatives Brijesh Yadav, Rajesh Yadav and Manish Yadav had come to his house on their motorcycles. Thereafter he alongwith Brijesh Yadav, Manish Yadav and his brother had gone to the place of incident on a Scorpio Car. In the bhoomi poojan ladies had not gone. He had categorically stated that for the bhoomi poojan Pandit (priest) and nai (barber) had not come. They were planning to call the priest and in fact he had in so many words stated that there was no definite person in their mind and they were searching for him. Same was the case for the Barber. From the Azad Chowk labour were arranged and they were digging the pit. When the accused had reached the place of incident, they had threatened his brother not to do the pooja and that his brother was at that point of time inside the western boundary. In the cross-examination he had also stated that Govind had fired on the head of the deceased while Suresh had fired on the right side of the chest. He however stated that it was correct to say that in the FIR he had stated that both Govind Yadav and Suresh Yadav had fired from very near the deceased and had stated that Suresh and Govind both had fired in the head of the deceased. He further stated that he wanted to say that they had fired towards the head. He had thereafter confirming what he had stated in the FIR and also had got recorded under Section 161 CrPC before the police that both Govind Yadav and Suresh Yadav had fired in the head of the deceased, categorically stated that he neither had stated in the FIR nor had informed the police that the firing was done on the chest. He was in a state of shock and he was stating the correct fact in the Court when he was stating that one firing was done in the chest. He had stated that he was not present at the time when the panchayatnama was being filled. He has very categorically stated that the accused had entered from the eastern side which did not have a boundary and the brother of the informant was standing inside the boundary wall. He had then stated that he himself, Manish, Rajesh and Brijesh were standing inside the boundary wall. From which side the accused Govind had fired he did not remember. He however had categorically stated that his brother was standing on the eastern side 5-7 feet away from the pit. He also stated that firing was done from a very short distance i.e. of 3-4 steps. He thereafter tried to inform the Court with regard to how the FIR was typed out in 10-12 minutes and how he had singed the same. Because only Sadhu was written, therefore, there was a cutting and he wrote Sadhu Yadav @ Shiv Pratap Yadav. He had stated that he had lodged the FIR after getting the same typed out and after taking legal advise. With regard to Babludhar Dubey he had stated that he was not knowing the name of his father and therefore he had not mentioned the same in the FIR. He had also not mentioned his other name i.e. Vishnudhar Dubey. About his other name and the name of his father he mentioned for the first time in the Court. Upon a specific question being asked as to how pooja had been planned, he stated that he had no knowledge about it. Upon a question being put with regard to the fact that whether any food etc. was taken by the deceased before the informant□s side had reached the place of incident, he had stated that no one had taken either tea, water or any food etc. He had thereafter stated that he had started from his house at betia

hata and had reached the place of incident in 15 minutes and very categorically had stated that he had made phone call from betia hata using his mobile and that in between the place of incident and house many other areas had to be crossed namely, Azad Chowk and Durga Chowk. He had also stated that from the place of incident he had rung up the S.S.P. Gorakhpur from his mobile no. 9415619199. He had also given the telephone number of Brijesh which was 9616623045 and telephone number of Manish Yadav as 8896104235 and then from his memory he has given the mobile number of Rajesh Yadav as 7860489999. He thereafter on the cross-examination being done on behalf of Rinku Yadav had stated that when the firing was done the accused were inside the boundary wall and had very categorically stated that he had no idea if any empty cartridge was found outside the boundary wall. Upon suggestion being made that the other relatives were not there he had denied the suggestion and stated that the other relatives were definitely there. Again upon cross examination done by Monu Yadav he stated that he knew the family of Gulab Yadav including the wife and the sons. The names of two sons were not mentioned in the FIR, because at that time he could not recollect their names. He had informed that Rajesh Yadav was a clerk in Punjab National Bank. With regard to bhoomi pujan upon being asked as to how the planning was done he stated that 3-4 days prior to the incident priest had given the auspicious time (muhurt) after consultation. He however did not remember the name of priest who had told the auspicious time. He had then stated that the accused had entered from the gate and then had turned right and had fired on his brother. Upon the cross-examination done by Rajan Yadav, he had stated that at the time of lodging the FIR he had not remembered the name of Rajan as he was in a state of shock and that the name of Rajan was taken in the Court itself. He had further stated that he was well aware of the fact that the police had submitted final report vis-a-vis Babludhar Dubey but no action was taken from the side of informant. Nothing with regard to Babludhar Dubey was told to the Investigating Officer in the statement recorded under Section 161 CrPC and he was telling about Babludhar Dubey for the first time in the Court. He was also not aware that in the house of Babludhar Dubey recitation of Ramayan was going on. He had stated that he had two brothers-in-law namely Brijesh and Manish. Brijesh was engaged in the business of Milk and Manish was an Advocate in the Civil Court.

13. PW-2 - Brajesh Kumar Yadav in his examination-in-chief had stated the same story about the pooja etc. and that he alongwith others was present at the time of pooja. He had also narrated the manner in which Raju Yadav was shot dead by Suresh Yadav and Govind Yadav. He also stated that Govind Yadav had shot in the head of the deceased and Suresh Yadav had shot him in his chest. He had also stated that the other accused persons were trying to also kill the other persons but the others who were present had run away. He had stated that the land belonged to the informant and his Bhabhi Sunita. He had stated that he had no mobile telephone number. The recovery memos with regard to the empty cartridges and soil etc. were prepared in his presence. He had stated that the Investigating Officer had reached the place of incident after the FIR was lodged and taking the empty cartridges in his possession, he had very specifically stated that the recovery of empty cartridge etc. was done from the place where the incident had occurred. He had further stated that the pit was dug-up before the pooja. He had categorically stated that Raju Yadav was not killed anywhere inside the boundary but he was killed outside the boundary wall gate. The firing was not done inside the boundary wall but was done outside it. Raju Yadav and accused had gone out talking with each other and outside the plot Raju was murdered, while he himself remained inside the plot near the pit. Raju Yadav was hit by a bullet fired by Govind Yadav on the head and

this was absolutely a close range shot and Suresh had fired on the left side of the chest of Raju Yadav. He had then stated that while he was inside the plot he had seen that Raju Yadav had fallen down thereafter second shot was fired upon him by Suresh and the shot on the chest was from a close range. He had stated that the accused had also fired on the others, who were present with an intention to kill them all. This answer came in response to a specific question put to him as to in what direction the accused had run away. He had then upon being recalled on 6.7.2017 stated the very same story that Govind and Raju were talking to each other and they went out of the western gate and others remained near the pit in the plot and Raju while had gone out of the gate was murdered. He had stated that Raju was killed outside the gate. He had stated that this fact was mentioned in his statement under Section 161 CrPC and how the same was not recorded, he does not know. He had stated that everything was being done in a very normal manner and then Raju and Govind had gone out of the gate talking to each other and thereafter suddenly there was firing done by Govind and Suresh. When Govind had gone out the gate then Suresh had also left the plot and had gone out of the gate. He had then stated that when Suresh was coming inside the plot then he himself had noticed the firearm in his hand. When Suresh had left the plot and had gone out by that time the first firing had already been done and everybody else was in a state of shock. He had stated that Suresh had fired upon Raju from the front. When the firing was done those persons including he himself, all were inside the boundary. He had stated that all the accused persons had gone out from the southern side. He had also stated that when Raju was taken to the hospital there was blood on his pant and shirt and this was also shown to the Investigating Officer. He had however stated that an NCR which was reported against somebody else, had his telephone no. as 8896104234.

14. PW-3 - Dr. Awadhes had done the post mortem of the deceased and had stated about the injuries sustained by the deceased. The first injury was 1.5 x 1.5 cm of entry in the head and that it had also gone out of the back of the head and therefore the other injury was an exit wound. The second injury was in the chest which was 7.5 cm below the left nipple and was measuring .9 x.9 cm. He had stated very categorically that while the small intestine was empty, in the large intestine there was gas and faecal matter. He had categorically stated upon cross-examination done by the defence counsel that both the injuries i.e. in the head and in the chest were from the same firearm. Upon a question being asked with regard to faecal matter and the gas he categorically stated that the situation he had found with regard to faecal mater and gas in the large intestine could have been there only if the food had been taken two hours prior to the incident. He had also stated that he had found the bullet inside the body of the deceased.

15. PW-4 - S.I. Shailendra Yadav is the person before whom the inquest had taken place. He had also tried to explain the interpolation in the panchayatnama.

16. PW-5 is the S.I. Mahendra Kumar, who was head moharrir and had prepared the chik. He had categorically stated that the FIR was transmitted to Chief Judicial Magistrate's Court only on 11.8.2014.

17. PW-6 - S.I. Jitendra Pal Singh was the first Investigating Officer. He had categorically stated that the site plan was prepared on the pointing out of PW-1. While recording the statement of PW-1 under Section 161 CrPC he had categorically stated that Govind Yadav and Suresh Yadav

fired in the head of the deceased from a close range. He had also stated that statement of PW-2 under Section 161 CrPC was recorded on 10.8.2014. He had thereafter stated in his examination-in-chief as to how he had conducted the investigation and that thereafter submitted the charge sheet. In his cross-examination he had stated that he had followed all the rules and regulations as had been given in the Police Act and Police Regulations and thereafter in the cross-examination also he had stated that he had prepared the site plan on the pointing out of the PW-1/informant. PW-6 has further stated that the statement of PW-1 was not recorded at the police station. However, subsequently in his cross-examination he had stated that the statement of PW-1 under Section 161 CrPC was recorded at the police station itself. The statement of Rajesh Yadav was recorded on 10.8.2014. Thereafter he had told the manner in which the recovery was done under Section 27 of the Evidence Act. He had prepared only one recovery memo regarding recovery of both firearms and cartridges. He, in his cross-examination, had stated that even though Brijesh Yadav was present while site plan was being prepared but he had prepared the site plan only on the pointing out of PW-1. Thus, he had stated that in the site plan there was no mention of Brijesh Yadav, PW-2. With regard to the delay in the reaching of the special report to the Magistrate's office, he had stated that the same was sent on the same date by registering it in the dak-bahi. However, with regard to the person who had taken the special report he had not mentioned anything in the case diary. He had stated that on 8.8.2016 the Court had called for call details of the mobile numbers 9415619199 (PW-1), 7860489999 (Rajesh) and 8896104234 (PW-2) and he had given out in his cross-examination as to where the telephone numbers were found at the time of the incident. With regard to the sending of the pistol, revolver, empty cartridges and the live bullets he had mentioned that they had all gone for matching to the FSL. He had also stated that on the date of the incident he had also enquired if there was a Ramayan Path in the house of Babludhar Dubey.

18. PW-7 - Inspector Rampal Yadav is the second Investigating Officer. He had mentioned as to how he had excluded the name of Babludhar Dubey.

19. PW-8 - S.I. Pramod Kumar Singh was the I.O. of the Arms Act.

20. PW-9 - S.I. Narsingh was Head Moharrir at the time of preparation of the chik FIR with regard to Arms Act.

21. Upon closure of recording of statement of prosecution witnesses statements of accused under Section 313 CrPC were recorded. Whereafter, five defence witnesses appeared, out of which DW-1, DW-2 and DW-3 had appeared for proving the alibi of Babludhary Dubey.

22. DW-1 Dharmendra Mishra had stated in detail as to how he was attending the Ramayan Paath at the house of Babludhar Dubey and Babludhar Dubey was at his home during Ramayan Paath.

23. DW-2 Ram Ujagir Tripathi was the phupha of Babludhar Dubey and he had also stated in so many words as to how Ramayan Paath was going on and Babludhar Dubey was at his home during Ramayan Path. He stood firm in the cross-examination.

24. DW-3 Deen Dayal Gupta was the cook / bavarchi, who had also stated with regard to the alibi of Babludhar Dubey and also stood firm in the cross-examination.

25. DW-4 S.I. Dhirendra Kumar was the incharge Surveillance Cell at Gorakhpur and he had proved the case as was there with regard to the locations of mobile numbers 9415619199, 7860489999 and 8896104234 and he had stated that the location was got by due process and was thereafter placed before the Court.

26. DW-5 is Pandit Mithlesh Chaturvedi. He had stated that on that particular date there was no auspicious day for bhoomi pujan.

27. The learned trial court upon scrutiny of the evidence on record concluded that the case of prosecution was proved beyond reasonable doubt against the accused appellants and recorded conviction and sentenced them, as mentioned here-in-above. It may be noted that appellant Babludhar Dubey however was acquitted under Section 396 IPC. Hence, these appeals.

28. We have heard Shri Manish Tiwari, learned Senior Advocate assisted by Shri Pranav Tiwari and Shri Atharva Dixit, learned counsel for the appellants in Criminal Appeal Nos. 2855 of 2023 and 2861 of 2023. Criminal Appeal No. 2089 of 2023 was argued by Shri Rahul Mishra and Shri Raghuvansh Mishra. Shri N.I. Jafri, learned Senior Advocate assisted by Shri Sadrul Islam Jafri, learned counsel argued for the appellant in Criminal Appeal No.2088 of 2023, Shri Sanjeev Kumar Singh, learned counsel was heard for the appellant in Criminal Appeal No. 2519 of 2023. Shri Amit Daga, learned Senior Advocate assisted by Shri Ankit Srivastava, Shri C.P. Pandey and Shri V.C. Shukla, was the learned counsel for the informant. Shri C.B.Dhar Dubey and Shri Muni Raj Mehrotra, learned Additional Government Advocates appeared for the State.

29. Assailing the impugned judgment and order, learned counsel appearing for the appellants have made the following submissions :

(i) PW-4 S.I. Shailendra Yadav, who was responsible for conducting the inquest proceeding of the body of the deceased in his cross-examination has categorically submitted that he had not mentioned about any alleged eye witness.

(ii) Delay in sending the report from the police station to the concerned Chief Judicial Magistrate under Section 157 of CrPC was not condonable. In the instant case it is clear that the FIR was lodged on 8.8.2014 but the report was sent on 11.8.2014.

(iii) Learned counsel for the appellant in Criminal Appeal No. 2861 of 2023 and Criminal Appeal No. 2855 of 2023 submitted that the manner of assault was also questionable. In the initial version put forth in the FIR it had been categorically stated by the PW-1/informant that the appellants Govind Yadav and Suresh Yadav shot at the deceased by two different firearms, viz. a pistol and revolver in the head and the same was done upon instigation of Babludhar Dubey. The post mortem report gave a version very different from that put forth by the informant and it revealed that only one single firearm was used for the injuries that were on the head as also on the chest. Learned counsel for the appellants, therefore, submitted that the prosecution version as had

been brought forth was absolutely falsified, if statements of PW-1 and PW-2 are seen. It becomes clear that they, upon seeing the entry and exit injuries in the head, had somehow come to the conclusion that there were two firings done on the head itself. This version of PW-1 and PW-2 was maintained even in the statements given under Section 161 CrPC. However, when they had knowledge of the post mortem report and they had thereafter appeared in the Court then they had given a version which was absolutely different, i.e. two injuries were there out of them one was in the head and another in the chest.

(iv) PW-1 stated in his examination-in-chief that all the six accused had firearms with them, however, the role of shooting was assigned only to Govind Yadav and Suresh Yadav. It had been stated by them that all indiscriminately fired on the informant's side. However, there were no empty cartridges corresponding to this version of the prosecution. PW-1 and PW-2 admittedly were inside the premises of the plot and the incident had happened outside the premises and, therefore, the version of the prosecution that PW-1 and PW-2 had seen two firing being done was absolutely erroneous since when first firing was done the deceased had fallen down. From inside the boundary wall definitely PW-1 and PW-2 could not have seen the incident happening. What is more he submitted that apart from the deceased, no other person had received any firearm injury.

(v) If the prosecution version is properly seen then it becomes very evident that PW-1 and PW-2 and also the other relatives were not there at the site at all. PW-1 had throughout stated that the incident had actually happened within the boundary wall of the plot, however, PW-2 gave a contradictory version wherein he had stated that in fact the incident had happened outside the gate of the western side and when PW-1 and PW-2 both had found that the empty cartridges had fallen outside the western gate then PW-1 while getting the site plan prepared had in fact told to the Investigating Officer that the incident had happened outside the western side of the gate.

(vi) Relying upon the call detail reports it has been submitted that the three telephones were at places where the report had suggested them to be. Mobile No. 9415619199, as per the CDR report, was at Betia Hata, thereafter at Azad Chowk and thereafter at 11.12.53 at Durga Chowk, meaning thereby firstly it was found at Betia Hata, then at Azad Chowk and thereafter at Durga Chowk and thereafter ultimately well after the time of the incident the telephone had reached the place of incident. This showed that PW-1, who had stated that at the time of the incident he had called the Senior Superintendent of Police, Gorakhpur from the site in the question then definitely he was not at the place of incident because the call detail had showed that at that point of time PW-1 was at Betia Hata. Further, it was said that Babludhar Dubey @ Vishnu Dhar Dubey, who had exhorted the two assailants, namely, Govind Yadav and Suresh Yadav to kill the deceased, was present but learned counsel appearing for appellant Babludhar Dubey in Criminal Appeal No. 2089 of 2023 had submitted that Babludhar Dubey was in fact having Akhand Ramayan Path at his house, therefore, he was not present at the place of incident and since the prosecution tried to put him at the place of occurrence, it clearly shows that the prosecution case was a concocted one.

(vii) Prosecution case got falsified by the statements of DW-1, DW-2 and DW-3, who are pandit, cook/bawarchi and phupha of Babludhar Dubey and they had definitely stated that there was Akhand Ramayan Path at the house of Babludhar Dubey. If the defence witnesses were

believed, then the prosecution case as was there in the FIR and thereafter would become absolutely falsified.

(viii) The cause for assembling of the deceased alongwith PW-1 and PW-2 and other relatives that there was bhoomi pujan going to take place at the place of incident also appeared to be fictitious. The scene of incident and the time of incident all became doubtful in view of the fact that neither there was Pandit (priest) nor Nai (barber) and also no pooja items were found. What is more even one of the defence witnesses had stated that in fact auspicious time as was stated by the prosecution was not there on that particular date.

(ix) The witnesses, who were produced, namely, PW-1 and PW-2 were virtually interested witnesses. The other persons, namely, Rajesh Yadav and Manish Yadav were not produced in the witness box, meaning thereby that such persons who could have actually revealed the truth were never produced.

(x) Learned counsel for the appellant in Criminal Appeal No. 2088 of 2023 submitted that Rajan Yadav was not named in the FIR. Subsequently upon his name being mentioned he was arrested and thereafter he was produced as an accused However, nowhere at any point of time he was identified either during investigation by the method of test identification parade or during trial in the dock. He submits that test identification parade and dock identification are very important since the appellant Rajan was not named in the FIR and also in the statements under Section 161 CrPC. It was therefore important that the witnesses ought to have identified him, at least in the Court. In support of this submission he has placed reliance upon a decision of the Apex Court in Tukesh Singh v. State of Chattisgarh 2025 SCC OnLine SC 1110, wherein the Apex Court has observed that :

‘21. In a case where there are eyewitnesses, one situation can be that the eyewitness knew the accused before the incident. The eyewitnesses must identify the accused sitting in the dock as the same accused whom they had seen committing the crime. Another situation can be that the eyewitness did not know the accused before the incident. In the normal course, in case of the second situation, it is necessary to hold a Test Identification Parade. If it is not held and if the evidence of the eyewitness is recorded after a few years, the identification of such an accused by the eyewitness in the Court becomes vulnerable. Identification of the accused sitting in the Court by the eyewitness is of utmost importance. For example, if an eyewitness states in his deposition that □he had seen A, B and C killing X and he knew A, B and C□. Such a statement in the examination-in-chief is not sufficient to link the same to the accused. The eyewitness must identify the accused A, B and C in the Court. Unless this is done, the prosecution cannot establish that the accused are the same persons who are named by the eyewitness in his deposition. If an eyewitness states that □he had seen one accused assaulting the deceased with a sword, another accused assaulting the deceased with a stick and another accused holding the deceased to enable other accused to assault the deceased.□ In such a case, the eyewitness must identify the accused in the open Court who, according to him, had assaulted the accused with a stick, who had assaulted the deceased with a sword and who was holding the deceased. Unless the eyewitnesses identify the accused present in the Court, it cannot be said that, based on the testimony of the eyewitnesses, the guilt of the accused has been proved.’

(xi) Learned counsel for the appellants submitted that when the prosecution failed to establish the circumstances to prove the prosecution case beyond reasonable doubt, a doubt shall be created and for that purpose they have relied upon the judgment of Apex Court in State of U.P. v. Arun Kumar Gupta, (2003) 2 SCC 202, (paragraph nos. 14,16, 20 and 21 of the said judgment) :

'14. We have heard the learned counsel and perused the records of the case and we are inclined to concur with the judgment of the High Court. As pointed out by the High Court that the prosecution though has been able to establish some of the links in the chain of circumstances, it has failed to establish some of the vital links beyond all reasonable doubts. Therefore, the High Court was justified in coming to the conclusion that the chain of circumstances in this case is not complete. On examining the evidence of Lilaldhar (PW 3), who allegedly saw the deceased with the respondent entering the house of the respondent on 27-5-1988 at about 3.00 to 3.30 p.m., we notice that even in his examination-in-chief he had admitted that he did not inform this fact to the father of the deceased, who at that point of time was searching for the deceased. Though, in the cross-examination, he has tried to fill in this omission, we think this circumstance is of such importance and if really he had noticed the deceased entering the house of the respondent on that afternoon, he would not have failed to mention this in his examination-in-chief itself, which omission should be taken note of while appreciating his evidence. Then we notice that this witness also belongs to the same biradari of PW 1 and was on visiting terms with him. Thus he is also an interested witness. He also stated in his evidence that the factum of seeing the deceased entering the house of the respondent was mentioned by him for the first time to the investigating officer when his statement was recorded even though ample opportunity was there to mention the same earlier. This coupled with the fact that the explanation given by him as to his presence near the house of the respondent on the afternoon being doubtful, we think the High Court was justified in coming to the conclusion that the evidence of this witness is not wholly reliable. We will next discuss the probability of the recovery of the dead body from the house of the respondent. In this regard, we have already noted the argument of the learned counsel for the respondent. Even according to the prosecution, the house in question belongs to the respondent and he was staying in that house with his family consisting of his wife and young children. The house is situated in a crowded locality and a large number of other houses and shops are in the close vicinity. We agree with the learned counsel for the respondent that no reasonable person would commit a ghastly murder like the one with which we are concerned by taking the victim to such a house where his family was residing. The prosecution has not produced any material to show either the presence or absence of the family members of the respondent at the time of the murder in the house. That apart, it is highly unlikely that neighbours and passers-by would not have been attracted if really the deceased, who suffered as many as 30 injuries was murdered in that house. Therefore, in all probability, the murder of the deceased was not committed in the house of the respondent.

16. In this regard, the prosecution relies on the evidence of PW 4. We have earlier noticed that PW 4 is not a resident in the immediate proximity of the house of the respondent. He belongs to the same biradari of the complainant and lives behind the house of the investigating officer, PW 9. We find no reasonable explanation, why such a person was called to be a witness to the recovery when there were any number of people available and who are residents of the houses in the immediate proximity of the house of the respondent. We also notice from the records that a large number of people were present at the time of the recovery, therefore, the prosecution should have come

forward with some explanation, why PW 4 was so selectively chosen to be the witness for the recoveries. We also notice, though the preparation of memos of the recoveries took a long time, still for all the recoveries PW 4 is a common witness. There is also considerable discrepancy in regard to the manner in which PW 4 came to be a witness to the recoveries. From the evidence on record, it is seen that at one place it is stated that PW 4 had come to the house of the respondent on hearing the commotion that took place because of the breaking open of the lock of the house. At another place, we find that the IO, PW 9 had summoned PW 4 from his house to be a witness for the recovery. This discrepancy also adds to the doubt in regard to the evidence of PW 4. Therefore, in our opinion as held by the High Court, it is not safe to rely on the evidence of this witness. PWs 7 and 9 who were police officers are also witnesses, who speak about the recoveries made from the house of the respondent. PW 9 at one point says that all the recoveries in question were made by him and he left the house of the respondent around 11.00 or 11.30 p.m. in the night of 28-5-1988, while PW 7, who was also present at that point of time says that PW 9 was there throughout the night of 28-5-1988 till the morning of 29-5-1988 when the recoveries were completed. Thus we find a material contradiction in the evidence of these two witnesses. From the records, we see that the recoveries of the bloodstained knife and the bloodstained earth were made on 29-5-1988. And according to PW 9 he had made the recoveries and he had left the place by about 11.30 p.m. in the night. It is not possible to reconcile these two facts. If actually PW 9 was the person responsible for preparing the recovery memos then, the date 29th May does not fit into the prosecution case since according to this witness himself he left at about 11.30 in the night of 28-5-1988. Therefore, there is force in the arguments of the learned counsel for the respondent that these recoveries cannot be believed, more so in the background of the fact that the bloodstained knife and the bloodstained earth were not sent to the serologist. This Court in the case of Lakshmi Singh v. State of Bihar [(1976) 4 SCC 394 : 1976 SCC (Cri) 671 : AIR 1976 SC 2263] has stated that: (SCC p. 402, para 14)

'14. To add to this another important circumstance is the omission on the part of the prosecution to send the bloodstained earth found at the place of occurrence for chemical examination which could have fixed the situs of the assault. In almost all criminal cases, the bloodstained earth found from the place of occurrence is invariably sent to the Chemical Examiner and his report along with the earth is produced in the court, and yet this is one exceptional case where this procedure was departed from for reasons best known to the prosecution. This also, therefore, shows that the defence version may be true. It is well settled that it is not necessary for the defence to prove its case with the same rigour as the prosecution is required to prove its case, and it is sufficient if the defence succeeds in throwing a reasonable doubt on the prosecution case which is sufficient to enable the court to reject the prosecution version.'

20. From the material produced by the prosecution, it shows that this witness was taking extraordinary interest in the investigation and was present at practically every important place and time in the course of the investigation. The High Court has very elaborately discussed the evidence of this witness and has rejected the same for reasons with which we agree. In our opinion, the evidence of this witness does not inspire much confidence.

21. From the above discussion, in our opinion the prosecution has been able to establish only a motive as against the respondent for committing the murder, while most of the circumstances

which are otherwise important to be proved in this case have not been established. We are of the opinion, the High Court was justified in interfering with the judgment of the Sessions Judge and allowing the appeal.'

(xii) For the purposes of non-examination of the material witnesses by the prosecution, learned counsel for the appellants have relied upon the decision of Supreme Court in Meharaj Singh v. State of U.P., (1994) 5 SCC 188, paragraph nos. 13,14,15 and 16 of the said judgment:

'13. It appears that it was a blind murder and none of the eyewitnesses were actually present at the scene. The ante-timing of the FIR was obviously made to introduce eyewitnesses to support the prosecution case. We may demonstrate this by noticing that though PW 3 Smt Kamlesh the widow of the deceased claimed that she was present with her husband at the time of the occurrence, her conduct was so unnatural that not only she did not try to save her husband by trying to provide a cover but even after her husband fell down and was inflicted repeated injuries with the knife by the appellant Meharaj Singh, she did not even try to go anywhere near her husband and even later on hold his head in her lap and try to provide some comfort to him. This becomes obvious from the absence of any bloodstains on her clothes. She admitted that she had not even received a scratch during the occurrence. In a situation like this, the normal conduct of any wife would be firstly to make an effort to save her husband even by taking the blow on herself and if that is not possible then at least to go so close to his person, at least after the assailants had left that there would be no escape from the blood oozing out of the injuries of the deceased to come on to her clothes. Similar criticism is also available against Balbir PW 2, Shiv Charan PW 4 and Satkari PW 5. It is not the case of the prosecution that the clothes of any of them had got bloodstained. The very fact that none of these witnesses went to lodge a report and instead left it to the father of the deceased to lodge the FIR would also go to show that the witnesses in all probability were not present at the spot. The absence of any blood in the field of Kirpal Singh as also the absence of blood trail from the field of Kirpal Singh to the place where the dead body was found, as admitted by PW 8, also suggests that the occurrence did not take place in the manner suggested by the prosecution and that the genesis of the fight has been suppressed from the court. The evidence of Dr Pande who conducted the post-mortem examination showing that the stomach contained partially digested food material weighing about 150 gms and concluding therefrom that the occurrence must have taken place between 9.00 and 9.30 a.m. if the deceased had taken his food at 7.00 a.m. would also throw a doubt on the correctness of the prosecution version which alleged time of occurrence as 11.30 a.m., presumably to lend an assurance that PWs 2, 3, 4 and 5 were present in the field at that time. The evidence of Dr Pande also to the effect that he had found incised injuries on the deceased including a L shaped injury (injury 11) and a semi-circular injury (injury 18) is indicative of the fact that these two injuries were caused with different weapons and looking to the nature of the other incised wounds present on the deceased, the possibility that three types of sharp-edged weapons were used cannot be ruled out. That being the position, it is obvious that the ocular testimony does not fit in with the medical evidence and instead it contradicts it.

14. It is interesting in this connection also to note that Satkari PW 5 named Resham also as an eyewitness. The High Court rightly held Satkari to be a chance witness also but the prosecution has not explained as to why Resham who was alleged to be an eyewitness has not been examined. According to Balbir PW 2, Jog Raj was also an eyewitness. He too has not been examined. Shiv

Charan PW 4, also named Resham and Jog Raj as eyewitnesses. Thus, it appears to us that a concerted effort was made by the prosecution witnesses to introduce Resham and Jog Raj as false eyewitnesses in the case but since they have not been examined, it would be fair to draw a presumption, that they perhaps were not prepared to support the false case. The High Court while setting aside the order of acquittal did not deal with these various infirmities.

15. The alleged eyewitnesses are undoubtedly deeply interested in the prosecution but that by itself cannot be a ground to discard their testimony. It, however, certainly puts this Court on its guard to scrutinise their evidence more carefully and keeping in view their unnatural conduct, as noticed above, it appears to us that none of the alleged eyewitnesses had actually seen the occurrence and they were introduced as eyewitnesses after thoughtful deliberations and consultations. It appears, that since it was a blind murder, the appellants have been roped in on account of misguided suspicion because of the previous enmity. Our independent analysis of the evidence on the record coupled with the infirmities which we have noticed above has created an impression on our minds, that the prosecution has not been able to bring home guilt to either of the appellants beyond a reasonable doubt. The trial court was, therefore, right in acquitting them and the High Court even after noticing the infirmities, in our opinion, fell in error in convicting the appellants. The reasons given by the High Court, to set aside the order of acquittal do not commend to us. They are neither sufficient nor adequate or cogent much less compelling.

16. As a result of our above discussion, we hold that the case against both the appellants has not been proved beyond a reasonable doubt and that they are entitled to benefit of doubt. Their appeals consequently succeed and are allowed. The conviction and sentence recorded against them by the High Court are set aside. The appellants shall be set at liberty forthwith, if not required in any other case.'

(xiii) Since the case throughout of PW-1 was that the incident had happened inside within the boundary wall and that of PW-2 was that it had happened outside the boundary wall, therefore, when the place of occurrence itself was doubtful and it had shifted as per the prosecution witnesses, then the case definitely becomes doubtful. For this purpose, they have relied upon on the decision of Apex Court in Syed Ibrahim v. State of A.P., (2006) 10 SCC 601, paragraph nos. 10,11 and 12 of the said decision:

'10. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by PW 1 to a large extent to contend about the desirability to throw out the entire prosecution case. In essence the prayer is to apply the principle of 'falsus in uno falsus in omnibus' (false in one thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, his conviction can be maintained. It is the duty of the court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient, or to be not wholly credible. Falsity of material particular would not ruin it from the beginning to end. The maxim 'falsus in uno falsus in omnibus' has no application in India and the witness or witnesses cannot be branded as liar(s). The maxim 'falsus in uno falsus in omnibus' has not received general acceptance nor has this maxim come to occupy the status of the rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases

testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called a mandatory rule of evidence. (See Nisar Ali v. State of U.P. [1957 SCR 657 : AIR 1957 SC 366 : 1957 Cri LJ 550]) In a given case, it is always open to a court to differentiate the accused who had been acquitted from those who were convicted where there are a number of accused persons. (See Gurcharan Singh v. State of Punjab [AIR 1956 SC 460 : 1956 Cri LJ 827] .) The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because the witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respect as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab v. State of M.P. [(1972) 3 SCC 751 : 1972 SCC (Cri) 819] and Ugar Ahir v. State of Bihar [AIR 1965 SC 277 : (1965) 1 Cri LJ 256] .) An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See Zwinglee Ariel v. State of M.P. [(1952) 2 SCC 560 : AIR 1954 SC 15 : 1954 Cri LJ 230] and Balaka Singh v. State of Punjab [(1975) 4 SCC 511 : 1975 SCC (Cri) 601] .) As observed by this Court in State of Rajasthan v. Kalki [(1981) 2 SCC 752 : 1981 SCC (Cri) 593] , normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. The courts have to label the category to which a discrepancy may be categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted in Krishna Mochi v. State of Bihar [(2002) 6 SCC 81 : 2002 SCC (Cri) 1220] and in Sucha Singh v. State of Punjab [(2003) 7 SCC 643 : 2003 SCC (Cri) 1697] . It was further illuminated in Zahira Habibulla H. Sheikh v. State of Gujarat [(2004) 4 SCC 158 : 2004 SCC (Cri) 999] , Ram Udgar Singh v. State of Bihar [(2004) 10 SCC 443 : 2004 SCC (Cri) Supp 550] , Gorle S. Naidu v. State of A.P. [(2003) 12 SCC 449 : 2004 SCC (Cri) Supp 462] and in Gubbala Venugopalaswamy v. State of A.P. [(2004) 10 SCC 120 : 2004 SCC (Cri) 1764]

11. In the background of principles set out above it is to be seen how far the evidence of PW 1 is cogent and credible. Merely because he was the solitary witness who claimed to have seen the occurrence, that cannot be a ground to discard his evidence, in the background of what has been stated in Section 134 of the Evidence Act, 1872 (in short ‘the Evidence Act’). No particular number of witnesses are required for the proof of any fact; material evidence and not number of witnesses has to be taken note of by the courts to ascertain the truth of the allegations made. Therefore, if the

evidence of PW 1 is accepted as cogent and credible, then the prosecution is to succeed. It is to be noted that PW 1, father of the appellant, claimed to have set law into motion. The testimony of PW 1 was to the effect that after witnessing a part of the occurrence he had run to the police station and had come back within about five minutes. The evidence on record disproves veracity of this part of his evidence. The occurrence is alleged to have taken place at about 10 p.m. The FIR was lodged at the police station at about 11.30 p.m. PW 1 and the investigating officer accepted that it will take nearly one hour for somebody on foot to reach the police station considering the distance of the alleged place of occurrence and the police station. There is another interesting factor : PW 1 accepted in the cross-examination that the report (Ext. P-1) was written in the police station in the presence of Sub-Inspector and a constable. But in his examination-in-chief, he had stated that he had got written the report by somebody at a hotel and the person normally writes petitions. No particulars of this person who allegedly scribed the report, not even his name, was stated by PW 1. His evidence is further to the effect that he alone had come to the police station where the report was lodged and that is how he admitted that the report was written at the police station. This may not appear to be that important a factor considering the illiteracy of PW 1. But there is another significant factor which completely destroys the prosecution version and the credibility of PW 1 as a witness. He has indicated four different places to be the place of occurrence. In his examination-in-chief he stated that the occurrence took place in his house. In the cross-examination he stated that the incident took place at the house of his wife, the deceased's mother. This is a very important factor considering the undisputed position and in fact the admission of PW 1 that he and his wife were separated nearly two decades ago, and that he was not on visiting terms with his wife. Then the question would automatically arise as to how in spite of strained relationship he could have seen the occurrence as alleged in the house of his wife. That is not the end of the matter. In his cross-examination he further stated that the incident happened in the small lane in front of the house of his wife. This is at clear variance with the statement that the occurrence took place inside the house where allegedly he, the deceased, his son, PW 2 and daughters, PWs 3 and 6 were present. That is not the final say of the witness. He accepted that in the FIR (Ext. P-1) he had stated the place of occurrence to be the house of the deceased. Though the FIR is not a substantive evidence yet, the same can be used to test the veracity of the witness. PW 1 accepted that what was stated in the FIR was correct. When the place of occurrence itself has not been established it would not be proper to accept the prosecution version.

12. Above being the position, the High Court was not right in lightly brushing aside the apparent inconsistencies and discrepancies by making a general observation that PW 1 is an illiterate person. Above being the position the impugned judgment of the High Court is set aside. The accused be set at liberty forthwith unless he is required to be in custody in connection with any other case.'

In Pohlu v. State of Haryana, (2005) 10 SCC 196, the Apex Court has held as under : paragraph nos. 9, 10, 11, 13 and 17 of the said decision:

'9. So far as motive is concerned, it is settled law that failure to prove motive is not fatal to the case of the prosecution if there is reliable evidence to prove the case of the prosecution. However, there is substance in the submission urged on behalf of the appellants that there was really no reason for the appellants to assault Sukhdei, and for that purpose to go to her house, even if they

bore a grudge against Hukam Chand, the deceased. It is not understood as to why the appellants went to the house of Sukhdei and assaulted her when it was really Hukam Chand who was their target and who was living separately from Sukhdei. Moreover, the election took place on 19-12-1994 and thereafter for about 18 days nothing untoward happened. There is no reason why suddenly the appellants decided to assault Sukhdei. It was therefore, contended that the real genesis of the occurrence has not been disclosed by the prosecution, and that probabilises the defence case that in a different occurrence, and in a different manner, the informant and the deceased were assaulted.

10. It was then submitted that some of the material witnesses were not examined and in this connection it was argued that two of the eyewitnesses named in the FIR, namely, Chander and Sita Ram were not examined by the prosecution. Dharamvir, son of Sukhdei was also not examined by the prosecution though he was a material witness, being an injured eyewitness, having witnessed the assault that took place in the house of Sukhdei, PW 2. It is true that it is not necessary for the prosecution to multiply witnesses, if it prefers to rely upon the evidence of the eyewitnesses examined by it, which it considers sufficient to prove the case of the prosecution. However, the intrinsic worth of the testimony of the witnesses examined by the prosecution has to be assessed by the court. If their evidence appears to be truthful, reliable and acceptable, the mere fact that some other witnesses have not been examined, will not adversely affect the case of the prosecution. We have, therefore, to examine the evidence of the two eyewitnesses, namely, PW 1 and PW 2, and to find whether their evidence is true, on the basis of which the conviction of the appellants can be sustained.

11. PW 2 Sukhdei has alleged in the FIR that the occurrence took place near the village chaupal in which Hukam Chand, the deceased, was assaulted. Before that the appellants and others had entered her house, assaulted her and thereafter proceeded towards the chaupal. While deposing in court she has attempted to change the place of occurrence by stating that she was assaulted in the sahan of her house and Hukam Chand was assaulted just outside her house. Counsel for the State has shown to us the site plan from which it appears that the place where Hukam Chand is alleged to have been assaulted is only three steps from the main door of the house of the informant. Counsel for the appellants submitted that this has been done deliberately, because the material on record does disclose that a different occurrence took place near the chaupal in which the son of the informant namely Dharamvir, was also involved. However, with a view to prevent the emergence of truth the prosecution has shifted the place of occurrence and also not examined Dharamvir, son of the informant, who was also involved in that incident. What is apparent, however, is that PW 1 has sought to shift the place of occurrence where Hukam Chand is said to have been assaulted. Though, according to her, she was assaulted inside the house in the sahan and some blood had dropped in the sahan, and her clothes had also got bloodstained, the investigating officer has categorically stated that he did not find blood at any place either at the alleged place of occurrence or in the sahan or on the clothes of the informant. Moreover, this witness named only three accused persons in the FIR. Later she added the name of Prem Singh, and in the course of deposition in court she also implicated Raj Kumar. These facts lead us to hold that she is not a wholly reliable witness on whom the Court can place implicit reliance.

13. From the deposition of this witness it appears that in the course of the investigation he had stated that his father had been assaulted only by Ishwar, and not by others. In the course of deposition he sought to involve all the accused persons. Having considered the evidence of this witness in its entirety, we are satisfied that he is also not a reliable witness on whom implicit reliance can be placed and his credibility has been sufficiently impeached in his cross-examination. In fact so far as this witness is concerned, he named Raj Kumar and Prem Singh for the first time in the course of his deposition, and it appears that he had not even mentioned their names in the course of the investigation.

17. Having considered the evidence of the eyewitnesses and in view of the fact that the eyewitnesses tried to falsely implicate two other persons namely Raj Kumar and Prem Singh, whose acquittal was not challenged by the State, we are not persuaded to place reliance upon any one of the eyewitnesses for the reasons earlier recorded. Other witnesses named in the FIR who could have thrown some light on the occurrence as it took place, have not been examined. One of the injured persons, namely, Dharamvir has been kept out deliberately, and was not examined at the trial. There was a deliberate attempt on the part of the informant PW 2 to keep him out of the picture by not naming him in the FIR, though in her supplementary statement she mentioned that Prem Singh had assaulted her son Dharamvir inside her house. So far as PW 1 is concerned, his cross-examination reveals that he had a different story to tell in the course of the investigation involving only Ishwar. In these facts and circumstances, we hold that neither of the two eyewitnesses examined by the prosecution can be relied upon. If their evidence is discarded, there is no other evidence which can sustain the conviction of the appellants.'

(xiv) What is more learned counsel for the appellants have submitted that it had been the case of the prosecution especially of PW-1 and PW-2 that after the incident had occurred the deceased was taken to hospital in a Scorpio Car, however, the Scorpio Car was never made a part of investigation and it was never shown that there was any blood in the Scorpio Car and this also, as per the learned counsel for the appellants, became a doubtful circumstance.

(xv) There was absolutely no motive and submitted that there might have been a case of eye witness account but some element of motive had to be looked into by the Courts.

(xvi) Medical evidence was against the ocular evidence.

(xvii) Entire incident was based on nothing else but falsehood as two firearms, which were recovered on the pointing out of the accused Govind Yadav and Suresh Yadav and the empty cartridges which had fallen at the place of occurrence had not matched the firearms i.e. country made pistol and country made revolver and it is clear from the FSL report dated 2.8.2016.

(xviii) Relying upon the doctor's version that apart from the fact that PW-1 was not there and the place of incident was not determined, even the time of the incident was doubtful as the post mortem report showed that there was gas and faecal matter in the large intestine of the deceased and the doctor has stated that this was possible only if the deceased had taken food two hours before the incident. Therefore, the incident had occurred either two hours after lunch or two hours after dinner time. For this purpose learned counsel for the appellants relied upon the statement of

PW-1 at page 64 of the paper book, which is as under. It had stated that the deceased was having an empty stomach :

'घर से चलने व घटना स्थल तक पहुचने तक कोई चाय यानी नास्ता पानी नहीं किये थे मौंके पर पहुचने पर भी और घटना के पहले मेरे भाई कुछ खाये पीये नहीं थे।"

Thereafter, he relied upon the statement of doctor at page 135 of the paper book, which is as under :

"आमाशय की दशा अन्तर वस्तुये और गंध पेस्टीफ्ल्यूड मौजूद था छोटी आंत और अपेंडिक्स की स्थिति खाली व नार्मल था। बड़ी आंत में गैस और मल मौजूद था।'

Contradictions in the statements of PW-1 and PW-3 definitely raises a doubt in the mind with regard to the timing of the incident.

(xix) There were two live cartridges also recovered at the place of occurrence by the Investigating Officer. Learned counsel submit that under no situation live cartridges would have fallen down at the place of incident when firing had been done actively by the pistols or revolvers. Only to give credence to the story of the prosecution the live cartridges were made to appear at the place of incident.

(xx) Even the samples of plain soil and bloodstained soil, which were taken by the Investigating Officer were sent to the FSL and the report had failed to establish that the place of occurrence was the place where the soil had been picked from.

30. On the other hand, learned counsel for the informant and the learned Additional Government Advocates submitted that :

(i) Though motive was not there in black and white but there was a motive because apparently the accused side never liked the ownership of the deceased wife of the plot in question. Still further, learned counsel for the informant submitted that there was no delay in sending the police report and thus no violation of the provisions of Section 157 CrPC. The two days delay to send the report to the Magistrate was because of there being intervening State Holidays. Also they submitted that no prejudice could be pointed out. For this purpose he relied upon a case in Ombir Singh vs. State of Uttar Pradesh and another, (2020) 6 SCC 378, paragraph nos. 4 and 5 of the said judgment:

'4. There was undoubtedly a delay in compliance with Section 157 of the Code, as the FIR was received in the office of the Chief Judicial Magistrate with a delay of 11 days. Effect of delay in compliance with Section 157 of the Code and its legal impact on the trial has been examined by this Court in Jafel Biswas v. State of W.B. [Jafel Biswas v. State of W.B., (2019) 12 SCC 560 : (2019) 4 SCC (Cri) 455] after referring to the earlier case laws, to elucidate as follows : (SCC pp. 565-67, paras 18-21)

'18. In State of Rajasthan [State of Rajasthan v. Daud Khan, (2016) 2 SCC 607 : (2016) 1 SCC (Cri) 793] in paras 27 and 28, this Court has laid down as follows : (SCC pp. 620-21)

'27. The delay in sending the special report was also the subject of discussion in a recent decision being Sheo Shankar Singh v. State of U.P. [Sheo Shankar Singh v. State of U.P., (2013) 12 SCC 539 : (2014) 4 SCC (Cri) 390] wherein it was held that before such a contention is countenanced, the accused must show prejudice having been caused by the delayed dispatch of the FIR to the Magistrate. It was held, relying upon several earlier decisions as follows : (SCC pp. 549-50, paras 30-31)

'30. One other submission made on behalf of the appellants was that in the absence of any proof of forwarding the FIR copy to the jurisdiction Magistrate, violation of Section 157 CrPC has crept in and thereby, the very registration of the FIR becomes doubtful. The said submission will have to be rejected, inasmuch as the FIR placed before the Court discloses that the same was reported at 4.00 p.m. on 13-6-1979 and was forwarded on the very next day viz. 14-6-1979. Further, a perusal of the impugned judgments of the High Court [Sarvajit Singh v. State of U.P., 2003 SCC OnLine All 1214 : (2004) 48 ACC 732] as well as of the trial court discloses that no case of any prejudice was shown nor even raised on behalf of the appellants based on alleged violation of Section 157 CrPC. Time and again, this Court has held that unless serious prejudice was demonstrated to have been suffered as against the accused, mere delay in sending the FIR to the Magistrate by itself will not have any deteriorating (sic) effect on the case of the prosecution. Therefore, the said submission made on behalf of the appellants cannot be sustained.

31. In this context, we would like to refer to a recent decision of this Court in Sandeep v. State of U.P. [Sandeep v. State of U.P., (2012) 6 SCC 107 : (2012) 3 SCC (Cri) 18] wherein the said position has been explained as under in paras 62-63 : (SCC p. 132)

'62. It was also feebly contended on behalf of the appellants that the express report was not forwarded to the Magistrate as stipulated under Section 157 CrPC instantaneously. According to the learned counsel FIR which was initially registered on 17-11-2004 was given a number on 19-11-2004 as FIR No. 116 of 2004 and it was altered on 20-11-2004 and was forwarded only on 25-11-2004 to the Magistrate. As far as the said contention is concerned, we only wish to refer to the reported decision of this Court in Pala Singh v. State of Punjab [Pala Singh v. State of Punjab, (1972) 2 SCC 640 : 1973 SCC (Cri) 55] wherein this Court has clearly held that (SCC p. 645, para 8) where the FIR was actually recorded without delay and the investigation started on the basis of that FIR and there is no other infirmity brought to the notice of the court then, however improper or objectionable the delay in receipt of the report by the Magistrate concerned be, in the absence of any prejudice to the accused it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.

63. Applying the above ratio in Pala Singh [Pala Singh v. State of Punjab, (1972) 2 SCC 640 : 1973 SCC (Cri) 55] to the case on hand, while pointing out the delay in the forwarding of the FIR to the Magistrate, no prejudice was said to have been caused to the appellants by virtue of the said delay. As far as the commencement of the investigation is concerned, our earlier detailed discussion discloses that there was no dearth in that aspect. In such circumstances we do not find any infirmity in the case of the prosecution on that score. In fact the above decision was subsequently followed in Sarwan Singh v. State of Punjab [Sarwan Singh v. State of Punjab, (1976) 4 SCC 369 : 1976 SCC (Cri) 646] , Anil Rai v. State of Bihar [Anil Rai v. State of Bihar, (2001) 7

SCC 318 : 2001 SCC (Cri) 1009] and Aqeel Ahmad v. State of U.P. [Aqeel Ahmad v. State of U.P., (2008) 16 SCC 372 : (2010) 4 SCC (Cri) 11]

28. It is no doubt true that one of the external checks against ante-dating or ante-timing an FIR is the time of its dispatch to the Magistrate or its receipt by the Magistrate. The dispatch of a copy of the FIR □forthwith□ ensures that there is no manipulation or interpolation in the FIR. [Sudarshan v. State of Maharashtra, (2014) 12 SCC 312 : (2014) 5 SCC (Cri) 94] If the prosecution is asked to give an explanation for the delay in the dispatch of a copy of the FIR, it ought to do so. [Meharaj Singh v. State of U.P., (1994) 5 SCC 188 : 1994 SCC (Cri) 1391] However, if the court is convinced of the prosecution version's truthfulness and trustworthiness of the witnesses, the absence of an explanation may not be regarded as detrimental to the prosecution case. It would depend on the facts and circumstances of the case. [Rattiram v. State of M.P., (2013) 12 SCC 316 : (2014) 1 SCC (Cri) 635]

19. The obligation is on the investigating officer to communicate the report to the Magistrate. The obligation cast on the investigating officer is an obligation of a public duty. But it has been held by this Court that in the event the report is submitted with delay or due to any lapse, the trial shall not be affected. The delay in submitting the report is always taken as a ground to challenge the veracity of the FIR and the day and time of the lodging of the FIR.

20. In cases where the date and time of the lodging of the FIR is questioned, the report becomes more relevant. But mere delay in sending the report itself cannot lead to a conclusion that the trial is vitiated or the accused is entitled to be acquitted on this ground.

21. This Court in Anjan Dasgupta v. State of W.B. [Anjan Dasgupta v. State of W.B., (2017) 11 SCC 222 : (2017) 4 SCC (Cri) 280] (of which one of us was a member, Hon'ble Ashok Bhushan, J.) had considered Section 157 CrPC. In the above case also, the FIR was dispatched with delay. Referring to an earlier judgment [Rabindra Mahto v. State of Jharkhand, (2006) 10 SCC 432 : (2006) 3 SCC (Cri) 592] of this Court, it was held that in every case from the mere delay in sending the FIR to the Magistrate, the Court would not conclude that the FIR has been registered much later in time than shown.

5. Therefore, delay in compliance with Section 157 of the Code cannot, in itself, be a good ground to acquit the appellant. Albeit, this fact has to be considered when we examine the credibility of the version of the eyewitnesses; in this case, the testimonies of Dinesh Singh (PW 1) and Mukesh Singh (PW 2). We must also keep in mind that there were questions raised by the complainant and the family members of the deceased as to the manner in which the investigation was carried by the first investigating officer and his team, and therefore the investigation was subsequently transferred to the Crime Branch□Crime Investigation Department (□CB-CID□, for short) on 1-8-1999.'

(ii) Even if the FSL report had not made the empty cartridges match with the bullet, which was found inside the body of the deceased, it matters little because it was an eye witness account which had initiated the prosecution and also it was a day light murder, which could not have been doubted.

(iii) The call detail reports, which were being relied upon to show that PW-1 and PW-2 were not present on the spot were of no avail, as they were neither accompanied by the certificate under Section 65-B of the Evidence Act, nor were they proved after exhibiting the documents.

(iv) The incident had occurred on 8.8.2014 and the examination-in-chief started on 17.8.2015 and thereafter there was cross-examination also done and for almost 5 years the trial had continued. There was every possibility that the witnesses i.e. PW-1 and PW-2 had become confused and therefore, they had not given the correct position where the incident had occurred. In this regard learned counsel for the informant and the learned AGA have relied upon a decision of Apex Court in Chandan v. State (NCT of Delhi), (2024) 6 SCC 799, and relied upon paragraph nos. 5 and 6 of the said decision, which are as under :

'5. An FIR was registered on the date of incident itself i.e. 28-5-1993, at Police Station, Kashmere Gate, Delhi on the statement of PW 2, the complainant, where she narrated the incident as already stated above. The police after investigation filed the charge-sheet against the sole accused, Chandan, under Section 302IPC.

6. After committal of the case to the Sessions Court, 18 witnesses were examined by the prosecution. The star witness of the prosecution was PW 2, who was the eyewitness. She was put to a lengthy cross-examination by the defence but nothing has come out which may discredit this witness. This witness in her testimony narrates the entire sequence of events as to how the accused stabbed the deceased to death and how she watched from a short distance the act being committed before her, and how all this happened in quick time.'

(v) Still further learned counsel for the informant submitted that minor contradictions do not matter and placed reliance upon a case of Supreme Court in Alauddin v. State of Assam, (2024) 12 SCC 224, paragraph nos. 5, 6, 7, 8, 9 and 10 of the said judgment:

'5. Before we deal with the merits, something must be stated about how the trial court recorded the prosecution witnesses' cross-examination in this case, especially when they were confronted with their prior statements. The trial court did not follow the correct procedure while recording the contradictions.

6. Under Section 161 of the Code of Criminal Procedure, 1973 (for short 'CrPC'), the police have the power to record statements of the witnesses during the investigation. Section 162CrPC deals with the use of such statements in evidence.

7. Section 162 reads thus:

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

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

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

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

8. The basic principle incorporated in sub-section (1) of Section 162 is that any statement made by a person to a police officer in the course of investigation, which is reduced in writing, cannot be used for any purpose except as provided in Section 162. The first exception incorporated in sub-section (2) is of the statements covered by clause (1) of Section 32 of the Evidence Act, 1872 (for short 'the Evidence Act'). Thus, what is provided in sub-section (1) of Section 162 does not apply to a dying declaration. The second exception to the general rule provided in sub-section (1) of Section 162 is that the accused can use the statement to contradict the witness in the manner provided by Section 145 of the Evidence Act. Even the prosecution can use the statement to contradict a witness in the manner provided in Section 145 of the Evidence Act with the prior permission of the court. The prosecution normally takes recourse to this provision when its witness does not support the prosecution case. There is one important condition for using the prior statement for contradiction. The condition is that the part of the statement used for contradiction must be duly proved.

9. When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the court which is inconsistent with what he has stated in his statement recorded by the police, there is a contradiction. When a prosecution witness whose statement under Section 161(1) or Section 164CrPC has been recorded states factual aspects before the court which he has not stated in his prior statement recorded under Section 161(1) or Section 164CrPC, it is said that there is an omission. There will be an omission if the witness has omitted to state a fact in his statement recorded by the police, which he states before the court in his evidence. The Explanation to Section 162CrPC indicates that an omission may amount to a contradiction when it is significant and relevant. Thus, every omission is not a contradiction. It becomes a contradiction provided it satisfies the test laid down in the Explanation under Section 162. Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-section (1) of Section 162 must be followed for contradicting witnesses in the cross-examination.

10. As stated in the proviso to sub-section (1) of Section 162, the witness has to be contradicted in the manner provided under Section 145 of the Evidence Act. Section 145 reads thus:

'145. Cross-examination as to previous statements in writing.'A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.'

31. We have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned judgment and order and the case laws relied upon by the parties carefully.

32. We find that the place of incident is definitely doubtful. PW-1 had stated that the incident had occurred inside the plot which was surrounded by a boundary wall and closed by a gate. However, actually the incident had happened outside, as was stated by PW-2. Also the PW-6, the Investigating Officer had stated that on the pointing out of PW-1 he had prepared the site plan and he had found that the incident had happened outside the boundary wall and the gate. Empty cartridges, bullet etc. were found outside the boundary wall. We also find that there was no contradiction in the statement of PW-1 at various stages regarding the place of occurrence. PW-1 was constantly consistent that the incident had happened inside the gate whereas PW-2 was constantly consistent about the fact that the incident had happened outside the boundary wall and the gate of the plot. Thus, no confusion was there in the minds of PW-1 and PW-2. We find that even the Investigating Officer had prepared the site plan with the help of PW-1 and had stated that the incident had occurred outside the gate, therefore, with some certainty we can say that the place of incident definitely becomes doubtful. Also the firearm which was recovered and the bullet which was recovered from inside the dead body of the deceased and also the empty cartridges which were found from the place of occurrence and the empty cartridge which was found in the revolver all were sent to Forensic Science Laboratory and the report which came from there showed that none of the empty cartridges or the bullet etc. matched the two guns which were recovered under Section 27 of the Evidence Act. We are conscious of the fact that before the recovery had taken place, the disclosure statement was not recorded and therefore, as per the judgment of Apex Court in Subramanya vs. State of Karnataka reported in (2023) 11 SCC 255 the recovery itself became bad in law.

33. In the above conspectus and also while we consider the report of the doctor which said that there was gas and faecal matter in the large intestine making it evident that the deceased had taken food two hours prior to the incident, it makes it evidently clear that the incident might have happened at a time which was not in accordance with the time given by the prosecution. Coupled with the time not tallying after considering the statements of the PW-1 and PW-2, we have already found that the PW-1 and PW-2 were at variance with regard to the place of incident. These two factors definitely make the case of prosecution extremely doubtful.

34. Still further as per the judgment in Tukesh Singh case (supra) we are of the view that so far as the accused persons are concerned, specially Rajan Yadav, they all ought to have been identified in the Court and in the absence of dock identification the trial itself becomes vulnerable and had to result in acquittal. We are also of the view that when Rajan Yadav was not named in the FIR and subsequently his name erupted then there was a doubt as to whether he was there at all. Thus, we are definitely of the view that he should have been identified by a test identification parade. Be that as it may, even if the test identification parade had not been done at least dock identification should have been conducted at the time of the trial.

35. So far as the prosecution case with regard to the reliance of call detail reports is concerned, we do find that call details were not accompanied by any certificate under Section 65-B of the Evidence Act and also the call detail report was not subjected to proof and no evidence was led in this regard and also it was never exhibited. Thus, reliance on it would not be justified.

36. Further, from the entire reading of the evidence, we are of the view that the FIR might not have been ante-timed. The cuttings on the inquest report and the delay in sending the police report were not such lapses in the prosecution case that we would be led to conclude that the FIR was ante timed.

37. Concluding, we find that the place of incident becomes doubtful; presence of PW-1 and PW-2 and other persons from the informant's side becomes doubtful; the timing of the incident also becomes doubtful and so far as Babludhar Dubey is concerned, we are of the view that definitely, if all the testimonies of the defence witnesses are taken into account, the irresistible conclusion would be that he was not there at the site. His alibi was definitely an issue which had to be considered and if it was found that Babludhar Dubey was not there then the FIR version from the very beginning becomes nothing else but a bundle of lies. Also, when the Trial Court acquitted Babludhar Dubey under Section 396 IPC it gives us reason to believe that the prosecution had concocted the story with regard to his taking away the licensed gun of the deceased.

38. Also the recovery of firearm was not in accordance with law and also since the firearm did not match the empty cartridges and the bullet etc. we are of the considered view that the case taken by the prosecution under the Arms Act was also nothing else but a concocted story to help the main case.

39. Hence, upon careful analysis and consideration of the settled legal position in the backdrop of the facts and circumstances of the present case, we are of the opinion that the conclusion taken by the Trial Court in the impugned judgment and order is not in accordance with law and the evidence available on record. Thus, this Court is of the considered view that the prosecution has not been able to establish the guilt of the accused appellants beyond reasonable doubt. Therefore, the Court is inclined to grant benefit of doubt to the accused appellants on the ground of rule of caution.

40. In view of the above discussions, we are of the opinion that the prosecution has failed to establish the guilt of the accused appellants for the alleged offences punishable under Sections 147, 148, 307/149. 302/149, 504 of IPC and under Section 3/25 Arms Act beyond reasonable doubt and

to the satisfaction of the judicial conscience of the Court. So, the impugned judgment and order of conviction and sentence dated 13/17.2.2023, which has been sought to be assailed, calls for and deserves, interference. The criminal appeals are liable to be allowed.

41. Accordingly, criminal appeals are allowed and the conviction and sentence imposed upon the accused appellants is set-aside as the accused appellants are found not guilty for the aforesaid offences. They are honourably acquitted of all the charges framed against them. Accused appellants Govind Yadav, Suresh Yadav, Rinku @ Rajiv Yadav, Monu Yadav, Rajan Yadav are on bail and accused appellant Babludhar Dubey @ Vishnudhar Dubey is on short term bail on medical ground. They need not surrender and their bail bonds are cancelled and sureties are discharged.

42. Copy of this order be also placed on the records of Criminal Appeal Nos. 2855 of 2023, 2861 of 2023, 2088 of 2023 and 2519 of 2023.

42. Office is directed to communicate this order to the court concerned forthwith for compliance and also to send back the trial court record.

43. Pending application, if any, stands disposed of.

(2026) 5 ILRA 253
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.05.2026

BEFORE

THE HON'BLE AVNISH SAXENA, J.

Criminal Appeal No. 2360 of 1985

Rajendra Chauhan & Anr. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to whether, in the facts and circumstances of the case, where the conviction of the appellants under Ss. 307/34 of the Indian Penal Code, 1860 stood affirmed, but the occurrence had taken place about 45 years earlier, the parties had entered into a verified compromise, the appellants had become senior citizens, and there was nothing on record to show that they were habitual criminals, the sentence of five years' rigorous imprisonment required modification to the period already undergone. (Paras 17-20)

Headnotes

Criminal Law - Sentence - Modification of sentence after long lapse of time - Indian Penal Code, 1860 - Ss. 307 and 34 - Judicial discretion in sentencing - Sentence must be just, adequate and proportionate to the gravity of the offence, but passage of time, age of the convicts, compromise between the parties and reformative principles of punishment are relevant considerations while determining whether the remaining sentence should be served - On facts, occurrence was about 45 years old, compromise had been verified, appellants had remained on bail for decades, were

senior citizens and there was nothing on record to show that they were habitual criminals - Sentence modified to the period already undergone while maintaining conviction. (Paras 17-20)
Criminal Law - Sentencing policy - Reformative theory of punishment - Indian Penal Code, 1860 - Ss. 307 and 34 - Long passage of time - Court held that sending the appellants to jail after lapse of about 41 years would not serve the purpose of the basic principles of the law of punishment, which in India is not corporeal in nature but reformative in its form, and the intention of the legislature regarding remission also reflects the same principle - Sentence reduced to the period already undergone. (Paras 17-20)
Criminal Law - Compromise - Effect on sentence - Indian Penal Code, 1860 - Ss. 307 and 34 - Though the offence was non-compoundable, the verified compromise, coupled with the advanced age of the appellants, long pendency of proceedings and judicial precedents on sentencing, constituted relevant circumstances for modification of sentence without disturbing the conviction - Appeal partly allowed only on the question of sentence. (Paras 3-6, 19-22)
Held: The trial court had rightly evaluated the role of the appellants and awarded just and adequate punishment and the conviction under Ss. 307/34 IPC did not call for interference - However, while exercising judicial discretion in sentencing, the appellate court was required to consider the long passage of time, the verified compromise between the parties, the advanced age of the appellants, the fact that they had remained on bail for decades and the absence of any material to show that they were habitual criminals - Sending the appellants to jail after about forty-one years would not serve the purpose of the basic principles of the law of punishment which in India is not corporeal in nature but reformative in its form - The judicious and purposeful punishment was to reduce the sentence to the period already undergone while maintaining the conviction and accordingly the appeal was partly allowed on the point of sentence and the bail bonds and sureties were discharged - appeal partly allowed. (Paras 17-22) (E-7)

Case Law Cited

Labh Singh v. State of Haryana, **2012 Lawsuit (SC) 255***; State of U.P. v. Siyaram,* **2010 Lawsuit (SC) 897***; George Pon Paul v. Kanagalet,* **2009 Lawsuit (SC) 795***; Manjappa v. State of Karnataka,* **2007 Lawsuit (SC) 706***; Ramesh v. State of U.P.,* **(1992) 1 SCC 318***; State of Madhya Pradesh Vs. Bablu,* **(2014) 9 SCC 2811***; Abdul Waheed Vs. State of Uttar Pradesh,* **(2016) 1 SCC 583***.*

List of Acts

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

List of Keywords

Attempt to murder; Sentence; Modification of sentence; Judicial discretion; Sentencing; Compromise; Verified compromise; Long lapse of time; Senior citizens; Reformative theory of punishment; Period already undergone; Compensation; Proportionate punishment; Appeal partly allowed; Conviction maintained; Bail bonds discharged.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal filed under S. 374 CrPC against the judgment of conviction and sentence dated 05.09.1985 passed in S.T. No. 201 of 1985 whereby the appellants were convicted under Ss. 307/34 of the Indian Penal Code, 1860 and sentenced to five years' rigorous imprisonment each.

Appearances for Parties

Advs. for the Appellants:
Sri Vinod Kumar Chandel.
Advs. for the Respondent:
Ms. Seema Shukla learned AGA for the State.

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

1. Heard Sri Vinod Kumar Chandel, learned counsel for the appellants and Ms. Seema Shukla, learned AGA for the State.

2. The present criminal appeal has been preferred under Section 374 CrPC by accused appellants Rajendra Chauhan and Ram Pyare Lal on being aggrieved by the judgment of conviction and sentence dated 05.09.1985 in S.T. No. 201 of 1985 (State Vs. Rajendra Chauhan and another) wherein the appellants have been convicted for offence under Section 307 read with Section 34 IPC and sentence each of them for five years rigorous imprisonment.

3. Before adverting to the facts of the case, it would be expedient to mention that there is cross version of FIR. The informant of this case namely Saghir Ahmad has moved an application on 13.10.1992 before this Court along with an affidavit stating therein that the permission be granted to compromise the matter. It is mentioned in paragraph nos. 1 to 3 of the affidavit that the appellants have been wrongly convicted under Section 307 IPC though on the face of it Sections 323, 324, 325 IPC is attracted. The relevant paragraph are reiterated underneath:-

‘1. That the appellants have been wrongly convicted under Section 307/34 IPC From the facts, evidence and circumstances of the case, it is Sections 323, 324 and 325 of Indian Penal Code, which are attracted and made out of the prosecution is at all believed.

2. That the learned Sessions Judge has observed in his Judgment that both, the prosecutory and the defence have concealed the facts leading to the occurrence.

3. That the injured Saghir Ahmad and the appellants Rajendra and Ram Pyare have to terms. They have compromised. In case this court accept the compromise the relation between the parties will become sweet and tension free, leading to future harmony and peace.

4. This Court in order dated 22.10.1992 has granted permission and send the compromise for verification. The order dated 22.10.1992 is reiterated underneath:-

‘Send the compromise for verification to the C.J.M. Azamgarh. The C.J.M. Azamgarh shall endeavour to get the compromise verified within six weeks from the date when he receives the papers sent by this court and he shall transmit the papers back after verification to this court, without delay. The office is directed to send the papers to the C.J.M., Azamgarh within ten days from today.’

5. In pursuance to the aforesaid order the application in original was sent to the court of Chief Judicial Magistrate, Azamgarh, who in order dated 25.01.1993 has verified compromise. The text of the verified compromise is reiterated underneath:-

"आज इस सुलहनामे के सत्यापन हेतु श्री सगीर अहमद वादी ने रूबरू अदालत मजमून सुलहनामा को तस्दीक किया तथा इनकी पहचान श्री शाहजहां एडवो ० ने किया। मजमून सुलहनामा इनको पढ़कर सुनाया एवं समझाया गया तथा सुलहनामे पर अपने हस्ताक्षर का होना स्वीकार किया।"

6. The verified compromise received to this Court on 18.03.1993 and since then it is fixed for disposal.

7. The prosecution case in a nutshell as revealed from first information report dated 24.05.1981 lodged at P.S.- Gambhirpur, Azamgarh by Saghir Ahmad with the allegation that Iliyas went to the village of the accused to call Nekchand Lohar of his village and took Saghir Ahmad, who met him in the way. The accused appellants had apprehended the informant and took him to the door of Saheb Ali and opened fire at him. Iliyas has sprinted away, whereas informant suffered gun shot injuries.

8. In the prosecution Saghir Ahmad and Iliyas were produced as PW-1 and PW-2; whereas, Dr. B.Das the Medical Officer has been produced as PW-3, the Doctor who found injuries on the person of Saghir Ahmad suffered due to gun shot.

9. It is the contention of learned counsel for appellants that the parties are of same village. The matter is nearly 45 years old. The parties have settled their dispute through compromise in the year 1992 and there is no point in moving with the conviction of the accused appellants, who are presently senior citizens of nearly 80 years of age, hence, prayed for an order of modification of sentence that the appellants shall be released on undergone.

10. Learned AGA, though argued that there is cross fight wherein both the accused and informant suffered injuries, which establishes the guilt, but concedes that there is compromise between the parties and the same is verified.

11. This Court has given thoughtful consideration to the rival submissions and considered some judgments on the point, which are dealt with in subsequent paragraphs.

12. In the case of Labh Singh v. State of Haryana1, Hon□ble the Supreme Court has taken the view, while considering the sentence awarded in the old case of 1985, wherein, all the accused are senior citizen by then, that no useful purpose would be served in sending the accused to jail. The relevant paragraph numbers 3 to 6 are reiterated underneath:

‘ 3. According to the impugned judgment passed by the High Court, Appellant 1 is more than 82 years of age and Appellants 2 and 3 are 72 and 62 years of age respectively.

4. This is an incident of 1985. The appellants have already undergone part of the sentence. Sending them to jail after a lapse of about 27 years, in the facts and circumstances of this case, would not be justified.

5. On a consideration of the totality of the facts and circumstances of this case, we are of the opinion that ends of justice would meet if we direct each of the appellants to pay Rs 1 lakh to the complainant/injured persons. We direct accordingly. Let the amount be deposited before the trial court within two weeks from today and after the amount is deposited, the trial court shall disburse the amount equally among the injured persons.

6. Consequently, the sentence of the appellants is reduced to the period already undergone by them, the impugned judgment is modified to the aforementioned extent and the appeal is partly allowed.

13. In the case of State of U.P. v. Siyaram2, Hon□ble the Supreme Court has considered the old case and propensity to false implication, took the view to compensate than to further incarceration. The relevant paragraph number 4 is reiterated underneath:-

‘4. We have heard the learned counsel for the parties and have gone through the record. We are not inclined to interfere in the acquittal of Siyaram for the reasons recorded by the High Court, as the propensity to implicate falsely is not uncommon in India. We, however, do agree with Mr Dash that the reduction in the sentence in case of Jiya Lal to already undergone was somewhat inadequate but as the prosecution had been initiated in the year 1988, we are not inclined to interfere on the term of imprisonment. We, however, direct that the fine be increased to Rs 25,000 in all and in default of payment of fine the appellant Jiya Lal shall undergo 2 years' RI. The fine will be paid within three months from now to Banshi Lal, the injured and if Banshi Lal is not available, to his legal representatives.’

14. In the case of George Pon Paul v. Kanagalet3, Hon’ble the Supreme Court considered the passage of time, as a relevant factor to consider. The relevant paragraph numbers 4 to 6 are reiterated underneath:-

‘4. The only question that remains is whether the custodial sentence as was imposed by the trial court was adequate or not i.e. confinement till rising of the court.

5. It appears from record that the fine amount has been deposited and the amount which was directed to be paid to PW 2 has already been paid.

6. Considering this fact and the long passage of time, it would be appropriate to restrict the period of sentence to the period already undergone. The appeals stand disposed of.’

15. In the case of Manjappa v. State of Karnataka4, Hon□ble the Supreme Court considered the long pendency of case and opined the adequate punishment would be the period of incarceration already undergone but enhanced the fine to be paid as compensation. The relevant paragraph numbers 14 to 16 are reiterated underneath:-

‘14. At the same time, however, the fact remains that the High Court has reduced substantive sentence to a month and a half. It is also not in dispute that the appellant has undergone and has remained in custody for about fifteen days. Moreover, as on today, he is on bail. Hence, even though we are of the view that in the facts and circumstances of the case, provisions of Section 360 read with Section 361 of the Code are not attracted and Om Prakash [(2001) 10 SCC 477 : 2003 SCC (Cri) 799] does not help the appellant, it would not be appropriate now to direct the appellant to surrender and to suffer the remaining sentence for about a month. The incident is of 1997 and about 10 years have passed.

15. Keeping in view all the facts and circumstances, in our opinion, ends of justice would be met, if we order that the substantive sentence which the appellant has already undergone is held sufficient. We are also of the view that it would be appropriate if over and above the amount which the appellant herein has paid towards fine and also towards compensation to the injured victim, the appellant is ordered to pay an additional amount of Rs 10,000 (Rupees ten thousand only), to the complainant by way of compensation.

16. For the foregoing reasons, the appeal is partly allowed by holding that the sentence already undergone by the appellant is held sufficient and adequate in the facts and circumstances of the case. It is, however, ordered that the appellant will pay an additional amount of Rs 10,000 (Rupees ten thousand only) to the injured complainant within a period of one month from today over and above the amount of fine and compensation ordered to be paid by the courts below.'

16. In the case of Ramesh v. State of U.P.5, Hon'ble the Supreme Court has converted the offence of attempt to murder to the voluntary causing of grievous hurt in view of single injury and awarded punishment accordingly. The relevant paragraph numbers 3 and 4 are reiterated underneath:-

'3. The learned counsel for appellant has assailed the finding recorded by the High Court and the trial Judge and has urged that the appellant was implicated due to enmity. He urged that even though the High Court held that in the FIR the main part was specifically assigned to the appellant and one Jagat Singh but in the evidence it was confined to the appellant as the relations between the two were strained. The learned counsel further urged that the case of the prosecution was that the complainant was bitten by Jagat Singh and there being no injury of biting, the High Court committed an error in maintaining the conviction. We are not impressed by the argument. The learned counsel then urged that the High Court committed an error in convicting the appellant under Section 307, Penal Code, 1860. We do not propose to decide it as a matter of law. But we agree with the learned counsel for the appellant that in peculiar circumstances of the case it being a case of single injury in the back of neck the conviction can be altered to be under Section 324, Penal Code, 1860.

4. In the result the appeal succeeds and is allowed in part. The conviction under Section 307/34, IPC is converted to under Section 324, IPC and the sentence is reduced to the period already undergone. The appellant shall deposit a sum of Rs 3000 as fine within six months which shall be paid to the complainant. In default of payment he shall serve out the entire sentence. On deposit of fine the bail bond shall stand discharged.'

17. There is judicial discretion attached to reasoned sentencing. In the cases of State of Madhya Pradesh Vs. Bablu6 and Abdul Waheed Vs. State of Uttar Pradesh7, Hon'ble the Supreme Court observed solemn duty of the Courts while imposing sentence that the same would be just, adequate and proportionate to the gravity of offence. Further observed that undue sympathy to impose inadequate sentence would do more harm to the justice system and undermine the public confidence in the efficacy of system. Considering those principles the trial court rightly evaluated the role of the sole surviving appellants and adequately sentenced them on 05.09.1985 with just and adequate punishment. This Court in appeal has granted bail on 09.09.1985 and since then the

surviving appellants are enlarged on bail. Now the point of concern is whether it would be rightful decision by appellate court to send the accused to serve the remaining sentence after elapse of 41 years.

18. The incident occurred 45 years back. There is nothing on record to show that the accused appellants were habitual criminals. Sending the appellants to jail will not serve the purpose of basic principles of the law of punishment, which in India is not corporeal in nature but reformative in its form. The intention of legislature in considering the act, conduct and behaviour of convict for remission also evinces the same principle.

19. Therefore considering, the dictums of Hon'ble the Supreme Court; the analogy drawn up from the facts of the case; and involvement of the appellants, their role in the occurrence vis-a-vis their age at the time of incident and as on date, this Court is of the view that the judicious and purposeful punishment would be to modify the punishment as below:-

19.1. The sentence awarded to Rajendra Chauhan son of Bhanu Pratap Chauhan and Ram Pyare Lal son of Thakuri r/o Village Mulanapur, P.S. Rani Ki Sarai (old P.S. Gambhirpur), District- Azamgarh is reduced to the period already undergone by them in S.T. No. 201 of 1985 (State Vs. Rajendra Chauhan and another), under Sections 307 read with Section 34 IPC.

20. The appeal is therefore partly allowed on the point of sentence, which is modified.

21. The appellants are on bail. Their bail bonds and sureties are discharged.

22. Record be returned forthwith as per Rules.

(2026) 5 ILRA 259
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 22.05.2026

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Criminal Appeal No. 2380 of 2019

Rinku @ Amrish **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to whether the appellant-accused has committed an offence punishable under S. 302 of the I.P.C., or any other lesser offence, more particularly S. 304 Part-I or II of the I.P.C. (Para 53)

Headnotes

Criminal Law - Murder - Culpable homicide not amounting to murder - Indian Penal Code, 1860 - Ss. 300 Exception 4, 302 and 304 Part I - Single blow theory - Sudden fight - Exception 4 to S. 300 applies where death is caused without premeditation, in a sudden fight, in the heat of passion upon a sudden quarrel, without the offender having taken undue advantage or acted in a cruel or unusual manner - There is no inflexible rule that a single blow would invariably attract either S. 302 or S. 304 - Nature of offence depends upon the totality of the facts and circumstances including the nature of injury, weapon used, surrounding circumstances, intention and knowledge - Appellant-accused inflicted a single blow with scissors during a sudden scuffle following a quarrel - No evidence that the weapon was brought to the spot pursuant to any premeditated plan - Totality of circumstances established absence of premeditation and applicability of Exception 4 to S. 300 - Conviction altered from S. 302 to S. 304 Part I. (Paras 54-65, 67).

Criminal Law - Evidence - Injured eyewitnesses - Related witnesses - Indian Evidence Act, 1872 - S. 134 - Code of Criminal Procedure, 1973 - S. 161 - Testimony of an injured eyewitness stands on a higher pedestal and ordinarily carries greater evidentiary value - Mere relationship with the deceased is not a ground to discard otherwise reliable testimony - Non-examination of independent witnesses is not fatal where the evidence of injured eyewitnesses is trustworthy and conviction can rest on quality and not quantity of evidence. (Paras 39-46).

Held: The evidence of an injured witness must be given due weightage being a stamped witness and his presence cannot ordinarily be doubted - The testimony of an injured witness is accorded a special status in law and is to be relied upon unless there exist major contradictions or discrepancies warranting its rejection - Mere non-examination of independent witnesses does not vitiate the prosecution case where the evidence of injured eye-witnesses is otherwise reliable, trustworthy and corroborated by medical evidence - There is no inflexible rule that in every case of a single blow S. 302 of the I.P.C. is excluded and the nature of the offence must be determined on the facts and circumstances of each case - Exception 4 to S. 300 of the I.P.C. applies where death is caused without premeditation in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage or acted in a cruel or unusual manner - The occurrence originated in a sudden quarrel and scuffle and the material on record does not establish that the appellant-accused had brought the scissors pursuant to any premeditated design - The fatal injury was inflicted during the course of the sudden fight and the totality of the circumstances establishes absence of premeditation and applicability of Exception 4 to S. 300 of the I.P.C. - The conviction under S. 302 of the I.P.C. is liable to be altered to one under S. 304 Part I of the I.P.C. - Appeal partly allowed. (Paras 39, 40, 55, 56, 60, 62, 63, 64, 65 and 67). (E-7)

Case Law Cited

State of U.P. v. Naresh, **(2011) 4 SCC 324***; Jarnail Singh v. State of Punjab,* **(2009) 9 SCC 719***; Balraje @ Trimbak v. State of Maharashtra,* **(2010) 6 SCC 673***; Abdul Sayed v. State of Madhya Pradesh,* **(2010) 10 SCC 259***; Balu Sudam Khalde v. State of Maharashtra,* **(2023) 13 SCC 365***; हुकुम सिंह बनाम स्टेट आफ राजस्थान,* **2000 (41) एसीसी 662 (एससी)***; कृपाल सिंह बनाम स्टेट आफ हरियाणा,* **2013- एससीसी (क्रि.);** *कैलाश व अन्य बनाम स्टेट ऑफ यू०पी०,* **1997 जे०आई०सी० 911 (एस०सी०);** *मोतीलाल व अन्य बनाम स्टेट आफ यू०पी०,* **2010, क्रि०ला०जर्नल, 1937, पेज 1937***; Rajesh Yadav v. State of Uttar Pradesh,* **(2022) 12 SCC 200***; Madan v. State of U.P.,* **2023 SCC OnLine SC 1473***; Shivaji Genu Mohite v. State of Maharashtra,* **AIR 1973 SC 55***; Bikau Pandey v. State of Bihar,* **(2003) 12 SCC 616***; Rajagopal v. Muthupandi,* **(2017) 11 SCC 120***; Yogesh Singh v. Mahabeer Singh,* **(2017) 11 SCC 195***; Jafel Biswas v. State of West Bengal,* **(2019) 12 SCC 560***; Mahesh Balmiki v. State of M.P.,* **(2000) 1 SCC 319***; Dhirajbhai Gorakhbhai Nayak v. State of Gujarat,* **(2003) 9 SCC 322;** *Ravinder Kumar v. State of Punjab,* **2025 SCC OnLine SC 635***; Arjun v. State of Chhattisgarh,* **(2017) 3 SCC 247;** *Jagriti Devi v. State of H.P.,* **(2009) 14 SCC 771***; Jagtar Singh v. State of Punjab,* **(1983) 2 SCC 342***; Jagrup Singh v. State of Haryana,* **(1981) 3 SCC 616***; Satish Narayan Sawant v. State of Goa,* **(2009) 17 SCC 724***; Hem Raj v. State (Delhi Admn.),* **1990 Supp SCC 291***; Gurmail Singh v. State of Punjab,* **(1982) 3 SCC 185***; Kulwant Rai v. State of Punjab,* **(1981) 4 SCC 245***; Ahmed Shah v. State of Rajasthan,* **(2015) 3 SCC 93;** *Hazara Singh v. Raj Kumar,* **(2013) 9 SCC 516***.*

List of Acts

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

List of Keywords

Culpable homicide not amounting to murder; Exception 4 to Section 300; Single blow; Sudden fight; Heat of passion; Absence of premeditation; Injured eye-witness; Stamped witness; Quality of evidence; Non-examination of independent witnesses; Modification of sentence; Section 304 Part I IPC.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 against the judgment and order dated 07.09.2019 passed by the Additional Sessions Judge/Special Judge, P.C. Act, Lucknow, in Sessions Trial No. 1062 of 2014, arising out of Case Crime No. 264 of 2014, Police Station Krishna Nagar, District Lucknow.

Appearances for Parties

Advs. for the Appellant:
Harshit Singh
Advs. for the Respondents:
S.P. Singh (A.G.A.)

(Delivered by Hon'ble Abdhesh Kumar Chaudhary, J.)

1. The present Criminal Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') has been filed by the appellant-accused- Rinku @ Amrish, against the Judgment and order dated 07.09.2019 passed by the learned Additional Sessions Judge/ Special Judge, P.C. Act, Lucknow, in Sessions Trial No. 1062 of 2014 (State Vs. Rinku @ Amrish), arising out of Case Crime No. 264 of 2014, Police Station Krishna Nagar, District Lucknow, wherein he has been convicted for the commission of offences under Section 302, 323, 504, 506, 427 of the Indian Penal Code, 1860 (hereinafter referred to as the 'I.P.C.') and sentenced to undergo imprisonment for life, along with a fine of Rs.1,00,000/-, and, in default, further imprisonment for six months.

CASE OF THE PROSECUTION

2. The prosecution case, as unfolded through the evidences adduced during the Trial, is succinctly narrated as under:

2.1) The complainant/P.W.-1, Smt. Satvindar Kaur, (wife of the deceased, Shri Gurpreet Singh Sethi), was running a boutique under the name and style of 'Simiran Boutique' situated on Natkheda Road, within the jurisdiction of Police Station Krishna Nagar, Lucknow. The appellant-accused, Rinku @ Amrish, was previously employed as a 'tailor' in the said boutique.

2.2) On account of alleged acts of misconduct, including that of theft and other wrongdoing in the said boutique shop, the appellant-accused was dismissed from his employment. Subsequently, the appellant-accused opened a tailoring shop in the same vicinity/complex.

2.3) On the fateful evening of 09.07.2014, at around 9:00 PM, the complainant/P.W.-1 Satvindar Kaur, along with her husband Gurpreet Singh Sethi (deceased), and her mother, Smt.

Basant Kaur (P.W.-2), were present inside the boutique. Suddenly, all of them heard the distinct sound of breaking glass from outside. Upon rushing out to ascertain the cause, they found the appellant-accused Rinku @ Amrish, smashing/breaking the windshield/glass of their parked Activa scooter. When these people, in order to stop him, went near the appellant-accused, he started abusing them in filthy language and threatened to kill them. In the course of the alleged ensuing altercation/scuffle, actuated by a pre-existing grudge and with the clear intention to cause death, the appellant-accused picked up a pair of scissors and stabbed the deceased, Gurpreet Singh Sethi, once on the left side of the chest. During the said scuffle, the P.W.-1 and P.W.-2 also sustained injuries while attempting to rescue the deceased and ward off the assault.

The injured Gurpreet Singh Sethi was immediately rushed to Awadh Hospital, Lucknow, where he was declared brought dead. The incident was alleged to have been occurred under sufficient street-light illumination, rendering the identification of the appellant-accused unimpeachable.

2.4) Immediately thereafter, the complainant/P.W.-1, Smt. Satvindar Kaur, lodged a written complaint/Tehrir (Exhibit-Ka-1) at Police Station Krishna Nagar, Lucknow on the basis of which F.I.R. No. 264/2014 (Exhibit-Ka-13) was registered at about 10:00 PM on the same night under Sections 302, 323, 504, 506 and 427 I.P.C. against the appellant-accused. Inquest proceedings were conducted at the hospital (Exhibit-Ka-2), and the dead body was sent for post-mortem examination.

2.5) During investigation, the Investigating Officer/P.W.-4, (Inspector Vikas Kumar Pandey), inspected the scene of occurrence, prepared the Site plan (Exhibit-Ka-6 to Exhibit-Ka-8), collected blood-stained earth/soil from the spot, and recorded statements of witnesses under Section 161 Cr.P.C., and subsequently, arrested the appellant-accused pursuant to his disclosure and pointing out, and, effected recovery of the blood-stained scissors (the alleged weapon used in the offence) and the blood-stained pant worn by the appellant-accused at the time of incident, from a pile of bricks in an open field at Mahuari Bagh. After completing the investigation, the Investigating Officer found sufficient incriminating material against the appellant-accused and, therefore, filed a charge sheet against the appellant-accused.

3. The case, being triable exclusively by the Court of Session, was committed accordingly. Charges were framed on 21.04.2015 under Sections 302, 323, 504, 506, and 427 of the I.P.C. The appellant-accused pleaded not guilty and claimed Trial. Hence, the case was taken up for Trial.

PROCEEDINGS BEFORE THE TRIAL COURT

4. To bring home the charges, the prosecution examined the following witnesses during the course of Trial against the appellant- accused Rinku @ Amrish:-

1.	Smt. Satvindar Kaur	P.W.-1	Complainant/ Wife of the Deceased (Eye Witness)
2.	Smt. Basant Kaur	P.W.-2	Mother of Complainant/ P.W.-1 and mother-in-law of the Deceased (Independent Eye Witness)

3.	S.I. Dharamveer Singh	P.W.-3	Proved the inquest proceedings/ photo-lash and other Inquest papers.
4.	Inspector Vikas Kumar Pandey	P.W.-4	Investigating Officer/ proved spot inspection, Site plan(s) and arrest of the accused
5.	Manoj Kumar Yadav	P.W.-5	Head Moharir/proved registration of F.I.R. and General Diary entry
6.	Dr. Alok Sonkar	P.W.-6	Emergency Medical Officer/proved the medical examination of injured P.W.-2
7.	Dr. Nirupam Awasthi	P.W.-7	Conducted the post mortem of the deceased

5. Apart from the aforementioned oral evidence, the prosecution also exhibited and proved the following documentary evidence to support its case, running from Exhibit Ka-1 to Exhibit Ka-17 :-

(i)	Written Complaint /Tehrir	Exhibit-ka-1
(ii)	Panchayatnama/Inquest Report	Exhibit-ka-2
(iii)	Police Form 13	Exhibit-ka-3
(iv)	Photo lash	Exhibit-ka-4
(v)	Sample Seal	Exhibit-ka-5
(vi)	Site-plan of the crime spot	Exhibit-ka-6
(vii)	Site-plan	Exhibit-ka-7
(viii)	Site-plan	Exhibit-ka-8
(ix)	Recovery Memo/Fard	Exhibit-ka-9
(x)	Recovery Memo/Fard	Exhibit-ka-10
(xi)	Forensic Report	Exhibit-ka-11
(xii)	Charge-sheet	Exhibit-ka-12
(xiii)	First Information Report	Exhibit-ka-13
(xiv)	Police Information Sheet/ General Diary	Exhibit-ka-14
(xv)	Injury Report of P.W.-2/ Smt. Basant Kaur	Exhibit-ka-15
(xvi)	Injury Report of P.W.-1/ Smt. Satvindar Kaur	Exhibit-ka-16
(xvii)	Post Mortem Report	Exhibit-ka-17

6. Furthermore, in the present case, the defence also produced the following defence witnesses in support of the appellant-accused Rinku @ Amrish:-

1.	Smt. Sushma	D.W.-1	Hospital Staff
2.	Vishal Sharma	D.W.-2	Neighbour

3.	Devendra Kumar	D.W.-3	fellow tailor/alleging alibi

7. The prosecution, in order to prove its case before the Trial Court, had produced seven witnesses, wherein P.W.-1/ Smt. Satvindar Kaur, who is also the Complainant, an eye-witness, and the wife of the deceased, fully supported the prosecution version during her examination-in-chief. She narrated the entire sequence of events, being the employment and subsequent dismissal of the appellant-accused Rinku @ Amrish, on theft charges, the ensuing grudge, the breaking of scooter glass, abuse/threats, scuffle, the stabbing with scissor on the chest of the deceased- husband causing fatal injury, injuries to herself and her mother (P.W.-2), and the shifting to the hospital and declaration of death.

She proved her written complaint/Tehrir (Exhibit-ka-1), identified the appellant-accused Rinku @ Amrish, in the Court, and asserted presence of sufficient light at the crime scene for clear identification. Additionally, she stated in her examination-in-chief that when all of them came outside after hearing the sound of breaking of glass, it was her deceased husband who initially went to stop the appellant-accused. P.W.-1 deposed that the appellant-accused abused her husband, and also did □hatha-pai□ with her husband, and then only attacked him with the scissors, causing fatal injury.

8. P.W.-2/ Smt. Basant Kaur (Mother-in-law of the deceased), an ocular and injured eye-witness, corroborated the testimonies of P.W.-1 in toto. In her examination-in-chief, P.W.-2 deposed that on 09.07.2014 at around 9:00 PM, she was at the boutique with her daughter and son-in-law (the deceased). Upon hearing the glass breaking, they exited and saw the appellant-accused Rinku @ Amrish, vandalizing the scooter's windshield. Upon objection, the appellant-accused abused them, threatened death, and, during the scuffle, stabbed the deceased in the chest with scissors. Resultantly, the deceased collapsed; P.W.-2 and P.W.-1 intervened and sustained injuries (lacerations on their hands). They immediately carried the deceased to Awadh Hospital, where he was declared brought dead.

P.W.-2 identified her daughter's signature on the F.I.R. (Exhibit Ka-1) and her own thumbprint on the Injury Report (Exhibit Ka-15). She confirmed her medical examination on 10.07.2014, revealing two lacerated wounds. P.W.-2 positively identified the appellant-accused Rinku @ Amrish, in the Court as the perpetrator of the fateful incident.

9. P.W.-3/ S.I. Dharamveer Singh, who was posted as Station In-charge, Sarafa Bazar, Krishna Nagar P.S.- Lucknow, deposed that on 09.07.2014, as per the S.O.'s order, he conducted the inquest at Awadh Hospital at 10:10 PM of the deceased's body, under Case Crime No. 264/2014. The panchayatnama noted the death as homicidal by stabbing. P.W.-3 prepared and signed the panchayatnama (Exhibit Ka-2), Challan-lash (Form 13, Exhibit Ka-3 to Exhibit Ka-5), and forwarded the body for post-mortem. P.W.-3 confirmed readings to the panch witnesses and obtained their signatures. During his cross-examination, P.W.-3 admitted no personal knowledge of the incident but affirmed all procedural compliances.

10. P.W.-4/ Vikas Kumar Pandey, the Investigating Officer, detailed the investigation conducted on 09.07.2014, he took charge, recorded P.W.-1's statement, inspected the Site, prepared

the Site-plan (Exhibit Ka-6 to Exhibit Ka-8), collected blood-soaked soil, and recorded statement of witnesses Govind Ram and Pinku Jaiswal (not examined). P.W.-4 arrested the appellant-accused Rinku @ Amrish, and recorded his disclosure statement admitting the grudge, vandalism, scuffle, and stabbing. On appellant's pointing out, P.W.-4 recovered the blood-stained scissors and pants from a brick pile in 'Mahuari Bagh'. P.W.-4 proved the Charge-sheet (Exhibit Ka-12) and Material exhibits (Exhibit Ka-1 to Exhibit Ka-4). During Cross-examination, P.W.-4 admitted dictation of some documents to his subordinates but verified the signatures himself and also highlighted the lack of independent recovery witnesses.

11. P.W.-5/ Manoj Kumar Pal, Head Moharir proved the registration of F.I.R. at 22:00 hours on 09.07.2014 (Exhibit Ka-13) and General Diary (Exhibit Ka -14), copying verbatim the written complaint and signing the same.

12. P.W.-6/ Dr. Alok Sonkar, who was posted as an Emergency Doctor at Lokbandhu Hospital, Lucknow, examined the injured P.W.-2/ Smt. Basant Kaur, on 10.07.2014 at 7:45 PM and recorded the following: 'Injury 1 - 3x1 cm lacerated wound on left palm below thumb with clot; Injury 2 - 3x1 cm lacerated wound on right wrist with redness. Opined simple, by blunt object, - 1 day old'; (Exhibit Ka-15). For P.W.-1/ Satvindar Kaur, no external injuries but pain was opined, (Exhibit Ka-16).

13. P.W.-7/ Dr. Nirupam Awasthi, who conducted the post-mortem of the deceased on 10.07.2014 at 05:00 PM found 'one punctured wound 3x1 cm on left chest (70 cm below left nipple, 18 cm from mid line), penetrating deep into chest cavity, lacerating lung and causing about 1.5 litres haemothorax. Cause of death was haemorhage and shock due to injury to vital organ by sharp weapon (consistent with scissors). Time since death was opined about half a day' (Exhibit Ka-17). The said witness also deposed that there were no signs of any scratches or injuries on the rest of the body.

14. After the closure of prosecution evidence, the statement of the appellant-accused Rinku @ Amrish, was recorded under Section 313 Cr.P.C., wherein he denied the incident, admitted only his prior employment at the shop of P.W.-1, and pleaded false implication due to business rivalry after he opened his own tailoring shop in the vicinity . He claimed about an unfair investigation in the present case.

15. In order to bolster its case, the defence examined three witnesses to establish alibi, false implication, and procedural lapses. The defence Counsel produced D.W.-1/ Smt. Sushma, hospital staff at Awadh Hospital, Lucknow, who deposed that on the alleged date of the incident in 2014, the deceased was brought in dead at around10:00 PM and not as a 'patient'. D.W.-1 was in the O.P.D., provided a stretcher, but no treatment/inquest occurred there. D.W.-1 refuted having any knowledge about further police proceedings.

16. D.W.-2/ Vishal Sharma, a neighbour of the appellant-accused Rinku @ Amrish, deposed that he knew appellant-accused as a nearby resident of his grandmother's adjacent house. D.W.-2 denied any knowledge of a criminal history of the appellant-accused Rinku @ Amrish. D.W.-2 also deposed about witnessing arrest of the appellant-accused Rinku @ Amrish from Lalita Prasad's

house at midnight in the year 2014, by police officers. D.W.-2 came to know about the charges from the newspaper on the next day. D.W.-2 deposed that he did not meet the appellant-accused Rinku @ Amrish on the evening of the incident, as he had returned home around 9:00-10:00 PM from his bookstore job.

17. D.W.-3/ Devendra Kumar, a fellow tailor of the appellant-accused Rinku @ Amrish, deposed that on the day of the incident, he was working with the appellant-accused at his shop at Natkheda Road. They closed the shop at about 9:00 PM as usual, and thereafter, the D.W.-3 dropped the appellant-accused at his maternal grandmother's house and returned home. The next morning, he came to know that the appellant-accused had been arrested in the present case. He stated that the appellant-accused Rinku @ Amrish never had any quarrel with customers or anyone and that he was not aware about the incident mentioned in the F.I.R.

18. The learned Trial Court found that P.W.-1 and P.W.-2, being the natural and injured eye-witnesses, their testimonies were reliable as the same were consistent throughout. The learned Trial Court ignored the minor discrepancies, by holding that they do not affect the substratum of the prosecution case. The learned Trial Court found the medical evidence to corroborate the ocular version of a single stab injury on the chest causing death of the deceased due to haemorrhage and shock. The learned Trial Court found that the F.I.R. was also promptly lodged, and any delay stood satisfactorily explained, the motive also stood proved and the recovery of the blood-stained scissors and pants pursuant to disclosure, was admissible and trustworthy. The learned Trial Court returned a finding that the plea of alibi was unsupported and unreliable. Thus, the learned Trail Court on the basis of the documentary and oral evidence, produced by both the parties, after dealing with the points of challenge, appreciation of evidence, and analyzing the core facts, held that the prosecution had proved its case beyond reasonable doubt, and consequently, went on to record a finding of conviction against the appellant-accused and accordingly, sentenced him for maximum punishment of life imprisonment, along with a fine of Rs.1,00,000/-, with a default clause, under Sections 302, 323, 504, 506 and 427of the I.P.C.

PROCEEDINGS BEFORE THIS COURT

19. It is in this aforesaid background that the appellant-accused Rinku @ Amrish, as being aggrieved, has preferred the present Criminal Appeal under Section 374(2) of the Criminal Procedure Code, 1973 against the impugned Judgment and order dated 07.09.2019, passed by the learned Additional Sessions Judge/ Special Judge, P.C. Act, Lucknow, in Sessions Trial No. 1062 of 2014 (State Vs. Rinku @ Amrish), arising out of Case Crime No. 264 of 2014, Police Station Krishna Nagar, Lucknow.

20. The First bail application filed by the appellant-accused Rinku @ Amrish along with the present appeal, was rejected by a Co-ordinate Bench of this Court with a reasoned order dated 17.06.2021, passed in Criminal Miscellaneous Bail Application No. 145579 (B) of 2019. Subsequently, the Second bail application filed by the appellant-accused Rinku @ Amrish was again rejected by the Co-ordinate Bench of this Court with a reasoned order dated 07.04.2023, passed in Criminal Miscellaneous Bail Application No. IA/09/2023.

21. Further, during the pendency of the present Criminal Appeal, a Third bail application came to be filed by the appellant-accused Rinku @ Amrish on 14.02.2025, being Criminal Miscellaneous Bail Application No. IA/11/2025; but while arguing the bail application, Shri Harshit Singh, learned Counsel for the appellant-accused Rinku @ Amrish, has also pressed that, since the paper book has been prepared and that the actual period of incarceration of the appellant/accused Rinku @ Amrish, is more than 12 years, as per the Custody Certificate issued by the Jail Authorities, therefore, the appeal may be heard and decided on its merits and prayed that the Third bail application be dismissed as being not pressed. Consequently, the instant bail application is 'dismissed being not pressed', and the appeal has been heard on its merits.

SUBMISSION ON BEHALF OF THE PARTIES

22. Sri Harshit Singh, learned Counsel appearing for the appellant- accused Rinku @ Amrish, has submitted that the impugned conviction is contrary to the evidence on record and settled principles of criminal law. According to him, even if the prosecution case is accepted at its highest, the attending circumstances unmistakably attract Exception 4 to Section 300 of the I.P.C. and, at best, make out a case under Section 304 of the I.P.C., and not under Section 302 I.P.C.

23. Learned Counsel appearing for the appellant-accused has vehemently submitted that the prosecution story itself discloses that the occurrence arose out of a sudden quarrel relating to an alleged dispute over the smashing of the 'Activa' scooter mirror. There is no allegation of prior enmity, motive, planning, or preparation. He further submits that the alleged weapon i.e. a pair of scissors, is an ordinary article available in shops and workplaces, and there is no evidence that it was carried with a preconceived intention to commit murder.

The learned Counsel has submitted that only a single injury is attributed to the deceased, and there is no allegation of repeated blows, pursuit, cruelty, or undue advantage. Thus, he submits that these circumstances clearly indicate that the act, if any, occurred in the heat of passion upon a sudden quarrel, without premeditation, and the prosecution has failed to establish the specific intention to cause death or such bodily injury as was sufficient in the ordinary course of nature to cause death. According to him, at the highest, knowledge may be attributed, but not intention; which is a distinction crucial in determining whether the offence falls under Section 302 I.P.C. or Section 304 I.P.C.

24. Learned Counsel has strenuously submitted that the conviction primarily rests upon the testimony of P.W.-1 and P.W.-2, who are closely related to the deceased. Their evidence suffers from material contradictions. P.W.-1 stated that no employee was present at the shop at the relevant time, whereas P.W.-2 deposed that two employees were present and working. This inconsistency strikes at the root of the prosecution case. If employees were present, their non-examination constitutes a serious lacuna warranting an adverse inference. If they were not present, the case rests solely upon interested witnesses without independent corroboration. Further, despite the admitted fact that other shops were open and public witnesses were present in the market area, no independent witness had been examined.

25. Learned Counsel has also submitted that the defence evidence further creates a reasonable doubt in the impugned conviction of the appellant, as D.W.-3 has deposed that he was working along with the appellant-accused and the shop came to be closed at about 9:00 PM, and that he dropped the appellant-accused at his maternal grandmother's house. Thereafter, D.W.-3 has further deposed that upon inquiry from other shopkeepers, none had witnessed the alleged occurrence. It has been submitted that it is well settled that defence witnesses are entitled to equal treatment and their testimony cannot be discarded merely because they were examined by the defence. Thus, it has been submitted that when read cumulatively with the contradictions in the prosecution case, a clear and reasonable doubt emerges in the present case.

26. Learned Counsel has also vehemently submitted that the very genesis of the prosecution story i.e., the alleged breaking of the scooter mirror, remains unsubstantiated. The broken mirror was neither recovered nor produced before the Trial Court. No photograph of the alleged damage was placed on record. Further, the official record from the Regional Transport Office shows that the vehicle registration number allegedly involved does not stand in the name of the deceased or his family members and pertains to a different vehicle altogether. This material discrepancy renders the alleged motive doubtful and weakens the prosecution case at its foundation.

27. Learned Counsel has lastly submitted that, in view of the cumulative effect of the aforesaid circumstances, absence of premeditation, a single-blow injury, contradictions in material witnesses, non-examination of independent witnesses, doubtful genesis of the occurrence, and plausible defence version; the prosecution has failed to prove its case beyond reasonable doubt. The conviction under Section 302 I.P.C. is, therefore, liable to be set aside. Alternatively, even if culpability is assumed, the case would fall within Section 304, Part II of the I.P.C., which prescribes for a maximum punishment of 10 years.

28. Learned Counsel appearing for the appellant-accused has placed reliance upon the following precedents of the Hon□ble Supreme Court in order to buttress his arguments:-

* Ravinder Kumar v. State of Punjab, 2025 SCC OnLine SC 635;

* Arjun v. State of Chhattisgarh, (2017) 3 SCC 247;

* Jagriti Devi v. State of H.P., (2009) 14 SCC 771;

* Jagtar Singh v. State of Punjab, (1983) 2 SCC 342;

* Jagrup Singh v. State of Haryana, (1981) 3 SCC 616;

* Satish Narayan Sawant v. State of Goa, (2009) 17 SCC 724;

* Hem Raj v. State (Delhi Admn.), 1990 Supp SCC 291;

* Gurmail Singh v. State of Punjab, (1982) 3 SCC 185;

* Kulwant Rai v. State of Punjab, (1981) 4 SCC 245;

* Ahmed Shah v. State of Rajasthan, (2015) 3 SCC 93.

29. Per contra, Sri S.P. Singh, learned Additional Government Advocate (A.G.A.) for the State, has vehemently opposed the appeal and supported the judgment of conviction passed by the learned Trial Court. Learned A.G.A. has submitted that the prosecution has successfully established the guilt of the appellant-accused Rinku @ Amrish, beyond reasonable doubt for offences punishable under Sections 302, 323, 504, 506 and 427 of the Indian Penal Code. The impugned judgment is based upon cogent ocular testimony, duly corroborated by medical and documentary evidence, and warrants no interference.

30. Learned A.G.A. has strenuously contended that the occurrence dated 09.07.2014, at about 9:00 PM, stands proved by the consistent testimony of P.W.-1 Satvindar Kaur (wife of the deceased), and P.W.-2 Smt. Basant Kaur (mother-in-law of the deceased), both of whom were natural eye-witnesses present at the place of occurrence. Their presence at the shop is undisputed, and their testimony clearly established that appellant-accused Rinku @ Amrish, nursing a grudge after being removed from employment on allegations of theft, came to the shop, vandalized the vehicle parked outside, and, when objected to, assaulted the deceased with scissors, inflicting a forceful blow on the chest. Their evidence has remained materially intact in cross-examination and inspires confidence.

31. The learned A.G.A. has also submitted that merely because P.W.-1 and P.W.-2 are closely related to the deceased, their testimony cannot be discarded. It is settled law that evidence of a related or interested witness is not to be rejected if it is otherwise credible and trustworthy. In the present case, P.W.-1 herself sustained injuries in the incident, and P.W.-2 was medically examined by P.W.-6/ Dr. Alok Kumar Sonkar, who proved the injury report. The presence of an injured eyewitness lends strong assurance to the prosecution case.

Even the medical evidence fully corroborates the ocular version. P.W.-7/ Dr. Nirupam Awasthi, who conducted the post-mortem, found a penetrating wound on the left side of the chest cavity, resulting in laceration of vital organs and excessive internal bleeding of approximately 1.5 litres. The cause of death was opined to be shock and haemorrhage due to the ante-mortem injury caused by a sharp-edged weapon such as scissors. The injury was sufficient, in the ordinary course of nature, to cause death. The situs of the injury on a vital part of the body and the force applied clearly establish intention to cause death, thereby attracting Section 302 of the I.P.C.

32. The learned A.G.A. has further submitted that the motive stands sufficiently established from the evidence on record. The appellant-accused had been removed from service on suspicion of theft and had developed animosity against the deceased and his family. Even otherwise, where there is clear and reliable direct evidence of eyewitnesses, proof of motive assumes secondary importance. The prosecution has led direct ocular evidence, which stands corroborated by medical findings and recovery. The recovery of the blood-stained scissors and blood-stained jeans/pants at the instance of the accused further strengthens the prosecution case. The Investigating Officer, P.W.-4/ Vikas Kumar Pandey, proved the recovery memos and arrest proceedings. The fact that

independent public witnesses were not examined for the recovery is not fatal, particularly when the recovery is duly proved by official witnesses whose testimony has not been shaken in cross-examination.

33. The learned A.G.A. has vehemently submitted that plea of the defence that the appellant-accused Rinku @ Amrish, had gone to his grandmother's house and was not present at the scene, is merely an afterthought and unsupported by reliable evidence. D.W.-3/ Devendra Kumar's, testimony is self-serving and does not inspire confidence, particularly in light of the recovery of the weapon at the instance of the accused and the consistent testimony of the eye-witnesses placing him at the scene.

34. The learned A.G.A. has strenuously submitted that the contention of the learned Counsel appearing for the appellant-accused that the present case falls under the Exception 4 to Section 300 I.P.C. is misconceived. The evidence clearly shows that the appellant- accused, after vandalizing the vehicle and engaging in a scuffle, deliberately inflicted a forceful stab injury on the chest of the deceased, a vital part of the body, with a sharp-edged weapon. The nature of the injury, its depth, the damage to internal organs, and the resultant excessive haemorrhage unequivocally demonstrate intention to cause death or, at least to cause such bodily injury as was sufficient in the ordinary course of nature to cause death. The act cannot be characterized as a mere sudden quarrel devoid of intention.

35. The learned A.G.A. has lastly submitted that the prosecution has proved its case beyond reasonable doubt, establishing that the appellant-accused Rinku @ Amrish, has intentionally inflicted a fatal injury upon the deceased and also caused injuries to P.W.-1 and P.W.-2, besides committing acts of abuse, criminal intimidation, and mischief. The findings recorded by the learned Trial Court are based on a proper appreciation of the evidence and do not suffer from perversity or illegality warranting interference in the present criminal appeal. It is, therefore, submitted that the conviction of the appellant-accused Rinku @ Amrish, under Sections 302, 323, 504, 506 and 427 I.P.C. is fully justified both on facts and in law, and the present criminal appeal deserves to be dismissed.

ANALYSIS AND FINDINGS

36. Having heard the learned Counsel for the parties, we have given our thoughtful consideration to the submissions canvassed by the learned Counsels and have also carefully perused the materials placed on record.

37. In the present case, it is apparent from a facial reading of the impugned judgment that the Trial Court has based the conviction of the appellant-accused on the ocular account furnished by the informant and injured Satvinder Kaur (P.W.-1), and injured Smt. Basant Kaur (P.W.-2), and that of recoveries of the weapon of assault, i.e., the scissors, effected from the disclosure statement of the appellant-accused, as well as the medial opinion of the medical Experts.

38. The learned Counsel for the appellant-accused has vehemently argued that the conviction of the appellant-accused is perverse, as it primarily rests on the deposition of P.W.-1 and P.W.-2,

who are related to the deceased, being the wife and mother-in-law, respectively. According to the learned Counsel, the credibility and consistency of these witnesses are questionable and doubtful, and, as such the Trial Court could not have based its conviction entirely on their testimony.

First and foremost, apparently it seems that the learned Counsel has missed the event that these two eyewitnesses are also injured witnesses, as has also been deposed by P.W.-6 (Dr. Alok Kumar). The said P.W.-6 has deposed that the P.W.-2 has sustained injury, which was opined to be from a blunt object. Further, the doctor also deposed that P.W.-2 had about 3x1 cm lacerated wound was found on the left palm below the thumb with clot and another lacerated wound of 3x1 cm size was found on right wrist with redness. The said Doctor also opined that P.W.-1 experienced pain, although had no external injuries. This all goes to show that these eye-witnesses were also injured witnesses.

39. As far as the testimony of an Injured witness is concerned, it is settled law that ocular evidence of the victim or the injured is considered the best evidence. Apparently, these kind of witnesses come with a built-in guarantee of their presence at the scene of the crime and are unlikely to spare their actual assailant in order to falsely implicate anyone. Thus, testimony of these kind of witnesses is placed on a higher pedestal than a normal eye-witness, who is not injured. In State of U.P. v. Naresh, reported in (2011) 4 SCC 324; the Hon'ble Supreme Court held as follows:

'27. The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. [Vide: Jarnail Singh v. State of Punjab, (2009) 9 SCC 719; Balraje @ Trimbak v. State of Maharashtra, (2010) 6 SCC 673; and Abdul Sayed v. State of Madhya Pradesh, (2010) 10 SCC 259.'

(Emphasis Supplied)

40. Further, as to how the evidence of an injured ocular witness is to be dealt with, the Hon'ble Supreme Court in Balu Sudam Khalde v. State of Maharashtra, reported in (2023) 13 SCC 365; noted the following legal principles, which must be kept in mind by a Court while appreciating the said testimony. These principles are being enumerated herein below:

'26. When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the courts are required to be kept in mind:

26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

26.2. Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

26.3. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

26.4. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

26.5. If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

26.6. The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

(Emphasis Supplied)

41. The Hon'ble Supreme Court in the said judgment also went on to observe that, in assessing the value of the evidence of an eye-witness, two principal considerations arise, firstly, as to whether in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such a situation as would make it possible for them to witness the facts deposed to by them; and secondly, whether there is anything inherently improbable or unreliable in their evidence.

42. Testing on the anvil of these said two principal considerations, when we look into the oral evidence of the two injured eye-witnesses, namely, Satvinder Kaur and Smt. Basant Kaur (P.W.-1 and PW-2), respectively, it is apparent that Satvinder Kaur (PW-1) has deposed that the place of occurrence of the incident was near her shop, and it has also come in evidence that the appellant-accused had a shop in the same vicinity. Next, the time of incident is about 9 PM, which generally is the closing time of all the shops. It has come in evidence of P.W.-1 that, the incident occurred at 9 PM, when she was about to close her shop. It has also come in evidence of D.W.-1 that, on that particular date of incident, he along with the appellant-accused had closed their shop at 9 PM. Thus, both the place of occurrence and the time of the incident coincide, and it cannot be said that the presence of P.W.-1 at the scene of occurrence was not natural or impossible.

43. However, the learned Counsel for the appellant-accused has submitted that there is a contradiction in the version of the testimony of P.W.-1 and P.W.-2 relating to the number of employees present in the shop at the relevant point of time. According to him, P.W.-1 has stated in her testimony that there were no employees in her shop, whereas, on the contrary, P.W.-2 has deposed that two employees were present in the shop at the time of the incident. When, we examine the testimony of P.W.-1 and P.W.-2, as pointed out by the learned Counsel for the appellant-accused, we find that the said discrepancy in the statement does not have any bearing on the place of occurrence of the incident or the time of incident. On a dispassionate and careful reading of the

depositions of both these injured eye-witnesses, we find that, except for minor the inconsistency relating to the presence of any employee in the shop at that particular time, there is no marked disparity in their statements.

Further, we find that the discrepancy pointed out by the learned Counsel for the appellant-accused is not material and does not go to the root of the controversy and could had been engineered due to various reasons of failing human memory and as to how one person has perceived the said fact or understood the question asked during the cross-examination. This Court does not find any good reason to disbelieve the testimony deposed by these injured ocular witnesses or anything inherently improbable or unreliable in their evidence. We do not find any material on records, which could disprove their presence at the time of incident. Further, the learned Trial Court has minutely dealt with the said aspect and recorded its observations, as herein under, in the impugned judgment:

" 34.- अभियुक्त के विद्वान अधिवक्ता द्वारा यह भी तर्क प्रस्तुत किया गया है कि घटना रात नौ बजे के आस-पास होना बताया गया है लेकिन घटना का कोई चक्षुदर्शी साक्षी को परीक्षित नही कराया गया है। जबकि घटनास्थल पर रामवीर, गौरव सिंह, शिवम, गुरूमीत सिंह व राजवीर सिंह को घटनास्थल पर होना बताया गया है। उसके साथ उनकी दुकान भी होना बताया गया है लेकिन किसी भी गवाह को न्यायालय में लाकर घटना के तथ्य, तिथि व समय आदि को साबित नही कराया गया है। घटना की वादिनी मृतक की पत्नी तथा पी०डब्लू०-2 बसंत कौर जो उसकी सास है तथा हितवद्ध साक्षी है। अतः घटना को किसी स्वतंत्र साक्षी द्वारा साबित नहीं कराया गया है इसलिए अभियोजन कथानक संदेह से परे साबित नहीं माना जा सकता है। इस संबंध में अभियोजन द्वारा यह कहा गया है कि विवेचक के द्वारा केस डायरी में बहुत सारे गवाहों के बयान धारा 161 सी०आर०पी०सी० के अंतर्गत अंकित किये गये है लेकिन यह सब लोग अभियुक्त से मिल गये हैं इसलिए इनकी गवाही अभियोजन द्वारा नही करायी गयी है। विधि का यह सुस्थापित सिद्धान्त है कि अभियोजन इस बात के लिए स्वतंत्र है कि वह किस साक्षी को परीक्षित कराये और किसको परीक्षित न कराये। क्योंकि विधि यह भी है कि किसी तथ्य को साबित करने के लिए Quantity की आवश्यकता नहीं है, बल्कि Quality की आवश्यकता है। मा० सर्वोच्च न्यायालय की विधि व्यवस्था " हुकुम सिंह बनाम स्टेट आफ राजस्थान, 2000 (41) एसीसी 662 (एससी) व " कृपाल सिंह बनाम स्टेट आफ हरियाणा, 2013- एससीसी (क्रि.) में मा० सर्वोच्च न्यायालय द्वारा अभिमत पारित किया गया है।

35.- घटना को साबित करने के लिए भारतीय साक्ष्य अधिनियम की धारा 134 के अन्तर्गत साक्षियों की संख्या होना आवश्यक नहीं है बल्कि घटना के तथ्य को संदेह से परे साबित होना आवश्यक है। घटनास्थल पर स्वयं वादिनी मुकदमा उपस्थित थी और बीच बचाव में उसे भी चोटें आयी हैं। भले ही वह हितबद्ध साक्षी हो लेकिन वह घटना के तथ्य व समय तथा स्थान को स्वयं अपने आंखों से देखा है और न्यायालय में आकर इस तथ्य को साबित किया है। इसलिए हितबद्ध साक्षी के आधार पर मृतक की पत्नी को उसके बयान अविश्वसनीय

36.- इस संबंध में मेरे द्वारा केस डायरी में अंकित गवाहों के बयान धारा 161 सी०आर०पी०सी० तथा पी०डब्लू०-1 व पी०डब्लू०-2 के बयानों का अवलोकन किया गया जिससे स्पष्ट है कि विवेचक के द्वारा रामवीर, गौरव सिंह, शिवम, गुरुमीत सिंह व राजवीर सिंह का बयान अन्तर्गत धारा 161 सी०आर०पी०सी० दौरान विवेचना अंकित किया गया है लेकिन उनको परीक्षित नहीं कराया गया है क्योंकि उनको अभियुक्त से मिल जाना बताया गया है। लेकिन गवाह सतविन्दर कौर ने घटना को अपनी आंखों से देखा है जो मृतक की पत्नी है और केवल उसी को परीक्षित होने के कारण घटना को असाबित नहीं माना जा सकता है। माननीय उच्च न्यायालय के निर्णय विधि "कैलाश व अन्य बनाम स्टेट ऑफ यू०पी०, 1997 जे०आई०सी० 911 (एस०सी०)" के अवलोकन से स्पष्ट है कि हितबद्ध साक्षी यदि घटना को संदेह से परे साबित किया है तो उसे इस आधार पर अविश्वसनीय नहीं कहा जा सकता है कि मृतक का रिश्तेदार है। अतः मैं अभियुक्त के विद्वान अधिवक्ता के इस तर्क से सहमत नही हूँ कि सतविन्दर कौर उसकी पत्नी होने के कारण सही नहीं माना जा सकता है कि घटना को अन्य तथ्यों से संदेह से परे साबित किया गया हो। चूंकि सतविन्दर कौर स्वयं घटनास्थल पर मौजूद थी और वह चक्षुदर्शी साक्षी है।

37.- अभियुक्त के विद्वान अधिवक्ता द्वारा यह भी तर्क दिया गया है कि डी०डब्लू०-2 बसंत कौर कभी भी दुकान पर नहीं आती थी, लेकिन उस दिन वह दुकान कैसे आ गयी, इसका कोई स्पष्टीकरण नहीं दिया गया है? क्योंकि उन्हें घटनास्थल पर उपस्थित होना बताया गया है और न्यायालय में

आकर अपने बयान में घटना के सम्बंध में साक्ष्य दिया है, यह नहीं कहा जा सकता है कि वह घटनास्थल पर उपस्थित नहीं रही। दूसरे की घटना के समय वह मृतक को छुड़ाने गयी थी। स्वयं पी०डब्लू०-2 बसंत कौर को भी उक्त घटना में चोटें आयी हैं और उनका मेडिकल हुआ है जिसे पी०डब्लू०-6 डा० अशोक कुमार सोनकर ने साबित किया है जो पत्रावली पर प्रदर्श क-15 के रूप में दाखिल किया गया है. जिसके अवलोकन से स्पष्ट है कि उनके शरीर पर दो चोटें आयी थी जो किसी हार्ड और ब्लण्ट आब्जेक्ट से आना सम्भव है। यदि वह घटनास्थल पर उपस्थित नही थी तो उन्हें चोटें कैसे आयी थी। इस पर अभियुक्त की ओर से कोई तर्क प्रस्तुत नहीं किया गया है। केवल यह कहना कि कभी भी वह दुकान पर नही आती थी और उसी दिन घटना की तिथि पर दुकान पर कैसे आयी, उनकी उपस्थिति को संदिग्ध होना नही कहा जा सकता और मैं अभियुक्त के विद्वान अधिवक्ता के स्तर सहमत नहीं हूँ। इस संबंध में मा० सर्वोच्च न्यायालय की विधि व्यवस्था" मोतीलाल व अन्य बनाम स्टेट आफ यू०पी०, 2010, क्रि०ला०जर्नल, 1937, पेज 1937" में मा० न्यायालय द्वारा कहा गया है कि यदि गवाह उक्त घटना में चुटहिल है, तो उसकी अनुपस्थिति पर कोई संदेह नही व्यक्ति किया जा सकता है। पी०डब्लू० 2 बसंत कौर को भी उक्त घटना में बीच बचाव करने में चोटें आयी हैं और उसका चिकित्सीय परीक्षण हुआ है और गवाह डाक्टर पी०डब्लू० 6 ने भी उसकी चोटों को साबित किया है। अतः उपरोक्त पी०डब्लू० 2की घटना पर उपस्थिति में कोई संदेह नही रह जाता है।"

44. As far as the contention of the learned Counsel for the appellant-accused is concerned, that no independent witness has been examined, although several people were present at the crime spot. It has to be understood that in case if a witness examined in the Court is otherwise found reliable and trustworthy, the fact sought to be proved by that witness need not be further proved (read doubly proved) through other witnesses, even though there may be other witnesses available who could have been examined but were not examined. The stress is on the quality, and not the quantity, of evidence, as per Section 134 of the Indian Evidence Act, 1872. Any non-examination of a material witness is not a mathematical formula or a consequential effect for discarding the weight of the testimony available on record, however natural, trustworthy, and convincing it may be. It is settled law that the non-examination of independent witnesses cannot be pressed into service like a ritualistic formula for discarding the prosecution case, when the testimony of a witness is found to be trustworthy, reliable, and sterling. The Court can convict an accused on the testimony of a witness even if he is a relative of the deceased. The non-examination of an independent witness would not be fatal to the case of the prosecution.

45. Further, from the aforesaid portion of the judgment of the Trial Court extracted herein above, we also find that as far as the argument of the learned Counsel for the appellant-accused relating to reason for non-examination of independent witnesses, whether shop-keepers or public is concerned, the Trial Court has beautifully dealt with the said argument at paragraph 34 of the impugned judgment. To further add, we find that the law in that regard is also no longer res integra, in as much as, the Hon'ble Supreme Court in the case of Rajesh Yadav v. State of Uttar Pradesh, reported in (2022) 12 SCC 200; has held as follows:

'**Non-examination of witness**

34. A mere non-examination of the witness per se will not vitiate the case of the prosecution. It depends upon the quality and not the quantity of the witnesses and its importance. If the court is satisfied with the explanation given by the prosecution along with the adequacy of the materials sufficient enough to proceed with the trial and convict the accused, there cannot be any prejudice. Similarly, if the court is of the view that the evidence is not screened and could well be produced by the other side in support of its case, no adverse inference can be drawn. Onus is on the part of the party who alleges that a witness has not been produced deliberately to prove it.'

46. Further, the non-examination of independent witnesses would not reduce the credibility of the eye-witness account in any manner. Thus, the contention of the learned Counsel for the appellant-accused, that P.W.-1 and P.W.-2, being related witnesses, their testimony cannot be taken into account for conviction without any deposition of an independent witness, has to be rejected.

47. As far as the contention of the learned Counsel for the appellant-accused that a doubt has been cast on the prosecution narrative as D.W.-3 has deposed that, after closing the shop at 9 PM, the said witness dropped the appellant-accused at his grand-mother's house and, upon inquiry the next morning from other shop-keepers in the complex, he came to learn that none had witnessed the said incident: firstly, this evidence appears to be hearsay for the simple reason that D.W.-3 does not himself say that no such incident had occurred, but relies on the version of other shop-keepers to say that no one has witnessed the said incident. Secondly, he was only a witness of the closing of the shop at 9 PM and to dropping the appellant-accused at his grandmother's place after the said closing of his shop. Neither the grandmother of the appellant-accused has been examined nor any witness, who would say that D.W.-3 actually dropped the appellant-accused at his grandmother's place after 9 PM and he continued to stay at her place until he was arrested by the police has been produced by the dense. In fact, D.W.-3 states in his cross-examination that he is not aware as to what the appellant-accused did after dropping the appellant at his grandmother's place. Thirdly, he admits that he was called as a witness by the father of the appellant-accused and wanted to help him and not that he had come to state the truth of the incident. Thus, apparently D.W.-3 appears to be not trustworthy and most importantly, he does not throw any light on the incident and expresses his inability about the said occurrence. According to this Court, the testimony of D.W.-3 has done more harm than favor to the appellant-accused.

48. The learned Counsel has next argued that the breaking of the Activa scooty mirror, which, according to him, was the foundation of the prosecution case, was not substantiated. According to him, the broken glass was not recovered from the crime spot, nor were any photographs produced of the said incident. It was also argued that even the scooty registration number suggested by the prosecution does not belong to the deceased or his family, and as such, these discrepancies go to the root of the controversy and create a reasonable doubt in the prosecution story. According to this Court, the aforesaid grounds are meaningless, as the defence cannot have a say on what kind of evidence is to be collected or as to what all evidence has to be proved by the investigating agency. The grounds as tried to be substantiated by the learned Counsel for the appellant-accused are, therefore to be rejected, as the prosecution has successfully proved the case beyond reasonable doubt on the basis of the depositions of the injured eye-witnesses, being P.W.-1 and P.W.-2, the testimony of the medical expert, and the recovery of the crime weapon upon the disclosure statement of the appellant-accused.

49. Learned Counsel appearing on behalf of the appellant-accused has next drawn our attention to the non-applicability of Section 302 I.P.C. and according to him, in the given facts and circumstances, the appellant-accused ought to have been punished under Section 304 part-II and not under Section 302 I.P.C. The learned Counsel vehemently submitted that, as it is a case of a single blow, Section 302 I.P.C. shall not be attracted. It was submitted that even the so called alleged motive for the incident was prior to one and half months of the incident in question, i.e., the

time when the appellant was removed from his service, and therefore, the prosecution has failed to establish and prove a motive for the appellant to kill the deceased.

It is, thus, submitted that the occurrence had taken place out of a sudden fight and, therefore, the offence would fall under Exception 4 to Section 300 I.P.C. and accordingly, the appellant has to be convicted for a lesser offence than Section 302 I.P.C. Relying on the various judgments mentioned supra, it has been prayed to convert the conviction from Section 302 I.P.C. to Section 304 Part- II of the I.P.C.

50. As far as the submission on behalf of the appellant-accused, that the prosecution has failed to establish or prove the motive, and/or that the alleged motive of the incident is prior in time to the incident in question, this Court finds that the law in that regard is no longer res integra. In a case where the eye-witnesses are available, the motive becomes insignificant. Admittedly, in the present case, P.W.-1 and P.W.-2 are the eye-witnesses to the incident, and therefore, the proof of motive is insignificant. Further, on the aspect of non-proving of motive is concerned, this Court finds that the Hon'ble Apex Court in Madan v. State of U.P., reported in 2023 SCC OnLine SC 1473; has held that when there is an eye-witness who had seen the commission of murder and their evidence is credible, it is not necessary that the prosecution had to prove the motive behind the offence.

51. Similarly, in Shivaji Genu Mohite v. State of Maharashtra, reported in AIR 1973 SC 55; it was held that it is a well-settled principle in criminal jurisprudence that when ocular testimony inspires the confidence of the Court, the prosecution is not required to establish motive. The mere absence of motive would not impinge upon the testimony of a reliable eye-witness. Motive is an important factor for consideration in a case of circumstantial evidence. But when there is a direct eye witness, motive is not significant. This is what was held by the Hon□ble Supreme Court in the said judgment:

'In case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eye-witness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eye-witnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eye-witness is rendered untrustworthy□ The principle that the lack or absence of motive is inconsequential when direct evidence establishes the crime has been reiterated by this Court in Bikau Pandey v. State of Bihar, (2003) 12 SCC 616; Rajagopal v. Muthupandi, (2017) 11 SCC 120; Yogesh Singh v. Mahabeer Singh, (2017) 11 SCC 195'

52. As held by this Court in a catena of decisions, motive is not an explicit requirement under the Penal Code, though 'motive' may be helpful in proving the case of the prosecution in a case of circumstantial evidence. As observed herein above, there are two eye-witnesses to the incident, and the prosecution has been successful in proving the case against the appellant-accused by examining those two eye-witnesses and therefore, as rightly observed by the Trial Court, assuming that the

alleged motive predates the incident or the prosecution has failed to prove the motive beyond doubt, the same shall not be fatal to the case of prosecution.

As observed and held by the Apex Court in the case of Jafel Biswas v. State of West Bengal reported in (2019) 12 SCC 560; the absence of motive does not disperse a prosecution case if the prosecution succeeds in proving the same. The motive is always in the mind of person authoring the incident. Motive not being apparent or not being proved only requires deeper scrutiny of the evidence by the Courts while coming to a conclusion. When there is definite evidence proving an incident and eye'witness account prove the role of the accused, absence in proving of the motive by prosecution does not affect the prosecution case.

53. Thus, non-proving of motive is not fatal to the prosecution in case of direct witnesses. As such, the only issue which is now required to be considered in the present appeal is whether the appellant-accused has committed an offence punishable under Section 302 of the I.P.C., or any other lesser offence, more particularly Section 304 Part-I or II of the I.P.C.?

54. Before, this Court delves into the said consideration of facts relevant to the aforesaid determination, it would be pertinent to refer to certain guiding principles in the nature of judgment passed by the Hon'ble Apex Court in the said context, which would act as a north star in answering to the aforesaid proposition. The submission of the learned Counsel for the appellant-accused for the applicability of Exception 4 to Section 300 of the I.P.C., so that the appellant-accused can be punished for the lessor punishment under Section 304, Part-II of the I.P.C. in place of Section 302 I.P.C., is threefold viz, (i) death is caused without any premeditation (ii) merely a single blow was inflicted and (iii) the whole incident occurred due to a sudden fight, and the appellant-accused did not take undue advantage or acted in an unusual manner.

55. As far as the single blow theory for applicability of Section 304 I.P.C. or Section 302 I.P.C. is concerned, the Hon'ble Supreme Court in the case of Mahesh Balmiki v. State of M.P., reporetd in (2000) 1 SCC 319; while deciding the question of whether a single blow with a knife to the chest of the deceased would attract Section 302 I.P.C. or not, held thus: (SCC pp. 322-23, para 9)

'9. …. there is no principle that in all cases of a single blow Section 302 IPC is not attracted. A single blow may, in some cases, entail conviction under Section 302 IPC, in some cases under Section 304 IPC and in some other cases under Section 326 IPC. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non- vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him. In the instant case, the deceased was disabled from saving himself because he was held by the associates of the appellant who inflicted though a single yet a fatal blow of the description noted above. These facts clearly establish that the appellant had the intention to kill the deceased. In any event, he can safely be attributed the knowledge that the knife blow given by him was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death.

56. Further, as far as the contention of the learned Counsel that a sudden fight had occurred on the fateful night between the deceased and the appellant-accused, and as such Exception 4 to Section 300 I.P.C. is applicable instead of Section 302 I.P.C. is concerned, the Hon'ble Supreme Court, from time to time has devised certain propositions, which plays a pivotal role in deciding whether the case falls under Section 302 or under Section 304 Part I or 304 Part II I.P.C. Thus, we see that the Apex Court in Dhirajbhai Gorakhbhai Nayak v. State of Gujarat, reported in (2003) 9 SCC 322; while discussing the ingredients of Exception 4 to Section 300 I.P.C. relating to sudden fight, as has been claimed by the appellant-accused in the present case, held as follows: (SCC pp. 327, para 11)

'11. The fourth exception of Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution (sic provocation) not covered by the first exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self- control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1, but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon an equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage.'

(Emphasis Supplied)

57. From the above stated decisions, it emerges that there is no hard and fast rule that in a case of single blow injury Section 302 of the I.P.C. would not be attracted. It depends upon the facts and circumstances of each case. The fact situation has to be considered in each case, more particularly, the events which precede will also have a bearing on the issue whether the act by which the death was caused was done with an intention of causing death or knowledge that it is likely to cause death. It is the totality of the circumstances which will decide the nature of the offence.

58. Applying the law laid down by the Apex Court in the aforesaid decisions, more particularly the decisions on the single blow injury and the facts on hand, it is required to be considered whether the case would fall under Section 302 I.P.C. or any other lesser offence.

P.W.1 Satvindar Kaur, who is an eye-witness to the incident right from the beginning and also an injured, deposed that the appellant-accused had worked along with her for two years and was removed one and a half months (in cross-examination, she says 3 months) prior to the incident due to allegations of theft and 'hera-pheri' against the appellant-accused. She admits that although a complaint had been lodged for the said theft, however, the same was settled on the ground that the appellant-accused would not repeat such conduct in the future. She also admits that it was her deceased-husband, who had come out first after hearing the noise of the breaking glass of the scooty, and she and her mother (P.W.-2) came out only upon hearing the abusive duel between her husband and the appellant-accused. It has also been admitted by the said eye-witness that 'dhakka-mukki' has occasioned and when the complainant and her mother went to save her husband, the appellant-accused attacked the husband with the scissors.

She also admits that both the appellant-accused and the deceased, while fighting and pushing each other, came from the spot of scooty to the basement where her shop was located, and eventually her husband was attacked in front of Sanjeev Boutique. She admits that she had told the police during investigation that her husband was stabbed at the place of scooty due to her mental disturbance.

Thus, apparently it appears that there had been some quarrel between the deceased and the appellant-accused over the breaking of glass and abuses words, which resulted in 'dhakka-mukki' and eventually leading to stabbing the deceased. Further, this Court finds that both the appellant-accused and the deceased moved from the spot of parking of scooty to the basement for more than two minutes. Thus, keeping in view the cumulative happening of the incident, it can be termed to be a sudden fight.

59. Further, the said eyewitness although has deposed that the appellant had bricks (withy which he was breaking the glass of scooty) in one hand and a pair of scissors in the other, however, when she is further cross-examined, she says that the appellant-accused was beating the deceased with his hands during 'dhakka-mukki', and the said beating went for about two minutes. She also admits that the appellant-accused attacked the deceased with the scissors suddenly and the first blow was directed towards her mother (P.W.-2) and the second towards her husband. She also admits that there were altogether only two blows with the scissors. Thus, it can be said that upon hearing the breaking of glass of the scooty , the deceased immediately rushed outside and may have challenged the appellant-accused and obviously would have given rise to verbal abuses followed by

'dhakka-mukki', resulting in a sudden quarrel, due to the existing dispute of the appellant-accused being an ex-employee and now a competitor, as has been brought out from the evidence on record.

60. Further, from an analysis of the aforesaid statement of the eyewitness, it is apparent from the statement, as far as the appellant-accused having the bricks in one hand and scissors in the other cannot be believed for the simple reasons that later during her cross-examination, she admits that prior to the blow with the scissors, 'Dhakka-mukki' i.e., pushing and fisting, had occasioned at the crime-spot and the appellant-accused was seen beating the deceased for two minutes by his hand. If both the hands of the appellant-accused were engaged with bricks and scissors,, as deposed by the eyewitness, how can the appellant-accused beat the deceased with his hands for two minutes. Thus, according to this Court, the appellant-accused was not holding the scissors in his hand when the fight started, and he may only had bricks with which he broke the glass of the scooty.

Further, this Court finds that there is no evidence on record as to whose scissor was used for stabbing the deceased, as to whether the appellant-accused brought along with him or that the scissor was picked from the shop of the deceased or the Sanjeev Boutique, wherein he eventually died with the stabbing of a scissor. Neither of the parties have led any evidence on the said aspect, although a suggestion was put by the appellant-accused to P.W.-1 that the scissor was brought by the deceased himself from his shop, which was denied, but this Court does not find any sterling evidence on the said issue as to who brought the scissor or as to who was the owner of the scissor. Since, there is no evidence, the benefit of the same has to accrue in favour of the appellant-accused and as such, it has to be held that the appellant-accused did not bring along with him the scissor, with which the deceased was attacked. In case, the appellant-accused was carrying the scissors all throughout the happening of the incident, this Court fails to understand as to why he used the bricks to break the glass of scooty or as to why he did indulge in 'dhakka-mukki' or that why the beating of the deceased by the appellant-accused was with hand. These all questions, merely indicate that the scissors were not brought along by the appellant-accused. Thus, it can be said in a way that the attack was not premeditated or preplanned.

61. Next, it has been admitted by the P.W.-1 that there were altogether two blows inflicted with the scissors. . The first being on the mother (P.W.-2) and the second on the deceased. Again, if the first blow was to the mother, it definitely meant that the intention of the appellant-accused was not directed towards the deceased only but was also towards the mother (P.W.-2). However, we see from the evidence which has come on record that the mother (P.W.-2) was not a regular visitor to the shop nor used to sit regularly at the shop. She, as per the evidence on record, came to visit her daughter and the shop, as a matter of chance. Thus, it cannot be said that the appellant-accused would have planned the same fate for the mother as well for the deceased. In any case, no evidence has been brought on record relating to any animosity between the mother (P.W.-2) and the appellant-accused. Thus, it can be stated with some certainty that a fight ensued between the parties due to the breaking of glass of the scooty by the appellant-accused and because of the □dhakka-mukki□ and beating which went for two minutes and the appellant-accused being faced with three persons i.e., the deceased, P.W.-1 and P.W.-2, could have caught hold of a pair of scissors and attacked the persons indiscriminately, who came in front of him. Since there was no premeditation, the mother-in-law of the deceased (P.W.-2) came first and as such was attacked with the scissors prior to the second attack on the deceased.

62. As to the intensity of the blow, the medical evidence shows that the injuries sustained by the mother were simple in nature. The medical report can be seen in that regard, which is being mentioned herein:

‘* 3x1 cm lacerated wound was found on the left palm below the left hand thumb with clot

* 3x1 cm Lacerated wound over the ulna found on right wrist with redness.

The aforesaid injury has been opined to be simple by the Doctor. Apparently, the deceased was the second person to receive the blow with the scissors from the appellant-accused with equal intensity as has been revealed from the postmortem report. The said report says that the deceased sustained the following ante-mortem injury:

‘A stab wound (punctured wound) size 3 x 1 cm at chest cavity deep on Left side chest, 7.0 cm away from (Lt) Nipple and 18.0 cm away from (Rt) Nipple.

The cause of death is due to shock and haemorrhage as a result of ante-mortem injury.

An analysis of the Medical report as aforesaid shows that although the intensity of the stab inflicted by the appellant-accused to the mother (P.W.-2) and the deceased is almost the same as the wound is of size 3 x 1 cm in both cases, however, there is a huge difference when it comes to the consequence of the said stabbing, as the mother merely sustained simple injury, whereas the deceased sustained a fatal injury. Apparently, the said difference in consequences is due to the place, where the stabbing was inflicted. In the case of deceased, he was stabbed on a vital part. But the question is whether the appellant-accused had the intention or knowledge of the said stabbing on vital part. The answer would be no, for the simple reason that it has come in evidence that there was a fight between the appellant-accused on one side and P.W.-1, P.W.-2 and deceased on the other. Further, it has also come in evidence that there were various neighbouring shop owners who had come to see the fight after verbal abuses between the appellant-accused and the deceased, therefore a commotion like situation was created at the crime-spot, leading to usage of the scissors to attack and get away from the said scene. Thus, we see that the first blow landed on the mother-in-law (P.W.-2) on the wrist/hand, while the second blow unfortunately landed on the chest of the deceased, causing fatal injuries.

63. Further, this Court finds that after the said second blow, there was no further blow to anyone or even to the deceased. There was only a single blow to the deceased. Thus, from the aforesaid narration of facts, it can be safely said that (i) the act was committed without premeditation; (ii) there was a sudden fight; (iii) the act was in a heat of passion upon a sudden quarrel; and (iv) the offender has not taken undue advantage or acted in a cruel or unusual manner.

64. As per Exception 4 to Section 300 of the I.P.C., Culpable Homicide is not Murder if it is committed without premeditation, in a sudden fight, in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage and not having acted in a cruel or unusual manner. In the present case, from the analysis of the evidence brought on record, the Culpable Homicide cannot be said to be a murder within the definition of Section 300 I.P.C. and, therefore,

in the facts and circumstances of the case narrated herein above, and the manner in which the incident started with the breaking of the scooty glass, and followed by verbal abuse and 'dhakka-mukki', we are of the opinion that Section 302 of the I.P.C. shall not be attracted.

65. Now, the next question which is posed for consideration of this Court is whether the case would fall under Section 304, Part II I.P.C. Considering the totality of the facts and circumstances of the case, and more particularly that the appellant-accused inflicted a blow with scissors and he inflicted the injury on the deceased on a vital part of the deceased's body, it is to be presumed that causing such bodily injury was likely to cause death. Therefore, the case would fall under Section 304, Part I of the I.P.C. and not under Section 304, Part II of the I.P.C.

66. Though, the issue would now be restricted only to the sentence for the offence under Section 304, Part I of the I.P.C., and we have to consider about the appropriate punishment for the appellant-accused in this case, for its aggravating circumstances relating to the crime while mitigating circumstances relating to the criminal. We see from the record that at the time of commission of charged incident, age of appellant-accused was about 35 years. From the facts and circumstances of the case, it is clear that the appellant-accused initially had no intention for murder/homicide or causing any injury. The appellant-accused has no criminal history and is in incarceration for about 12 years. This Court when faced with the hardcore term of determining the quantum of sentence to be awarded to the appellant-accused, is reminded of the judgment of the Hon'ble Supreme Court in the case of Hazara Singh v. Raj Kumar, reported in (2013) 9 SCC 516. The relevant paragraph is being extracted herein below in verbatim:-

'17.We reiterate that in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment.

67. Therefore, keeping in view the totality of facts and circumstances, and for the reasons stated herein above, the impugned judgment and order passed by the Trial Court convicting the appellant-accused for the offence punishable under Section 302 I.P.C. is hereby modified from that of under Section 302 I.P.C. to Section 304, Part I of the I.P.C. The appellant-accused is held guilty for the offence punishable under Section 304, Part I of the I.P.C. and is accordingly sentenced to undergo 12 years Rigorous Imprisonment with a fine and default clause, as awarded by the Trial Court in Sessions Trial No.1062 of 2015, arising out of Case Crime No. 264 of 2014.

68. In view of the above, the appeal is partly allowed to the aforesaid extent.

69. Let a copy of this judgment, as well as the lower Court record, be sent to the Trial Court for necessary information and ensuring compliance.

70. All pending application(s) shall stand disposed of.

(2026) 5 ILRA 283
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 26.05.2026

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE DR. AJAY KUMAR-II, J.

Criminal Appeal No. 4280 of 20111

Pawan Kumar **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to the validity of conviction of the appellant under Ss.302, 452 and 354 IPC and whether the prosecution proved its case beyond reasonable doubt on the basis of the dying declaration and other evidence, whether the charge under S.354 IPC stood established, and whether, in the facts and circumstances of the case, the offence amounted to murder punishable under S.302 IPC or culpable homicide not amounting to murder punishable under S.304 Part II IPC. (Paras 16, 28-59)

Headnotes

Criminal Law - Evidence - Dying Declaration - Indian Evidence Act, 1872 - S.32(1) - Reliability and evidentiary value - A truthful, voluntary and reliable dying declaration, recorded when the maker was in a fit physical and mental condition, can by itself form the sole basis of conviction without corroboration - Requirement of corroboration is merely a rule of prudence and not an absolute rule of law - Briefness of the dying declaration or the fact that it is not recorded in question-answer form does not render it unacceptable - Applied to facts, the dying declaration was recorded within about two and a half hours of the occurrence after obtaining medical certification regarding the fitness of the declarant both before and after recording, was found brief, precise and trustworthy and was accepted as reliable - Conviction could safely be founded thereon. (Paras 28-46)

Criminal Law - Appreciation of evidence - Ocular evidence vis-à-vis dying declaration - Indian Evidence Act, 1872 - Ss. 3 and 32(1) - Dying declaration admissible under S. 32(1) on the maxim *nemo moriturus praesumitur mentire* - Brevity of the declaration lends assurance to its truthfulness and indicates absence of tutoring or prompting - Absence of a medical certificate regarding the declarant's fitness not fatal where the person recording the declaration was satisfied about the declarant's physical and mental condition - Extent or percentage of burn injuries not by itself determinative of mental fitness to make the declaration - Where ocular evidence is inconsistent with a truthful and voluntary dying declaration and is found unreliable, the Court may safely rely upon the dying declaration - In the present case, presence of P.W.2 at the place of occurrence held doubtful in view of material inconsistencies with the dying declaration, whereas testimony of P.W.1 partly corroborated the prosecution case and was

supported by the medical and documentary evidence - Charge under S. 354 IPC not proved - Conviction under S. 452 IPC affirmed. (Paras 47-52, 59).

Criminal Law - Culpable Homicide and Murder - Indian Penal Code, 1860 - Ss.299, 300, 302, 304 Part II, 452 and 354 - Distinction between murder and culpable homicide not amounting to murder - Court must determine the intention or knowledge of the accused from the proved circumstances and examine whether any clause of S.300 IPC is attracted - Applied to facts, the incident occurred during a sudden scuffle without previous enmity or premeditation and the deceased succumbed after seven days due to septicaemia resulting from burn injuries - Facts disclosed knowledge that death was likely but did not attract any clause of S.300 IPC - Conviction altered from S.302 IPC to S.304 Part II IPC, conviction and sentence under S.452 IPC affirmed, appellant acquitted of the offence under S.354 IPC, sentenced under S.304 Part II IPC with fine and default sentence and directed to be released forthwith, having already undergone the sentence, if not required in any other case. (Paras 53-59)

Held: A dying declaration recorded after the maker is found medically fit and which is voluntary, truthful and inspires full confidence can by itself form the basis of conviction without any corroboration and the rule requiring corroboration is merely one of prudence and not of law - the dying declaration in the present case having been recorded within a short time of the occurrence after obtaining fitness certificates before and after recording and having been found brief, precise and reliable was sufficient to establish that the appellant had set the deceased on fire - the testimony of P.W.2 was rightly found doubtful in view of inconsistencies with the dying declaration while the testimony of P.W.1 and the medical and documentary evidence afforded partial corroboration - the prosecution failed to establish the charge under S.354 IPC but successfully proved the charge under S.452 IPC - having regard to the facts that there was no previous enmity, no premeditation, the occurrence took place during a sudden scuffle and the deceased succumbed after seven days due to septicaemia resulting from burn injuries, the case did not fall within any of the clauses of S.300 IPC but was covered by clause (c) of S.299 IPC and consequently the conviction under S.302 IPC was liable to be altered to one under S.304 Part II IPC while maintaining the conviction and sentence under S.452 IPC and acquitting the appellant of the charge under S.354 IPC - the appellant was sentenced under S.304 Part II IPC with fine and default sentence and, having already undergone the sentence, was directed to be released forthwith, if not required in any other case - appeal partly allowed. (Paras 28-59) (E-7)

Case Law Cited

Lakhan V. State of M.P. **(2010) 8 SCC 514***; Khushal Rao v. State of Bombay* **AIR 1958 SC 22***; Kusa v. State of Orissa* **(1980) 2 SCC 207***; Meesala Ramakrishan v. State of A.P.* **(1994) 4 SCC 182***; Ranjit Singh v. State of Punjab* **(2006) 13 SCC 130***; Nanhau Ram v. State of M.P.* **1988 Supp SCC 152***; Laxman v. State of Maharashtra* **(2002) 6 SCC 710***; State of M.P. v. Dal Singh* **(2013) 14 SCC 159***; P.V. Radhakrishnan v. State of Karnataka* **(2003) 6 SCC 443***; Ram Bihari Yadav v. State of Bihar & Ors.* **MANU/SC/0302/1998***; Atbir v. Govt. (NCT of Delhi)* **(2010) 9 SCC 1***; Paniben v. State of Gujarat* **(1992) 2 SCC 474***; Munnu Raja v. State of M.P.* **(1976) 3 SCC 104 : 1976 SCC (Cri) 376 : (1976) 2 SCR 764***; State of U.P. v. Ram Sagar Yadav* **(1985) 1 SCC 552 : 1985 SCC (Cri) 127 : AIR 1985 SC 416;** *Ramawati Devi v. State of Bihar* **(1983) 1 SCC 211 : 1983 SCC (Cri) 169 : AIR 1983 SC 164***; K. Ramachandra Reddy v. Public Prosecutor* **(1976) 3 SCC 618 : 1976 SCC (Cri) 473 : AIR 1976 SC 1994***; Rasheed Beg v. State of M.P.* **(1974) 4 SCC 264 : 1974 SCC (Cri) 426;** *Kake Singh v. State of M.P.* **1981 Supp SCC 25 : 1981 SCC (Cri) 645 : AIR 1982 SC 1021;** *Ram Manorath v. State of U.P.* **(1981) 2 SCC 654 : 1981 SCC (Cri) 581;** *State of Maharashtra v. Krishnamurti Laxmipati Naidu* **1980 Supp SCC 455 : 1981 SCC (Cri) 364 : AIR 1981 SC 617***; Surajdeo Ojha v. State of Bihar* **1980 Supp SCC 769 : 1979 SCC (Cri) 519 : AIR 1979 SC 1505***; State of U.P. v. Madan Mohan* **(1989) 3 SCC 390 : 1989 SCC (Cri) 585 : AIR 1989 SC 1519***; Mohanlal Gangaram Gehani v. State of Maharashtra* **(1982) 1 SCC 700 : 1982 SCC (Cri) 334 : AIR 1982 SC 839***; Irfan alias Naka v. State of Uttar Pradesh,* **2023 SCC OnLine SC 1060***; Naeem v. State of U.P.* **(2024) 3 SCR 36***; Surajdheo Ojha & Ors. v. State of Bihar* **1980 (Supp) SCC 769***; Anbazhagan v. State represented by the Inspector of Police* **(2024) 20 SCC 500***; Phulia Tudu* **(2007) 14 SCC 588***; Rajwant Singh v. State of Kerala* **AIR 1966 SC 1874***; Virsa Singh v. State of Punjab.*

List of Acts

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

List of Keywords

Dying declaration; Medical fitness; Reliability; Sole basis of conviction; Corroboration; Rule of prudence; Appreciation of evidence; Ocular evidence; Medical evidence; Burn injuries; Septicaemia; House-trespass; Culpable homicide; Murder; Knowledge; Intention; Mens rea; Scuffle; Section 299 IPC; Section 300 IPC; Section 302 IPC; Section 304 Part II IPC; Section 452 IPC; Section 354 IPC; Conviction altered; Acquittal.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal against the judgment and order dated 07.07.2011/11.07.2011 passed by the Additional Sessions Judge/Special Judge (S.C./S.T. Act), Etawah in Sessions Trial No.394 of 2008 (State v. Pawan Kumar), arising out of Case Crime No.90 of 2008, under Sections 452, 354 and 302 IPC, Police Station Ekdil, District Etawah, whereby the appellant was convicted under Sections 302, 452 and 354 IPC and sentenced accordingly.

Appearances for Parties

Advs. for the Appellant:
Sri Abhishek Sharma, Amicus Curiae.
Advs. for the Respondents:
Sri Aditya Kumar Tripathi, counsel for the complainant;
Sri Virendra Kumar Pal, A.G.A. for the State.

(Delivered by Hon'ble Dr. Ajay Kumar-II, J.)

1. The instant Criminal Appeal has been directed against the judgment and order dated 07.07.2011 / 11.07.2011 passed by Additional Sessions Judge / Special Judge (S.C./S.T. Act), Etawah in Sessions Trial No.394 of 2008 (State Vs. Pawan Kumar) arising out of Case Crime No.90 of 2008, under Sections 452, 354, 302 IPC, Police Station - Ekdil, District Etawah convicting and sentencing the appellant under Section 302 I.P.C. for life imprisonment and a fine of Rs. Rs.10,000/- with stipulation of default clause, under Section 452 IPC for seven years rigorous imprisonment and a fine of Rs.5000/- with stipulation of default clause and under Section 354 IPC for two years rigorous imprisonment and a fine of Rs.2000/- with stipulation of default clause. All the sentences were directed to run concurrently.

2. Prosecution story, in nutshell, as unfolded in written report (Ex.Ka.-1), is as follows:

On 02.04.2008 at about 12:00 Noon, when Kanchan, daughter of the complainant Santosh Kumar, aged about 16 years and a student of class XI returned home from school, kept her bag and was changing her clothes and the younger son of the informant namely, Vikas aged about 13 years was at home, the accused Pawan Kumar entered into the house of the complainant through the roof of the neighbour and started outraging the modesty of the daughter of the complainant. On being objected, he became annoyed. The son of the informant, who was outside the house came inside, to which the accused Pawan picked the kerosene container, poured it on Kanchan, lit the matchstick, set her ablaze and fled away from the roof of the house. The son of the informant, who witnessed the incident, started shrieking, on which the neighbour Smt. Urmila came at the spot and extinguished the fire that broke out in the roof of the house. At the time of incident, the complainant was working as a labourer along with his wife. Urmila told that he had seen Pawan Kumar running from the place of incident.

3. On the basis of written report (Ex.Ka.-1), on 02.04.2008 at 16:30 hours, Chik First Information Report (Ex.Ka-5) as Case Crime No.90 of 2008, under Sections 354, 452, 307 IPC was registered against the accused at Police Station - Ekdil, District Etawah.
4. The complainant immediately took his daughter in burnt condition to Moti Jheel Hospital, Etawah by rickshaw and got her admitted there, where she was medico legally examined. On 02.04.2008 itself, the statement / dying declaration of the victim (Ex. Ka.3) was recorded by the Tehsildar. He also took her signature over the same. Victim was conscious at the time of statement. On the very next day her daughter was referred to Kanpur Ursala Hospital, where she remained admitted for 6 - 7 days and during treatment, she took her last breath.

5. On 10.04.2008 at 3:20 P.M., the autopsy of the deceased Kanchan was performed by Dr. V.P. Chaturvedi, who found following injuries on her person :

(i) Superficial to deep burn injuries all over the body except some parts of chest, stomach, knee joints, legs and soles were saved from burning.

As per opinion of the Doctor, the cause of death of the deceased was due to septicemia, as a result of ante-mortem burn injury. The postmortem report is Ex. Ka.-17.

6. Sub Inspector Sajjan Singh P.W.6 started the investigation and after inspection of the spot, prepared the site plan (Ex.Ka.-7). He recorded the statements of witnesses Kiran, Urmilla Devi, Vikas, Satya Prakash, Raghuveer and Amar Singh. Thereafter he recorded the injury report of the victim in case diary and took remand of the accused on 20.04.2008. After the death of victim, inquest report was prepared and postmortem was performed. Thereafter, Investigating Officer recorded the proceedings of inquest in case diary and also recorded the statements of witnesses of inquest. In G.D. No.29 dated 22.04.2008 time 18:10 hours, Section 302 IPC was added and thereafter he handed over the investigation to Station House Officer. The then Station Officer Pradeep Kumar Sharma took over the investigation and after perusal of the case diary and conclusion of the investigation, submitted charge-sheet (Ex.Ka.-16) against the accused. Thereafter cognizance was taken upon the said charge-sheet and the case was committed to the Court of Sessions.

7. Accused appeared before the Court and after hearing both the parties, charges were framed under Sections 452, 354, 302 IPC against the accused. The accused pleaded not guilty and claimed to be tried.

8. Trial started and in order to prove it□s case, the prosecution adduced P.W.1 Santosh Kumar, complainant (father of the deceased), P.W.2 Vikas (brother of the deceased), P.W.3 Panna Lal (Tehsildar, who recorded the dying declaration of the deceased), P.W.4 Dr. V.S. Agnihotri (who prepared injury report of the victim at District Hospital, Etawah), P.W.5 Virendra Pratap Singh (Head Moharrir, P.S. Ekdil), P.W.6 S.I. Sajjan Singh (Investigating Officer, who inspected the spot, prepared site plan and recorded the statements of the witness and prepared other papers), P.W.7 S.I. Girja Shanker (performed the inquest and prepared other papers), P.W.8 S.I. Pradeep Kumar (subsequent Investigating Officer who investigated the matter and submitted charge-sheet against the accused) and P.W.9 Dr. V.P. Chauturvedi (conducted the post-mortem of the deceased).

9. In support of oral version, following documents were filed and proved on behalf of the prosecution:

Written report / tehrir dated 02.04.2008 (Ex.Ka.-1), inquest report dated 09.04.2008 (Ex.Ka.-2), dying declaration dated 02.04.2008 (Ex.Ka.-3), injury report (Ex.Ka.-4), chik first information report (Ex.Ka.-5), G.D. report dated 02.04.2008 (Ex.Ka.-6), site plan (Ex.Ka.-7), photo nash (Ex.Ka.-8), G.D. Entry dated 22.04.2008 (Ex.Ka.-9), sample seal (Ex.Ka.-10), challan nash (Ex.Ka.-11), Application to S.S.P. (Ex.Ka.-12), Letter to C.M.O. (Ex.Ka.-13), Report (Ex.Ka.-14), inquest report (Ex.Ka.-15), charge-sheet (Ex.Ka.-16) and postmortem report (Ex.Ka.-17).

10. After the prosecution evidence was over, all adverse/incriminating circumstances relied upon by the prosecution were disclosed to accused in question answer form for his version of occurrence as per mandate of Section 313 Cr.P.C. Accused denied all those adverse/incriminating facts put to him and said that the prosecution case is false, he is innocent and falsely implicated. Investigation was not done in fair and impartial manner. Accused also pleaded that the statement of the victim was wrongly recorded, as she (victim) was not in a position to speak and did not say anything.

11. Trial Court, having heard learned counsel for parties and going through entire record, vide impugned judgment and order, convicted and sentenced the accused-appellant as above. Hence, feeling aggrieved with said judgment and order, present accused-appellant has filed this appeal.

12. Heard Sri Abhishek Sharma, Amicus Curiae for the appellant, Sri Aditya Kumar Tripathi, counsel for the complainant and Sri Virendra Kumar Pal, the A.G.A. for the State.

13. The Amicus Curiae appearing for appellant argued that the prosecution case is totally baseless and from the evidence available on record, no case is made out as against the convict / appellant. It was further argued that the learned trial court has misinterpreted the evidence available on record. No ingredient to bring home the guilt of the accused under Sections 452, 354, 302 IPC was proved by the prosecution. On the basis of analysis of prosecution evidence, no guilt against the accused appellant is established and proved. Learned trial court misread the evidence and convicted and sentenced the appellant. It was further argued that this appeal pertains to the year 2011 and the appellant is languishing in jail for a considerable period of time. The sentence for life imprisonment awarded to the appellant by the trial court is very harsh and excessive.

14. The Amicus Curiae for the appellant further submitted that the injuries sustained by the deceased did not result into her instantaneous death. If, for the sake of argument, it is assumed that appellant has committed the offence, in that case also no offence under Section 302 IPC is made out. This case can maximum travel up to the limits of offence under Section 304 IPC, because the deceased died after 7 days of the occurrence due to developing the infection in her burn-wounds, i.e., septicaemia. As per catena of judgments of Hon'ble Apex Court and this Court, offence cannot travel beyond section 304 IPC, in case the death occurred due to septicaemia. He further submitted that autopsy report also shows that cause of death was septicaemia as a result of ante mortem burn injuries.

15. The counsel for the complainant as well as the A.G.A. for the State vehemently opposed the submissions made on behalf of the appellant and submitted that PW-1, the father of the deceased and P.W.-2, the brother of the deceased have fully supported the prosecution case in their testimony. Other witnesses of fact have also corroborated the prosecution version. Severe burn injuries were found on the body of the deceased. Hence, while going through the evidence on record, it cannot be said that the offence under Sections 452, 354, 302 IPC is not made out against he appellant. The learned trial court has not committed any error in convicting and sentencing the accused- appellant under Sections 452, 354, 302 IPC. There is no merit in the appeal and the same is liable to be dismissed.

Analysis

16. In the light of above, following questions arise for consideration in present appeal :

(i) Whether the dying declaration of the deceased is reliable or not ?

(ii) Whether the prosecution could be said to have proved it□s case against the appellant - convict beyond reasonable doubt ?

(iii) Whether the present case is a case of culpable homicide not amounting to murder and, therefore, conviction / sentence of the appellant - convict is liable to be converted / reduced under section 304 I.P.C. ?

Oral Evidence on Record.

17. Informant Santosh Kumar, who is the father of the deceased Kanchan, has been examined by the prosecution as P.W.1. He is not an eyewitness of the incident. However, in his deposition, he has stated that the incident is of 02.04.2008. He and his wife had gone for labour work. At around 12:00 noon, a boy named Chaman came to this witness and asked him to come to his home immediately as some untoward incident had happened. He immediately returned to his home on the motorcycle of Chaman and found his daughter Kanchan, aged about 16 years, lying completely burnt. He immediately took Kanchan in burnt condition to Moti Jheel Hospital, Etawah by rickshaw and got her admitted. He asked his daughter Kanchan and his son Vikas regarding the incident on which, both of them have told him that when Kanchan had returned from school as usual and was changing her clothes, just then accused, who is present in Court, came down from roof of adjacent house through stairs and molested his daughter with bad intention. When his daughter tried to save herself and resisted, the accused poured kerosene oil upon her and thereafter set her on fire with a matchstick. At that time his son had also entered the house. Accused Pawan Kumar fled away from the roof by taking stairs. Hearing the noise of his son Vikas, their neighbours Satya Prakash, Urmila Devi and others also came on spot. After getting his daughter Kanchan admitted to Moti Jheel Hospital, he came back to Etawah Court where he got typed his written report / Tehrir from typist. Aforesaid written report / Tehrir was read out to him and thereafter he signed the same. This witness has proved the written report / Tehrir as Ex.Ka.-1. He gave the written report / Tehrir to Senior Superintendent of Police, Etawah. His daughter was referred to Ursala Hospital, Kanpur on the next day of her admission where she remained admitted

for about 6 □ 7 days and died therein. On the second day of Kanchan□s death, he was made the witness of the inquest along with Arvind, Raju and his wife Kiran Devi. He signed on the inquest report and has proved inquest report as Ex.Ka.-2. He had also shown the scene of crime to the Investigating Officer. He also identified signature of his daughter Kanchan Kumari on Paper No.10-Ka, which is the dying declaration of his daughter.

18. The cross-examination of P.W.1 was deferred on 20.01.2009 and was cross-examined at length on 03.03.2009. As this witness is not an eyewitness of the incident, therefore, his all cross-examination is with respect to timing of his arrival on the spot. However, in his cross-examination, he has confirmed that information of the incident was given to him by Chaman. He has also confirmed that when he arrived in his house, he found his daughter completely burnt. This witness is the informant and has proved his written report / Tehrir as Ex.Ka.-1 as well as inquest report as Ex.Ka.-2. This witness has also proved the fact that on his arrival in his home on the date of incident, he found his daughter lying in a burnt condition.

19. The younger brother of the deceased namely, Vikas has been examined as P.W.2. The trial Court after recording his age and putting some questions, came to the conclusion that he understands right and wrong and thereafter recorded its satisfaction that witness is capable of giving testimony. In his examination-in-chief, P.W.2 has stated that on the date and time of incident, he was in the gallery of his house. He did not go to school as he was unwell on that day. Both of his parents had gone to work. His younger brother, aged about 2□ years at that time, was with him. His sister Kanchan, who was aged about 16 years at that time, had returned from the school and was changing her clothes inside the room. On hearing shrieks of his sister Kanchan, he went inside and saw that accused Pawan Kumar was molesting his sister and his sister was resisting, just then accused poured kerosene oil from a container kept there, on his sister and set her on fire with a matchstick. After setting her ablaze, accused went to the roof taking stairs and ran away from there. His sister Kanchan in a burning state came out of the room and went to the bathroom located in the courtyard. He tried to extinguish the fire by sprinkling water and raised alarm, then their neighbours Urmila Devi, Satya Prakash and other villagers came on spot and extinguished the fire. Chaman of his village brought his father on his motorcycle. Thereafter his father took his sister to the hospital. His sister Kanchan died in Kanpur Hospital about seven days after the burning. Accused Pawan Kumar□s house is situated at a distance of 5 - 6 houses from his house. Accused Pawan Kumar is present in Court, whom he knew and identified.

20. On the request of defence, the cross-examination of P.W.2 was deferred, however, an adjournment application was moved, which was rejected. No cross-examination was done, therefore, cross-examination of this witness was closed. This witness was again recalled on 10.02.2010, however, no one came to cross-examine this witness. His cross-examination was again closed. On the application of defence, this witness was again recalled and his cross-examination was concluded on 14.07.2010. P.W.2 in his cross-examination has stated that on the date of incident, he had fever and, therefore, he was at home. He was cross-examined regarding the place of incident and its directions. He, in his cross-examination, again affirmed that his sister came from school and was changing her clothes when accused Pawan Kumar came there. Before this incident, Pawan Kumar had never come to his house. He came to know about it when the noise started. Pawan Kumar was molesting his sister. When he reached, Pawan ran away after setting her sister

ablaze. Therefore, this witness has confirmed the prosecution story in his cross-examination as well.

21. The then Naib Tehsildar, Etawah Pannalal P.W.3 in his deposition has stated that on 02.04.2008, he had recorded the dying declaration of Kanchan daugher of Santosh on the direction of S.D.M., Etawah. Kanchan was in a very burnt state. Whatever was stated by Kanchan, he had recorded the same. He started recording her statement on 02.04.2008 at 2:30 P.M. and concluded the same at 2:46 P.M. After recording her statement, he obtained the signature of Kanchan. He also obtained the fitness certificate from Emergency Medical Officer, Etawah that injured / victim is in a fit state to give her statement and only thereafter he recorded her statement. After recording the statement of the injured / victim, he again obtained certificate from the same Medical Officer that she was in a fit state. This witness has proved the dying declaration of the deceased as Ex.Ka.-10. Inspite of giving opportunity to the defence, no one turned to cross-examine this witness, therefore, his cross-examination was closed. However, on the application of defence, this witness was also recalled for cross-examination and in his cross-examination done on 21.11.2009, this witness has stated that when he arrived in hospital for recording the statement, family members of the victim were there, however, he had sent them outside. He had put questions to the victim to which she had answered. However, he had not recorded the dying declaration in question - answer form. The victim was promptly giving answers to the questions asked to her and was not taking time in giving the answers. This witness has proved the dying declaration of the deceased.

22. Dr. V.S. Agnihotri P.W.4 medico legally examined the deceased when she was admitted in District Hospital, Etawah on 02.04.2008 and prepared her medico legal examination report. This witness has proved the injury report of Kanchan as Ex.Ka.-4. He has found wounds of burn injuries, light on some places and dark on other places, both legs were positioned forward. Except knees, back side of both palms, some part of abdomen and head, the entire body was burnt. Colour was red and on some part blackening was present, hair of skull and eyebrows were singed. Smell of kerosene oil was there on burn injuries. Ulcers / sores were also present on some parts. The injured was conscious. Pulse and blood pressure was zero. Injuries were kept under observation and injured was admitted in the hospital. In his opinion, Kanchan has sustained those burn injuries as a result of burning from kerosene oil on 02.04.2008 at 12:00 noon. This witness was not cross-examined by the defence.

23. Head Constable Virendra Pratap Singh P.W.5, who was the scribe of the first information report, is a formal witness, who has proved the first information report as Ex.Ka.-5 and G.D. Report dated 02.04.2008 time 16:30 hours as Ex.Ka.-6.

24. Sub Inspector Sajjan Singh P.W.6 is the first Investigating Officer of this case, who after taking the investigation in hand inspected and prepared the site plan. He recorded the statement of various witnesses and took the accused on remand. When Section 302 I.P.C. was added after the death of deceased Kanchan, he handed over the investigation to Station Officer of concerned police station. This witness has proved the site plan as Ex.Ka.-7.

25. Sub Inspector Girja Shanker Pandey P.W.7 conducted the inquest proceedings of deceased Kanchan and has prepared the inquest report. He has proved various papers viz. Photo nash, G.D.

Entry, sample seal, challan nash, Application to S.S.P., Letter to C.M.O., Report P.S. Kotwali, Kanpur Nagar as Ex.Ka.-8 to Ex.Ka.-14. This witness has also proved inquest report as Ex.Ka.-15 by verifying his signature. This witness has stated that Ex.Ka.-2 is already marked earlier on the inquest report.

26. The then Station Officer Pradeep Kumar Sharma P.W.8 concluded the investigation and submitted the charge-sheet, which has been proved by this witness as Ex.Ka.-16.

27. Dr. V.P. Chaturvedi P.W.9 is the autopsy surgeon, who has conducted postmortem examination of the deceased Kanchan and has proved the postmortem report as Ex.Ka.-17. Antemortem burn injuries found on the body of deceased and cause of death have already been mentioned in Para 5 of this judgment.

Question No.1 : Whether the dying declaration of the deceased is reliable or not ?

28. The then Naib Tehsildar, Etawah Pannalal P.W.3 has recorded the dying declaration of Kanchan on 02.04.2008 at 2:30 P.M. P.W. 3 in his deposition has categorically stated that prior to recording the dying declaration of Kanchan, he obtained the fitness certificate from the Emergency Medical Officer that she is in a fit state to give statement. Only thereafter, he recorded her statement. He further deposed that after recording the statement of the injured / victim, he again obtained certificate from the same Medical Officer that she was in a fit state during recording of her dying declaration. Therefore, P.W.3, after obtaining the fitness certificate from the Emergency Medical Officer, started recording the statement of victim at 2:30 P.M. and concluded the same at 2:46 P.M. He, after recording the statement of victim, again obtained fitness certificate. The dying declaration of the injured / victim Kanchan has been proved by this witness as Ex.Ka.-10.

29. Before going into the submissions made by both the parties on facts and law it would be proper to have a glance over the dying declaration of the deceased recorded by Naib Tehsildar P.W.3 and proved as Ex.Ka.-3, which contains the certification by Emergency Medical Officer, Sadar Hospital, Etawah regarding the medical fitness of the victim both prior to and after recording the dying declaration. The dying declaration of the victim is reproduced here-in-below :-

"बयांन कंचन पुत्री संतोष उम्र लगभग १६ वर्ष निवासी वमनपुरा ने किया की हम पढ़ने के लिये सुबह संत कबीर पब्लिक स्कूल नगला खादर में पढ़ने के लिये गई हुई थी जब हम घर लौट कर आई तो माँ व पिता घर पर नहीं थे मैं अपने कपड़े बदलने लगे तो पड़ोस के माकन जो मेरे पिता का मकान है उसके मकान के दक्षिण को दीवाल से ज़ालिम का मकान है उसी दीवाल से एक लड़का चढ़ आया और छीना झपटी करने लगा जब मैंने विरोध किया और चिल्लाई तो पवन पुत्र रामहंस ने आग लगा दिया और उसी रास्ते जिस रास्ते से आया उसी से भाग गया जब हम चिल्लाई तो पड़ोस से जो चाची थी वह छत से आई और मोहल्ले वाले आये जिन्होंने आग बुझाई मेरे पिता से किसी की कोई दुश्मनी नहीं है और न ही मैं किसी को फ़साने का बयांन दे रही हूँ "

The dying declaration of the victim, originally made in hindi language is translated / reproduced in english as under :

'The statement was made by Kanchan, daughter of Santosh, aged approximately 16 years, resident of Vamanpura, stating that : I had gone to study at Sant Kabir Public School, Nagla Khadar in the morning. When I returned home, my mother and father were not at home. I started changing

my clothes. Then, from the south wall of the neighbor's house (which belongs to my father and is adjacent to Zalim's house), a boy climbed over and began scuffling with me. When I resisted and screamed, Pawan, son of Ramhans, set me on fire and fled back the same way he had come. When I screamed, an aunt from the neighborhood came from the roof, and other people from the locality arrived and extinguished the fire. My father has no enmity with anyone, nor am I giving this statement to falsely implicate anyone.

30. A dying declaration is admitted in evidence on the principle of 'Nemo moriturns proesumitur mentiri i.e. a man will not meet his maker with a lie in his mouth. Dying declaration does not require any corroboration as long as it creates confidence in the mind of the Court and is free from any form of tutoring. In Lakhan V. State of MP(2010) 8 SCC 514, the Apex Court in para no.9 of it's judgment has observed as under :-

"9. The doctrine of dying declaration is enshrined in the legal maxim nemo moriturus praesumitur mentire, which means "a man will not meet his Maker with a lie in his mouth'. The doctrine of dying declaration is enshrined in Section 32of the Evidence Act, 1872 (hereinafter called as "the Evidence Act') as an exception to the general rule contained in Section of the Evidence Act, which provides that oral evidence in all cases must be direct i.e. it must be the evidence of a witness, who says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross-examined. Such statements themselves are relevant facts in certain cases.'

31. In Khushal Rao v. State of Bombay AIR 1958 SC 22, Kusa v. State of Orissa (1980) 2 SCC 207 and in Meesala Ramakrishan v. State of A.P. (1994) 4 SCC 182 (SCC p. 183, para 4) it has been held that the law is well settled that the conviction can be founded solely on the basis of dying declaration, if the same inspires full confidence.

32. In Ranjit Singh v. State of Punjab (2006) 13 SCC 130, it has been held that: (SCC p. 134, para 13)

'conviction can be recorded on the basis of a dying declaration alone, if the same is wholly reliable, but in the event there exists any suspicion as regards the correctness or otherwise of the said dying declaration, the courts in arriving at the judgment of conviction shall look for some corroborating evidence.'

33. The Apex Court in Nanhau Ram v. State of M.P. 1988 Supp SCC 152 has held that normally, the court, in order to satisfy itself whether the deceased was in a fit mental condition to make the dying declaration, looks up to the medical opinion. But, where the eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. While dealing with the evidence of the declarant's mind, the Constitution Bench in Laxman v. State of Maharashtra (2002) 6 SCC 710, has laid down thus: (SCC pp. 713-14, para 3)

'The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful

consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy itself whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite.'

34. In the State of MP V. Dal Singh (2013) 14 SCC 159, an issue arose regarding the acceptability of dying declaration where the victim suffered from 100% burn injuries and had placed her thumb impression on her statement and the ridges and curves were clearly found on the thumb impression. The Apex Court in para 30 of this judgement has observed that

'There may also be in a given case, a situation where a part of the body may bear upon it severe burns, but a small part of the body may have none. When burns occur on the scalp, they may cause greater difficulties. They can usually be distinguished from wounds inflicted before the body was burnt by their appearance, their position in areas highly susceptible to burning, and on fleshy areas by the findings recorded after internal examination. Shock suffered due to extensive burns is the usual cause of death, and delayed death may be a result of inflammation of the respiratory tract, caused by the inhalation of smoke. Severe damage to the extent of blistering of the tongue and the upper respiratory tract can follow due to the inhalation of smoke.'

35. The Apex Court in para 16 of PV Radhakrishnan V. State of Karnataka (2003) 6 SCC 443 has observed that

'The residuary question whether the percentage of burns suffered is a determinative factor to affect the credibility of the dying declaration and the improbability of its recording. There is no hard-and-fast rule of universal application in this regard. Much would depend upon the nature of the burn, part of the body affected by the burn, impact of the burn on the faculties to think and convey the idea or facts coming to mind and other relevant factors. Percentage of burns alone would not determine the probability or otherwise of making the dying declaration.'

36. In Ram Bihari Yadav V. State of Bihar & Ors. MANU/SC0302/998 in para 9, the Apex Court has held that

'Generally, the dying declaration ought to be recorded in the form of questions and answers but if a dying declaration is not elaborate but consists of only a few sentences and is in the actual words of the maker the mere fact that it is not in question-answer form cannot be a ground against its acceptability or reliability. The mental condition of the maker of the declaration, alertness of mind, memory and understanding of what he is saying, are matters which can be observed by any person. But to lend assurance to those factors having regard to the importance of the dying declaration, the certificate of a medically trained person is insisted upon. In the absence of availability of a doctor to certify the above-mentioned factors, if there is other evidence to show that the recorder of the statement has satisfied himself about those requirements before recording the dying declaration there is no reason as to why the dying declaration should not be accepted.'

37. The Hon'ble Apex Court in para 22 of Atbir V. Govt. (NCT of Delhi) (2010) 9 SCC 1 has observed as under :

'(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.

(ii)The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

(iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot be the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

(v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.'

38. The Apex Court in Paniben v. State of Gujarat (1992) 2 SCC 474 has laid down some factors, which can be considered to determine when a dying declaration should be accepted. The relevant para 18 of this judgment is reproduced herein below :-

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

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

(iii) The court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See K. Ramachandra Reddy v. Public Prosecutor [(1976) 3 SCC 618 : 1976 SCC (Cri) 473 : AIR 1976 SC 1994] .)

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

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

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

(vii) Merely because a dying declaration does not [Added by official Corrigendum No. F.3/Ed. B.J./107/2003 dated 28-10-03] contain the details as to the occurrence, it is not to be rejected. (See State of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 Supp SCC 455 : 1981 SCC (Cri) 364 : AIR 1981 SC 617] .)

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

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

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

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

39. The Hon□ble Apex Court in Irfan alias Naka Vs. State of Uttar Pradesh, 2023 SCC OnLine 1060 in para 62 has affirmed the aforesaid factors for determining when a dying declaration should be accepted. However, the Apex Court has made it clear that these factors will only affect the weight of the dying declaration and not its admissibility. In this case, there were two dying declarations, which were not found consistent and were rather found contradictory to the oral evidence on record.

40. The Apex Court in PV Radhakrishnan V. State of Karnataka (2003)6SCC443 in para 12 and in Naeem V. State of UP (2024) 3 SCR 36 in para 6, has observed that a dying declaration carries great evidentiary weight but lacks the safeguard of cross-examination, so courts must ensure it inspires full confidence. The declaration must be free from tutoring, prompting, or imagination, and the deceased must have been in a fit mental state with a clear opportunity to identify the assailant. Once the court is satisfied of its truth and voluntariness, a conviction can be based solely on it without corroboration. The rule requiring corroboration is not an absolute rule of law but merely a rule of prudence. Thus, a credible and reliable dying declaration alone is sufficient to sustain a conviction.

41. The Apex Court in Surajdheo Ojha & Ors. V. State of Bihar 1980 (Supp) SCC 769 in para 3 observed that

'Moreover, the deceased has also given a short statement which is a proof of the manner in which the deceased was assaulted. The shortness of the statement itself, appears to be the guarantee of its truth. Even the Doctors who examined the deceased do not say, that having regard to the injuries, the deceased would have become unconscious immediately. In this view of the matter we are fully satisfied about the truth of the dying declaration.'

42. Law thus can be summarized that a credible and reliable dying declaration alone is sufficient to sustain a conviction. The rule requiring corroboration is not an absolute rule, but merely a rule of prudence. A dying declaration, even if brief or short in nature, holds significant evidentiary value under Indian law and is well recognized as an exception to the hearsay rule under Section 32(1) of the Indian Evidence Act, 1872. It is well settled that the value of a dying declaration depends not upon its length but upon its truthfulness, clarity, and the conscious state of the declarant. The absence of elaborate detail does not diminish its legal sanctity. Whenever there is a brief dying declaration it is indictive of the fact that it is neither the result of tutoring nor prompting. The shortness of the statement is itself a guarantee of its veracity.

43. Generally, the dying declaration ought to be recorded in the form of questions-answers but if a dying declaration is not elaborate but consists of only a few sentences and is in the actual words of the maker the mere fact that it is not in questions-answer form cannot be a ground against its acceptability or reliability.

44. If a person recording the dying declaration finds the victim / deceased to be in a fit physical and mental condition to make a statement, absence of fitness certificate in respect of such state of deceased is not essential in every case. The percentage of burns marks on the deceased is not a determinative factor in assessing the credibility of a dying declaration, as mental fitness depends on various factors such as the nature and impact of injuries, not solely on the extent of physical harm. The mental condition of the maker of the declaration, alertness of mind, memory and understanding of what he is saying, are matters which can be observed by any person. But to lend assurance to those factors having regard to the importance of the dying declaration, the certificate of a medically trained person is insisted upon. In the absence of availability of a doctor to certify the above mentioned factors, if there is other evidence to show that the recorder of the statement has satisfied, himself about those requirements before recording the dying declaration there is no reason as to why the dying declaration should not be accepted. Normally the court looks to the medical opinion about the fit condition of the declarant at the time of making the statement. But this cannot be an inelastic rule. If the person who records the statement or the witness to the declaration tenders satisfactory evidence as to the fit mental condition, the Dying Declaration will be accepted.

45. In the light of above principles, the acceptability of the alleged dying declaration in the instant case has to be considered. The dying declaration is only a piece of untested evidence and must, like any other evidence, satisfy the court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.

46. The incident happened on 02.04.2008 at about 12:00 noon, immediately thereafter injured / victim Kanchan was admitted to District Hospital, Etawah where she was medico legally examined by Dr. V.S. Agnihotri P.W.4 at 12:15 P.M. and prepared her injury report Ex.Ka.-4. Thereafter, Naib Tehsildar Panna Lal P.W.3 recorded her dying declaration at 2:30 P.M. Meaning thereby, the dying declaration of the victim was recorded within 2 hours 30 minutes of the occurrence of the incident. The victim was referred to Ursala Hospital, Kanpur on the next day of her admission where she remained admitted for 6 - 7 days and died therein during the course of treatment. Kanchan in her dying declaration has specifically stated that she was burnt by Pawan son of Ramhans. She in her dying declaration has also briefly and precisely stated the manner of incident that when she returned home after attending her school and was changing her clothes, one boy entered into their house and started scuffling with her, to which she resisted and raised noise, on this Pawan son of Ramhans set her on fire and ran away. Victim□s dying declaration is a brief statement in which she has not only named her assailant, but even the manner of incident has been precisely stated by her. P.W.3 has proved the aforesaid dying declaration and it has come in his deposition that he obtained requisite fitness certificates from the Emergency Medical Officer both

prior to and after recording of dying declaration of the victim. The veracity of her dying declaration further strengthens the fact that Dr. V.S. Agnihotri found burn injuries on the body of the victim with smell of kerosene oil on her burn injuries. Therefore, we are of the opinion that prosecution has been able to prove the dying declaration of Kanchan as Ex.Ka.-10 and the same is brief, precise and reliable. Accordingly, Question No.1 is answered in the affirmative.

Question No.2 : Whether the prosecution could be said to have proved it's case against the appellant - convict beyond reasonable doubt ?

47. In the present case, prosecution has successfully proved the dying declaration of the deceased Ex.Ka.-3. As per the aforesaid dying declaration, it was accused Pawan Kumar, who has burnt her. The aforesaid dying declaration has been found by this Court to be reliable and conviction of the appellant can be sustained only on the strength of aforesaid dying declaration without there being any corroboration. However, P.W.2 Vikas, who is the younger brother of the deceased Kanchan, has also deposed regarding the incident. Vikas P.W.2 in his deposition has stated that on the date of incident, he was in his house. He, on hearing shrieks of his sister Kanchan, went inside and saw accused Pawan Kumar molesting his sister. His sister was resisting and just then accused Pawan Kumar poured kerosene oil from a container upon his sister and set her on fire with the matchstick. Accused Pawan thereafter ran away from the spot.

48. Vikas P.W.2 in his deposition has stated that on the date of incident, he tried to extinguish the fire of his sister by sprinkling water and also raised alarm, then their neighbours Urmilla Devi, Satya Prakash and others came on spot. However, victim in her dying declaration has clearly stated that on her shrieks, one auntie from their neighbourhood came from the roof and other people from the locality also arrived and extinguished her fire. It is important to observe here that victim has not stated anything about the presence of her younger brother Vikas on the spot or even at the time of extinguishing her fire. Victim in her dying declaration has stated that accused was scuffling with her. However, Vikas P.W.2 has deposed that accused was molesting her. We have already found the dying declaration to be truthful and, therefore, when deposition of P.W.2 is tested in the light of specific averments made in the dying declaration of the deceased, a serious doubt arises in our mind regarding the presence of P.W.2 on the spot at the time of incident. We have carefully perused and evaluated the deposition of P.W.2 in the light of dying declaration of the deceased and are of the opinion that the presence of P.W.2 on the spot at the time of incident is doubtful, therefore, his depostion cannot be relied upon.

49. Informant Santosh Kumar P.W.1 is the father of the deceased, who in his deposition as P.W.1, has categorically stated that when he arrived on spot, he found his daughter Kanchan lying completely burnt. Therefore, the aforesaid evidence of P.W.1 also partially corroborates the prosecution version.

50. Ocular as well as documentary medical evidence prove it on record that the deceased Kanchan sustained burn injuries and she died due to septicemia as a result of antemortem burn injuries. Therefore, ocular as well as documentary evidence corroborate this part of the prosecution story that the deceased suffered burn injuries on the date and time of the alleged incident and she finally succumbed to her injuries due to septicemia, as a result of antemortem burn injuries.

51. Site plan Ex.Ka.-7 also proves that towards southern side of the house of informant, house of Zalim Singh is there, from where appellant - convict Pawan Kumar climbed over and thereafter ran away from the same route after committing the crime, which further corroborate the contents of dying declaration of deceased.

52. In the totality of the circumstances, the prosecution has been able to successfully prove the dying declaration of the deceased, which is a reliable piece of evidence, which in the present case is in itself sufficient to convict the appellant. However, in the instant case, the aforesaid dying declaration also finds partial corroboration from the deposition of P.W.1. The ocular as well as documentary medical evidence strengthen the prosecution version that the deceased sustained burn injuries on her body at the time of incident and ultimately she died due to septicemia, which was a result of burn injuries. It is also clear from the dying declaration (Ex. Ka.3) of the deceased that no allegation whatsoever regarding molestation has been made by the victim and this Court has found the presence of P.W.2 on the spot at the time of incident as doubtful, therefore, the prosecution has not been able to prove the charge of molestation framed against the appellant - convict. Prosecution has been able to prove the charge of house-trespass passed against the appellant - convict and the aforesaid house-trespass by the appellant - convict has been committed for assaulting the deceased and she was even set on fire. Therefore, the prosecution has been able to prove the charge under Section 452 I.P.C. against the appellant - convict. Therefore, we are of the opinion that in the present case, prosecution has been able to prove its case against the appellant - convict beyond reasonable doubt so far as charges of culpable homicide and criminal trespass are concerned, however, the prosecution has not been able to prove the charges under Section 354 I.P.C. Question No.2 is, therefore, accordingly decided.

Question No.3 : Whether the present case is a case of culpable homicide not amount to murder and, therefore, conviction / sentence of the appellant - convict is liable to be converted / reduced under section 304 I.P.C. ?

53. The Supreme Court while analyzing difference between culpable homicide amounting to murder and culpable homicide not amounting to murder in Anbazhagan V. State Represented by the Inspector of Police (2024) 20 SCC 500 in paras 39-44 has held that-

’39- This Court in Phulia Tudu (2007) 14 SCC 588 has observed that the academic distinction between ‘murder’ and ‘culpable homicide not amounting to murder’ has always vexed the courts. The confusion is caused if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300 of the IPC. The following comparative table will be helpful in appreciating the points of distinction between the two offences:-

Section 299	**Section 300**

Section 299	**Section 300**
A person commits culpable homicide if the act by which the death is caused is done-	Subject to certain exceptions culpable homicide is murder if the act by which death is caused is done-
	Intention
	(1) with the intention of causing death; or
	(2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or
(a) with the intention of causing death;	
or	(3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
(b) with the intention of causing injury as is likely to cause death; or	Knowledge
	(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as is mentioned above
(c) with the knowledge that the act is likely to cause death	

'40' Clause (b) of Section 299 of the IPC corresponds with clauses (2) and (3) of Section 300 of the IPC. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the of ender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the intention to cause death is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the of ender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This clause (2) is borne out by illustration (b) appended to Section 300 of the IPC.

'41' Clause (b) of Section 299 of the IPC does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 of the IPC can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that

particular person as a result; of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300 of the IPC, instead of the words □likely to cause death□ occurring in the corresponding clause (b) of Section 299 of the IPC, the words □sufficient in the ordinary course of nature□ have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 of the IPC and clause (3) of Section 300 of the IPC is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word 'likely' in clause (b) of Section 299 of the IPC conveys the sense of probable as distinguished from a mere possibility. The words 'bodily injury'..sufficient in the ordinary course of nature to cause death□ mean that death will be the 'most probable' result of the injury, having regard to the ordinary course of nature.

'42' For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. The decision in the case of Rajwant Singh v. State of Kerala, AIR 1966 SC 1874, is an apt illustration of this point.

'43' The scope of clause thirdly of Section 300 of the IPC has been the subject matter of various decisions of this Court. The decision in Virsa Singh (supra) has throughout been followed in a number of cases by this Court. In all these cases the approach has been to find out whether the ingredient namely the intention to cause the particular injury was present or not? If such an intention to cause that particular injury is made out and if the injury is found to be sufficient in the ordinary course of nature to cause death, then clause thirdly of Section 300 of the IPC is attracted.

'44'Analysing clause thirdly and as to what the prosecution must prove, it was held in Virsa Singh (supra) as under:-

'15. First, it must establish, quite objectively, that a bodily injury is present;

16. Secondly, the nature of the injury must be proved; These are purely objective investigations.

17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended'

18. Once these three elements are proved to be present, the enquiry proceeds further and,

19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is suficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the of ender.'

It was further observed as under:-

'20. - If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional. (Emphasis supplied)

The Apex court also observed in para 66 that

'66'Few important principles of law discernible from the aforesaid discussion may be summed up thus:-

'66.1'When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate : 'A' is bound hand and foot 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

'66.2' Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

‘66.3’ To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is ‘guilty intention,’ whereas the second part would apply when there is no such intention, but there is ‘guilty knowledge’.

‘66.4’Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

‘66.5’ Section 304 of the IPC will apply to the following classes of cases:

(i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section,

(ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC,

(iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

‘66.6’ To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

‘66.7’ The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

‘66.8’ The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution

fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC

'66.9' The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

'66.10' Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary cause of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

'66.11' When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

'66.12' Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the of ence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

'66.13' In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.

54. In the present case, in the statement recorded under section 313 Cr.P.C. in the year 2011, the accused has stated his age to be about 21 years. Therefore, at the time of commission of offence i.e. 02.04.2008, the appellant was about 18 years of age and the deceased was a school going girl of about 16 years at the time of incident. The prosecution has successfully proved that the deceased was set on fire by the appellant - convict. The victim Kanchan sustained extensive burn injuries and she died after 7 days of the incident due to septicemia, as a result of ante mortem burn injuries. Therefore, it is clear that burn injuries were caused to the deceased by appellant with the knowledge that his act is likely to cause death. Any reasonable person by any stretch of imagination can easily come to a conclusion that burning someone alive is likely to cause death.

55. In the present case, P.W.4 although found smell of kerosene oil on burn injuries, but no container of kerosene either empty or partially filled was found on spot. Moreover, no traces of kerosene oil were found on spot by the Investigating Officer.

56. It is an admitted fact that the deceased died after 7 days of burning and her postmortem report (Ex. Ka.-17) clearly goes to show that she died due to septicemia as a result of antemortem burn injuries. Autopsy Surgeon Dr. V.P. Chauturvedi P.W.9 in his deposition has affirmed the aforesaid finding recorded by him in postmortem report (Ex.Ka.-3) of the deceased. It is crystal clear that death of deceased was a homicidal death. Now the question remains that whether homicidal death of the deceased would fall within the four corners of murder or culpable homicide not amounting to murder. In the present case, there is no such evidence that appellant - convict was previously known to the deceased or her family members. Therefore, it is not a case of any previous enmity or earlier harassment. The deceased in her dying declaration has not stated any allegation of her molestation at the hands of appellant - convict. The victim has clearly stated that the appellant - convict was scuffling with her. The victim has stated that when she resisted and screamed, then appellant - convict set her on fire. The victim has not stated that how she was set on fire i.e. whether any kerosene oil or any other inflammable material was poured upon her or not.

57. We have carefully gone through the entire dying declaration of the deceased, which is the principle foundation for conviction of the appellant - convict. However, we are of the opinion that that the incident had happened in a spur of moment, that too during scuffle with no prior bad intention or planning. In this background, when evidence is again scrutinized, the victim was immediately shifted to hospital for treatment and she ultimately died due to septicemia as a result of burn injuries. As the death caused by the appellant - convict was not a premeditated and there being no previous enmity or instances of earlier harassment, therefore the present case falls under clause (c) of Section 299 I.P.C. We have carefully gone through the entire evidence and thus are of opinion that in the present case none of clause of Section 300 I.P.C. is attracted in the peculiar facts of the present case, therefore the offence committed by the appellant - convict falls under Part - II of Section 304 I.P.C. Resultantly, we are of the view that present appeal is liable to be partly allowed and the conviction of the appellant under Section 302 I.P.C. is liable to be converted into conviction under Section 304 Part-II I.P.C. However, fine amount imposed by learned trial Court is liable to be maintained. The appellant - convict is in jail for the last more than 18 years.

58. We have already arrived on the conclusion that prosecution has not been able to prove the charge under Section 354 I.P.C. against the appellant - convict. Therefore, the appellant - convict is liable to be acquitted so far as offence under Section 354 I.P.C. is concerned.

59. Accordingly, present Appeal is partly allowed and the appellant is convicted for the offence under Section 304 Part-II I.P.C. and is sentenced to undergo maximum imprisonment provided therein i.e. 10 years imprisonment without remission and is acquitted for the offence under Section 354 I.P.C. However, fine and default sentence imposed upon the appellant - convict by learned trial Court under Section 302 I.P.C. is maintained under Section 304 Part-II I.P.C. with default sentence. Therefore, a fine of Rs.10,000/- is imposed upon appellant under Section 304 Part-II I.P.C. and in case of his failure to deposit the same, he shall undergo an additional imprisonment of one year. However, we affirm the conviction and sentence imposed upon the

appellant by learned trial Court under Section 452 I.P.C. along with the fine and sentence imposed under default clause. The appellant / convict is in jail for the last more than 18 years and as such has completed his sentence alongwith the default sentence for Section 304 Part-II and Section 452 I.P.C., therefore, he shall be set at liberty forthwith, if he is not wanted in any other case.

60. Let a copy of the judgment be provided immediately to the appellant through Superintendent Jail, free of cost.

61. The record of the 'Trial Court' be sent back immediately with a copy of this judgment for necessary information and compliance.

62. Lastly, the Court records its word of appreciation for the able assistance rendered by Sri Abhishek Sharma, Amicus Curiae for the appellant, who assisted the Court in reaching to its logical conclusion. Sri Abhishek Sharma, learned Amicus Curiae for the appellant shall be paid Rs.15,000/- by the High Court Legal Services Committee as fee, if not already paid in this case and if any amount has already been paid to him, the same shall be adjusted.

(2026) 5 ILRA 306
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 11.05.2026

BEFORE

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

Criminal Appeal No. 7543 of 2006
& Other Connected Cases

Santosh & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to whether the prosecution proved its case beyond reasonable doubt notwithstanding the omission of the name of one deceased in the charge framed under Ss. 302 read with 149 IPC, and whether the testimony of injured and related eye-witnesses, corroborated by medical and ballistic evidence, could be relied upon despite alleged discrepancies in the ocular evidence regarding firing distance and the absence of proof of motive.

Headnotes

Criminal Law - Murder and Unlawful Assembly - Reliability of injured witness - Defective charge - Indian Penal Code, 1860 - Ss. 147, 148, 302, 307 and 452 read with S. 149 - Code of Criminal Procedure, 1973 - Ss. 215, 464 and 465 - Object of framing a charge - Error or omission in charge - Failure of justice - Testimony of injured witness - Minor discrepancies in ocular evidence - Motive - Appellants convicted for offences punishable under Ss. 147, 148, 302, 307 and 452 read with S. 149 IPC - Contention that omission of the name of one deceased from the charge under S. 302 read with S. 149 IPC vitiated the trial and caused prejudice - Held, the object of

framing a charge is to make the accused aware of the accusations to enable him to effectively defend himself - Under Ss. 215, 464 and 465 Cr.P.C., an error or omission in the charge is not material unless the accused was misled and it occasioned a failure of justice - In the present case, the accused were questioned regarding the omitted deceased in their examination under S. 313 Cr.P.C. and the prosecution witnesses were extensively cross-examined on the said aspect - No prejudice was caused to the appellants - Testimony of an injured witness carries special evidentiary value since the injury itself furnishes an in-built guarantee of his presence at the place of occurrence - Minor discrepancies arising from prolonged cross-examination or lapse of time do not affect the substratum of the prosecution case - In a case resting on reliable direct evidence, motive loses its significance and failure to establish a specific motive is not fatal - Medical evidence and ballistic reports corroborated the ocular version - Conviction and sentence affirmed - Appeals dismissed. (Paras 3, 36, 37, 40, 44, 48, 54, 60, 73, 74, 77)

Held: The object of framing a charge is to make the accused aware of the accusations against him so that he can effectively defend himself. Under Ss. 215, 464 and 465 Cr.P.C., no error in stating the offence or particulars required to be stated in the charge and no omission therein shall be regarded as material unless the accused was in fact misled by such error or omission and it occasioned a failure of justice. In judging the question of prejudice, the Court must look to the substance of the matter and not to technicalities and its principal concern should be to ascertain whether the accused had a fair trial and sufficient notice of the accusations against him. In the present case, the appellants knew from the inception of the trial that they were being prosecuted for the murder of the deceased whose name was omitted from the formal charge, they were afforded full opportunity to cross-examine the prosecution witnesses and were specifically questioned in their examination under S. 313 Cr.P.C. regarding the said occurrence and, therefore, no prejudice or failure of justice was occasioned. The testimony of an injured witness carries special evidentiary value as the injury itself constitutes an in-built guarantee of his presence at the scene of occurrence and such a witness is unlikely to spare the real assailants. Minor discrepancies which do not go to the root of the matter and do not shake the basic version of the prosecution cannot be given undue importance, particularly where the witnesses have been subjected to lengthy cross-examination. In a case founded upon reliable direct evidence, motive loses its significance and failure to establish the precise motive is not fatal. The ocular testimony stands fully corroborated by the medical evidence, post-mortem reports, injury reports and ballistic expert report and the prosecution has proved its case beyond reasonable doubt. The conviction and sentence recorded by the Trial Court, therefore, call for no interference. (Paras 36, 37, 40, 41, 44, 53, 54, 60, 62, 73, 74, 76, 77) (E-7)

Case Law Cited

*Kali Charan and Others Vs. State of U.P. (***Criminal Appeal No. 122 of 2021***); Kahan Singh Vs. State of Haryana* **(1971) 3 SCC 216***; Gurpreet Singh v. State of Punjab,* **(2005) 12 SCC 615***; State of U.P. and Another Vs. Jaggo @ Jagdish and Others,* **1971 (2) Supreme Court Cases 42***; Shahid Khan and Others Vs. State of Rajasthan,* **2016 (4) SCC 1996***; State of Madhya Pradesh Vs. Saleem @ Chamaru and Another,* **2005 (5) SCC 554***; State of U.P. Vs. Krishna Master and Others,* **(2011) 1 SCC (Criminal) 381***; Bhagwan Jagannath Markad and Others Vs. State of Maharashtra,* **AIR 2016 SC (Criminal) 1461***; Abdul Sayeed Vs. State of Madhya Pradesh (***Criminal Appeal No. 1423 of 2007***); Leela Ram (D) through Duli Chand Vs. State of Haryana and Another (***Criminal Appeal No. 297 of 1992***); Bhag Singh & Ors. v. State of Punjab,* **(1997) 7 SCC 712***; Rana Pratap v. State of Haryana,* **AIR 1983 SC 680: (1983) 3 SCC 327***; Bharwada Bhoginbhai Hirjibhai v. State of Gujarat,* **(1983) 3 SCR 280: AIR 1983 SC 753***; Thaman Kumar v. State of Union Territory of Chandigarh,* **(2003) 6 SCC 380: AIR 2003 SC 3975***; Nathuni Yadav and Others v. State of Bihar and Another,* **1997 (34) ACC 576***; State of H.P. v. Jeet Singh,* **(1999) 4 SCC 370: AIR 1999 SC 1293***; Suresh Chandra Bahri v. State of Bihar,* **AIR 1994 SC 2420***.*

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Arms Act, 1959

List of Keywords

Criminal Appeal; Murder; Unlawful Assembly; Common Object; Injured Witness; Ocular Evidence; Medical Evidence; Defective Charge; Failure of Justice; Motive; Direct Evidence; Post-mortem Report; Ballistic Expert; Enmity; Abadi Land

Case Arising From

APPELLATE JURISDICTION: Criminal Appeals arising out of the judgment and order dated 29.11.2006 passed by the Additional Sessions Judge, Court No. 6, Mainpuri, in Sessions Trial No. 128 of 2002.

Appearances for Parties

Advs. for the Appellants:
Amit Kumar Gaur, Lav Srivastava
Advs. for the Respondents:
G.P. Dixit, Govt. Advocate, Nikhil Pratap Singh,
Ramesh Kumar,Sanjay kumar, Sharad chand Rai,
Tripurari Pal

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

1. All the above three Criminal Appeals have been filed under Section 374 (2) Cr.P.C. against the judgment and order dated 29.11.2006 passed by Sri Shyam Sundar, Additional Sessions Judge, Court No. 6, Mainpuri, in Session Trial No. 128 of 2002 (State Vs. Santosh and Others). As all the above three Criminal Appeals have been filed against the common judgment and order dated 29.11.2006, and therefore, all of them are being decided by a common judgment.

2. The Criminal Appeal No. 7543 of 2006 has been filed by appellants, to wit, Santosh son of Charan Singh, Kamlesh son of Sua Ram, Ram Naresh son of Sonelal and Ram Pal son of Kanaujiya Lal; Criminal Appeal No. 7712 of 2006 has been filed by appellants- Satyvir Singh, Shiv Vir Singh and Ram Avtar all sons of Sonelal and Criminal Appeal No. 7713 of 2006 has been filed by the appellants- Sukhvir son of Charan Singh and Arvind Singh son of Ram Naresh, all residents of Village- Nagla Bandh, Police Station- Kisni, District- Mainpuri, against the judgment and order dated 29.11.2006 passed by the Additional Sessions Judge, Court No. 6 Mainpuri, in Sessions Trial No. 128 of 2002, as aforesaid.

3. By the impugned judgment and order, all the appellants, to wit, Santosh, Kamlesh, Ram Naresh, Ram Pal, Satyavir Singh, Shiv Vir Singh, Ram Avtar, Sukhvir, Arvind Singh have been found guilty and convicted and sentenced to undergo imprisonment for a term of one year's for offence punishable under Section 147 Indian Penal Code (in short 'IPC'); one year's imprisonment for offence punishable under Section 148 IPC; appellants Kamlesh and Ram Naresh were further convicted and sentenced to undergo rigorous imprisonment for a term of five years and a fine of Rs. 2,000/- for offence punishable under Section 307 IPC and in default of payment of fine they were directed to undergo further imprisonment of four months; all the appellants were also convicted and sentenced to undergo imprisonment of life for offence punishable under Section 302 IPC and a fine of Rs. 5,000/- each and in default of payment of fine they were further directed to undergo imprisonment for a term of four months and lastly, all the appellants were convicted and sentenced to undergo imprisonment for a term of three years under Section 452 IPC and to pay a fine of Rs. 2,000/- and in default of payment of fine they were further directed to undergo

imprisonment for a term of four months, and it was directed that all the sentences shall run concurrently.

4. Brief facts of the prosecution case are that the informant Om Prakash son of Sri Sarman Singh Yadav, Resident of Village- Nagla Bandh, H/o Mudausi, Police Station- Kisni, District- Mainpuri, filed a written information (tehrir) dated 19.08.2001 before Incharge Police Outpost - Mogaon, Police Station- Kisni, District Mainpuri, stating therein that he is serving in the Army and had come to his village on leave. There was enmity over abadi land between Om Prakash and Santosh, Sukhvir Yadav and Kamlesh natives of his village. About one month ago he had come on leave to his house, then the reputed persons of the area had got the matter of disputed land settled in a panchayat, but the accused kept grudge against him and his family. His brother-in-law (saala) Mohar Singh son of late Pahelwan Singh Yadav, his nephew Sunil @ Baba son of Sobran Singh, both residents of village Nagla Sukhi, Police Station- Kurra had came to meet him because today he was going back to attend his duties after availing leave. Today, i.e. 19.08.2001 in the morning he and his younger brother Ganga Singh had gone to their field and his father was sitting to the North of his house, cleaning garlic and his wife was brooming in verandah. Her brother-in-law's (saala) son Sunil @ Baba had also gone to the field and his elder son Dharmendra alongwith his maternal uncle (mama) Mohar Singh had gone to see electric wires towards the transformer and his younger children Satendra and Jitendra were studying over the roof of the house. At about 07:30 a.m. the informant and his younger brother Ganga Singh returned home from the field and were talking to his father then Santosh, Sukhvir both sons of late Charan Singh, Kamlesh son of late Sua Ram, Naresh, Satyavir, Shivir and Ramadhar all sons of Sonelal Yadav. Arvind son of Ram Naresh and Shyam Pal son of Kanauji Lal resident of Village- Awazpur, Police Station- Kisni, armed with illegal weapons entered in his courtyard from the side of tubewell hurling abusive languages. As soon as he and his brother Ganga Ram looked towards the courtyard and objected then Santosh and Sukhvir shot at his wife Savitri Devi with intention to kill, she cried and his both sons sitting over the roof of the house also cried, then Kamlesh and Ram Naresh shot at their sons with intention to kill. All the accused rushed towards him, his brother Ganga Singh and his father. He himself and his brother took shelter behind the heap of straw (bhoose ka coop). Then, Kamlesh and Ram Naresh shot multiple fires at his father and upon the hue and cry of the informant and his brother, they ran towards tubewell. There his brother-in-laws nephew (Sunil @ Baba) was coming from the field. Satyavir and Shivvir, shot at him and thereafter all the accused ran towards the southern road of the village. Upon hearing the noise of fire his son Dharmendra and brother-in-law, Mohar Singh and Santosh were coming, when they were surrounded by the accused near Lala Ram s field where Ramadhar, Arvind, Shyam Pal shot at his son Dharmendra with intention to kill. He himself, Mohar Singh and Santosh somehow managed to save their lives after hiding themselves and all the accused after shooting ran towards Paharpur. His father, son Dharmendra and brother-in-law s son Sunil @ Baba had died at the spot and their dead bodies are lying there. The informant, his brother Ganga Singh and brother-in-law Mohar Singh have somehow managed to bring his injured wife Savitri Devi, injured son Jitendra to the police station. Due to the indiscriminate firing by the appellants there is terror in and around the village and due to the fear of the appellants, none of the villager is ready to come with him.

5. Upon this information chik FIR under Case Crime No. 248 of 2001, Sections 147, 148, 149, 452, 307 and 302 IPC, was registered at Police Outpost- Kushmura, Police Station- Kisni, District-

Mainpuri on 19.08.2001 at 10.00 a.m. and the investigation commenced. The Investigation Officer reached at the place of occurrence and collected blood-stained and plain earth from the places of occurrence where the dead bodies were lying and prepared their fard baramadagi marked as Ext. Ka-28 to Ext. Ka- 32. He also collected empty cartridges from the places of occurrence and prepared its fard baramadagi which he proved as Ext. Ka- 33 to Ext. Ka- 36. The informant□s wife Savitri Devi succumbed to her injuries and the inquest of all the four deceased were prepared alongwith related papers. The dead bodies were sent for postmortem and the postmortem was conducted. The Investigating Officer recorded statements of informant, injured and other witnesses. The injured Jitendra was medically examined. The I.O. in the course of investigation arrested accused and recovered country made pistol at the pointing out of accused Sukhvir and prepared its fard baramadagi and separate case under Section 25 of Arms Act was lodged against him, which was separately investigated. The Investigation Officer sent the cartridges, recovered from the places of occurrences and recovered pistol, for forensic examination. The Investigating Officer after completion of investigation submitted charge-sheet before the Chief Judicial Magistrate, Mainpuri.

6. The concerned court took cognizance of the offence and summoned the accused, they appeared before the court and they were furnished copies of relevant prosecution papers under Section 207 Cr.P.C. and thereafter, the case was committed for trial to the Court of Sessions on 18.04.2002.

7. The accused appeared before the Sessions Court and charge under Sections- 147, 148, 302 read with 149, 307 read with 149 and 452 IPC was framed against them to which they pleaded not guilty and claimed to be trite.

8. The prosecution has examined nine witnesses to prove its case , to wit, P.W. 1 informant-Om Prakash; P.W. 2 injured Jitendra Singh; P.W. 3 Dr. U.C. Chaturvedi, (the doctor who examined injured Jitendra Singh and prepared its injury report); P.W. 4 Ganga Singh; P.W. 5 Dr. R.D. Yadav, (who conducted postmortem of all the four deceased); P.W. 6 S.I. Asht Muni, (who prepared inquest of deceased Dharmendra Singh, Sunil @ Baba and Sarman Singh along with related papers); P.W. 7 S.I. Anuj Kumar Tyagi; P.W. 8 Constable Clerk Ram Kumar Singh, who scribed chik FIR and G.D. No. 12; P.W. 9 S.I. Satya Pal Singh (who prepared inquest of deceased Savitri Devi alongwith related papers).

9. The prosecution has produced following documentary evidence to prove its case, namely, ballistic expert report Paper No.13a/2; written application (tehrir) Ext. Ka-1; injury report of injury Jitendra Ext. Ka-2; Postmortem report of deceased Smt. Savitri Devi Ext. Ka-3; Postmortem report of deceased Dharmendra Singh Ext. Ka-4; Postmortem report of deceased Sunil @ Baba Ext. Ka-5; Postmortem report of deceased Sarman Singh Ext. Ka-6; inquest report of deceased Dharmendra Singh Ext. Ka-7; a copy of chik FIR Ext. Ka-8; a copy of G.D. Ext. Ka-9; the letter to CMO Ext. Ka-10; Challan nash Ext. Ka-11; Photo nash Ext. Ka-12, the letter to R.I. Ext. Ka-13, inquest of deceased Sunil @ Baba Ext. Ka-14 and related papers for conducting postmortem such as copy of chik FIR, copy of GD, the letter to CMO, sample seal, challan nash, photo nash as Ext. Ka-15 to Ext. Ka-20, respectively; inquest of deceased Sarman Singh Ext. Ka-21, along with related documents; copy of chik FIR, copy of GD, the letter to CMO as Ext. Ka-22 to Ext. Ka-27

respectively; fard baramadagi of taking into possession plain concrete and blood-stained concrete from the roof of the house of the informant Ext. 19-28; blood stained earth from the place where Savitri Devi was shot Ext. Ka-29; blood-stained earth from the place where the dead body of deceased Sarman Singh was found Ext. Ka-30; fard baramadagi of taking sample of blood-stained earth from near the dead body of Sunil @ Baba Ext. Ka-31; fard baramadagi of taking sample of blood-stained earth near the dead body of Dharmendra Singh as well as plain earth Ext. Ka-32; three empty cartridges 315 bore from near the body of Dharmendra as Ext. Ka-33; two empty cartridges 315 bore and one empty cartridge 12 bore recovered from near the place of dead body of Sunil @ Baba as Ext. Ka-34; fard baramadagi of three empty cartridges 315 bore from near the dead body of Sarman Singh as Ext. Ka-35; fard baramadagi of two cartridges 315 bore and one empty cartridge from the house of informant as Ext. Ka-36; fard baramadagi of empty cartridges 12 bore and empty cartridges 315 bore as material as Ext. 1 to 7; site plan of the place of occurrence as Ext. Ka-37; the charge-sheet as Ext. Ka-38; the chik FIR as Ext. Ka-39, a copy of G.D. as Ext. Ka-40; inquest of deceased Savitri Devi and related papers necessary for postmortem of deceased Savitri Devi as Ext. Ka-41 to Ext. Ka-45, respectively; Postmortem report of Savitri Devi prepared by Dr. U.C. Chaturvedi as Ext. Ka-46.

10. P.W. 1- Om Prakash is the informant and also eye witness of the incident. He has stated that the incident occurred on 19.08.2001 at about 07.00 a.m. His father was cleaning garlic in front of northern door of his house, his wife was sweeping the verandah, his brother-in-law's son Sunil @ Baba had gone for nature's call in field. His elder son Dharmendra alongwith his maternal uncle (mama) had gone to see electric wires near transformer; his two sons, Satendra and Jitendra were studying over the roof of the house. His younger brother Ganga Singh and he himself were talking to his father, after returning from field. Then Santosh, Ram Naresh, Ramadhar, Satyavir, Dharmpal, Kamlesh, Shivvir, Arvind and Shyampal came there. Santosh and Sukhvir were having tamancha 315 bore, Shivvir and Ram Naresh were having tamancha 12 bore and rest of the accused were having tamancha 315 bore. They entered in his courtyard from towards the tubewell hurling abuses, as soon as he and his brother Ganga Singh saw and objected them, Santosh and Sukhvir fired at his wife Savitri Devi with intention to kill as a result she got injured and cried and his both children stepped down from the roof and also cried and while her children were peeping from the roof then Kamlesh and Ram Naresh fired at them with intention to kill. Upon hue and cry of the informant and his brother Ganga Singh all the accused pounced upon them and his father. The informant and his brother Ganga Singh hid themselves behind the heap of straw (bhoose ka coop) and saw that Ram Naresh and Kamlesh shot at his father killing his father. He and his brother raised alarm to save themselves, then the accused ran towards tubewell. There Sunil @ Baba was returning home, the appellants Satyavir and Shivvir fired at him with intention to kill, as a result he died on the spot. The appellants ran towards the southern road of the village, and the informant saw Sunil @ Baba being killed from the north-western edge of his house and chased the accused, because his son had gone in that direction from where his son Dharmendra and his maternal uncle (mama) Mohar Singh and Santosh were returning home. They were surrounded near Lalaram□s field and appellants Shyam Pal, Ramadhar and Arvind fired at his son as a result he died at the spot. Mohar Singh and Santosh saved their lives by hiding themselves. All the accused ran towards Paharpur thereafter. As a result of these firings his father Sarman Singh, Dharmendra Singh and his brother Sunil @ Baba have died at the spot and his wife Savitri Devi and son Jitendra were injured. The informant was serving in Army and had come to his home on leave. There was enmity between him and accused

Santosh, Sukhvir and Kamlesh over an abadi land. One month prior to this incident, they had entered into compromise due to intervention of some reputed persons but the accused were not satisfied with this compromise and they were keeping enmity against them. His brother-in-law Mohar Singh and nephew Sunil @ Baba had come to meet him because his leave was over and he had to join the next day. The accused Shyam Pal is resident of Awazpur and he is relative of accused Santosh and Sukhvir. The informant, his brother Ganga Singh and Mohar Singh brought his wife Savitri Devi and injured son Jitendra to the police Outpost- Kushmara, District- Mainpuri with a written application. The witness has proved application (tehrir) as Ext. Ka-1 and has stated that he brought his injured wife soon to Maharaj Tejsingh, Hospital Mainpuri, but she died on way in between Bhogaon and Mainpuri. He admitted his son Jitendra in the Hospital and kept his wife's dead body in front of the Hospital's gate. The condition of Jitendra was serious so he was referred to Agra. This witness has been cross-examined to a considerable length and time by different advocates of all the appellants and his cross-examination continued for more than one and a half years. It is submitted on behalf of the appellants that there are material contradictions in his statement which will be discussed in later part of this judgment.

11. P.W. 2 Jitendra is the injured witness and son of the informant, he has also supported the prosecution case and has stated that on 19.08.2001 at about 07:30 a.m. he was reading over the roof along with his brother Santosh. His mother was sweeping in the courtyard, his grand-father Sarman Singh was cleaning garlic in front of the door of his house. His father Om Prakash and uncle Ganga Singh had returned from the field and were talking to his grand-father. About one day prior to this incident his maternal uncle (mama) Mohar Singh and his nephew Sunil @ Baba had come to his house. During the time of this incident his father was on ten days leave and on the next day of this incident, he had to go to join his duties. His maternal uncle and Sunil @ Baba had come to meet his father. His maternal uncle Mohar Singh and brother Dharmendra Singh had gone to see the electric wires of the transformer and his maternal uncle's son Sunil @ Baba had gone towards the field, then all the nine accused carrying tamanchas came. Accused Shyam Pal resides in village Awazpur and the rest are residents of his own village. All the accused came abusing from western side of his house and entered inside the courtyard. His father and uncle objected to them, then accused Santosh and Sukhvir fired at his mother with intention to kill causing her serious injuries. Upon hearing the sound of fire and the cry of his mother, he and his brother Satendra raised alarm and peeped from the roof and saw, then Ram Naresh and Kamlesh fired at him with intention to kill as a result he himself sustained grievous injuries. Thereafter accused rushed towards his father and uncle, who hid themselves behind the heap of straw and saved themselves. Ram Naresh and Kamlesh fired at his grand-father, as a result he died at the spot. His father and uncle raised alarm to call villagers then the appellants ran towards western side, there his maternal uncle's son Sunil @ Baba was coming then appellants Satyavir and Shivvir fired at Sunil @ Baba with intention to kill and he died on the spot. Then the appellants ran towards southern side shooting fire, from that direction his brother Dharmendra and maternal uncle Mohar Singh were coming. Appellant Ramadhar, Arvind and Shyam Pal fired at him with intention to kill as a result he died on the spot. Dharmendra was shot near Lalaram's field and his maternal uncle Mohar Singh and Santosh saved themselves after hiding themselves behind the bushes. Thereafter, all the accused shot 30-35 rounds of fire to create terror and panic. The villagers were frightened and did not chase them. His mother was alive and was taken to police outpost- Kushmara alongwith him. There, he and his mother kept sitting inside the jeep and his father lodged the report at the police outpost- Kushmara. Thereafter, the Inspector

came near his jeep and inquired about the incident from him and his mother. The condition of his mother was serious, thereafter, she was brought to Mainpuri but she scummed to injuries before reaching the railway crossing between Boghaon and Mainpuri. His father brought them to hospital. His condition was serious so he was referred to S.N. Medical College, Agra. There his X-Ray was conducted, given treatment and was operated. He remained admitted for about one month in the hospital. There was a land dispute regarding abadi land between his father and the appellants and a civil case is pending in the court. Due to the above, the appellants had committed the murder. This witness was also cross-examined at length for a considerable period. It is submitted on behalf of the appellants that there are material contradictions in his statement which will be discussed in later part of this judgment.

12. P.W. 3- Dr. U.C. Chaturvedi, is the formal witness, who has medically examined injured Jitendra Kumar, aged about 12 years, on 19.08.2021 at about 11:10 a.m. at District Hospital, Mainpuri. He found following injuries on Jitendra Kumar:-

1. Lacerated wound of 1cm X 0.5 cm X muscle deep over right side of abdomen 10 cm away from umbilicus. Fresh clotted blood present. No burning or tattooing or blackening seen. This injury was kept under observation and X-ray advised,

2. Fire-Arm wound of entry,size 0.3 cm. X 0.3cm, X skin deep over front of left arm 15 cm. below the tip of right shoulder. fresh clotted blood clot present. X-ray was advised and this injury was kept under observation.

3. Injury no, 3 (which is shown to be injury no. 2 in the medical report), is fire-arm wound of entry, size 0.3 cm. X 0.3 cm, over right side of upper part of chest 1.5 cm. below the mid 1/3 of right collar bone, soft blood clot present. This injury was kept under observation and X-ray was advised.

4. (This injury shown to be injury no. 3 in the medical report), is fire-arm wound of entry, size 0.3 cm. X 0.3 cm. X muscle deep over back of right hand, between base of III and IV fingers. This injury was kept under observation and X-ray was advised.

5. (This injury shown to be injury no. 4 in the medical report), is fire-arm wound of entry, size 0.4 cm. X 0.4 cm, over outer part and front side of leg 3.5 cm below the knee. Soft clotted blood present. This injury was kept under observation and X-ray was advised.

6. (This injury shown to be injury no.5 in the medical report), is fire-arm wound of entry, size 0.4 cm X 0.4 cm. X over inner side of right leg 9 cm, below the ankle. Soft blood clot present. This injury was kept under observation and X-Ray was advised.

13. P.W. 4 Ganga Singh, is also an eye witness of the incident, he has also stated the same version of the incident as was stated by P.W. 1- Om Prakash and P.W. 2 Jitendra Singh, and has stated that all the accused were armed with deadly weapons i.e. tamanchas, came at his brother's (Om Prakash) house and shot fire at his bhabhi Savitri Devi, his father, Sarman Singh, causing their death. They also shot at Jitendra and Satendra who were sitting at the roof of the house causing

injuries to Jitendra. The accused also shot at Sunil @ Baba who was coming from field to the western side of the house. The appellants ran towards tubewell where they shot at Dharmendra near Lalaram's field causing his death. He has stated that his brother Om Prakash and Mohar Singh brought the injured Savitri Devi and Jitendra to police outpost Kushmara and Om Prakash lodged the FIR and from there they took both the injured to Mainpuri, but Savitri Devi died on the way due to the injuries and Jitendra was admitted in District Hospital Mainpuri, where his condition was found serious, so he was referred to S.N. Medical College, Agra.

14. P.W. 5- Dr. R.D. Yadav, has conducted autopsy of deceased Savitri Devi on 20.08.2001 at about 11:05 a.m. in District Hospital, Mainpuri. He found following ante mortem injuries over the body:

1. wound measuring 6 cm. X 4 cm, on anterior aspect left for arm; skin, muscles are missing, wound was exposed, just above the wrist joint. Abrasion and burning present on the margins of the wound.

2. firearm wound of entry present on the lateral 1/3 of clavicles measuring 3.5 cm. X 3 cm. Abrasion and tattooing present around the injuries and also the margins are everted.

3. firearm wound of exit measuring 0.5 cm x 1 cm, on the middle of left scapular region. Margins are everted. Muscles are coming out from the wound.

4. firearm wound of exit measuring 2 cm. x 5 cm on the left scapular region; 2 cm, above the injury no.3. Margins are everted and muscles and tissues coming out from the wound.

5. Left clavicle fractured at its lateral 1/3rd and part missing.

6. Left I,II,III ribs were fractured.

7. Left scapula fractured at 2 places at wounds of exit.

He has also conducted postmortem of deceased Dharmendra Singh and found following ante-mortem injuries:-

1. fire arm wound of entry 4.2 cm X 2.5.cm, on the left part of nose, upper lip and left ramous of mandible. Tattooing and burning present on the margins of wound and also on the tongue.

2. Maxilla fractured and missing alongwith upper four incisor, teeth hard palate and nasal bones are fractured. Part of hard palate missing.

3. firearm wound of exit 12 cm. X 4.5 cm, on the left Parietal region. Durameter and brain material coming out.

4. fire arm wound of exit 5 cm X 3 cm, on the left posterior-supirio part of right parietal region. Right parietal and occipital bones are fractured. Dura and brain material coming out.

5. firearm wound of exit measuring 3cm X 3 cm on the top of head. Both occipital and parietal bones are fractured. Dura and brain material coming out.

6. firearm wound of entry measuring 0,4 cm, X 0.4 cm (diagram of the wound in the injury around which tattooing and abrasion are mentioned) on the left hypochondriac region. Margins inverted and burning present.

7. firearm wound of entry 0.5 cm X 0.5 cm, on the right lateral border of abdomen just above illiac crushed. Margins inverted.

He has also conducted postmortem of deceased Sunil @ Baba and found following ante-mortem injuries:

1. fire arm wound of entry measuring 1 cm x 1 cm on the right temporal region (diagram of injury made in which around the wound tattooing and abrasions were shown lacerated.

2. fire arm wound of entry 4 cm X 3 cm, on the root of nose, forehead between both eye brow and between bony socket of left ball. The nasals bones, parietal bones and bones of both bony socket of eye balls fractured.

3. wound exit measuring 2.5 cm x 1 cm extending from the left eye brow alongwith the left parietal region to the posterior-superior part of the right parietal region. Membranes and brain material missing.

4. Both frontal, both pallets and occipital, right temporal bone fractured in pieces.

5. fire arm wound of entry measuring 1,5 cm x 1 cm, on the chest medial to the anterior field of axilla of right side. Margins are inverted and tattooing present on the margins.

6. Multiple firearm wounds of entry, measuring 0.3 cm. X 0.3 cm, distributed in an area of 20 cm x 14 cm, on the back right region; right lateral border of abdomen just above the right illiac crushed. Margins are everted,.

He has also conducted postmortem of deceased Sarman Singh and found following ante-mortem injuries:-

1. Cruciform wound of entry measuring 3.4 cm. X 2.1 cm, on the left temporal region (some part of P.M. torn) margins are inverted; tattooing Present around the margins of wound, just in front of root of the left ear.

2. Left temporal muscle (P.M. torn) eye socket and right Parietal bone were fractured.

3. fire arm wound of exit, measuring 8.5 cm X 7 cm, on the right temporal region extending from outer angle of right eye to the root of right ear and below up to right angle of mandible including lower part of right ear. Membrance and brain material coming out.

4. Right temporal, right maxilla, right mandible, bony socket of right ball fractured.

5. fire arm wound of entry 9 cm X 4 cm, on the left hypo-humdrum present. Margins are inverted and tattooing present.

6. wound of exit measuring 15 cm X 7 cm, on the back ravel region present. Abdominal Viscera are coming out.

7. Left 10,11,12 ribs are fractured at its posterior part.

15. The defence did not cross-examine the above witness despite being given an opportunity.

16. P.W. 6 Asht Muni, is the formal witness, who being posted as Head Constable at Police Station- Kisni on 19.08.2001, prepared inquest of deceased Dharmendra Singh, Sunil @ Baba and Sarman Singh along with related papers, at the direction of Station House Incharge A.K. Tyagi and also proved his signature over the fard baramadagi of taking into the possession the sample of plain concrete and blood-stained concrete from roof of house of the informant and plain-earth and blood-stained earth from places where Savitri Devi was shot and where dead body of deceased Sarman Singh, Sunil @ Baba and Dharmendra Singh was found. He has also proved the recovery memo of empty cartridges found at the place of occurrence, despite being given opportunity this witness is also not been examined by the defence.

17. P.W. 7- S.I. Anuj Kumar Tyagi has investigated the case and has stated that injured Savitri Devi met him at Police Outpost- Kushmura and recorded her statement there. The other injured Jitendra was also there and his statement was also recorded, their condition was serious so after preparing chitti majrubi, they were sent to Hospital. Thereafter, he reached at the place of occurrence(s) and the dead body of deceased Dharmendra was found to the south of village where at his direction inquest was prepared by Asht Muni. Three empty cartridges 315 bore were found from near the place where the dead body was found and its fard baramadagi was prepared. Thereafter, the inquest of deceased Sunil @ Baba and Sarman Singh were prepared at his direction and fard baramadagi of empty cartridges, plain earth and blood-stained earth found near the dead bodies, was prepared. Sample of plain earth and blood-stained earth was taken from the courtyard of the house alongwith two empty cartridges 315 bore and one empty cartridge 12 bore. Its fard baramadagi was also prepared. The sample of concrete and blood-stained concrete was taken from the roof of the informant□s house and its fard baramadagi was prepared. The three dead bodies were sent to District Hospital, Mainpuri for post-mortem. The same day, Om Prakash met and told him that Savitri Devi had died before reaching the Hospital. He recorded statement of informant Om Prakash and at his pointing out prepared site-plan of the place(s) of occurrence. He arrested accused and recorded their statements. Appellant Sukhvir was arrested carrying a tamancha 315 bore alongwith two live cartridges regarding which a separate Case No. 259 of 2001 was registered. He recorded statements of witnesses and filed charge-sheet (Ext. Ka-13) in the Magistrate□s Court. The defence did not cross-examine this witness.

18. P.W. 8- Constable Ram Kumar Singh is the formal witness who has proved the chik FIR and copy of G.D. as Ext. Ka-39 and Ext. Ka-40, respectively, scribed on the basis of (tehrir) given by the informant Om Prakash.

19. In his cross-examination, he has said that the entry of SO Anuj Kumar Tyagi is not mentioned in G.D. No. 12 dated 19.08.2001. He does not remember whether on 19.08.2001, the I.O. had reached at Police Outpost- Kushmura. According to G.D. No. 12, the presence of I.O. at Police Outpost- Kushmura on 19.08.2001, is not there. It is correct that both the injured were brought to the Police Outpost- Kushmura. A special report of the crime was sent through constable Krishna Swaroop by G.D. No. 17 dated 19.08.2001 at 11.30 a.m. to headquarter. His return is not mentioned in G.D dated 19.08.2001. The injured were soon sent to hospital after the FIR was lodged. The injured kept sitting in jeep so there was no blood dropped at the Police Outpost.

20. P.W. 9- S.I. Satyapal Singh, is the person who prepared inquest of deceased Savitri Devi at District Hospital, Mainpuri on 19.08.2001 at 02.:10 p.m. alongwith its related papers which the eye-witness has proved as Ext. Ka- 41 to 45.

21. In his cross-examination, he has said that as per the memo from the doctor, Savitri Devi had died during treatment in the hospital. In memo Ext. Ka-46, it is written that the deceased was brought by her husband in dead condition in hospital. He had heard about the murder of Savitri Devi in Kotwali but did not try to note the crime number and section of the crime. It is true that the crime number is not mentioned in the inquest and other related papers. He had completed inquest on 19.08.2001 at 03.30 p.m.

22. After closure of prosecution evidence, the statement of appellants under Section 313 Cr.P.C. were taken in which they denied the prosecution case and have stated that false case has been lodged against them, due to enmity and partybandi. Witnesses have deposed against them due to enmity. Except for appellant Shyam Pal rest of the appellants have stated that Ganga Singh had earlier falsely implicated the absconded accused Rajveer in many cases and he has committed these murders alongwith his companions. Due to fear, the informant instead of lodging the FIR against Rajveer, has lodged false case against them. Accused Shyam Pal has stated that he is resident of the same village and has been falsely implicated in this case due to partybandi. He has no concern with other co-accused and does not even know them.

23. The defence has filed chik FIR of Case Crime No. 34 of 2006 under Sections- 147, 148, 149, 307, 302 IPC as Ext. Kha-1. The defence also summoned the ballistic expert to controvert the prosecution case, but at the time of examination-in-chief, D.W. 1 Shri Ram Asrey Pandey, requested for pellets recovered from near the dead body of deceased Dharmendra Singh to give a concrete opinion, but the prosecution failed to produce them as they were not available in Malkhana of Police Station or in Sadar Malkhana of the district. Thereupon, the defence endorsed on record that now it will not produce ballistic expert as defence witness. The defence has not examined any other witness in support of their contention.

24. After hearing argument of learned Counsel for the parties and perusal of record, the learned Trial Court observed that the prosecution has proved its case beyond reasonable doubt. The

FIR was lodged promptly and there is no delay in lodging the FIR. The FIR was not ante-timed. The statements of witnesses were consistent and reliable. There were no contradictions between the ocular and medical evidence and accordingly, the learned Trial Court found the appellants guilty of the offence and convicted and sentenced them to the term as indicated above.

25. Heard the rival submissions of learned Counsel for the parties and learned A.G.A for the State and perused the record.

26. It is submitted on behalf of the appellants that prosecution has failed to prove its case beyond reasonable doubt. The first argument, on technical point, is raised on behalf of the appellants that as per the prosecution, four persons were murdered in the incident and for charge framed against the appellants for the offence punishable under Section 302 read with 149 IPC. name of one of the deceased Sunil @ Baba is not mentioned in it, thus, the charge was defective, which cost prejudice to the appellants and thus, this omission or error has occasioned failure of justice. So on this ground, the impugned judgment and order is not sustainable, and in its support the appellants have relied upon case in Criminal Appeal No. 122 of 2021 (Kali Charan and Others Vs. State of U.P.) decided on 14.12.2022, of Supreme Court, which will be discussed in later part of this judgment. It is also submitted that there was no motive on the part of the appellants to commit the said crime, the prosecution has failed to prove motives and thus, the prosecution has not been able to prove its case beyond reasonable doubt. It is also submitted that the presence of P.W. 1 Om Prakash, P.W. 2 Jitendra Singh and P.W. 4 Ganga Singh at the place of occurrence(s) is highly doubtful and particularly those of P.W. 1 Om Prakash and P.W. 4 Ganga Singh, because if they were also present at the place of occurrence then there was no reason why the appellants would have spared them unhurt. It is further submitted that as per prosecution the alleged incident occurred at three different places and it is highly unlikely and also there is no evidence that P.W. 1, Om Prakash, P.W. 2 Jitendra Singh and P.W. 4 Ganga Singh were present at all these three places, therefore, their testimony with regard to the entire incident(s) is not believable. It is also submitted that the statement of P.W. 4 Ganga Singh under Section 161 Cr.P.C. was recorded at belated stage by the Investigating Officer, which raises doubt over his testimony. It is also submitted that the ocular testimony is not supported by medical evidence and there are major contradictions in it which raises serious doubt over the prosecution case. It is further submitted that the prosecution has failed to examine material witnesses of fact namely Mohar Singh and Santosh Singh, whom the prosecution says that they witnessed the murder of Dharmendra Singh @ Ballu. Therefore, non-production of these witnesses raises serious doubt over the prosecution case. It is also submitted that witness Ganga Singh, had lodged several reports against Gangster Rajvir and Kalua was on visiting terms with the informant, due to this he would have committed the aforesaid murders and the appellants have been falsely implicated in this case. It is also submitted that it is highly unlikely that each of the murder would be committed by the other members or other persons of the group rather than by the persons who allegedly shot the earlier deceased. The appellants have relied upon case law (State of U.P. and Another Vs. Jaggo @ Jagdish and Others) 1971 (2) Supreme Court cases 42, (Shahid Khan and Others Vs. State of Rajasthan) 2016 (4) SCC 1996, which shall be discussed in later part of this judgment.

27. On the other hand, learned A.G.A and learned Counsel for the informant submitted that the prosecution case is proved beyond reasonable doubt, the FIR was prompt and contains the original

and true version of the incident. It was registered in a state of panic, shock and urgency. All the nine appellants are named in the FIR and their names, roles and weapons are mentioned in it. It is further submitted that minor contradictions are natural, and happen if the witness is cross-examined at length. The core prosecution story remains consistent in all essential particulars, therefore, minor contradictions have no bearing over the testimony of witnesses of fact. It is next submitted that the three material eye-witnesses namely informant Om Prakash, Ganga Singh and injured Jitendra Singh have supported the prosecution story, and, their presence at the spot is natural and well explained. So far as the, eye witness Mohar Singh is concerned, he has died therefore, he could not be examined before the court. There was motive for the appellants to commit this gruesome murder, because there was a land dispute between the informant and the appellants and due to this the appellants had developed enmity against the informants. The medical evidence fully corroborates the ocular testimony of the three eye-witnesses. The weapon recovered at the instance of appellant Sukhvir matches the cartridges, bullet recovered from the spot in the ballistic examination report which corroborates the prosecution case. It is also submitted that all the nine accused were armed with deadly weapons and all of them have actively participated in the crime, therefore, the crime was committed, in furtherance of common intention, as such, every member of the unlawful assembly is liable for the acts committed by the other. It is also submitted that before 2005, witness Ganga Singh had no criminal history and had no motive to falsely implicate the appellants. It is also submitted that the alleged incident occurred in the day light and the witnesses had seen the occurrence and there was no reason why they would implicate the innocent and spare the real culprits. The manner in which the murders were committed show that the appellants were in state of intense rage, it was a massacre, indiscriminate killings of children and elderly persons and woman which shows that the appellants had deep rooted motive and pre-meditation.

28. Prosecution has drawn the attention of the Court on different case laws such as 2005 (5) SCC 554 (State of Madhya Paradesh Vs. Saleem @ Chamaru and Another); (2011) 1 SCC (Criminal) 381 (State of U.P. Vs. Krishna Master and Others); AIR 2016 SC (Criminal) 1461 Bhagwan Jagannath Markad and Others Vs. State of Maharashtra; Criminal Appeal No. 1423 of 2007 Abdul Sayeed Vs. State of Madhya Pradesh, Supreme Court decided on 14.09.2010; Criminal Appeal No. 297 of 1992 Leela Ram(D) through Duli Chand VS. State of Haryana and Another, Supreme Court decided on 06.10.1999, which shall be discussed in later part of this judgment. So far as Saleem @ chamaru (supra) is concerned that case law relates to imposing adequate sentence and as in this case prosecution has not challenged the adequacy of sentence imposed, so this ruling has no application in this case.

29. The first submission on behalf of the appellants is that charge against them was defective and in charge No. 3 dated 27.08.2002 the name of deceased Sunil @ Baba is missing which is framed for offence punishable under Section 302 read with 149 IPC. In view of the above omission of the name of deceased Sunil @ Baba, the appellants have been misled and it has resulted in failure of justice and this error and omission has caused prejudice to the appellants. Learned counsel for the appellants has relied upon a judgment of the Hon'ble Supreme Court in Criminal Appeal No.122 of 2021 (Kali Charan and Others Vs. State of U.P.) dated 14.12.2022, in which the it was held that the object of the provisions in Chapter XVII in Cr.P.C., regarding framing of charge is obviously to make the accused aware of the accusations against him on the basis of which prosecution is seeking to convict him. The object of the provisions regarding framing of charge is

that, accused should be in a position to effectively defend himself and the accused can properly defend himself provided he should be clearly informed about the nature of the allegations against him before the actual trial starts. The relevant part of the judgment is extracted here in below:-

'19. Section 215 lays down when errors in the particulars required to be stated in the charge can be treated as material. It lays down that the error cannot be said to be material unless the accused was misled by such error or omission and that such error or omission has caused a failure of justice. Section 464 deals with effect of error or omission made while framing charges on the finding and sentence of the competent Court. The Section provides that the finding and sentence of the Court cannot be invalid merely on the ground of error in framing charge or omission in framing charge. The finding and sentence will be invalid only if in the opinion of the Court of appeal, the error or omission has occasioned a failure of justice.

20. When the Court of appeal is called upon to decide whether any failure of justice has been occasioned due to omission to frame a charge or error in the charge, the Court is duty bound to examine the entire record of the trial including all exhibited documents, depositions and the statements of the accused recorded under Section 313.'

30. In the above said case the Hon'ble Supreme Court observed that no questions were asked under Section 313 Cr.P.C. in statement of accused about post-mortem of the body of Harpal Singh, it was not put to the witness that cause of death of Harpal Singh was due to hemorrhage and shock as a result of injuries caused by sharp weapons. In view of the above it was held that if the accused is not explained the important circumstances appearing against him in the evidence, of which his conviction is sought to be based, the accused will not be in a position to explain the said circumstances brought on record against him and he will not be able to properly defend himself.

31. Section 215 and 464 of the Code of Criminal Procedure,1973, deal with such matters. Section 215 reads that □no error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice'

32. Section 464 reads that □no finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby'

33. A combined reading of the above provisions shows that the object of these sections is to prevent failure of justice and the irregularity in framing of the charge, is not fatal unless there is prejudice caused to the accused. The mere omission to frame the charge or a mere defect in the charge is no ground for setting aside a conviction. In Kahan Singh Vs. State of Haryana (1971) 3 SCC 216, it has been laid down that procedural laws are designed to subserve the ends of justice and not to frustrate them by mere technicalities. The object of the charge is to give the appellants notice of the matter he is charged with. If the necessary information is conveyed to him and ends of

justice is caused to him because of the charges, the appellants succeeds merely showing that the charges framed were defective nor could conviction recorded on charges under wrong provisions be reversed, if the accused were informed of the details of the offences committed, and thus no prejudice was caused to him. In Gurpreet Singh v. State of Punjab, (2005) 12 SCC 615, it was held that unless there is a failure of justice and thereby the cause of the accused has been prejudiced, no interference is required if the conviction can be upheld on the evidence led against the accused. The Court should not interfere unless it is established that the accused was in any way prejudiced due to the errors and omissions in framing the charges against him.

34. The other section relevant for our purpose is Section 465 of the Cr.P.C., which lays down that no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation of revision on account of any error, omission or irregularity in the proceedings, unless in the opinion of that Court, a failure of justice has in fact been occasioned. It further provides, inter alia, in determining whether any error, omission or irregularity in any proceeding under this Code, has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings. In judging the question of prejudice as of guilt, the Court must look to the substance of the matter and not to technicalities, and its main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him, fairly and clearly and whether he was given a full and fair chance to defend himself.

35. In view of the above legal position, if we look into the present case then the prosecution case is that all the nine appellants came to the house of the informant, armed with deadly weapons, and in the incident committed murder of Dharmendra Singh, Sarman Singh, Savitri Devi and Sunil @ Baba. The charge was framed by the trial court on 27.08.2022 and with regard to offence punishable under Section 302 read with 149 IPC, inadvertently, omitted the name of deceased Sunil @ Baba as one of the deceased. Charge No.3 as framed by the learned trial court is reproduced here in below:-

‘Thirdly, that on the aforesaid date time and place you with common object intentionally committed murder of Dharmendra Singh, Sarman Singh and Savitri Devi and thereby you committed an offence punishable u/s 302 read with section 149 I.P.C. and within the cognizance of this Court.’

It shows the names of three deceased as mentioned in it, except Sunil @ Baba. The evidence led on behalf of the prosecution is with regard to all the four deceased.

36. More importantly, the witnesses of fact have given details of murder of deceased Sunil @ Baba also, committed by the appellants and on this point they were cross-examined at length by the defence and after closure of prosecution evidence, statements of accused were recorded under Section 313 Cr.P.C. As per prosecution case Sunil @ Baba was shot by appellants Satyavir and Shivvir, and it would be proper to quote Question No. 9, asked from the accused, in their statement recorded under Section 313 Cr.P.C., which reads as follows –

"प्रश्न नं9- अभियोजन साक्ष्य है कि उक्त दिनांक समय व स्थान पर आप सत्यवीर व शिववीर ने वादी के साले के लड़के सुनील उर्फ (बाबा) की गोली प्रहार कर हत्या कर दी, जिस सम्बन्ध में आपको क्या कहना है?

उत्तर- गलत है।"

37. The above question reads that as per prosecution evidence appellants Satyvir and Shivvir had shot dead Sunil @ Baba, the son of informant's brother-in-law, to which they answered 'गलत है' (it is incorrect). Thereafter, the appellants were given opportunity to lead evidence in their defence, In view of the above, the appellants knew from the beginning that they are charged for murder of deceased Sunil @ Baba also, therefore, the error/ omission in charge with regard to the name of Sunil @ Baba in charge no. 3, has not misled the appellants which would have occasioned the failure of justice and no prejudice has been caused to the appellants due to such omission of name in the charge. In view of the above discussion, we are of the considered opinion that such omission in the charge has no adverse bearing over the prosecution case.

38. As we know, in a criminal case the burden of proof lies upon the prosecution to prove its case beyond reasonable doubt. In the present case, the incident occurred on 29.08.2001 at 07:30 a.m. The FIR was lodged the same date at 10:00 a.m., i.e., after two and a half hours of the incident. The incident occurred in Village- Nagla Bandh, Hamlet of Village Mudausi under Police Outpost Kushmura, Police Station- Kisni District- Mainpuri. As per chik FIR the distane from the place of occurrence to the Police Outpost- Kushmura is 8 kilometers. The FIR was lodged by informant Om Prakash, who has said that after the incident, he took his injured wife Savitri Devi and injured son Jitendra to the Police Outpost- Kushmura in Jeep, it took 30-45 minutes to arrange the jeep and about one and half hour to reach at the Police Outpost- Kushmura. He wrote down the written application (tehrir) at round about Kushmura and submitted it at the reporting Police Outpost- Kushmura. It has come in evidence informant's brother Ganga Singh and Mohar Singh accompanied him to the Police Outpost along with the injured.

39. P.W. 8 Constable Ram Kumar Singh, is the scribe of the chik FIR. The inquest of all the deceased was prepared the same day. Therefore, the FIR was lodged promptly and it has not been specifically challenged by the defence.

40. So far as the place of occurrence is concerned, according to the prosecution the incident took place at three different places, the first incident occurred at the house of the informant where his wife Savitri Devi was shot causing her serious injuries and informant's father Sarman Singh was shot dead. The second incident occurred near the tubewell in village Nagla Bandh where Sunil @ Baba was shot dead. As per prosecution Sarman Singh was shot dead at the door of the house and Savitri Devi was shot and injured in Verandah. Informant's son Jitendra was also shot and injured while he was at roof of the house. Deceased Sunil @ Baba was returning home from the side of transformer when he was shot and Dharmendra Singh was shot near Lala Ram's field. The Investigating Officer reached at the place of occurrences and found dead bodies of Sarman Singh, Dharmendra Singh, Sunil @ Baba at the places alleged by the prosecution. He also collected blood-stained earth and empty cartridges from near the dead bodies. He prepared site-plan at the instance of informant in which he has shown all the relevant things. The defence has not put any suggestion

or gave any other alternative place of occurrence. Thus, in fact the defence has not challenged the place of occurrence. P.W. 1 Om Prakash, P.W. 2 Jitendra and P.W. 4 Ganga Singh, the three eye witnesses of the incident have stated on oath that the incident occurred at these three places. In view of the above, the place of occurrence is fully established.

41. The perusal of post-mortem reports of all the four deceased and injury report of injured Jitendra shows that all of them sustained indiscriminate gunshot wounds resulting to injuries over their body. The cause of death of all the four deceased was hemorrhage and shock as a result of gun shot injuries which means that all of them were shot dead. The prosecution case is that it were the appellants who committed such offence in furtherance of their common object. To prove its case, the prosecution has examined P.W.1 Om Prakash, P.W. 2 Jitendra and P.W. 4 Ganga Singh as eye-witness of the incident. P.W. 1 Om Prakash is the informant and his father Sarman Singh, wife Savitri Devi and son Dharmendra Singh were murdered in this incident. His brother-in-laws son Sunil @ Baba was also killed. A perusal of his statement shows that he was cross-examined for about one and half years by different sets of advocates from the side of accused. There is a very lengthy cross-examination and if we look into the entire testimony then it shows that the witness is consistent, reliable and trustworthy, with regard to the prosecution case. He has deposed that all the nine appellants came to his house armed with country-made pistol by giving a detail who carried which firearm and has said that it were appellants Santosh and Sukhvir who shot at his wife Savitri Devi; appellants Kamlesh and Ram Naresh shot at his son Jitendra and other son Satendra; appellants Ram Naresh and Kamlesh also shot at his father Sarman Singh, appellants Sayavir Singh and Shivivr Singh shot at his brother-in-laws son Sunil @ Baba and appellant Ram Pal, Ramadhar and Arvind shot at his son Dharmendra Singh. He has also said that appellant Ram Naresh, Ramadhar, Satyavir and Shivivr are real brothers and are sons of Kamlesh's maternal uncle (mama). Appellant Arvind is Ram Nareshs' son and appellant Shyam Pal resides in Azadpur and he is acquainted with Santoh and Sukhvir.

42. P.W. 2 Jitendra, is the injured witness, he has also supported the prosecution case. He has also been cross-examined at length but no material contradiction has come in his statement. P.W. 4 Ganga Singh is the younger brother of the informant, he has also supported the prosecution case and has described the manner in which the incident took place and in what manner the appellants took participation in the crime. If we take into account their entire deposition then it comes out that they are consistent, reliable and trustworthy. It is submitted on behalf of appellants that there are major contradictions in their statements therefore their testimony is not reliable. We do not agree with this submission. If a witness is cross-examined for days and months then some contradictions are bound to happen in their statement and if that contradiction does not shake the root of the prosecution case then such minor contradictions would have no bearing over the prosecution case.

42. In the case Krishna Master and Others (Supra), the Supreme Court observed that the material witness was cross-examined for days together on the point as to where and in which direction houses of Kailash, Rajaram Subedar, Darbari, etc. were situated.

It was held that ‘such an attempt by the defence lawyer can hardly be approved. On re-appreciation of evidence of Jhabbulal, this Court finds that he has not made major improvements in

his testimony before the Court and the so-called discrepancies which are blown out of proportion by the High Court are minor in nature and do not relate to the substratum of the prosecution story.'

43. With regard to evidence of a child witness it was further held that 'This Court fails to understand as to on what principle and on which experience in real life, the High Court made a sweeping observation that it is inconceivable that a child of Madan Lal's understanding would be able to recapitulate facts in his memory witnessed by him long ago. There is no principle of law known to this Court that it is inconceivable that a child of tender age would not be able to recapitulate facts in his memory witnessed by him long ago. This witness has claimed on oath before the Court that he had seen five members of his family being ruthlessly killed by the respondents by firing gunshots. When a child of tender age witnesses gruesome murder of his father, mother, brothers, etc. he is not likely to forget the incident for his whole life and would certainly recapitulate facts in his memory when asked about the same at any point of time, notwithstanding the gap of about ten years between the incident and recording of his evidence. This Court is of the firm opinion that it would be doing injustice to a child witness possessing a sharp memory to say that it is inconceivable for him to recapitulate facts in his memory witnessed by him long ago. A child of tender age is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child would be able to recapitulate correctly and exactly when asked about the same in future.'

43. In the case Bhagwan Jagannath Markad and Others (Supra), the Supreme Court has held that:-

'While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. It is not every discrepancy which affects the creditworthiness and the trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting the credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted. Want of independent witnesses or unusual behaviour of witnesses of a crime is not enough to reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit. The evidence may be closely scrutinised to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a 'partisan' or 'interested' witness may lead to failure of justice.' It was also held that 'As already observed, the discrepancies of trivial nature could not be the basis of rejecting the evidence of injured eyewitnesses nor non-examination of some of the witnesses be a ground to reject the prosecution case when injured eyewitnesses were examined.'

44. In Bhag Singh & Ors. v. State of Punjab (1997) 7 SCC 712, while dealing with a similar contention, the Supreme Court observed:

"It is a general handicap attached to all eyewitnesses, if they fail to speak with precision their evidence would be assailed as vague and evasive, on the contrary if they speak to all the events very well and correctly their evidence becomes vulnerable to be attacked as tutored. Both approaches are dogmatic and fraught with lack of pragmatism. The testimony of a witness should be viewed from broad angles. It should not be weighed in golden scales, but with cogent standards. In a particular case an eyewitness may be able to narrate the incident with all details without mistake if the occurrence had made an imprint on the canvas of his mind in the sequence in which it occurred. He may be a person whose capacity for absorption and retention of events is stronger than another person. It should be remembered that what he witnessed was not something that happens usually but a very exceptional one so far as he is concerned. If he reproduces it in the same sequence as it registered in his mind the testimony cannot be dubbed as artificial on that score alone."

46. In the instant case P.W.2 Jitendra is injured witness and his presence at the place of occurrence can not be doubted. With regard to testimony of injured witness, in the case of Abdul Sayeed (Supra), the Supreme Court has held that:-

‘26. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness.

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28. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.’

45. The appellants have submitted that the presence of P.W. 1, Om Prakash and P.W 4 Ganga Singh at the place of occurrence is highly doubtful and had they been present there the appellants would also have attacked and killed them but they have not sustained any injuries. Further, it has also argued that if such an incident is occurred in their presence then should have reacted and attacked the appellants, the first informant was a soldier in army having rifle and he should have used the rifle to protect his family. Secondly, P.W. 4 Ganga Singh who should also have reacted in the same manner, thus, their presence at the spot is doubtful. We do not agree with this submission, once an offence like this takes place then each person who witnesses the incident reacts in his own way.

46. In Rana Pratap v/s State of Haryana AIR 1983 SC 680, (1983) 3 SCC 327 at page 330, the Supreme Court observed:

'Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. The others rush to the rescue of the victim, even going to the extent of counter attacking the assailants. Every one reacts in his own special way. There is no such rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.'

47. It has come in evidence that it was cold-blooded murder, the nine appellants were armed with firearms, the incident took place suddenly giving no chance to the informant to collect his rifle from the house and fire in self defence, beside this in such a horrible incident, the first reaction of the first informant and Ganga Singh would have been to save themselves and they have stated that they hid themselves behind a heap of straw (bhoose ka coop), thus, by not reacting in the manner as alleged by the appellants is not a ground to reject testimony of both these witnesses.

48. It is further submitted on behalf of the appellants that there are major contradictions, in the testimony of P.W. 1 and P.W. 4 as well as P.W. 2 Jitendra, which raises doubt over their statements. The appellants have drawn attention of this Court to the following statements of P.W. 1, P.W.2 and P.W.4 :-

P.W.1 Om Prakash :-

" पंचायत में पंचों ने मेरे मकान से जुड़ी हुई जगह मुझे दिलाई थी।….. पंचायत में यह भी तय हुआ था कि जगह के बदले दूसरी जगह दे दी जाय, मेरे मकान के उत्तर दूसरी साइड में जगह दिया जाना तय हुआ था।…… पंचायत के बाद घटना होने तक विवादित जमीन पर मुल्जमान ने कब्जा करने का प्रयास नहीं किया।"

P.W.4 Ganga Singh :-

"पंचायत ओम प्रकाश की मौजूदगी में हुई। पंचायत होने के बाद अभियुक्तगण ने विवादित जमीन को कब्जा करने का प्रयास नहीं किया।"

P.W.1-Om Prakash :-

"ये लोग ट्यूबवेल की तरफ गाली गलौज देते हुए मेरे आंगन में घुस आये जैसे ही मैंने व मेरे भाई गंगा सिंह ने देखा व टोका..

मेरे व मेरे गंगा सिंह के चिल्लाने पर सभी मुल्जिमान मेरे पिताजी, व मेरे भाई पर झपटे।...

मुल्जिमान फायर कर रहे थे मुझ पर व मेरे भाई पर हवाई हमले किये थे।.

जब मेरे ऊपर झपटे थे तब मुल्जिमान ने मुझे देख लिया था।

जब अभियुक्तगण अंदर आ रहे थे तब मैंने उन्हें टोका था।"

P.W.2- Jitendra :-

"दरवाजे पर मेरे पिताजी व गंगा सिंह ने मुल्जिमानों को टोका था टोकने पर मुल्जिमान ने मेरे पिता पर फायर नहीं किया था, मेरी माँ के ऊपर फायर किया था।"

P.W.4- Ganga Singh:-

"मैंने व मेरे भाई ओम प्रकाश ने जब मुल्जिमान हमारे घर में घुस रहे थे मैं तभी उनको टोका था। जब मैंने टोका तब उन लोगों ने हम दोनों पर फायर नहीं किया था।..

मैंने व मेरे भाई ने मुल्जिमान को टोका था तथा ललकारा था एवं पीछा किया था।...

ओम प्रकाश ही मुल्जिमानों के मुख्य लक्ष्य थे।"

49. If we look into the entire testimonies of P.W. 1 Om Prakash, P.W. 2 Jitendra and P.W. 4 Ganga Singh then the above quoted statements did not come within the category of major contradictions to shake the prosecution case. When the witness is cross-examined at length for so many months and even years (as is the case with P.W.1), then such contradictions are normal to happen.

50. When an incident like this happens in quick succession within minutes, the assailant(s), the victim(s) and the witness(es) are not expected to keep stand still but they keep moving, either to attack or protect themselves, as the case may be, so the observation of such an incident by one person may vary from the other. It has come in evidence that informant Om Prakash serving in Army, had come on leave to his house. His brother Ganga Singh was also there. His injured son Jitendra was reading at the roof of the house so their presence at the place of occurrence is quite natural and normal. No one can see into the mind of the criminal, if the appellants did not fire at the informant or Ganga Singh as they hid behind the heap of straw or for some other reason then mainly on this ground it cannot be said that these witnesses were not present at the spot.

51. In Bharwanda Bhoginbhai Hirjibhai v State of Gujarat (1983) 3 SCR 280 at page 280 : (AIR 1983 SC 753 at page 756) the Supreme court has held:

‘ Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all important probabilities - factor echoes in favour of the version narrated by the witnesses.’

52. Therefore, these discrepancies in the statements of witnesses are minor which do not go to the root of the case and would have no adverse bearing over the prosecution case.

53. It is also submitted on behalf of the appellants that P.W. 2 Jitendra was on the roof so he had no occasion to see what was happening in the courtyard and thus, he could not have witnesses the murder of Smt. Savitri Devi and Sarman Singh. It is also submitted that Dharmendra was shot when he was coming from the side of Lala Ram’s field and after Jitendra sustained injuries he

stepped down from roof and sat in the courtyard till he was taken to the Police Outpost from the courtyard. Therefore, P.W. 2 Jitendra has no occasion to see the murder of Dharmendra also.

54. We do not agree with this submission as it has come in evidence that when Savitri Devi was being shot the P.W. 2 Jitendra, who was sitting on the roof, peeped from the roof with his brother Satendra and upon that Kamlesh and Ram Naresh shot at them from the courtyard due to which Jitendra sustained injuries, therefore, it proves that Jitendra saw his mother Savitri Devi and grand-father Sarman Singh being shot by the appellants. So far as the murder of Dharmendra is concerned, it has come in the statement of P.W. 2 Jitendra that he saw it from the roof and on being asked P.W. 2 Jitendra has said that Dharmendra was shot at a distance of 200-225 steps from the roof where he was sitting. He has also said that in between both these places there are no trees but there are some small bushes. In view of the above, P.W.2 Jitendra Singh had occasion to witness the murder of Dharmendra Singh also from his roof. It has come in his statement that after he sustained firearm injuries, he stepped down from the roof in 20-25 minutes, therefore, the submission of the appellants has no force that soon after Jitendra sustained injury, he stepped down from the roof. If P.W. remained at the roof during the entire incident then he had occasion to witness the murder of Dharmendra Singh which was caused near Lala Ram's field. P.W. 2 Jitendra is the injured witness so his presence at the spot cannot be doubted and being an injured witness, his testimony assumes greater significance.

55. It is further submitted on behalf of appellants that according to P.W. 1 Om Prakash and P.W. 4 Ganga Singh, when the appellants shot at Savitri Devi and Sarman Singh, they hid themselves behind the 'Ladoria' i.e. heap of straw (bhoose ka coop), so they had no chance to witness murders of Sunil @ Baba and Dharmendra, which had taken place at other places. It is further submitted that the I.O. has not shown Ladoria, i.e. heap of straw (bhoose ka coop) in the site plan, it is material omission on his part raising suspicion over the prosecution case. We do not agree with this submission because the I.O. has shown 'Ladoria' i.e. heap of straw (bhoose ka coop) by two circles to the north of the open spot of the informant's house, in his site plan Ext. Ka-37, and in index at Serial No. 8 has mentioned that from this place the informant and Ganga Singh witnessed the incident after hiding themselves behind (bhoose ka coop), therefore, this submission on behalf of appellants has no force that the I.O. has not shown the heap of straw (bhoose ka coop) from where the witnessed have seen the incident. P.W. 1 Om Prakash, P.W. 4 Ganga Singh have said that they hid themselves behind heap of straw (bhoose ka coop) and it has come in their statement that after remaining their for a few minutes they followed the appellants. It has also come in statement of P.W. 1 Om Prakash that from behind the heap of straw (bhoose ka coop) the place was visible, where Dharmendra was shot. The I.O. has marked it as 'X', the place where Dharmendra was shot and in between heap of straw and the above place there is open land and raasta, so the witnesses could have seen this incident from behind the heap of straw. It has come in evidence of P.W. 1 Om Prakash, that when the appellants, after shooting Savitri Devi and Sarman Singh, fled from the house of the informant, they also followed the appellants and saw appellants Satyavir and Shiv Vir fire at Sunil @ Baba. The place where Sunil @ Baba was found was shown by the Investigating Officer in the site-plan as letter 'B'. Therefore, P.W. 1 Om Prakash was in a position to witness this incident also after following the appellants.

56. It has been submitted on behalf of appellants that the prosecution has not examined Mohar Singh and Santosh who were allegedly accompanying Dharmendra while he was near Lala Ram's field and thus by withholding these relevant winesses, adverse inference would be drawn against the prosecution. The appellants have relied upon case law Jaggo @ Jagdish and Others (supra), wherein the Supreme Court has held that 'it is true that all the witnesses of the prosecution need not be called but it is important to notice that the witness whose evidence is essential to the "unfolding of the narrative" should be called whether the effect of his testimony is for or against the case for the prosecution. Failure to examine such a witness might affect a fair trial. Presentation of an application to the effect that a witness had been won over was not conclusive to the question that the witness has been won over. In such a case the witness could have been produced for cross-examination by the accused which would have elicited the correct facts.'

57. The learned counsel for the appellants have also relied upon case law State of U.P. and Another Vs. Cheeku @ Jagdish and others 1971 (2) SCC 42, wherein it has been held that it is the duty of the prosecution to examine necessary witnesses and material contradiction between the eye witness account and medical evidence would render the prosecution unreliable.

58. We do not agree with this submission and the above case laws do not apply in the present case. It has been brought to the notice of this Court, by the prosecution, that one of the witness Mohar Singh had died before his statement could be recorded in the trial court. Further, in a criminal case, it is not the quantity but the quality of evidence, which matters. The prosecution has examined other eye-witnesses who have supported the prosecution case and their testimony is consistent and reliable, therefore, non examination of other eye witnesses would have no adverse effect over the prosecution case.

59. It has earlier come in the discussion that P.W. 1 Om Prakash, P.W. 2 Jitendra and P.W. 4 Ganga Singh are reliable witnesses and their testimony with regard to the incident is consistent and trustworthy, therefore, non examination of other witnesses of fact would have no adverse effect over the prosecution case. It has been further submitted on behalf of appellants that the statement of P.W. 4 Ganga Singh was recorded by the I.O. under Section 161 Cr.P.C. after a gap of three months and no explanation of delay is shown by the prosecution thus, he is a planted witness whose testimony before the court cannot be relied upon.

60. The defence has not asked from the I.O. the reason of delay in recording the statement of Ganga Singh, under Section 161 Cr.P.C. In absence of any such question put to the IO, it cannot be assumed that his statement was recorded belatedly without any sufficient explanation because if the I.O. had been asked about this delay, he could have explained the delay and only then the court could have examined whether the delay was sufficient or not. By not putting such question to the I.O. and merely arguing over this would have no adverse effect over the prosecution case. Beside this, it has been stated in the FIR that P.W. 4 Ganga Singh was present there alongwith informant when this incident occurred so the name of Ganga Singh was there from the beginning as eye-witness of this case. Therefore, it is not that his name has subsequently been added as witness to this case, therefore, on this ground the submission on behalf of appellants have no force.

61. It is also submitted on behalf of appellants that the investigation is defective and the first Investigating Officer was not present at the Police Outpost- Kushmura of Police Station- Kisni on the date when FIR was lodged, in view of statement given by P.W. 8 Constable Ram Kumar Singh that according to G.D dated 19.08.2001, there is no entry that the Investigating Officer was present at the Police Outpost. In view of the above, the statement of the I.O. that he recorded the statements of injured Jitendra and Savitri Devi at Police Outpost- Kushmura is false raising suspicion over the prosecution case and that false evidence has been prepared to implicate the appellants in this case. We do not agree with this submission, as it has come in evidence that the first informant Om Prakash reached at Police Outpost- Kushmura alongwith injured Jitendra and Savitri Devi who remained sitting inside the Jeep and the concerned police Inspector inquired from both the above injured, about the incident, while they were seated inside the Jeep. In view of the above, if the Investigating Officer inquired from the injured outside the premises of the Police Outpost Kushmura then if his presence in the G.D. of Police Outpost- Kushmura is not entered then it has no adverse bearing over the prosecution case.

62. It is also submitted on behalf of the appellants that there are contradictions that injured Savitri Devi died on way to the hospital or after reaching at the hospital, which raises suspicion over the prosecution case. We do not agree with this submission also, all the witnesses of fact have stated that Savitri Devi died on the way to the hospital, they are not experts who can give a certain opinion when a person dies. Therefore, if there is any such discrepancy then it would have no adverse effect over the prosecution case.

63. It is further submitted on behalf of appellants that there is contradiction in ocular and medical evidence and according to the site plan, deceased Savitri Devi sustained injuries from a distance of about 10 steps which comes out to 15 feet, whereas as per her post-mortem report there is scorching and blackening over the firearm wounds of entry. It is not possible that blackening and scorching would occur from a fire shot from a distance of 15 feet, therefore, these are major contradictions raising doubt over the prosecution case. We do not agree with this submission. The site plan prepared by the IO bears two kinds of evidence, the first kind of evidence is that which he observes and finds at the place and the second kind of evidence is hearsay, which is told to him by the informant and other witnesses at the time of inspecting the place of occurrence. Showing distance of Savitri Devi being shot from a place is hearsay account in site plan.

64. The defence should have inquired about it from the witnesses of fact. The witnesses of fact have supported the prosecution case, in such a brutal murder when everybody was there to save his life, it was not usual on their part to keep into account every minute details of the incident and then mathematically narrate that in the court. Therefore, in our view, there are no major contradictions in ocular and medical evidence. Witnesses have said that the deceased and injured were shot and injury reports and post-mortem reports confirm that they sustained firearm gunshot injuries. Further, during the investigation a firearm was recovered from appellant Sukhvir and was sent to Forensic Science Laboratory alongwith the cartridges found at the place of occurrence for expert opinion. As per ballistic expert the cartridges found at the place of occurrence matched with the firearm recovered at the pointing of appellant Sukhvir. It also substantiates the prosecution case regarding the involvement of the appellants in the commission of this offence.

65. It is submitted on behalf of appellants that according to P.W. 1 Om Prakash appellant Shyam Pal did not fire at any of the deceased or injured, therefore, his role in the commission of the offence is doubtful. We do not agree with this submission, as it has come in evidence that all the appellants including Shyam Pal reached at the house of the informant and thereafter the incident occurred. All the appellants remained together carrying firearms including appellant Shyam Pal and after committing the murder all of them fled from the spot which shows that they had formed unlawful assembly to commit a criminal act armed with firearms, which are deadly weapons and in furtherance of the common object, the above offence was committed by the members of that unlawful assembly, therefore, being member of the unlawful assembly, appellant Shyam Pal would also be liable for the offence committed by the other member of the unlawful assembly.

66. It is also submitted that the motive assigned to the appellants to commit this offence is not proved. As per prosecution there was a dispute with regard to a land between Om Prakash and Santosh regarding which a panchayat was also convened and it was resolved in the panchayat that some land would be given to the informant Om Prakash and the other part would be given to appellant Santosh. It has come in the statement of P.W. 1 Om Prakash and P.W. 4 Ganga Singh that after this panchayat no overt act was committed by the appellants, so there was no reason for them to commit such offence. The learned counsel for the appellants has drawn the attention of this Court over the statement of P.W. 1 Om Prakash:-

"पंचायत में पंचों ने मेरे मकान से जुड़ी हुई जगह मुझे दिलवा दी थी।

पंचायत में यह भी तय हुआ था कि जगह के बदले दूसरी जगह दे दी जाय, मेरे मकान के उत्तर दूसरी साइड में जगह दिया जाना तय हुआ था।...

पंचायत के बाद घटना होने तक विवादित जमीन पर मुल्जमान ने कब्जा करने का प्रयास नहीं किया। "

And the statement of P.W. 4 Ganga Singh :-

"पंचायत ओम प्रकाश की मौजूदगी में हुई। पंचायत होने के बाद अभियुक्तगण ने विवादित जमीन को कब्जा करने का प्रयास नहीं किया।"

67. On the basis of above statements, learned counsel for the appellants wants to show that there was no reason for the appellants to commit such murder due to the above dispute. We do not agree with this submission also. It is settled law that in a case based on direct evidence motive to commit the crime looses its significance, so a direct motive is not at all relevant. Beside that, it is established from evidence that there was a land dispute between the first informant and the appellants. It is also not in dispute that panchayat was held with regard to said land and a civil suit was pending before the court. Motive is a state of mind of a person which cannot be seen from inside.

68. In the case of Thaman Kumar vs. State of Union Territory of Chandigarh, reported in (2003) 6 SCC 380: (AIR 2003 SC 3975), the Supreme Court has observed as under:-

"There is no such principle or rule of law that where the prosecution fails to prove the motive for commission of the crime, it must necessary result in acquittal of the accused. Where the ocular

evidence is found to be trustworthy and reliable and finds corroboration from the medical evidence, a finding of guilt can safely be recorded even if the motive for the commission of the crime has not been proved."

69. The observation of Supreme Court in the case of Nathuni Yadav and others v. State of Bihar and another, 1997 (34) ACC 576 are also worth mentioning:-

"Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impells a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Chambell struck a note of caution in 'Reg v. Palmer' thus: "but if there be any motive which can be assigned I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of Criminal Courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties."

70. In the case of State of H.P. Vs. Jeet Singh, (1999) 4 SCC 370 : (AIR 1999 SC 1293), the Supreme Court has made the following observations:-

"No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offendoffender towards the person whom he offended."

71. Regarding the motive for commission of a crime, the Supreme Court has observed as under in the case of Suresh Chandra Bahri v. State of Bihar, AIR 1994 SC 2420 (in para 21 of the report at page 2429):-

"Sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the Court that the accused was guilty for the offence charged with. But it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime."

72. Therefore, even if, for the sake of argument it is admitted that the prosecution has failed to prove motive for the appellants to commit the said crime, it would not have any adverse effect over the prosecution case. It is also submitted on behalf of the appellants that there are two groups one headed by Kalua @ Rajbeer and the other was headed by Rajvir. P.W. 1 informant, Om Prakash had admitted that Kalua has a licensed revolver and he sometimes comes with him, which means that Om Prakash and Kalua were acquainted with Ganga Singh. It is submitted that all the appellants in their statements under Section 313 Cr.P.C. have said that P.W. 4 Ganga Singh had lodged several reports against the gang of other Rajvir. Since Kalua and Rajvir were on visiting terms with the complainant and his family so Ganga Singh and other Rajvir were annoyed with the appellants and it is that Rajvir Singh which had committed such murders and the appellants have been falsely implicated in this case.

73. We do not agree with this submission as well, there is no such evidence led by the defence to show that there are two different Rajbeers'. Consequently, if P.W. 4 Ganga Singh had lodged some criminal cases against the other Rajbeer, prior to the said incident, then the other Rajbeer would have developed grudge against the Ganga Singh and not at the first informant and his family members. If this was the case then he would not have spared Ganga Singh during the said incident and most importantly if Ganga Singh had lodged several reports against Rajbeer prior to the said incident then he would have been the last person to be spared by Rajbeer. Therefore, the defence version has no force that the other Rajbeer and his gang were involved in this incident and appellants have been falsely implicated in this case. If Ganga Singh had courage to lodge other criminal reports against the said Rajbeer prior to the alleged incident then he would have certainly named that Rajbeer if the incident was caused by him and his gang. A family member would be the last person who will spare the real culprit and implicate an innocent person, if he knows the assailants.

74. In view of the above discussion, we come to the conclusion that the prosecution has been able to prove its case beyond reasonable doubt. It was gruesome murder in which informant Om Prakash's wife Savitri Devi, son and father were murdered. His brother-in-laws son was also murdered. His son Jitendra was also seriously injured and there was an attempt to life on his person. The testimony of P.W. 1 Om Prakash, P.W. 2 Jitendra, P.W. 4 Ganga Singh is consistent and reliable with regard to entire case of the prosecution. The ocular testimony is supported by medical evidence. FIR was lodged promptly and all the appellants were named from the very beginning. The argument on behalf of appellants with regard to their false implication has no force. The motive is also proved and even if it is argued that the prosecution has failed to prove motive then it is a case of direct evidence in which motive does not have much consequence.

75. In view of the above, the learned trial court has rightly appreciated the evidence on record and has rightly reached at the conclusion of the guilt of the appellants. The appellants have been rightly convicted and sentenced for the offence, therefore, appeal has no force and is liable to the dismissed.

76. Thus, all the appellants are guilty of the offence punishable under Sections- 302, 307, 452 read with 34 IPC. The Trial Court has appreciated the evidence on record properly and rightly reached at the conclusion of guilt of all the appellants.

77. Thus, the present three appeals Nos. 7543 of 2006, 7713 of 2006 and 7712 of 2006 lacks merit and are, accordingly, dismissed. All appellants Santosh, Sukhvir, Kamlesh, Ram Naresh, Satyavir, Shiv Vir, Ramadhar, Arvind and Shyam Pal, are on bail. Their personal bonds and bail bonds are cancelled and sureties are discharged. They are directed to surrender before the learned Trial Court to undergo the remaining part of their sentence, failing which, the Trial Court is directed to adopt coercive measures for securing their presence.

78. Let a copy of this order be forwarded to the Trial Court concerned alongwith the lower court record for information and necessary compliance.

(2026) 5 ILRA 334
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.05.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE PRASHANT MISHRA-I, J.

Criminal Appeal No. 9263 of 2023
& Connected with other cases

Ranjeet Yadav **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to whether the conviction of the appellants under Ss. 302/34, 352, 504 and 506 of the Indian Penal Code and S. 7 of the Criminal Law Amendment Act could be sustained in view of the delay in lodging the First Information Report, inconsistencies in the ocular evidence, alleged contradictions with the medical evidence, the evidentiary value of the recoveries and the prosecution version as a whole. (Paras 1, 37, 38)

Headnotes

Criminal Law - Murder - Conviction under Ss. 302/34, 352, 504 and 506 IPC and S. 7 of the Criminal Law Amendment Act - Delay in lodging First Information Report - Appreciation of ocular evidence - Contradictions between testimonies of alleged eye-witnesses - Consistency of ocular evidence with medical evidence - Evidentiary value of recoveries - Incident allegedly took place on 21.8.2018 at 19:00 hours and the First Information Report came to be lodged on 23.8.2018 at 13:29 hours, resulting in a delay of about 42 and a half hours – Prosecution explained the delay by stating that the informant was waiting for her four brothers to arrive before the cremation and lodging of the report - Investigating Officer admitted that police had visited the house of the deceased on the date of occurrence when family members and relatives were present, yet no written complaint was submitted - P.W.-1 claimed to have accompanied the deceased on the scooty and to have witnessed the assault whereas P.W.-2 stated that both she and her daughter were at the house and that a neighbourhood boy informed them of the incident before they reached the place of occurrence - Said neighbourhood boy was not examined as a witness - Medical evidence disclosed that except injury no.1, all injuries were on the back side of the body, whereas the ocular version suggested a frontal assault while the deceased attempted to ward off the blows - Doctor stated that the laceration in the brain could be because of the incident and opined that death could have occurred between 11:00 p.m. and 12:00 midnight - Recoveries of

bamboo lathis were made from open places without recording disclosure statements under S. 27 of the Indian Evidence Act and without independent witnesses - Motive projected by the prosecution was found to be weak in the facts of the case - Delay in lodging the First Information Report remained unexplained - Material contradictions in the prosecution evidence, inconsistency between ocular and medical evidence and unreliable recoveries rendered the prosecution case doubtful - Conviction and sentence set aside and appellants acquitted. (Paras 3,4,7,14,16, 22,23,24,25,26,31,32,37,38, 39, 40, 41, 45)

Held: Upon an overall appreciation of the evidence, the delay in lodging the First Information Report remained unexplained because even if the first informant was hesitant in lodging the report, the police personnel who had accompanied the injured to the hospital ought to have initiated the criminal process if the occurrence was perceived to be a case of murder, and the unexplained delay became prejudicial to the prosecution case. The names introduced in the First Information Report appeared to be the result of an afterthought. If the first informant had in fact remained throughout at the place of occurrence and had attempted to save the deceased, some injuries upon her person would ordinarily have been expected. The post mortem report disclosed that except injury no.1 all injuries were on the back side of the body and the medical evidence did not completely support the ocular version as narrated by the prosecution witnesses. The contradictions between the testimonies of P.W.-1 and P.W.-2 regarding the presence of the daughter at the place of occurrence and the fact that the neighbourhood boy, who allegedly informed them of the incident, was never examined, constituted material infirmities in the prosecution case. The motive projected by the prosecution was found to be weak and the possibility of false implication could not be ruled out. The recoveries were also held to be unreliable as they were effected from open places without compliance with the settled principles governing recoveries under S. 27 of the Indian Evidence Act. Consequently, the prosecution failed to establish its case beyond reasonable doubt and the conviction and sentence recorded by the trial court were liable to be set aside. (Paras 38, 39, 40, 41, 45) (E-7)

Case Law Cited

Lalita Kumari vs. State of U.P. and others , **2014 (2) SCC 1***; Thulia Kali vs. State of Tamil Nadu ,* **(1972) 3 SCC 393***; Dilawar Singh vs. State of Delhi,* **(2007) 12 SCC 641***; Krishnedowda & Ors; Nanje Gowda and another vs. State of Karnataka by Arkaloud Police,* **2017 AIR SC 1657***; Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh,* **AIR 2022 SC 5273***; Subramanya vs. State of Karnataka,* **AIR 2022 SC 5110***; Yogarani Versus State by the Inspector of Police,* **2024 AIR SC 4641;** *Javed Shaukat Ali Qureshi v. State of Gujarat,* **2023 INSC 829;** *Javed Shaukat Ali Qureshi vs State of Gujarat,* **2023 (9) SCC 164***; Apren Joseph @ Current Kunjukunju & ors vs. State of Kerala,* **1973 (3) SCC 114***; Rammi v. State of M.P.,* **(1999) 8 SCC 649 : 2000 SCC (Cri) 26***; Tahsildar Singh v. State of U.P.,* **AIR 1959 SC 1012***; Anvar P.V vs P.K. basheer and Ors.,* **2014 (10) SCC 473;** *Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal,* **AIR 2020 SC 4908***.*

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Criminal Law Amendment Act, 1932; Indian Evidence Act, 1872

List of Keywords

Murder; Common intention; Delay in lodging FIR; Appreciation of evidence; Related witness; Natural witness; Ocular evidence; Medical evidence; Contradictions; Omissions; Defective investigation; Recovery; Benefit of doubt; Appeal against conviction; Appeal against acquittal; False implication; Motive; Gaon Sabha land dispute; Exhortation; Section 34 IPC; Credibility of witnesses.

Case Arising From

APPELLATE JURISDICTION: The Criminal Appeals have been filed against the judgement and order dated 10.8.2023 passed by the Additional Sessions Judge/Special Judge (E.C. Act), Court No. 4, Deoria, in Sessions Trial No. 19 of 2019 (State vs. Devendra Yadav and others), arising out of Case Crime No. 144 of 2018, under Sections 302/34, 352, 504, 506 IPC and Section 7 of the Criminal Law Amendment Act, Police Station Bankata, District Deoria, convicting the appellants; and the Connected Criminal Appeal under Section 372

Cr.P.C. has been filed against the same judgment and order dated 10.8.2023 whereby the remaining accused were acquitted.

Appearances for Parties

Advs. for the Appellant:
Sri Rajrshi Gupta, Adv. Sri Ashutosh Kumar Mishra, Adv.
Advs. for the Respondents:
Sri Amrendra Pratap Singh, Adv. (For First Informant)
Sri Girish Kumar Singh, Adv. (For First Informant)
Sri Ashutosh Ganguli, Adv. (For First Informant)
Sri Amit Sinha, Learned AGA (For State)

(Delivered by Hon'ble Siddhartha Varma, J.
&
Hon'ble Prashant Mishra-I, J.)

1. The Criminal Appeals No. 9263 of 2023, 9255 of 2023, 9555 of 2023 and 9965 of 2023 have been filed against the judgement and order dated 10.8.2023 passed by the Additional Sessions Judge/Special Judge (E.C. Act), Court No. 4, Deoria, in Sessions Trial No. 19 of 2019 (State vs. Devendra Yadav and others), arising out of Case Crime No. 144 of 2018, under Sections 302/34, 352, 504, 506 IPC and Section 7 of the Criminal Law Amendment Act, Police Station Bankata, District Deoria, whereby the trial court convicted and sentenced the appellants, Devendra Yadav, Dan Singh Yadav, Ranjeet Yadav and Amit Kumar Rai, as follows:

(i) under Section 302/34 IPC, to undergo imprisonment for life along with a fine of Rs. 5,000/- each, and in default of payment of fine, to further undergo two months additional imprisonment;

(ii) under Section 352 IPC, to undergo one month□s rigorous imprisonment along with a fine of Rs. 500/- each, and in default of payment of fine, to further undergo five days additional imprisonment;

(iii) under Section 504 IPC, to undergo six months' rigorous imprisonment, and in default thereof, to further undergo ten days' additional imprisonment;

(iv) under Section 506 IPC, to undergo one year's rigorous imprisonment along with a fine of Rs. 2,000/- each, and in default of payment of fine, to further undergo twenty days' additional imprisonment; and

(v) under Section 7 of the Criminal Law Amendment Act, to undergo one month's rigorous imprisonment along with a fine of Rs. 100/- each, and in default of payment of fine, to further undergo one day's additional imprisonment.

2. The Criminal Appeal under Section 372 Cr.P.C., being Criminal Appeal No. 439 of 2023, has been filed against the judgment and order dated 10.8.2023 passed by the learned Additional Sessions Judge/Special Judge (E.C. Act), Court No. 4, Deoria, whereby the accused, Brahma Yadav and Rohit Yadav, were acquitted of the charges under Sections 147, 148, 302/149, 323/149, 352, 504 and 506 IPC, as well as Section 7 of the Criminal Law (Amendment) Act.

3. Upon an incident which allegedly took place on 21.8.2018 at 19:00 hours (7:00PM), the first information report with regard to it was lodged by the complainant Neha Rai, the daughter of the deceased on 23.8.2018 at 13:29 hours(1:29PM). It was alleged in the first information report that at the relevant point of time, the first informant Neha Rai along with her mother Harikant Devi and father Uma Shankar Rai was living in their house at Deoria. She had stated that she had four brothers. The eldest brother was living in Mumbai and was doing the work of contractor and the second eldest brother Jitendra Rai was also living in Mumabi and was doing his private business. Third brother Raghvendra Rai was living in Bangalore and was working in a steel plant and the fourth brother Narendra Kumar was doing a job in Ahemdabad. In the first information report even before the incident was being reported, the motive was given out that in the front of her Sahen, one decimal of land of gaon sabha was there and with regard to possession over it there was a dispute always raised by one Amit Kumar Rai. In his support, Devendra Rai son of Subhash Yadav always used to be there and had on many an occasion along with his support in the past had beaten up Uma Shankar Rai the deceased and that with regard to the beating which was done , the father of the first informant had also got a case register in the police station and that case was still pending. She had stated that even though the Revenue Department had resolved the controversy with regard to the land contiguous to the Sahen land yet Devendra Yadav son of Subhash Yadav along with Amit Kumar Rai was occasionally abusing the father of the complainant and was also threatening him with dire consequences. Because of the doings of Amit Rai and Devendra Yadav there was quite a bit of fear prevailing in the village.

4. On 21.8.2018, it had been stated in the FIR that the Prasad which was brought by the complainant and her father from the Baijnath Dham was to be given to one Jai Prakash Tiwari and, therefore, on 21.8.2018 at around 6:00PM both the father and the daughter had gone to the house of Jai Prakash Tiwari and after having met him they were returning to their house and at around 7:00PM at the Bhadsar crossing the accused Devendra Yadav exhorted the other accused, in the presence of the first informant and shouted pointing to her father that the enemy of Devendra Yadav had reached and he had not to be spared. He had specifically exhorted that he be killed. Thereafter, Devendra Yadav and Dan Singh sons of Subhash Yadav; Rohit Yadav son of Surendra Yadav; Ranjit Yadav son of Ram Chhabila Yadav; Amit Kumar Rai son of Arvind Kumar Rai and Bharma Yadav son of Suryabali Yadav, all residents of village Chhitauni, Police Station Bankata District Deoria came up to the father and the daughter with lathies in their hands. They had come from the road which came from the side of Chhituani and with a common object and intention they started beating the deceased with their dandas. She had then stated that she had started shouting and had started raising a hue and cry that her father was being beaten and there was an apprehension that he would be killed. However, because Devendra Yadav was known as a strong man of the area, no shopkeeper of the area came to save the father of the first informant and the accused repeatedly beat up the father of the first informant. However, upon the hue and cry being raised, the mother of the first informant Harikanti Devi came running and thereafter both the mother and daughter made an effort to save the deceased. Upon this Devendra Yadav pulled out both Harikanti Devi, the mother of the first informant and the first informant from the place of the incident and chased them away. She had stated that as her father was lying on the place of incident, she had immediately, therefore, called at the telephone number ‘100’ but no police came. Thereupon she had stated that she informed the police station and after a lot of delay the police came and took the father of the first informant to the PHC, Bankata, where there was absolutely no doctor available.

Because of that the father of the first informant was taken to the Sadar Hospital Deoria where he was declared dead. About the incident, she had stated that she had informed her brothers. Out of the four brothers, two came in the night of 22/8/2018 and the other two brothers reached Deoria in the morning of 23.8.2018. The post mortem had already been done and even before the FIR was lodged the last rites were also performed and thereafter she had gone to get the FIR lodged.

5. Upon the FIR being lodged, the police got into action and recovered two lathies and also arrested two of the accused. The memo which was prepared was numbered as exhibit ka-14 on 29.8.2018. Thereafter on 6.9.2018, again one lathi of bamboo was recovered and one more accused was arrested. The memo as was prepared on 6.9.2018 and was exhibited as exhibit ka-15. One more lathi of bamboo and one more arrest was done on 7.9.2018 and the memo in regard to that was prepared and numbered as exhibit ka-16.

6. After the death, a panchayatnama/inquest was undergone on 22.8.2018 at 1:00PM and was completed on the same day at 2:10PM. In the column, where it was stated that when the information was given it had been given that it had been registered on 22.8.2018 at 8:30am. The person who had given the information with regard to the dead body was one ward boy Vishal Yadav of the district hospital Deoria.

7. The panches were Jai Prakash Tiwari, Balram Rai, Jai Prakash, Harikant Rai and Yogeshwar Rai. As no first information report was yet lodged, the panchayatnama along with the death certificate and other reports was sent for post mortem which was conducted on the body on 22.8.2018 itself at 5:00PM and had got completed at 5:50 PM. The body had reached the mortuary at 2:55PM. The anti-mortem injuries as were noted in the post mortem report are being reproduced here as under:-

"1- खरोंच बाँये कलाई के सामने के हिस्से में 3cm x 1cm का गहरा लाल scab था।

2- Contusion 40 cm x 21 cm का कमर के पास एवं दोनों चूतड़ पर मौजूद था। रंग कालापन था।

3. Contusion 26 cm x 24 cm दायें जांघ के पिछले हिस्से में मौजूद था। रंग कालापन था।

4. Abraded contusion 4 cm x 2.5 cm दाहिने पैर के पिछले हिस्से में मौजूद था। जो कि Lateral malleolus के 12 cm ऊपर था। रंग कालापन था।

5. Contusion 14 cm x 15 cm बायें जांघ के पिछले हिस्से में मौजूद था जो कि Popliteal fossa के 18 cm ऊपर था। रंग कालापन था।

6. Multiple linear खरोंच दाहिने चूतड़ पर मौजूद थे जो कि सात थे एवं उनकी लम्बाई 4 cm से 5cm x 0.2 cm थी। Dark red stab मौजूद था।

7. Abraded contusion 12cm x 3.5 cm कमर के पास निचले हिस्से में चूतड़ के ऊपर मौजूद था। रंग कालापन था।

8. Abraded घाव 11 cm x 3.5 cm बाये तरफ कमर के निचले हिस्से में चूतड़ से 6 cm ऊपर मौजूद था।

9. Contusion 33 cm x 9 cm दाहिने scapula के नीचे से शुरू होकर बायें scapula तक मौजूद था। रंग कालापन था।

10. खरोंच 3cm x 2 cm दाहिने हाथ के पिछले हिस्से में कोहनी के ठीक नीचे था।

11. खरोंच 4 cm x 1.5 cm बायें कोहनी के ठीक पीछे था। गहरा लाल scab था।

12. Contused swelling 3 cm x 3 cm सर के पिछले हिस्से में चोट था। आंतरिक परीक्षण scalp As noted. skull meninges lacerated था।"

8. The case, as per the prosecution, was that after the post mortem, the cremation had taken place and thereafter the first information report was got lodged on 23.8.2018 at 13:29 hours. Thereafter, vis-a-vis Devendra Yadav, Dan Singh Yadav, Rohit Yadav, Ranjit Yadav, Amit Kumar Rai and Brahma Yadav charges were framed under Sections 147, 148, 302, 323/149, 352, 504 and 506 IPC and Section 3/7 of the Criminal Law (Amendment) Act.

9. The P.W. -1, the first informant, Neha Rai, appeared in the witness box and got her examination in chief recorded in the Court. She had told herself as being in the occupation of education and that she was staying with her mother Harikanti Devi and father late Uma Shankar Rai. She had thereafter given out the motive because of which the accused had killed her father. She had very categorically stated that on 21.8.2018, she had, along with her father, gone at 6:00PM with the prasad of Babadham to the house of Jai Prakash Tiwari. After they had both sat at the house of Jai Prakash Tiwari, they had proceeded towards their house at 7:00PM. On the Bhadsar crossing, Devendra Yadav was waiting exactly in the manner as she had stated in the FIR and she had got her statement-in-chief recorded as to how they had assaulted her father. She had further stated that though it was a crowded crossing and despite the fact that she was shouting for help, but because of the terror created by Devendra Yadav, no one came from the market to help her out. However, because of the hue and cry she had raised, her mother came out of her house and reached the spot. The mother and the daughter both tried to save the deceased but Devendra Yadav held her by the shoulder and separated her from her father. She was also threatened with dire consequences if she intervened. She had thereafter also dialed number □100□ to call the police but no police personnel came and therefore she rang up the Thana from where a Daroga came and took the father of the First informant to the PHC Bankata where there was no doctor available and, therefore, they went to Deoria Hospital where the doctors declared the father of the complainant dead and thereafter she started informing her brothers who came on 22.8.2018 and 23.8.2018 and the father of the first informant was thereafter cremated and she alone came to the police station to get the FIR lodged. She had written the FIR in her own handwriting at her house and proved the same. She had stated that with regard to the incident, the Investigating Officer had recorded her statement and she had also shown the Investigating Officer the place of incident.

10. In the cross-examination, she had stated that her father were three brothers. The names of other two brothers were Umesh Rai and Ramesh Rai. Ramesh Rai was a bachelor. Umesh Rai used to stay out of Deoria. Uma Shankar, the deceased, had four sons, namely, Satendra Rai, Jitendra

Rai, Raghvendra Rai and Narendra Rai. Thereafter there was one more daughter known by the name of Rekha Rai. She was not married. She had stated that her family was not a joint family. She had then stated that the elder brothers of the deceased were living separately from the deceased. She had then stated that even though the house was one, there was separation amongst the brothers. Her sister Rekha Rai was staying at Bombay with her brothers. She had stated that her father was not a journalist but was a leader of the Bhartiya Janata Party.

11. Upon a question being asked as to whether any interview of her was taken before she had dialed the number '100', she had denied the interview. She had then stated that on the day which followed the incident, some journalists had taken her interview. She had also stated that she had dialed '100' thrice. First two times, it was not picked up and on the third occasion it was picked up. After half an hour the police had reached the place of incident. She had stated that when the phone call had come from dial '100' the Darogaji said that he would reach on the place of incident in 5 minutes. She denied the suggestion that she had not rung up at the number '100' and categorically she had stated that when she had rung up the number 100 then, thereafter, within half an hour the Darogaji had come. The police which was required to come from the dialing of the number 100, reached the place of incident around half an hour of the commission of the crime. But before that the Darogaji had reached the place of incident. On the vehicle which came upon dialing number 100, there were 5 to 6 police personnel.

12. Upon a question being asked as to why she had not mentioned about the fact that the police, upon dialing 100 number, had reached half an hour late then she had answered that she had not stated that as she had told the Darogaji with regard to the incident orally immediately after the arrival of the police. The police had taken her father to the Primary Health Centre at Bankata where there was nothing done in writing. From there, upon the suggestion of Daroga, she herself came back to her house to look after her mother and the Darogaji took her father to Deoria Hospital. She had stated in the cross-examination that when exactly the body had reached the hospital, she did not know. What the doctor said was also not known to her. She had then stated that she drove herself to the Hospital at Deoria along with her mother. There Darogaji was present. Upon declaring her father as dead, the dead body was kept in hospital in the mortuary. She had again stated that the fact that she had gone by private car was not stated in the FIR. However, in the statement recorded under Section 161 Cr.P.C. she had stated so. If it was not stated in the statement under Section 161 Cr.P.C., then she did not know the reason for that.

13. Upon a specific question being asked as to why when the police was there at the hospital, it had not got the FIR lodged she had replied that because there was no matured person at her house and because the accused had also given her dangerous threats, therefore, she had also not got the FIR lodged. She had stated that on the second day also she had not got the FIR lodged because the post mortem had not been conducted and she shifted the burden on the police by saying that because police had said that till such time as the post mortem would not be done they would not lodge the FIR. She had then stated that before the FIR was lodged, the post mortem report was made available to her. Then, she had stated that in the same paternal house, her uncle Umesh Rai was also living but separately. Ramesh Rai was also her uncle. She had also stated that Umesh Rai had two sons, namely, Anurag Rai and Anuj Rai and they were all staying in the same house. She had stated that it was correct to say that in the FIR and in her statement under Section 161 Cr.P.C.

she had not stated that her sister was staying with her. She had also stated that she had not given out in her statement in chief that her sister Rekha was staying along with her brother. She had also stated that she knew the names of the Pradhan of her village. She had also stated that on her pointing, the site map was prepared. Upon questions being asked as to who stayed in the neighbourhood she had given out all the names. She had then given out the names of the shopkeepers whose shops were in the neighbourhood of the site of occurrence. She had given out the names as Uma Nai, Ramesh Panwala, Falak Karim Panwala and Kapil Kharwar Chaiwala. She had stated that Manorama the wife of one Heera Lal had lodged a criminal case against her uncle Ramesh Rai for having teased her daughter. She had stated that Brahma Yadav one of the accused was giving evidence from the side of Manorama in the case which was got registered against her uncle Ramesh Rai. The prasad which was given to Jai Prakash Tiwari was given on that particular day to him alone. She had stated that even though Jai Prakash Tiwari used to write the title 'Tiwari' but he was also of the same caste to which the deceased and the first informant belonged.

14. She had stated that she did not remember as to how many lathies were there as she was engrossed in saving her father. She had also not seen the length of lathies and dandas. She had stated again that when she had with her father proceeded towards the Bhadsar Chauraha then she had seen the accused persons at the crossing. Devendra at that point of time had stated that the enemies had reached. Upon this the deceased i.e. the father of the first informant and the first informant immediately turned towards their house and started running. However, they were caught there and were surrounded. The father of the deceased was taken off the scooty which he was driving and was assaulted by lathies and dandas. She had stated that the father, therefore, was stopping the assault by bringing his hands in between the lathies and dandas. The father therefore got injuries also on his head. However no blood was coming out of his head. Whether there was any swelling on the head, she did not know. The scooty, upon a question, being asked whether was damaged she answered that it was in tact. She had then stated that while the father and daughter were on the scooty they were assailed and that the scooty was lying at the place of incident. What was done with the scooty, thereafter, she did not know. Darogaji had taken her father from the place of incident himself. From where, the blood was coming out she did not know. She had fallen on the body of her father to protect him from the assaults which were being made. Her efforts to save her father were thwarted by Devendra who pushed her aside. She had stated that from the place of incident, her house was around 100 to 200 meters away. She had also stated that when they were assaulting her father she had pleaded and implored that they may not beat him but they did not listen to her at all. With regard to the scooty, she had not mentioned anything in the FIR. She had stated that her father could have escaped using the scooty but the accused had surrounded him from all sides. She once again reiterated that the Daroga had stated that the FIR would be lodged only after the post mortem report would be made available. She then had stated the reason for the delay in the lodging of the FIR and had stated that when the 4 brothers had arrived then the FIR was lodged. She had also stated that she had thought it proper to first cremate her father and then lodge the FIR. This was done after much deliberation. When the incident had occurred and she had raised an alarm then apart from her mother many other persons from the neighbourhood had come. The names of the neighbours were not mentioned in the FIR. Whether the lands no. 3/7ka, 3/7kha and 318 were in the name of her father, she said that only he knew about it all. She had stated that on the date of incident, her statement were recorded by the police at her house and also at the police station. She had stated very categorically that on the date of incident while she was at the site, her

mother had come running from the house. She had stated that when she had gone to the Deoria Hospital in her car then it was driven by somebody who was sent by her brother Jitendra Rai from across some river known as Bhat. That the brother had sent the driver was neither mentioned to the police nor was it mentioned in the FIR. She had stated that she had not brought the dead body of her father from the hospital. In fact, it was brought by Jai Prakash Tiwari by an ambulance. A police car was accompanying the ambulance. She had stated that she did not remember if any reporter had asked her name. She did not remember if she had told to him her name Neha or Neha Rai. Then she had stated that she had told them about her village Chhitauni. Upon the reporter asking her as to how the incident had occurred, she had replied that some boy had come to her house and had informed that her father was being beaten by somebody and thereafter she had gone running to the place of incident. Thereafter she had stated that this statement she had given to the reporter as she was afraid of the accused persons.

15. Upon the names being asked of the accused persons by the reporter, she had stated that their names were Surendra, Maqsoodan, Arun Kumar and Subhash and when the reporter had asked as to where her residence was then she had stated that they were of Chhitauni and she had then stated that her uncle Ramesh Rai was a lunatic. She had emphatically stated that he had not gone to the site or to Deoria. He had also run away from the house on the date of incident and thereafter he was at times coming to the house and was also at times going away from the house. At the brahmabhoj which was held 12 days after the death he was there. She had stated that she considered him a mad person. She had stated that she had not mentioned about the reporter in the FIR.

16. P.W.-2, was the widow of the deceased. Her name was Harikanti Devi. She had also stated about the family member in the same manner as the P.W.-1 had stated. She has stated that on the date of incident, she along with her husband and daughter were at the house. She had then stated as to what was the motive for which the murder had taken place and had mentioned about the very same land which the daughter had mentioned. However, she had stated that she had surrendered the possession of the land after sometime. Two days before the incident, her husband had gone to Baba Dham and had come back at 6:00PM. Her husband had gone alongwith his daughter to the house of Jai Prakash Tiwari to give Prasad on a scooty. When he was coming back from the house of Jai Prakash Tiwari the six accused were hiding at the Bhadsar Chauraha. When she came out of the house upon hearing some noise then the boy living in the neighbourhood said that her husband was being beaten up. She had also stated that she had heard the voice of her daughter. She was crying and shouting. Thereafter she reached the place of the incident and saw that four people were beating him with lathies. Rohit Yadav and Brahma Yadav had held him while 4 others were beating him. When she reached the place of incident and asked the accused to leave her husband then she was also pushed away and thereafter she fainted. When the son was informed on the phone about the incident, he had got a driver sent and then she reached Deoria at around 9:00PM and found her husband lying dead. She came back to her home at around 9:00am in the early morning. Her statement under Section 161 Cr.P.C. was got recorded about one and a half months after the incident. She had in her cross-examination stated that her husband was a simple person and no one in the village was afraid of him. About Ramesh Rai, Dewar, (brother-in-law) she stated that he was living in the same house and she had been the surety for him when the bail was granted to him in the molestation case. When she had again stated that when she first saw the incident she had seen

six persons assailing her husband. She had stated that while her husband was in a standing position he was being assaulted. She had stated that on the place of incident her husband was lying down, face downwards. She had not seen as to where the lathi had hit, whether it was on the head or hand. As she had thereafter fainted she could not tell where the scooty had gone. Till the date of the recording of the testimony in the court, she did not know what had happened to the scooty. She had then stated that the place of incident was around 200 to 500 yards away from her house. She had then upon cross-examination stated that the place of incident was first visited by her daughter and thereafter she had gone. The deceased was being hit by lathis. She had seen the incident with her own eyes. She rarely went out of the house. She denied the suggestion that the husband was beaten and killed at some other place and that after three days after a lot of discussion, the FIR was lodged and the accused were nominated in the FIR. She had stated that since she was a Pardanasin lady, she was not much aware of the incident between the accused and her husband. She had then stated that her house was around half a kilometer away from the site and that she could hear the sounds from the site, sitting at her house. She had stated that on the date of incident, the young boy living in the neighbourhood had come and informed her about her husband being beaten. Upon listening of the sounds of beating, first her daughter Neha had gone and thereafter she had gone. She then also stated that Anish son of Parmanand was the boy who had come and informed her. In the further cross-examination, she had given the details of the persons who were her relatives. But it had been stated that none of them had come to her place upon hearing about the death of her husband. She had stated that her daughter had informed her that she had rung up Jai Prakash Tiwari after the incident had occurred but he was not at home. She was also not aware as to whether her driver Dhruv had come to the place of incident. She had then stated that when Anish had informed about the incident, she had gone there. She had stated that most of the time, the vehicles were at home and were driven by her driver Dhruv. However at times her dever (brother-in-law) also used to drive but he was not a matured person (budbak). She had denied the suggestions that she had not known about the assailants of her husband till late in the night.

17. P.W.-3, Jai Prakash Tiwari was also a witness of the panchayatanama. He had stated that he had given out the reason for the death as assault by lathi and danda and also because of throttling. He had stated that Uma Shankar Rai, the deceased, was known to him because his daughter Vineeta and the daughter of Uma Shankar Rai, Neha were friends and that he had met Uma Shankar Rai around a week before the date of the incident. On the whole of the body of the deceased, there were only injuries of lathi. However strangulation was also there and he had stated that he had, in fact, seen the strangulation on the throat himself.

18. P.W.- 4 was the Police personnel who had stated that on 22.8.2018, the ward boy of the district hospital had informed the police station Kotwali by the Rojnamcha aam at around 8:30am. He had stated that he had got the duty of getting the panchayatnama done. The opinion given in the panchayatnama was that he was hit by lathies and dandas. Upon being cross-examined, he had stated that the exhibit ka9, (paper no. 18ka/1) did not have a signature and that inadvertently probably it was left out. He had admitted that there was over writing on 50 and upon ‘50’, ‘55’ had been written. Upon being asked whether there was also overwriting on 21 and on ‘21’, ‘22’ had been written, he had said yes that there was overwriting. In other columns also 21 was cut out and 22 was written. He admitted that overwriting had been done.

19. P.W.-5, the Head Moharrir, had proved the FIR which was dated 23.7.2018.

20. P.W. - 6 again was a formal witness who had proved certain computer entries.

21. P.W.-7 was, Devendra Singh Yadav, who was the Sub Inspector who had done the investigation and was the investigating officer. He had stated that on 23.8.2018 he was posted as Station House Officer at Bankata Police Station. The first informant Neha Rai had got the first information report lodged under Sections 143, 148, 149, 323, 352, 504, 506, 302/34 and that had given rise to Case Crime No. 144 of 2018 against the accused, namely, 1. Devendra Yadav, 2. Dan Singh Yadav, 3. Ranjeet Yadav, 4. Rohit Yadav, 5. Amit Kumar Rai, and 6. Brahma Yadav. They were all said to be the residents of village Chhitauli, Police Station Bankata, District Deoria. After the first parcha was written on 23.8.2018, the statement of the P.W.- 1 was recorded by him and on the pointing of the P.W.-1 the site map was prepared on 23.8.2018 itself. On 24.8.2018, for the purpose of arresting the accused efforts were made. On 25.8.2018, again all efforts were made. On the same date i.e. on 25.8.2018 telephones of the accused were put on surveillance. On 27.8.2018 and 28.8.2018, efforts were made to arrest the accused. On 29.8.2018, the accused Devendra Yadav son of Subhash Yadav and Ranjeet Yadav son of Ram Chhabila were arrested and from them two bamboo lathis on their pointing were recovered. On 2.9.2018 by the entries on parcha no. 9, he had stated that Rohit Yadav was arrested. From his pointing also, a certain bamboo lathi was recovered. Similarly, Dan Singh Yadav was also arrested and on his pointing on 7.9.2018 a bamboo lathi was recovered. In the same manner, from the accused Amit Kumar Rai who was arrested, a bamboo lathi was recovered. With the help of accused Dan Singh Yadav, Brahma Yadav was also arrested on 9.9.2018. From them also, weapons of the crime were recovered. In the same manner, he had described about all the other arrests and the other recoveries.

22. In his cross-examination, he had stated that he did not remember as to with which official, the weapons which were recovered were sent for further inspection. He also did not remember if the weapons/lathies etc. were sent to any laboratory for further tests. In fact, he admitted that there was no mention of any sending of weapons/lathies to the laboratory. He had submitted in his cross-examination that when recoveries were done no independent witnesses were there. He had stated that during investigation, he had not enquired as to how many brothers, the deceased had and, in fact, he admitted that even on the date of cross-examination, he was not knowing the number of brothers the deceased had. Whether there was any case under Section 354 IPC registered against Ramesh, the brother of the deceased, Uma Shanker, he did not know. He also did not know if the brother Ramesh was married. However, the deceased Uma Shanker, his wife P.W.-2, were sureties for him in the case under section 354 I.P.C. He had stated that he had not recovered any scooty in its proper or damaged form from the place of incident. He has stated that he had not taken the scooty in his custody. When he had reached the house of the deceased then a lot of family members and relatives were present. None of them, however, gave any written FIR despite the fact that the P.W.-7 had demanded one from them. However, he gave reasons for not lodging the FIR and that was that a few of the family members were still out of the town and they were being waited for. With regard to there being any journalist at the house of the deceased and whether any photography was done he had replied that, he had no idea. Upon a question being asked as to how the police authorities function vis-a-vis dial '100', he had replied that when the number '100' is dialed then it reaches Lucknow, the main office. From there, it is given to the Police Response Van (PRV) which

is present at every police station and is in the control of the Station House Officer there. On the date of the incident, the control over the PRV was in the hands of P.W.-7. He had stated that whether dial '100' was dialed, he had no information but some police station had given him the information. The Sub Inspector Ram Pratap Yadav had given him the information that on Bhadsar Chauraha an incident had taken place. He had stated that on the date of incident i.e. 21.8.2018, he had gone to attend on it. What the Sub Inspector Ram Pratap Yadav had done on 21.8.2018, he had no idea. However, P.W.-7 had not cared to investigate as to from which number the dial '100' was dialed. He denied the fact that because the telephone from which number '100' was dialed was of some other people and not of P.W.-1 and, therefore, he had not mentioned about it in the case diary. That the police had taken the deceased to the primary health centre Bankata, he had not noted. Obviously, he said that the police of police station must have been taken along with the injured but with regard to this fact he had not mentioned anything in the investigation. Whether at the time of post mortem anyone from the police station was present, he had no idea. Before the FIR was lodged and after the number '100' was dialed, he had stated that he did not remember if he had gone to the house of the deceased. No dangerous weapon was used in the incident and no dangerous weapon was also recovered. He had stated that he had not taken the statement of any of the shopkeepers, namely, Kapil Kharwar, Brijesh Yadav, Suddu Lohar, Sheshnath Tiwari during his investigation. In the case only eye-witnesses were the mother of the first informant and the first informant herself. In the map, he had not given the distance of the place of the incident and the house of the informant. He had stated that he had not prepared any site plan with regard to the recovery of lathi from the pointing of Amit Kumar Rai. However, he had stated that the place from which the lathi was recovered was opposite the house of the informant. Since the recovery of lathi/bamboo from Amit Kumar Rai was not stated in so many words in the fard baramadgi, the P.W.-7 had stated, upon a question being asked, that in fact, a lathi was recovered from the house of Amit Kumar Rai. Upon further questioning, he had stated that the site plan was prepared by him. He had stated that in the map he had not given anything about the neighbourhood. He had also not taken the statement of any of the shopkeepers who were there in the neighbourhood. Even the statement of Sheshnath Tiwari, the land-lord of the Katra was not recorded by him. In the neighbourhood of the Katra, there was a milk dairy farm and the statement of the owner of the milk dairy farm was also not taken by him. He had upon questions being asked whether he had given the distance between the various fixed points, he had stated that he had not given them at all. Who had seen the incident and from which place also he had not mentioned in the site plan. At the time of the incident, where the first informant Neha was, also he had not mentioned in the map. How the wife of the deceased, Harikanti Devi came and from which direction, he had also not mentioned in the map. He had again stated, upon a question being asked, as to who lived in the neighbourhood, he had stated that he did not know about it specifically. The Katra owner Sheshnath Tiwari was living in the neighbourhood but he had not taken his statement at all. Before the recoveries were made under Section 27, he had stated that he had not taken any disclosure statement from any of the accused persons. He had stated that the news of the incident had reached him on the date when the incident had occurred i.e. on 21.8.2018 but he had not taken any steps till such time as the FIR was lodged. He had denied the allegations made by the P.W.-1 that the FIR was not lodged because he had asked for the post mortem report first. He had categorically stated that from the site in question he had not recovered any scooty. The place of recovery from where the lathi/bamboo sticks of Ranjeet and Rohit were found was an open place where any one could go easily. Where the accused had escaped, after committing the murder, he had not stated in the map. He had also not made any efforts to recover

the scooty. He, in so many words, had stated that he recorded the statement of the widow of the deceased Harikanti Devi only after 36 days of the incident. The reason for the delay he did not know. On 21.8.2018, also he categorically states that neither Neha nor any of the family members was present in the house to tell as to who was responsible for the murder of Uma Shanker. He had categorically stated that there was no blood found on any of the lathies recovered.

23. P.W.-8 is Doctor Bipin Ranjan had proved the post mortem report. He had stated that the post mortem when was being conducted, it was also photographed. The police constable who had brought the dead body was Shailesh Kumar. The person who had recognized the dead body was Jai Prakash Tiwari son of Ram Ghyan Tiwari. The other person who had identified the dead body was one Rama Shish. The injuries on the dead body were 12 in number which were as follows:--

"1- खरोंच बाँये कलाई के सामने के हिस्से में 3cm x 1cm का गहरा लाल scab था।

2- Contusion 40 cm x 21 cm का कमर के पास एवं दोनों चूतड़ पर मौजूद था। रंग कालापन था।

3. Contusion 26 cm x 24 cm दायें जांघ के पिछले हिस्से में मौजूद था। रंग कालापन था।

4. Abraded contusion 4 cm x 2.5 cm दाहिने पैर के पिछले हिस्से में मौजूद था। जो कि Lateral malleolus के 12 cm ऊपर था। रंग कालापन था।

5. Contusion 14 cm x 15 cm बायें जांघ के पिछले हिस्से में मौजूद था जो कि Popliteal fossa के 18 cm ऊपर था। रंग कालापन था।

6. Multiple linear खरोंच दाहिने चूतड़ पर मौजूद थे जो कि सात थे एवं उनकी लम्बाई 4 cm से 5cm x 0.2 cm थी। Dark red stab मौजूद था।

7. Abraded contusion 12cm x 3.5 cm कमर के पास निचले हिस्से में चूतड़ के ऊपर मौजूद था। रंग कालापन था।

8. Abraded घाव 11 cm x 3.5 cm बाये तरफ कमर के निचले हिस्से में चूतड़ से 6 cm ऊपर मौजूद था।

9. Contusion 33 cm x 9 cm दाहिने scapula के नीचे से शुरू होकर बायें scapula तक मौजूद था। रंग कालापन था।

10. खरोंच 3cm x 2 cm दाहिने हाथ के पिछले हिस्से में कोहनी के ठीक नीचे था।

11. खरोंच 4 cm x 1.5 cm बायें कोहनी के ठीक पीछे था। गहरा लाल scab था।

12. Contused swelling 3 cm x 3 cm सर के पिछले हिस्से में चोट था। आंतरिक परीक्षण scalp As noted. skull meninges lacerated था।"

24. In the cross-examination, amongst other things which he had stated was that the lasceration in the brain could be because of the incident. Then he had categorically stated that apart from the injury no. 1, all the injuries were on the back side of the body. The injury no. 2 could not

be possible by a lathi as it was 40X21 CM in size. Regarding injury no. 3, he had stated that it could be possible by the assault by a single person.

25. On the cross-examination being done by the side of Rohit and Ranjeet, he had stated that the death could have taken place on 21.8.2018 in between 11:00PM to 12:00 midnight.

26. Thereafter, the statements of the accused were recorded under Section 313 Cr.P.C. They had all denied having committed the crime and had stated that because they had highlighted the fact that the deceased had encroached upon the gaon sabha land and because of the that fine was imposed on the deceased, the accused had been falsely implicated by the daughter of the deceased.

27. D.W.-1 was Rajneesh Kumar Bharti. He had stated that in the interviews which he had taken of the P.W.-1. She had not mentioned the names of Devendra Yadava, Dan Singh Yadav, Rohit Yadav, Ranjeet Yadav and Verma Yadav. He had also denied the suggestion that there was any interpolation in the video.

28. D.W.-2 had played the video which had recorded the interview. 29. After the trial was completed, judgment was delivered on 10.8.2023 whereby the accused Devendra Yadav, Dan Singh Yadav, Rohit Yadav, Ranjeet Yadav, Ankit Kumar Rai were found guilty under Section 302/34, 354, 504 and 506 IPC and were exonerated for the offences under Sections 147, 148, 302/149, 323/149. However, the accused Brahma Yadav, Rohit Yadav were given the benefit of doubt and were acquitted.

30. Pursuant to the conviction, Ranjeet Yadav filed CRLA No. 9263 of 2023, Dan Singh Yadav filed CRLA No. 9255 of 2023, Devendra Yadav filed CRLA No. 9555 of 2023 and Amit Kumar Rai filed CRLA No. 9965 of 2023.

31. Learned counsel who appeared for the appellants Ranjeet Yadav, Dan Singh Yadav, Devendra Yadav and Amit Kumar Rai, Sri Rajrshi Gupta assisted by Sri Ashutosh Kumar Mishra made the following submissions:-

I. There was a delay in the lodging of the FIR and that was sufficient, he submitted, to come to the conclusion that the accused were falsely implicated in the case and that too after much deliberation. Learned counsel for the appellants stated that the incident took place on 21.8.2018 as per the FIR at 7:00PM. The FIR was lodged by the informant Neha Rai, the P.W.-1, the daughter of the deceased on 23.8.2018 at 13:29 hours (1:29PM). Thus the delay was to the tune of 42 and a half hours. The prosecution had tried to explain the delay by saying that the informant had 4 brothers who resided in different parts of the country and only after they had come back, the cremation was done and then the FIR was lodged. She had stated in her statement at page 36 of paper book that on 22.8.2018 two of her brothers had come back and thereafter on 23.8.2018, the other two brothers had also come back. They had thereafter done the cremation and then she had gone to the police station to lodge the FIR. The relevant portion of page 36 is being reproduced here as under:-

'तो मैंने बाहर रहने वाले भाइयों को सूचना दी तो दो भाई दिनांक 22.8.18 के रात्रि में आये तथा दो भाई दिनांक 23.8.18 के सुबह आये और पापा का अन्तिम संस्कार किये। पापा के अन्तिम संस्कार के बाद थाने पर दर0 देने गयी। मैं दर0 अपने हाथ से लिखकर दिनांक 23.8.18 को थाने पर ले गयी थी।'

Learned counsel for the appellants stated that when two of her brothers had come on 22.8.2018 then at least on 22.8.2018 the FIR could have been lodged. Only on 23.8.2018 when the cremation was also done then the written first information report was lodged for the first time in the police station.

Learned counsel for the appellants further submitted that the P.W.-7 at page 99 had stated that on receiving the information about the incident, he had reached the place of incident. Immediately thereafter he had reached the house of the deceased wherein the family members, relatives and others were present. He has stated that yet no complaint regarding the incident was given by any of the family members. He had stated that he had tried to ask the complainant to lodge the FIR but she had stated that she was waiting for her brothers to come. Learned counsel for the appellant had taken the Court through the statement of the investigating Officer at page 99 and, therefore, the same is being reproduced here as under:-

'पहले मैं घटना स्थल पर गया था। घटना स्थल पर जाने के कितनी देर बाद मृतक के घर गया था याद नहीं है। जब मैं मृतक के घर पहुँचा तो वहाँ उनके घर के लोग थे रिश्तेदार थे गांव के लोग थे। जब मैं मृतक उमाशंकर के घर पहुँचा तो वहाँ उनके परिवार के लोगों ने कोई लिखित तहरीर घटना के सम्बन्ध में नहीं दिया था। मैंने उनके परिवार से लिखित तहरीर मांगा था। लेकिन तहरीर इसलिए नहीं दिया क्योंकि उनके घर के कुछ लोग बाहर थे। घर के लोग जो बाहर थे उनका इन्तजार कर रहे थे लेकिन इस सम्बन्ध में कुछ नहीं कहा कि रपट कब देंगे।'

Learned counsel for the appellants further submitted that the P.W.-1 had stated in her testimony that she had made a call on number 100 and when the police had not reached, she had made a call to the police station and thereafter the SHO from the police station had come and had taken her father to the PHC Bankata and after that to the Deoria Hospital. This, learned counsel for the appellants states, amounts to virtually an admission that the first informant had till the death of her father not given any information regarding the commission of any offence against her father. The police official who had accompanied the father i.e. the SHO to the Hospital had also not revealed the names of the accused persons. With regard to this, the statement of P.W.-1 at page 36 again becomes important.

'मैं 100 नम्बर पर डायल की लेकिन पुलिस समय पर नहीं आयी तो थाने पर फोन की। फोन पर दरोगा जी आये तो पापा को पीएचसी बनकटा ले गये लेकिन वहाँ डाक्टर के न रहने के कारण देवरिया अस्पताल आते-2 देवरिया सदर अस्पताल के डाक्टर ने मेरे पापा को मृत घोषित कर दिया।'

Learned counsel for the appellants while again explaining as to how the accused were falsely implicated in the delayed FIR had drawn the attention of the Court to the page 40 of the paper book wherein he had brought to the notice of the court as to what story the first informant had come up with regard to the fact as to why she had delayed the lodging of the FIR. The statement of the first informant as was read out by the learned counsel for the appellants, the same is being reproduced here as under:-

'प्रश्नः' जब दरोगा जी अस्पताल पर थे तो वहीं पर घटना की लिखित सूचना क्यों नहीं दी?

उत्तर- क्योंकि मेरे घर पर कोई गार्जियन नहीं था मेरे गांव मुझे भी जान से मारने की धमकी दिये थे इसलिए मैंने तुरंत तहरीर दरोगाजी को नहीं दिया था।

दूसरे दिन भी मैंने लिखित सूचना थाने पर नहीं दिया था क्योंकि पोस्टमार्टम नहीं हुआ था। दरोगाजी ने कहा था कि पोस्टमार्टम रिपोर्ट लाओ तब एफ०आई०आर० दर्ज होगी।'

This very witness, learned counsel for the appellants stated that, when was asked as to why she had not taken the help of her uncle Ramesh who was also staying in the same house, she had stated that he was of unsound mind and that he had left the house at the time of the incident and returned after 26 and 27 days. With regard to this submission of the learned counsel for the appellants, the statement of P.W.-1 at pages 50 and 51 of the paper book becomes important and the same is being reproduced here as under :-

'S.P. साहब का नम्बर मुझे याद नहीं है। मेरे चाचा रमेश राय दिमाग से पागल है। घटना के दिन घटना स्थल पर नही पहुंचे देवरिया भी नही गये थे। उस दिन नही बताया था कि रमेश मेरे चाचा पागल है। इस पर साक्षी ने कहा कि बोलने कहा देते है। आप। आज सिखाने के बाद मै चाचा को पागल बता रही हूँ। घटना के दिन मेरे चाचा घर से भाग गये थे तब से आते है जाते है। घटना के दिन मेरे चाचा भागे थे उसके 26, 27 दिन बाद लौटे थे। ब्रह्म भोज मे थे। ब्रह्म भोज 12 दिन पर होता है। मेरे चाचा मेरे पिता के समय से ही पागल हैं। उनकी दवा बहुत हुई थी। डा० का पर्चा है या नही मेरे को नही मालुम। कहाँ के डा० की दवा हुई मै नही जानती। मुल्जिमान से मेरे चचा रमेश बात करते है। इसीलिए हम समझते है कि वह पागल है मुझे याद नही है कि जिस समय रिपोर्टर मेरा इंटरव्यू ले रहा था फोटो खींच रहा था उस समय मेरे चाचा मौजूद थे या नहीं। मुझे नही मालुम कि उस रिपोर्टिंग मे मेरा व दरोगा जी व मेरे चाचा का व अन्य लोगो का फोटो हो।'

With regard to the view of the P.W.-2 as to why the FIR was not lodged immediately after the incident, she had also given the story that she was waiting for her sons and her brother-in-law (devar) Ramesh who was of no use whatsoever.

Despite all this, the P.W.-1 and P.W.-2 have admitted to the fact that Ramesh was an accused of a case of teasing in which the appellant Brahma was a witness against him. The P.W.-1 stated as follows:-

'हीरा लाल चौहान को जानती हूँ। हीरा लाल की पत्नी मनोरमा ने लड़की से छेड़खानी का मुकदमा मेरे चाचा रमेश राय पर लिखवाया है। मुझे याद नही है कि मेरे पिता स्व० उमाशंकर राय व मेरी माँ हरिकंती देवी ने मेरे चाचा की जमानत भी हो। मेरे पिता के पास स्कूटर व चार पहिया गाड़ी थी। यह सही है कि दूर जाना होता था तो चार पहिया से जाते थे छोटी दूर जाना होता था तो स्कूटर से जाते थे। मै हमेशा उनके साथ नही जाती थी कभी-2 जाती थी। स्कूटर पर या गाड़ी पर बैठ कर जाती थी। ब्रम्हा नाम का मुल्जिम मनोरमा द्वारा लिखाये गये मुकदमे मे मनोरमा के तरफ से गवाह है।'

and the P.W.-2 had page 54 as stated as follows:

'जिरह द्वारा अभि० अधि० देवेन्द्र यादव, दान यादव, ब्रम्हा, रणजीत व रोहित मेरे पति सीधा व्यक्ति थे और गांव के लोग डरते नहीं थे। रमेश राय मेरे देवर हैं। शादी रमेश राय की नहीं हुयी है। रमेश राय के विरूद्ध अभि० गण ने छेड़खानी का मुकदमा लिखवाया है। मनोरमा W/o हीरा लाल ने लिखावाया है। इस मुकदमें का अभि० ब्रम्हा उक्त छेड़खानी के मुकदमें का गवाह है। रमेश राय मेरे देवर हमार साथ उसी मकान मे रहते हैं जहाँ मैं रहती हूँ। उस मुकदमें में रमेश राय ने जमानत करवा ली है। उनके जमानतदार मैं व मेरे पति हैं। छेड़खानी का मुकदमा इस मुकदमें के पहले का है। जब लड़के ने आकर बताया कि मेरे पति को मार रहे है तो उस समय छः बज रहा था। जब से मेरे पति की हत्या हुयी और दरोगा जी से पूछ ताछ तक मैं घर पर ही रही। एक मुकदमें में ब्रम्हा के विरूद्ध लिखवाया था। अभि० देवेन्द्र अमित राय के साथ मिल कर धमकी देता था। अभि० देवेन्द्र से मेरी कोई दुश्मनी नहीं थी।'

Learned counsel for the appellants, therefore, stated that if Ramesh was having the sense to get involved in teasing etc. and he had to be got released on bail then definitely he was a person who was in his senses and could not be written off absolutely. He submits that at least he could have gone and got the FIR lodged. Thus, to say that there was no grown up person at the relevant point of time is again only an excuse which was being made by the P.W.- 1 and 2 and thus learned counsel for the appellants submitted that definitely only an excuse was being made for the delay in lodging of the FIR. He submits that the informant had no idea with regard to the fact as to who had killed her father and she was only trying to deliberate the issue with her brothers as to whether the persons who were responsible for getting the encroachment of her father removed from the gaon sabha land should be implicated in the case which as per the appellants counsel was only an accident.

Learned counsel for the appellants has submitted that as per the judgment of the Supreme Court in Lalita Kumari vs. State of U.P. and others reported in 2014 (2) SCC 1, as per paragraph no. 93 of the judgment, the lodging of the FIR at the earliest was essential as it firstly set into motion the criminal process and secondly if the FIR was lodged at the earliest then there is a minimum chance of embellishment. Since paragraph no. 93 of the judgment was relied upon by the counsel it is being reproduced here as under:-

‘93. The object sought to be achieved by registering the earliest information as FIR is inter alia twofold; one, that the criminal process is set into motion and is well documented from the very start; and second that the earliest information received in relation to the commission of a cognizable offence is recorded so that there cannot be any embellishment, etc. leater.’

Learned counsel for the appellants also relied upon this very judgment and referred to paragraph no. 97 of it and submitted the importance of lodging the FIR. The same is being reproduced herein as under:-

‘97. The Code contemplates two kinds of FIRs: the duly signed FIR under Section 154(1) is by the informant to the officer concerned at the police station. The second kind of FIR could be which is registered by the police itself on any information received or other than by way of an informant [Section 157(1)] and even this information has to be duly recorded and the copy should be sent to the Magistrate forthwith. The registration of FIR either on the basis of the information furnished by the informant under Section 154(1) of the Code or otherwise under Section 157(1) of the Code is obligatory. The obligation to register FIR has inherent advantages :

97.1. (a) It is the first step to ‘access to justice’ for a victim.

97.2. (b) It upholds the □rule of law□ inasmuch as the ordinary person brings forth the commission of a cognizable crime in the knowledge of the State.

97.3. (c) It also facilitates swift investigation and sometimes even prevention of the crime. In both cases, it only effectuates the regime of law..

97.4. (d) It leads to less manipulation in criminal cases and lessens incidents of 'antedated' FIR or deliberately delayed FIR.'

Regarding the paragraph no. 120.4 of the judgment, he stated that any police officer cannot avoid his duty from registering the FIR, if cognizable offence is disclosed. In fact, he submitted that if the FIR was not registered by the officials with regard to the offence then they were liable to be proceeded with .The paragraph 120.4 of the judgment of Lalita Kumar is being reproduced here as Under:-

'120.4. The plice officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

Learned counsel for the appellants relied upon the judgement of the Supreme Court Thulia Kali vs. State of Tamil Nadu reported in (1972) 3 SCC 393 and relied upon paragraph no. 12 of the judgment and submitted that the delay in lodging the FIR results in miscarriage of justice. Any after thought results is miscarriage of justice and thus, the delay should be properly explained. A delay of 42 and a half hours being only explained by the fact that the informant was waiting for her brothers appears to be absolutely unsatisfactorily.

Further learned counsel for the appellants relied upon the judgement of Dilawar Singh vs. State of Delhi reported in (2007) 12 SCC 641 and submitted that in absence of satisfactory reasonings for causing the delay in reporting the incident may prove to be fatal to the prosecution case. The delay in the lodging of the FIR by PW1 and the non- filing of the FIR by the police definitely also, he submitted, went to show that the police did not lodge the FIR as it always thought it was only an accident and not any offence committed by anyone.

II. Learned counsel for the appellant has very categorically from the record of the case pointed to certain contradictions in the statements of the eye-witnesses and has submitted that if those contradictions are seen then a doubt is created as to whether the P.W.-1 and 2 were at all there at the place of incident. While the P.W.-1 had stated that she had accompanied the deceased and was also present at the alleged time of assault her statements get questioned in the following manner. First of all, she gave an interview to a journalist, D.W-1, and stated that when the incident had take place, she had received the information from some persons while she was at her house. She had stated that though she had given the interview, the things stated therein were because she was very frightened at the relevant point of time. Learned counsel states that what threat was worrying her was never disclosed. However, he stated that it was an admission that she did give the interview.

The fact that the P.W.-1 and 2 were not there at the relevant place on the date when the incident had taken place also gets corroborated by the testimony of the P.W.-2 i.e. the mother of the P.W.-1 and wife of the deceased who had page 59 categorically stated that at the time when she had heard the incident both she and Neha were at the house. The relevant portion of her statement which was pointed out by the learned counsel for the appellant is at page 59 wherein she had stated:

'मै शोर सुनकर घर से बाहर निकली उसी समय कोई लड़का रोते हुये आया और कहा कि चाचा को लोग मार रहे हैं। जब मैं शोर सुनी तो मेरी लड़की नेहा और मैं घर पर थी।'

She had also stated at page 57 that initially the daughter had reached the place of incident and she thereafter had followed her. The relevant portion which learned counsel for the appellant pointed out at page 57 is being reproduced here as under:

'घटना स्थल पर पहले लड़की गयी थी। फिर मैं गयी थी। लाठी से मारना मैंने अपने आँख से देखी। मैं बराबर घर में रहती हूँ। बाहर कम जाती हूँ। मैंने बयान दिया है कि लोग घटना देख रहे थे लेकिन देवेन्द्र के डर के मारे कोई छुड़ाने नहीं आ रहा था। मैं बेहोश होने के कारण नही देखी थी कि घटना कौन 2 लोग देखे हैं।'

Thus the contradictions in the statements of P.W.- 1 and 2 were not only there to show that they were not stating the correct facts but they also went to show that they were not present at the place of incident when the alleged assault had taken place. The PW2 was a highly tutored witness, which broke down to state the truth which she was being cross-examined.

Learned counsel for the appellants relied upon the statement of P.W.- 1 and stated that she had stated that her house from the place of incident was 100 to 200 meters away (जहा मार् हो रही थी वहा से मेरा घर, 100 से 200 मीटर इस दुरी पर है).

P.W.-2, however, had stated that the distance between the place of incident and her house was 200 to 500 yards. Again P.W. -2 at page 61 had stated something which neither the P.W.-1 nor the P.W.-2 had stated at the time of getting there statements recorded under Section 161 Cr.P.C. PW.-2 stated for the first time stated that she got to know about the incident from one Anish, the relevant portion at pages 61 and 62 of the paper book is being reproduced hereas under:-

'अनीस पुत्र परमानन्द ने जब मुझे बताया कि चाचा को मार दिये हैं, उस समय मैं अनीस पहचानती थी क्योकि वह मेरी पट्टीदारी का है। जब अनीस ने मुझे बताया तो उस समय दिन नही हुआ था, 15 मिनट दिन डूबने में बाकी था। अनीस के बताने के बाद मैं मौके पर हिम्मत बाँधकर गयी थी। अपने घर से मौके पर मैं अकेले गयी थी, मेरे साथ और कोई नही गया था। अनीस ने मुझे मेरे घर आकर घटना के बारे में बताया था, यह बात मैंने अपनी लड़की नेहा से भी नही बताया था। अनीस का नाम मैंने अपने लड़को को बताया था और किसी को नहीं बताया था। मैंने सभी लड़को को बताया था। अनीस ने घटना के बारे में मुझे बताया था, यह बात मैंने दरोगा जी को नही बतायी थी।'

Learned counsel for the appellants stated that Anish was never examined by the prosecution. Still further to prove that P.W.1 and P.W. 2 were not present at the relevant place at the time of occurrence and their statements were filled with contradictions, learned counsel for the appellants submitted that the statement of the PW2 was recorded by the Investigating Officer almost after 36 days of the incident and no plausible explanation was brought forth by the prosecution. This has been stated by the P.W. - 7 and also by the P.W.-2.

III. Learned counsel for the appellants further submitted that no independent eye-witness was brought forth by the prosecution P.W. -1 and 2. Both have stated that the incident had taken place in a busy street. At pages 42 and 43, the names of the shopkeepers whose shops were there at the place of incident were mentioned by the P.W.-1 but strangely no one came in the witness box to

testify about the incident. This fact has also been metnioned by the P.W.-7 at page 102 of the paper book. The relevant portion of which is being reproduced here as under:-

'इस केस के बाबत चश्मदीद गवाह वादिनी मुकदमा व उनकी मां हरिकान्ती के अलावा अन्य किसी का नाम चश्म दीद साक्षी के रूप में नहीं है।'

IV. There are material contradictions in the medical evidence from the occular testimonies of the P.W. 1 and 2. Learned counsel for the appellants has submitted that there were in fact 12 injuries on the person of the deceased and they were all on non-vital parts and that too in the back portion of the body. The P.W.-1 had stated that the assault was from the front and in fact the deceased had tried to hold the lathi blows. From the post mortem report this much was clear that no assault was made from front. The injury no. 12 which is laceration in the head was also a doubtful injury and in fact the doctor at page 114 had gone to the extent of saying 'brain ka laceration motor vehicle accident se ana sambhav hai'

V. If the statement of the P.W.-1 and the statement of P.W.-3 is seen then also there is a vital variation in the statements of the two witnesses. In the FIR, the P.W.-1 had stated that the father and the daughter had gone with some Prasad of Bhaijnath Dham at around 6:00PM to the house of Jai Prakash Tiwari and thereafter the father and the daughter were coming back to their house and then the incident had occurred whereas the P.W.-3, Jai Prakash Tiwari, had stated in his testimony before the Court that he was not a relative of Uma Shanker but he had met him because his daugther Vineeta and the daughter of the deceased Neha were friend and, therefore, he had known Uma Shanker Rai. He had met Uma Shanker Rai, the last time around 1 week before the incident had taken place, and thereafter, he had seen the dead body of the deceased at the time of panchayatnama on 22.8.2018. He very categorically stated that in between he had never met the deceased.

Learned counsel for the appellants, therefore, states that the story as was brought forth by the P.W.-1 with regard to her going to Jai Prakash Tiwari's house with her father becomes falsified.

Learned counsel for the appellants further has submitted that in the FIR itself the P.W.1 had stated that there was some dispute between the accused and the deceased and, therefore, her father was done to death. From the various statements of the witnesses, learned counsel for the appellants has demonstrated before the court that it was the deceased who had made illegal encroachments over certain gaon sabha land and since the accused side had moved applications for the removal of the encraochment there could not have been any reason for the accused to kill the deceased. In fact, since the deceased was pushed out of the encroachments on the complaint of the accused persons there was a possibility that P.W.-1, because her father had been dragged into a litigation where he had lost, had implicated the accused persons falsely.

VI. Learned counsel for the appellants states that while motive is a double edged weapon where murder could take place because of a motive, the very same motive could be used to implicate the accused falsely. Learned counsel for the appellants while disclosing the motive aspect has further stated that even though the prosecution witness had presented the accused as notorious people having local power/clout/terror in the area but no evidence in this regard had been brought forth.

Learned counsel for the appellants states that the P.W.-1 had categorically stated that her father was a BJP leader and he, therefore, submits that if he was politically strong then definitely some evidence ought to have been brought forth to indicate as to whether the accused were notorious people.

VII. Learned counsel for the appellants submitted that the demand made by the P.W.-1 with regard to the interview of the journalist cannot be lightly brushed aside. In the interview she had stated that she was at her house and someone had informed her about the incident having taken place and upon reaching there she had found Surendra, Maqsudan, Arun Kumar and Subhas assaulting her father. These persons whose names were taken in the interview were not mentioned in the FIR. In this regard, learned counsel for the appellants states that as per Section 58 of the Evidence Act such facts which are admitted need not to be proved. Since he relied upon Section 58 of the Evidence Act, the same is being reproduced here as under:-

58. Facts admitted need not be proved.

No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings:Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

Learned counsel, therefore, stated that if the factum of interview had been admitted then what was stated in the interview ought to be taken into consideration while deciding the case.

VIII. Learned counsel for the appellants submitted that the investigation was made in the most faulty manner and any lapse which was there in the investigation would go to benefit the accused. He states that if the panchayatnama is seen and the statement of P.W.4 S.I. Awadhesh Yadav, is seen then it would be evident that in the panchayatnama there were various interpolations which had not been explained.

Even in the panchayatnama, such opinions had been given so as to subsequently treat the incident as murder. Learned counsel for the appellants further states that even the preparation of the site map was done in a most shoddy manner. He relied upon Krishnedowda & Ors; Nanje Gowda and another vs. State of Karnataka by Arkaloud Police, reported in 2017 AIR SC 1657 and submitted that if there were contradictions bewteen the medical and occular evidence coupled with severe contradictions in the oral evidence, then clearly latches in investigation would benefit the case of the accused.

IX. Learned counsel for the appellants further submitted that the recoveries as were made were erronously made. Before the recoveries, no disclosure statements were prepared and nothing as was essential as per the judgement of Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh reported in AIR 2022 SC 5273 and Subramanya vs. State of Karnataka reported in AIR 2022 SC 5110 was done.

X. Still further learned counsel for the appellants has submitted that if there was acquittal of two accused who were made accused on the very same evidence on the basis of which other accused were being convicted then it goes to establish that the prosecution had come up with a concocted case. In this regard, learned counsel for the appellants relied upon Yogarani Versus State by the Inspector of Police reported in 2024 AIR SC 4641. Learned counsel for the appellants has specifically relied upon paragrpah no. 10 of the judgement and the same is being reproduced here as under

'10. The Court cannot convict one accused and acquit the other when there is similar or identical evidence pitted against two accused persons. In the case of Javed Shaukat Ali Qureshi v. State of Gujarat reported in 2023 INSC 829, this court has held that:

'15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination.'

In the case on hand, allegations against the appellant being the same as made against Accused No. 3 & 4, the Courts below could not have convicted the Appellant while acquitting the other two.'

He also relied upon the judgement of Supreme Court in Javed Shaukat Ali Qureshi vs State of Gujarat reported in 2023 (9) SCC 164 and relied upon 15 of this judgement it is being reproduced here as under :.

'15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the criminal court should decide like cases alike, and in such cases, the court cannot make a distinction between the two accused, which will amount to discrimination.'

32. From the side of the first informant Sri Sri Amrendra Pratap Singh, Sri Girish Kumar Singh and Sri Ashutosh Ganguli were heard. The learned AGA Sri Amit Sinha were heard for the State. They have submitted, that not always delay in FIR would be fatal for the prosecution. They submitted, relying upon the judgment of Apren Joseph @ Current Kunjukunju & ors vs. State of Kerala reported in 1973 (3) SCC 114 that there are various circumstances under which the delay can happen. So far as the inconsistency in the testimony of witnesses are concerned, learned counsel for the first informant relied upon the judgment in CRLA No. 1587 of 2002 (Birbal nath vs State of Rajasthan and ors.) which was decided along with CRLA No. 1588 of 2002. Learned counsel for the first informant has submitted that evidence as is there on record had to be looked into with sagacity. In this, regard, he relied upon paragraphs no. 20, 21 and 22 of the judgment and therefore they are being reproduced here as under :

'20. The contradictions in the two statements may or may not be sufficient to discredit a witness. Section 145 read with Section 155 of the Evidence Act, have to be carefully applied in a given case. One cannot lose sight of the fact that PW 2 Rami is an injured eyewitness, and being the wife of the deceased her presence in their agricultural field on the fateful day is natural. Her statement in her examination-in-chief gives detail of the incident and the precise role assigned to each of the assailants. This witness was put to a lengthy cross-examination by the defence. Some discrepancies invariably occur in such cases when we take into account the fact that this witness is a woman who resides in a village and is the wife of a farmer who tills his land and raises crops by his own hands. In other words, they are not big farmers. The rural setting, the degree of articulation of such a witness in a court of law are relevant considerations while evaluating the credibility of such a witness. Moreover, the lengthy cross-examination of a witness may invariably result in contradictions. But these contradictions are not always sufficient to discredit a witness. In Rammi v. State of M.P. [Rammi v. State of M.P., (1999) 8 SCC 649 : 2000 SCC (Cri) 26] , this Court had held as under:

'24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.'

In the same case, how far a contradiction in the two statements can be used to discredit a witness has also been discussed

'25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:

'155. Impeaching credit of witness. 'The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him'

(1)-(2)***

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

26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to

be 'contradicted' would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to 'contradict' the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to 'contradict' the witness.

21. In Tahsildar Singh v. State of U.P. AIR 1959 SC 1012, it was held that to contradict a witness would mean to 'discredit' a witness. Therefore, unless and until the former statement of this witness is capable of 'discrediting' a witness, it would have little relevance. A mere variation in the two statements would not be enough to discredit a witness. This has been followed consistently by this Court in its later judgment, including Rammi (Supra) . Moreover, in this case the High Court lost sight of other more relevant factors such as the witness being an injured eyewitness.

22. The purpose of the cross-examination of a witness in terms of Sections 145 and 155 of the Evidence Act is to bring contradictions in the two statements of the witness, in the case at hand, one given to police under Section 161CrPC, and the other given before the court. Even assuming for the sake of argument that there is a difference in the two statements of PW 2 as she evidently does not disclose in her examination-in-chief that Jethnath was also working in the adjacent field and there was altercation between the two, this may discredit the witness only so far as the beginning of the incident; how it started. The fact that the incident happened is not in doubt. The offenders were the accused is also not in doubt. There is no doubt that the incident took place, which resulted in one death and grievous injuries to another. It may not have happened exactly as narrated by PW 2, yet for this discrepancy the entire testimony of PW 2 cannot be discarded.

33. He also relied upon the judgments of the Supreme Court wherein it was held that general denials in the statements under Section 313 Cr.P.C. do not affect the prosecution. So far as the issue of electronic evidence is concerned, he relied upon the judgement Anvar P.V vs P.K. basheer and Ors. reported in 2014 (10) SCC 473 and Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal reported in AIR 2020 SC 4908 and submitted that in the absence of the Section 65(B) certificate as was required to be issued in the Evidence Act, electronic evidence cannot be considered as admissible in a court of law.

34. Learned counsel for the first informant further has submitted that if the delay of 42 hours was there then there was a definite reason for that. The P.W.-1 was a common girl not having much experience in life and she was also afraid of her surrounding where she lived. She would definitely be afraid of lodging FIR against the persons who were absolutely known to her and were living around her house and, thus, the delay could not be in any manner prejudicial to the case of the prosecution. Learned counsel for the first informant further submitted that if there were minor contradictions in the statements of P.W.- 1 and 2 then the case could not be termed as doubtful. They were ladies who had little knowledge as to what had to be stated at what time and, therefore, if they had made certain statements which were different from each others statements and also if they were different from their statement recorded under Section 161 Cr.P.C. then it could not be said that the whole case of the prosecution would be brushed aside. Learned counsel for the

informant has submitted that it was a broad day light murder seen by the P.W. 1 and 2 and, therefore, if other witnesses of the area did not appear then it mattered little.

35. So far as the motive part is concerned, learned counsel for the first informant has submitted that definitely the accused were aggrieved by the litigation between the parties and, therefore, the deceased who was a brave man had ultimately lose his life at the hands of the accused.

36. Learned counsel for the first informant further stated that two accused, namely, Brahma Yadav and Rohit Yadav had wrongly been acquitted. In this regard, a Criminal Appeal U/s 372 No. 439 of 2023 had been filed. He submitted that on the same evidence which had led the trial court to convict Ranjeet Yadav, Devendra Yadav, Dan Singh Yadav and Amit Kumar Rai, the two accused Brahma Yadav and Rohit Yadav could not have been acquitted.

37. Having heard the learned counsel for the appellants, learned counsel for the first informant and the learned AGA, we find that the incident occurred on 21.8.2018 at 19:00 hours as has been alleged in the FIR. Definitely there was a delay of 42 and a half hours. This delay the prosecution has tried to explain through the statements of P.W.-1 and P.W.-2. The P.W.-1 as has been noted above had stated that she had accompanied her father and was present at the time of the incident. When the incident occurred, she rung up the number □100□ to call the PVR. When there was no response from the PVR, she rung up to the police station and the SHO of the police station came. He took the injured along with the first informant to the primary health centre where they did not find any doctor and therefore, they went to the hospital at Deoria where the injured was declared dead. We also find that the first informant had on the very same day informed her 4 brothers who were staying in far off towns of the country and they took 24 and 48 hours respectively to come to Deoria. The P.W.-1 the first informant had also stated that the uncle of hers, Ramesh, was of an unsound mind and, therefore, she could not depend upon his advice. The P.W. 1 further shifted the burden over to the police and had stated that it had said that when she would get the post mortem report only then the FIR would be lodged.

38. We have considered the rival arguments of the learned counsel for the appellants and the learned counsel for the first informant who had submitted that delays did occur at times, specially when ladies are at home. However, upon the analysis of the entire incident which had taken place, we find that the delay was unexplained. The P.W. -1 had stated that upon the incident having been taken place, the police was called and the doctors were contacted. One fails to understand that even if the first informant was hesitant in getting the FIR lodged, at least the police personnel who had accompanied the injured and who had subsequently died should have at least lodged the FIR. We find substance in the submission made by the learned counsel for the appellants that, in fact, the police had been throughout of the view that it was an accidental death and therefore in all probability the FIR for the commission of murder i.e. offence under Section 302 was not being lodged. It is another matter that since a person had died the police had the responsibility to lodge the FIR. What inputs the brothers who had come from outside could give also is not known to anyone. If the P.W.-1 was an eye-witness and had seen everything, especially the assault then she should have got the matter reported at the earliest. This not having been done, we are definitely of the view that the delay would become prejudicial to the case and we are of the view that the names

which were brought in the FIR were a result of an afterthought. Further, we find that P.W.-1 had stated that she had come to the house of Jai Prakash Tiwari along with her father to give prasad. Thereafter she had gone along with her father and had reached the place of incident and had actually seen her father being getting beaten. The story seems improbable. If the daughter had been there and if she had tried to resist the assault, then she would have also got injured. Not only this, from the post portem report, we find that all the injuries were on the back side of the deceased. These injuries could have very much been there if the body of the father was dragged because of some accident. The eye-witness says that she had seen the assailants coming from the front and her father was trying to hold back the assailants but there is no injury on the front portion of the body. Coupled with that, we find that even the doctor had opined that it could be an accidental death. Not only that the doctor had also opined that the timing as was given by the first informant appeared to be a different timing. Whether Jai Prakash Tiwari was the same Jai Prakash Tiwari who was there on the panchayatnama has not been clarified by the prosecution in the entire case. However, we find that P.W. 3 Jai Prakash Tiwari had stated that he had not met the deceased for quite some time. We would also like to comment on the working on the prosecution, specially the police, which had not lodged any FIR immediately after it came to know of the incident. If it had been a case of even an accident then we are definitely of the view that an FIR was a must.

39. The contradictions in the statements of P.W.-1 and P.W.-2 are also not such which could be ignored. P.W.-1 had throughout said that she had accompanied the father but P.W.-2 had in so many words stated that the daughter was throughout with her. This is again not a simple contradiction. Further, the P.W.-2, the widow of the deceased, had stated that she was informed by a boy of the name □Anish□ and Anish was never produced in the witnesses box and thus who was speaking the correct facts, remains a big mystery which went unsolved.

40. Also, the motive aspect seem to be absolutely weak. It was the father of the P.W.-1, who should have been the aggrieved by the acts of the accused and not vise versa. This compels us also to give a thought to the fact that false acquisition might have been there. And in the ultimate analysis we do find that it was a case of false implication.

41. Furthermore, even the recovery as per the judgments of the Supreme Court were faulty and the recoveries were also such which could not be relied upon. Also, they having been found in the open place no importance could be attached to them.

42. We are, however, definitely of the view that the recorded C.D. containing the interview which was brought before the court by the D.W.-1 could not be a substantial peace of evidence of which could be considered as admissible.

43. This we say because there was no certificate from the relevant authority under Section 65(B) of the Indian Evidence Act.

44. Be that as it may, we are of the view that some substance was there in the case of the defence when they came forth with the fact that the P.W.-1 had given an interview before some news agency. This we say because she had virtually admitted the interview. Whether there was any

threat on the PW1 to give the interview was never clarified. No evidence was led with regard to the threat.

45. However, in the ultimate analysis after considering the entire evidence before us and the arguments made by the learned counsel for the appellants, we are of the view that the conviction was wrongly done by the judgement and order dated 10.8.2023 and, thus, the judgement and order dated 10.8.2023 passed by the Additional Sessions Judge/Special Judge (E.C. Act), Court No. 4, Deoria, is set aside. The appellants, Devendra Yadav, Dan Singh Yadav, Ranjeet Yadav and Amit Kumar Rai are acquitted of all the charges. They be released forthwith, if they are not required in any other case.

46. Accordingly, the Criminal Appeal No. 9263 of 2023, Criminal Appeal No. 9255 of 2023, Criminal Appeal No. 9555 of 2023 and Criminal Appeal No. 9965 of 2023 are allowed.

47. So far as the Criminal Appeal U/s 372 Cr.P.C No. 439 of 2023 is concerned, we find that there is absolutely no evidence against the accused which could be used to convict them. We are of the view that the accused Rohit Yadav and Brahma Yadav were acquitted in a fair manner and, therefore, no interference in the appeal is required. All the reasons for which the Criminal Appeal No. 9263 of 2023, Criminal Appeal No. 9255 of 2023, Criminal Appeal No. 9555 of 2023 and Criminal Appeal No. 9965 of 2023 were allowed, are also the reasons for which this criminal appeal U/s 372 Cr.P.C. No. 439 of 2023 is being dismissed.

(2026) 5 ILRA 360
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.05.2026

BEFORE

THE HON'BLE CHANDRA DHARI SINGH, J.
THE HON'BLE DEVENDRA SINGH-I, J.

Criminal Misc. Writ Petition No. 23655 of 2025
With Other Connected Cases

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

Issue for Consideration

Matter pertains to whether the allegations contained in the impugned First Information Report, arising out of disputes relating to allotment of commercial units, assured returns, execution of documents, and the alleged allotment of Shop No. D/GF-12 in the "IT Square" project, disclosed the essential ingredients of offences punishable under various ss. of IPC, or whether the controversy was essentially a civil/commercial dispute arising from contractual obligations, thereby warranting quashing of the FIR in exercise of the High Court's writ jurisdiction under Article 226 of the Constitution of India.

Headnotes

Indian Penal Code, 1860 - ss. 406, 420, 467, 468, 469, 471 and 120-B - Real Estate (Regulation and Development) Act, 2016 - ss. 31, 71 - Cheating - Builder-buyer dispute - Allotment of commercial units - Assured returns - Non delivery of possession - Fabrication of allotted related documents - Arbitration clause - Quashing of FIR - Civil dispute given criminal colour - The petitioners instituted a bunch of writ petitions seeking quashing of First Information Report dated 03.10.2025, alleging offences under various provisions of IPC - The prosecution case originated from the complainant's booking of three commercial units in the "IT Square" project in 2008, coupled with an assurance of monthly returns - Owing to disputes regarding non-payment of assured returns, the complainant was allegedly offered an additional commercial unit, namely Shop No. D/GF-12, against adjustment of outstanding amount and made further payments - Subsequently, the complainant alleged that despite receiving the entire consideration, the accused failed to execute the sale deed and the purported Shop No. D/GF-12 did not exist in the sanctioned plan, thereby accusing the petitioners of cheating, forgery and criminal conspiracy - The petitioners contended that the project had undergone multiple changes in management, they were not in control during the relevant period of alleged transactions, the dispute arose purely out of contractual and commercial obligations concerning allotment, assured returns and execution of documents, and the criminal proceedings were initiated only to exert pressure in what was essentially a civil dispute.

Held: A bare perusal of allegations levelled in the FIR/complaint would demonstrate that the substratum of dispute pertains to alleged delay in completion of project, non-delivery of possession within the stipulated timeline, alleged deviation from representations made at the time of booking, demands pertaining to payments/installments, dispute qua map/site plan/non existence of allegedly sold unit, and grievances concerning performance of obligations arising out of Builder Buyer Agreement and the real estate project in question - Such disputes are intrinsically connected with the rights and obligations flowing from a real estate transaction and squarely fall within the regulatory framework contemplated under the RERA - Where the dominant nature of dispute is regulatory, contractual and compensatory, and the statute itself creates an efficacious forum for redressal of such grievances, criminal proceedings ought not to be permitted to become a tool for arm-twisting or exerting pressure in matters essentially falling within domain of civil and regulatory adjudication - Even if the allegations contained in FIRs are accepted at face value, the same primarily disclose civil and commercial disputes arising from real estate transactions, adjustment of assured returns and validity of allotment documents - The basic ingredients of offences u/ss. of IPC are not prima facie established against the petitioners - Accordingly, writ petitions allowed. [Paras 94, 96, 108] (E-13)

Case Law Cited

Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra, **2021 SCC OnLine SC 315;** *A. Ayyasamy v. A. Paramasivam,* **(2016) 10 SCC 386;** *Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.*, **(2021) 4 SCC 713;** *Indian Oil Corpn. v. NEPC India Ltd.,* **(2006) 6 SCC 736;** *V.Y. Jose v. State of Gujarat,* **(2009) 3 SCC 78;** *Hridaya Ranjan Prasad Verma,* **(2000) 4 SCC 168; referred to**

State of Haryana v. Bhajan Lal, **1992 Supp (1) SCC 335; relied on**

List of Acts

Indian Penal Code, 1860; Real Estate (Regulation and Development) Act, 2016

List of Keywords

First Information Report; Writ Petition; Commercial units; Builder Buyer Agreement; Assured returns; Allotment letter; Sale Deed; Sub-Lease Deed; Shop No. D/GF-12; Common passage; Commercial dispute; Contractual obligations; Arbitration clause; Cognizable offence; Cheating; Criminal Breach of Trust; Forgery; Fabrication of documents; Conspiracy; Entrustment; Fraudulent intention; Dishonest inducement; Misappropriation; Commercial Transaction; Financial Transactions; Petitions allowed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ Petition No. - 23655 of 2025)

Connected with

(Criminal Misc. Writ Petition No. - 23649 of 2025),

(Criminal Misc. Writ Petition No. - 25666 of 2025)
From the First Information Report namely Case Crime No. 227/2025, registered on 03.10.2025 at Police Station - Knowledge Park, District Gautam Budh Nagar.

Appearances for Parties

Advs. for the Petitioner(s):
Kanchan Sharma, Prashant Vyas, Sr. Advocate

Advs. for the Respondent(s):
G.A., Nitin Chandra, Shashank Pandey

(Delivered by Hon'ble Chandra Dhari Singh, J.)

Factual Matrix

1. All the aforesaid writ petitions arise out of the same factual background and challenge the same First Information Report (hereinafter 'FIR'), namely Case Crime No. 227/2025, registered on 03.10.2025 at Police Station - Knowledge Park, District Gautam Budh Nagar, under Sections 406, 420, 467, 468, 469, 471 and 120-B of the Indian Penal Code, 1860. Since the allegations levelled in the impugned FIR, the nature of the transactions involved, the parties against whom accusations have been levelled, and the legal issues raised in the petitions are substantially common and interconnected, all the petitions were heard together and are being decided by this common judgment.

2. The present batch of petitions has been filed by different accused persons/entities arrayed in the aforesaid FIR. Criminal Misc. Writ Petition No. 23655/2025 has been filed by the petitioner namely Sh. Arunpreet Singh Sahni, who has been described in the FIR as owner/director of the Solitarian Group and also connected with M/s Prasandi Infotech Park Private Limited as Additional Director. Criminal Misc. Writ Petition No. 23649/2025 has been instituted by the petitioners namely M/s Prasandi Infotech Park Private Limited (petitioner no.1) along with Sh. Rajkumar Sisodiya (petitioner no.2) himself. Criminal Misc. Writ Petition No. 25666/2025 has been filed by the petitioner namely Sh. Harjeet Singh Sahani, who has also been named as an accused in the impugned FIR and has been alleged to be associated with the affairs and management of the project in question. All the petitioners are named accused persons in the impugned FIR.

3. The background of the matter is that the FIR in question came to be lodged at the instance of respondent no. 4/informant/complainant Dr. Gurpreet Singh. The FIR alleges commission of offences by the petitioners and several other accused persons in relation to a commercial real estate project known as 'I.T. Square', situated at Plot No. 21, Knowledge Park-III, Greater Noida, Gautam Budh Nagar. The allegations broadly pertain to inducement, collection of money under an assured return scheme, non-delivery of possession of the allotted commercial unit, execution/non-

execution of sale/sub-lease documents, alleged fabrication of allotment related documents and alleged cheating in relation to a unit stated to be Shop No. 12 situated at Tower-D, Ground Floor of the project.

4. The record further discloses a detailed chronology regarding the manner in which the project originally commenced (launched and operated by a Company namely 'Era'), the subsequent changes in ownership/management, and the eventual entry M/s Prasandi Infotech Park Private Limited and thereafter, the Solitarian Group, into the affairs of the project.

5. The record also shows that on 31.05.2015, in the midst of the aforesaid management structure, the alleged transaction relating to Shop No. D/GF-12 took place in the name of Prasandi. The petitioners have specifically pleaded that even at that stage, the affairs of the company were under the management of SREI Infrastructure Finance Limited/Bharat Nirman Fund and not under Solitarian.

6. The next major development reflected in the record concerns the incorporation and subsequent entry of Solitarian. It has been pleaded that Solitarian Buildinfra Private Limited was incorporated on 18.08.2015. The petitioners have further stated that Arunpreet Singh Sahni was associated with Solitarian and that Solitarian Group entered into the management structure of Prasandi only much later, namely around August, 2023.

7. According to the pleadings, after entering into the management in August, 2023, Solitarian allegedly executed a debt restructuring arrangement in March, 2024 and thereafter acquired 100% shareholding/control from Bharat Nirman Fund on 09.04.2024. The petitioners have also alleged that despite repayment of the restructured debt by September, 2024 and issuance of No Objection Certificates in November, 2024, several statutory records and company records were either not handed over properly or only partially transferred by Bharat Nirman Fund, thereby leaving several records untraceable.

8. The petitioners have thus attempted to portray a long and layered commercial history of the project spanning multiple entities and management transitions, namely:

(i) initial launch and development by Era Engineering Innovations/Era Landmarks Limited in 2008;

(ii) transfer/association of the project with Prasandi Infotech Park Private Limited;

(iii) takeover of shareholding and financial control by SREI Infrastructure Finance Limited/SREI Alternative Investment Trust/Bharat Nirman Fund pursuant to restructuring arrangements between 2014 and 2015; and thereafter

(iv) eventual entry and takeover of management by the Solitarian Group in the years 2023-2024.

9. It is in the backdrop of the aforesaid corporate and managerial transitions that the rival allegations have arisen between the complainant and the accused persons regarding the allotment, consideration, execution of documents and existence/non-existence of Shop No. 12 in the 'I.T. Square' project as well as the dispute regarding execution of the allotment letter of Shop No. 12.

10. As emerging from the FIR, the case is that on 31.03.2008, the complainant booked three commercial units/shops bearing Nos. 5, 6 and 7 situated at Tower-D, Ground Floor under a discounted cash down plan for a total sale consideration of Rs.1,17,76,050/-. The booking was allegedly made at the rate of Rs.3,510/- per square foot and, according to the informant, the entire amount stood paid. It is alleged that possession was promised to be delivered by 03.01.2009.

11. The FIR further alleges that under the Builder Buyer Agreement dated 31.03.2008, particularly Clause-C thereof, the complainant was assured monthly returns of Rs.1,99,901/- for a period of 36 months after deduction of TDS. According to the informant, only partial assured returns were paid and thereafter payment of assured returns amounting to approximately Rs.35,46,900/- was discontinued. The complainant alleged that when he approached the office of the company, he was informed that the project, though proposed to be completed in the year 2009, was still incomplete and consequently assured returns were not being released.

12. The FIR then narrates that after the complainant protested and raised objections regarding non-payment and delay in possession, certain representatives/directors including one Sh. Atul Bhalla and Sh. Ganesh Prasad Badri allegedly proposed allotment of another commercial unit namely Shop No. 12 admeasuring approximately 948 sq. ft. situated at Tower-D, Ground Floor, in lieu of the assured return component. It is alleged that the value of Shop No. 12 was fixed at Rs.44,55,600/- and payments towards the said shop were made by the complainant through various cheques issued between 12.05.2015 and 30.10.2015. The FIR specifically mentions cheque numbers and amounts allegedly paid by the complainant.

13. It is further alleged that on 13.05.2015, allotment letter, payment plan and site plan in relation to Shop No. 12 were handed over to the informant and, on the same date, five cheques of Rs.1,50,000/- each and one cheque of Rs.1,58,700/- were taken from him towards alleged brick and glass work. The FIR specifically alleges that cheque bearing No. 179010 amounting to Rs.1,58,700/- was deposited and encashed without the consent of the complainant.

14. According to the FIR, e-mails dated 05.09.2016 and 09.09.2016 were exchanged with one Sh. Sumit Sahu wherein assurances were allegedly extended that construction/brick work relating to Shop No. 12 would soon be completed and documents would thereafter be furnished. The complainant has alleged that despite passage of time, construction remained incomplete and when he inspected the site, he allegedly found that instead of the promised shop, a coffee shop was functioning at the site.

15. The FIR further alleges that in the meantime the Solitarian Group had taken over the project and that Sh. Arunpreet Singh Sahni, who is stated to be owner/director of the Solitarian Group, was also associated with the petitioners company. It is alleged that in April, 2022 the complainant was informed that the area of Shop No. 12 had increased to approximately 975 sq. ft.

and that additional amount would therefore be payable. Thereafter, on 16.04.2022, an allotment letter/document was allegedly issued mentioning enhanced area, adjustment of assured returns and other financial calculations.

16. The FIR further records that the revised valuation of the shop was stated to be Rs.48,48,041/-, out of which pending assured returns amounting to Rs.35,46,900/- and the cheque amount of Rs.1,58,700/- were adjusted, leaving a balance amount of Rs.11,42,441/-. According to the FIR, cheque bearing No. 445107 amounting to Rs.11,42,441/- was subsequently handed over to Sh. Rajkumar Sisodiya and the amount was debited from the account of the informant on 06.05.2022.

17. The complainant has also alleged that on 08.04.2022, an e-mail was sent by the Solitarian Group stating that Shop No. 12 was being sold by the Solitarian Group and that money was being received by them. It is then alleged that though sub-lease deeds in respect of Shop Nos. 5, 6 and 7 were executed in the year 2022, the sale/sub-lease deed relating to Shop No. 12 was not executed despite repeated requests. The complainant alleges that one Sh. Naresh Kumar Khetan informed him that a certain balance amount was still outstanding and therefore execution of sale deed could not be undertaken.

18. The FIR also alleges that despite receiving a total amount of Rs.48,48,041/-, the accused persons failed to execute the sale deed in respect of Shop No. 12. It is further alleged that after the death of the complainant□s father, when the complainant again visited India in March, 2025 for execution of the sale deed, one Ms. Anamika Dogra, General Manager of the Solitarian Group, demanded a further amount of Rs.23,35,809/- towards registration and other alleged charges. Reference is also made to an e-mail dated 22.04.2025 demanding additional amounts towards holding charges, delayed payment charges and CAM charges.

19. The FIR further states that when the complainant approached Greater Noida Authority to verify the status of the unit, he allegedly came to know that no sanctioned plan existed in relation to Shop No. 12 and that the location allegedly shown as Shop No. 12 was in fact a common passage/common area situated at the Ground Floor. It is further alleged that the said unit existed only on paper and that the accused persons had cheated the informant by selling a non-existent unit.

20. On the basis of the aforesaid allegations, the impugned FIR dated 03.10.2025 came to be registered against the present petitioners and several other named persons including Sh. Atul Bhalla, Sh. Ganesh Prasad Badri, Sh. Naresh Kumar Khetan, Sh. Sumit Sahu, Sh. Raj Kumar Sisodiya, Sh. Harjeet Singh Sahani, Sh. Arunpreet Singh Sahni, representatives of Solitarian Group and others.

21. The petitioners, however, have disputed the allegations in entirety and have asserted that the dispute is essentially civil/commercial in nature arising out of real estate transactions and contractual obligations.

22. The pleadings further disclose that M/s Prasandi Infotech Park Private Limited had availed financial assistance from SREI entities and, upon alleged financial defaults, the management and

shareholding structure underwent substantial changes over a period of time. It has been stated that SREI Infrastructure Finance Limited and Bharat Nirman Fund (BNF) came to acquire and control the management of the company and that the Solitarian Group entered into the management only in or around August, 2023 pursuant to restructuring arrangements.

23. The petitioners have specifically pleaded that several of the acts alleged in the FIR pertain to periods when the present petitioners were not in control of the company or the project. It has further been pleaded that the allotment letter dated 16.04.2022 relied upon by the complainant was unsigned and unenforceable and did not bear signatures of authorized representatives. The petitioners have also asserted that Sh. Harjeet Singh Sahani had resigned from the directorship of Solitarian prior to registration of the FIR and that he was neither employee, director nor shareholder at the relevant time. The petitioners have relied upon various documents including e-mails, allotment documents, MCA records, D-Mat holdings, reminders, sub-lease deeds among other documents in support of their case.

24. The aforesaid facts, emerging from the pleadings and documents filed in the connected petitions, constitute the broad factual matrix giving rise to the present batch of matters.

Submissions on behalf of the petitioners

25. The learned counsel appearing for the petitioners in all the connected petitions submitted that since all the present petitions arise out of the same factual matrix and challenge the same FIR, the petitions deserve to be heard and decided together by way of a common judgment. It was submitted that the allegations levelled in the impugned F.I.R. are substantially identical in nature and are directed against different persons connected with the management and affairs of the company at different points of time.

26. It was argued on behalf of the petitioners in Criminal Misc. Writ Petition No. 23649/2025, namely M/s Prasandi Infotech Park Private Limited through its authorized representative and petitioner no.2, that petitioner no.1 company was incorporated on 17.10.2001 under the provisions of the Companies Act, 1956 and was the lessee of Plot No. 21, Knowledge Park-III, Greater Noida by virtue of lease deed dated 20.03.2002. It was submitted that in the year 2008, ERA Landmarks Ltd., subsequently known as ADEL Landmarks Ltd., launched a commercial project under the name and style of ‘IT Square’ over the said leased property and under the understanding between the parties, ERA/ADEL had absolute development and marketing rights over the project.

27. The petitioners further submitted that respondent no.4/complainant had originally booked three commercial units bearing Nos. D/GF-05, D/GF-06 and D/GF-07 in the aforesaid project on 31.03.2008 at discounted rates and the complainant had been assured returns in respect of the said units. It was argued that possession of the said units had already been offered to the complainant on 20.02.2012 and reminder letters dated 08.06.2012 were also issued requesting the complainant to clear outstanding dues and complete necessary formalities. Learned counsel submitted that despite the offer of possession, the complainant got the sub-lease deeds executed only on 25.11.2022 after more than ten years.

28. It was next contended that during the years 2006-07 and thereafter till 2013-14, ERA/ADEL became the majority and subsequently the sole shareholder of petitioner no.1 company. The learned counsel referred to annual returns and shareholding documents filed along with the supplementary affidavits to contend that the entire control, management and day-to-day affairs of petitioner no.1 company were being managed by ERA/ADEL and thereafter by SREI Infrastructure Finance Limited (SIFL) and Bharat Nirman Fund (BNF). It was submitted that petitioner no.1 company had availed financial assistance from SREI Infrastructure Finance Limited to the extent of approximately Rs.300 crores and on account of financial restructuring, the entire shareholding together with management rights stood transferred to SREI/BNF pursuant to Share Purchase Agreement dated 30.12.2014.

29. Learned counsel for the petitioners further argued that from the year 2015 till March, 2024, the entire management, control and operational affairs of petitioner no.1 company remained with SREI Infrastructure Finance Limited and Bharat Nirman Fund and thereafter Solitarian Group entered into the management of the company in August, 2023 and subsequently acquired 100% shareholding on 09.04.2024 pursuant to restructuring arrangements. It was thus submitted that the petitioners against whom criminal liability has now been fastened were not in control of the affairs of the company during the relevant period when the alleged transactions took place or when the alleged documents were executed.

30. It was specifically submitted on behalf of petitioner no.1 in Criminal Misc. Writ Petition No. 25666/2025, namely Sh. Harjeet Singh Sahani, who has been arrayed as accused in the impugned F.I.R., that he had already resigned from the Directorship/management of Solitarian on 30.06.2025, much prior to lodging of the impugned F.I.R. dated 03.10.2025. Learned counsel submitted that the only allegation against the said petitioner is that he, along with two other persons, had informed respondent no.4/complainant regarding possession related aspects and such allegation, even if accepted on its face value, does not disclose commission of offences punishable under Sections 406, 420, 467, 468, 469, 471 or 120-B of the IPC.

31. Learned counsel appearing for petitioner Sh. Arjunpreet Singh Sahani in Criminal Misc. Writ Petition No. 23655/2025 submitted that the said petitioner has falsely been implicated merely because he was associated with the Solitarian Group at a later stage. It was argued that the petitioner had no role whatsoever in the original allotment of units in favour of respondent no.4/complainant in the year 2008, nor was he connected with the alleged representations made at the time of booking of the units. It was submitted that the entire dispute pertains to commercial transactions arising out of allotment of commercial units in a real estate project and no element of criminality is made out against the said petitioner.

32. The petitioners jointly contended that the allegations contained in the impugned F.I.R. essentially arise out of contractual and commercial obligations between the parties concerning allotment, possession, assured returns and execution of sub-lease deeds and the same at best constitute a civil dispute for which appropriate civil remedies are available. Learned counsel submitted that respondent no.4/complainant had accepted possession and had also entered into sub-lease deeds in respect of the allotted units, thereby acknowledging the subsisting contractual relationship between the parties. It was argued that the dispute relating to alleged non-payment of

assured returns, adjustment of dues, possession and execution of documents cannot be converted into a criminal prosecution merely to exert pressure upon the petitioners.

33. It was further argued that the allegations of forgery and fabrication are wholly vague, bald and unsupported by any material particulars. Learned counsel submitted that even according to the petitioners, the alleged allotment letter/document dated 16.04.2022 relied upon by the complainant does not bear signatures of the petitioners and therefore, the same cannot legally be attributed to them. It was submitted that even assuming such a document exists, the same was allegedly issued during the period when the affairs of the company were under the management and control of SIFL/BNF and not under the petitioners. Hence, ingredients of offences under Sections 467, 468, 469 and 471 of the IPC are not made out against the present petitioners.

34. The learned counsel further submitted that the impugned F.I.R. suffers from gross and unexplained delay. It was argued that the transactions in question pertain to the period commencing from the year 2008, possession had admittedly been offered in the year 2012 and various communications had been exchanged between the parties over the years, yet the impugned F.I.R. came to be lodged only on 03.10.2025 after an inordinate lapse of time. It was contended that such abnormal delay clearly demonstrates that the criminal proceedings have been initiated with ulterior motives and only as a pressure tactic in relation to an old commercial dispute.

35. It was also submitted that respondent no.4/complainant had throughout remained aware of the status of the project, the management changes and the possession related communications. The petitioners referred to various reminder letters, e-mails and allotment related documents annexed with the writ petitions and supplementary affidavits to contend that there had been continuous interaction between the parties and therefore the allegations of cheating from inception are inherently improbable.

36. Learned counsel for the petitioners further argued that essential ingredients of the offence under Section 420 IPC are completely absent inasmuch as there was no dishonest intention at the inception of the transaction. It was submitted that the project was in fact developed, units were allotted, possession was offered and sub-lease deeds were eventually executed, which itself demonstrates that the dispute relates to performance of contractual obligations and not to any fraudulent inducement from the very beginning. It was argued that mere breach of contractual terms or non-fulfilment of commercial expectations cannot give rise to criminal prosecution in absence of fraudulent or dishonest intention at inception.

37. It was next contended that no entrustment of property in the manner contemplated under Section 405 IPC has been pleaded or established and therefore offence under Section 406 IPC is also not attracted. Learned counsel submitted that the monies paid by respondent no.4/complainant were paid pursuant to contractual arrangements under commercial allotment transactions and the same cannot be treated as entrustment for the purposes of criminal breach of trust.

38. The petitioners also argued that the allegations contained in the impugned F.I.R. are unsubstantiated and there is no specific role attributed individually to each of the accused persons. It was submitted that different petitioners were connected with the company at different stages and

periods, however the complainant has mechanically implicated all of them without disclosing any specific overt act attributable to each accused. It was argued that such sweeping allegations without distinct particulars are legally insufficient to sustain criminal prosecution.

39. Learned counsel further submitted that the present proceedings are manifestly attended with mala fide and have been instituted maliciously with an ulterior motive for wreaking vengeance and coercing the petitioners in relation to a long-standing commercial dispute. It was argued that the criminal process is being misused as a tool for recovery and settlement of monetary claims arising out of contractual transactions.

40. It was also specifically submitted on behalf of petitioner no.2 in Criminal Misc. Writ Petition No. 23649/2025 that Sh. Rajkumar Sisodia had been falsely implicated despite not being concerned with the original transaction of 2008 and despite the fact that the relevant affairs of the company were being managed by different entities over different periods. Similarly, on behalf of petitioner Sh. Arjunpreet Singh Sahani in Criminal Misc. Writ Petition No. 23655/2025 and petitioner Sh. Harjeet Singh Sahani in Criminal Misc. Writ Petition No. 25666/2025, it was submitted that they have been implicated merely because of their subsequent association with Solitarian Group and no material has been brought on record to demonstrate their involvement in the original inducement or execution of the alleged forged documents.

41. The petitioners have further submitted that the entire controversy, even as per the own case of the informants, substantially pertains to contractual and allotment disputes arising out of commercial agreements executed between the parties and therefore the matter is fundamentally civil and arbitrable in nature. It has specifically been argued that the agreement dated 16.04.2022 and other agreements pertaining to any of the allotment, relied upon by the informant itself, contains an arbitration clause at ‘Clause 7 of Heading X’ of the allotments letters, thereby, governing disputes inter se the parties. The petitioners have thus contended that once the parties consciously agreed to a contractual dispute resolution mechanism, invocation of criminal machinery for enforcement of alleged contractual obligations is wholly impermissible. It has accordingly been urged that the FIRs are nothing but an attempt to convert a commercial dispute into a criminal prosecution for exerting pressure upon the petitioners.

42. The petitioners have further argued that the principal allotments originally made in favour of respondent no.4/complainant were with respect to three commercial units namely D/GF-05, D/GF-06 and D/GF-07 situated at Tower-D, Ground Floor in the ‘IT Square’ project and not with respect to any fourth unit. It has been categorically argued that the aforesaid three units were booked on 31.03.2008 under a discounted cash down plan for a total consideration of Rs.1,17,76,050/-. According to the petitioners, possession of these three units had already been offered way back on 20.02.2012 and eventually sub-lease deeds in respect thereof were executed on 25.11.2022. It is thus contended that insofar as the original three units are concerned, the contractual relationship substantially stood concluded and therefore no criminal offence can be said to arise therefrom.

43. The petitioners have emphasized that the real dispute now sought to be projected in the FIR substantially revolves around the so-called ‘fourth unit’ allegedly allotted to respondent

no.4/complainant against adjustment of assured returns. According to the petitioners, since respondent no.4/complainant was demanding adjustment towards alleged assured returns, petitioner no.1 company proposed allotment of an additional commercial unit in lieu thereof. Consequently, vide allotment letter dated 13.05.2015, respondent no.4 was allegedly allotted one additional unit bearing Shop No.12 in Tower-D having an area of 948 sq. ft. in the subject project. It has been submitted that the total sale consideration reflected therein was Rs.44,55,600/-, out of which adjustment of Rs.35,46,900/- towards alleged assured returns was proposed and the remaining amount was payable through cheques.

44. The petitioners have thus contended that the FIR itself demonstrates that the original three allotted units were delivered/offered possession long back and the entire surviving controversy is essentially confined to the disputed fourth alleged unit, whose very allotment, execution, validity, location and contractual status are seriously disputed by the parties. According to the petitioners, such issues can only be adjudicated upon by a competent civil forum or arbitral tribunal after appreciation of documentary evidence and cannot constitute the basis for criminal prosecution under Sections 406, 420, 467, 468, 471 and 120-B IPC.

45. On the aforesaid grounds, learned counsel for all the petitioners prayed that the impugned first information report dated 03.10.2025 registered as Case Crime No. 0227 of 2025 under Sections 406, 420, 467, 468, 469, 471 and 120-B IPC, Police Station Knowledge Park, District Gautam Budh Nagar, together with all consequential proceedings, be quashed by this Court in exercise of powers under Article 226 of the Constitution of India, as continuation of the criminal proceedings would amount to abuse of process of law.

Submissions on behalf of the respondents

46. Per contra, learned counsel appearing for the State as well as respondent no.4/complainant have vehemently opposed the writ petitions and have submitted that the impugned FIRs disclose commission of serious cognizable offences involving cheating, forgery, criminal breach of trust, fabrication of documents and conspiracy on the part of the petitioners and other accused persons. It has been contended that the allegations cannot be brushed aside merely by describing the dispute as ‘civil’ or ‘commercial’ in nature, particularly when the accusations disclose dishonest intention, inducement, false representations and preparation of forged documents.

47. The respondents have submitted that the petitioners launched and marketed the project ‘IT Square’ at Plot No.21, Knowledge Park-III, Greater Noida by holding out categorical assurances regarding allotment, possession, assured returns and execution of documents, thereby inducing innocent purchasers to invest substantial amounts. According to the respondents, the complainant booked commercial units after being lured by representations and assurances extended by the accused persons and huge sums were paid relying upon the promises made by them. It has been contended that despite receipt of substantial consideration, the accused persons deliberately failed to honour their commitments and instead adopted deceitful methods to avoid their liabilities.

48. The respondents have further argued that the petitioners cannot escape criminal liability merely by taking shelter under internal corporate arrangements between ERA/ADEL, SREI, Bharat

Nirman Fund or Solitarian Group. According to the respondents, all the accused persons acted in concert and continuously represented themselves to be persons in control of the project and competent to deal with the allottees. It has been submitted that the subsequent change in shareholding pattern or transfer of management cannot absolve the accused persons of liability arising from fraudulent acts committed against purchasers.

49. It has specifically been argued by the complainant in Criminal Misc. Writ Petition No.23649/2025 that petitioner no.2 Sh. Rajkumar Sisodia and petitioner no.1 company continued to actively participate in discussions, meetings and negotiations concerning the disputed unit and payments even during later periods. It has been alleged that petitioner no.2 played an active role in orchestrating transactions and induced the complainant to deposit additional amounts on assurances regarding allotment and adjustment of assured returns. According to the respondents, the active participation of the petitioners in negotiations and dealings clearly establishes their involvement in the alleged offences.

50. The respondents have further submitted that the controversy does not merely relate to delay in possession or breach of contractual obligations but concerns fraudulent creation and manipulation of documents. According to the respondents, forged allotment letters, fabricated documents and manipulated papers were prepared in order to mislead purchasers and to illegally retain their money. It has been argued that the genuineness, validity and authenticity of such documents can only be examined during investigation and trial and therefore the writ petitions seeking quashing at the threshold are wholly premature.

51. The respondents have also refuted the submission of the petitioners that possession had already been validly offered and delivered with respect to the original three units. According to the complainant, despite repeated assurances and demands, complete and lawful possession together with all rights was never actually handed over in a legally enforceable manner. It has been submitted that execution of sub-lease deeds at a highly belated stage after several years cannot wipe out the criminality attached to the conduct of the accused persons. The respondents contend that prolonged withholding of possession and repeated false assurances demonstrate continuing dishonest intention on the part of the accused persons.

52. The respondents have further submitted that the dispute regarding the fourth unit cannot be trivialized by portraying it as a mere contractual adjustment dispute. According to them, the fourth unit was specifically allotted against adjustment of assured returns and other dues legitimately payable to respondent no.4 and the petitioners deliberately induced respondent no.4 to accept such arrangement while knowing fully well that they neither intended nor were capable of honouring the same. It has been argued that after extracting payments and obtaining continued confidence of respondent no.4, the accused persons subsequently denied the allotment itself and started disputing the very documents executed by them. According to the respondents, such conduct clearly discloses mens rea and ingredients of cheating and forgery.

53. The respondents have also denied the contention regarding discrepancies in tower identification being mere clerical or contractual inconsistencies. It has been argued that the conflicting descriptions of units, tower numbers and allotment particulars themselves demonstrate

manipulation and fabrication of project records by the accused persons. According to the respondents, the inconsistencies are not innocent discrepancies but are indicative of fraudulent dealings requiring thorough investigation by the investigating agency.

54. So far as the arbitration clause is concerned, learned counsel for the respondents have submitted that existence of an arbitration clause or availability of civil remedies does not bar initiation of criminal proceedings where allegations prima facie disclose commission of cognizable offences. It has been argued that civil liability and criminal culpability may coexist and merely because the parties are governed by contractual arrangements, the accused persons cannot seek immunity from criminal prosecution. According to the respondents, where allegations of forgery, cheating and criminal conspiracy are specifically made, the matter cannot be relegated exclusively to arbitration proceedings.

55. The respondents have further submitted that the petitions under Article 226 of the Constitution seeking quashing of FIRs deserve dismissal in view of the settled principles laid down by the Hon'ble Supreme Court in Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra1. It has been contended that at the stage of investigation the Court is only required to examine whether the FIR discloses commission of cognizable offences and not whether the allegations are ultimately likely to result in conviction. According to the respondents, disputed questions of fact, rival versions, genuineness of documents and defence pleas raised by the accused persons cannot be adjudicated in writ jurisdiction.

56. The State has additionally submitted that the investigation is at a nascent stage and substantial material is yet to be collected regarding execution of documents, financial transactions, role of various accused persons and movement of funds. It has therefore been argued that interference by this Court at this premature stage would seriously prejudice fair investigation into grave economic offences involving large financial implications.

57. The respondents have thus prayed that the writ petitions, being devoid of merits, be dismissed and the investigating agency be permitted to proceed with investigation in accordance with law without any interference by this Court.

Analysis and Findings

58. The principal questions which arise for consideration are - first, whether the FIR and the materials relied upon by the complainant disclose, on their face, the ingredients of the offences under Sections 406, 420, 467, 468, 469, 471 and 120-B of the IPC against the present petitioners; second, whether the dispute is essentially civil/commercial in character; third, whether the role attributed to each petitioner is specific enough in law to justify continuation of criminal proceedings; and fourth, whether the continuation of the impugned proceedings would amount to abuse of process.

59. Since all the petitions arise from the same factual matrix, pertain to the same project namely 'IT Square', Plot No.21, Knowledge Park-III, Greater Noida and involve substantially

overlapping allegations and accused persons, they are being decided together by this common judgment.

60. The principles governing quashing of criminal proceedings are well settled. In State of Haryana v. Bhajan Lal2, the Hon'ble Supreme Court held that the High Court can exercise jurisdiction to quash where the allegations taken at face value do not constitute any offence, or where the criminal proceeding is ex facie with mala fide and instituted with an ulterior motive. The relevant paragraph of the same is as follows:

'102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'

61. In Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra (Supra), the Hon'ble Supreme Court reiterated the aforementioned principle of law regarding the quashing of the FIR and held that though investigation should not be stifled as a matter of routine, the Court must still see whether the FIR discloses commission of a cognizable offence on the allegations made.

62. At the outset, it is equally well settled that a mere breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention exists at the inception of the transaction. The distinction between mere contractual non-performance and criminal cheating has been repeatedly emphasized by the Hon'ble Supreme Court. Similarly, for criminal breach of trust under Section 406 IPC, there must be entrustment and dishonest misappropriation or conversion of entrusted property, and not a mere failure to honour a contractual obligation. As regards forgery, the law requires making of a false document or using a forged document as genuine with the requisite knowledge and intent, commercial disputes regarding validity or enforceability of allotment papers do not, by themselves, satisfy these ingredients.

63. On the civil-commercial character of disputes, the Hon'ble Supreme Court in A. Ayyasamy v. A. Paramasivam3, and in Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.4, recognized that ordinary allegations of fraud arising between parties to a commercial arrangement do not always take the matter outside the domain of civil or arbitral adjudication. These decisions underscore that every allegation of deception in a commercial setting does not automatically justify a criminal prosecution, especially where the dispute remains between parties and documentary.

64. Before adverting to deal with the contentions, it would be apposite to recapitulate the broad factual backdrop emerging from the pleadings and documents brought on record.

65. The material available before the Court shows that petitioner no.1 in Criminal Misc. Writ Petition No.23649/2025 namely M/s Prasandi Infotech Park Pvt. Ltd. became lease holder of Plot No.21, Knowledge Park-III, Greater Noida by virtue of lease deed dated 20.03.2002. Thereafter, in the year 2008, ERA Landmarks Ltd., subsequently renamed as ADEL Landmarks Ltd., launched a commercial project in the name and style of 'IT Square' upon the aforesaid plot. The pleadings and documents placed before the Court further prima facie indicate that ERA/ADEL was entrusted with development and marketing rights of the project.

66. It is also not in dispute that respondent no.4/complainant initially booked three commercial units namely D/GF-05, D/GF-06 and D/GF-07 situated at Tower-D, Ground Floor in the said project under a discounted cash down plan for a total consideration of Rs.1,17,76,050/-. The material on record further reflects that possession in respect of the aforesaid three units had already been offered on 20.02.2012 and ultimately sub-lease deeds came to be executed on 25.11.2022. Therefore, insofar as the original three units are concerned, the admitted position emerging from

the record is that the parties remained engaged in a continuing commercial relationship extending over several years.

67. This Court finds considerable significance in the fact that the present criminal proceedings do not substantially arise out of the original three units, but primarily revolve around the alleged 'fourth unit', namely Shop No.D/GF-12, which admittedly did not form part of the original allotment made in the year 2008.

68. The records reveal that disputes subsequently arose between the parties with regard to alleged assured returns. According to the complainant himself, he was thereafter offered another/additional unit in lieu of adjustment of assured returns and related claims. Thus, even according to the prosecution case, the alleged fourth unit emerged only during subsequent commercial negotiations, facilitation, and financial settlements between the parties.

69. The record indicates that vide the alleged allotment letter dated 13.05.2015, an additional unit allegedly bearing Shop No.12 in Tower-D admeasuring approximately 948 sq.ft. was proposed to be allotted in favour of the complainant against adjustment of assured returns amounting to Rs.35,46,900/- out of total alleged consideration of Rs.44,55,600/-. The remaining amount was allegedly payable through cheques. Thus, the entire genesis of the dispute qua the fourth unit itself arises out of adjustment/accounting arrangements concerning assured returns and reciprocal contractual obligations.

70. The aforesaid aspect assumes considerable importance because it demonstrates that the dispute is deeply embedded in contractual and financial dealings between the parties requiring examination of accounts, documentary evidence, reciprocal obligations and validity of allotment arrangements.

71. Even more significant is the fact that the allotment agreements/letters of all the original three units as well as the alleged agreement/document dated 16.04.2022 pertaining to Shop No.D/GF-12 itself contains an arbitration clause. Clause 7 under Heading 'X' of the said agreement specifically contemplates reference of disputes to arbitration. Thus, the parties themselves consciously agreed that disputes arising from the said arrangement would be adjudicated through contractual dispute resolution mechanisms. The said Clause has been reproduced herein for reference:

'(7) In the event of any disputes or differences between the parties thereto arising out of the terms hereof or its scope, or interpretation, applicability etc, the same unless amicably settled shall be referred for arbitration. The sole arbitrator shall be appointed by the 'LESSOR. The proceeding shall be held at Gautam Budh Nagar and the laws of the State of UP or as may be made applicable to the State of UP shall be applicable.

72. This Court is conscious that mere existence of an arbitration clause does not by itself bar criminal proceedings. However, where the dispute substantially concerns enforcement of contractual rights, validity of allotment documents, adjustment of monetary liabilities, interpretation of agreements and entitlement arising from commercial arrangements, the existence

of an arbitration clause becomes a relevant circumstance while examining whether the allegations genuinely disclose criminality or whether criminal law is being invoked to exert pressure in a civil dispute.

73. The Hon'ble Supreme Court in Indian Oil Corpn. v. NEPC India Ltd.5, observed that a given set of facts may give rise to both civil and criminal liability, but courts must guard against attempts to cloak purely civil disputes with criminal colour. Similarly, in IV.Y. Jose v. State of Gujarat6, the Hon'ble Supreme Court held that a contractual dispute should not be allowed to be converted into a criminal case unless clear ingredients of the alleged offences are disclosed. The relevant paragraph of NEPC India Ltd. (Supra) is as follows:

'13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed: (SCC p. 643, para 8)

'It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.'

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.

Section 405

21. We will next consider whether the allegations in the complaint make out a case of criminal breach of trust under Section 405 which is extracted below:

'405. Criminal breach of trust. 'Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law

prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'

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23. In Chelloor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore Cochin [(1952) 2 SCC 392 : AIR 1953 SC 478 : 1954 Cri LJ 102] this Court held: (AIR p. 484, para 21)

'[T]o constitute an offence of criminal breach of trust it is essential that the prosecution must prove first of all that the accused was entrusted with some property or with any dominion or power over it. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered to do.

It follows almost axiomatically from this definition that the ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit.

(emphasis supplied)

26. The question directly arose for consideration in Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] It related to a complaint against the accused for offences of criminal breach of trust. It was alleged that a floating charge was created by the accused debtor on the goods by way of security under a deed of hypothecation, in favour of a bank to cover credit facility and that the said goods were disposed of by the debtor. It was contended that the disposal of the goods amounted to criminal breach of trust. Negativing the said contention, this Court after stating the principle as to when a complaint can be quashed at the threshold, held thus: (SCC pp. 607-08, para 27)

'[A] serious dispute has been raised by the learned counsel ' as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression 'entrusted with property' or 'with any dominion over property' has been used in a wide sense in Section 405 IPC. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression 'entrusted' appearing in Section 405 IPC is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression 'trust' in Section 405 IPC is a comprehensive expression and has been used to denote various kinds of relationships like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to

another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee. In the instant case, a floating charge was made on the goods by way of security to cover up credit facility. In our view, in such case for disposing of the goods covering the security against credit facility the offence of criminal breach of trust is not committed.

(emphasis supplied)

Section 415

32. The essential ingredients of the offence of □cheating□ are: (i) deception of a person either by making a false or misleading representation or by other action or omission, (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

35. In Hridaya Ranjan Prasad Verma [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] this Court held: (SCC pp. 176-77, paras 14-15)

‘14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is, the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.

Section 425

37. Section 425 IPC provides:

‘425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits ‘mischief’

The three ingredients of the section are: (i) intention to cause or knowledge that he is likely to cause wrongful loss or damage to the public or to any person; (ii) causing destruction of some property or any change in the property or in the situation thereof; and (iii) the change so made destroying or diminishing the value or utility or affecting it injuriously. For the purpose of Section 425, ownership or possession of the property is not relevant. Even if the property belongs to the accused himself, if the ingredients are made out, mischief is committed, as is evident from Illustrations (d) and (e) to Section 425. The complaints clearly allege that NEPC India had removed the engines thereby making a change in the aircrafts and that such removal has diminished the value and utility of the aircrafts and affected them injuriously, thereby causing loss and damage to IOC, which has the right to possess the entire aircraft. The allegations clearly constitute the offence of □mischief□. Here again, we are not concerned with the proof or ultimate decision.

74. The relevant paragraph of V.Y. Jose v. State of Gujarat (Supra) has also been reproduced for reference:

26. Recently, in Vir Prakash Sharma v. Anil Kumar Agarwal [(2007) 7 SCC 373: (2007) 3 SCC (Cri) 370] , noticing, inter alia, the aforementioned decisions, this Court held: (SCC p. 377, paras 13-16)

‘13. The ingredients of Section 420 of the Penal Code are as follows:

(i) Deception of any persons;

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

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

No act of inducement on the part of the appellant has been alleged by the respondent. No allegation has been made that he had an intention to cheat the respondent from the very inception.

14. What has been alleged in the complaint petition as also the statement of the complainant and his witnesses relate to his subsequent conduct. The date when such statements were allegedly made by the appellant had not been disclosed by the witnesses of the complainant. It is really absurd to opine that any such statement would be made by the appellant before all of them at the same time and that too in his own district. They, thus, appear to be wholly unnatural.

15. In law, only because he had issued cheques which were dishonoured, the same by itself would not mean that he had cheated the complainant. Assuming that such a statement had been made, the same, in our opinion, does not exhibit that there had been any intention on the part of the appellant herein to commit an offence under Section 417 of the Penal Code.

16. Furthermore, admittedly, their residences are in different districts. Whereas the appellant is a resident of the district of Ajamgarh, the respondent is a resident of the district of Rampur. Cheques were admittedly issued by the appellant at his place. There is nothing on record to show that any part of the cause of action arose within the jurisdiction of the court concerned. Even if such statements had been made, the same admittedly have been made only at the place where the appellant resides. The learned Magistrate, therefore, had no jurisdiction to issue the summons. (See Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd. [(2006) 3 SCC 658 : (2006) 2 SCC (Cri) 98])

27. The said principle has been reiterated in All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain [(2007) 14 SCC 776 : (2007) 12 Scale 391] stating: (SCC p. 781, para 16)

'16. For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie correct, take into consideration the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice.

28. A matter which essentially involves dispute of a civil nature should not be allowed to be the subject-matter of a criminal offence, the latter being not a short cut of executing a decree which is non-existent. The superior courts, with a view to maintain purity in the administration of justice, should not allow abuse of the process of court. It has a duty in terms of Section 483 of the Code of Criminal Procedure to supervise the functionings of the trial courts.

29. An offence of cheating may consist of two classes of cases:

(1) Where the complainant has been induced fraudulently or dishonestly. Such is not the case here;

(2) When by reason of such deception, the complainant has not done or omitted to do anything which he would not do or omit to do if he was not deceived or induced by the accused.

75. A perusal of the afore-quoted portions of the judgments reveal that the Hon'ble Supreme Court has repeatedly cautioned against the growing tendency of converting purely civil and commercial disputes into criminal proceedings with a view to exert pressure upon the opposite party or to secure recovery/settlement through coercive criminal process. The consistent view of

the Hon'ble Supreme Court is that criminal law cannot be permitted to be used as a substitute for civil remedies or as a short-cut for enforcement of contractual and commercial obligations, particularly where the dispute predominantly arises out of contractual terms, monetary claims, business arrangements, or alleged breach of reciprocal obligations.

76. It further emerges from the aforesaid decisions that while exercising jurisdiction for quashing of criminal proceedings, the Court is required to examine whether the allegations contained in the FIR/complaint, even if taken at their face value and accepted in their entirety, disclose the essential ingredients constituting the offences alleged. In the absence of foundational averments satisfying the statutory ingredients of the offences invoked, continuation of criminal proceedings would amount to abuse of the process of law warranting interference by the constitutional courts in exercise of their inherent/writ jurisdiction.

77. Insofar as the offence of cheating is concerned, the Hon'ble Supreme Court has consistently held that the sine qua non for attracting the offence is the existence of fraudulent or dishonest intention at the very inception of the transaction. Mere breach of contract, subsequent non-performance, or failure to honour assurances subsequently would not, by itself, constitute the offence of cheating unless it is shown that the accused possessed dishonest intention from the very beginning at the time when the representation or promise was made. The distinction between a mere contractual breach and the offence of cheating, though fine, is nevertheless well recognised in law, and criminal liability cannot arise merely on account of failure to fulfil contractual obligations.

78. Likewise, for constituting the offence of criminal breach of trust, the essential requirement is entrustment of property or dominion over property coupled with dishonest misappropriation or conversion thereof in violation of law or contractual obligation. The Hon□ble Supreme Court has clarified that the property alleged to have been misappropriated must belong beneficially to a person other than the accused and must have been entrusted to the accused in a fiduciary or legally recognised capacity. In commercial transactions involving contractual arrangements, financial accommodations, or hypothecation/security interests, mere non-payment or disposal of secured assets, absent the essential ingredient of entrustment in the legal sense contemplated under Section 405 IPC, would not ipso facto constitute criminal breach of trust.

79. The aforesaid principles unequivocally demonstrate that where the dispute essentially pertains to performance of contractual obligations, settlement of accounts, commercial understandings, recovery of money, or alleged breach of terms governing a business transaction, and the necessary criminal intent or statutory ingredients are conspicuously absent from the allegations, permitting continuation of criminal proceedings would result in misuse of the criminal justice machinery. In such circumstances, the superior courts are duty-bound to exercise their jurisdiction to secure the ends of justice and to prevent abuse of the process of Court.

80. Examining the allegations in the present case in light of the aforesaid principles, this Court finds that the foundational ingredients of the alleged offences are conspicuously absent.

81. So far as the offence under Section 420 IPC is concerned, the law is well settled that there must exist dishonest or fraudulent intention at the very inception of the transaction. Mere breach of

promise, subsequent non-performance or failure to honour contractual obligations cannot amount to cheating unless it is shown that the accused possessed fraudulent intention at the time the representation was made.

82. In Hridaya Ranjan Prasad Verma7, the Hon'ble Supreme Court categorically held that distinction between mere breach of contract and the offence of cheating depends upon intention of the accused at the inception of the transaction.

83. Applying the aforesaid principles to the facts of the present case, this Court finds no material whatsoever indicating dishonest intention from inception. The initial allotments were made in the year 2008. Construction activities admittedly progressed. Possession of the three original units was admittedly offered on 20.02.2012. Sub-lease deeds came to be executed on 25.11.2022. The parties continued to engage in negotiations over several years. Assured returns were allegedly paid at least to some extent. Thereafter, the complainant himself allegedly agreed to adjustment of claims through allotment of another/additional unit. Such prolonged commercial dealings extending over years completely negate the allegation that the accused persons possessed fraudulent intention from the very inception.

84. The entire dispute rather reflects continuing disagreements concerning performance of contractual obligations, adjustment of assured returns and validity of subsequent arrangements. Such disputes, by their very nature, fall within the domain of civil adjudication.

85. Likewise, the essential ingredients of Section 406 IPC are also not satisfied. Entrustment is the sine qua non for constituting an offence of criminal breach of trust. The FIRs do not disclose any entrustment in the legal sense. The money paid by the complainant was paid as consideration under commercial builder-buyer transactions. Mere non-delivery or delayed delivery of units cannot by itself constitute criminal breach of trust.

86. This Court is also of the view that mere breach of contractual obligations arising out of agreements to sell would not by itself attract criminal breach of trust unless specific entrustment and dishonest misappropriation are established.

87. The allegations under Sections 467, 468 and 471 IPC also do not withstand scrutiny at this stage. The dispute regarding the alleged fourth unit fundamentally turns upon validity and execution of documents dated 13.05.2015 and 16.04.2022. The petitioners have consistently disputed the authenticity and execution of the said documents and specifically pleaded that the agreement dated 16.04.2022 does not bear signatures of any authorized representative/director of petitioner no.1 company.

88. A perusal of the material placed before this Court further indicates that the said document appears to have been signed only from the side of the complainant and not by any authorized person of the management of petitioner no.1 company. Thus, whether the document was validly executed, whether it was acted upon, whether it creates enforceable rights and whether any forgery was actually committed are all matters requiring detailed evidence and adjudication. Mere

existence of disputed documents does not automatically establish offences of forgery against the petitioners before this Court.

89. Equally important is the issue regarding management and control of petitioner no.1 company during the relevant period.

90. The documents on record prima facie show that pursuant to restructuring arrangements and share transfer mechanisms, the control and management of petitioner no.1 company remained with SREI Infrastructure Finance Limited/Bharat Nirman Fund from the year 2015 till March, 2024.

91. Petitioner Sh. Harjeet Singh Sahani in Criminal Misc. Writ Petition No.25666/2025 has specifically pleaded that he resigned from the directorship on 30.06.2025 whereas the FIR came to be lodged subsequently on 03.10.2025. The record further prima facie indicates that petitioner Sh. Arjunpreet Singh Sahni became associated with the management only subsequently after restructuring arrangements and takeover by Solitarian entities.

92. Thus, many of the documents and transactions now relied upon by the complainants pertain either to periods prior to induction of the petitioners before this Court or to periods when management and operational control vested elsewhere. In absence of specific allegations showing active participation coupled with criminal intent attributable to each accused person, sweeping criminal liability cannot be imposed merely on account of subsequent association with the company.

93. Pertinently, this Court also notes that other than the reference to arbitration clause, the complainant's grievances substantially fall within the framework of the Real Estate (Regulation and Development) Act, 2016 (hereinafter 'RERA'). Under Section 31 of the RERA Act, an aggrieved allottee possesses the statutory remedy of filing complaint before the Real Estate Regulatory Authority. Section 71 further contemplates adjudication regarding compensation and related grievances by the Adjudicating Officer. The legislature having created a specialized statutory mechanism for adjudication of disputes arising from real estate projects, disputes relating to delay in possession, contractual defaults, compensation and allied builder-buyer grievances ordinarily fall within the realm of civil/regulatory adjudication unless clear criminality is independently disclosed.

94. A bare perusal of the allegations levelled in the FIR/complaint would demonstrate that the substratum of the dispute pertains to alleged delay in completion of the project, non-delivery of possession within the stipulated timeline, alleged deviation from representations made at the time of booking, demands pertaining to payments/installments, dispute qua map/site plan/non existence of allegedly sold unit, and grievances concerning performance of obligations arising out of the Builder Buyer Agreement and the real estate project in question. Such disputes are intrinsically connected with the rights and obligations flowing from a real estate transaction and squarely fall within the regulatory framework contemplated under the RERA. The grievance of the complainant is essentially directed against the manner of execution and performance of the project and the contractual obligations undertaken by the developer/promoter, for which the statute itself provides a complete adjudicatory mechanism.

95. The legislative intent behind enactment of the RERA framework is to provide a specialised and sector-specific mechanism for adjudication of disputes between allottees and promoters/developers, particularly in relation to delay in possession, refund claims, project completion obligations, disclosures, compensation and contractual defaults. The allegations in the present case, when holistically examined, substantially emanate from such builder-buyer and allotment related disputes.

96. In the considered opinion of this Court, merely because allegations of breach of assurances, delay, or non-fulfilment of contractual obligations have been made, the same would not ipso facto clothe the dispute with criminal colour in the absence of specific allegations disclosing fraudulent or dishonest intention from the inception of the transaction. Where the dominant nature of the dispute is regulatory, contractual and compensatory, and the statute itself creates an efficacious forum for redressal of such grievances, criminal proceedings ought not to be permitted to become a tool for arm-twisting or exerting pressure in matters essentially falling within the domain of civil and regulatory adjudication.

97. The respondents have repeatedly argued that the existence of civil remedies cannot bar criminal proceedings. There can be no quarrel with the said proposition. However, the equally settled principle is that criminal law cannot be permitted to become an instrument of pressure or harassment in disputes predominantly civil in character.

98. This Court is of the considered view that criminal proceedings should not be encouraged where the dispute is essentially civil and criminal courts should not be used for settling scores or exerting pressure in commercial disputes.

99. Therefore, taking into consideration the entirety of the matter, this Court is further of the opinion that the present case falls within the parameters illustratively laid down in State of Haryana v. Bhajan Lal (Supra). Even if the allegations contained in the FIRs are accepted at face value, the same primarily disclose civil and commercial disputes arising from real estate transactions, adjustment of assured returns and validity of allotment documents. The basic ingredients of offences under Sections 406, 420, 467, 468, 471 and 120-B IPC are not prima facie established against the petitioners before this Court.

100. The continuation of criminal proceedings in such circumstances would amount to abuse of the process of law.

Conclusion

101. This Court is conscious of the fact that every dispute arising out of a real estate transaction or every delay in completion of a project cannot ipso facto be permitted to assume the character of a criminal offence. The real estate sector inherently involves complex commercial, regulatory and financial considerations, and delays in execution of projects may occur on account of multiple factors including market downturns, liquidity constraints, regulatory approvals, force majeure circumstances, or other unforeseen contingencies affecting the viability and timelines of the project.

102. If every instance of delay in handing over possession, failure to adhere to projected timelines, or inability of a developer to immediately fulfil contractual commitments were to result in registration of criminal cases, the same would not only amount to criminalising commercial and contractual defaults but would also have serious adverse repercussions on legitimate business and commercial activity in the sector. Criminal law cannot be permitted to operate as a mechanism for enforcing contractual performance in ordinary commercial disputes, absent clear allegations disclosing the requisite criminal intent and statutory ingredients of the offences alleged.

103. This Court also cannot lose sight of the hardship and inconvenience which may have been caused to the complainant on account of the alleged delay and non-fulfilment of expectations arising from the transaction in question. The grievances projected by the complainant may indeed entitle him to seek appropriate reliefs including refund, compensation, interest, possession-related directions, or other consequential remedies in accordance with law. However, such sympathy, by itself, cannot justify continuation of criminal prosecution where the essential ingredients constituting a cognizable criminal offence are otherwise not disclosed from the material placed on record. The complainant has efficacious civil and statutory remedies available under the governing contractual framework as well as under the provisions of the RERA Act and other competent forums, where appropriate relief in relation to the subject units and allied claims may be duly adjudicated and granted in accordance with law.

104. It is true that, as noted from the record, the investigation is still at a nascent stage and ordinarily this Court would be slow in interfering with criminal proceedings at the threshold. However, it is equally well settled that mere pendency of investigation cannot operate as an absolute bar against exercise of writ or inherent jurisdiction where the allegations contained in the FIR itself, even if accepted in their entirety, fail to disclose the essential ingredients of the alleged offences or where continuation of criminal proceedings would amount to abuse of process of law.

105. The power of judicial review is intended precisely to prevent misuse of criminal machinery in cases where disputes are overwhelmingly civil or commercial in nature. In the present case, the foundational facts are substantially documentary and largely undisputed, namely the original allotment of three units in the year 2008, offer of possession on 20.02.2012, execution of sub-lease deeds on 25.11.2022, subsequent negotiations concerning assured returns and the alleged fourth unit, the existence of arbitration clause under Clause 7 of Heading □X□ of the agreement dated 16.04.2022, as well as the shifting management structure of petitioner no.1 company during the relevant periods.

106. Therefore, even at this stage, the Court is not required to conduct a roving inquiry into disputed facts but only to examine whether the uncontroverted allegations prima facie disclose commission of cognizable offences.

107. Upon such examination, this Court finds that the dispute essentially arises from contractual and commercial arrangements relating to a real estate project and does not prima facie satisfy the ingredients of offences under Sections 406, 420, 467, 468, 471 or 120-B of the IPC qua the present petitioners. Consequently, merely because investigation is at a nascent stage would not justify relegating the petitioners to prolonged criminal proceedings which, in the facts of the

present case, appear to be manifestly civil in character, rather, quashing of the FIR at this stage would prevent the misuse of the process of law.

108. Accordingly, all the connected writ petitions deserve to be allowed.

109. In view thereof, impugned FIRs as well as all consequential proceedings arising therefrom are hereby quashed qua the petitioners.

110. It is made clear that the instant batch of petitions have been adjudicated on the basis of the pleadings brought before this Court and the observations made hereinabove shall not be construed as expression on the merits, rights and contentions of the parties which they may seek to address or raise in other proceedings or before any other forum of law, in accordance with the law.

(2026) 5 ILRA 386
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 27.05.2026

BEFORE

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

Jail Appeal No. 589 of 2021

Jag Prasad Yadav @ Jaggu **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to whether the prosecution proved beyond reasonable doubt the guilt of the accused for the offences punishable under Ss. 302, 307 and 323 of the Indian Penal Code, 1860 on the basis of ocular and medical evidence and whether, in the facts and circumstances of the case, the conviction under S. 302 I.P.C. was liable to be altered to S. 304 Part II I.P.C. on the ground that the act was committed with the knowledge that it was likely to cause death but without intention to kill. (Paras 46-55)

Headnotes

Criminal Law - Murder and Culpable Homicide - Whether conviction under S. 302 I.P.C. sustainable or liable to be converted into S. 304 Part II I.P.C. - Indian Penal Code, 1860 - Ss. 299, 300, 302, 304 Part II, 307 and 323 - Where prosecution proved the occurrence by reliable testimony of an injured eye-witness fully corroborated by medical evidence, conviction could not be interfered with on the ground of absence of motive or alleged contradictions - However, evidence disclosed that the accused had come with bad intention towards the mother of the deceased and, in the heat of passion, threw the children into the well and though he had knowledge that the act was likely to cause death, intention to kill was not established - Conviction under S. 302 altered to S. 304 Part II while convictions under Ss. 307 and 323 maintained. (Paras 25-32, 46-55, 57)

Criminal Law - Appreciation of Evidence - Injured eye-witness - Related witness - Indian Evidence Act, 1872 - Mere relationship is not a ground to discard testimony where the witness is consistent, convincing and nothing could be extracted in cross-examination creating any doubt

regarding the occurrence or involvement of the accused - Medical evidence corroborated the ocular version and the prosecution proved its case beyond reasonable doubt. (Paras 25-35)

Criminal Law - First Information Report - Prompt lodging - Indian Penal Code, 1860 - Prompt F.I.R. lodged within one hour and ten minutes of the occurrence after taking the injured children to hospital guaranteed the truthfulness of the prosecution version and substantially ruled out chances of consultation, concoction and embellishment. (Paras 21-24)

Criminal Law - Motive - Relevance - Indian Penal Code, 1860 - In a case resting on reliable eye-witness account, motive does not play a significant role and absence of proof of motive by itself does not dent the prosecution case though motive remains relevant while considering whether intention to kill existed for determining the nature of the offence. (Paras 29, 46-55)

Criminal Law - Medical Evidence - Ocular Evidence - Indian Penal Code, 1860 - Medical evidence corroborated the prosecution case where injuries sustained by the injured witness supported her testimony and post-mortem findings together with negative viscera report did not rule out death due to drowning - Hence no inconsistency warranting benefit of doubt arose. (Paras 31-35)

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act - Applicability of S. 3(2)(v) - Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - S. 3(2)(v) - Acquittal under the special enactment upheld since the offence was not committed on the ground that the victims belonged to Scheduled Caste community but because of the criminal conduct of the accused. (Paras 36, 46)

Held: The prosecution established its case beyond reasonable doubt by the consistent and convincing testimony of the injured eye-witness which stood corroborated by the medical evidence and the prompt F.I.R. and nothing could be extracted in cross-examination creating any doubt regarding the occurrence or the involvement of the accused - Mere absence of proved motive or the fact that the principal witness was related to the deceased did not weaken the prosecution case - At the same time the evidence disclosed that the accused had come with bad intention towards the mother of the deceased and in the heat of passion picked up the children sleeping on the cot and threw them into the well and though he had the knowledge that such act was likely to cause death the intention to kill was not established and the occurrence could not be treated as a premeditated murder - Consequently the conviction under S. 302 I.P.C. was liable to be modified to S. 304 Part II I.P.C. while maintaining the conviction and sentence under Ss. 307 and 323 I.P.C. - appeal partly allowed. (Paras 21-35, 46-57) (E-7)

Case Law Cited

Amar Nath vs The State of U.P; **2023 SCC OnLine SC 1322***; Alauddin vs State of Assam;* **AIR 2024 SC (criminal)756***; Anand Ramachandra Chougule vs Sidarai Laxman Chougule;* **AIR 2019 Supreme Court 3871***; Balaji Gunthu Dhule vs State of Maharashtra;* **AIR 2013 Supreme Court 264***; Abdul Wahid & another vs State of Rajasathan;* **2025 SCC OnLine SC 453***; Krishnegowda vs State of Karnataka by Arkalgud Police;* **AIR 2017 Supreme Court 1657***; Baso Prasad and others vs State of Bihar;* **AIR 2007 Supreme Court 1019***; Mohar Singh and others vs State of Punjab;* **1981 SCC (Cri) 638***; Virsa Singh Vs. The State of Punjab;* **1958 SCC Online SC 37, (AIR 1958 SC 465)***; Pulicherla Nagarjun Vs. State of Andhra Pradesh;* **(2006) 11 SCC 444***; Suresh Chandra Bahri Vs. State of Bihar and Others;* **1995 Supp (1) SCC 80***; Khuman Singh Vs State of MadhyaPradesh;* **(2020) 18 SCC 763***.*

List of Acts

Indian Penal Code, 1860; Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989; Code of Criminal Procedure, 1973; Indian Evidence Act, 1872

List of Keywords

Murder; Culpable homicide not amounting to murder; Injured eyewitness; Related witness; Prompt F.I.R.; Ocular evidence; Medical evidence; Motive; Knowledge; Intention; Heat of passion; Bad intention; Drowning; Well; Appreciation of evidence; Benefit of doubt; Post-mortem; Viscera report; Conviction altered; Sentence modified; Acquittal under SC/ST Act.

Case Arising From

APPELLATE JURISDICTION: Jail Appeal filed against the judgment and order dated 19.04.2019 passed by the Special Judge (S.C./S.T. Act), Faizabad in Sessions Trial No. 171 of 2015 (Computer Registration No. 792 of 2015) arising out of Case Crime No. 102 of 2015 convicting the appellant under Ss. 302, 307 and 323 of the Indian Penal Code, 1860 and acquitting him of the charge under S. 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Appearances for Parties

Advs. for the Appellant:
Shri Shreesh Kumar Mishra Atal, Amicus Curiae.
Advs. for the Respondents:
Learned A.G.A. for the State.

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

(1) The instant jail appeal has been preferred by convict/appellant, Jag Prasad Yadav alias Jaggu, assailing the judgment and order dated 19.04.2019 passed by Special Judge (S.C./S.T. Act), Faizabad, in Sessions Trial No. 171 of 2015 (Computer Registration No. 792 of 2015); State Versus Jag Prasad Yadav alias Jaggu, emanating from Case Crime No. 102 of 2015, under Sections 302, 307, 323 of the Indian Penal Code, 1860 (here-in-after referred to as 'I.P.C.') and Section 3(ii)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (here-in-after referred to as 'SC/ST Act'), Police Station Kumarganj, District Faizabad.

(2) The case of the prosecution, in short, is that complainant, Ramlautan son of Suraju, resident of village Sakir Pithala, Police Station Kumarganj, district Faizabad, had submitted a written complaint at police station Kumarganj, district Faizabad on 22.04.2015, alleging therein that on 22.04.2015, a wedding procession (बारात) had come to his village. In that procession, a person from his village, Jaggu alias Jagprasad Yadav son of late Ram Naval Yadav, had torn to shreds the motorcycle etc. and when the wedding party chased him from there, he (Jaggu alias Jagprasad Yadav) went to the door of Suraju of his village and picked up a boy, Shagun, aged 3 1/2 years and a girl aged 1 year, lying on a cot at the door, who had come to their maternal home and thrown them into a nearby well at about 11:00 in the night. Upon hearing the children crying, nearby villagers took them out of the well and rushed them to Kumarganj hospital, where the doctor declared Shagun dead, while the girl survived. The dead body is lying on the road in front of the doctor. The boy Shagun is of Scheduled Caste community and the aforesaid Jaggu is of non-Scheduled Caste community. Information is being given, the appropriate action may be taken.

(3) On the basis of the aforesaid report, F.I.R., bearing No.102 of 2015, under Sections 302 I.P.C. and Section 3 (2) (v) of the S.C./S.T. Act was registered at police station Kumarganj, Faizabad on 23.04.2016 at 00:10 hours.

(4) The investigation of the case was conducted by Circle Officer Navin Kumar Nayak. He, after getting copy of F.I.R., recording of the evidence of complainant and scriber of the F.I.R., reached the place of occurrence and prepared the site plan. Thereafter, S.I. Ram Bachan Ram had prepared the inquest report of the dead body of deceased Shagun. He, after collecting all the papers, sent the dead body of Shagun for post-mortem. He also sent mother of deceased, namely, Rekha wife of Dharamraj for medical examination.

(5) The post-mortem of the dead body of the deceased Shagun was conducted on 23.04.2015 at 03:05 P.M. at District Hospital, Faizabad by Dr. Gulrez Ahmad. On external examination, he found that height of the deceased was 81 C.M.; her body was well-built; her eyes and mouth were semi open; rigor mortis was present; and there was no visible injury on the body of the deceased. On internal examination, blackish layer seen in upper part trachea and in larynx over mucosa; left and right chamber of heart full; there was no smell from the stomach; stomach wall was normal and containing 50 ml black coloured material; in small intestine, normal pasty material with gasses fecal material with gases in large intestine; gall bladder half full. As per his opinion, cause of death could not be ascertained, hence viscera was preserved and handed over to concerned constable.

(6) The medical examination of the injured Rekha was conducted by Dr. Arun Kumar at Community Health Centre, Milkipur, Faizabad on 23.04.2015 at 12:05 P.M. In the medical report, following injuriers were found :-

1. Contused swelling 5 cm x 4 cm on dorsal aspect of Rt. foot just below Rt. ankle joint. Red in colour. X-ray advice.

2. Contusion 6 cm x 3 cm on outer aspect of Rt. leg 11 cm below Rt. knee. Red in colour.

3. Complaint of headache.

As per his opinion, duration of injuries was within 24 hours; all the injuries were caused by hard and blunt object and simple in nature except injury no.1, which was referred to District Hospital Faizabad for x-ray.

(7) On reference, x-ray of the right foot was conducted at District Hospital, Faizabad by Dr. Gulrez Ahmad on 23.04.2015. No fracture was found.

(8) The Investigating Officer C.O. Navin Kumar Nayak, after collecting material evidence, had forwarded charge-sheet against the accused, Jaggu alias Jag Prasad Yadav under Sections 302, 323, 307 I.P.C. and Section 3 (2) (v) of S.C./S.T. Act on 06.05.2015.

(9) The Chief Judicial Magistrate, Faizabad took cognizance of the aforesaid charge-sheet and committed the case to the Court of Sessions by means of order dated 14.07.2015, where the case was registered as Sessions Trial No. 171 of 2015 (Computer Registration No. 792 of 2015); State Vs. Jag Prasad Yadav alias Jaggu. On being committal of the case, learned Special Judge (S.C./S.T.) Act, Faizabad had framed charges against the accused under Sections 302, 307, 323 I.P.C. and Section 3 (2) (v) of the S.C./S.T. Act. The accused denied the charges and pleaded for trial.

(10) The prosecution, in support of its case, examined nine witnesses, which are as under :-

P.W.1-Ramlautan	Complainant
P.W.2-Rekha	Injured/mother of deceased Sugun and Payal

P.W.1-Ramlautan	Complainant
P.W.3-Suraju	Witness of Inquest Report
P.W.4-Constable Ashish Srivastava	Prepared check F.I.R. on the basis of written report of complainant
P.W.5-Dr. Gulrez Ahmad	Conducted post-mortem of the deceased Shagun and medical examination and x-ray of injured Rekha at District Hospital, Faizabad
P.W.6-C.O. Naveen Kumar Nayak	Investigating Officer
P.W.7-S.I. Ram Bachan Ram	Prepared Inquest Report
P.W.8-Const. Indrajeet Sharma	Witness of panchayatnama
P.W.9-Dr. Arun Kumar	Conducted medical examination of injured Rekha at Community Health Centre, Milkipur, Faizabad

(11) In addition to the aforesaid, the prosecution, in order to prove its case, has placed on record following documentary evidence and proved it :-

Ext. Ka. 1	Written Report
Ext. Ka. 2	Check F.I.R.Inquest Report
Ext. Ka. 3	Copy G.D. entry dated 23.04.2015
Ext. Ka. 4	Letter to C.M.O.Post-mortem report of deceased Sugun
Ext. Ka.5	Sample seal of dead body of the deceased SugunX-ray report of injured Rekha
Ext. Ka. 6	Photo lashSite Plan
Ext. Ka. 7	Challan lashCharge sheet
Ext. Ka. 8	Injury Report of injured Rekha

(12) The prosecution had also placed on record the report dated 01.10.2015 of Forensic Science Laboratory, Uttar Pradesh, Mahanagar, Lucknow.

(13) After closer of the evidence of prosecution, the statement of the accused Jag Prasad Yadav alias Jaggu under Section 313 Cr.P.C. was recorded, in which he stated that he is innocent and he has no connection with the incident. He has not committed the incident. The F.I.R. of the case was lodged in connivance with the police. The investigation of the case was tainted. He further states that witnesses have adduced false evidence on account of enmity on the basis of suspicion and he would produce evidence in his defence. However, no evidence was produced in defence.

(14) The trial Court, after affording opportunity of hearing to learned Government Counsel and the defence and appreciation of oral and documentary evidence and other material on record, acquitted the accused Jag Prasad Yadav alias Jaggu for the offence under Section 3 (2) (v) of the S.C./S.T. Act, however, convicted and sentenced him by means of judgment and order dated 19.04.2019 in the manner as stated here-in-below :-

I. Under Section 302 I.P.C. to undergo life imprisonment and a fine of Rs.10,000/-. In default of payment of fine to undergo 3 months imprisonment;

II. Under Section 307 I.P.C. to undergo 7 years R.I. and a fine of Rs.5000/-. In default of payment of fine to undergo 2 months imprisonment;

III. Under Section 323 I.P.C. to undergo 6 R.I.(It would be 6 months) and a fine of Rs.500/-. In default of payment of fine to undergo one month's imprisonment.

All the sentences have been directed to run concurrently and the period already undergone would be adjusted in sentence.

(15) Being aggrieved by the impugned judgment and order of conviction and sentence, the appellant has preferred the instant jail appeal before this Court.

ARGUMENTS

(16) Heard, Shri Shreesh Kumar Mishra Atal, learned Amicus Curiae for the appellant and learned A.G.A. for the State.

(17) Learned Amicus Curiae for the appellant submitted that impugned judgment and order has been passed without considering the evidence and material on record and dealing it appropriately. He further submitted that the prosecution has failed to establish any motive for the commission of offence. There are material contradictions and discrepancies in the evidence of the prosecution witnesses of fact. P.W.1 is not an eye witness. P.W.2 claims to be an eye witness, but her testimony is not reliable for the reason that it is highly improbable that the accused-appellant could have picked two children from near her and thrown them in a well at a distance. The post mortem report and the injuries have not corroborated the prosecution case, as no injury was found on the body of the deceased and the cause of death could not be ascertained. The Viscera report was also negative. He also submitted that the instant case is of circumstantial evidence and the prosecution has failed to establish chain of circumstances. He also submitted that if two views are possible, then the benefit of doubt must be given to the accused-appellant. There was no independent witness to the occurrence and all the witnesses are related witnesses and the evidence of the injured witness is also not reliable as he is also a related witness.

(18) On the basis of the above submissions, learned Amicus Curiae for the appellant submitted that the prosecution has failed to prove it's case beyond reasonable doubt, therefore, the conviction of the appellant could not have been recorded and, thus, the impugned judgment and order is not sustainable in the eyes of law and is liable to be set aside and the appellant is liable to be acquitted.

He relied on Amar Nath vs The State of U.P; 2023 SCC OnLine SC 1322, Alauddin vs State of Assam; AIR 2024 SC (criminal)756, Anand Ramachandra Chougule vs Sidarai Laxman Chougule; AIR 2019 Supreme Court 3871, Balaji Gunthu Dhule vs State of Maharashtra; AIR 2013 Supreme Court 264, Abdul Wahid & another vs State of Rajasathan; 2025 SCC OnLine SC 453, Krishnegowda vs State of Karnataka by Arkalgud Police; AIR 2017 Supreme Court 1657, Baso Prasad and others vs State of Bihar; AIR 2007 Supreme Court 1019, Mohar Singh and others vs State of Punjab; 1981 SCC (Cri) 638.

(19) Learned AGA vehemently opposed the submissions of learned counsel for the appellant. He submitted that the impugned judgement and order has rightly been passed in accordance with law, by means of which the appellant has been convicted and sentenced. He further submitted that the prosecution has proved it's case beyond reasonable doubt by adducing evidence of an eye witness, who was also an injured witness and mother of the deceased, which stands corroborated by the medical evidence relating not only to the injured witness but also to the deceased. Merely because she is related witness, her testimony could not have been discarded. It is settled in law that the related that too an injured witness would not implicate an innocent person, leaving the culprit. Merely because the witness is the mother of the deceased, whose three and a half year son was killed and whose 1 year daughter was also thrown and sustained injury in the eye but survived, her testimony cannot be discarded. He also submitted that the motive has also been proved by P.W.2. Thus, he submits that the impugned judgment and order has rightly been passed in accordance with law. There is no illegality or error in it, which may call for any interference by this Court. The appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

(20) We have considered the submissions of learned counsels for the parties and perused the records.

(21) The written report dated 22.04.2015 was submitted at the Police Station by P.W.1 Ram Lotan, on the basis of which, F.I.R. was lodged at 00.10 hours on 23.04.2015, with regard to the occurrence on 22.04.2015 at 23:00 hours, i.e., within a period of 1 hour 10 minutes. The distance between the police station and the place of incident is three kilometers. P.W.1 as well as P.W.2 have coherently deposed regarding the occurrence, which took place at 11:00 p.m. on 22.04.2015. P.W.2 has also stated in her cross examination that after about 10 minutes when the children were brought out from the well, her uncle and villagers took them to the hospital.

(22) P.W.1 who is uncle of P.W.2 has stated that after the death of the child, he got the report written by Arvind Singh and submitted the same at Police Station, which was proved as Ex. Ka(1). Thus, looking to the time taken, for providing the medical aid and the distance of the police station, it is apparent that the F.I.R. was lodged promptly within a period of 1 hour 10 minutes of the occurrence. The prompt lodging of the F.I.R. guarantees the truthfulness of the prosecution version, as chances of consultation, concoction and embellishments are very remote or less.

(23) The F.I.R. was lodged naming the appellant, as the accused, who has committed the crime. The report was lodged by P.W.1 Ram Lautan, who is uncle of P.W.2. He has admitted in his evidence that he was not an eye witness. He was sleeping at home on 22.04.2015 at about 11:00 p.m. in the night. His niece Rekha, alongwith her children, was sleeping in the thatch shed outside

the house. A marriage procession had come in the village that night, during which the appellant Jag Prasad @ Jaggu was vandalizing a motorcycle and when the members of the marriage procession chased the accused, he ran towards the house of Suraju and picked up Shagun, a boy who was aged about three and a half years and a girl aged about one year, who were sleeping on a cot and threw them into a well. Upon hearing the cries of the children, he and the neighboring villagers brought the children out of the well and took them to the Kumarganj Hospital, where the doctor declared Shagun as dead but the girl survived. Thus, P.W.1 has not stated in his evidence either he had seen the accused throwing the children in the well or taking away them. Thus, P.W.1 is not an eye witness, which has been admitted also by him in his cross examination. However, he has further deposed that the night of the incident was dark but the light was alight and as per his knowledge, the accused was neither mad nor intoxicated. He further deposed that after the incident, the mother of the child Rekha Devi was disturbed. Considering the evidence of P.W.1, learned trial court has recorded that P.W.1 is not an eye witness to the occurrence and has also not supported the prosecution case.

(24) The P.W.1 is not an eye witness but he has proved that upon hearing the noise he had reached on the spot and he alongwith neighbour villagers had brought the children out of well. Thus he has proved the place of occurrence and nothing could be extracted from him in cross examination, from which it may be inferred that he has deviated from his earlier statement.

(25) P.W.2 is an eye witness to the incident. She has deposed in his examination-in-chief that the incident had taken place one and a half year ago. It was 11:00 p.m. in the night. Ram Lautan is her uncle. At the time of the alleged incident, she was staying at her maternal home at Pithola, where she was sleeping alongwith her two children namely Shagun aged about three and a half year and Payal aged about one year under the thatched shed. At the time of incident, Jag Prasad Yadav @ Jaggu came at her house and pressed her neck. She asked him to go away. In the meantime, he kicked her on the leg, as a result of which she fell down. Thereafter Jag Prasad picked up her son Shagun and daughter Payal and threw them in the well. Upon raising alarm, her uncle and several villagers arrived at the spot and saw the accused Jag Prasad running away. Then the neighbors brought the children out of the well. Her son's condition was serious. He was taken to the Kumarganj Hospital, where the doctor declared him dead. She was examined at the Government Hospital, Milkhipur and thereafter at District Hosptial, Faizabad. She had suffered injuries in her right leg and her daughter suffered injury in her eye but she was saved. The report was lodged by her uncle.

(26) P.W.2 further categorically stated that she had seen the accused and identified him. Her statement was recorded by the Circle Officer. She further deposed that she belongs to a scheduled caste community. Thus, she has proved the incident as an eye witness and it is apparent from her evidence that the accused-appellant had come at about 11:00 p.m. in the night and pressed her neck and upon being asked to go away kicked her also on leg, on account of which she fell down. Thereafter he took her two children and threw them in a nearby well. Upon raising alarm, the villagers had come and brought children out of well. She was also medically examined. She has also deposed that the accused-appellant Jag Prasad is a resident of her village. She has no quarrel or enmity with the family of the accused. She has also deposed that her village is Sarai Dhanethi. She also deposed that when the accused was caught after 5-6 days of the incident, she was called at the

police station. She further deposed that on the date of incident, her uncle Pinku, Ram Lautan and some other villagers had assisted in bringing out the children from the well. After about ten minutes of the bringing out of the children from the well, they were taken to the hospital.

(27) P.W.2 has further deposed that she was wearing a mangalsutra at the time of alleged incident, which is still kept at her home and none of her jewellery was snatched. She further deposed that she knows the accused Jag Prasad since childhood, as his sister was studying with her, therefore, she knows him well. The house of the accused is situated at a distance of about 40-45 houses away from her house. The accused had come near her with bad intention. However, she had not spoked to the accused prior to the date of incident nor she had made any wrong talk to him prior thereto. She denied the suggestion that she had not seen the accused on the night of incident and had implicated him falsely in consultation with Arvind Singh. Nothing could be extracted from her in the cross examination, which may create any doubt regarding the occurrence or involvement of the appellant.

(28) The aforesaid evidence of P.W.2 shows that she has clarified that she had no enmity or quarrel with the family of the accused, therefore, question of any false implication does not arise. P.W.1; the complainant and P.W.3 Suraju, who had also reached on spot have also joined the P.W.2 on the issue of enmity between the two families and have categorically deposed that there was no enmity. The P.W.1 has even said that the accused and his family had no enmity with his family and still there is no enmity and the relations between both the families are normal and they go to meet and greet each other. It shows that family members of the appellant must also be knowing that he is guilty, otherwise after his implication, they would not have kept normal relation.

(29) P.W.2 has also deposed in cross examination that the deceased had come with bad intention. It appears that the appellant had come near P.W.2 with bad intention and on being confronted pressed her neck and when she asked him to go away, he picked up the children lying near her on the cot and threw them in the nearby well. Thus the cross examination of P.W.2 throws some light on the motive. However, Investigating Officer (P.W.6), has deposed in cross examination that he does not know the reason of incident and could not get any motive for occurrence. But the motive appears to be was of bad work with P.W.2 and not the murder of her child. However, even if the motive is not proved, the prosecution story cannot be said to have even a dent on account of absence of motive because it is a case of eye witness account and in the case of eye witness account, the motive does not play any significant role.

(30) In view of above, the evidence of P.W.2 is consistent and convincing and nothing could be extracted in the cross examination, which may create any doubt about the testimony of P.W.2. P.W.2 is an eye witness and there is no contradiction in her evidence. The learned trial court has also recorded a finding that there is no contradiction in the evidence of P.W.2 and she had seen the accused pressing her neck, kicking her and throwing the children in the well.

(31) P.W.2 has deposed that the accused-appellant had kicked her in her leg, on account of which she fell down. The medical report of P.W.2 indicates three injuries,out of which two are in the right leg between knee and near ankle joint. In case a person would kick in the leg, the injury would come in the lower part of the leg. Thus, the medical report of P.W.2, who is an injured

witness, has corroborated her evidence. P.W.9 Dr. Arun Kumar, who had examined the injured P.W.2 has also stated that the injuries were of within 24 hours, which could have been caused by a bangle or kudal. In the cross examination, he deposed that the injuries could have been of within 24 hours or even within 12 hours also. The post mortem report of the deceased indicates that 50 ml black coloured material was found in his stomach, which could have entered on account of falling and drowning into the well. Since cause of death could not be ascertained, therefore, the viscera was preserved and the FSL report shows that no poison was found in the body. Thus the post mortem report (Ex. Ka. 4), also supports the prosecution case because the death could have been on account of drowning in the well. Therefore, the presence of about 50 ml liquid in the stomach further supports the prosecution version. The post mortem report has been proved by P.W.5 Dr. Gulrez Ahmad, who has also opined that since 50 ml liquid was found in the stomach of the deceased and the poison was not found, therefore, viscera was preserved. No poison was found in the viscera report, therefore, death due to drowning may not be ruled out in the facts and circumstances of the case. The post mortem examination of the deceased was conducted at about 3:05 p.m. on 23.04.2015 and as per the post mortem report, the approximate time since death was about one day. No cross examination of P.W.5 was conducted, except with regard to the cause of death mentioned in the post mortem report. Thus, his evidence in regard to the time of death is intact.

(32) In view of above, the prosecution case stands proved not only by the testimony of the eye witness but the same is also corroborated by the medical evidence.

(33) P.W. 3 supported the statements of P.W.1 and P.W.2, in saying that on the date of incident at about 11:00 p.m.in the night, on a alarm raised, he had gone to the house of Ram Lautan, where two children were thrown into the well by Jag Prasad. They had brought the children out of the well, in which the child Shagun, aged about three and a half years had died. The inquest was prepared by the investigating Officer. He is a witness to the inquest report and has also proved his thumb impression in inquest.(Ex. Ka 2). He has also deposed that the dead body was sealed and sent for post mortem. Thus the P.W.3 has also proved the place of incident and that the children were thrown in the well, from where they were taken out, upon which the child Shagun was found dead, as well as the inquest report, in which opinion of witnesses is recorded, according to which the child Shagun died as he was thrown in well by Jaggu @ Jag Prasad.

(34) P.W. 3 has also deposed that at the time of incident, when the children were thrown in the well, the name of Jag Prasad had come. The accused had ran away from the village leaving the children in the well and he was caught by the police after 4-5 days. P.W.2 the mother of the deceased was injured who had also deposed that the accused-appellant was caught after 4-5 days and upon call from the police, she had gone to the police station but she had not met the accused either at the police station or anywhere else. Thus, the conduct of the appellant also shows that though he resides after 40-45 house from the place of occurrence but he had absconded in the very night of the incident and was caught only after 4-5 days.

(35) P.W.4, writer of the F.I.R. has proved it. P.W.5 is the Investigating Officer, who had recorded statements and prepared the site plan on the pointing out of the complainant and collected the material and filed the charge sheet and proved them. P.W.7 has also proved the inquest of the

deceased Shagun. P.W.8-Constable Indrajeet Sharma helped in the preparation of the inquest and took the dead body for post mortem and proved it. Nothing could be extracted from the said official formal witnesses, which may create any doubt about their testimony or even on the prosecution case. Thus, this Court is of the view that the prosecution has proved it's case beyond reasonable doubt. Learned trial court upon considering the evidence and material on record has recorded a finding that on the basis of evidence on record, the charge of Section 302, 307 and 323 IPC has been proved against the appellant with the following findings:-

"इस प्रकार अभियोजन पक्ष की तरफ से कुल दो साक्षी तथ्य के परीक्षित कराये गये हैं जिसमें से पी०डब्ल्यू ०२ रेखा चश्मदीद साक्षी है। इन्होंने अपने साक्ष्य में इस तथ्य को साबित किया है कि अभियुक्त जग प्रसाद उर्फ जग्गू रात में ११ बजे उसके घर आया और वह अपने छप्पर में अपने दोनों बच्चों के साथ रात ११ बजे सो रही थी। अभियुक्त बुरी नीयत से उसके पास आया और पी०डब्ल्यू०२ रेखा को लात से मारा, उसका गला भी दबाया। संभवतः प्रतिरोध होने के कारण उसने रेखा के दोनों बच्चों को ले जाकर कुयें में फेक दिया जिससे उसके बेटे सगुन की मृत्यु हो गयी और उसकी लड़की बच गयी। सगुन के पोस्टमार्टम रिपोर्ट में उसके पेट में ५० ग्राम तरल पदार्थ पाया गया है। न्यायालय के विचार से यह तभी हो सकता है जब मृतक को डुबोया गया हो अथवा वह स्वयं डूबा हो। इस प्रकार मौखिक साक्षी पी०डब्ल्यू०२ रेखा के साक्ष्य का समर्थन डाक्टरी साक्ष्य से भी होता है। पत्रावली पर उपलब्ध साक्ष्य से अभियुक्त के विरूद्ध धारा ३०२, ३०७ व ३२३ भा०दं०सं० का अपराध सन्देह से परे साबित होता है। चूँकि अभियुक्त द्वारा किये गये कार्य से पी०डब्ल्यू०२ रेखा के लड़के सगुन की मृत्यु हुई तो यह माना जायेगा कि अभियुक्त यह जानता था कि तीन वर्ष के बच्चे को यदि कुएं में फेंक दे तो निश्चित रूप से उसकी मृत्यु हो जायेगी। इसके अलावा पी०डब्ल्यू०२ की लड़की को भी कुएं में अभियुक्त द्वारा फेका गया है लेकिन कुएं से निकालकर अस्पताल ले जाने पर व दवा इलाज होने पर वह बच गयी किन्तु उसकी आंख खराब हो गयी लेकिन अभियुक्त का आशय पी०डब्ल्यू०२ की लड़की को जान से मारने का था। इसलिए उसने उसको कुएं में फेक दिया। इसके अलावा पी०डब्ल्यू०४ के साक्ष्य से यह साबित है कि पीड़िता के शरीर पर भी चोटें आयी है। इस प्रकार पत्रावली पर उपलब्ध साक्ष्य से अभियुक्त के विरूद्ध धारा ३०२, ३०७ य ३२३ भा०दं०सं० का अपराध साबित होता है।

(36) The learned trial court, further considering the evidence and material on record and the provisions made under Section 3(2)(v) of SC/ST Act, found that charge under Section 3(2)(v) of SC/ST Act is not proved as the crime was not committed on the ground that the victims are of SC/ST community and recorded the following findings:-

"अभियुक्त के विरूद्ध धारा ३(२) (v) अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम का आरोप भी विरचित किया गया है। धारा ३(२) (v) अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम के लागू होने के संबंध में यू० पी० सीआर० आर० २००० पेज-२६८ मासूमशा हसनशा मुसलमान बनाम स्टेट ऑफ महाराष्ट्र का उद्धरण महत्वपूर्ण है जिसमें माननीय उच्चतम न्यायालय द्वारा यह कहा गया है कि धारा ३(२) (v) अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम के लागू होने के लिए जरूरी शर्त है कि पीडित व्यक्ति अनुसूचित जाति या अनुसूचित जनजाति का हो और पीड़ित के साथ अपराध इस आधार पर किया गया हो कि वह अनुसूचित जाति या जनजाति का है। यदि यह दोनों शर्तें पूरी नहीं हैं तो धारा ३(२) (v) अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम का आरोप साबित नहीं होगा। न्यायालय के विचार से अभियुक्त द्वारा उपरोक्त अपराध इसलिए नहीं किया गया है कि बच्चे अनुसूचित जाति के थे बल्कि आपराधिक मानसिकता से उपरोक्त अपराध कारित किया गया है। ऐसी स्थिति में अभियुक्त के विरूद्ध धारा ३(२) (v) अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम का अपराध साबित नहीं होता है।

(37) The judgment relied by learned Amicus Curiae for the appellant are not applicable on the facts and circumstances of the case and of any help to him, which in short, are being referred here-in-after.

(38) In the case of Amar Nath versus the State of Uttar Pradesh(supra), the Hon'ble Supreme Court, has held that when there are multiple inconsistencies in the evidence on the basis of which conviction was ordered and possibility of conviction resulting in grave miscarriage of justice,

interference with a concurrent verdict is not only possible but it would be well warranted. It has further been held that when the testimonies of the eye-witnesses suffer from fatal flaws, to sustain conviction on the basis of such unreliable evidence, would surely amount to miscarriage of justice.

(39) In the case of Alauddin versus State of Assam(supra), the Hon'ble Supreme Court, has dealt with the status of the statement under Section 161 Cr.P.C. and further observed that when the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the Court which is inconsistent with what he has stated in his statement recorded by the Police, there is a contradiction. If a former statement of the witness is inconsistent with any part of his evidence given before the Court, it can be used to impeach the credit of the witness in accordance with clause (3) of Section 155 of the Evidence Act.

(40) In the case of Anand Ramachandra Chougule versus Sidarai Laxman Chougala (supra), has held that The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. In contradiction to the same, the accused has only to create a doubt about the prosecution case and the probability of its defence. An accused is not required to establish or prove his defence beyond all reasonable doubt, unlike the prosecution. The fact that a defence may not have been taken by an accused under Section 313 Cr.P.C. again cannot absolve the prosecution from proving its case beyond all reasonable doubt. The relevant paragraphs 9 and 10 are extracted hereinbelow:-

‘9. The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. In contradistinction to the same, the accused has only to create a doubt about the prosecution case and the probability of its defence. An accused is not required to establish or prove his defence beyond all reasonable doubt, unlike the prosecution. If the accused takes a defence, which is not improbable and appears likely, there is material in support of such defence, the accused is not required to prove anything further. The benefit of doubt must follow unless the prosecution is able to prove its case beyond all reasonable doubt.

10. The fact that a defence may not have been taken by an accused under Section 313 CrPC again cannot absolve the prosecution from proving its case beyond all reasonable doubt. If there are materials which the prosecution is unable to answer, the weakness in the defence taken cannot become the strength of the prosecution to claim that in the circumstances it was not required to prove anything. In Sunil Kundu v. State of Jharkhand [Sunil Kundu v. State of Jharkhand, (2013) 4 SCC 422 : (2013) 2 SCC (Cri) 427] , this Court observed: (SCC pp. 433-34, para 28)

28. When the prosecution is not able to prove its case beyond reasonable doubt it cannot take advantage of the fact that the accused have not been able to probabilise their defence. It is well settled that the prosecution must stand or fall on its own feet. It cannot draw support from the weakness of the case of the accused, if it has not proved its case beyond reasonable doubt.

(41) In the case of Balaji Gunthu Dhule versus State of Maharashtra(supra), the Hon'ble Supreme Court, has held that since the entire evidence of the eye-witnesses has not been accepted by the High Court, it could not have merely relied upon the postmortem report to convict the appellant for an offence under Section 302 of the I.P.C. Further, in our view, the postmortem

report should be in corroboration with the evidence of eye-witnesses and cannot be an evidence sufficient to reach the conclusion for convicting the appellant.

(42) In the case of Abdul Shakur versus State of Rajasthan(supra), the Hon'ble Supreme Court has held that it is for the prosecution to connect the accused to the murder of the deceased by producing credible and legally admissible evidence.

(43) In the case of Krishnegowda versus State of Karnataka by Arkalgud Police(supra), The Hon'ble Supreme Court has held that When there is inconsistency between medical evidence and ocular evidence, the benefit of doubt should be given to the accused.

(44) In the case of Baso Prasad and others versus State of Bihar(supra), the Hon'ble Supreme Court has held that the exact time of death cannot be established scientifically and precisely, only because of presence of rigour mortis or in the absence of it.

(45) In the case of Mohar Singh and others versus State of Punjab(supra), the Hon'ble Surpeme Court has held that in the facts and circumstances of the case, upon consideration of which the Hon'ble Court has recorded that in view of this glaring inconsistency between the ocular and medical evidence, it will be extremely unsafe and hazardous to maintain the conviction of the appellants on such evidence. The judgment has been passed on the facts and circumstances of case.

(46) The settled position of law discussed in the aforesaid case laws, relied by learned Amicus Curiae for the appellant, cannot be disputed and it is for the prosecution to prove it's case beyond reasonable doubt, irrespective of the contradictions or inconsistencies in the evidence and weakness of the defence and it cannot absolve the prosecution of it's liability. As discussed above, the aforesaid case laws are not of any assistance to the case of the appellant. This Court is in agreement with the acquittal of appellant under Section 3(2)(v) of SC/ST Act and none of the parties have informed that it has been challenged either by the prosecution or complainant. Even otherwise, since there is no enmity with the appellant and his family with the P.W.2 and her family and their relations are not strange even thereafter and cordial, it could not have been challenged by the complainant. This also leads us to consider as to whether the murder of the children was the motive of accused/appellant and he attempted to murder with pre-meditated mind, on account of which one of the child died.

(47) In view of aforesaid discussion, the motive, which could be inferred from evidence of P.W.2 was not to commit murder of child, by the accused /appellant but he had come with bad intention to her. Thus, it may not be said that there was any intention to kill any of the child, Since the motive of murder of child could not be proved, therefore, it may be a case in which the intention to kill may not be there, even if the accused/appellant was knowing that the child may die on account of throwing in well and a child is also alive. If the motive and intention to kill is not proved then it is required to be considered as to whether the offence would fall under the category of murder or not, if not, then it may be a case of culpable homicide not amounting to murder.

(48) In view of above, it would be apt, to consider the issue emerged in the case, to refer the relevant provisions made in I.P.C., which for convenience may be extracted. Sections 299, 300, 302 and 304 I.P.C. relevant for the purpose are extracted below:-

"299. Culpable homicide.--Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

300. Murder.--Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

2ndly.--If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly.--If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly.--If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1.--When culpable homicide is not murder.--Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:--

First.--That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.--That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.--That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.--Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2.--Culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3.--Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.--Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Exception 5.--Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

302. Punishment for murder.-

Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

304. Punishment for culpable homicide not amounting to murder.--Whoever commits culpable homicide not amounting to murder, shall be punished with 1 [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

(49) In view of above to bring a case under Section 300 firstly it must be established that a bodily injury is present; secondly the nature of the injury must be proved and thirdly it must be proved that there was an intention to inflict that particular bodily injury and it was not accidental or unintentional or that some other kind of injury was intended and fourthly it must be proved that injury inflicted on the deceased is sufficient to cause death in the ordinary course of nature. If all these eliments are established by the prosecution the offence would be murder under Section 300 I.P.C.

(50) The Hon'ble Supreme Court considered the issue, in the case of Virsa Singh Vs. The State of Punjab; 1958 SCC Online SC 37, (AIR 1958 SC 465), and held that after determination of objective facts in regard to the nature of injury and the part on which it has been inflicted etc, when it comes to the question of intention, that is subjective to the offender, it must be proved that he had an intention to cause the bodily injury that is found to be present and laid down the principles as to how it is to be considered. The relevant paragraphs 13 to relevant portion of paragraph 22 are extracted below:-

13. In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, be cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broadbased and simple and based on common sense: the kind of enquiry that " twelve good men and true could readily appreciate and understand.

14. To put it shortly, the prosecution must prove the following facts before it can bring a case under section 300, 3rdly "

15. First, it must establish, quite objectively, that a bodily injury is present ;

16. Secondly, the nature of the injury must be proved; These are purely objective investigations.

17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

18. Once these three elements are proved to be present, the enquiry proceeds further and,

19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

20. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under's. 300, 3rdly. It does not matter that there was no intention to cause death. It does not matter that there was Do intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional.

21. We were referred to a decision of Lord Goddard in R v. Steane (1) where the learned Chief Justice says that where a particular intent must be laid and charged, that particular intent must be proved. Of course it must, and of course it must be proved by the prosecution. The only question

here is, what is the extent and nature of the intent that s. 300 thirdly requires, and how is it to be proved ?

22. The learned counsel for the appellant next relied on a passage where the learned Chief Justice says that:

"if, on the totality of the evidence, there is room for more than one view as to the intent of the prisoner, the jury should be directed that it is for the prosecution to prove the intent to the jury's satisfaction, and if, on a review of the whole evidence, they either think that the intent did not exist or they are left in doubt as to the intent, the prisoner is entitled to be acquitted."

We agree that that is also the law in India. But so is this. We quote a few sentences earlier from the same learned judgment:

"No doubt, if the prosecution prove an act the natural consequences of which would be a certain result and no evidence or explanation is given, then a jury may, on a proper direction, find that the prisoner is guilty of doing the act with the intent alleged."

(51) The Hon'ble Supreme Court, in the case of Pulicherla Nagarjun Vs. State of Andhra Pradesh; (2006) 11 SCC 444, discussed as to what is to be considered for deciding a case as to whether it falls under Section 302 or 304 Part-I or 304 Part-II and also the intention to cause death can be gathered from a combination of circumstances. The relevant paragraph-18 is extracted below:-

"18. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters # plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under section 302, are not converted into offences punishable under section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under section 302.

The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre- meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x)

whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may."

(52) The Hon'ble Supreme Court, in the case of Suresh Chandra Bahri Vs. State of Bihar and Others; 1995 Supp(1) SCC 80, has held that sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. However it further noticed that in a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the court that the accused was guilty of the offence charged with. But the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime. Therefore motive may only be a relevant factor to form an opinion as to whether in a given circumstances there was an intention to kill on account of which the case may fall under Section 302 I.P.C.

(53) The Hon’ble Supreme Court, in the case of Khuman Singh Vs State of MadhyaPradesh; (2020) 18 SCC 763, has held that Exception 4 to Section 300 IPC can be invoked if death is caused; (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner and (d) the fight must have been with the person killed.

(54) In view of the above statutory provisions and the principles laid down by Hon’ble Supreme Court, when we test the facts of the instant case on the aforesaid principles, we find that it is apparent from the evidence and material on record that the appellant had thrown the children of P.W.2 in the well in heat of passion on account of frustration of his bad intention for the P.W.2, which could not be fulfilled, as she had asked him to go away, therefore, firstly he kicked her in the leg and in the same continuation, he picked up her children sleeping with her on the cot and thrown them in the well, on account of which one of the child died and the other suffered injury in the eyes. In these circumstances, though it may be said that he had thrown the children in the Well with the knowledge that it is likely to cause death but without intention to kill, therefore, it cannot be said to be a per-medidated murder. This Court is of the view that, looking to the offence and manner of committing offence, it would fall under Section 304 Part II I.P.C. Thus, we are of the view that while upholding conviction under Section 307 I.P.C., on account of throwing of one year child in well, who suffered injury in eyes and under Section 323 IPC on account of injuries sustained by P.W.2, conviction of offence under Section 302 IPC is liable to be modified and converted under Section 304 Part II IPC. Now we will consider as to what punishment is to be awarded.

(55) Learned trial court has awarded with imprisonment for life and fine of Rs.10,000/- under Section 302 IPC and 7 years rigourous imprisonment under Section 307 IPC with fine of Rs.5000/- and 6 months rigorous imprisonment and fine of Rs.500/- under Section 323 IPC. However, the

maximum punishment has not been awarded for any of the offence as the court has not found the crime so heinous to award the maximum punishment. Thus, this Court is of the view that the conviction and sentence under Section 302 IPC is liable to be modified to Section 304 Part II IPC, upholding the conviction and sentence under Section 307 and Section 323 IPC.

(56) The appeal is partly allowed.

(57) We, therefore, uphold the conviction and sentence awarded to the appellant by the trial Court under Sections 307 and 323 I.P.C., however, modify the conviction under Section 302 IPC to Section 304 Part II I.P.C. and award a sentence of 10 years rigorous imprisonment with a fine of Rs.50,000/-. In case of default of payment of fine, to undergo 1 year further rigorous imprisonment. On completion of the said period, the appellant is entitled to be released forthwith, if, he is not required in any other case.

(58) On deposit of the aforesaid fine against all the punishments, if already deposited and if any amount has been deposited, deposit of the remaining amount,the same shall be disbursed to the P.W.2, which shall be transferred in her account after calling account details from her.

(59) The appellant is in jail since 25.04.2015. Thus, he must have completed the punishment of 10 years. Therefore, he shall be released forthwith on deposit of the fine/remaining amount of fine. In case he has already completed the sentence and not deposited the fine and completed the default period, he shall be released forthwith, if he is not wanted or required to remain in jail in any other case.

(60) Appellant-Jag Prasad Yadav @ Jaggu is directed to file personal bond and two sureties each in the like amount to the satisfaction of the Court concerned in compliance with Section 437-A of the Code of Criminal Procedure, 1973 within a period of two weeks.

(61) Pending application(s), if any, stands disposed of accordingly.

(62) Let a copy of this judgment and the trial Court's record be transmitted to the Court concerned forthwith and in any case within two weeks from today, for information and compliance.

(2026) 5 ILRA 404
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 08.05.2026

BEFORE

THE HON'BLE SYED QAMAR HASAN RIZVI, J.

RERA Appeal No. 169 of 2025

U.P. Real Estate Regulatory Authority ...Petitioner
Versus
M/S Maa Bhagwati Commercial Reality N Resorts Llp B-20/2 New Delhi ...Respondent

Issue for Consideration

Whether a real estate project can be granted registration by the Real Estate Regulatory Authority under Section 5 of the Real Estate (Regulation and Development) Act, 2016, on a land held on lease for a period of 29 years and 11 months, in light of the provisions contained in Section 4(2)(l)(A) of the Real Estate (Regulation and Development) Act, 2016

Head Notes

The Real Estate (Regulation and Development) Act, 2016-Sections 2(zk), 4(2)(1) (A), 5 & 58; The Transfer of Property Act, 1882- Section 105- Respondent does not possess the legal authority or right under the terms of the lease-deed, to sell the plot, apartment, or building, as the case may be, the project does not fall within the ambit of the Real Estate (Regulation and Development) Act, 2016. The ability to offer units for sale is a foundational element for attracting the applicability of the Real Estate (Regulation and Development) Act, 2016, as the statutory scheme primarily governs 'real estate projects' undertaken for the purpose of sale to allottees-

Held- In the absence of such a right, the Respondent cannot be brought within the definition of a "promoter" under the Act, as the essential condition of developing or marketing real estate for sale remains unfulfilled. Consequently, the provisions relating to mandatory registration, particularly under Section 5 of the Act, are not attracted in the present case- Respondent is neither obligated to seek registration nor it can be compelled to obtain registration under the Real Estate (Regulation and Development) Act, 2016, the legislative intent being to regulate only those projects which are intended for sale to prospective allottees. **Appeal disposed of**. (E-15)

Case Law Cited

Ram Niranjan Kajaria versus Sheo Prakash Kajaria and others; reported in 2015 (10) SCC 203; District Mining Officer vs. Tata Iron & Steel Co (2001) 7 SCC 358; Hardeep Singh vs. State of Punjab and Others, (2014) 3 SCC 92; M/s Newtech Promoters and Developers vs. State of U.P. (2021) 18 SCC 1;

List of Acts

The Real Estate (Regulation and Development) Act, 2016; The Transfer of Property Act, 1882

List of Keywords

Section 5; Promoter; Ability to offer units for sale; Foundational element; attracting The Real Estate (Regulation and Development) Act, 2016

Case Arising From

Order dated 25.09.2025 passed by the Real Estate Appellate Tribunal (REAT), Lucknow in Appeal No. 135 of 2025 thereby directing the Regulatory Authority to grant registration for the respondent's project and to grant Registration Number including a Login ID and Password within 7 days while setting aside the order dated 10.03.2025 passed by the Real Estate Regulatory Authority (RERA) Lucknow.

Appearances for Parties

Counsel for Appellant(s) : Shireesh Kumar, Shobhit Mohan Shukla
Counsel for Respondent(s) : Swetank Sharma, Swetank Sharma, Syed Aftab Ahmad

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

1. Sri Shobhit Mohan Shukla, learned counsel for the appellant and Sri Sudeep Seth, Senior Advocate assisted by Sri Syed Aftab Ahmad, learned counsel for the respondent are present.

2. By means of the instant appeal under section 58 of the Real Estate (Regulation and Development) Act, 2016 the U.P. Real Estate Regulatory Authority, the Appellant, has challenged the order dated 25.09.2025 passed by the Real Estate Appellate Tribunal (REAT), Lucknow in Appeal No. 135 of 2025 (M/s. Maa Bhagwati Commercial Reality N Resorts LLP vs. UP Real Estate Regulatory Authority) thereby directing the Regulatory Authority to grant registration for the respondent's project and to grant Registration Number including a Login ID and Password within 7 days while setting aside the order dated 10.03.2025 passed by the Real Estate Regulatory Authority (RERA) Lucknow.

3. The facts, in nut-shell, as culled out from the pleadings available on record, are that a public charitable trust, namely 'Udasin Sangat Rishi Aashram, Ranopali, Ayodhya, Uttar Pradesh, (hereinafter referred to as Trust,) registered in the Office of the Sub-Registrar, Sadar, Ayodhya, vide Registration No. 275/2019 is the owner of the plots of land having Gata Nos.309 and 328, situated at village Ranopali, Pargana Haveli Awadh, Tehsil Sadar, District Ayodhya, admeasuring, 26000.58 sq.mtrs.

4. The above-mentioned Trust granted lease for a period of 29 years and 11 months in favour of the respondent/appellant by means of Registered lease dated 29.09.2023, to construct a commercial building, on a yearly consideration at the rate of Rs.60,00,000/- with five per cent increase after every five years. The term of the 'lease' is renewable by mutual consent.

5. The Respondent/Appellant having obtained the relevant and necessary clearances, applied with the Uttar Pradesh Real Estate Regulatory Authority (hereinafter referred to as UP RERA) for registration of its project, 'Samrajya', on 02.02.2025, vide application ID 1426755, in terms of Section 4 of the Real Estate (Regulation and Development) Act, 2016 and in conformity with the Standard Operating Procedure (SOP) of the real estate project issued by U.P. Real Estate Regulatory Authority. However, the Regulatory Authority vide communication dated 06.02.2025, inter-alia, raised objection, as is reflected from the impugned order, alleging that from the land details it is not clear whether the land owner /lessor is having leasing rights and that it is also not clear as to how could the land owner give sub-leasing rights to the lessee, as the property belongs to a Trust.

6. The Respondent/Appellant acknowledged the objections/notice and submitted a reply vide communication dated 11.02.2025, inter alia, stating that the leasing rights in favour of the applicant firm are clearly ascertainable from the trust-deed itself, which had already been uploaded on the portal. Along with the same, copies of the Khatauni extracts evidencing the title of the trust over the plots in question were also furnished.

7. The Regulatory Authority, however, vide communication dated 21.02.2025 reiterated the same objections regarding land details and leasing/sub-leasing rights. In response, the appellant clarified that the right to sub-lease had been expressly conferred upon it under the terms of the lease-deed. The Respondent herein Appellant also uploaded the lease-deed along with the registration certificate issued by the Sub-Registrar. Despite the same, the Regulatory Authority again raised identical queries vide communication dated 03.03.2025, questioning the authority of the land owner to grant sub-leasing rights. Ultimately the Regulatory Authority, being dissatisfied

with the replies and clarifications submitted by the Respondent proceeded to reject the application for registration of the project.

8. Feeling aggrieved by the order of rejection of application for grant of registration of the project dated 04.03.2025 the Respondent herein challenged the same by filing an appeal under Section 44 of the Real Estate (Regulation and Development) Act, 2016 before the Real Estate Appellate Tribunal (hereinafter referred to as Appellate Tribunal), which came to be allowed vide order dated 25.09.2025 i.e. the impugned order.

9. The case of the Respondent/Appellant before the Tribunal was that the lessor/Trust is the absolute and lawful owner of the plots forming the subject matter of the project, and the said plots have been validly and legally leased in its favour for the purposes of development and that under the provisions of the Transfer of Property Act, 1882 the owner of a property possesses a bundle of rights, including the right to lease the property in accordance with Sections 105 to 117 of Chapter V of the Act.

10. It was further contended, before the learned Appellate Tribunal, by the Respondent/Appellant that the Regulatory Authority has committed a manifest error in questioning the right of the land owner to lease its own property. The objection raised by the Authority, to the effect that the owner lacks the right to lease the property, is wholly beyond its jurisdiction and contrary to settled legal principles and that the Authority failed to consider Section 108(j) of the Transfer of Property Act, 1882, which expressly provides that a lessee is entitled to transfer his interest, either absolutely or by way of mortgage or sub-lease, in whole or in part, and that such transferee may further transfer the same. Thus, the rights of a sub-lessee are both heritable and transferable. It was also contended by the Respondent/Appellant that the direction issued by the Authority requiring it to obtain permission under Section 92 of the Code of Civil Procedure, 1908, is legally unsustainable as the same is merely an enabling provision and cannot be construed in a manner that restricts the trustees from leasing Trust property for generating funds for the administration and objectives of the Trust.

11. As rejection of the present respondent's application was also on the ground that the lease period is limited to 29 years and 11 months it was asserted on their behalf that the conclusion drawn by the Regulatory Authority to the effect that the lease is not of a permanent nature is erroneous and based on a misreading of the lease deed as the lease deed expressly provides for renewal by mutual consent, thereby reflecting the intention of the parties to continue the arrangement.

12. On the other hand, it was contended on behalf of the Regulatory Authority before the learned Appellate Tribunal that on the strength of the sub-lease deeds to be executed of the units by the promoter the sub-lessees would not fall within the scope and ambit of the definition, 'allottee' as defined under Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016 as allottee means a person to whom a plot, apartment or building, as the case may be, has been allotted or sold but not given on rent. It was further contended that Section 2 (zk) of the Act, 2016 defines a 'promoter' as one who constructs or causes to be constructed, inter alia, building/apartment for the purpose of selling all or some of the apartments to other persons. Further, reliance was placed on

the definition of the 'real estate project', defined under Section 2 (zn), wherein, a real estate project, which inter-alia means development of building or a building consisting of apartments for the purpose of selling all or some of the said apartments.

13. It was also submitted by the Regulatory Authority that the apartments/plots/building, as the case may be, could only be sold and would not include apartments/plots/building, given on rent/sub lease. It further relied upon Section 17 of Act, 2016, to submit that after completion of the project, promoter shall execute a registered conveyance deed in favour of the allottee, along with, the undivided proportionate title in the common areas, Section 2 (n) defines "common areas" inter alia, to mean the entire land for the real estate project. Further, that the promoter has obtained the land of the project on lease and is not legally competent to transfer the undivided share of the land to the allottees of the entire common areas to the association of allottees or the competent authority, as the case may be. Therefore, under clause (a) of sub-Section (1) of Section 5 of the Act, 2016, the Regulatory Authority was justified in rejecting the application being dehors the provisions of the Act, rules and regulation made thereunder.

14. Based upon the rival submissions, the learned Appellate Tribunal framed the following questions for consideration:

(i) whether real estate project can be developed on a leasehold property/land under Act 2016;

(ii) whether lessor (trust) was required to obtain permission of the competent court for the lease under Section 92 of Code of Civil Procedure, 1908;

(iii) whether the project of the appellant came to be registered in view of the deeming fiction under Section 5(2) of Act 2016.

15. The learned Appellate Tribunal answered Questions No. 1 and 2 in favour of the appellant/respondent herein and against the respondent/appellant herein while Question No. 3 was answered against the appellant/respondent herein and the Appeal was allowed in the following terms:

"….56. Having due regard to the facts and circumstances of the case and for the reasons assigned herein above, the appeal succeeds, accordingly allowed by passing the following orders:

(i) Impugned order dated 10.03.2025, passed by the Regulatory Authority is set aside and quashed.

(ii) The Regulatory Authority is directed to grant registration for the appellant project and issue registration number including a Login Id and password to the appellant within seven days from the date this order is uploaded on the portal of the Tribunal.

(iii) It is clarified that no other point or ground was pressed and argued by the contesting parties.

(iv) No order as to costs….."

16. Feeling aggrieved, the U.P. Real Estate Regulatory Authority preferred the instant appeal under Section 58 of the Act, 2016 which came to be admitted by this Court on 20.11.2025 on the following substantial questions of law:

"(i). Whether the appeal under Section 58 of the Real Estate (Regulation & Development) Act, 2016 can be preferred by the Regulatory Authority and can be termed as 'person aggrieved' as used in Section 58 of the said Act?

(ii). Whether a trustee can lease out the charitable trust property without the leave of the District Judge, as provided under Section 92 of the C.P.C. 1908?

(iii). Whether a real estate project can be developed and registered with Real Estate Regulatory Authority under Section 5 of the Act of 2016 on the land taken on lease for a period of 29 years and 11 months in the teeth of the provisions of section 4 (2) (l) (A) of the Act.

17. The respondent/promoter who had entered appearance through caveat, filed a Short Counter Affidavit dated 17.02.2026 stating therein that the case of the appellant before the Appellate Tribunal as well as this Court is to the effect that the Respondent is not covered within the meaning of promoter as defined under section 2 (zk) of the Act and the project was not a 'real estate project' as defined under section 2 (zn) and the appellant has made a categorical averment to the same effect in Paragraph No. 26 of its affidavit filed in support of application for stay.

18. It has further been submitted that in view of the admitted position that the respondent is not covered within the statutory definition of "promoter", it, by necessary implication, is neither required to seek registration under section 4 nor is it liable to be granted registration under section 5 of the Act, 2016 thereof.

19. In the aforesaid Short Counter Affidavit filed on behalf of the respondent, it is categorically averred that it would be expedient in the interest of justice that the present appeal be disposed of in terms of the statement/averment made by the appellant to the effect that the respondent is beyond the purview of the Act of 2016 and is not required to obtain registration for the project in question as it stands absolved of any requirement to apply for and to obtain the registration under the provisions of the Real Estate (Regulation and Development) Act, 2016 in respect of the project in question.

20. The respondent has further stated in its Short Counter Affidavit that as per statement made by the RERA in the appeal, the nature of title is leasehold and not transferable, hence as per section 17 of the Act of 2016, the project does not fall under RERA registration. It has further been stated that as per RERA the Respondent is not covered within the purview of the Real Estate (Regulation and Development) Act, 2016 and the restrictions imposed vide Form-D are not applicable and should be revoked.

21. Finally, the learned counsel for the Respondent has very emphatically urged that under the circumstances as mentioned here-in-above, it would be expedient in the interest of justice that the appeal preferred by the Authority may be disposed of in terms of the following statement/averment as mentioned in paragraph no. 13 of the said Short Counter Affidavit:

i. That the respondent is beyond the purview of the Real Estate (Regulation and Development) Act, 2016 and is not required to apply for registration of real estate project or be granted registration under section 5 of the Act.

Further, the Appellant U.P. Real Estate Regulatory Authority may also be directed to immediately remove the restrictive clauses contained in Form-D prohibiting the Respondent from marketing, promoting, selling, advertising, booking, or dealing with the project.

22. The Appellant/Authority did not file any rejoinder/objection to the aforesaid Short Counter Affidavit filed by the Respondent/Promoter and has agreed that the appeal may be decided in terms of the proposition made by the Respondent/Promoter. The parties have also agreed that the substantial questions of law nos. (i) and (ii) may be left to be decided in some appropriate matter and the present appeal may be decided in terms of substantial questions of law (iii) only, as rest of the questions have become redundant in view of the admitted position that the Respondent is not required to apply or be granted registration under the Act, 2016.

23. Paragraph 26 of the affidavit filed by the Appellant Authority in support of its application for stay reads as under:

"...26. That the application for registration of the Project was not maintainable as the respondent was not covered within the meaning of promoter as defined under Section 2(zk) of the Act and the project was not a Real Estate Project as defined under Section 2(zn) of the Act wherein a real estate project means development of a building or a building consisting of apartments or converting an existing building or part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto?."

24. Now, with the consent of the parties, this Court takes up only the third substantial question of law i.e. whether a real estate project can be developed and registered with Real Estate Regulatory Authority under Section 5 of the Act of 2016 on the land taken on lease for a period of 29 years and 11 months in the teeth of the provisions of section 4 (2) (l) (A) of the Act.

25. The proposition that the Respondent is not required to be granted registration under the Real Estate (Regulation and Development) Act, 2016; emerges from the fact that it is only a lessee of the original owner/Trust and given that it is not capable of transferring the units/apartments/building, as the case may be, by way of sale, is beyond the purview of the Act, 2016.

26. Sri Shobhit Mohan Shukla, learned counsel appearing for the appellant Authority has drawn the attention of this court towards the preamble to the Act and has submitted that the respondent is not covered under Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016 as it cannot sell the plot, apartments or building and can only assign leasehold rights in the project by way of creation of sub-leases in favour of its allottees. The preamble to the Act reads as under:

"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto."

27. It is trite in law that admissions, if clear, are by far the best proof of facts admitted. Admissions in pleading or judicial admission, if admissible, made by the parties or their agents at or before the hearing of a case, stand on a higher footing than evidentiary admissions. The former class of admissions is fully binding on the party that makes them and constitutes a waiver of proof. The Court can very well pass an order on the basis of an undisputed admission of a party in accordance with law. It is well settled that where admissions of facts and law have been made either in the pleading or otherwise, whether orally or in writing, the Court at any stage of the proceeding either on the application of a party or on its own motion without waiting for the determination of other questions, may make such order or give such judgment as it may think fit, having regard to such admission. The Hon'ble Supreme Court observed in the case of Ram Niranjan Kajaria versus Sheo Prakash Kajaria and others; reported in 2015 (10) SCC 203 that a party cannot be permitted to wholly withdraw the admission in the pleadings.

28. Sri Syed Aftab Ahmad learned counsel appearing for the respondent very emphatically submitted that Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016, which defines promoter, states that a person who has been assigned development rights in respect of a project for the purpose of selling the apartments or a person who develops land as a project for the purpose of selling, would only qualify as being a promoter and would, consequently, require a registration under the Act and since he cannot sell the plot, apartments or building and can only assign leasehold rights in the project by way of creation of sub-leases in favour of its allottees he stands exempted from the operation of the Act.

29. Before delving into the merits of the case, it would be appropriate to take note of the statement of objects and reasons of the Real Estate (Regulation and Development) Act, 2016, which reads as follows:

"THE STATEMENT OF OBJECTS AND REASONS

The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been

largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums.

In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013 in the interests of effective consumer protection, uniformity and standardisation of business practices and the transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for Regulation and promotion of real estate sector and to ensure sale of plot, apartment or building. as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority."

(emphasis supplied by this court)

30. For ready reference, the definition of "promoter" as occurring in section 2(zk) of The Real Estate (Regulation and Development) Act 2016 is reproduced as below;

2 (zk) "promoter" means,--

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of?

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government,

for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale, or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation. For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder,

The expression "real estate project" is defined under Section 2(zn) of the Act which reads as under:

2 (zn) "real estate project" means:

"the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto".

Therefore, the purpose of selling is sine-qua-non for a person to be a promoter within the meaning of the Real Estate (Regulation and Development) Act, 2016, but the respondent, admittedly, does not have the right to sell the property.

31. Section 105 of the Transfer of Property Act, 1882 defines 'lease' of immoveable property as a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

32. The Transfer of Property Act, 1882 envisages five different modes for transferring a property but for the purpose of the present appeal we are only concerned with one of the modes i.e., "Sale" and the same is dealt with under section 54 of the Transfer of Property Act, 1882 which defines "sale" and a "contract for sale" as follows:"

"**54. 'Sale' defined**.

'Sale' is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made. Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immovable property takes place when the person as he directs, in possession of the property.

Contract for sale.-

A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property."

33. Upon a bare perusal of clauses 4 and 7 of the lease deed dated 29.09.2023 it is apparent that the respondent has been given a right to undertake construction on the land forming subject matter of the lease and to sub-lease it to others and has only lease hold rights, thus, the lease deed is conditional in nature. For ready reference clauses 4 and 7 of the lease deed are reproduced as under:

धारा-4

यह कि द्वितीयपक्ष को लीज में शामिल भूमियों पर निर्माण कराकर उसे सब लीज पर दूसरे को देने का अधिकार होगा। द्वितीयपक्ष के द्वारा रखे गये सब लीज व साझेदार को दी गयी भूमि को प्रथमपक्ष द्वारा दी गयी लीज भूमि की समयावधि के अन्दर होगी। द्वितीयपक्ष द्वारा सब लीज पर दिये गये सब लीज ग्राही को द्वितीयपक्ष की शर्तों को मानने के लिए बाध्य होगा और विवाद की दशा में उभयपक्ष आपसी सहमति से विवाद का समाधान करेंगे।

धारा-7

यह कि द्वितीयपक्ष-प्रथमपक्ष को लीज प्रतिफल मु० 60,00,000 रूपये वार्षिक है। प्रथमपक्ष जिसकी अदायगी प्रत्येक छः माह पर मु० 30,00,000 रूपये 1 वर्ष में या दो किस्तो में अदा कर सकता है। यदि द्वितीयपक्ष द्वारा लगातार लीज प्रतिफल की तीन किस्तें अदा नहीं की जाती हैं तो यह अनुबन्ध लीज स्वतः शून्य हो जायेगी।

The relevant clauses of the lease deed particularly the above quoted clauses make it abundantly clear that the element of sale is lacking in the transaction and all that the respondent/lessee has been given under the terms of the lease-deed, is a mere right to create sub-leases of the land involved in the principal lease.

34. The lease deed does not speak about the right to sell but clauses 4 and 7 envisage the right to sub-lease the property. In view of the above the developer herein cannot be a promoter within the meaning of section 2 (zk) of the Real Estate (Regulation and Development) Act 2016.

35. Upon a careful examination of the provisions of the Act this Court finds that under Section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016, the status of a 'promoter' is not determined by mere possession or leasehold interest in land, but by the active role of development and sale of units in a real estate project. A lessee, who does not sell units to prospective allottees, does not fall within the ambit of 'promoter'. Further, as per Section 2 (zn), a 'real estate project' necessarily contemplates development for the purpose of sale. In absence of any sale component,

the activity does not constitute a real estate project, and consequently, the provisions relating to registration under Section 3 are not attracted.

36. Section 2(zn) defines a "real estate project" as development of land into plots or apartments for the purpose of selling the same to allottees. Thus, the element of "sale" is indispensable for bringing any activity within the ambit of the Act.

37. A conjoint reading of the aforesaid provisions yields the following mandatory conditions: (a) there must be development or construction activity and (b) such activity must be undertaken for the purpose of sale to allottees. Therefore, unless both conditions co-exist, a person cannot be classified as a "promoter" under the Act and is not required to apply for registration under the Act and the Authority is not supposed to grant or refuse registration to such a person.

38. A lessee, thus, holds only a restricted right of possession and enjoyment in accordance with the terms of the lease, without acquiring absolute ownership or any inherent obligation to undertake development. Mere possession, in the absence of any legally enforceable right to sell the property, does not fulfil the statutory requirements of a "promoter" under the Real Estate (Regulation and Development) Act, 2016.

39. In the case of "District Mining Officer vs. Tata Iron & Steel Co." (2001) 7 SCC 358 Hon'ble Supreme Court held as under:-

"A statute has to be construed according to the intent of them that make it and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation, the court has to choose that interpretation which represents the true intention of the legislature. The function of the courts is only to expound and not to legislate. The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. It is also a cardinal principle of construction that external aids are brought in by widening the concept of context as including not only other enacting provisions of the same statute, but is preamble, the exiting state of law, other statutes in pari materia and the mischief which the statute was intended to remedy.?

40. It is a settled principle of law that where the language of a statutory provision is clear and unambiguous, it must be presumed that the legislature has consciously and deliberately employed such words to give effect to the object of the Act. This principle is encapsulated in the legal maxim A Verbis Legis Non Est Recedendum, meaning thereby that no departure can be made from the plain words of the law. Accordingly, the Court is bound to proceed on the basis that the legislature intended what it has expressly stated, and the statute must be interpreted without doing violence to its language. This position has been affirmed by the Hon'ble Supreme Court in Hardeep Singh vs. State of Punjab and Others, (2014) 3 SCC 92.

41. Similar view has been taken by Hon'ble Supreme Court in the matter of M/s Newtech Promoters and Developers vs. State of U.P. (2021) 18 SCC 1 wherein the court has held as under: -

‘It is well established principle of interpretation of law that the court should read the section in literal sense and cannot rewrite it to suit its convenience, nor does any canon of construction permits the court to read the section in such a manner as to render it to some extent otiose.?

42. In view of the consensus between the parties, the controversy in the present appeal stands confined solely to the determination of the question as to whether a real estate project can be granted registration by the Real Estate Regulatory Authority under Section 5 of the Real Estate (Regulation and Development) Act, 2016, on a land held on lease for a period of 29 years and 11 months, in light of the provisions contained in Section 4(2)(l)(A) of the Real Estate (Regulation and Development) Act, 2016. Accordingly, the remaining substantial questions, namely Questions Nos. 1 and 2, do not survive for consideration in the present case. The Court, therefore, adjudicates only the aforesaid third substantial question for the purpose of disposal of the instant appeal.

43. The third question of law formulated by this Court is as to whether a real estate project can be developed and registered with Real Estate Regulatory Authority under Section 5 of the Act of 2016 on the land taken on lease for a period of 29 years and 11 months in the teeth of the provisions of section 4 (2) (l) (A) of the Act of 2016.

44. Section 4 of the Act, 2016 deals with an application for registration of real estate projects making it mandatory for every promoter to make an application to the Authority for registration of the real estate project and enumerates certain documents to be enclosed along with the application. Section 4 (2) (l) (A) of the Act, 2016 makes it mandatory for a promoter to make a declaration supported by an affidavit stating that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title if such land is owned by another person.

45. The term "title" is a comprehensive concept signifying lawful ownership backed by enforceable rights. It is the cornerstone of property related laws, determining the legitimacy of claims and the entitlement to possession and enjoyment of property. In legal parlance, the term "title" refers to the lawful basis of ownership or the bundle of rights by which a person asserts and enjoys dominion over property. It is not merely physical possession, but the legal right to possess, use, enjoy, and dispose of property. Title embodies both ownership rights and the legitimacy of such rights, recognized and enforceable in law.

46. It has been vehemently argued by Sri Sudeep Seth learned Senior Advocate appearing for the Respondent that Section 4 (2) (l) (A) of the Act, 2016 also makes room for someone who himself does not have the title, by providing for an authentication of title if such land is owned by another person and it is grossly misconceived on the part of the Authority to allege that the respondent/promoter suffers from lack of title for the purposes of the Real Estate (Regulation and Development) Act, 2016.

47. However, this Court is of the considered opinion that since the Respondent does not possess the legal authority or right under the terms of the lease-deed, to sell the plot, apartment, or building, as the case may be, the project does not fall within the ambit of the Real Estate (Regulation and Development) Act, 2016. The ability to offer units for sale is a foundational

element for attracting the applicability of the Real Estate (Regulation and Development) Act, 2016, as the statutory scheme primarily governs 'real estate projects' undertaken for the purpose of sale to allottees.

48. In the absence of such a right, the Respondent cannot be brought within the definition of a "promoter" under the Act, as the essential condition of developing or marketing real estate for sale remains unfulfilled. Consequently, the provisions relating to mandatory registration, particularly under Section 5 of the Act, are not attracted in the present case.

49. Therefore, it necessarily follows that the Respondent is neither obligated to seek registration nor it can be compelled to obtain registration under the Real Estate (Regulation and Development) Act, 2016, the legislative intent being to regulate only those projects which are intended for sale to prospective allottees.

50. The substantial question of law is answered accordingly.

51. Consequently, the appeal is disposed of in the light of the observations made here-in-above .

52. The appellant/U.P. Real Estate Regulatory Authority, therefore is, under no obligation to provide registration number, Login ID and Password etc. to the respondent herein pursuant to its application dated 02.02.2025. The Uttar Pradesh Real Estate Regulatory Authority is expected to withdraw the communication vide Form-D containing the prohibitory and restrictive clauses against the Respondent with respect to the project in question.

53. No order as to costs.

(2026) 5 ILRA 417

REVISIONAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 05.05.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

S.C.C. Revision No. 16 of 2026

Suresh Shah Sisodiya **...Revisionist**

Versus

Jai Prakash Yadav **...Respondent**

Issue for Consideration

Whether, after having recorded a finding that the controversy between the parties involved a serious, substantial and bona fide question of title so as to attract Section 23 of the Provincial Small Cause Courts Act, 1887, the court below was justified in proceeding to dismiss the suit on merits, or whether the only course open to it in law was to return the plaint for presentation before a court of competent jurisdiction.

Head Notes

The Provincial Small Cause Courts Act, 1887- Section 23 & 25- A Court of Small Causes is intended to adjudicate suits of a comparatively simple nature. Therefore, where determination of the rights of parties involves an intricate and substantial question of title, such disputes are more appropriately tried by a regular Civil Court. Section 23 of the Provincial Small Cause Courts Act, 1887 is specifically designed to meet such situations by empowering the Court to return the plaint where adjudication of the plaintiff's right depends upon proof or disproof of title which cannot be satisfactorily decided in summary proceedings. The object of the provision is to ensure that disputes involving serious questions of title, requiring full-fledged evidence and carrying consequences of finality, are determined by a competent court of ordinary civil jurisdiction.

Once such a conclusion is reached, the Court is required to refrain from deciding the suit on merits and to adopt the course statutorily prescribed, namely, return of the plaint for presentation before a competent civil court. Section 23 does not contemplate dismissal of the suit in such circumstances, for that would defeat the very purpose of the provision and may seriously prejudice the rights of the parties by foreclosing adjudication before the proper forum.

Held- The trial court has itself recorded a categorical finding that there exist two competing chains of title and that the dispute is serious, substantial and bona fide in nature. Having reached such a conclusion, it ought to have exercised jurisdiction under Section 23 of the Provincial Small Cause Courts Act, 1887 by returning the plaint for presentation before the competent civil court-Revision allowed with the direction to return the plaint to the plaintiff for presentation before the appropriate court, as contemplated under Section 23 of the Provincial Small Cause Courts Act, 1887(E-15) **(Para 21, 22 & 24)**

Case Law Cited

Shamim Akhtar v. Iqbal Ahmad (2000) 8 SCC 12; Budhu Mal v. Mahabir Prasad (1988) 4 SCC 194

List of Acts

The Provincial Small Cause Courts Act, 1887

List of Keywords

Section 23 & 25; Provincial Small Cause Courts Act; Question of title involved; Return the plaint for presentation before a competent civil court

Case Arising From

Judgment and decree dated 30.10.2025 passed by the Judge, Small Cause Court/Additional District Judge, Court No.1, Etah in S.C.C. Suit No.11 of 2010, whereby the suit instituted for ejectment, arrears of rent, possession and damages has been dismissed

Appearances for Parties

Counsel for Revisionist(s) : Devendra Dahma
Counsel for Opposite Party(s) : Shishir Kumar Tiwari

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

Heard Sri Devendra Dahma, learned counsel for the revisionist and Sri Shishir Kumar Tiwari, learned counsel for the opposite party.

2. The present S.C.C. Revision under Section 25 of the Provincial Small Cause Courts Act, 1887 has been preferred by the revisionist - plaintiff assailing the judgment and decree dated 30.10.2025 passed by the Judge, Small Cause Court/Additional District Judge, Court No.1, Etah in

S.C.C. Suit No.11 of 2010, whereby the suit instituted for ejectment, arrears of rent, possession and damages has been dismissed.

3. Briefly stated, the case of the revisionist-plaintiff is that he became owner/landlord of the disputed tenanted premises on 07.11.2008 by virtue of a registered lease deed executed by the managers of the temple property, namely Shri Raj Rajeshwar Maharaj Mahadev Ji Maharaj Virajman Mandir. It is asserted that the opposite party was already occupying the premises as a tenant at a monthly rent of Rs.3,500 and, upon execution of the said lease deed, the revisionist stepped into the shoes of the erstwhile landlord.

4. It is further pleaded that the tenant committed default in payment of rent, whereafter notices terminating the tenancy were duly issued. Despite service thereof, the tenant failed to vacate the premises or clear the arrears, compelling the revisionist to institute S.C.C. Suit No. 11 of 2010 seeking eviction, recovery of arrears of rent and damages for use and occupation.

5. The defendant-tenant contested the suit by specifically denying the existence of any relationship of landlord and tenant with the revisionist. He set up an independent and competing chain of title through one Shishupal Singh, supported by registered sale deeds tracing back to earlier transactions, and asserted that he continued to be tenant under the said Shishupal Singh and not under the plaintiff.

6. The trial court, upon appreciation of the oral and documentary evidence on record, recorded findings to the effect that the plaintiff failed to establish the relationship of landlord and tenant, that two rival chains of title had been set up by the parties, and that the dispute regarding title was serious, substantial and bona fide in nature. However, despite recording such findings, the trial court did not exercise jurisdiction under Section 23 of the Provincial Small Cause Courts Act, 1887 for return of the plaint, and instead proceeded to dismiss the suit on merits.

7. Learned counsel for the revisionist submits that the trial court has committed a manifest error of jurisdiction in dismissing the suit on merits despite having itself recorded a categorical finding that a serious and bona fide dispute regarding title exists between the parties. It is contended that once the trial court found two rival and competing chains of title requiring adjudication upon detailed evidence, the jurisdiction of the Small Cause Court stood circumscribed by Section 23 of the Provincial Small Cause Courts Act, 1887, and the only course open to it in law was to return the plaint for presentation before a court of competent regular jurisdiction.

8. It is further urged that Section 23 does not contemplate dismissal of the suit in such circumstances, but is specifically designed to prevent summary adjudication of complex title disputes by a court lacking jurisdiction to finally determine the same. The trial court, by proceeding to decide the matter on merits, has failed to exercise jurisdiction vested in it and has caused serious prejudice to the revisionist. It is, therefore, submitted that the impugned judgment is legally unsustainable and liable to be set aside with a direction for return of the plaint in accordance with law.

9. Learned counsel appearing for the respondents, while not admitting the stand taken by the revisionist in its entirety, has not disputed the legal position with regard to the scope and ambit of Section 23 of the Provincial Small Cause Courts Act, 1887. It has also not been controverted on behalf of the respondents that where the Court of Small Causes forms an opinion that adjudication of the dispute would necessarily involve determination of complex and substantial questions relating to title, the proper course in law would be to return the plaint for presentation before a court of competent jurisdiction rather than to proceed to decide the suit finally on merits.

10. Heard learned counsel for the parties and perused the record. The principal question which arises for consideration in the present revision is whether, after having recorded a finding that the controversy between the parties involved a serious, substantial and bona fide question of title so as to attract Section 23 of the Provincial Small Cause Courts Act, 1887, the court below was justified in proceeding to dismiss the suit on merits, or whether the only course open to it in law was to return the plaint for presentation before a court of competent jurisdiction.

11. In order to appreciate the controversy, it would be apposite to notice Section 23 of the Provincial Small Cause Courts Act, 1887, which reads as under:

'23. Return of plaints in suits involving questions of title. (1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immovable property or other title which such a Court cannot finally determine, the court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title.

(2) When a Court returns a plaint under sub-section (1), it shall comply with the provisions of the second paragraph of Section 57 of the Code of Civil Procedure and make such order with respect to costs as it deems just, and the Court shall, for the purposes of the Limitation Act, 1877 be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction.

12. The scope of Section 23 of the Provincial Small Cause Courts Act, 1887 assumes significance in determining whether a suit instituted before a Court of Small Causes ought to be tried on merits or returned for presentation before a regular Civil Court. The provision embodies a jurisdictional limitation on the summary powers of the Small Cause Court and operates as a mechanism to ensure that disputes requiring final adjudication of title are not decided in a forum not competent to conclusively determine such issues. It thus preserves the distinction between the summary jurisdiction exercised in rent and eviction matters and the plenary jurisdiction vested in ordinary Civil Courts for adjudication of complex proprietary disputes. In essence, it reserves substantial questions of title and proprietary rights for courts of regular civil jurisdiction equipped to undertake a full-fledged trial.

13. A careful reading of the provision shows that though it employs the expression 'may', return of plaint is not to be understood as an unguided discretion. The discretion conferred is judicial in nature and has to be exercised upon examination of the real controversy between the parties. Only where the plaintiff's right to relief is substantially dependent upon proof or disproof

of title incapable of final determination by the Small Cause Court does the occasion arise for invoking Section 23.

14. It is equally well settled that a mere denial of title by the defendant does not ipso facto attract Section 23. In suits for eviction and arrears of rent, the principal issue ordinarily is the existence of the jural relationship of landlord and tenant and not adjudication of absolute title. For deciding such relationship, the Small Cause Court is competent to incidentally examine questions of title to a limited extent. Such incidental scrutiny does not amount to a final declaration of ownership.

15. In Shamim Akhtar v. Iqbal Ahmad1, the Supreme Court has clarified that a Court of Small Causes can incidentally examine questions of title for the limited purpose of determining the existence of landlord-tenant relationship, and that such incidental findings do not amount to final adjudication. It was further held that the power under Section 23 is to be exercised only where the relief claimed is inseparably dependent upon final determination of title, and that a tenant cannot avoid eviction proceedings merely by denying the landlord's title or raising collateral disputes.

16. Section 23 embodies the principle that jurisdiction is determined not by the ingenuity of pleadings, but by the true nature of the relief claimed. A defendant cannot, by merely raising a plea of title, convert a summary eviction proceeding into a regular title suit. The provision must, therefore, be construed in a manner that prevents procedural subversion while at the same time preserving the legislative object of providing a speedy remedy in landlord-tenant disputes.

17. Thus, a tenant cannot be permitted to frustrate summary proceedings by setting up a bald, illusory or superficial dispute of title. Equally, where the controversy is genuine, substantial and supported by material disclosing competing claims of ownership going to the very root of the landlord□tenant relationship, the Court must recognise the limits of its summary jurisdiction and adopt the course contemplated by law.

18. The jurisprudence underlying Section 23 is intended to maintain a balance between the expeditious disposal of tenancy disputes and the full adjudication of serious civil rights before a competent forum. The law permits incidental examination of title so as to avoid delay in summary proceedings, yet simultaneously recognises that complex and bona fide disputes involving competing proprietary claims ought to be adjudicated by a competent civil court. The distinction between incidental examination of title and final adjudication of title is, therefore, crucial. While the former is permissible to the limited extent necessary for determining whether a landlord□tenant relationship exists, the latter lies outside the normal province of the Court of Small Causes.

19. The discretionary nature of Section 23 is rooted in the principle that such discretion must be exercised judicially. Where the dispute of title is real, substantial and goes to the root of the matter, and is incapable of being decided in a summary manner, the Court must decline to adjudicate the suit on merits. As explained by the Supreme Court in Budhu Mal v. Mahabir Prasad2, the power to return the plaint is to be exercised in those cases where doing so is necessary to ensure complete justice between the parties and to avoid prejudice arising from adjudication by an inappropriate forum.

20. The legal position governing Section 23 of the Provincial Small Cause Courts Act, 1887 is well settled. A mere plea of title raised by the defendant does not, by itself, oust the jurisdiction of the Court of Small Causes, which may proceed where such plea is unsubstantial or lacking bona fides. However, where the dispute of title is real, substantial, supported by material on record, and goes to the root of the landlord-tenant relationship, the Court must examine whether the controversy can be satisfactorily decided within the limits of its summary jurisdiction. If adjudication of the plaintiff's right and relief necessarily depends upon determination of a substantial and intricate question of title, the proper and judicious course would be to return the plaint for presentation before the competent civil court.

21. A Court of Small Causes is intended to adjudicate suits of a comparatively simple nature. Therefore, where determination of the rights of parties involves an intricate and substantial question of title, such disputes are more appropriately tried by a regular Civil Court. Section 23 of the Provincial Small Cause Courts Act, 1887 is specifically designed to meet such situations by empowering the Court to return the plaint where adjudication of the plaintiff□s right depends upon proof or disproof of title which cannot be satisfactorily decided in summary proceedings. The object of the provision is to ensure that disputes involving serious questions of title, requiring full-fledged evidence and carrying consequences of finality, are determined by a competent court of ordinary civil jurisdiction.

22. Once such a conclusion is reached, the Court is required to refrain from deciding the suit on merits and to adopt the course statutorily prescribed, namely, return of the plaint for presentation before a competent civil court. Section 23 does not contemplate dismissal of the suit in such circumstances, for that would defeat the very purpose of the provision and may seriously prejudice the rights of the parties by foreclosing adjudication before the proper forum.

23. While Section 23 is couched in discretionary terms and does not render return of the plaint mandatory in every case, such discretion must be exercised judiciously and upon sound principles. Where the dispute of title is bona fide, substantial and incapable of summary adjudication, it would be a proper and prudent exercise of jurisdiction for the Court of Small Causes to return the plaint for presentation before the competent civil court rather than proceed to determine the controversy within the confines of its limited summary jurisdiction.

24. In the present case, the trial court has itself recorded a categorical finding that there exist two competing chains of title and that the dispute is serious, substantial and bona fide in nature. Having reached such a conclusion, it ought to have exercised jurisdiction under Section 23 of the Provincial Small Cause Courts Act, 1887 by returning the plaint for presentation before the competent civil court.

25. The dismissal of the suit on merits, despite such findings, amounts to a jurisdictional error, inasmuch as the court below has failed to exercise the jurisdiction vested in it by law and, at the same time, assumed jurisdiction to decide issues falling beyond the permissible scope of its summary powers.

26. In the result, the judgment and decree dated 30.10.2025 passed by the Judge, Small Cause Court/Additional District Judge, Court No. 1, Etah in S.C.C. Suit No.11 of 2010 are hereby set aside. The Judge, Small Causes is directed to return the plaint to the plaintiff for presentation before the appropriate court, as contemplated under Section 23 of the Provincial Small Cause Courts Act, 1887.

27. The revision is, accordingly, allowed.

(2026) 5 ILRA 423
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.05.2026

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 3037 of 2023
& Other Connected Cases

Amar Prakash Chandra & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Issue(s) for consideration

(a) Whether administrative deficiencies/missing entries in official dispatch registers can automatically render an appointment or post-creation order forged/fabricated?
(b) Whether long-standing service/equity protects appointees whose initial entry into service suffered from lack of basic statutory eligibility qualifications or was vitiated by fraud?
(c) Whether the petitioners are entitled to release of salary arrears and retiral benefits?

Headnotes

A. Service Law - U.P. Junior High Schools (Payment of Salaries of Teachers and Other Employees) Act, 1978: Section 9(2) - Dharmendra Kumar Janta Laghu Madhyamik Vidyalaya, Satgur Muzuri, District Maharajganj was established in 1974 as a recognized Junior High School (Classes VI to VIII) and was brought under the State grant-in-aid list on 12.09.1994.

On 08.06.1996, the Assistant Director of Education (Basic), Gorakhpur, allegedly sanctioned/created 7 posts of Assistant Teachers and 1 post of Assistant Clerk. Permission to advertise was granted by the District Basic Education Officer (BSA), Maharajganj on 06.06.1996. The management advertised the posts in a local daily (*Rashtriya Chetna*), conducted selections on 27.06.1996, and submitted the proposal for approval. The BSA granted approval on 29.06.1996, and the petitioners joined on 01.07.1996.

The petitioners received their salaries until August 2000, after which their salaries were abruptly withheld pending an inquiry ordered on 24.10.2000 by the Assistant Director of Education (Basic). The petitioners challenged the salary stoppage in Writ Petition No. 28745 of 2001, wherein an interim order was granted on 06.08.2001 directing that salary non-payment stay in abeyance during the inquiry. This interim order was never complied with by the State authorities. On 27.09.2018, the High Court criticized the state officials for failing to conclude the inquiry for over 17 years and directed the Director of Education (Basic), U.P. to finalize

the inquiry and fix accountability. Pursuant to the Director's inquiry report dated 10.10.2018, the BSA, Maharajganj passed the impugned order dated 12.01.2023, rejecting the petitioners' claim for salary.

B. Where approval orders are not verifiable from dispatch records and minimum qualifications are absent, the appointments cannot be held to be lawful, nor can such appointees claim salary from the State exchequer. (Para 51, 53 to 55)

B.(i) In the present case, the issue is not merely of a missing entry in the dispatch register, but rather a cumulative pattern of discrepancies, contradictions, and suspicious circumstances surrounding the very genesis of the appointments. The order, based on records, reveals inconsistencies regarding sanction of posts, variance in the names of employees reflected in the M.R. records of 1991–92 vis-à-vis salary bills of 1996, absence of proof regarding sanctioned vacancies, doubtful approval letters, and procedural irregularities in the selection process. Such circumstances cast a serious cloud upon the legality of the appointments themselves. (Para 48)

Glaring inconsistencies cannot be brushed aside as mere administrative lapses, especially where the petitioners seek enforcement of monetary claims from public funds. The very substratum of the petitioners' claim remains shrouded in uncertainty and suspicion. (Para 45, 46, 47)

B.(ii) Lacking the requisite qualifications prescribed u/Rule 4 of the Rules, 1978 – Petitioner nos. 1, 2 and 4 in Writ-A No. 3037 of 2023 have been alleged to be lacking the requisite qualifications prescribed u/Rule 4 of the Rules, 1978, for appointment to the post of Assistant Teacher. The petitioners have failed to dispel the said objection by placing cogent material on record. (Para 50)

C. The appointments are *ex facie* contrary to Section 9(2) of the Act, 1978. Even if assumed that the alleged posts were created either in 1980 or 1988, admittedly, appointments came to be made only in the year 1996, much beyond the statutory period of three months prescribed u/s 9(2), whereby approval for newly created posts stands deemed withdrawn if appointments are not made within the stipulated period. Consequently, the very basis of appointment becomes legally unsustainable. (Para 49)

D. Equity cannot override statutory mandate. It is trite that there can be no estoppel against law. There can be no quarrel with the proposition that long-standing appointments ought not ordinarily be unsettled. However, **Mere continuance in service for a period of time or receipt of salary for certain years cannot sanctify an appointment which is otherwise *dehors* the statutory framework.** The foundational burden to establish a lawful appointment squarely rests upon the petitioners. A person claiming salary from the State Exchequer must demonstrate that his appointment was made strictly in accordance with the statutory procedure and against duly sanctioned posts. (Para 44, 56, 63)

It is a settled proposition of law that salary payable from public exchequer can only be claimed by a person whose appointment is demonstrably legal and in accordance with statutory provisions. **Sympathy or equitable considerations cannot be permitted to supplant the rule of law, particularly where public funds are involved.** (Para 57)

Equity cannot be invoked to perpetuate an illegality. Since the petitioners were permitted to function, if at all, only for a short duration of approximately four years on the basis of appointments which were not made in accordance with the procedure prescribed under law, they cannot derive any equitable advantage so as to seek continuance of service or salary from the State Exchequer. (Para 62, 64)

E. Salary is payable for the work actually performed, save in exceptional circumstances where the employee is unlawfully prevented from discharging duties despite a valid appointment. In the present case, petitioners' appointments themselves stand clouded by serious infirmities and have been found to be contrary to statutory provisions, therefore, any claim for salary beyond the period for which actual work has been discharged cannot be countenanced. In absence of any material, it cannot be presumed that petitioners continued to work in the Institution after stoppage of salary in August, 2000. They cannot claim

salary as a matter of right merely on the strength of an interim order, particularly when the factum of rendering service itself remains unsubstantiated. (Para 58 to 60)

Petitioners have failed to establish that their appointments were made against duly sanctioned posts and in accordance with the provisions of the Rules, 1978 and the Act, 1978. The findings recorded in the inquiry report dated 10.10.2018 and the consequential order dated 12.01.2023 do not suffer from perversity, arbitrariness, or illegality warranting interference in exercise of writ jurisdiction u/Article 226 of the Constitution. (Para 66)

Writ petition dismissed. (E-4)

Case Law Cited

1. Subodh Kumar Prasad Vs. State of Bihar, (2001) 10 SCC 282 (Para 21)
2. Radhey Shyam Yadav & Anr. Vs. State of U.P. and Others, AIR 2024 SC 260 (Para 21)
3. Rajesh Kumar Srivastava Vs. State of U.P. & 4 Ors. (Para 24)
4. Subodh Kumar Prakash Vs. State of Bihar and Others, (2001) 10 SCC 282 (Para 25)
5. Yashwant Kumar Rai Vs. State of U.P. & 4 Ors., Writ-A No. 17479 of 2021 ((Para 25)
6. Ram Kewal & 7 Ors. Vs. State of U.P. & 2 Ors., Writ-A No. 10080 of 2019 (Para 27)
7. Tridip Kumar Dingal and others Vs. State of West Bengal & Ors., (2009) 1 SCC 768 (Para 29)
8. Deepak Kumar and Another Vs. State of U.P. and Others, CMWP No. 2227 of 2000 (Para 38)

List of Acts

U.P. Junior High Schools (Payment of Salaries of Teachers and Other Employees) Act, 1978.

List of Keywords

payment, salaries, teachers, school, management, education, jurisdiction, valid appointment, equity, discrepancies, minimum qualification.

Appearances for Parties

For Petitioner(s): Anand Tiwari, Prakash Padia, Prakash Padia (Ele.), Pramod Kumar Dubey, Ramesh Chandra Dwivedi
For Respondent(s): B.P. Singh, C.S.C., Nalin Kumar (Sharma), S.N. Srivastava, Shere Ali

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard learned counsel for the petitioners, Mr. Shailendra Singh, learned Standing Counsel for the State, learned counsel appearing for the District Basic Education Officer, and perused the record.

2. As all the abovementioned three petitions arise out of connected facts and involve common questions for consideration, with the consent of learned counsel for the parties, the same are being heard and decided together by this common judgment.

3. Placing the brief facts of the case, learned counsel for the petitioners submits that Dharmendra Kumar Janta Laghu Madhyamik Vidyalaya, Satgur Muzuri, District Maharajganj1 is a duly recognized Junior High School, which was brought on the grant-in-aid list vide order dated 12.09.1994. The Institution in question was established in the year 1974 as a Junior High School imparting education from Classes VI to VIII and has been functioning continuously since its establishment. The Institution, as already stated, was brought under the grant-in-aid list for the first time vide order of the State Government dated 12.09.1994.

4. At the relevant point of time, the Institution had one Headmaster, 13 Assistant Teachers, 3 Class-IV employees, and 1 Class-III employee working therein. Subsequently, vide order dated 08.06.1996 passed by the Assistant Director of Education (Basic), Seventh Region, Gorakhpur, 7 posts of Assistant Teachers and 1 post of Assistant Clerk were sanctioned/created for the Institution in question.

5. For the purpose of filling up the aforesaid sanctioned posts, the Institution sought prior permission from the District Basic Education Officer, Maharajganj2, which was granted vide order dated 06.06.1996, permitting the Institution to publish advertisements in newspapers in accordance with the prescribed procedure under law.

6. Accordingly, the Manager of the Institution proceeded to advertise the aforesaid posts in two daily newspapers in accordance with law. Pursuant thereto, eligible candidates, including the petitioners, duly submitted their applications and appeared before the Selection Committee. The Selection Committee, after considering the candidature of the applicants, held the selection proceedings on 27.06.1996 and found the petitioners to be the most suitable candidates on the basis of quality point marks. Consequently, their names were recommended for issuance of appointment letters. Thereafter, the Committee of Management, accepting the recommendations made by the Selection Committee, duly forwarded the relevant papers to the District Basic Education Officer, Maharajganj, for grant of approval, which came to be accorded on 29.06.1996.

7. On the basis of the aforesaid approval, all the petitioners joined their respective posts on 01.07.1996 and have been discharging their duties regularly and continuously since then. The petitioners were paid salary regularly, without any interruption, and continued to receive the same up to the month of August, 2000. However, without any justifiable reason and without affording any opportunity of hearing to the petitioners, payment of their salary was withheld under the garb of some inquiry, which is wholly arbitrary and unsustainable in the eyes of law.

8. It has further been submitted that when the salary bills pertaining to the petitioners, along with those of other teachers, were submitted by the Management before the BSA, a note/remark dated 10.01.2001 was made by the BSA to the effect that in pursuance of the order dated 24.10.2000 passed by the Assistant Director of Education (Basic), Seventh Region, Gorakhpur, payment of salary to the petitioners shall remain withheld and could be released only after conclusion of the inquiry.

9. Aggrieved by the order dated 24.10.2000 passed by Assistant Director of Education (Basic), Seventh Region, Gorakhpur, as well as the consequential orders/notings made by the BSA on the salary bills of the petitioners for the period commencing from the month of August, 2000 onwards, the petitioners instituted Civil Misc. Writ Petition No. 28745 of 20013. In the said writ petition, this Court granted an interim order dated 06.08.2001, which reads as under:

"Supplementary affidavit filed today be kept on record."

The respondents no 1 to 4 are represented by the standing Counsel. He may file counter affidavit within six weeks. Required steps be taken by the petitioner within three days.

List after expiry of the aforesaid period

In the meantime considering the fact that the petitioners were getting salary since 1996 after approval. Stopping of their salary merely because of some complaint which in the opinion of the respondent no. 1 requires some enquiry does not appear to be justified. It has been alleged by the petitioner that almost one year has been passed but no enquiry has been done so far. In the circumstances as an interim measure, it is directed that the order stopping the salary of the petitioner will remain in abeyance to the extent it directs the stopping of the salary. However. the enquiry will continue but in the enquiry no final orders will be passed unless the concerned teachers as well as Management are given opportunity of hearing.

10. It is submitted that the interim order granted by this Court was neither given effect to nor complied with by the respondent authorities.

11. During the pendency of Writ Petition No. 28745 of 2001, a subsequent order dated 27.09.2018 was passed by this Court,which is as follows:

'Supplementary affidavits filed today by the respective parties be taken on record.

This writ petition is filed in the year 2001, in which, an order was passed on 6.8.2001, which is quoted below :-

"Supplementary affidavit filed today be kept on record.

The respondents No. 1 to 4 are represented by the standing Counsel. He may file counter affidavit within six weeks. Required steps be taken by the petitioner within three days.

List after expiry of the aforesaid period.

In the meantime, considering the fact that the petitioners were getting salary since 1996 after approval. Stopping of their salary merely because of some complaint which in the opinion of the respondent no.1 requires some enquiry does not appear to be justified. It has been alleged by the petitioner that almost one year has been passed but no enquiry has been done so far. In the circumstances as an interim measure, it is directed that the order stopping the salary of the petitioner will remain in abeyance to the extent it directs the stopping of the salary. However, he enquiry will continue but in the enquiry no final orders will be passed unless the concerned teachers as well as Management are given opportunity of hearing."

While passing the order dated 6.8.2001, this Court had clearly indicated and recorded that the petitioners were getting the salary since 1996, after approval which was stopped on a complaint, which in the opinion of respondent No.1, the Assistant Director of Education (Basic), 7th Region, Gorakhpur, requires some enquiry.

The petitioner approached this Court in the year 2001 with an objection that even after expiry of one year, no enquiry report was submitted and in the garb of the alleged enquiry, the salary of the petitioner was stopped / not paid.

This Court while entertaining this writ petition has provided as an interim measure by directing that the order stopping the salary of the petitioner will remain in abeyance to the extent it directs that the stopping of salary. However, this Court further clarified that the enquiry will continue but in the inquiry no final orders will be passed unless the opportunity will be provided to the concerned Teachers as well as the management.

It appears that in the garb of the aforesaid order, the matter is yet not settled nor the enquiry is finalized even after a gap of more than 17 years.

This Court finds it appropriate that this matter must be placed before the Director of Education (Basic), Uttar Pradesh at Lucknow,and before the concern Principal Secretary, who are hereby directed to take appropriate action against the erring authorities, who were supposed to complete the enquiry within a reasonable time, which in my opinion expired at least 15 years back.

In case, if the petitioner is entitled, the erring officials, who so ever they may be, will be liable to pay the entire salary or dues if the same is payable.

List this petition before this Court on 12 October 2018.

12. On Pursuant to the aforesaid order, an inquiry report was submitted by the Director of Education (Basic). The said inquiry report was assailed by the petitioners by way of amendment in the writ petition.

13. On the basis of the inquiry report submitted by the Director of Education (Basic), the claim of the petitioners came to be rejected vide order dated 12.01.2023 passed by the BSA. Aggrieved by the aforesaid order, petitioner nos. 1, 2, 3 and 5 challenged the same by instituting Writ-A No. 3037 of 2023.

14. By means of the said writ petition, the petitioners, inter alia, prayed for quashing of the order dated 12.01.2023 and further sought a direction to the respondent authorities to release and pay their salary with effect from August, 2000 onwards.

15. It is further submitted that the interim order dated 06.08.2001 passed in Writ Petition No. 28745 of 2001 was not complied with by the respondent authorities, despite the fact that Special Appeal preferred by state respondents was dismissed.

16. During the pendency of the matter, petitioner - Brahm Dev Yadav, and petitioner - Anirudh Yadav, attained the age of superannuation and retired in the years 2021 and 2022 respectively. Aggrieved by non-release of retiral dues, they preferred Writ-A No. 2504 of 2026 before this Court praying for a writ of mandamus directing the respondent authorities to release their pension and other retiral benefits.

17. It is contended by learned counsel for the petitioners that the impugned order dated 12.01.2023 has been passed by respondent no. 2 merely on the ground that the official dispatch register containing the relevant dispatch number is not traceable in the office of the BSA. Consequently, the respondents have raised doubts regarding the validity of creation of the posts on which the petitioners came to be appointed.

18. It is further contended that if the dispatch register for the relevant period is not traceable or is missing from the office of the Deputy Director of Education (Basic), Seventh Region, Gorakhpur, the same cannot be attributed to the petitioners. Moreover, no action appears to have been taken against the officials concerned for such negligence or dereliction of duty.

19. It is contended that mere non-availability or non-traceability of the dispatch register containing reference to the post-creation letter dated 05.05.1980 cannot be made the sole basis to conclude that the said letter, pursuant to which the posts against which the petitioners were appointed were created/sanctioned, is forged and fabricated.

20. Learned counsel for the petitioners further submits that the impugned order dated 12.01.2023 passed by the BSA, is founded solely upon the order/report dated 10.10.2018 of the Director of Education (Basic). It is contended that the rejection of the petitioners' claim for payment of salary on such basis is patently illegal and cannot be sustained in law.

21. Placing reliance upon the judgment of the Supreme Court in the case of Subodh Kumar Prasad vs. State of Bihar4, learned counsel for the petitioners contends that the mere absence of an entry in the dispatch register cannot, by itself, invalidate the existence of a relied document. Placing reliance upon the judgment of the Supreme Court in the case of Radhey Shyam Yadav & Anr. vs. State of U.P. and Others5, learned counsel for the petitioners contends that where excess appointments had been made against sanctioned posts, but no illegality was attributable to the employees themselves, the Supreme Court has deprecated the abrupt stoppage of salary and set aside the order assailed therein.

22. Placing reliance upon the aforesaid judgment, learned counsel for the petitioners further submits that, in the present case also, the appointments of the petitioners were made after following the due procedure prescribed under law and were duly approved by the competent authority. The petitioners have rendered services for more than thirty years and had continuously discharged their duties.

23. It is contended that the salary of the petitioners has been stopped solely on the ground that the record relating to creation/sanction of posts does not find mention in the dispatch register. Mere non-availability of such entry, however, cannot be made the basis to invalidate the appointments or deny salary to the petitioners after decades of service. On this ground alone, it is submitted that the impugned order is arbitrary, illegal and unsustainable in the eyes of law.

24. Reliance has further been placed upon the judgment passed in the case of Rajesh Kumar Srivastava v. State of U.P. & 4 Ors.6, wherein stoppage of salary was occasioned on account of an alleged discrepancy/mismatch in the dispatch number pertaining to the approval letter and the post

creation letter. The petitioner therein having retired from service, and no illegality being attributable to him and the Court had directed release of salary and consequential retiral benefits.

25. Learned counsel for the petitioners further submits that in the case of Yashwant Kumar Rai also, the approval letter could not be duly verified from the dispatch register and, on the said ground, payment of salary was stopped. Aggrieved thereby, the petitioner therein approached this Court by instituting Writ-A No. 17479 of 2021 (Yashwant Kumar Rai v. State of U.P. & 4 Ors.), which came to be allowed in the light of the observations made by the Supreme Court in Subodh Kumar Prakash vs. State of Bihar and Others7. The said writ petition was allowed vide judgment and order dated 04.11.2022.

26. It is further submitted that the aforesaid judgment and order dated 04.11.2022 was assailed by the State of Uttar Pradesh by filing Special Appeal (Defective) No. 400 of 20238, however, the appeal preferred by the State Government came to be dismissed vide order dated 31.05.2023.

27. Reliance has also been placed upon the judgment in the case of Ram Kewal & 7 Ors. v. State of U.P. & 2 Ors.9, wherein, despite non-availability of records concerning approval of appointments and post creation, coupled with missing pages of the dispatch register, this Court held that appointments made after due compliance of statutory procedure cannot be disturbed on such administrative deficiencies alone, unless tainted by fraud on the part of the appointee.

28. Aggrieved by the aforesaid judgment, the State preferred Special Appeal (Defective) No. 660 of 202510, which ultimately came to be dismissed vide judgment and order dated 23.04.2026. Nevertheless, the question of law concerning the effect and interpretation of Section 9(2) of the U.P. Junior High Schools (Payment of Salaries of Teachers and Other Employees) Act, 197811 was expressly left open to be adjudicated in an appropriate proceeding.

29. Learned counsel for the petitioners submits that in case of Tridip Kumar Dingal and others v. State of West Bengal & Ors.12, the Apex Court held that long-standing appointments should not ordinarily be unsettled merely because some irregularity is alleged in the selection process, especially where the appointees are not at fault and have continued in service for years. Judicial discretion must balance legality with equity and administrative stability.

30. In view of the aforesaid, the impugned orders are liable to be quashed and the petitioners are entitled for payment of salary together with arrears and all consequential benefits admissible under law

31. Per contra, learned Standing Counsel submitted that although permission was allegedly granted by the BSA on 06.06.1996 to the Management of the Institution for issuance of an advertisement with respect to the vacant post of Assistant Teacher, the said post was not reflected as a sanctioned post in the official records of the office concerned.

32. The learned Standing Counsel further contended that the Manager of the Institution had issued an advertisement in the daily newspaper ‘Rashtriya Chetna’, which did not have wide circulation in District Maharajganj. Subsequently, a meeting of the Committee of Management was

held on 27.06.1996, wherein the recommendations of the selection committee came to be approved. It was further alleged that the selection proceedings were completed in the absence of an observer, thereby vitiating the process.

33. The learned Standing Counsel further submitted that the selection committee, without adhering to the procedure prescribed under the Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 197813, initiated the appointment proceedings, selected the petitioners for the posts of Assistant Teacher, and forwarded the proposal for approval. It was contended that the relevant papers were forwarded by the Manager of the Institution on 27.06.1996 to the BSA, who allegedly granted approval on the very same day in favour of the petitioners. However, the said approval order was not reflected in the dispatch register maintained in the office of the BSA.

34. The learned Standing Counsel further submitted that the alleged appointment of the petitioners was made in contravention to the provisions contained under Rules 4, 7, 9, 10 and 11 of the Rules, 1978, therefore, the same is wholly unsustainable in the eyes of law.

35. The learned Standing Counsel further submitted that the appointment of the petitioners was made against the posts allegedly created pursuant to a post-creation order. However, upon verification, it was found that the alleged post-creation order dated 19.01.1988 did not correspond with the dispatch records maintained in the office concerned.

36. The learned Standing Counsel further submitted that the alleged letter dated 06.06.1996, purportedly issued by the then BSA granting permission to advertise the posts, is not traceable in the office records, thereby rendering its genuineness doubtful. It was further argued that although the Manager of the Institution allegedly forwarded the selection proceedings and proposal for approval, and approval is stated to have been granted on 27.06.1996, no corresponding entry exists in the dispatch register of the office of the BSA. As such, the approval order relied upon by the petitioners appears to be false and fabricated, and consequently, the entire selection and appointment proceedings undertaken by the Committee of Management stand vitiated.

37. It has been further submitted that petitioner nos. 1, 2 and 4 in Writ Petition No. 3037 of 2023 were not duly qualified for appointment to the post of Assistant Teacher in terms of Rule 4 of the Rules, 1978. It was contended that petitioner no. 1, namely Amar Prakash Chandra, possessed the qualification of B.Sc., B.Ed.; petitioner no. 2, namely Ashok Lal Srivastava, possessed the qualification of B.A., B.Ed.; and petitioner no. 4, namely Anirudh Yadav, possessed the qualification of M.A., L.T., which, according to the respondents, did not satisfy the prescribed eligibility requirements under the applicable Rules.

38. It was further submitted that the aforesaid controversy already stands settled by this Court in the case of Deepak Kumar and Another v. State of U.P. and Others14, judgment dated 27.04.2016, wherein this Court considered the issue in detail and observed as follows in paragraphs 19, 20 and 21:

‘19. An affidavit of Sri Raj Kumar, District Basic Education Officer, Allahabad, dated 24th February, 2016, has been filed. Paragraphs 3 and 4 of the affidavit reads as under:-

"3. That as per direction of Hon'ble Court dated 20.1.2016 the answering respondent have gone into 'Uttar Pradesh Basic Shiksha Karmchari Varg Niyamawali, 1973' read with 'Uttar Pradesh Basic Education Act, 1972', and after examining the provisions enshrined under U.P. Basic Shiksha Karmchari Varg Niyamawali, 1973, the deponent has gone into the qualification as prescribed under Rule 10 of said Rules, wherein the minimum educational eligibility criteria has been mentioned. Rule 10 of said Rules reads as under:-

"Rule 10: Educational Qualification-

The minimum educational qualifications are as under:-

(a). Teachers of Nursery Vidyalaya:-

Nursery Training from Trained Institutions.

(b). Teachers (Male/Female) for Junior Basic Schools:-

Trained High School/Teachers from old trained Junior High Schools are eligible for appointments.

(c). In Senior Basic Institutions, Teachers (Male/Female) are being appointed, who possess the minimum educational qualification of Intermediate with Training."

4. That in view of aforesaid, it is evident to mention here that before commencement of Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Services of Teachers) Rule, 1978, the minimum qualification for an appointment of a teacher for Junior Basic Schools was 'High School with Training' as well as Junior High Schools for 'Old Teachers with Training' and for Senior Basic Institutions, the minimum educational qualification was prescribed 'Intermediate alongwith Training Qualification'. The training qualification is said to be BTC, HTC, JTC etc. ..."

20. It is in the context of these facts and circumstances that petitioners' claim for payment of salary is required to be considered. Admittedly, none of the petitioners possesses training qualification. The service rules in respect of teachers of privately managed Junior High Schools were framed in 1978, which required minimum qualification of intermediate with recognized training qualification. The minimum qualification otherwise specified in respect of teachers of Junior High School under U.P. Basic Education Employees Service Regulations, 1973, readwith Basic Education Act, 1972, is trained High School for Junior Basic Schools and trained Intermediate for Senior Basic Schools. Learned counsel for the petitioners contend that prior to framing of 1978 rules, there existed no rules, which prescribed any minimum qualification for appointment of teachers. In case this contention is to be accepted, then anybody could become a teacher and claim salary from State. This contention, therefore, cannot be accepted. It cannot be

presumed that task of teaching students could be left to even an illiterate person. Even if no statutory rules existed on 1.7.1977, prescribing the minimum qualification for appointment to the post of Assistant Teacher in a Junior High School, yet, the State would be justified in insisting upon a reasonable qualification to be possessed, before he/she could be held entitled to payment of salary from the State. Apex Court, in its decision in State of Orissa Vs. Mamata Mohanty; (2011) 3 SCC 436, has been pleased to hold that possessing of minimum qualification is essential for standard of education to be maintained, and the State would be justified in insisting upon minimum qualifications to be possessed for grant of aid. The minimum qualification prescribed in respect of similar teachers under U.P. Basic Education Employees Service Regulations, 1973 readwith U.P. Basic Education Act, 1972, is a trained matriculate. The possessing of training qualification is otherwise mandatory by virtue of the Clause-4 of the Government Order dated 20.3.1997. Petitioners admittedly do not possess any recognized training qualification on the date of their appointment i.e. 1.7.1977. It is, therefore, to be observed that the petitioner nos.1 to 6 could not have been validly appointed in the institution due to lack of minimum qualification possessed, nor in its absence, they are entitled to payment of salary from State, in view of Clause-4 of the Government Order dated 20.3.1997.

21. There is a serious issue on facts as to whether petitioners' appointment had been approved. The petitioners have referred to the approval dated 31st of July, 1990 but no such order exists on record. The original dispatch register has been produced before the Court to show that no such letter/order was dispatched on the relevant date. Even otherwise, no provision has been shown under the rules of 1978, whereunder any order of regularization/approval could be issued. I am, therefore, inclined to hold that no order of approval exists in favour of the petitioners, as alleged by them, in terms of Clause-4 of the Government Order dated 20.3.1997. So far as petitioner no.7 is concerned, no approval of appointment exists in her favour either, once the approval dated 31st of July, 1990 is disbelieved.'

39. Learned counsel for the respondents further submits that the letter sanctioning the posts on which the petitioners were appointed, dated 19.01.1988, as well as the permission granted for filling up the posts on 06.06.1996 and the approval order dated 27.06.1996, were not reflected in the dispatch register. From this, it can be inferred that the appointments were made on the basis of forged and fabricated documents, which have also not been placed on record.

40. It is submitted that the impugned order dated 10.10.2018 passed by the Director of Education (Basic), U.P., Lucknow, as well as the order dated 12.01.2023 passed by the BSA, are in accordance with law and suffer from no illegality, therefore, the writ petition is liable to be dismissed.

41. Learned Counsel for the respondents on the basis of details mentioned in the order dated 10.10.2018 passed by Director of Education (Basic), U.P., Lucknow, submits that Dharmendra Kumar Janta Laghu Madhyamik Vidyalaya, Satgur Muzuri, Maharajganj, was granted recognition by the letter dated 05.05.1980 issued by the Deputy Director of Education, Seventh Division, Gorakhpur. Thereafter, vide letter dated 12.09.1994 the Institution was included in the grant-in-aid list.

i. It is further stated that additional classes were sanctioned to the Institution vide letter/order dated 05.05.1980 issued by the then District Inspector of Schools, Gorakhpur, whereby 4 additional sections in Class VI, 4 in Class VII, and 3 in Class VIII were approved. It is further stated that, vide another letter/order of the same reference number and date, i.e., 05.05.1980, issued by the then District Inspector of Schools, Gorakhpur, two additional sections each from Classes VI to VIII were sanctioned, thereby recognising a total of 5 sections in each class from VI to VIII, aggregating to 15 sections in all.

ii. Thus, the Institution appears to have obtained two separate orders granting permission for additional classes bearing the same reference number and date, which, prima facie, renders the matter suspicious, particularly in view of the fact that permanent recognition was granted to the Institution by the Deputy Director of Education, Seventh Division, Gorakhpur, only on 05.05.1980.

iii. It has been shown that the additional sanction/approval of the Institution was granted by the Assistant Director of Education (Secondary), Seventh Division, Gorakhpur, vide order dated 19.01.1988. However, the same appears to be wholly forged and fabricated, inasmuch as the document dated 19.01.1988 is addressed to the Postmaster, Head Post Office, Gorakhpur. In such circumstances, the alleged additional sanction order of the Institution dated 19.01.1988 is wholly forged, fabricated, and fictitious.

iv. Thus, the alleged additional recognition/approval order dated 05.05.1980 produced by the Institution before this Court appears to be wholly forged, fabricated, and fictitious, particularly when the Institution itself is showing the grant of permission for additional classes on the very same date, i.e., 05.05.1980. The grant of permanent recognition, approval for additional classes, and sanction of additional sections/curriculum on one and the same date is not in consonance with the governing rules and, therefore, appears to be impermissible under the applicable regulatory framework.

v. In Civil Misc. Writ Petition No. 28745 of 2001, Smt. Durgawati Devi, Manager of the Institution, while filing a counter affidavit in July, 2005, placed before this Court an alleged order relating to additional recognition/approval of the Institution purportedly issued from the office of the Deputy Director of Education, Seventh Division, Gorakhpur, vide letter/order dated 05.05.1980.

vi. It is stated that, in the academic session 1991-92, an application was submitted by the Manager of the Institution seeking grant-in-aid for upgrading the Institution to Junior High School status. Along with the said application, a prescribed proforma was annexed containing details of the teachers and non-teaching staff working in the Institution at the relevant point of time.

vii. The said proforma bears the signatures of the Manager of the Institution, the Headmaster, the concerned Block Education officer Paniyara, Maharajganj, and the BSA, dated 13.02.1993. It is further stated that the same was countersigned/approved by the then Assistant Director of Education (Basic), Seventh Division, Gorakhpur, though such approval appears to be doubtful/suspicious.

viii. In the aforesaid proforma, the particulars of the teachers and non-teaching employees have been furnished in the following manner:

क्र०सं०	शिक्षक/शिक्षणेत्तर कर्मचारी का नाम	पदनाम	संस्था में नियुक्ति तिथि
1	2	3	4
1	श्री रामनवल यादव	प्र०अ०	01-7-1975
2	श्री रामधनी	भाषा अध्यापक	07-7-1975
3	श्री हीरालाल	स०अ०	01-7-1974
4	श्री रामचन्द्र	स०अ०	01-7-1975
5	श्री ओकार सिंह	स०अ०	01-7-1974
6	श्री हरिराम प्रसाद	स०अ०	01-7-1975
7	श्री मोती लाल	स०अ०	01-7-1974
8	श्री बुद्धसागर सिंह	स०अ०	01-7-1977
9	श्री राजेन्द्र सिंह	स०अ०	01-7-1976
10	श्री शिवनारायण मिश्र	स०अ०	07-7-1976
11	श्री सीताराम	स०अ०	01-7-1974
12	श्री सत्यप्रकाश यादव	स०अ०	01-1-1977
13	श्री चन्नर यादव	स०अ०	01-1-1976
14	श्री बेचन यादव	स०अ०	01-7-1975
15	श्री सत्यनारायण पाण्डेय	स०अ०	07-7-1977
16	श्री बाबूलाल	लिपिक	01-7-1976
17	श्री जोखू	अनुचर	01-7-1976
18	श्री सुदामा	अनुचर	01-7-1977
19	श्रीमती फूलमती देवी	अनुचर	01-7-1977

ix. It is stated that, in the grant-in-aid records of the Institution for the Academic Session 1991-92, the details of teachers and non-teaching employees as shown by the Manager of the Institution are at variance with the persons to whom salary payments were made in the year 1996. In the year 1996, salary disbursement was allegedly made to employees whose names, as entered in the salary bills/register, are materially different from those recorded in the relevant grant-in-aid documents. The details of names mentioned in Salary Bill Register of the year 1996 are as follows:

क्र०सं०	शिक्षक/शिक्षणेत्तर कर्मचारी का नाम	पदनाम
1	2	3
1	श्री रामनवल यादव	प्र०अ०
2	श्री रामधनी	स०अ०

3	श्री हीरालाल	स०अ०
4	श्री ओंकार सिंह	स०अ०
5	श्री रामचन्द्र	स०अ०
6	श्री हरिराम प्रसाद	स०अ०
7	श्री मोतीलाल	स०अ०
8	श्री सत्यप्रकाश यादव	स०अ०
9	श्री बुद्धिसागर सिंह	स०अ०
10	श्री अनिरुद्ध यादव	स०अ०
11	श्री बेचन प्रसाद	स०अ०
12	श्री राजेन्द्र सिंह	स०अ०
13	श्री हरिराम सिंह	स०अ०
14	श्री शिव प्रसाद	स०अ०
15	श्री कन्हैया लाल यादव	स०अ०
16	श्री हनुमान प्रसाद	स०अ०
17	श्री नागेन्द्र उपाध्याय	स०अ०
18	श्री ओमप्रकाश दुबे	स०अ०
19	श्री सत्यनारायण पाण्डेय	स०अ०
20	श्री उदय शंकर सिंह	स०अ०
21	श्री मोलहू प्रसाद	स०अ०
22	श्री अंगद सिंह	स०अ०
23	श्री बाबू लाल	लिपिक
24	श्री जोखू लाल	अनुचर
25	श्रीमती फूलमती देवी	अनुचर
26	श्री चैतू प्रसाद	अनुचर

x. In the Institution's M.R. (Management Register) for the Year 1991-92, the teachers and employees recorded therein, namely, Shri Shiv Narayan Mishra, Assistant Teacher; Shri Sitaram, Assistant Teacher; Shri Channar Yadav, Assistant Teacher; and Shri Sudama, Class IV Employee (Peon), were not paid salary as per the salary bill register of the year 1996. On the contrary, in deviation from the M.R. for the year 1991-92, Shri Aniruddh Yadav, Shri Bechan Prasad, Shri Hariram Singh, Shri Kanhaiya Lal Yadav, Shri Hanuman Prasad, Shri Nagendra Updahyay, Shri Om Prakash Dubey, Shri Uday Shankar Singh, Shri Molhu Prasad, Shri Angad Singh, Shri Shiv Prasad, Assistant Teachers, and Shri Chaitu Prasad, Class IV Employee (Peon) were paid salary as per the salary bill register of the year 1996.

xi. This clearly reflects that, contrary to the M.R., the Institution's Manager irregularly facilitated salary payments to eleven Assistant Teachers and one Class IV employee, which

indicates fraudulent functioning on the part of the Institution's Management. If the names of duly appointed teachers working against sanctioned posts had been forwarded in the M.R. in accordance with rules, then under what circumstances salary payments were made to teachers other than those mentioned therein remains unexplained. It is also not clear against which sanctioned posts these alleged teachers were selected and appointed.

xii. The Management has produced only two orders relating to the creation of posts, out of which one document of the year 1988 appears to be forged, while the order of 1980 could not be verified. In such circumstances, when no valid and lawful document regarding the creation of posts is available in the Institution, the basis on which such a large number of teachers were appointed, remains wholly unclear.

xiii. In addition to the above, in the Institution□s M.R. for the year 1991-92, in the seventh column relating to the details of student strength, sanctioned posts, and approved employees annexed thereto, a copy of the order regarding creation of posts, bearing reference number and date, has been mentioned. In the said entry, the date 05.05.1980 and the corresponding letter/reference number dated 05.05.1980 have been referred to.

xiv. The concerned document was countersigned on 13.02.2019 by the Manager of the Institution, Principal, the concerned Deputy Inspector of Schools, and the BSA. The said document indicates that the reference number and date relating to the creation of posts dated 05.05.1980 pertain to a letter granting permission for an additional class/section, which was issued by the District Inspector of Schools, Gorakhpur. This establishes that no order for additional creation of posts was issued to the Institution by the competent departmental authority in accordance with the prescribed rules.

xv. By letter dated 06.06.1996, the then BSA purportedly granted permission to the Institution for issuing an advertisement for appointments. However, with regard to the permission allegedly granted to the Institution through the letter of the then BSA, dated 06.06.1996, no records are available in the office of the BSA, concerning the appointment of a departmental observer for completion of the selection process pursuant to the said advertisement. Consequently, the authenticity of the said permission appears to be doubtful.

xvi. Further, approval is shown to have been granted by letter dated 27.06.1996 issued by the then BSA, however, the same is not supported by the dispatch register. The alleged approval letter appears to be wholly forged and fabricated.

xvii. In Civil Misc. Writ Petition No. 47856 of 200315, Civil Misc. Writ Petition No. 25681 of 200216, and Civil Misc. Writ Petition No. 22455 of 200217, this Court, after hearing the matters, passed an order dated 15.05.2012, the relevant extract of which is reproduced hereinbelow:

'In view of the above facts and circumstances, it is established that the explicit direction of this Court in the earlier writ petition that an inquiry be held and a copy of the inquiry report be supplied to the petitioners as well as the Committee of Management has not been complied with till date. The orders impugned in the three writ petitions namely 9.5.2003, 16.4.2002 and 14.1.2001

are, therefore, quashed. A direction is issued to the Zila Basic Shiksha Adhikari, Maharajganj to hold the enquiry as ordered by this Court in the order dated 20.12.2000 and provide a copy of the inquiry report to the petitioners within a period of six months from the date a certified copy of this order is received in the office of the District Basic Shiksha Adhikari, Maharajganj. It goes without saying that the petitioners will be given an opportunity of hearing and of leading all such evidence as available with them before the Basic Shiksha Adhikari.

The writ petitions are accordingly allowed in the aforesaid terms.

xviii. In compliance with the order of this Court, a three-member inquiry committee was constituted by the BSA. The committee comprised the Finance and Accounts Officer, Basic Education, Maharajganj, and Shri Mahendra Prasad I, Senior Block Education Officer, while the then District Basic Education Officer, Maharajganj, himself functioned as a member of the committee.

xix. Since the position of the petitioners in Writ Petition No. 47858 of 2003, Shobhnath Singh and 3 Ors., Writ Petition No. 25681 of 2002, Shambhu Prasad and Others, and Writ Petition No. 22455 of 2002, Pramod Kumar Pandey and Others, was similar to that of Writ Petition No. 28745 of 2001, the inquiry committee conducted an investigation concerning the Institution in relation to all the aforesaid writ petitions.

xx. By letter dated 30.10.2012 issued by the BSA, the hearing of the claimants/petitioners was fixed for 09.11.2012 at 2:00 PM. During the hearing, all the claimants, namely Amar Prakash Chand, Ashok Lal Srivastava, Brahm Yadav, Brahmdev Yadav, Aniruddh Yadav, Akhilesh Kumar Mishra, Rakesh Srivastava, and the alleged Assistant Teachers and Lab Bearers appeared and submitted their respective statements and documentary evidence before the inquiry committee.

xxi. In point no. 7 of the petitioners statement dated 09.10.2012, it was specifically mentioned that, insofar as Writ Petition No. 28745 of 2001 is concerned, the counter-affidavit filed by the Department stated that no additional posts had been created in the Institution. However, according to the petitioners, sanction for the additional posts had been granted by the Deputy Director of Education, Seventh Division, Gorakhpur.

xxii. The three-member inquiry committee, in its inquiry report, recorded that by office letter dated 30.03.2015, a request had been made to the Deputy Director of Education, Seventh Region, Gorakhpur for verification of the order relating to the creation of posts in favour of the Institution, bearing reference number and dated 05.05.1980. However, till date, the verification report has not been received. It was further stated that upon receipt of the verification report, this Court shall be informed separately through an affidavit.

xxiii. The post creation order provided by the petitioners, which was issued by the Deputy Director of Education, Seventh Region, Gorakhpur, vide letter dated 05.05.1980, was forwarded by the then BSA, vide their letter dated 30.03.2015 to the Joint Director of Education, Seventh Region, Gorakhpur, for verification.

xxiv. In continuation of this, the Joint Director of Education, Seventh Region, Gorakhpur, vide letter dated 07.04.2016, has sent the verification report to the BSA, wherein it is mentioned that the dispatcher was directed to verify the received letter from the dispatch register. The dispatcher of the office informed on date 07.04.2016 that the dispatch register which he received, is only from 23.05.1980 to 27.11.1982, hence it is not possible to verify the non-receipt of the duplicate register prior to this. In this manner, the post creation order also appears to be suspicious.

xxv. By the letter dated 19.01.1988 of the Assistant Director of Education, Basic, Seventh Region, Gorakhpur, the additional post creation order was directed to be canceled being completely forged, because that letter dated 19-01-1988 was addressed to the Postmaster, Head Post Office, Gorakhpur. Permanent recognition was granted to Institution by the Deputy Director of Education, Seventh Region, Gorakhpur via letter dated 05.05.1980, on the same date, four additional sections in class 6, four in class 7, and three additional sections in class 8 were approved for the Institution by the then District Inspector of Schools, Gorakhpur vide letter dated 05.05.1980, and on the same date 05.05.1980, the District Inspector of Schools, Gorakhpur, by letter dated 05.05.1980 approved 2 additional separate sections in each classes of Standards 6 to 8, and by accepting 5-5 sections in each Classes 6 to 8, approved a total of 15 sections. In this manner it is clear, that the said letter is forged because two letters have been issued on the same letter number on the single date, which is absolutely not acceptable to anyone.

xxvi. An application form was filled by the Management of the Institutions in the year 1991-92 for sanction of initial grant to the unaided Senior Upper Primary Schools up to the level of Junior High Schools. Along with the said application form, a document was appended, wherein in Column-7 the details of number of students post creation and approved employees are mentioned, which also bears the details of letter dated 05.05.1980. The said document is signed by the Manager/Headmaster of the Institution and countersigned by Deputy District Inspector of Schools, Area Paniyara Maharajganj/ District Basic Education Officer, Maharajganj. The aforesaid letter bears the details of letter of post creation dated 05.05.1980, which is the letter number and date of the additional section approval issued to the Institution by the District Inspector of Schools, Gorakhpur. On the very same date i.e. 05.05.1980, it is not possible to grant permanent recognition to the Institution, grant additional section approval, and creation of additional posts, because, in view of the relevant provisions, initially the additional section approval is granted, thereafter application form for the creation of additional posts is filled by the Institution Manager/Headmaster, thereafter, the post creation order is issued by the competent authority. From this, it is clearly reflected that on the basis of forged and fabricated records, an attempt is being made by the Manager/Headmaster/Petitioners to obtain irregular payments, which is not acceptable under the Rules.

xxvii. It is noteworthy that after the post creation order of the year 1988 was found to be forged and fabricated during verification, in the year 2005, the post creation year 1980 was shown by the Manager of the Institution before this Court, which proves that a misleading situation was created by the Manager regarding post creation. Even if, the post creation year is accepted as 1980 or 1988, then according to the provisions contained in the Act, 1978, the appointment process against the said newly created posts should be completed within three months from the date of creation. Whereas the appointment year of the petitioners is shown as 1996, which is 16 years after

the alleged post creation order dated 05.05.1980 and 08 years after the alleged post creation order dated 19.01.1988, which is completely contrary to Section 9 of the Act 1978. Section-9 which is in connection with the approval of posts, is being quoted herein below:

‘(1) No institution shall create a new post of teacher or other employee, except with the previous approval of the Director or such other officer, as may be empowered by a general or special order in that behalf by the Director.

(2) If any new post is created with the previous approval referred to in sub-section (1) and no appointment is made to such post, within three months, the approval shall be deemed to have been withdrawn.

xxviii. In this manner, it is clear that the alleged appointment of the petitioners against the post creation dated 05.5.1980 is completely contrary to the provisions of Section 9(2) of the Act, 1978 and is by no means it is acceptable.

xxix. Similarly, in the year 1991-92, contrary to the number of teachers/employees mentioned in the M.R. Form-2, getting irregular salary payments for 11 teachers and 01 peon, proves that Management is functioning contrary to departmental rules/instructions and Statutes.

xxx. From the above, it is clear that the authenticity of the newly created posts against which the alleged appointment of the petitioners is being stated is not verified. Furthermore, there appears to be no legal justification for making appointments to those posts after such a long interval i.e. 16 years. The approval of the petitioners' appointment is also forged because verification of the said approval letter has also not been possible. It is clear that the appointment of the petitioners has been made contrary to the provisions mandated in the Rules, 1978 and Act, 1978. Since the appointment of the petitioners has not been made according to the rules, in such a situation, the petitioners are not entitled to receive salary payments from the State Exchequer.

42. Learned Counsel for the respondents further submits that on the representation of Ashok Lal Srivastava, for payment of salary which was not being paid since 2000, the order dated 12.01.2023 has been passed, in which stand taken in the order dated 10.10.2018 has been reiterated. It has also been submitted that the appointment of the petitioners has been made contrary to the provisions laid down in the Rules, 1978 and the Act, 1978. Because the appointment of the petitioners, was not made according to the rules, in such a situation, they are not entitled to receive salary payments from the State Exchequer.

43. After grant of the interim order, it is not clear as to whether the petitioners have worked or not, therefore, they are not entitled for any salary after August, 2000, when the appointment itself is not in accordance with law.

Heard learned counsel for the parties and perused the record.

44. At the very threshold, this Court finds that the foundational burden to establish a lawful appointment squarely rested upon the petitioners. A person claiming salary from the State

Exchequer must demonstrate that his appointment was made strictly in accordance with the statutory procedure and against duly sanctioned posts. Mere continuance in service for a period of time or receipt of salary for certain years cannot sanctify an appointment which is otherwise dehors the statutory framework.

45. In the present case, the petitioners have utterly failed to place unimpeachable documentary material to establish the legality of their appointments. Though the petitioners have asserted that their appointments were made against sanctioned posts pursuant to permission granted on 06.06.1996 and approval dated 27.06.1996, no legally verifiable documents have been annexed so as to conclusively establish the authenticity of the alleged post creation, permission to advertise, or approval of appointment. The very substratum of the petitioners claim remains shrouded in uncertainty and suspicion.

46. This Court cannot lose sight of the grave discrepancies noticed in the order dated 10.10.2018 submitted by the Director of Education (Basic), U.P., Lucknow, which stands reiterated in the consequential order dated 12.01.2023 passed by the BSA. The order categorically records that the alleged post-creation order dated 19.01.1988 appears to be forged and fabricated inasmuch as the said document was addressed to the Postmaster, Head Post Office, Gorakhpur, rendering its authenticity wholly doubtful. Likewise, the alleged post-creation document dated 05.05.1980 could not be verified from official records and appears suspicious, particularly in view of the glaring anomaly that permanent recognition, approval of additional sections, and alleged creation of additional posts are shown to have been granted on the same date, which is wholly incongruous to the statutory scheme governing educational institutions.

47. Further, the alleged permission dated 06.06.1996 said to have been granted by the BSA for the issuance of advertisement is not traceable in official records. Similarly, the approval order dated 27.06.1996 allegedly approving the appointments of the petitioners does not find mention in the dispatch register maintained in the office of the District Basic Education Officer. Such glaring inconsistencies cannot be brushed aside as mere administrative lapses, especially where the petitioners seek enforcement of monetary claims from public funds.

48. The argument advanced on behalf of the petitioners that mere non-availability of the dispatch register cannot invalidate their appointments is liable to be rejected in the peculiar facts of the present case. Here, the issue is not merely of a missing entry in the dispatch register, but rather a cumulative pattern of discrepancies, contradictions, and suspicious circumstances surrounding the very genesis of the appointments. The order, based on records, reveals inconsistencies regarding sanction of posts, variance in the names of employees reflected in the M.R. records of 1991 92 vis- -vis salary bills of 1996, absence of proof regarding sanctioned vacancies, doubtful approval letters, and procedural irregularities in the selection process. Such circumstances cast a serious cloud upon the legality of the appointments themselves.

49. This Court further finds substance in the submission advanced by learned counsel for the respondents that the appointments are ex facie contrary to Section 9(2) of the Act, 1978. Even assuming for the sake of argument that the alleged posts were created either in 1980 or 1988, admittedly, appointments came to be made only in the year 1996, much beyond the statutory period

of three months prescribed under Section 9(2), whereby approval for newly created posts stands deemed withdrawn if appointments are not made within the stipulated period. Consequently, the very basis of appointment becomes legally unsustainable.

50. Equally significant is the fact that petitioner nos. 1, 2 and 4 in Writ-A No. 3037 of 2023 have been alleged to be lacking the requisite qualifications prescribed under Rule 4 of the Rules, 1978. The respondents have specifically pleaded that the petitioners did not possess the qualifications mandated for appointment to the post of Assistant Teacher. The petitioners have failed to dispel the said objection by placing cogent material on record.

51. This Court is also persuaded by the principle enunciated by this Court in the decision rendered in Deepak Kumar (supra), wherein this Court held that where approval orders are not verifiable from dispatch records and minimum qualifications are absent, the appointments cannot be held to be lawful, nor can such appointees claim salary from the State exchequer. The ratio laid down therein squarely applies to the controversy at hand.

52. The judgments relied upon by learned counsel for the petitioners are wholly distinguishable and do not render any assistance in the peculiar facts of the present case.

53. The judgment of the Apex Court in Subodh Kumar Prasad (supra), proceeded on the premise that the underlying appointment was otherwise valid and only a discrepancy in dispatch or record maintenance was involved. In the present matter, however, the challenge goes to the root of the appointment process itself, including the authenticity of post creation, approval, sanction, qualification, and procedural compliance, therefore, the said judgment is clearly distinguishable.

54. Similarly, the reliance as placed by learned counsel for the petitioners upon the judgment of the Apex Court in Radhey Shyam Yadav (supra) is misconceived. In the said case, appointments had been made against sanctioned posts and the employees were not found responsible for any illegality attributable to the selection process. Here, the petitioners have failed to establish the existence of lawful sanctioned posts itself, and the very approval and post-creation documents as well as documents regarding selection process are under serious doubt, hence, the factual matrix is entirely different.

55. Likewise, the judgments rendered in Rajesh Kumar Srivastava (supra), Yashwant Kumar Rai (supra) and Ram Kewal (supra) do not advance the case of the petitioners. In those cases, the appointments were not found to be tainted by such pervasive discrepancies concerning post creation, forged documents, doubtful approvals, and statutory violations. Those decisions turned on their own peculiar facts and cannot be mechanically extended to a case where the very edifice of appointment appears legally infirm.

56. The reliance placed upon by learned counsel for petitioners upon the judgment of Apex Court in Tridip Kumar Dingal (supra) is equally misplaced. There can be no quarrel with the proposition that long-standing appointments ought not ordinarily be unsettled. However, equity cannot override statutory mandate. It is trite that there can be no estoppel against law. Continuance

in service or lapse of time cannot legitimize an appointment made in violation of statutory provisions or based on doubtful and unverified records.

57. It is a settled proposition of law that salary payable from public exchequer can only be claimed by a person whose appointment is demonstrably legal and in accordance with statutory provisions. Sympathy or equitable considerations cannot be permitted to supplant the rule of law, particularly where public funds are involved.

58. This Court further finds that, notwithstanding the interim order dated 06.08.2001 passed in favour of the petitioners, no material whatsoever has been brought on record to demonstrate that the petitioners were ever permitted to discharge duties in the Institution thereafter, or that they, in fact, continued to function and render services pursuant to the said interim protection. Mere grant of an interim order does not ipso facto establish actual continuance in service, unless supported by cogent documentary evidence demonstrating performance of duties, attendance, work allocation, salary acquittance, or any contemporaneous record maintained by the Institution.

59. In absence of any such material, this Court is unable to presume that the petitioners continued to work in the Institution after stoppage of salary in August, 2000. Consequently, the petitioners cannot claim salary as a matter of right merely on the strength of an interim order, particularly when the factum of rendering service itself remains unsubstantiated.

60. It is a trite law that salary is payable for the work actually performed, save in exceptional circumstances where the employee is unlawfully prevented from discharging duties despite a valid appointment. In the present case, however, the petitioners' appointments themselves stand clouded by serious infirmities and have been found to be contrary to statutory provisions, therefore, any claim for salary beyond the period for which actual work has been discharged cannot be countenanced.

61. Accordingly, the petitioners, if otherwise entitled, can lay claim only to such emoluments as may be relatable to the period during which they demonstrably worked after August 2000, and not otherwise. However, in absence of any evidence establishing that the petitioners were permitted to function in the Institution subsequent to August, 2000, no such relief can be granted.

62. The submission of learned counsel for the petitioners that long-standing appointments ought not to be unsettled after passage of time is equally devoid of merit in the facts of the present case. Admittedly, the petitioners were appointed in the year 1996 and salary payment came to be discontinued from August, 2000. Thus, at best, the petitioners continued in service only for a brief period of approximately four years before the legality of their appointments came under scrutiny.

63. The principle protecting long-standing appointments is ordinarily invoked in cases where appointments have continued uninterruptedly for decades and equities have crystallized in favour of employees appointed against lawful or substantially compliant procedures. The said principle cannot be mechanically extended to cases where the very appointment is ex facie illegal, unsupported by authentic records, made in derogation of prescribed statutory procedure, and tainted by serious discrepancies regarding sanction of posts and approval.

64. Equity cannot be invoked to perpetuate an illegality. A person appointed dehors the statutory framework cannot claim a vested right merely because he was permitted to continue for a limited period. An illegal appointment does not mature into legality by efflux of time. Since the petitioners were permitted to function, if at all, only for a short duration of approximately four years on the basis of appointments which were not made in accordance with the procedure prescribed under law, they cannot derive any equitable advantage so as to seek continuance of service or salary from the State Exchequer.

65. Having regard to the facts pleaded, the material placed on record, the submissions advanced by learned counsel for the parties, and particularly the discrepancies reflected in the inquiry report dated 10.10.2018 and consequential order dated 12.01.2023, the writ petition deserves to be dismissed for the reasons recorded hereinafter.

66. Accordingly, this Court is of the considered opinion that the petitioners have failed to establish that their appointments were made against duly sanctioned posts and in accordance with the provisions of the Rules, 1978 and the Act, 1978. The findings recorded in the inquiry report dated 10.10.2018 and the consequential order dated 12.01.2023 do not suffer from perversity, arbitrariness, or illegality warranting interference in exercise of writ jurisdiction under Article 226 of the Constitution of India.

67. The writ petitions, being devoid of merit, are accordingly dismissed.

68. Needless to say that the petitioners will be at liberty to move application before the concerned respondent authority for payment of salary for the period they worked, which shall be looked into by the authority concerned after verifying the same from the records.

69. No order as to costs.

(2026) 5 ILRA 444
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.05.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 5542 of 2026

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

Issue for Consideration

(1) Application of principle of natural justice in an enquiry conducted on the allegation of changing the date of birth in the service record, and validity of order retiring the petitioner earlier without giving him opportunity of hearing.

Headnotes

(A) Service law – Age of retirement – Date of Birth – Determination – Principle of natural justice – Applicability – Enquiry – Allegation of changing the Date of Birth (DoB) by making overwriting in the service book from 19.10.1967 to 14.4.1966 was made – Impugned order was passed stating that the petitioner would retire on 30.4.2026 on the basis of Transfer Certificate considering his DoB to be 14.04.1966 ignoring the DoB (19.10.1967) as mentioned in service record – Petitioner was not called upon to participate in the enquiry – effect

Held : Since at the time of entry into service, the petitioner has not passed High School or equivalent examination, therefore, date of birth recorded in service book at the time of entry shall be deemed to be correct date of birth – There are various documents in service records which consistently recorded petitioner's date of birth as 19.10.1967. There was no reason for the petitioner to make forgery to change date of birth from 19.10.1967 to 14.04.1966, which would be against his interest, since he would retire early – Impugned orders dated 19.03.2026 and 23.03.2026, being passed behind the back of petitioner also as well as contrary to above referred position of law and in present set of circumstances, cannot sustain. [Para 16, 18 and 20] (E-1)

Case Law Cited

Brij Kishore vs. State of U.P. and others, 2016 (4) ESC 2148; Union of India and others vs. Nathan Singh (2023) 2 UPLBEC 1321; Union of India vs. Harnam Singh, 1993 SCC (2) 162; U.P. Madhyamik Shiksha Parishad vs. Raj Kumar Agnihotri, (2005) 11 SCC 465 – **referred to.**

List of Acts

U.P. Recruitment to Services (Determination of Date of Birth) Rules, 1974 **–** Rule 2.

List of Keywords

Date of birth, Medical examination, Service record, enquiry, Overwriting, retirement, Inquiry Committee, Transfer certificate, Principle of natural justice.

Case Arising From

Impugned orders dated 19.03.2026 and 23.03.2026.

Appearances for Parties

Advs. for the Petitioner : Ashish Kumar; Rahul Mishra.
Advs. for the Respondents : Abhishek Srivastava; Tanisha Jahangir Monir.

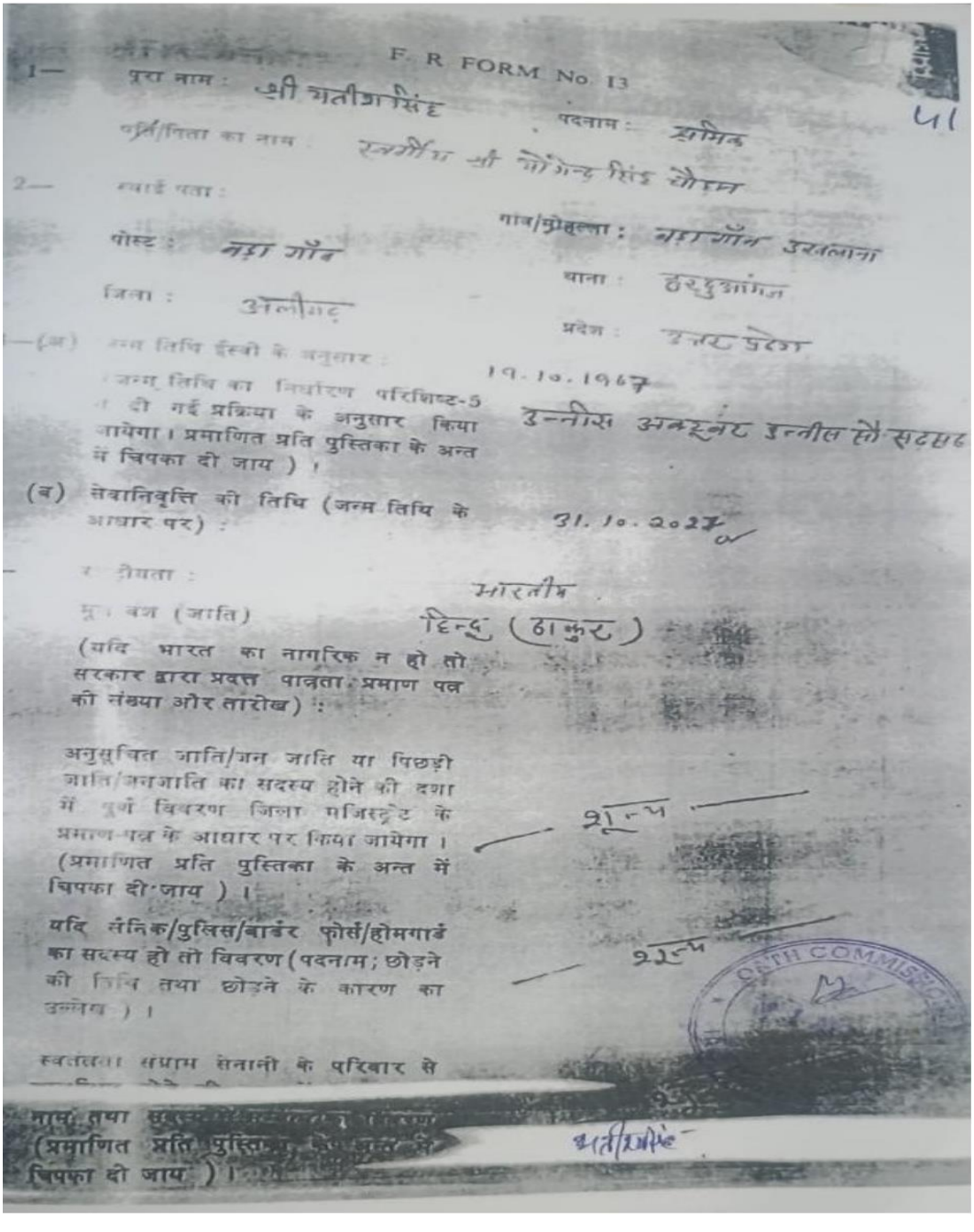
(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. The petitioner was appointed on the post of Shramik at Harduaganj Thermal Power Plant, Kasimpur, Aligarh vide an appointment letter dated 18.3.1988.

2. At the time of entry in service, petitioner's date of birth was mentioned on basis of a report of medical examination dated 19.10.1987 that at that stage, petitioner appears to be 20 years old and accordingly in service records his date of birth was recorded as 19.10.1967 and same was mentioned in other documents also including information uploaded on web portal of respondent Nigam and according to said date of birth, petitioner's date of retirement would be 31.10.2027.

3. Sri Rahul Mishra, learned counsel for the petitioner submitted that after 35 years, an inquiry was conducted behind his back regarding his date of birth to determine correct date of retirement, since it was found that his date of birth was changed by making overwriting in his service book from 19.10.1967 to 14.4.1966 as well as his date of birth mentioned in Hindi as (उन्नीस अक्टूबर सन् उन्नीस

सौ सडसठ) was deleted by using white fluid and just below it was mentioned in Hindi as (चौदह अप्रैल सन् उन्नीस सौ छाछट), though the date of retirement i.e. 31.10.2027 was not disturbed. For reference, scanned copy of same though very dim , still for ready reference is pasted hereinafter:-


F. R FORM No. 13

1— पूरा नाम : श्री सतीशसिंह पदनाम : सैनिक

पति/पिता का नाम स्वर्गीय श्री गोविन्द सिंह चौहान

2— स्थाई पता :

पोस्ट : नया गाँव गाव/मोहल्ला : नया गाँव उरतलाना

जिला : उन्नाव थाना : हसनगंज

प्रदेश : उत्तर प्रदेश

(अ) जन्म तिथि ईस्वी के अनुसार : 19.10.1967

जन्म तिथि का निर्धारण परिशिष्ट-5 में दी गई प्रक्रिया के अनुसार किया जायेगा। प्रमाणित प्रति पुस्तिका के अन्त में चिपका दी जाय)। उन्नीस अक्टूबर उन्नीस सौ सडसठ

(ब) सेवानिवृत्ति की तिथि (जन्म तिथि के आधार पर) : 31.10.2027

राष्ट्रीयता : भारतीय

मूल वंश (जाति) हिन्दू (ठाकुर)

(यदि भारत का नागरिक न हो तो सरकार द्वारा प्रदत्त पात्रता प्रमाण पत्र की संख्या और तारीख) :

अनुसूचित जाति/जन जाति या पिछड़ी जाति/जनजाति का सदस्य होने की दशा में पूर्ण विवरण जिला मजिस्ट्रेट के प्रमाण-पत्र के आधार पर किया जायेगा। (प्रमाणित प्रति पुस्तिका के अन्त में चिपका दी जाय)।

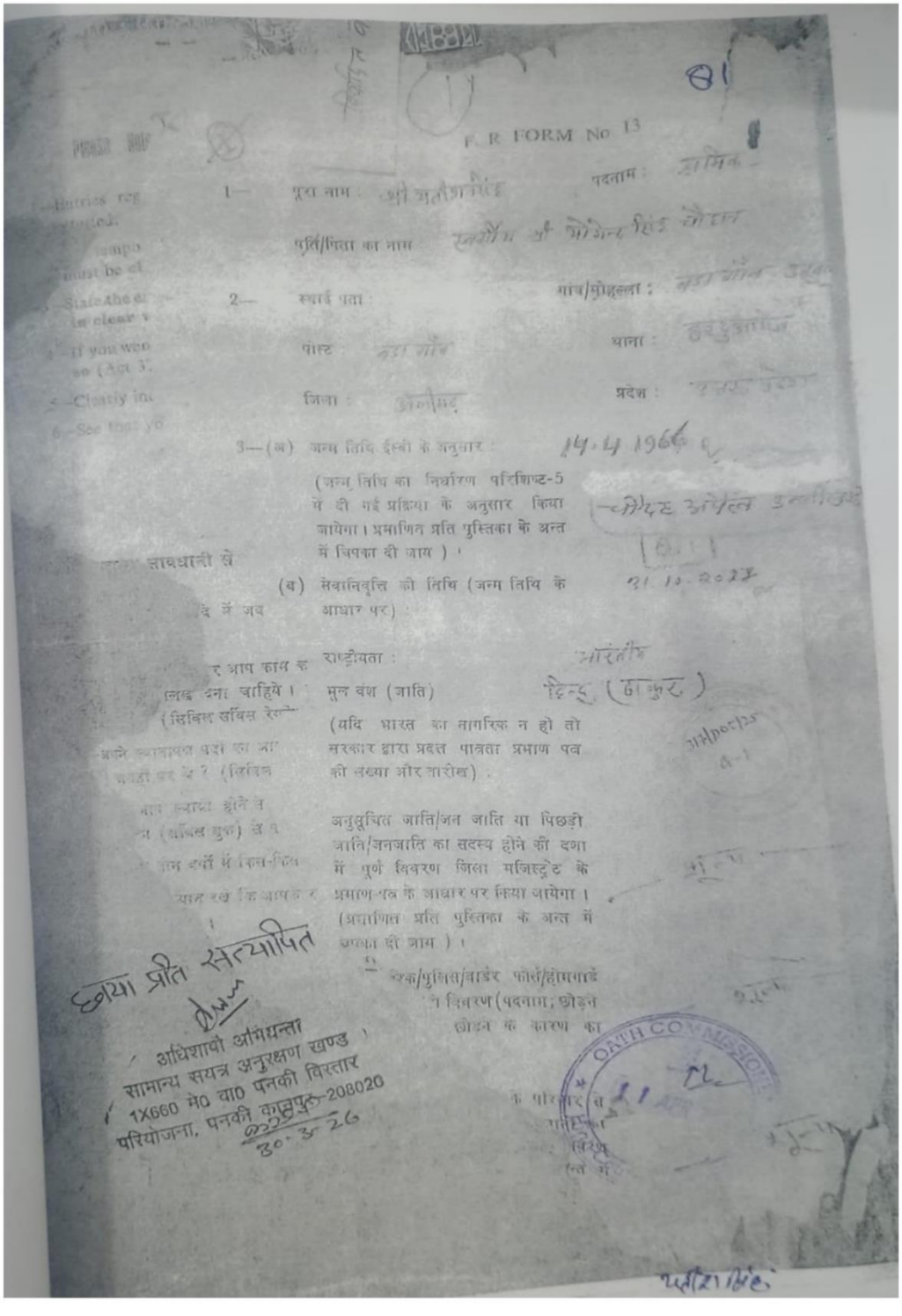
यदि सैनिक/पुलिस/बार्डर फोर्स/होमगार्ड का सदस्य हो तो विवरण (पदनाम; छोड़ने की तिथि तथा छोड़ने के कारण का उल्लेख)।

स्वतंत्रता संग्राम सेनानी के परिवार से

नाम तथा

(प्रमाणित प्रति पुस्तिका

चिपका दी जाय)।



F. R FORM No 13

1— पूरा नाम : श्री यतीश सिंह पदनाम :

पुत्र/पिता का नाम

2— स्थाई पता : गाव/मोहल्ला :

पोस्ट : थाना :

जिला : प्रदेश :

3—(अ) जन्म तिथि ईस्वी के अनुसार : 14.4.1966

(जन्म तिथि का निर्धारण परिशिष्ट-5 में दी गई प्रक्रिया के अनुसार किया जायेगा। प्रमाणित प्रति पुस्तिका के अन्त में चिपका दी जाय)।

(ब) सेवानिवृत्ति की तिथि (जन्म तिथि के आधार पर) : 31.10.2027

राष्ट्रीयता : भारतीय

मूल वंश (जाति) हिन्दू (ठाकुर)

(यदि भारत का नागरिक न हो तो सरकार द्वारा प्रदत्त पात्रता प्रमाण पत्र की संख्या और तारीख)

अनुसूचित जाति/जन जाति या पिछड़ी जाति/जनजाति का सदस्य होने की दशा में पूर्ण विवरण जिला मजिस्ट्रेट के प्रमाण-पत्र के आधार पर किया जायेगा। (प्रमाणित प्रति पुस्तिका के अन्त में चिपका दी जाय)।

छाया प्रति सत्यापित

अधिशाषी अभियन्ता
सामान्य सयत्र अनुरक्षण खण्ड
1X660 मे0 वा0 पनकी विस्तार
परियोजना, पनकी कानपुर-208020
30.3.26

4. The petitioner has procured some documents under The Right to Information Act, 2005, subsequently that an inquiry was initiated but its report was not submitted by the Inquiry Committee/I.G. Vigilance including Forensic Report. Therefore, the Executive Engineer communicated the Inquiry Committee vide a communication dated 22.12.2025 to inform about outcome of inquiry and same request was repeated vide another communication dated 3.2.2026. For reference, contents of letter dated: 03.02.2026 is mentioned hereinafter:

'कृपया अध्यक्ष, जाँच समिति एवं मुख्य अभियन्ता (न्यू कोल ब्लॉक), कार्यालय के पत्रांक: 68 / उनि / कोल ब्लाक / 2024 दिनांक: 24.02.2024 के निष्कर्ष बिन्दु सं०: 01 एवं खण्ड कार्यालय पत्रसं०: 87 / 1X660 पीटीईपी / सा०सं०अनु०ख० / पीएफ दिनांक: 22.12.2025 (छायाप्रति संलग्न) का सन्दर्भ ग्रहण करें, जिसके माध्यम से विधि विज्ञान प्रयोगशाला अलीगढ़ से जांच परीक्षण, उपरान्त जो वास्तविक जन्म तिथि / सेवानिवृत्ति तिथि फॉरेंसिक जांच में आयी हो तो इस कार्यालय को अतिशीघ्र उपलब्ध कराने हेतु आग्रह किया गया। इस संबंध में अवगत कराना है कि कार्यालय में अभी तक दिशा-निर्देश प्राप्त नहीं हुआ है। श्री यतीश सिंह, श्रमिक की सेवापुस्तिका में जन्म तिथि 14.04.1966 मानते हैं तो सेवानिवृत्त तिथि 30.04.2026 होती है और यदि जन्म तिथि 19.10.1967 माने तो सेवानिवृत्ति तिथि 31.10.2027 होती है। पनकी ई०आर०पी० में भी सेवानिवृत्त तिथि 31.10.2027 अंकित है। यदि कार्मिक की जन्म तिथि 14.04.1966 मानते हैं तो सेवानिवृत्ति तिथि निकट है, जिस कारण सेवानिवृत्त देयों के ससमय निस्तारण के लिये कार्यवाही किया जाना लम्बित होगा।

अतः उपरोक्त तथ्यों के दृष्टिगत अनुरोध है कि संदर्भित प्रकरण में पुलिस महानिदेशक, सतर्कता द्वारा जांच पूरी हो गयी हो तो दिशा-निर्देश प्रदान कराने का कष्ट करें, अन्यथा कि स्थिति में सेवानिवृत्त / पेंशन संबंधी देयों का ससमय भुगतान करने में कठिनाइयाँ होंगी।'

5. In aforesaid circumstances, since neither a report was submitted by the Inquiry Committee nor I.G. Vigilance has submitted a report on basis of Forensic Report, if any information was sent by the Executive Engineer to Chief General Manager vide a communication dated 19.03. 2026 that date of birth of petitioner be considered on basis of a new document i.e. a Transfer Certificate wherein petitioner□s date of birth was mentioned as 14.04.1966 i.e. he would retire on 30.04.2026 i.e. about a year and 6 months earlier. Relevant part of aforesaid communication is reproduced hereinafter:

' 2. इस सम्बन्ध में सूचित करना है कि पुलिस महानिदेशक (सतर्कता) द्वारा प्रश्नगत प्रकरण में अपनी जाँच आख्या अद्यतन प्रेषित नहीं किया गया है। अवगत है कि जन्मतिथि निर्धारण के सम्बन्ध में परिषददेश सं० -2661-जीएम/रा०वि०प०-तीन-28 जीएम/75 दिनांक 30.06.1975 में प्राविधानित है-

"ठीक जन्म दिनांक या आयु का अवधारण:- किसी सरकारी सेवक का जन्म दिनांक, जैसा कि हाई-स्कूल या समकक्ष परीक्षा में उत्तीर्ण हो जाने के प्रमाण पत्र में अभिलिखित हो, अथवा जहाँ कोई सरकारी सेवा में प्रविष्टि होने के समय उसकी सेवा पुस्तिका में अभिलिखित जन्म दिनांक या आयु उसकी सेवा के सम्बन्ध में प्रयोजनों के लिये, जिसके अन्तर्गत पदोन्नति, अधिवार्षिकी, समय-पूर्व सेवानिवृत्ति लाभ के लिये पात्रता भी है, यथास्थिति, उसका ठीक जन्म दिनांक या आयु समझी जायेगी तथा ऐसे दिनांक या आयु को सही (करेक्शन) करने के बारे में कोई आवेदन-पत्र या अभ्यावेदन किन्हीं भी परिस्थितियों में, चाहे जो भी हो, ग्रहण नहीं किया जायेगा।"

3. श्री यतीश सिंह, श्रमिक द्वारा मृतक आश्रित कोटा अन्तर्गत सेवा में प्रवेश करने का दिनांक 18.03.1988 है। निगम में प्रवेश करने की तिथि से पूर्व के अभिलेख, नवाब सिंह चौहान ग्रामोदय इण्टर कालेज की छात्र पंजी एवं स्थानान्तरण प्रमाण-पत्र (टी०सी०) में श्री यतीश सिंह पुत्र श्री योगेन्द्र सिंह की जन्म तिथि: 14.04.1966 (चौदह अप्रैल सन् छियासठ) अंकित है, जोकि कार्मिक के सेवा में प्रवेश करने से पहले का अभिलेख है।

4. अतः यह निष्कर्ष कि सेवा में प्रविष्टि होने के समय, सर्विस बुक में जन्मतिथि अंकित किये जाने के प्रयोजन से उपलब्ध अभिलेखों में से सर्वथा मान्य एवं उचित अभिलेख प्रतीत होता है। अन्य प्रस्तुत अभिलेख जैसे- हाईस्कूल प्रमाण पत्र (सन् 2004), सेवा में प्रवेश करने के पश्चात के है। अतः स्थानान्तरण प्रमाण पत्र में श्री यतीश सिंह, श्रमिक की अभिलिखित जन्म तिथिः 14.04.1966 (चौदह अप्रैल सन् छियासठ), उनकी सेवा के सम्बन्ध में प्रयोजनों के लिये, जिसके अन्तर्गत पदोन्नति, अधिवार्षिकी, समय-पूर्व सेवानिवृति लाभ के लिये पात्रता भी है, यथास्थिति, उसका ठीक जन्म दिनांक या आयु माना जाना चाहिए।

5. अतः विषयगत प्रकरण में यह कहने का निदेश हुआ है कि जन्मतिथि निर्धारण के सम्बन्ध में उपरोक्तानुसार परिषदादेश सं० 2661-जीएम/रा०वि०प०- तीन - 28 जीएम/75 दिनांक 30.06.1975 के प्राविधानों, कार्मिक का नवाब सिंह चौहान ग्रामोदय इण्टर कालेज की छात्र पंजी एवं स्थानान्तरण प्रमाण पत्र (टी०सी०) में अंकित जन्म तिथि 14.04.1966 को सेवा के सम्बन्ध में प्रयोजनों के लिये ठीक जन्म दिनांक मानते हुये अग्रेतर आवश्यक प्रभावी कार्यवाही करने का कष्ट करें।'

6. In aforesaid circumstances, for first time petitioner was informed about the decision vide a communication dated 23.03.2026 that he would retire on 30.4.2026 on basis of above referred document i.e. Transfer Certificate considering his date of birth to be 14.04.1966 ignoring Date of Birth (19.10.1967) mentioned in service records.

7. In aforesaid circumstances, petitioner approached this Court by way of filing present writ petition on 12.04.2026 against orders dated 19.03.2026 and 23.03.2026.

8. Learned counsel for the petitioner referred Rule 2 of U.P. Recruitment to Services (Determination of Date of Birth) Rules, 1974 that in case at the time of entry in service, an employee has not passed High School or equivalent examination, date of birth recorded in service book at the time of entry shall be deemed to be correct date of birth or age as the case may be and since there are sufficient materials on records that date of birth of petitioner at the time of his entry into Government Service was 19.10.1967, therefore, his retirement date would be 31.10.2027, therefore, said date of birth cannot be disturbed.

9. So far as any allegation of forgery is concerned, that petitioner's date of birth as mentioned at the time of entry into government service was 19.10.1967 which was changed as 14.04.1966, by making overwriting and using whitener, can be ignored since till date there is no proof that it was done by the petitioner. Inquiry Report of Inquiry Committee or of I.G. Vigilance or Forensic Report is still awaited.

10. Learned counsel for the petitioner also submitted that during service, petitioner has passed High School also, however, a different date of birth was mentioned therein i.e. 16.09.1966, however, in view of above provisions same cannot be considered for purpose of retirement.

11. Learned counsel for the petitioner further submitted that date of birth as mentioned in the Transfer Certificate which has now been relied upon was issued in the year 2005 but it was not verified from original records. As per above referred provision, date of birth as mentioned in service record at the time of entrance in service would be final, since on the other relevant element i.e High School Certificate which was not available at the time of entry into service.

12. Learned counsel for the petitioner has placed reliance on a judgment passed by this Court in Brij Kishore Vs. State of U.P.& Ors, 2016 (4) ESC 2148 and Union of India & Ors. Vs. Nathan Singh (2023) 2 UPLBEC 1321 that principles of natural justice were not followed before taking an adverse decision.

13. Per Contra, Sri Abhishek Srivastava and Ms.Tanisha Jahangir Monir, learned counsel for the respondents submitted that petitioner has mentioned different date of birth in his various documents. In Aadhar Card and PAN Card, his date of birth is recorded as 16.04.1966 and 16.04.1968 respectively and in PIS Service Record it is recorded as 19.10.1967 and in the High School Certificate it is recorded as 16.09.1966 and in service records with overwriting it is 14.04.1966 and same date of birth was mentioned in the Transfer Certificate, therefore, it was a subject matter of inquiry and they referred a report dated 24.02.2024, however, it has not been denied that petitioner was not a part of said vigilance or police investigation and that report does not has any final conclusion, except that a further inquiry is required such as Forensic Reports. For reference, relevant part of report dated 24.02.2024 is reproduced hereinafter:

'प्रकरण के सम्बन्ध में समिति की विवेचना निम्नवत है -

1. उपलब्ध अभिलेखों से पता चलता है कि सर्वप्रथम संदर्भित प्रकरण जवाहरपुर तापीय परियोजना द्वारा श्री यतीश सिंह, श्रमिक के तृतीय समयबद्ध वेतनमान एवं पदोन्नति के सम्बन्ध में कार्यवाही के दौरान जून 2022 में संज्ञान में लाया गया था जिस पर मानव संसाधन इकाई द्वारा जुलाई 2022 में पत्रावली प्रचलित की गयी थी। पत्रावली पर जनवरी 2023 में प्रदत्त अनुमोदन के क्रम में मानव संसाधन इकाई द्वारा संदर्भित जांच हेतु विभागीय समिति गठित की गयी तथा साथ ही पुलिस महानिदेशक, सतर्कता को भी प्रकरण की जांच कर आख्या प्रस्तुत किये जाने हेतु निर्देशित किया गया।

2. अवगत कराना है कि पत्रावली में उपलब्ध विभिन्न प्रपत्रों में श्री यतीश सिंह, श्रमिक की जन्म तिथि एवं नाम का विवरण निम्न तालिकानुसार है (संलग्नक-37) –

क्र० सं०	प्रपत्र का विवरण	कार्मिक का नाम	पिता का नाम	कार्मिक की जन्म तिथि
1	आधार नं० 520893001959	श्री यतीश सिंह(Yatish Singh)	योगेन्द्र सिंह	16.04.1966
2	पैनकार्ड- AHTPS4095B	श्री यतीश सिंह(Yatish Singh)	योगेन्द्र सिंह चौहान	16.04.1968
3	पी०आई०एस०	श्री यतीश सिंह(Yatish Singh)	योगेन्द्र सिंह चौहान	19.10.1967
4	हाईस्कूल	श्री यतीश चौहान(Yatish Chauhan)	योगेन्द्र चौहान	16.09.1966
5	सेवापुस्तिका	श्री यतीश सिंह	योगेन्द्र सिंह चौहान	14.04.1966परन्तु सेवापुस्तिका में अंकित जन्म तिथि में छेड़ छाड़ (ओवर राइटिंग) परिलक्षित हो रहा है
6	नवाब सिंह चौहान ग्रामोदय इण्टर कॉलेज की टी०सी०	श्री यतीश सिंह चौहान	योगेन्द्र सिंह	14.04.1966

◦ उक्त तालिका से परिलक्षित है कि विभिन्न अभिलेखों में श्री यतीश सिंह की जन्म तिथि व नाम अलग-अलग अंकित है। उक्त के सम्बन्ध में सूच्य है कि वर्तमान में श्री यतीश सिंह की सर्विस बुक में जन्म तिथि 14.04.1966 (छेड़ छाड़ के उपरान्त) अंकित है जबकि दिनांक 18.02.2010 को पनकी तापीय परियोजना द्वारा मुख्यालय को प्रेषित कार्मिक के पी.आई. एस विवरण में उनकी जन्मतिथि दिनांक 19.10.1967 अंकित थी। पी०आई०एस० में अंकन हेतु परियोजना द्वारा प्रगति इकाई को उपलब्ध कराये गये अभिलेख में अंकित जन्म तिथि 19.10.1967 व सेवानिवृत्त तिथि 31.10.2027 अंकित है। परन्तु देखने से उक्त दोनों तिथियों में भी छेड़ छाड़ परिलक्षित हो रही है (संलग्नक-38)

◦ जवाहरपुर तापीय परियोजना द्वारा प्रस्तुत वर्तमान सेवापुस्तिका में जन्म तिथि 14.04.1966 अंकित है जोकि ओवर राइटिंग प्रतीत होती है साथ ही शब्दों में यह अंकित है "चौदह अप्रैल उन्नीस सौ छि" जिससे यह प्रतीत होता है कि जन्म तिथि का अंकन अंकों एवं शब्दों में भिन्नता है। उक्त के अतिरिक्त यदि इनकी जन्म तिथि 14.04.1966 मानी जाती है तो इनकी सेवानिवृत्त तिथि 30.04.2026 होनी चाहिये परन्तु सेवापुस्तिका में सेवानिवृत्त तिथि 31.10.2027 अंकित है जोकि अधिवर्षिता आयु हेतु मानी गयी 60 वर्ष के अनुसार ठीक नही है। उक्त के अतिरिक्त यह भी अवगत कराना है कि सेवानिवृत्त तिथि 31.10.2027 में भी छेड़ छाड़ परिलक्षित होती है (संलग्नक-39)।

◦ जाँच हेतु उपलब्ध अभिलेख में पैन कार्ड, हाईस्कूल सर्टिफिकेट, आधार, टीसी में जन्म तिथि तथा नाम अलग-अलग अंकित है। कही-कही पर पिता का नाम भी अलग-अलग है। इस सम्बन्ध में सूच्य है कि जिस आधार पर पैन कार्ड, हाईस्कूल सर्टिफिकेट, आधार, टीसी में जन्म तिथि तथा नाम का अंकन किया गया है उससे सम्बन्धित अभिलेख जाँच समिति के पास उपलब्ध नहीं है जिसके कारण यह ज्ञात कर पाना सम्भव नहीं है कि कौन सी जन्म तिथि अथवा कौन सा नाम सही है।

◦ उक्त जाँच में किये गये ओवर राइटिंग के सम्बन्ध में विगत में तैनात अधिशासी अभियन्ताओं एवं कार्यकारी सहायक (वर्तमान में कार्यरत) से लिखित रूप में सूचना मांगी गयी, जिसमें सभी लोगों ने सूचित किया हैं कि ओवर राइटिंग के सम्बन्ध में उनकी कोई जानकारी नहीं है। इसलिये कार्यालय ज्ञाप संख्या 357-मा0सं0-05/उनिलि/2023-2 (17) मा0सं0-05/2023 दिनांक 04.03.2023 एवं 977-मा0सं0-05/उनिलि/2023-2 (17) मा0सं0-05/2023 दिनांक 09.06.2023 में अंकित बिन्दु संख्या 02 में अंकित तथ्यों के सम्बन्ध में यह स्पष्ट करना सम्भव नही हो पा रहा है कि उक्त कटिंग/ओवर राइटिंग किस अधिशासी अभियन्ता/कार्यकारी सहायक के कार्यकाल में हुआ हैं। यह भी सूच्य है कि श्री यतीश सिंह की सर्विस बुक के रखरखाव हेतु खण्ड में तैनात कुछ अधिशासी अभियन्ता एवं कार्यकारी सहायक सेवानिवृत्त हो चुके है।

14. Learned counsel for the respondents have placed reliance on a judgment passed by Supreme Court in Union of India Vs. Harnam Singh, 1993 SCC (2) 162.

15. Heard learned counsel for parties and perused the records.

16. Law in regard to determination of correct date of birth or age is well settled that provisions of Rule 2 of Rules 1974, shall be applicable that since at the time of entry into service, the petitioner has not passed High School or equivalent examination, therefore, date of birth recorded in service book at the time of entry shall be deemed to be correct date of birth.

17. In aforesaid background, Court finds that there are two different date of birth mentioned in the service record. One is 19.10.1967 without any overwriting and using white fluid and according to this petitioner’s date of retirement would be 31.10.2027. The other date of birth after overwriting and using white fluid is 14.04.1966 and accordingly to said date petitioner’s date of retirement would be 30.04.2026, though decision to retire him on 30.4.2026 was taken on basis of date of birth mentioned in Transfer Certificate issued in the year 2005, which is not the relevant document in terms of Rule 2 of Rules, 1974.

18. A decision to consider date of birth as 14.04.1966 being adverse to the petitioner, therefore, respondents could not take any decision at petitioner's back and further as referred above, since outcome of inquiry still remains unconclusive, therefore, dispute among date of birth i.e. 14.04.1966 and 19.10.1967, it would be appropriate that date of birth of the petitioner be considered as 19.10.1967, since overwriting has not been proved. Otherwise also, admittedly petitioner was not called to participate in any inquiry. There are various documents in service records which consistently recorded petitioner's date of birth as 19.10.1967. There was no reason for the petitioner to make forgery to change date of birth from 19.10.1967 to 14.04.1966, which would be against his interest, since he would retire early.

19. The Court takes note of few paragraphs of a judgment passed by Supreme Court in U.P. Madhyamik Shiksha Parishad v. Raj Kumar Agnihotri, (2005) 11 SCC 465. Relevant paragraphs of it are reproduced hereinafter:

'17. In the instant case, the U.P. Recruitment to Services (Determination of Date of Birth) Rules came into force w.e.f. 28-5-1974. Rule 2 of the Rules was amended by the First Amendment Rules, 1980 on 7-6-1980. The existing rule and the substituted rule are extracted hereinbelow:

Column 1 **(Existing rule)**	**Column 2** **(Rule as hereby substituted)**
"2. The date of birth of government servant as recorded in the certificate of his having passed the High School or equivalent examination, or where a government servant has not passed any such examination as aforesaid, the date of birth or the age recorded in his service-book at the time of his entry into government service, shall be deemed to be his correct date of birth or age, as the case may be, for all purposes in relation to his service including, eligibility for promotion, superannuation, premature retirement or retirement benefits, and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever."	"2. The date of birth of a government servant as recorded in the certificate of his having passed the High School or equivalent examination at the time of his entry into the government service or where a government servant has not passed any such examination as aforesaid or has passed such examination after joining the service, the date of birth or the age recorded in his service-book at the time of his entry into the government service shall be deemed to be his correct date of birth or age, as the case may be, for all purposes in relation to his service, including eligibility for promotion, superannuation, premature retirement or retirement benefits, and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever."

<u>As per the existing rule, the date of birth or the age recorded in his service-book at the time of entry into the government service shall be deemed to be the correct date of birth or age, as the case may be, for all purposes and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever.</u>

18 [Ed.: Para 18 corrected vide Official Corrigendum No. F.3/Ed.B.J./71/2005 dated 20-8-2005.] . The amended rule of 1980 was deemed to have come into force w.e.f 28-5-1974 and as per the substituted rule, the date of birth or the age recorded in the service-book at the time of entry into the government service shall be deemed to be the correct date of birth or age, as the case may be, for all purposes and that no application or representation shall be entertained for correction of date of birth or age in any circumstances whatsoever. The respondent has given his date of birth as 30-7-1941 at the time of entry into service which has also been recorded in the service records of the respondent. The above amended rule which came into force w.e.f. 7-6-1980 stipulates that no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever and that the date of birth or age recorded in the service-book at the time of his entry into government service shall be deemed to be his correct date of birth or age as the case may be for all purposes.

19. In view of the above rule, we hold that the correct date of birth of the respondent is only 30-7-1941 and the claim now made by the respondent to correct his date of birth from 30-7-1941 to 16-10-1945 cannot at all be entertained or encouraged.

20. In aforesaid circumstances, since impugned decisions suffer from errors on both account i.e. on law as well as on facts, therefore, Court finds that impugned orders dated 19.03.2026 and 23.03.2026, being passed behind the back of petitioner also as well as contrary to above referred position of law and in present set of circumstances, cannot sustain, therefore, set-aside and petitioner will continue to work considering his date of birth as 19.10.1967 i.e. his retirement date would be 31.10.2027. However, respondents will be at liberty to conclude the inquiry if still pending only with participation of the petitioner.

21. Writ Petition is accordingly disposed of.

(2026) 5 ILRA 453
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.05.2026

BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE PRAKASH PADIA, J.

Writ A No. 7653 of 2019

Ashok Kumar Yadav & Ors. **...Petitioners**
Versus
Union of India & Ors. **...Respondents**

Issue for Consideration

(1) Determination of arise of cause of action in respect of fixation of seniority.
(2) Scope of interference in review application.

Headnotes

(A) Service law – Fixation of seniority – Cause of action – Determination as to when it was arisen – Limitation to file OA before Central Administrative Tribunal (CAT) – Petitioner was appointed on 07.05.2013 on the direction of the Tribunal, which was also affirmed by the Supreme Court on 18.03.2013 – He was also regularized on 03.03.2014 – However, on the issue of fixation of seniority, CAT dismissed the OA holding it as barred by limitation on the ground that the cause of action was arisen in the year 1990 or latest in the year 2002 – The order of CAT was also affirmed by the Division Bench of the High Court – Review of the order of Division Bench sought :

Held : The concept of cause of action necessarily presupposes the existence of a right which has been violated. Until the petitioners were appointed and their seniority was fixed, no cause of action for a grievance qua seniority could have arisen against them – The petitioners are not seeking to reopen or disturb any settled seniority position dating back to 1990. What they seek is the correct implementation of a binding and final direction issued by the Principal Bench, CAT, New Delhi in O.A. No. 1215 of 2001, which attained finality up to the Supreme Court, directing that the seniority of trained apprentices be fixed according to their merit in the trade test. Since the petitioners were appointed and regularised under that litigation, they have a legal right to get their seniority fixed according to that direction. The respondents cannot be permitted to use the ground of limitation as a shield to defeat the enforcement of a direction which was obtained by the applicants-petitioners themselves after years of protracted litigation. [Para 6.1 and 6.5]

(B) Allahabad High Court Rules,, 1952 – Ch. V- Rules 12 – Civil Procedure Code – Order XLVII Rule 1 – Review – Scope of interference – Miscarriage of justice – Application – S. Nagaraj's case relied upon :

Held : If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent **–** It is this Court's constitutional and legal obligation to set right the injustice by recalling its earlier order.. (Para 6.6 amd 6.7) (E-1)

Case Law Cited

S. Nagaraj v. State of Karnataka, 1993 (Supp4) SCC 595 **– referred to.**

List of Acts

Administrative Tribunals Act, 1985 – S. 21.

List of Keywords

Limitation, Cause of action, Promotional benefits, Seniority list, Fixation of seniority, Application for condonation of delay, Apparent error on the face of record, Exercise of review jurisdiction, Miscarriage of justice, Determination of cause of action, Ground of limitation, Legal right to get seniority.

Case Arising From

Judgment and order dated 16.05.2019 of the Division Bench of the Allahabad High Court confirming the order of CAT dated 06.02.2019.

Appearances for Parties

Advs. for the Applicant : Fuzail Ahmad Ansari (Amicus curiae)
Advs. for the Respondents : P. N. Rai.

(Delivered by Hon'ble Mahesh Chandra Tripathi, J.)

A. Appearance of Counsel:-

1. Heard Shri Fuzail Ahmad Ansari, learned amicus curiae for the applicants-petitioners and Shri P.N. Rai, learned counsel for the respondents- opposite parties on the review application and the writ petition.

B. Prayer:-

2. The present review application has been preferred in Writ-A No. 7653 of 2019 (Ashok Kumar Yadav & 2 others v. Union of India & 2 others) with the prayer to review the judgment and order dated 16.05.2019 whereby the said writ petition was dismissed by a Division Bench of this Court comprising one of us, i.e., Hon'ble Prakash Padia, J. By the said judgment, the order dated 06.02.2019 passed by the Central Administrative Tribunal, Allahabad1, dismissing Original Application No.330/00624/20162 as barred by limitation, was upheld.

2.1. It is clarified that this order is being passed both on the review application as well as on the writ petition. Upon the review application being allowed and the judgment dated 16.05.2019 being recalled, Writ-A No.7653 of 2019 stands restored to its original number. This Court is accordingly proceeding to dispose of the said writ petition on merits as well. As such, both the proceedings are being finally disposed of by this common order for the reasons set forth in the following paragraphs.

C. Brief Facts:

3. The aforesaid Original Application in question was filed by the applicants-petitioners, namely Ashok Kumar Yadav, Riaz Babu and Chhail Behari, seeking directions against the railway authorities regarding their seniority and promotional benefits. The applicants prayed that they should be treated at par with one Mohd. Niyaz, who according to them had secured lower marks and a lower position in the merit list but was engaged earlier than them. They also sought promotional benefits similar to those granted to him.

3.1. The case of the applicants - petitioners before the Tribunal was that they were holders of National Apprenticeship Certificates and were regularised on the post of Helper with effect from 03.02.2014 by order dated 03.03.2014. They submitted representations against the said order and challenged the seniority list circulated on 13.10.2015. According to them, their seniority was not fixed in accordance with earlier directions issued by the Tribunal and the provisions of the Indian Railway Establishment Manual. They contended that the respondents failed to properly consider their claim and wrongly denied them the benefit of seniority and promotion.

3.2. The respondents opposed the Original Application and stated that the applicants - petitioners could not compare themselves with Mohd. Niyaz because he belonged to the Wireman Trade, whereas the applicants belonged to Fitter and Carpenter Trades. It was argued that separate seniority lists are maintained for different trades and therefore the claim of parity was not legally sustainable.

3.3. After hearing both sides and examining the records, the Tribunal found that Mohd. Niyaz had been engaged in service in the year 1990, whereas the applicants - petitioners themselves were

appointed only in the year 2014. Therefore, the applicants - petitioners could not claim equality or seniority with a person who had entered into its service much earlier. The Tribunal further observed that if the applicants - petitioners had any grievance regarding the appointment or seniority of Mohd. Niyaz, the cause of action had arisen in the year 1990 itself. However, the said Original Application was filed only in the year 2016 after an extraordinary delay of about 26 years.

3.4. The Tribunal considered the provisions of Section 21 of the Administrative Tribunals Act, 19853 relating to limitation and delay. The Tribunal further observed that the applicants had failed to give any satisfactory explanation for the enormous delay and had not even filed any proper application for condonation of delay. It held that the conduct of the applicants showed negligence and inaction from the very beginning. The Tribunal also noted that entertaining such delayed claims relating to seniority and promotion would disturb settled positions and create unnecessary complications.

3.5. Apart from limitation, the Tribunal also found no merit in the case of the applicants - petitioners because the comparison with Mohd. Niyaz was itself incorrect due to the difference in trades and separate seniority lists. Accordingly, the Tribunal held that the claim of the applicants - petitioners was barred by limitation as well as devoid of merit. Consequently, the Original Application was dismissed vide order dated 06.02.2019. The said order was challenged in the instant writ petition (Writ-A No. 7653 of 2019), which was dismissed by judgment and order dated 16.05.2019 review of which is being sought in the instant review application. For ready reference the order dated 16.05.2019 is reproduced below:

"Heard learned counsel for the petitioners. Sri Vivek Kumar Rai has accepted notice on behalf of the respondents.

The petitioners have preferred this petition against the judgment and order dated 6th February 2019 of the Central Administrative Tribunal whereby Original Application of the petitioners has been dismissed as barred by limitation.

A perusal of the pleadings reveal that the petitioners have filed Original Application claiming seniority in terms of directions dated 2.6.2002 given by the tribunal in Original Application Nos. 1021 and 1215 of 2001 as well as the directions given by the tribunal in Original Applications No. 1101 of 1997 and 511 of 2001 vide order dated 16.4.2002.

In view of the aforesaid relief claimed by the petitioners in the Original Application, the cause of auction for the seniority as claimed by them arose on 2.6.2002 and 16.4.2002 respectively. The petitioners preferred Original Application in the year 2016.

The tribunal in view of Section 21 of the Administrative Tribunals Act, 1985 as such has rightly held that the claim petition is hopelessly barred by time. It can not be entertained as there is no sufficient cause for condoning the delay. This apart, it has also been held that there is no purpose for disturbing the long drawn seniority which has been prevailing since 2002.

In view of the aforesaid facts and circumstances, we find no error or illegality in the order of the tribunal which may warrant exercise of its discretionary jurisdiction in the matter.

The writ petition is dismissed accordingly.'

D. Submission on behalf of the applicants-petitioners:-

4. Shri Fuzail Ahmad Ansari, learned amicus curiae for the applicants-petitioners submits that the judgment and order dated 16.05.2019 passed by the Division Bench as well as the order dated 06.02.2019 passed by the Tribunal suffer from an apparent error on the face of record inasmuch as both the Courts proceeded on an incorrect assumption that the cause of action of the petitioners had arisen in the year 1990 or at the latest in the year 2002, whereas in fact the applicants - petitioners were granted appointment only on 07.05.2013 and were regularised on 03.03.2014 with effect from 03.02.2014. It is thus submitted that the grievance regarding fixation of seniority actually arose only after their regularisation and preparation of seniority list in the year 2014.

4.1. It is further argued that the petitioners had completed their three years compulsory apprenticeship training during the period from 14.05.1986 to 15.05.1989 and had secured higher marks than one Mohd. Niyaz in the examination held at the end of the training period. The applicant-petitioner No.1- Ashok Kumar Yadav secured 445/700 marks, applicant-petitioner No.2 - Riyaz Babu secured 417/700 marks and applicant-petitioner No.3 - Chhail Bihari secured 413.5/700 marks, whereas Mohd. Niyaz secured only 391/700 marks. Despite having secured lesser marks, Mohd. Niyaz was appointed on the post of Khalasi (Group-D) on 02.04.1990, whereas the applicants - petitioners were denied similar benefit.

4.2. Learned amicus curiae further submits that after coming to know that several persons junior in merit had been granted appointment, the applicants - petitioners approached the Principal Bench of the Central Administrative Tribunal, New Delhi4 by filing O.A. No.1215 of 2001 (Chhail Bihari and 2 others vs. GM Central Railway). The said Original Application was allowed on 03.06.2002 in terms of the decision rendered in Original Application No.1021 of 2001 (Rama Shankar and 50 others vs. Union of India). By the aforesaid order, the respondents were specifically directed to maintain a seniority list of trained apprentices according to their merit and batch and to reconsider adjustment and appointment accordingly.

4.3. It is argued that the aforesaid order dated 03.06.2002 attained finality up to the Hon'ble Supreme Court. The writ petition challenging the same filed by the Railway Authorities before the Delhi High Court being W.P.(C) No.197 of 2003 was dismissed on 24.05.2012. Thereafter, the Special Leave Petition (SLP CC No.2941/2013) filed before the Hon□ble Supreme Court was also dismissed on 18.03.2013. Therefore, according to learned counsel, the directions issued vide order dated 03.06.2002 by the Tribunal regarding maintenance of seniority according to merit became final and binding upon the respondents.

4.4. Learned amicus curiae further submits that when the respondents failed to comply with the directions issued by the Principal Bench, CAT, New Delhi in O.A. No.1215 of 2001 even after dismissal of the writ petition preferred by the Railway Authorities, the petitioners were constrained

to initiate contempt proceedings before the Tribunal for enforcement of the aforesaid directions. It is argued that only thereafter the respondents proceeded to issue appointment orders to the petitioners on 07.05.2013. According to learned counsel, this itself clearly establishes that the petitioners had been continuously pursuing their grievance and had never abandoned their claim. Therefore, the findings recorded by the Tribunal as well as by the Division Bench of this Court that the applicants - petitioners were guilty of delay, laches and inaction are wholly incorrect, misplaced and contrary to the material available on record.

4.5. It is next submitted that even after the aforesaid orders attained finality, the respondents failed to correctly implement the directions issued by the Principal Bench, CAT, New Delhi. The petitioners were offered appointment only on 07.05.2013 on substitute Group-D posts and thereafter were regularised on 03.03.2014. However, while fixing their seniority on 09.04.2014, the Railway Authorities wrongly treated them as casual labour/substitute employees instead of giving them proper seniority according to their merit position amongst trained apprentices.

4.6. Learned amicus curiae further submits that immediately after regularisation and fixation of incorrect seniority, the petitioners submitted representation dated 14.03.2014 seeking implementation of the order dated 03.06.2002 passed in Original Application No.1215 of 2001. Thereafter, a final representation/appeal was also submitted before the General Manager, North Central Railway, Saraswati Parishar, Subedarganj, Allahabad on 15.09.2015 praying that the petitioners be placed above Mohd. Niyaz in accordance with their higher merit. The said representation was rejected on 27.10.2015 and thereafter the petitioners promptly filed Original Application in question before the Tribunal on 25.02.2016.

4.7. It is thus contended that the Tribunal as well as the Division Bench committed manifest error in holding that the Original Application was barred by limitation. According to learned counsel, the cause of action cannot be said to have arisen in the year 1990 because the petitioners themselves were not appointed at that time. Their real grievance arose only after the respondents failed to correctly implement the binding directions issued in O.A. No.1215 of 2001 and wrongly fixed their seniority after their appointment and regularisation in the year 2014.

4.8. It is further argued that the petitioners are not seeking disturbance of any settled seniority position from the year 1990, but are merely praying for implementation of the directions already issued by the Tribunal and affirmed up to the Hon’ble Supreme Court, to wit that trained apprentices are required to be assigned seniority according to their merit and batch. Therefore, the finding recorded by the Tribunal that the petitioners were seeking to reopen stale claims is factually and legally incorrect.

4.9. Learned amicus curiae also submits that the Tribunal failed to appreciate that the petitioners and Mohd. Niyaz belong to the same category of trained apprentices and the petitioners had consistently asserted their right from the very beginning. It is argued that once the respondents themselves granted appointment to the petitioners pursuant to the earlier litigation, they could not thereafter deny them appropriate seniority in accordance with merit.

4.10. Shri Ansari, learned amicus curiae, vehemently argued that although the applicants, in the first round of litigation, had succeeded in their claim up to the Supreme Court, there was no delay in raising the issue of seniority while instituting the second proceedings before the Tribunal. He submitted that, instead of deciding the matter on merits, the entire emphasis of the Tribunal was to non-suit the applicants on the ground that the gradation list had already been finalized, and to hold that the matter was stale and old. He further contended that, although the Tribunal touched upon the merits in a solitary paragraph, no reasons whatsoever were assigned for rejecting the claim, which has caused grave injustice to the applicants. As such, the order passed by the Division Bench is liable to be reviewed, and the Tribunal be directed to decide the matter on merits.

4.11. It is lastly submitted that the judgment and order dated 16.05.2019 passed by this Court proceeded only on the question of limitation without considering the true nature of the relief sought by the petitioners and the effect of the earlier binding orders passed by the Principal Bench, CAT, New Delhi, Delhi High Court and Hon'ble Supreme Court. It is therefore prayed that the judgment and order dated 16.05.2019 be reviewed and recalled and the writ petition be allowed on merits after restoration of the same in the interest of justice.

E. Submission of Respondents-opposite parties:-

5. Per contra, Shri P.N. Rai, learned counsel for the respondents-opposite parties submits that no error apparent on the face of record has been shown so as to warrant exercise of review jurisdiction by this Court. It is argued that the review applicants - petitioners are merely seeking rehearing of the matter on merits, which is not permissible in review proceedings.

5.1. It is further submitted that the Tribunal as well as the Division Bench of this Court have rightly held that the claim raised by the applicants was hopelessly barred by limitation. He also submits that the grievance of the applicants regarding appointment and seniority relates back to the year 1990 and, therefore, the Original Application filed in the year 2016 after an enormous and unexplained delay was rightly dismissed. It is also argued that separate seniority lists are maintained for different trades and, therefore, the applicants - petitioners cannot claim parity with Mohd. Niyaz, who belonged to a different trade. Accordingly, it is prayed that the review application being devoid of merit is liable to be dismissed.

F. Discussion and Findings:-

6. Having considered the submissions advanced by the learned counsel for the parties and having carefully perused the record, this Court is of the opinion that the review application deserves to be allowed. There are glaring errors apparent on the face of record which have resulted in a gross miscarriage of justice. Both the Tribunal as well as the Division Bench of this Court proceeded on a fundamentally erroneous appreciation of the factual matrix, resulting in an incorrect determination of the cause of action and consequently an unjust dismissal of the petitioners' claim on the ground of limitation.

6.1. The first and most significant error apparent on the face of record is the misplaced assumption taken by both the Tribunal and the Division Bench that the cause of action of the

applicants - petitioners arose either in the year 1990, when Mohd. Niyaz was appointed, or in the year 2002, when the Principal Bench, CAT, New Delhi issued directions in Original Application No.1215 of 2001. This assumption is demonstrably incorrect. The applicants - petitioners were not appointed into service until 07.05.2013 and were not regularised until 03.03.2014. A person who has not yet been appointed to service cannot possibly have a cause of action for grievance in respect of seniority inter se among members of that service. The concept of cause of action necessarily presupposes the existence of a right which has been violated. Until the petitioners were appointed and their seniority was fixed, no cause of action for a grievance qua seniority could have arisen against them.

6.2. The record further discloses that the applicants - petitioners were regularised on 03.03.2014 with effect from 03.02.2014. Even prior to the formal fixation of seniority, the applicants - petitioners submitted a representation on 14.03.2014 seeking correct implementation of the order dated 03.06.2002 passed in O.A. No.1215 of 2001, having apprehended that their seniority would not be fixed in accordance with the binding directions of the Tribunal. Their apprehension proved well-founded as the seniority was thereafter wrongly fixed on 09.04.2014, treating them as casual or substitute employees rather than as trained apprentices ranked by merit. Thereafter, the seniority list was formally circulated on 13.10.2015. The petitioners also preferred a representation before the General Manager on 15.09.2015 and, upon its rejection on 27.10.2015, promptly filed the Original Application in question before the Tribunal on 25.02.2016, i.e. within approximately four months of the final rejection. Read in sequence, the conduct of the petitioners is wholly inconsistent with any finding of laches or inaction; on the contrary, it demonstrates persistent and diligent pursuit of a legitimate claim at every stage.

6.3. The second error, equally apparent, is the failure of both the Tribunal and the Division Bench to appreciate the significance and binding nature of the earlier proceedings. The petitioners had been engaged in litigation since the year 2001 by filing Original Application No.1215 of 2001 before the Principal Bench, CAT, New Delhi. The said Original Application was allowed vide order dated 03.06.2002 directing the Railway Authorities to maintain seniority of trained apprentices according to merit and batch. The Railway Authorities, instead of complying with the said directions, challenged the same before the Delhi High Court and thereafter before the Hon'ble Supreme Court. In the meantime, having waited for years without any compliance, the petitioners were constrained to initiate contempt proceedings, being Contempt Petition No.778 of 2012 (Chhail Bihari and others v. Union of India), before the Tribunal. The challenge by the Railway Authorities also proved to be in vain as the SLP filed before the Hon'ble Supreme Court was ultimately dismissed on 18.03.2013. It was only under the pressure of the said contempt proceedings that the appointment orders were eventually issued on 07.05.2013. The order dated 08.05.2013 passed in Contempt Petition No.778 of 2012 records as under:

"Counsel for respondents states that in compliance of the order of this Tribunal dated 03.06.2002, appointment letters have been issued for three applicants and fourth applicant has since passed away. The appointment letters are taken on record and in view of the same, nothing survives in the petition. CP is accordingly closed. Notices are discharged. If, however, any grievance still remains, the applicants shall be at liberty to seek remedy through appropriate proceedings."

(Emphasis supplied)

6.4. The aforesaid order leaves no manner of doubt that the appointment of the petitioners on 07.05.2013 was not a voluntary act of compliance by the Railway Authorities but was the direct result of contempt proceedings initiated by the petitioners after the directions of the Tribunal had remained unimplemented for over a decade. More significantly, the Tribunal itself, while closing the contempt petition, expressly preserved the petitioners' right to seek further remedy through appropriate proceedings in respect of any remaining grievance. The Original Application in question filed by the petitioners in the year 2016, challenging the incorrect fixation of their seniority after regularisation, is precisely such an appropriate proceeding, sanctioned and anticipated by the Tribunal's own order. Calling such parties lazy or blaming them for delay would be completely opposite to what the record actually shows.

6.5. The third error is the failure to appreciate that the petitioners are not seeking to reopen or disturb any settled seniority position dating back to 1990. What they seek is the correct implementation of a binding and final direction issued by the Principal Bench, CAT, New Delhi in O.A. No.1215 of 2001, which attained finality up to the Supreme Court, directing that the seniority of trained apprentices be fixed according to their merit in the trade test. Since the petitioners were appointed and regularised under that litigation, they have a legal right to get their seniority fixed according to that direction. The respondents cannot be permitted to use the ground of limitation as a shield to defeat the enforcement of a direction which was obtained by the applicants - petitioners themselves after years of protracted litigation.

6.6. On the scope and power of review, and the constitutional obligation of Courts to rectify errors that cause miscarriage of justice, this Court finds direct guidance in the celebrated judgment of the Hon'ble Supreme Court in S. Nagaraj v. State of Karnataka5, wherein the Hon'ble Supreme Court authoritatively expounded the philosophy and amplitude of review jurisdiction. In paras 18 and 19 of the said judgment, the Hon'ble Supreme Court observed and held as under:

"18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (R.M. Sahai, J.) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its

mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue.

19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order, the courts culled out such power to avoid abuse of process or miscarriage of justice. In Raja Prithvi Chand Lal Choudhury v. Sukhraj Rai and others, AIR (1941) Federal Court 1, the Court observed that even though no rules had been framed permitting the highest court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in Rajinder Narain Rae v. Bijai Govind Singh, 1 Moo PC 117, that an order made by the Court was final and could not be altered,

'nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by common law, the same power which the Courts of record and statute have of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.''

Basis for exercise of the power was stated in the same decision as under:

'It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.'

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice

or to prevent the abuse of process of court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

(Emphasis supplied)

6.7. The observations of the Hon'ble Supreme Court in paras 18 and 19 in S. Nagaraj (supra) quoted above are directly applicable to the facts of the present case. The judgment and order dated 16.05.2019 was passed by the Division Bench on an erroneous assumption of fact, namely that the cause of action had arisen in the year 1990 or 2002, without adverting to the undisputed material on record showing that the applicants - petitioners were not even appointed until 07.05.2013 and were not regularised until 03.03.2014. This was exactly the kind of mistake, caused by ignoring important facts, which the Hon'ble Supreme Court has held to be a proper ground for review. As observed in S. Nagaraj (supra), if the Court finds that the order was passed by mistake and the Court would not have passed such order if the correct facts had been known, and if allowing the mistake to continue would cause injustice, then the Court can correct the error. It is this Court's constitutional and legal obligation to set right the injustice by recalling its earlier order. Both the impugned orders are accordingly vitiated by errors apparent on the face of record and are liable to be set aside.

G. Conclusion:-

7. In the light of the foregoing discussion, this Court holds as follows:

(i) Both the judgments and orders dated 16.05.2019 passed by this Court in Writ-A No. 7653 of 2019 and dated 06.02.2019 passed by the Tribunal in the Original Application in question suffer from following errors apparent on the face of the record:

(a) both the Tribunal and this Court proceeded on a fundamentally incorrect understanding of the cause of action by treating it as having arisen in the years 1990 or 2002, whereas the petitioners were appointed in service only on 07.05.2013, and consequently held the claim to be barred by limitation;

(b) both Courts failed to appreciate that the petitioners had been continuously and diligently pursuing their grievance since the year 2001, including through contempt proceedings, and were therefore not guilty of delay, laches, or inaction;

(c) both Courts failed to appreciate that the relief sought was not intended to disturb any settled seniority position, but merely sought enforcement of the binding directions issued in O.A. No.1215 of 2001, as affirmed up to the Hon'ble Supreme Court, requiring fixation of seniority according to merit and batch;

(ii) The judgment and order dated 16.05.2019 passed by the Division Bench of this Court was rendered on an erroneous assumption regarding the cause of action and is therefore liable to be reviewed;

(iii) The petitioners were not guilty of delay, laches, or inaction, as they had been continuously and diligently pursuing their grievance since the year 2001, including through contempt proceedings, and the Original Application instituted in the year 2016 was within limitation;

(iv) The relief sought by the petitioners does not involve disturbance of any settled seniority position, but relates to enforcement of the binding directions issued by the Principal Bench, CAT, New Delhi in Original Application No.1215 of 2001, which have attained finality up to the Hon'ble Supreme Court;

(v) Consequently, the review application deserves to be allowed and the

the judgment and order dated 16.05.2019 passed by the Division Bench of this Court is liable to be reviewed and consequently and the order dated 06.02.2019 passed by the Tribunal is liable to be set aside.

H. Final Orders:-

8. In view of the above, this review application is allowed. The judgment and order dated 16.05.2019 passed by the Division Bench is recalled. Writ-A No. 7653 of 2019 stands restored and is taken up on merits. The same is disposed of to the extent indicated above.

8.1. The order dated 06.02.2019 passed by the Tribunal is set aside. Original Application No.330/00624/2016 is restored to the file of the Tribunal for fresh adjudication on merits in accordance with law and in the light of the binding directions issued in O.A. No.1215 of 2001 which have attained finality up to the Hon'ble Supreme Court.

8.2. Before parting, this Court deems it necessary to record that the petitioners are trained apprentices of the 1986-1989 batch who have been relentlessly pursuing their legitimate claim for over two decades, first before the Tribunal, then through contempt proceedings, then before the Delhi High Court, then before the Hon'ble Supreme Court, and thereafter again before the Tribunal and this Court. They have, by now, in all likelihood superannuated from service. Their dispute, which has its origins in a denial of correct seniority upon regularisation in the year 2014, has effectively been converted by the passage of time into a dispute concerning monetary benefits, i.e. arrears of pay in the appropriate grade, promotional benefits, and pension computed on the basis of correct seniority. This Court expects that the Tribunal shall be alive to this reality while adjudicating the matter.

8.3. For the purposes of the remand, it is clarified that the following facts stand conclusively established on the record and shall not be reopened before the Tribunal:

(a) that the petitioners completed their apprenticeship training from the batch of 1986-1989 and secured higher marks than Mohd. Niyaz in the trade test;

(b) that by order dated 03.06.2002 passed in O.A. No.1215 of 2001, the Tribunal directed that seniority of trained apprentices be fixed according to merit and batch; and

(c) that the said directions attained finality up to the Hon'ble Supreme Court.

The Tribunal shall proceed on the basis of the aforesaid undisputed facts and confine its adjudication to the question of consequential relief admissible to the petitioners in accordance with law.

8.4. The Tribunal shall decide Original Application No.330/00624/2016 expeditiously, preferably within three months from the date a certified copy of this order is produced before it. No observation made in the judgment and order dated 16.05.2019 passed by the Division Bench and the order dated 06.02.2019 passed by the Tribunal shall influence the fresh consideration.

8.5. No order as to costs.

(2026) 5 ILRA 465
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 14.05.2026

BEFORE

THE HON'BLE KARUNESH SINGH PAWAR, J.

Writ A No. 7873 of 2024

Ashok Kumar Kanaujiya **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(1) Validity of disciplinary proceeding initiated with the allegation that an awards allegedly containing erroneous determination of compensation was passed.
(2) Effect of delay of seven years in initiating the disciplinary proceeding.
(3) Competence of District Magistrate to constitute the four-members Committee to inquire into the issue relating to determination of compensation and its effect on initiating the disciplinary proceeding.

Headnotes

(A) Service law – Disciplinary proceeding – Inquiry report – Allegation that the petitioner, while acting as competent authority, passed an awards allegedly containing erroneous determination of compensation, was leveled – Validity of disciplinary proceeding was challenged : (E-1)

Held : Prima facie, the allegations leveled against the petitioner relate only to passing of an allegedly erroneous or wrongful order while exercising quasi-judicial powers as Competent Authority Land Acquisition which does not warrant disciplinary proceedings in light of the dictum as reported in *Amresh Srivastava*'s case – The impugned disciplinary proceedings initiated against the petitioner cannot be sustained in the eyes of law. The material brought on record prima facie demonstrates that the allegations leveled against the petitioner pertain merely to alleged errors in determination of compensation while discharging quasi-judicial functions as Competent Authority for Land Acquisition under the National Highways Act, 1956, without there being any allegation or material indicating mala fide, corrupt motive, extraneous consideration or dishonest intention on the part of the petitioner. [Para 33 (1) (IX) and 34]

(B) Service law – Disciplinary proceeding – Unexplained delay of about seven years was taken place in initiating the disciplinary proceeding – Effect

Held : Initiation of disciplinary proceedings against the petitioner after more than seven years merely on the allegation of passing an erroneous order while exercising quasi-judicial powers does not appear to be in consonance with the settled principles governing disciplinary action against officers discharging quasi-judicial functions – The charge-sheet is arbitrary and illegal on the ground of unexplained delay alone, as recognised in decisions such as *Bani Singh's case and P.V. Mahadevan's case*. [Para 33 (1) XII and Para 33 (2) (II)]

(C) Service law – Disciplinary proceeding – District Magistrate, being Arbitrator, constituted a four-members Committee to inquire into the issue relating to determination of compensation – The Committee submitted its report, which formed the basis of initiating the disciplinary proceedings against the petitioner – Competence of District Magistrate to constitute the four-members Committee and the validity of the very genesis of initiating disciplinary proceeding felt into consideration

Held : From the statutory scheme contained under Section 3G(5) of the National Highways Act, 1956, it appears that the role of the arbitrator is confined to adjudication of disputes relating to determination of compensation arising out of acquisition proceedings. The provision does not contemplate delegation of arbitral functions or constitution of an independent fact-finding/enquiry committee for conducting an inquiry into the conduct of the Competent Authority for Land Acquisition – The District Magistrate, Amethi, while functioning as the Sole Arbitrator appointed by the Central Government under Section 3G(5) of the National Highways Act, 1956, could not have travelled beyond the statutory scope of reference/arbitration contemplated under the Act by passing orders in the pending arbitration proceedings directing constitution of a four-member committee for submission of an inquiry report. Such exercise was beyond the ambit of jurisdiction conferred upon the arbitral authority under the statutory scheme contained in Section 3G(5) of the Act. [Para 33 (3) (III) and (V)] (E-1)

Case Law Cited

Amresh Shrivastava vs. State of Madhya Pradesh and others, 2023 SCC OnLine SC 693; Union of India vs. K.K. Dhawan, (1993) 2 SCC 56; Abhay Jain vs. High Court of Judicature of Rajasthan and another, 2022 SCC OnLine SC 319; Zunjarrao Bhikaji Nagarkar vs. Union of India and others, (1997) 7 SCC 409; V.K. Ashokan vs. CCE, (2009) 14 SCC 85; Writ A No. 29828 of 2021, Prakash Gupta vs. State of U.P. and others; In re: State of Madhya Pradesh vs. Bani Singh, 1990 Supp (1) SCC 738 In re: P.V. Mahadevan vs. MD T.N. Housing Board, (2005) 6 SCC 636; V.K. Ashokan vs. Assistant Excise Commissioner and Others, (2009) 14 SCC 85 **– referred to.**

List of Acts

National Highways Act, 1956 **–** Section 3(a), 3G(5) and 3G(6); Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 **–** Rule 9(4); Arbitration and Conciliation Act, 1996.

List of Keywords

Charges, Erroneous rates of compensation, Acquisition proceeding, Approval, Arbitrator, Independent application of mind, Arbitration application, Disciplinary action, Review application, Transfer of proceeding, Inquiry report, Opportunity, Competent authority, Foundation, Compensation, Quasi-judicial function, Extraneous consideration, Arbitrary, Unjustified, Statutory jurisdiction, Financial interest, Award, Mala fide, Gratification, Decision making process, Negligence, Statutory scope of reference, Corrupt motive, Dishonest intention.

Case Arising From

Disciplinary proceeding initiated against the petitioner.

Appearances for Parties

Advs. for the Petitioner : Gaurav Mehrotra, Sr. Adv.; Ms. Alina Masoodi; Anurag Tripathi.
Advs. for the Respondents : Sandeep Sharma, S.C.

(Delivered by Hon'ble Karunesh Singh Pawar, J.)

1. Heard Sri Gaurav Mehrotra, learned Sr. Advocate assisted by Ms. Alina Masoodi, who has also independently argued this matter for the petitioner and Sri Sandeep Sharma, learned Standing Counsel for the respondents.

RELIEF SOUGHT

2. Under Challenge in this petition is the charge-sheet dated 11.01.2023, issued by the Inquiry Officer/respondent no. 3, contained in Annexure No. 1, whereby four charges have been levelled against the petitioner. The substance of the allegations is that, while functioning as the Competent Authority for Land Acquisition, the petitioner had allegedly determined erroneous rates of compensation in three separate awards pertaining to parcels of land situated in District Amethi, which had been acquired for the purpose of widening and four-laning of National Highway-56.

FACTUAL MATRIX OF THE CASE

3. The petitioner was posted and functioning as the Sub-Divisional Magistrate, Musafirkhana, District Amethi, during the period from 19.09.2015 to 25.03.2016. Prior thereto, the Ministry of Road Transport and Highways, Government of India, had issued a Gazette Notification dated 27.09.2011 under Section 3(a) of the National Highways Act, 1956, whereby the Sub-Divisional Magistrate, Musafirkhana, District Amethi, was notified as the 'Competent Authority'. Subsequently, another notification dated 12.07.2012 was issued under Section 3(a) of the Act, containing the schedule and brief description of the lands proposed to be acquired for the public purpose of construction of National Highway-56. Thereafter, a further Gazette Notification dated 26.04.2013 under Section 3(d) of the Act was issued by the Ministry of Road Transport and Highways declaring the said lands to have been acquired by the Central Government for the construction and development of National Highway-56.

4. In discharge of his duties as Competent Authority for Land Acquisition (hereinafter referred to as ?CALA?), the petitioner passed three separate awards relating to acquisition proceedings. The first award dated 03.12.2015 pertained to Village Poore Premshah, District Amethi. The second award dated 05.12.2015 related to Village Utelwa, District Amethi, while the third award dated 18.02.2016 concerned Village Niyawan, District Amethi.

5. The award relating to Village Poore Premshah was approved on 30.12.2015, the award concerning Village Utelwa was approved on 06.01.2016, and the award pertaining to Village Niyawan received approval on 07.03.2016. The approvals were granted by the Regional Officer, NHAI (National Highways Authority of India), upon consideration of the recommendations and submissions made by the Project Director, Project Implementation Unit, NHAI (hereinafter referred to as ?PD-PIU, NHAI?). On 26.12.2015, certain objections were communicated by the PD-PIU, NHAI, to the petitioner in relation to the draft award concerning Village Niyawan, District Amethi.

6. Thereafter, by Notification dated 22.02.2016, issued by the Ministry of Road Transport and Highways, Government of India, the District Collector, Amethi, was appointed as the Arbitrator under sub-section (5) of Section 3G of the National Highways Act, 1956 (hereinafter referred to as the 'Highways Act'). It is significant to note that, after a lapse of nearly five years from the dates of

the awards dated 03.12.2015 and 05.12.2015, arbitration applications were instituted on 19.12.2020 by the PD-PIU, NHAI before the District Magistrate, Amethi, challenging the aforesaid awards relating to Village Poore Premshah and Village Utelwa respectively.

7. The District Magistrate, Amethi, acting as the sole Arbitrator, passed an order dated 12.10.2022 in the arbitration proceedings (Annexure No. 6), directing constitution of a four-member committee for examining the rates of compensation determined in the awards in question. The said committee comprised: (i) the Additional District Magistrate (as Chairman), (ii) the Sub-Divisional Magistrate, Musafirkhana (as member), (iii) the Chief Treasury Officer, Amethi as a member (as member), (iv) the Assistant Inspector General (Stamp and Registration) (as member). Pursuant to the aforesaid order dated 12.10.2022, the committee submitted its report on 28.10.2022 (Annexure No. 7). Thereafter, the Arbitrator/District Magistrate, Amethi, forwarded the said report to the Additional Chief Secretary, Appointments, Government of Uttar Pradesh, Lucknow, vide letter dated 29.10.2022 (Annexure No. 8), without applying any independent application of mind, requesting initiation of further action in relation to the alleged erroneous determination of compensation by the petitioner and four other officers.

8. Subsequently, on 25.11.2022, another arbitration application came to be filed challenging the award dated 18.02.2016 relating to Village Niyawan, after a lapse of approximately six years from the date of the said award. Thereafter, the State Government, vide order dated 05.12.2022, initiated disciplinary proceedings against the petitioner. In pursuance thereof, the petitioner was served with the impugned charge-sheet dated 11.01.2023 on 31.01.2023, containing four charges alleging that the petitioner had incorrectly and erroneously determined the rates of compensation in the awards relating to Village Poore Premshah dated 03.12.2015, Village Utelwa dated 05.12.2015, and Village Niyawan dated 18.02.2016, besides allegations relating to distribution and disbursement of compensation amounts.

9. Pursuant to an application moved by the petitioner under the Right to Information Act, the concerned Section Officer furnished information vide replies dated 12.05.2023 and 23.08.2023 disclosing that disciplinary proceedings against other officers named in the four-member committee report dated 28.10.2022, namely the then Competent Authorities/Sub-Divisional Magistrates, Musafirkhana, Shri Subhash Prajapati and Shri Abhay Kumar Pandey, had already been dropped, while the petitioner alone had been singled out for disciplinary action. The petitioner thereafter submitted his detailed reply to the charge-sheet on 22.10.2024.

10. In Civil Miscellaneous Application No. 120 of 2023, titled Girija Shankar Dwivedi vs. State of U.P. and others, a Division Bench of this Court, while allowing the review application, directed transfer of all arbitration proceedings pending before the District Magistrate, Amethi, to the Commissioner, Lucknow, as reflected from Annexure No. RA-6.

11. The Inquiry Officer thereafter submitted his inquiry report dated 08.01.2025. Consequent thereto, a show-cause notice dated 07.02.2025 was served upon the petitioner under Rule 9(4) of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 (hereinafter referred to as the 'Rules, 1999'), calling upon him to submit his representation against the findings recorded in

the inquiry report. The copy of the inquiry report was supplied to the petitioner on 28.02.2025, which forms part of the record at page no. 14 of the counter affidavit.

12. Thereafter, this Court, vide interim order dated 28.04.2025 passed in the present writ petition, granted protection to the petitioner by directing that no final order in the pending departmental proceedings shall be passed without obtaining prior leave of the Court. In compliance of the aforesaid proceedings, the petitioner submitted his representation under Rule 9(4) of the Rules, 1999 on 19.05.2025.

13. It is lastly stated that the Special Secretary, Government of Uttar Pradesh, vide communication dated 30.03.2026 addressed to the Inquiry Officer, categorically acknowledged that no opportunity had been afforded to the petitioner to cross-examine witnesses during the course of disciplinary proceedings. Consequently, the Inquiry Officer was directed to submit a revised inquiry report, as evidenced from Annexure No. CA-4."

SUBMISSIONS ON BEHALF OF THE PETITIONER

14. Learned counsel for the petitioner submits that the impugned charge-sheet as well as the consequential disciplinary proceedings initiated against the petitioner are founded solely on the allegation that, while discharging his judicial/quasi-judicial functions as the Competent Authority for Land Acquisition (CALA), the petitioner passed awards allegedly containing erroneous determination of compensation. It is vehemently contended that the charge-sheet does not contain even a whisper of any allegation relating to mala fide intention, extraneous consideration, illegal gratification, or abuse of official position. The entire foundation of the disciplinary proceedings rests merely upon the allegation that the awards passed by him were erroneous in nature.

15. It is further submitted that the petitioner, while functioning as CALA, passed awards only in respect of three villages, namely, Village Poore Premshah, Village Utelwa, and Village Niyawan. The petitioner merely adopted and followed the pattern, methodology, and rates of compensation already determined by his predecessor, namely Shri R.D. Ram, who had earlier been posted as Sub-Divisional Magistrate, Musafirkhana, and had acted as the Competent Authority prior to the petitioner?s posting during the period commencing from 19.09.2015 to 25.03.2016. Thus, the petitioner cannot be singled out when the compensation rates had already been determined and followed in earlier awards passed by his predecessor.

16. Learned counsel further submits that, prior to passing the final awards, the petitioner had duly circulated and shared the draft awards pertaining to all the aforesaid three villages with the PD-PIU, NHAI, strictly in compliance with Guideline 3.5 of the Manual of Guidelines on Land Acquisition for National Highways. The said guideline specifically casts responsibility upon the Project Executing Agency, namely PD-PIU, NHAI, to examine the proposed awards and raise objections, if any. It is contended that objections were received only in respect of Village Niyawan, and even those objections were confined merely to the area of certain plots of land and not with regard to the rates of compensation or any alleged error in the calculation thereof. At no point of time did the PD-PIU, NHAI point out any alleged erroneous determination of compensation or any

defect in calculation, despite the fact that the said authority was equally responsible in the process relating to determination and scrutiny of compensation payable under the awards.

17. It is further submitted that the petitioner passed all the aforesaid awards dated 03.12.2015, 05.12.2015, and 18.02.2016 in exercise of powers under sub-section (1) of Section 3G of the National Highways Act, 1956. No arbitration proceedings were initiated within the prescribed period of limitation and the arbitration applications came to be filed only after an extraordinary and unexplained delay of approximately four to five years. The arbitration application challenging the awards relating to Villages Poore Premshah and Utelwa was admittedly filed by the PD-PIU, NHAI on 19.12.2020, after 4-5 years of the awards.

18. In support of the aforesaid submissions, learned counsel for the petitioner has placed reliance upon the judgment of the Hon?ble Supreme Court in Amresh Shrivastava Vs. State of Madhya Pradesh and others, 2023 SCC OnLine SC 693, wherein the Apex Court held that disciplinary proceedings are not warranted merely because an officer, while discharging quasi-judicial functions, has passed an award which is subsequently alleged to be erroneous, unless there exist allegations of extraneous consideration and mala fide conduct.

19. Reliance has also been placed upon the judgment of the Hon?ble Supreme Court in Union of India Vs. K.K. Dhawan, (1993) 2 SCC 56, wherein the Supreme Court laid down the parameters governing disciplinary proceedings against officers exercising judicial or quasi-judicial powers and held that such proceedings would be permissible only if the conduct of the officer falls within the categories specifically enumerated therein. It is submitted that none of the conditions laid down in the aforesaid judgment are attracted in the present case.

20. Learned counsel submits that the impugned charge-sheet does not allege that the petitioner acted with mala fide intention, received any illegal gratification, or acted on the basis of any extraneous consideration. Therefore, at the most, the allegations against the petitioner may amount merely to passing an erroneous or incorrect order, which by itself cannot constitute misconduct warranting disciplinary proceedings in view of the law laid down in K.K. Dhawan (supra).

21. Further reliance has been placed upon the judgment of the Hon’ble Supreme Court in Abhay Jain Vs. High Court of Judicature of Rajasthan and another, 2022 SCC OnLine SC 319, wherein it has been reiterated that even if an officer is found negligent while discharging judicial or quasi-judicial functions, such negligence by itself would not amount to misconduct so as to justify disciplinary action. The Supreme Court categorically held that disciplinary proceedings cannot be initiated merely because an officer has passed an incorrect order or because another view was possible in the matter. Similar principles were earlier reiterated in Zunjarrao Bhikaji Nagarkar Vs. Union of India and others, (1997) 7 SCC 409.

22. The next submission advanced on behalf of the petitioner is that the disciplinary proceedings suffer from gross and unexplained delay and are, therefore, liable to be quashed on this ground alone. It is submitted that the charges relate to awards passed in the years 2015 and 2016, whereas the charge-sheet came to be issued only on 11.01.2023 and served upon the petitioner on 31.01.2023, after an inordinate delay of approximately six to seven years.

23. Elaborating the chronology, learned counsel submits that the award relating to Village Poore Premshah was passed on 03.12.2015 and approved on 30.12.2015 by the Regional Officer, PD-PIU, NHAI, whereas the arbitration application challenging the same was filed only on 19.12.2020, followed by issuance of the impugned charge-sheet on 11.01.2023, after nearly seven years. Similarly, the award relating to Village Utelwa was passed on 05.12.2015 and approved on 06.01.2016, yet the disciplinary proceedings were initiated only after several years. Likewise, the award concerning Village Niyawan was passed on 18.02.2016 and approved on 07.03.2016, whereas the arbitration proceedings challenging the said award were instituted only on 25.11.2022, after more than six years.

24. It is thus contended that initiation of disciplinary proceedings after such an enormous and unexplained lapse of time is wholly arbitrary, unjustified, and contrary to settled principles of law. In support of the aforesaid contention, learned counsel has relied upon the judgments of the Hon'ble Supreme Court in State of Madhya Pradesh Vs. Bani Singh, 1990 Supp (1) SCC 738 and P.V. Mahadevan Vs. Managing Director, Tamil Nadu Housing Board, (2005) 6 SCC 636, wherein the Apex Court has deprecated initiation of disciplinary proceedings after long and unexplained delay.

25. Lastly, learned counsel for the petitioner submits that the District Magistrate, Amethi, had been appointed as the sole Arbitrator by the Central Government under the provisions of the National Highways Act, 1956 and, therefore, was required to act strictly within the jurisdiction conferred under sub-section (5) of Section 3G of the Act. It is contended that the Arbitrator exceeded his statutory jurisdiction by directing constitution of a four-member committee for conducting an inquiry into the awards in question and for submission of a report concerning alleged erroneous determination of compensation.

26. It has further been argued that, although several officers were named in the report of the four-member committee, disciplinary proceedings against the other officers have either been dropped or not initiated at all, whereas the petitioner alone has been selectively targeted and singled out for departmental action in an arbitrary and discriminatory manner. In support of the said contention, learned counsel has also placed reliance upon the judgment of the Hon?ble Supreme Court in V.K. Ashokan Vs. CCE, (2009) 14 SCC 85."

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

27. Per contra, Shri Sandeep Sharma, learned Standing Counsel appearing on behalf of the respondents, has opposed the submissions advanced by learned counsel for the petitioner and submits that the departmental proceedings against the petitioner have been validly initiated under Rule 7 of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999, on the allegations relating to irregular and erroneous determination of compensation payable in respect of lands situated in Villages Poore Premshah, Utelwa, and Niyawan.

28. It is submitted that, pursuant to initiation of the disciplinary proceedings, the Inquiry Officer, along with the duly approved charge-sheet, served the same upon the delinquent officer/petitioner vide communication dated 31.01.2023. Thereafter, the petitioner participated in

the proceedings and submitted his replies on various dates, namely 01.06.2023, 16.06.2023, and subsequently a supplementary reply dated 22.10.2024. Learned Standing Counsel submits that adequate opportunity of hearing was afforded to the petitioner during the course of the inquiry proceedings, including personal hearing granted on 22.10.2024, on which date the petitioner submitted his supplementary response to the charges levelled against him.

29. It is further submitted that, after submission of the inquiry report, the petitioner was again afforded opportunity to submit his representation in terms of Rule 9(4) of the Rules, 1999 vide notice dated 07.02.2025, to which the petitioner submitted his detailed reply/representation vide letter dated 19.05.2025. The petitioner has, thus, been granted full opportunity at every stage of the departmental proceedings and the principles of natural justice have been duly complied with.

30. Learned Standing Counsel has further submitted that, in compliance of the order passed by the Division Bench of this Court in Civil Miscellaneous Application No. 120 of 2023, Girija Shankar Dwivedi Vs. State of U.P. and others, all arbitration proceedings pending before the District Magistrate, Amethi, stood transferred to the Court of the Commissioner, Lucknow Division, where the same are presently pending consideration.

31. Lastly, learned Standing Counsel submits that the arbitration proceedings concerning the awards passed by the petitioner and the departmental proceedings initiated against him operate in altogether distinct and separate fields. Mere pendency of arbitration proceedings does not create any legal embargo upon continuation of departmental proceedings, inasmuch as both proceedings are independent in nature and can validly proceed simultaneously in accordance with law.

CONSIDERATION BY THE COURT

32. Perused the record.

33. On the basis of the pleadings exchanged between the parties and the grounds urged in the present writ petition, the following issues arise for consideration by this Hon’ble Court:

(i) Whether the initiation of disciplinary proceedings by the respondent authorities against the petitioner, merely on the allegation of having passed an erroneous order while discharging quasi-judicial functions as Competent Authority for Land Acquisition, in the absence of any allegation of mala fide or extraneous consideration, is legally sustainable in the facts and circumstances of the present case?

(ii) Whether the initiation of disciplinary proceedings against the petitioner on stale charges by the respondents authorities, after an inordinate and unexplained delay of approximately six to seven years, is sustainable in the eyes of law?

(iii) Whether the District Magistrate, Amethi appointed as the Sole Arbitrator by the Central Government, go beyond the scope of reference/arbitration as provided in the statutory scheme as contained in National Highways Act, 1956 under sub-section (5) of Section 3G and pass orders in

arbitration proceedings pending before it directing for constitution of a four-members committee to submit an enquiry report? "only rephrase the sentences?

RE: ISSUE NO. 1 - DISCUSSION AND FINDINGS

I. The aforesaid material on record prima facie reflects that the petitioner, while functioning as Competent Authority for Land Acquisition, had passed awards only in respect of three villages namely Poore Premshah, Niyanwan and Utelwa, which were affected by the widening and four-laning of National Highway-56, whereas the awards pertaining to the remaining twenty-seven villages had already been passed by his predecessor-in-office, Shri R.D. Ram, while posted as Sub-Divisional Magistrate, Musafirkhana, prior to the petitioner?s tenure from 19.09.2015 to 25.03.2016. It further appears that the petitioner had followed the compensation rates already determined by his predecessor and had also shared the draft awards in respect of the aforesaid three villages with the Project Director Project Implementation Unit, National Highways Authority of India (PD-PIU, NHAI) in consonance with Guideline 3.5 of the Manual of Guidelines on Land Acquisition for National Highways. The Guideline 3.5 of of the Manual of Guidelines on Land Acquisition for National Highways is as under:-

"3.5 Determination of the amount of Compensation in respect of land by the CALA

3.5.1 Determination of market value of land:

A number of issues have come to notice regarding the acquisition of land, especially those relating to determination of the market value of land, treatment of the nature of land and its impact on the market value of land and the total compensation amount awarded in respect of land acquisition for the National Highways. These are discussed and elaborated in the following sub-paras:

(i) It is re-iterated in the first instance that the CALAs, though officers from the State Governments, are appointed as such by the Central Government under the NH Act, 1956 and, accordingly, the CALAs are obliged to act in accordance with the provisions contained in the NH Act, 1956 and the quidelines issued by this Ministry in furtherance thereof in discharge of their quasi-judicial functions.

(ii) Further, it has been observed that the officers-in-charge of the Project Implementing Agencies (e.g. NHAI, NHIDCL, State PWDs and BRO) of the Central Government do not undertake any due diligence qua the amount of Award and leave it entirely to the CALAs on the ground that it is not their domain to question the CALAS in this behalf. This has been the practice followed so far. It may be noted that, as representatives of the land acquiring agency (i.e. the Central Government), they cannot entirely distance themselves in this process. They have to watch the financial interests of the Central Government as representatives of the land acquiring agency. As such, the concerned field officers of MORTH/NHAI/NHIDCL/State PWDs, executing NH Projects on behalf of MoRTH, may request the concerned CALA to share the Draft Award with them for furnishing their comments, if any. They would generally oversee that the compensation being awarded and paid for land acquisition is in accordance with the law and that any extraneous

factors or considerations are not built therein. Any such inconsistencies, timely rectification of which is necessary in the interests of the landowners as well as the Central Government, must be pointed out to the CALA immediately in writing for reconciliation and correction."

II. A perusal of Guideline 3.5 of the Manual prima facie demonstrates that although the Competent Authority Land Acquisition discharges quasi-judicial functions under the National Highways Act, 1956, the officers of the project implementing agency, including NHAI, are also required to undertake due diligence with respect to the amount proposed in the award and to safeguard the financial interests of the Central Government. The said Guideline further contemplates that the draft award may be shared with the concerned authorities of NHAI so as to enable them to point out any inconsistency, deviation or irregularity before the award is finalized.

III. Further, Guideline 3.13.2 of the Manual clearly sets out the duties and responsibilities of the PD-PIU, NHAI and specifically casts upon such authority the obligation to assist the Competent Authority Land Acquisition in determination of market value, verify correctness of mathematical calculations, identify deviations from statutory provisions or guidelines at the draft stage itself and ensure that the compensation proposed in the award is in accordance with law. Guideline 3.13.2 are reproduced as under:-

"The officer-in-charge of the project executing agency is expected to discharge his role as the owner of the project at every stage of completion of the LA process and establish his project ownership by taking the lead at every stage. Briefly stating, his role and responsibilities include the following:

(i) Active coordination and collaboration with the DPR Consultants regarding all aspects of land acquisition right from the stage of preparation of DPR/Feasibility Report

(ii) At the first level, call on the concerned Deputy Commissioner/ District Collector and the CALA to brief them about the road project and the need for timely acquisition of land for the said project. Keep this contact on a continuing basis;

(iii) At the next level, coordinate with and liaise with the concerned field officers from the Departments of PWD, Forest, Horticulture, Electricity and other Utility owning departments and brief them about the importance of the project and their support,

(iv) Request the Deputy Commissioner/ District Collector to convene periodical review meetings of all concerned with refreshments/lunch/dinner hosted by the officer-in-charge of the project executing agency.

(V) Ensure timely issue of Notifications under Sections 3(a), 3(A) & 3(D) of the National Highways Act, 1956;

(vi) Ensuring timely conduct of Joint measurement survey, wherever required;

(vii) Coordination with the CALA and officers of other concerned departments, i.e. Forest, Horticulture, PWD for valuation of assets attached to the land and for seeking pre-project statutory clearances:

(viii) To assist the CALA in determination of market value of land as per the provision of the Act, while observing the quidelines issued by the Ministry of Road Transport & Highways in furtherance of the Act in this behalf;

(ix) To bring any deviation from legal provisions/ quidelines to the Notice of the CALA for necessary correction at the draft stage of the Award, correct positioning of the nature/ category of land in the Award, assist the CALA in correctness of mathematical calculations, and to ensure that compensation for Government land is not included in the Award;

(x) Expeditious settlement of compensation claims/declaration of award;

(xi) Identification of missing plots and expediting the LA process for the same;

(xii) Expediting appointment of Arbitrators, as and when required; (xii)

(xiii) Challenging Arbitral Awards, in event of their being unreasonable;

(xiv) Mutation of acquired land in favour of Central Government in the Record of Rights;

(xv) To ensure strict compliance of Guidelines issued by MoRT&H from time to time."

IV. From the material brought on record, it further appears that draft awards in respect of all the three villages were duly shared by the petitioner with the PD-PIU, NHAI and objections were received only in relation to village Niyanwan and that too merely regarding the area of a particular plot and not with respect to the rate or calculation of compensation awarded by the petitioner. Prima facie, therefore, if there existed any alleged error in determination of compensation or mathematical calculation thereof, the same could have been identified and pointed out by the PD-PIU, NHAI prior to finalization of the awards.

V. It also appears from a perusal of Section 3G of the National Highways Act, 1956 that the said enactment constitutes a self-contained code governing not only the determination of compensation but also the remedy available against such determination. Under sub-section (5) of Section 3G, if the amount determined by the Competent Authority is not acceptable to either of the parties, the matter may be referred to arbitration before an arbitrator appointed by the Central Government. Sub-section (6) further provides that the provisions of the Arbitration and Conciliation Act, 1996 shall apply to every such arbitration. Guideline 3.5 is being reproduced as under:-

3G. Determination of amount payable as compensation.-

(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section

(2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their

respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government—

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change."

VI. Section 3G(5) of the National Highways Act, 1956 provides that if either party is dissatisfied with the compensation determined by the Competent Authority, the dispute may be

referred to an arbitrator appointed by the Central Government, and under Section 3G(6), the provisions of the Arbitration and Conciliation Act, 1996 apply to such proceedings. Thus, any grievance against the compensation awarded by the Competent Authority Land Acquisition while exercising quasi-judicial powers under Section 3G(1) was required to be challenged through arbitration. In the present case, the petitioner had passed awards dated 03.12.2015, 05.12.2015 and 18.02.2016 relating to villages Poore Premshah, Utelwa and Niyanwan in District Amethi while acting as Competent Authority Land Acquisition. However, no arbitration proceedings were initiated within the prescribed limitation period, and only subsequently in 2020 the Project Director, Project Implementation Unit filed an arbitration application dated 29.12.2020 concerning the awards relating to villages Poore Premshah and Utelwa.

VII. At this stage, reference may also be made to the judgment rendered by the Hon?ble Supreme Court in Amresh Shrivastava (supra), wherein it has been held that disciplinary proceedings are not ordinarily warranted merely on account of passing of an allegedly erroneous order while exercising quasi-judicial powers unless such order is shown to have been influenced by mala fides, extraneous consideration, gratification or dishonest intention. The Hon?ble Supreme Court further observed that where the order appears to have been passed in good faith and without any indication of impropriety, initiation of disciplinary proceedings would not be justified. The relevant extract of the Judgment reported in Amresh Shrivastava (supra), is being reproduced hereunder for ease of perusal and kind consideration of this Hon'ble Court:-

The facts as have been narrated above are not in dispute. Two aspects which need to be considered are:

(1) Whether the chargesheet issued to the Appellant by the Respondent-State would fall within the scope of observations that have been carved out by this Court in K.K. Dhawan case (supra)?

(2) Whether inordinate unexplained delay in issuance of the chargesheet (in this case 14 years) would in itself be a ground for quashing the chargesheet issued to the appellant?

15. As regards the first question in K.K. Dhawan case (supra), this Court carved out the following situations where the government is not precluded from taking disciplinary actions for violation of the Code of Conduct:-

"(1) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) If there is prima facie material to show recklessness or misconduct in the discharge of his duty,

(i) if he has acted in a manner which is unbecoming of a Government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party,

(vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."

After carving out the above exceptions, this Court proceeded to further observe that mere technical violations or the fact that an order is wrong, if not falling under the above enumerated instances, does not warrant disciplinary actions. It was further reiterated that each case depends on its facts, and absolute rules cannot be postulated. The above instances as referred and reproduced hereinabove, are thus only a guide and not meant to be mandatorily adhere to without exception.

16. In the present case, we are of the considered view that the charges alleged against the Appellant in the chargesheet fall under the category of a wrongful order, which does not appear to have been influenced by extraneous factors or any form of gratification. It appears that the order has been passed in good faith, without any indication of dishonesty. Furthermore, the facts outlined in the Show Cause Notice do not suggest any such impropriety. The power exercised by the Appellant in his capacity as a Tehsildar, while passing the order of Land Settlement Order, cannot be considered of a nature that would warrant disciplinary proceedings against him. The decision relied upon by the Counsel for the Appellant as mentioned above, supports this view. Consequently, the first question is answered in favor of the Appellant.

17. As to the second question, regarding whether delay is a ground for stopping the departmental proceedings at the stage of the chargesheet itself, suffice it to say that this varies from case to case. However, in the instant case where there is unexplained inordinate delay in initiating departmental proceedings despite the alleged misconduct being within the knowledge of the department, but still no departmental proceedings are initiated, the answer must go in favour of the employee. However, there may be cases where the department was not even aware of such irregularities or the misconduct, which is of such a nature that it is indicative, based on material considerations of factors other than merit, such as extraneous influences and gratifications. In such cases, such a delay, by itself would not be a valid ground to scuttle the initiation of the process of departmental proceedings.

18. Reference in this regard can be made to the decision of this court in State of Madhya Pradesh v. Bani Singh, wherein the court noted that there was no reason to interfere with the quashing as the disciplinary proceedings were initiated after 12 years of delay. A reference should also be made to the decision of this Court in P.V. Mahadevan v. MD, T.N. Housing Board, where it has been reiterated that continuing the departmental proceedings after an undue delay would be unjust, causing unnecessary mental distress and damaging the reputation of the employee for the mistakes committed by the department in initiating disciplinary proceedings.

19. In view of the above, the present appeal is allowed and the Impugned Judgment dated 30.04.2019 passed by the Division Bench of the High Court is set aside and consequently the order dated 26.04.2017 passed by the learned Single Judge stands restored."

VIII. It is also well settled that in matters involving officers exercising judicial or quasi-judicial powers, what is relevant is not merely the correctness of the ultimate decision but the decision-making process adopted by such officer. In this regard, reference may be made to the judgment in K.K. Dhawan (supra), wherein the Hon'ble Supreme Court held that disciplinary proceedings against an officer exercising quasi-judicial functions would be maintainable only if the conduct of such officer falls within the recognized exceptions enumerated therein.

IX. A perusal of the impugned charge-sheet dated 11.01.2023 further reflects that there is no allegation whatsoever that the petitioner acted mala fide or passed the awards in anticipation of any gratification or on account of any extraneous consideration. Prima facie, the allegations levelled against the petitioner relate only to passing of an allegedly erroneous or wrongful order while exercising quasi-judicial powers as Competent Authority Land Acquisition which does not warrant disciplinary proceedings in light of the dictum as reported in Amresh Srivastava (supra).

X. Reference may also be made to the judgments rendered by the Hon'ble Supreme Court in Abhay Jain (supra) and Zunjarrao Bhikaji Nagarkar (supra), wherein it has consistently been held that mere passing of an erroneous order, or even negligence while discharging judicial or quasi-judicial functions, would not by itself amount to misconduct unless accompanied by mala fides, extraneous consideration or dishonest intention.

XI. The aforesaid principles also appear to have been followed by this Court in Prakash Gupta Vs. State of U.P. and others, (Writ A No. 29828 of 2021) wherein it was observed that disciplinary proceedings cannot be initiated merely because a judicial or quasi-judicial authority may have passed an incorrect or erroneous order in absence of allegations relating to mala fides or extraneous consideration.

XII. Thus, even assuming, that there was any error in determination of compensation by the petitioner while passing the awards dated 03.12.2015, 05.12.2015 and 18.02.2016, the statutory remedy available to the aggrieved party was to seek arbitration under the provisions of the National Highways Act, 1956, which remedy admittedly came to be invoked subsequently. Thus, initiation of disciplinary proceedings against the petitioner after more than seven years merely on the allegation of passing an erroneous order while exercising quasi-judicial powers does not appear to be in consonance with the settled principles governing disciplinary action against officers discharging quasi-judicial functions.

XIII. Accordingly, the issue is liable to be answered against the respondent authorities and in favour of the petitioner, inasmuch as initiation of disciplinary proceedings merely on the allegation of passing an erroneous order while discharging quasi-judicial functions, in the absence of any allegation of mala fide, extraneous consideration or dishonest intention, does not appear to be legally sustainable in the facts and circumstances of the present case.

RE: ISSUE NO. 2 - DISCUSSION AND FINDINGS

I. The impugned charge-sheet dated 11.01.2023 pertains to alleged erroneous determination and disbursal of compensation by the petitioner while exercising quasi-judicial powers as

Competent Authority Land Acquisition under the National Highways Act, 1956 in awards passed during 2015?2016 relating to villages Poore Premshah, Utelwa and Niyanwan in District Amethi. Prima facie, the charge-sheet contains no allegation of mala fide conduct, extraneous consideration, dishonest intention, or personal gain, and the allegations are limited to alleged errors in determination of compensation. The relevant details of the awards, approvals and arbitration proceedings are being set out separately in tabular form.

S. No.	**Village**	**Date of Award Passed by the Petitioner**	**Date of Approval by Regional Officer, NHAI and PD-PIU, NHAI**	**Date of Filing of Arbitration Application Against the Award**	**Delay till Issuance of Charge-sheet on 11.01.2023**
1	Poore Premshah	03.12.2015	30.12.2015	19.12.2020	More than 7 years
2	Utelwa	05.12.2015	06.01.2016	19.12.2020	More than 7 years
3	Niyawan	18.02.2016	07.03.2016	25.11.2022	Almost 7 years

II. It is well settled that unexplained and inordinate delay in initiating disciplinary proceedings renders such proceedings unsustainable, particularly when based on stale allegations. In the present case, the impugned charge-sheet dated 11.01.2023 relates to awards passed by the petitioner on 03.12.2015, 05.12.2015 and 18.02.2016 concerning villages Poore Premshah, Niyanwan and Utelwa in District Amethi, nearly eight years prior to initiation of proceedings. The charge-sheet is arbitrary and illegal on the ground of unexplained delay alone, as recognised in decisions such as 1990 Supp (1) SCC 738 in re: State of Madhya Pradesh Vs. Bani Singh and (2005) 6 SCC 636 in re: P.V. Mahadevan Vs. MD T.N. Housing Board. Reliance is also placed upon Amresh Shrivastava (supra), wherein it was held that unexplained delay in initiating departmental proceedings despite prior knowledge of the alleged misconduct must ensure to the benefit of the employee.

III. In the present case, the draft and final awards were admittedly within the knowledge of the concerned authorities, including the PD-PIU and Regional Officer, NHAI, who had approved the same, and there is no allegation that the alleged errors were unknown to the respondents. Consequently, the absence of any plausible explanation for the delay makes the departmental proceedings liable to be set aside.

RE: ISSUE NO. 3 - DISCUSSION AND FINDINGS

I. The record reflects that the Central Government, in exercise of powers under Section 3G(5) of the National Highways Act, 1956, had appointed the District Collector, Amethi as the Sole Arbitrator for adjudication of disputes relating to compensation under the Act. The arbitration proceedings in question arose out of challenges made by the PD-PIU, NHAI to the awards passed by the petitioner while functioning as Competent Authority for Land Acquisition.

II. During pendency of the arbitration proceedings, the District Magistrate, Amethi, acting as Sole Arbitrator, passed an order dated 12.10.2022 constituting a four-member committee to inquire

into the issue relating to determination of compensation, pursuant whereto the committee submitted its report dated 28.10.2022. The said report was thereafter forwarded to the State Government and ultimately formed the basis for initiation of disciplinary proceedings against the petitioner.

III. From the statutory scheme contained under Section 3G(5) of the National Highways Act, 1956, it appears that the role of the arbitrator is confined to adjudication of disputes relating to determination of compensation arising out of acquisition proceedings. The provision does not contemplate delegation of arbitral functions or constitution of an independent fact-finding/enquiry committee for conducting an inquiry into the conduct of the Competent Authority for Land Acquisition. The arbitral authority is required to independently adjudicate the disputes referred before it within the confines of the statutory reference.

IV. In this regard, reference may also be made to V.K. Ashokan v. Assistant Excise Commissioner and Others, (2009) 14 SCC 85, wherein the Hon?ble Supreme Court observed that statutory authorities are required to act strictly within the scope of powers conferred by the statute.

V. Thus, the aforesaid issue is answered in the negative. It is held that the District Magistrate, Amethi, while functioning as the Sole Arbitrator appointed by the Central Government under Section 3G(5) of the National Highways Act, 1956, could not have travelled beyond the statutory scope of reference/arbitration contemplated under the Act by passing orders in the pending arbitration proceedings directing constitution of a four-member committee for submission of an inquiry report. Such exercise was beyond the ambit of jurisdiction conferred upon the arbitral authority under the statutory scheme contained in Section 3G(5) of the Act.

CONCLUSION AND DIRECTIONS

34. In view of the discussions made hereinabove and the findings recorded while considering Issue Nos. 1, 2 and 3, this Court is of the considered opinion that the impugned disciplinary proceedings initiated against the petitioner cannot be sustained in the eyes of law. The material brought on record prima facie demonstrates that the allegations levelled against the petitioner pertain merely to alleged errors in determination of compensation while discharging quasi-judicial functions as Competent Authority for Land Acquisition under the National Highways Act, 1956, without there being any allegation or material indicating mala fide, corrupt motive, extraneous consideration or dishonest intention on the part of the petitioner.

35. This Court further finds that the impugned charge-sheet has been issued after an inordinate and unexplained delay of nearly seven years from the dates of passing of the awards, despite the relevant records and proceedings having remained within the knowledge of the respondent authorities throughout. Such initiation of disciplinary proceedings, particularly in matters relating to exercise of quasi-judicial powers, is contrary to the settled principles laid down by the Hon?ble Supreme Court in catena of decisions referred to hereinabove.

36. This Court also finds substance in the contention that the process culminating in initiation of disciplinary proceedings itself originated from a procedure not contemplated under the statutory framework of Section 3G(5) of the National Highways Act, 1956, inasmuch as the Sole Arbitrator

travelled beyond the permissible scope of arbitral jurisdiction by constituting a four-member inquiry committee during pendency of arbitration proceedings.

37. Accordingly, the writ petition is allowed. The impugned charge-sheet dated 11.01.2023 as well as all consequential disciplinary proceedings arising therefrom are hereby set aside.

(2026) 5 ILRA 482
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.05.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 10333 of 2025
& Other Connected Cases

Sunil Kumar Jain **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(1) Effect of non-joinder of parties in writ proceeding.
(2) Applicability of new Act of 2023 enforced after the publication of advertisement and before the final consideration.

Headnotes

(A) Service law – Selection – Advertisement was issued on 08.08.2023 prior to date of enforcement of the Act, 2023 i.e. 21.08.2023 – Selection process was taken place – Impugned order was passed holding that since advertisement was published prior to the enforcement of the Act, 2023, therefore, it would not be illegal to continue with selection process in terms of earlier Act of 1982 and not by Act of 2023 – Validity challenged – Effect of repeal of old Act and enforcement of new Act felt into consideration

Held : Only on a ground that a writ petition is pending from 2010 on a dispute of Committee of Management, there may not be a vacuum as well as students of the College concerned cannot be forced to suffer in absence of teaching staff. The conditions imposed in permission was in anticipation and as discussed above, the selection process was protected by provisions "Repeal and Savings" of Act, 2023, therefore, such condition has no legal consequence. No candidate has come forward being aggrieved by the impugned decision, therefore, the Court finds that there is no illegality in impugned order dated 21.04.2025. Since advertisements were issued before Act, 2023 was enforced, therefore, procedure applicable earlier vide Act of 2019 was followed and selection process was found to be legal. (Para 39)

(B) Service law – Selection – Post of Assistant Professors – Non-joinder of parties – Selected candidate were not impleaded as parties – Effect : (E-1)

Held : Defect of non-joinder of parties goes to the root of case since petitioner cannot deny that he was not aware about subsequent events that selected candidates were already appointed and they have joined at their respective posts as well as University has granted approval also, therefore, it was necessary for petitioner in first petition to array them as a party. [Para 11] (E-1)

Case Law Cited

Kumari Chitra Ghosh and another vs. Union of India and others, 1969(2) SCC 228; Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra and others, 2013(4) SCC 465; Desh Deepak Srivastava vs. State of U.P. and others, 2015(3) ADJ 352 (DB); Mita Ram Yadav and another vs. State of U.P. and others, 2021:AHC:19808; Ram Pal Singh vs. State of U.P. and others, 2019:AHC:217573; Prabodh Verma and others vs State of Uttar Pradesh and others, 1984(4) SCC 251; Vijay Kumar Kaul and others vs. Union of India and others, 2012(7) SCC 610; J.S. Yadav vs. State of U.P. and another, 2011(6) SCC 570; Public Service Commission of Uttaranchal vs. Mamta Bisht and others, 2010(12) SCC 204; Dr. Manoj Kumar Rawat vs. State of U.P. and others, 2026 INSC 508; State of U.P. and others vs. Rachna Hills and others, 2023 SCC OnLine SC 506; Santosh Kumar Singh vs. State of U.P. and others, 2015(7) ADJ 179 (FB); Rajiv Kumar vs. State of U.P. and others, 2024 SCC OnLine All 5843; Tej Prakash Pathak and others vs. Rajasthan High Court and others, 2025(2) SCC 1; Government of Andhra Pradesh and others vs. Sri Sevadas Vidyamandir High School and others, 2011(9) SCC 613 **– referred to.**

List of Acts

Uttar Pradesh Secondary Education Services Selection Board Act, 1982; U.P. Education Service Selection Commission Act, 2023; U.P. General Clauses Act, 1897 **–** Section 6.

List of Keywords

Appointment, Procedure of selection, Irregularity, Non-joinder of parties, Selected candidates, Recruitment process, Competent authority, Disbursement, Approval, Permission, Recall, Remit back, Maintainable.

Case Arising From

impugned order dated 21.04.2025 passed by the Principal Secretary, Higher Education.

Appearances for Parties

Advs. for the Petitioner : V.K. Singh, Sr. Adv.; R. K. Ojha, Sr. Adv.; Nipu Singh, Sr. Adv.; Shashank Shekhar Mishra; Ritesh Upadhyay; Naman Agrawal.

Advs. for the Respondents : G. K. Singh, Sr. Adv.; Sanjeev Singh, AAG; D. K. Singh, ACSC; Avneesh Tripathi.

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

1. Writ-A No. 10333 of 2025 was filed by one, Sunil Kumar Jain, claiming himself to be the Treasurer of time barred Committee of Management of Digamber Jain Mahavidyalaya, Baraut, Baghpat, a Minority Institution. The impugned order dated 21.04.2025 was passed by Principal Secretary, Higher Education, State of Uttar Pradesh in pursuance of a judgment passed in a bunch of three writ petitions, leading being, Sunil Kumar Jain vs. State of U.P. and others, 2025:AHC:9341 and in order to place relevant facts and details of earlier round of litigation, it would be appropriate to reproduce said judgment hereinafter in its entirety:

'1. All these writ petitions are arising out of a selection process initiated to fill vacant post of Assistant Professor in Digambar Jain College (Minority Educational Institution), Baraut, Baghpat.

2. Facts, as mentioned in one of the writ petition, are that there was a dispute with regard to Committee of Management of said Minority Institution and earlier attempt to fill up the vacant post does not reach to its logical end due to orders passed by Registrar of Chaudhary Charan Singh University, Meerut.

3. In above background an issue came up before this Court relating to inspection and Committee of Management of said Minority Institution filed Writ-A No. 20415 of 2023, which was disposed of vide order dated 20.12.2023 and relevant part thereof is mentioned hereinafter:

'11. The facts are not in dispute. The only bone of contention in between the parties is relatable to the fact as to whether the said exercise could have been resorted to by the State Government on the basis of the complaint behind the back of the writ petitioners without putting them to notice. The second issue would be whether the source of power of passing the said order would be Section 66-A or Section 40 of the U.P. State Universities Act, 1973. Though learned counsel for the writ petitioners argues that Section 66-A does not provide for such a power to be resorted to in view of the judgments in the case of Rekha Yadav (supra) and Rakesh Ranjan Verma (supra), however, on the other hand the respondents have relied upon Section 40 of the 1973 Act. Section 40 of the U.P. State Universities Act, 1970 provides a procedure, according to which inspection is to be done and further the association of the Committee of Management is also required. It is also apparent from Sub-section (4) of Section 40 that the State Government may communicate to the Management the result of the inspection or enquiry and may issue a direction as to the action to be taken and the Management shall comply thereof and further Sub-Section (5) provides that the State Government shall inform the Vice-Chancellor about any communication made by it to the Management under sub-section (4) and finally sub-section (6) of Section 40 provides that the State Government may, at any time, call for any information from the Management or Principal of an affiliated or associated college in connection with such inspection or inquiry. Thus in the opinion of the Court, a complete set of procedure has been provided modulating the manner according to which inspection is to be done and follow up action to be taken in that regard. Since the Court finds that the order in question has been passed in violation of the principles of natural justice and further the writ petitioner has raised the issue of jurisdiction, thus in the opinion of the Court the State Government has to specify as to what is the provision, under which it has proceeded to take such an action and whether it is permissible under law.

12. Bearing in mind the aforesaid issues, the writ petition is decided in the following manner: (a) The order dated 22.11.2023 passed by the Joint Secretary, State of U.P., Lucknow, second respondent is set aside. (b) The matter stands remitted back to the second respondent, Joint Secretary, State of U.P., Lucknow, to pass fresh order strictly in accordance with law within a period of two weeks from today.

13. It is open for the affected parties to join themselves post-remand and the second respondent shall pass orders strictly in accordance with law detailing the source of power either under Section 40 or Section 66-A of the State Universities Act 1973 and it is open for the writ petitioners to raise the questions of jurisdiction and all legal and factual issues, which is to be decided by the authorities.

14. With the aforesaid observations, the writ petition stands disposed of.

4. Before aforesaid order was passed candidates were selected and they were awaiting their appointment letters.

5. In pursuance of above referred order passed by this Court, Joint Secretary, Higher Education, Government of U.P., Lucknow passed order dated 06.05.2024 that since earlier selection of Teachers in Minority Institution was governed by provisions of U.P. Higher Education Services Selection Commission Act, however, now a new Act has been enacted, namely, U.P. Education Service Selection Commission Act, 2023, which came into force on 21.08.2023 and now said selection in Minority Institution is to be governed by said Commission and since there is a change of procedure of selection, therefore, it was directed that earlier selection process is liable to be cancelled. Relevant part of said order is reproduced hereinafter:

'7- प्रश्नगत प्रकरण में सुनवाई के उपरांत बिंदु विचारणीय हैः-

7.1 महाविद्यालय का संचालन करने वाली प्रबंध समिति कालातीत है, प्रबन्ध समिति की वैधता एवं चुनाव को लेकर अनेक रिट याचिकाएं मा० न्यायालय के समक्ष विचाराधीन है।

7.2 क्षेत्रीय उच्च शिक्षा अधिकारी, मेरठ के पत्र संख्या- क्षे०का०मे०/1324-26/2023-2024 दिनांक 10.07.2023 के माध्यम से 05 पदों पर, निदेशक, उच्च शिक्षा, प्रयागराज के पत्र संख्या- डिग्री अर्थ-1/2562/2023-2024 दिनांक 04.08.2023 के माध्यम से 08 पदों पर एवं निदेशक, उच्च शिक्षा, प्रयागराज के पत्र संख्या-डिग्री अर्थ-1/2944/2023-2024 दिनांक 08.08.2023 के माध्यम से 09 पदों पर अर्थात शिक्षकों के कुल 22 रिक्त पदों पर भर्ती की अनुज्ञा प्रदान की गयी। निदेशक, उच्च शिक्षा, प्रयागराज के उपर्युक्त संदर्भित पत्रों दिनांक 04.08.2023 एवं दिनांक 08.08.2023 में स्पष्ट उल्लिखित है कि " प्रस्तावित शिक्षा सेवा चयन आयोग के अस्तित्व में आने के फलस्वरूप भर्ती प्रक्रिया में कोई बदलाव होता है तो, उक्त अनुज्ञा स्वतः निरस्त समझी जायेगी।"

7.3 यहां सबसे महत्वपूर्ण बिंदु यह है कि विधायी अनुभाग-1, उ०प्र० शासन द्वारा निर्गत अधिसूचना संख्या-415/79-वि-1-2023-1-क-14-2023 दिनांक 21.08.2023 के माध्यम से उ०प्र० शिक्षा सेवा चयन आयोग अधिनियम, 2023 प्रख्यापित हुआ। इस आयोग के माध्यम से सहायता प्राप्त अल्पसंख्यक महाविद्यालयों में शिक्षकों की नियुक्त की जानी है। ध्यातव्य है कि सहायता प्राप्त अल्पसंख्यक महाविद्यालयों में शिक्षकों की भर्ती उ०प्र० उच्चतर शिक्षा सेवा चयन आयोग, प्रयागराज की परिधि से बाहर था। अर्थात उ०प्र० शिक्षा सेवा चयन आयोग, प्रयागरा के गठन के उपरांत अल्पसंख्यक महाविद्यालयों में भर्ती की प्रक्रिया में बदलाव किया गया है। अतः उक्त आधार पर निदेशक, उच्च शिक्षा, प्रयागराज के पत्र दिनांक 04.08.2023 एवं दिनांक 08.08.2023 द्वारा निर्गत अनुज्ञायें स्वतः निरस्त हो गयी है। उत्तर प्रदेश शिक्षा सेवा चयन आयोग के गठन के उद्देश्य एवं कारण में यह स्पष्ट उल्लिखित है कि " संस्था स्तरीय चयन समितियों द्वारा संचालित चयन प्रक्रिया में पारदर्शिता का अभाव भी परिलक्षित है, जिसके परिणामस्वरूप मुकदमें की स्थितियां उत्पन्न हो रही है।" प्रश्नगत प्रकरण में भी यही स्थिति परिलक्षित होती है।

7.4 प्रश्नगत प्रकरण में महाविद्यालय प्रबंध समिति द्वारा संचालित भर्ती प्रक्रिया पर वैधता, अनियमितता, भ्रष्टाचार एवं अनेक अन्य आरोप लगाये गये है। सूच्य है कि सहायता प्राप्त अल्पसंख्यक महाविद्यालयों के शिक्षकों के वेतन का भुगतान राज्य द्वारा प्रदत्त अनुदान से किया जाता है। लोक निधियों का प्रभावी, कुशल, पारदर्शी एवं शुचितापूर्ण उपयोग सुनिश्चित करना राज्य सरकार का सबसे महत्वपूर्ण दायित्व है। ऐसी स्थिति में शिक्षकों के चयन की पारदर्शी, निष्पक्ष, शुचितापूर्ण एवं गुणवत्तापूर्ण व्यवस्था के लिये उ०प्र० शिक्षा सेवा चयन आयोग का गठन किये जाने के बाद दिगम्बर जैन कालेज, बडौत, बागपत में शिक्षकों की भर्ती प्रक्रिया, उसी प्रबंधतंत्र से , जिस पर अनेक आरोप लगाये गये है, से कराये जाने का कोई औचित्य प्रतीत नहीं होता है। उक्त के अतिरिक्त उ०प्र० शिक्षा सेवा चयन आयोग के गठन के उपरांत कालेज द्वारा भर्ती प्रक्रिया संचालित होने से एक ही समय में दो पृथक प्रक्रियाए स्थापित हो जायेंगी, जो विधि विरूद्ध होगा।

8- अतः उपर्युक्त वर्णित स्थिति में रिट याचिका संख्या-20415/2023 कमेटी आफ मैनेजमेंट दिगम्बर जैन महाविद्यालय, बडौत, बागपत व अन्य बनाम उ०प्र० राज्य व 07 अन्य में मा० उच्च न्यायालय, इलाहाबाद द्वारा पारित आदेश दिनांक 20.12.2023 के अनुपालन में उ०प्र० शिक्षा सेवा चयन आयोग के गठन के उपरांत निदेशक, उच्च शिक्षा, प्रयागराज द्वारा निर्गत अनुज्ञाएं स्वतः निरस्त होने की स्थिति में महाविद्यालय- हित, उच्च

शिक्षा-हित एवं पारदर्शिता तथा शुचिता सुनिश्चित करने के दृष्टिगत दिगम्बर जैन महाविद्यालय, बडौत, बागपत में असि० प्रोफेसर के 22 पदों पर प्रक्रियारत भर्ती उ०प्र० शिक्षा सेवा चयन आयोग से कराये जाने का निर्णय एतद द्वारा किया जाता है।

6. Aforesaid order dated 06.05.2024 was challenged by selected candidates in Writ-A No. 7792 of 2024 and by Committee of Management by way of filing Writ-A No. 7979 of 2024.

7. In said two writ petitions counter affidavit was filed by State-Respondents-1, 2 and 3 (The State of U.P. through Secretary, Higher Education, U.P., Lucknow; The Joint Secretary, State of U.P., Lucknow; and The Director of Higher Education, U.P., Prayagraj, respective), sworn by Assistant Director, Office of Directorate, Higher Education at Prayagraj and relevant paragraphs thereof are mentioned hereinafter:

‘ 8. That it is provided that the Committee of Management managing the institution is time-barred, therefore, various writ petitions filed for validity and for holding the elections of Committee of Management.

9. That it is further relevant to mention here that permission was given for recruitment on 05 post by Regional Higher Education Officer, Meerut vide letter dated 10.07.2023, on 08 posts by Director, Higher Education vide letter dated 04.08.2023 and on 09 posts by the Director, Higher Education, Prayagraj, vide letter dated 08.08.2023 i.e. a total of 22 vacant posts of teachers.

10. That it is clearly mentioned in the above referred letters dated 04.08.2023 and dated 08.08.2023 of the Director, Higher Education, Prayagraj that, If there is any change in the recruitment process as a result of the coming into existence of the proposed Education Service Selection Commission, the said permission will automatically deemed to be cancelled. The most important point here is that the Uttar Pradesh Education Service Selection Commission Act, 2023 was promulgated by, Notification dated 21.08.2023 issued by the Uttar Pradesh Government.

11. That in terms of Notification dated 21.08.2023 issued by the Uttar Pradesh Government the teachers are also to be appointed in aided minority colleges by the UP Education Service Selection Commission. It is noteworthy to mention here that the recruitment of teachers in aided minority colleges was outside the purview of UP Higher Education Service Selection Commission, Prayagraj, but, after the formation of UP Education Service Selection Commission, Prayagraj, the process of recruitment in minority colleges has been changed. Therefore, on the above basis, the permissions issued by the Director, Higher Education, Prayagraj vide letter dated 04.08.2023 and dated 08.08.2023 have been automatically stand nullified. It is clearly mentioned in the purpose and reason of constitution of Uttar Pradesh Education Service Selection Commission that lack of transparency is also reflected in the selection process conducted by the institution level selection committees, as a result of which, various litigations have been filed.

12. That the same situation is reflected in the case in question and in the case in question, allegations of legality, irregularity, corruption and many other allegations have been made on the recruitment process conducted by the College Management Committee. It is further pointed that the salaries of teachers of aided minority colleges are paid from the grants provided by the state. The most important responsibility of the state governments is to ensure effective, efficient, transparent

and fair use of public funds. At this stage, after the constitution of Uttar Pradesh Education Service Selection Commission for a transparent, fair and complete quality system of selection of teachers, the recruitment process of teachers in the institution in question to be done by the same management against which many allegations have been made on which there seem to be any justification.

13. That apart form the above, if the recruitment process is conducted by the college after the formation of Uttar Pradesh Education Service Selection Commission, two separate processes will be established at the same time, which will be against the law. In the above mentioned situation, a writ petition no. 20415/2023 filed by the petitioner, in which this Hon'ble Court passed order dated 20.12.2023, consequently in compliance with the Hon'ble Court's order dated 20.12.2023 passed in the aforesaid writ petition, after the constitution of Uttar Pradesh Education Service Selection Commission, in the event of automatic cancellation of permissions issued by the Director, Higher Education, Prayagraj, in the interest of the college- interest of higher education and to ensure transparency and purity. Thus, in view of aforesaid backdrop, it has been decided to get the recruitment process for 22 posts of Assistant Professor in the Institution in question done by Uttar Pradesh Education Service Selection Commission.

8. Above referred specific stand of State-Respondents is later on changed and a U-tern was taken and without any permission of this Court or informing the Court, Chief Secretary of Higher Education, issued a Office Memorandum dated 20.11.2024 that earlier order dated 06.05.2024 was recalled on basis of a representation filed by Committee of Management of said Minority Institution dated 16.05.2024. Said order dated 20.11.2024 is reproduced hereinafter:

"उत्तर प्रदेश शासन,

उच्च शिक्षा अनुभाग-2

संख्याः-1/800391 2024 70-2099/52/2023

लखनऊः दिनाँक 20 नवम्बर, 2024

कार्यालय-ज्ञाप

दिगम्बर जैन महाविद्यालय, बडौत, बागपत में असि० प्रोफेसर के 22 पदों पर भर्ती के दिन से सचिव/ प्राचार्य प्रबंध समिति दिगम्बर जैन कालिज बडौत, बागपत के प्रत्यावेदन दिनांक 16.05.2024 पर सम्यक विचारोपरान्त प्रक्रियारत भर्ती का उ०प्र० शिक्षा सेवा चयन आयोग प्रयागराज से कराये जाने संबंधी कार्यालय ज्ञाप संख्या-844/सत्तर- 2-2023-16(117)/2023 दिनांक 06.05.2024 की आध्यता समाप्त की जाती है।

2. उक्त आदेश मा० उच्च न्यायालय में योजित रिट याचिका संख्या-7979/2024 नीलू जैन व 04 अन्य बनाम उ०प्र० राज्य व 05 अन्य तथा रिट याचिका संख्या-7979/2024/कमेटी आफ मैनेजमेंट दिगम्बर जैन महाविद्यालय बडौत बागपत व अन्य बनाम उ०प्र० राज्य व 07 अन्य में मा० उच्च न्यायालय इलाहाबाद द्वारा पारित अंतिम निर्णय के अधीन होगा।

Signed by

Mahendra Prasad Agrawal

Date: 19.11.2024 19.48.22

(एम०पी० अग्रवाल)

प्रमुख सचिव ।"

9. Aforesaid order is challenged by other Petitioner-Sunil Kumar Jain, claiming to be a life member of Committee of Management by filing Writ-A No. 19843 of 2024. As referred above, aforesaid order has neither referred the contents of representation dated 16.05.2024 filed by Committee of Management nor any reason has been assigned why earlier order dated 06.05.2024 is effectively recalled, despite supported in counter affidavit filed in other connected writ petitions.

10. Sri Anoop Trivedi, learned Senior Advocate assisted by Ms. Shreya Gupta, learned counsel appearing for petitioners (selected candidates) in Writ-A No. 7792 of 2024, mainly, argued that a process once initiated cannot be stopped on basis of some subsequent event, i.e., enactment of U.P. Education Service Selection Commission Act, 2023. Impugned order dated 06.05.2024 does not describe any reasons, therefore, it was rightly recalled by a subsequent order dated 20.11.2024, which is impugned in Writ-A No. 19843 of 2024. It was also referred that challenge to said order in above writ petition is not maintainable since selected candidates, i.e., petitioners in Writ-A No. 7792 of 2024, are not made party.

11. Sri G.K. Singh, learned Senior Advocate assisted by Sri Nipun Singh, learned counsel appearing for petitioners in Writ-A No. 7979 of 2024 filed by Committee of Management of said Minority Institution, has reiterated the similar arguments. He also requested that opportunity be granted to State to file counter affidavit in Writ-A No. 19843 of 2024.

12. As referred above, in aforesaid two writ petitions, i.e., Writ-A Nos. 7792 of 2024 and 7979 of 2024, order impugned is dated 06.05.2024 and as referred above, this order is now recalled by subsequent order dated 20.11.2024, as such both these writ petitions may become infructuous, however, since order dated 20.11.2024 is impugned in Writ-A No. 19843 of 2024, therefore, Court will take note of above submissions also, if required, in later part of judgment.

13. Sri Rakesh Pande, learned Senior Advocate assisted by Sri Chandan Sharma, learned counsel appearing for petitioner in Writ-A No. 19843 of 2024, submitted that the Committee of Management is under dispute, as such any process initiated was a legally incorrect approach. Once order dated 06.05.2024 was under challenge and it was supported by State, then any order to recall it or change it by subsequent order dated 20.11.2024 was illegal.

14. In reply to above submissions, Sri R.K. Tripathi, learned Additional Chief Standing Counsel for State-Respondents, submitted that State was empowered to take a different decision since there was no bar.

15. Heard learned counsel for parties and perused the material available on record.

16. Pleadings are already exchanged in one of the writ petition and all the facts are before this Court, therefore, there is no need to file counter affidavit in Writ-A No. 19843 of 2024.

17. So far as maintainability of Writ-A No. 19843 of 2024 is concerned since selected candidates are not party in it, for that the Court takes note that selected candidates are already before this Court by filing Writ-A No. 7792 of 2024 wherein pleadings are already exchanged as well as now they have filed impleadment application and their version has also been heard.

18. As referred above, there is a dispute with regard to Committee of Management of concerned Minority Institution, however, the Court is not entering into that issue at this stage.

19. The Court is concerned that once an order has been passed by Higher Education Department of State of U.P. in pursuance of an order passed by this Court on 06.05.2024 that the selection process of Teachers in said Minority Institution cannot go further and some reasons were also assigned, which was subject matter of two writ petitions, i.e., Writ-A Nos. 7792 of 2024 and 7979 of 2024 and even a detailed counter affidavit was filed by State-Respondents, supporting the said order with specific averment, then under what circumstances without informing the Court, said order was recalled by a cryptic order dated 20.11.2024. For reference said order dated 20.11.2024 is again reproduced hereinafter:

"उत्तर प्रदेश शासन,

उच्च शिक्षा अनुभाग-2

संख्याः-1/800391 2024 70-2099/52/2023

लखनऊः दिनाँक 20 नवम्बर, 2024

कार्यालय-ज्ञाप

दिगम्बर जैन महाविद्यालय, बडौत, बागपत में असि० प्रोफेसर के 22 पदों पर भर्ती के दिन से सचिव/ प्राचार्य प्रबंध समिति दिगम्बर जैन कालिज बडौत, बागपत के प्रत्यावेदन दिनांक 16.05.2024 पर सम्यक विचारोपरान्त प्रक्रियारत भर्ती का उ०प्र० शिक्षा सेवा चयन आयोग प्रयागराज से कराये जाने संबंधी कार्यालय ज्ञाप संख्या-844/सत्तर- 2-2023-16(117)/2023 दिनांक 06.05.2024 की आध्यता समाप्त की जाती है।

2. उक्त आदेश मा० उच्च न्यायालय में योजित रिट याचिका संख्या-7979/2024 नीलू जैन व 04 अन्य बनाम उ०प्र० राज्य व 05 अन्य तथा रिट याचिका संख्या-7979/2024/कमेटी आफ मैनेजमेंट दिगम्बर जैन महाविद्यालय बडौत बागपत व अन्य बनाम उ०प्र० राज्य व 07 अन्य में मा० उच्च न्यायालय इलाहाबाद द्वारा पारित अंतिम निर्णय के अधीन होगा।

Signed by

Mahendra Prasad Agrawal

Date: 19.11.2024 19.48.22

(एम०पी० अग्रवाल)

प्रमुख सचिव ।"

20. Contents of above order indicates that a very Senior Officer in Higher Education Department, in a very careless manner proceeded with the matter and without taking note of stand of Department before this Court and the fact that matter is sub-judice. The said Higher Officer has not taken pain to inform the Court about order dated 20.11.2024. No reason has been mentioned in above referred order nor any details are mentioned about said representation dated 16.05.2024 submitted by Committee of Management, after a writ petition was filed before this Court, being Writ-A No. 7979 of 2024 on 12.05.2024. Even said Committee of Management has also not informed the Court that any representation was pending before said authority.

21. Aforesaid approach of a Senior Officer of State, i.e., Chief Secretary of Higher Education, was not only casual but inappropriate also. Accordingly, Court is of the considered opinion that there was no justification to pass said order especially when it has assigned no reason.

22. In view of above, impugned order dated 20.11.2024 in Writ-A No. 19843 of 2024, is hereby set aside.

23. So far as order impugned in Writ-A Nos. 7792 of 2024 and 7979 of 2024, i.e., order dated 06.05.2024 is concerned, said order also cannot sustain on ground that it does not take note of other provisions of U.P. Education Service Selection Commission Act, 2023, i.e., Repeal and Savings as provided under Section 31 of Act. It ought to have taken note with regard to eligibility and minimum qualifications, whether there was any difference or not. Court also takes note, as told by learned counsel for parties, that till date U.P. Education Service Selection Commission has not commenced its working. These factors were not even taken note of.

24. In aforesaid circumstances, impugned order dated 06.05.2024 in Writ-A Nos. 7792 of 2024 and 7979 of 2024, is hereby set aside. Concerned respondents are directed to relook into the matter and pass a fresh order. Higher Officials in Department of Higher Education, Government of U.P. are cautioned to remain careful while passing orders, especially when they are recalling any order during pending litigation. Fresh decision shall be taken within a period of four weeks from today. Meanwhile, further procedure of selection shall be kept in abeyance.

25. With aforesaid observations/ directions, all these writ petitions are disposed of.

2. In above background, one of the relevant fact which is necessary to mention herein is that in aforesaid matter judgment was reserved on 10.01.2025 and delivered within a short period of 11 days, i.e., on 21.01.2025.

3. In the garb of deemed approval not only appointment letters were issued to selected candidates but they were allowed to join also on 09.01.2025, i.e., a day prior when the writ petitions were listed for final hearing, however, said fact was not disclosed during final hearing,

therefore, it is necessary to observe that it was an act of undue haste and, therefore, a direction passed by this Court in above referred judgment that further procedure of selection shall be kept in abeyance, was rendered ineffective.

4. In pursuance of aforesaid judgment dated 21.01.2025, the Principal Secretary, Higher Education, U.P. passed order dated 21.04.2025, whereby it was held that procedure initiated to fill up 22 posts of Assistant Professors at concerned Institution, would continue in accordance with the Uttar Pradesh Secondary Education Services Selection Board Act, 1982 on ground that the advertisements were published on 08.08.2023 and 12.08.2023 whereas U.P. Education Service Selection Commission Act, 2023 (hereinafter referred to as 'Act, 2023') was notified in the Gazette of State on 21.08.2023 (wrongly mentioned as 12.12.2023 in impugned order), i.e., the procedure for selection was already initiated before 'Act, 2023' came into force as well as that no other irregularity was found in selection process, i.e., due selection procedure was adopted and all candidates were qualified and selected on merit.

5. Aforesaid order dated 21.04.2025 passed by Principal Secretary, Higher Education, Government of U.P., is challenged in first petition, i.e., Writ-A No. 10333 of 2025.

6. Sri V.K. Singh, learned Senior Advocate assisted by Sri Shashank Shekhar Mishra, Advocate appearing for selected candidates, i.e., petitioners in Writ-A No. 5920 of 2026, Sri Nipun Singh, learned Senior Advocate assisted by Sri Naman Agrawal, Advocate appearing for Committee of Management of College concerned, i.e., petitioners in Writ-A No. 5941 of 2026 and Sri G.K. Singh, learned Senior Advocate assisted by Sri Avneesh Tripathi, learned counsel for University, have submitted that first petition, i.e., writ petition filed by Sunil Kumar Jain, is not maintainable mainly on two grounds.

7. Firstly, petitioner-Sunil Kumar Jain, cannot file writ petition being Treasurer of Committee of Management since it would be a challenge to resolutions passed by said Committee of Management and in support of above submission reliance was placed on the judgments passed by Supreme Court in Kumari Chitra Ghosh and another vs. Union of India and others, 1969(2) SCC 228 and Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra and others, 2013(4) SCC 465 as well as this Court's judgments in Desh Deepak Srivastava vs. State of U.P. and others, 2015(3) ADJ 352 (DB); Mita Ram Yadav and another vs. State of U.P. and others, 2021:AHC:19808; and, Ram Pal Singh vs. State of U.P. and others, 2019:AHC:217573, that petitioner either in personal capacity or in capacity of Treasurer would not fall within the ambit of a 'person aggrieved'.

8. Second limb of objection was that in first petition none of the selected candidates were arrayed as a party respondent despite their appointment letters were placed on record and in support of submission, learned Senior Advocates placed reliance on a judgment passed by Supreme Court in Prabodh Verma and others vs State of Uttar Pradesh and others, 1984(4) SCC 251.

9. Per contra, Sri R.K. Ojha, learned Senior Advocate assisted by Sri Ritesh Upadhyay, Advocate for petitioner-Sunil Kumar Jain in first petition, submitted that petitioner has already filed earlier writ petitions in the same capacity and without any objection, said writ petitions were considered on merit and were allowed to some extent, with certain directions and on said direction

the impugned order was passed, therefore, any objection on locus may not be reopened at this stage.

10. Learned Senior Advocate for petitioner-Sunil Kumar Jain further tried to defend that writ petition may not be rejected on ground of non joinder of parties since selected candidates have also approached this Court subsequently by way of separate writ petition, being Writ-A No. 5920 of 2026. The challenge is to the procedure of selection and on legal advice an application for impleadment of selected candidates was also filed later on.

11. However, Court finds that aforesaid defect of non-joinder of parties goes to the root of case since petitioner cannot deny that he was not aware about subsequent events that selected candidates were already appointed and they have joined at their respective posts as well as University has granted approval also, therefore, it was necessary for petitioner in first petition to array them as a party and in this regard Court takes note of judgments passed by Supreme Court in Vijay Kumar Kaul and others vs. Union of India and others, 2012(7) SCC 610; J.S. Yadav vs. State of U.P. and another, 2011(6) SCC 570; and, Public Service Commission of Uttaranchal vs. Mamta Bisht and others, 2010(12) SCC 204.

12. In above background, first petition can be dismissed on ground of non-joinder of relevant parties, however, the Court takes note that there are two other writ petitions filed by selected candidates and Committee of Management to challenge the subsequent orders passed on basis of an interim order passed in first petition and that a legal issue has also been cropped up that whether recruitment process would be considered to be commenced with effect from publication of advertisement or at the stage of consideration by Competent Authority, i.e., approval of appointment and what would be the effect if meanwhile rules were amended or a new Act was enacted, after publication of advertisement, however, before final consideration. Therefore, for consideration of said issue Court proceed to decide the petitions on merit, ignoring above procedural defect.

13. In first petition, i.e., Writ-A No. 10333 of 2025, following interim order was passed by a Coordinate Bench on 25.07.2025:

‘1. The instant writ petition has been filed seeking following main prayers:-

"(I) Issue a writ, order or direction in the nature of certiorari calling for the record of case and to quash the impugned order dated 21.04.2025 passed by Respondent No. 1 i.e. Principal Secretary Higher Education, Government of U.P., Lucknow.

(II) Issue a writ, order or direction in the nature of mandamus commanding the Respondents to fill up the vacant post of Assistant Professor in the institution in accordance with law i.e. through "U.P. Education Service Selection Commission"."

2. Sri R.K. Ojha, learned Senior Counsel assisted by Sri Ritesh Upadhyay, learned counsel appearing on behalf of the petitioner submitted that the impugned order dated 21.04.2025 passed by the respondent no.1 in the teeth of the order dated 04.08.2010 passed by the co-ordinate Bench of

this Court in Writ-C No.45786 of 2010 (Atul Kumar Jain Vs. State of U.P. and others). It is submitted that the respondent no.1 while passing the impugned order has recorded the wrong finding that the Uttar Pradesh Education Service Selection Commission Act, 2023 (hereinafter referred to as the Act, 2023) is notified/ gazetted on 13.12.2023, while it has been notified on 21.08.2023 much prior to the interview dates commenced with 19.11.2023 to 24.11.2023.

3. Mr. Ojha, learned Senior Counsel has placed the Gazette dated 21.08.2023 before this Court for perusal. The same has been perused and found that the Gazette was published on 21.08.2023 not on 13.12.2023.

4. Mr. Ojha, learned Senior Counsel also submitted that there is no valid Committee of Management in existence in the institution since 1999. It is submitted that the authority concerned by way of making appointments in the institution without following the norms, statutory provision and also some other considerations. It is, therefore, submitted that the entire selection process is illegal, unjust, without sanction of any valid authority and contrary to the law. It is vehemently submitted that the entire selection process of the institution after the notification/ Gazette dated 21.08.2023 by which the recruitment power of the minority institution has been withdrawn by the State Government is deserved to be set aside.

5. Taking into consideration of the submissions made by the learned Senior Counsel appearing on behalf of the petitioner, averments made in the writ petition and documents on record, prima facie I am of the opinion that matter requires consideration.

6. Issue notices to respondent nos.5 and 6 by ordinary post as well as registered post on payment of PF within a week.

7. Learned Standing Counsel appeared on advance accepted notice on behalf of State-respondents nos.1, 3 and 4.

8. Sri Prateek Rai, learned counsel appeared on advance accepted notice on behalf of respondents no.2.

9. Learned Standing Counsel and learned counsel for respondent no.2 vehemently opposed the petition and prayed four weeks time to file counter affidavits.

10. Let them file counter affidavits within the period as prayed.

11. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

12. List on 19.09.2025.

13. Since the matter kept pending for further consideration, considering the averments made in the petition, I am of the opinion that the operation of the impugned order dated 21.04.2025 should be kept in abeyance till the next date of hearing.

14. Accordingly, the operation of impugned order dated 21.04.2025 passed by the respondent no.1, shall be kept in abeyance till the next date of hearing.

14. As referred above, aforesaid interim order was passed without taking note that selected candidates were not party. On basis of above interim order, Regional Higher Education Officer, Meerut passed an order dated 26.02.2026 whereby the order of disbursement of salary in favour of selected candidates was stopped with immediate effect and subsequently by an order dated 02.04.2026 Registrar, Chaudhary Charan Singh University, Meerut suspended the order dated 26.07.2025, whereby approval was granted to appointments of selected candidates.

15. Some of the selected candidates, being aggrieved by aforesaid orders dated 26.02.2026 and 02.04.2026, filed Writ-A No. 5920 of 2026 and subsequently Committee of Management of said College has also challenged aforesaid orders by way of filing Writ-A No. 5941 of 2026, which are also connected with first petition filed by petitioner-Sunil Kumar Jain and are being decided finally by present judgment.

16. Now the Court proceed to consider the issue referred in paragraph no. 12 of this judgment.

17. Learned Senior Advocate appearing for petitioner-Sunil Kumar Jain, vehemently referred a recent judgment passed by Supreme Court in the case of Dr. Manoj Kumar Rawat vs. State of U.P. and others, 2026 INSC 508 wherein following question of law was also considered:

‘(ii) Whether, after enforcement of the Uttar Pradesh Education Service Selection Commission Act, 2023 (hereinafter referred as ‘the New Act’), repealing the old Act, the recommendation dated 13.12.2023 and consequential communications and placement order dated 12.01.2024 and 15.01.2025, issued in favour of the appellant can be sustained within the statutory scheme of the New Act?

18. Above referred question of law was answered by the Supreme Court in following manner:

‘21. At this stage, it also imperative to refer to the judgement of this Court in Kamlesh Kumar Sharma (Supra) wherein this Court had the occasion to deal with the interpretation of the word ‘otherwise’ in Section 13(4) of the Old Act. In the said judgement, it was held that if a wider interpretation is given, it would run contrary to the very object of the Old Act and permit filling of vacancy which was never advertised and a person, who did not apply, would inadvertently be absorbed on such vacancy. The relevant portion of the judgement is reproduced as thus:

‘13. We find, after giving our careful consideration that in case the appellant's argument is accepted by giving wider interpretation to the word ‘otherwise’, it would thwart the very object of the Act. In other words it would permit the filling of the vacancy occurring which was never advertised and a person in the select list panel, even though not applying for any vacancy, would be absorbed. Hence it would be limiting the sphere of selection in contradiction to the object of the provision to draw larger applicants by advertising every vacancy to be filled in. We have no hesitation to say that any appointment to be made on a vacancy occurring in the succeeding year in question for which there is no advertisement under the provisions of sub-section (4) of Section 12,

the person on the panel list of preceding academic year in question, cannot be absorbed or be appointed. The word □otherwise□ has to be read as ejusdem generis, that is to say, in group similar to death, resignation, long leave vacancy, invalidation, person not joining after being duly selected. In other words, it would be a case of unforeseen vacancies which could not be conceived under Section 12(2). Section 12(2) conceives of a vacancy which is existing on the date the vacancy is to be advertised and which is likely to be caused in future but constricted for a period ending in the ensuing academic year in question. The words 'likely to be caused' under Section 12(2) are followed by the words 'during the course of the ensuing academic year' that is any person likely to retire by the end of the academic year in question. In other words, such vacancies could be foreseen and not unforeseen. While vacancies under Section 13(4) are unforeseen vacancies which fall under the group, death and/or resignation. Hence the word 'otherwise' cannot be given the wide and liberal interpretation which would exclude a large number of expected applicants who could be waiting to apply for the vacancies occurring in the succeeding year in question.

22. In view of the above, it is observed that under the scheme of Old Act, the act done was issuance of recommendation dated 03.08.2022 by the Director. Simultaneously, in response to the appellant's representation dated 26.06.2023, the Director vide letter dated 17.08.2023 to the Special Secretary has unequivocally made it clear that after issuance of the previous recommendation on 03.08.2022 under the government instructions and applicable law, no arrangement for changing the place of posting can be made. In such a scenario, prior to the commencement of the New Act on 21.08.2023, the act done by the authorities was issuing the recommendation dated 03.08.2022, which remained valid and no further action was recommended vide letter dated 17.08.2023. Therefore, in furtherance to the repeal and saving clause under Section 31(2) of the New Act, the act done will be treated only to the extent indicated above.

23. It is even more surprising that after the letter dated 17.08.2023 and commencement of the New Act, the Joint Secretary, Government of Uttar Pradesh, on his own accord, issued order dated 12.01.2024 recommending the name of the appellant for being posted as Principal of Meerut College. In our view, after commencement of the New Act, the validity of the list/panel under the Old Act will automatically lapse and the authorities are duty bound to follow the procedure under Sections 10 and 11 of the New Act to take steps for appointment on the post of Principal. Thus, the concerned authorities could not have issued the letter dated 13.12.2023 on the basis of the list prepared under the Old Act and thereafter, passed the consequential orders on 12.01.2024 and 15.01.2024, to effectively recommend and appoint the appellant on the post of Principal of Meerut College.

24. At this stage and in to understand the real intent of Section 31 of the New Act, it is necessary to refer Section 6 of the Uttar Pradesh General Clauses Act, 1904 dealing with the 'Effect of repeal', whereby it is clear that in case any Uttar Pradesh Act repeals any enactment hitherto or hereafter, then unless a different intention appears, the repeal shall not revive anything not in force or existing at the time at which the repeal takes effect. Further, it shall not affect anything duly done, suffered or incurred under any enactment so repealed. Therefore, the act done, as also indicated above, was the recommendation dated 03.08.2022, which could not be implemented. The authorities have clearly intended that after issuance of the recommendation dated 03.08.2022, no subsequent change in the place of posting can be made in terms of the letter dated

17.08.2023. Thereafter, on 21.08.2023, the New Act came into force. Thus, there was no occasion for the authorities to issue the order dated 13.12.2023 and, consequent recommendation dated 12.01.2024 and order dated 15.01.2024 in favour of the appellant, under the pretext of Section 13(4) of the Old Act indicating that the position had otherwise fallen vacant. Therefore, with the assistance of Section 6 of the Uttar Pradesh General Clauses Act 1904, the effect of repeal of the Old Act is clear insofar as it will not revive the previous list or the act done under the Old Act, which is having the effect of repeal. (Emphasis supplied)

19. Learned Senior Advocate has also referred another judgment of Supreme Court passed in the case of State of U.P. and others vs. Rachna Hills and others, 2023 SCC OnLine SC 506 and relevant part thereof is mentioned hereinafter:

'Re issue no. 3 : Whether the posts of teachers could be filled as per the Rules and Regulations that existed when the vacancies arose and not as per the amended Regulations?

28. The Division Bench, as well as the Single Judge of the High Court, accepted the submission of the selected candidates that the vacancies to the post of teachers could be filled only as per the Rules and Regulations that operated when the vacancies arose and not as per the Regulations that came to be amended thereafter.

29. We have already held that approval of DIOS is mandatory and that the Act injuncts the appointment of a Teacher without such approval. We have also held that the legal regime concerning the appointment of Teachers does not contemplate any concept of deemed appointment if the DIOS does not decide upon the proposal within 15 days. Under these circumstances, the reference to and reliance on the principle that Rules that existed at the time when vacancies arose will govern the appointments is misplaced.

30. In any event, it is now a settled principle of law that a candidate has a right to be considered in the light of existing Rules, which implies Rules in force as on the date of consideration. This principle is affirmed by this Court in Deepak Agarwal v. State of U.P. (2011)6 SCC 725, as below:

'26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the 'rule in force' on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in Y.V. Rangaiah case lays down any particular time-frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment.

31. While reaffirming the above referred principle, in a subsequent case of Rajasthan State Sports Council v. Uma Dadhich, (2019)4 SCC 316, (in which one of us was a member Dr. D.Y. Chandrachud, J., as he then was). This Court noted:

'5. There is merit in the submission which has been urged on behalf of the appellants that the respondent had no vested right to promotion but only a right to be considered in accordance with the rules as they existed on the date when the case for promotion was taken up. This principle has been reiterated in several decisions of this Court. (See H.S. Grewal v. Union of India, Deepak Agarwal v. State of U.P., State of Tripura v. Nikhil Ranjan Chakraborty and Union of India v. Krishna Kumar.

(emphasis supplied)

32. In a recent decision, in State of Himachal Pradesh v. Raj Kumar, 2022 SCC OnLine SC 680, after reviewing a number of decisions on the same subject, this Court formulated the following principles:

'70. A review of the fifteen cases that have distinguished Rangaiah would demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in Rangaiah. The findings in these judgments, that have a direct bearing on the proposition formulated by Rangaiah are as under:

1. There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, Rangaiah's case must be understood in the context of the rules involved therein.

2. It is now a settled proposition of law that a candidate has a right to be considered in the light of the existed rules, which implies the 'rule in force' as on the date consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible candidates.

3. The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire any vested right to being considered for promotion in accordance with the repealed rules in view of the policy decision taken by the Government. There is no obligation for the Government to make appointments as per the old rules in the event of restructuring of the cadre is intended for efficient working of the unit. The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of Article 14.

4. The principle in Rangaiah need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately.

5. When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to the amendment, the State cannot be directed to consider the cases.

(emphasis supplied)

33. In view of the clear enunciation of the law, we have no hesitation in rejecting the submission made by the learned counsels for the Respondents, that the vacancies that existed prior to the amendment of Regulation 17 of Chapter II, must be governed by unamended rules.

(Emphasis supplied)

20. Learned Senior Advocate also submitted that permission to initiate process of selection was granted by Director of Higher Education by letters 04.08.2023 and 08.08.2023, however, it was with a specific condition that in case the proposed Education Service Selection Commission came into existence and resultantly there would be any change in process, permission would be deemed to be cancelled. By referring said condition, learned Senior Advocate further submitted that immediately after the advertisement new Act, 2023 was came into force, therefore, permission to initiate earlier process was deemed to be cancelled and any process subsequent to it, which led to appointment of selected candidates, would be non-est.

21. Learned Senior Advocate also submitted that a litigation with regard to dispute of Committee of Management is still pending before this Court in Writ-C No. 45786 of 2010, wherein an interim order was passed on 04.08.2010 that no election shall be conducted and, therefore, a time barred Committee of Management was not even empowered to initiate process of selection, as such, permission would have not been granted vide an order dated 04.08.2023, however, later on said order was recalled by a subsequent order dated 06.05.2024, which was subject matter of earlier round of litigation and that effect of said interim order is still in existence.

22. Per contra, learned Senior Advocate appearing on behalf of petitioners in Writ-A No. 5920 of 2026, i.e., writ petition filed by selected candidates, submitted that once a process was already initiated with due permission and advertisement was also published then such act would be protected though subsequently 'Act, 2023' came into force and for that learned Senior Advocate has referred Section 31 of Act, 2023, i.e., 'Repeal and Savings' and in support of his submission placed reliance on a judgment passed by a Full Bench of this Court in Santosh Kumar Singh vs. State of U.P. and others, 2015(7) ADJ 179 (FB) and referred the questions framed therein as well as answer given to said questions, which are reproduced hereinafter:

'(a) Whether even after the rescission of Removal of Difficulties Orders under Section 33-E of the Uttar Pradesh Secondary Education Services Selection Board Act, 1982 (Act) (U.P. Act No. 5 of 1982), with effect from 25 January 1999, the Committee of Management retains the power to make ad hoc appointment against short term vacancies only because it had published an advertisement for the purpose prior to 25 January 1999;

(b) Whether on enforcement of Section 33-E of the Act rescinding the Removal of Difficulties Orders issued earlier, the Committee of Management has lost all powers to make ad hoc appointment against short term vacancies;

(c) Whether under Section 16-E of the Intermediate Education Act 1921 (Act of 1921), there is a power with the Committee of Management to make ad hoc appointment against short term vacancies and if so then for what period; and

(d) Whether the Division Bench in the case of Subhash Chandra Tripathi v. State of U.P., Writ-A No. 70721 of 2010, decided on 14 July, 2014, has laid down the correct law.

'20. We consequently answer the reference in the following terms:

(a) Despite the rescission of the Removal of Difficulties Orders by Section 33-E of U.P. Act No. 13 of 1999 with effect from 25 January 1999, the power of the Committee of Management to make appointments against short term vacancies, where the process of appointment had been initiated prior to 25 January 1999 by the publication of an advertisement, would continue to be preserved;

(b) On the enforcement of the provisions of Section 33-E, the power of a Committee of Management to make ad hoc appointments against short term vacancies would not stand abrogated in a case where the process of selection had been initiated prior to 25 January 1999;

(c) Under Section 16-E of the Intermediate Education Act, 1921, the Committee of Management is empowered to make an appointment against a temporary vacancy caused by the grant of leave to an incumbent for a period not exceeding six months or in the case of death, termination or otherwise, of an incumbent occurring during an educational session. An appointment made under sub-section (11) of Section 16-E as provided in the proviso thereto shall, in any case, not continue beyond the end of educational session during which the appointment was made; and

(d) The judgment of the Division Bench in Subhash Chandra Tripathi (supra) is affirmed as laying down a correct interpretation of the judgment in A A Calton (supra).
(Emphasis supplied)

23. Learned Senior Advocate also placed reliance on a judgment passed by a Coordinate Bench of this Court in Rajiv Kumar vs. State of U.P. and others, 2024 SCC OnLine All 5843, wherein similar view was taken.

24. With regard to submission that recruitment process would consider to begin with issuance of advertisement, learned Senior Advocate for selected candidates referred a judgment passed by a Constitution Bench of Supreme Court in Tej Prakash Pathak and others vs. Rajasthan High Court and others, 2025(2) SCC 1 and relevant part thereof is reproduced hereinafter:

'13. The process of recruitment begins with the issuance of advertisement and ends with the filling up of notified vacancies. It consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment.'

xxxx

'65.1 Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies; (Emphasis supplied)

25. Learned Senior Advocate further submitted that in case of any ambiguity in the opinion rendered by a Bench of lesser strength even of Supreme Court, this Court would be legally entitled to follow a judgment passed by a Larger Bench of the Supreme Court, i.e., in present case the judgment passed by Constitution Bench in Tej Prakash Pathak (supra), so far as above issue is concerned.

26. Learned Senior Advocate also submitted that it may be a case of haste by giving appointment letter but haste may not be considered an illegality and at the most it could be an irregularity, which can be ignored, if otherwise the process was legally sustainable. Merely on a ground that no election of Committee of Management was undertaken for last many years, there would not be a vacuum and students of College should not suffer due to non availability of Teachers.

27. Sri G.K. Singh, learned Senior Advocate assisted by Sri Avneesh Tripathi, learned counsel for University has adopted above referred arguments of learned Senior Advocate for selected candidates and submitted that Writ-A No. 10333 of 2025 filed by petitioner-Sunil Kumar Jain is liable to be dismissed not only on locus but on ground of misjoinder of parties also. The University has already granted approval to appointments and interim order was granted, without disclosing misjoinder of parties.

28. Learned Senior Advocate appearing for Committee of Management in Writ-A No. 5941 of 2026, has also adopted above referred arguments made on behalf of selected candidates as well as University that there was no illegality in selection process. Committee of Management has took a decision for granting appointment on basis of deeming clause since Vice Chancellor of University concerned has not granted approval within stipulated time and, therefore, in terms of proviso to Section 31(11)(c) of U.P. State Universities Act, 1973 that there was a deemed approval for appointment of selected candidates, approval was deemed to be granted. Selected candidates have already joined and subsequently vide order dated 15.01.2025 Vice Chancellor of the University has accorded approval also, therefore, at this stage at the behest of petitioner-Sunil Kumar Jain, selected candidates cannot be ousted specifically when there is no allegation that they were not duly qualified or requisite procedure for selection was not followed.

29. Sri Sanjeev Singh, learned Additional Advocate General assisted by Sri D.K. Singh, learned Additional Chief Standing Counsel and Sri Saurabh, learned Standing Counsel appearing for State-Respondents, and assisted the Court on legal issue, whether impugned order assailed in first petition was legally sustainable or not. Learned Additional Advocate General submitted that impugned order whereby selection process was found to be legal since commenced prior to Act, 2023 came into force, would not survive in the light of a judgment passed by Supreme Court in Rachna Hills (supra) and he referred the discussion in reference to issue no. 3 therein, which is already quoted in earlier paragraph of this judgment. Learned Additional Advocate General has

fairly placed reliance on a judgment passed by Supreme Court in Government of Andhra Pradesh and others vs. Sri Sevadas Vidyamandir High School and others, 2011(9) SCC 613 that in case recruitment process was already begin, it may be protected.

30. Learned Senior Advocates for selected candidates, University and Committee of Management, have objected the submission of learned Additional Advocate General, being contrary to the counter affidavit filed on behalf of State.

31. Now the Court proceeds to consider above submissions of respective parties on referred issue.

32. There is no dispute so far as dates are concerned that Director, Higher Education has accorded permission vide orders dated 04.08.2023 and 08.08.2023 to fill up 22 posts of Assistant Professors in College concerned. In pursuance of permission the concerned College issued advertisements on 08.08.2023 and 12.08.2023. Said permission was recalled subsequently vide order dated 06.05.2024 passed by Secretary, Higher Education, Government of U.P., which was subject matter of challenge in earlier round of litigation and during pendency of said litigation order dated 06.05.2024 was recalled by a subsequent order dated 20.11.2024 and that Act, 2023 came into force with effect from its gazette notification on 21.08.2023, i.e., subsequent to advertisement.

33. As referred above, in earlier round of litigation both orders whereby permission was recalled and subsequent order whereby said order was recalled were set aside and matter was remitted back to concerned State Authority to pass a fresh order taking note of relevant factors including the effect of repeal.

34. In above background, an order dated 21.04.2025 was passed by the Principal Secretary, Higher Education, which is impugned in first petition, whereby it was held that since publication of advertisement was prior to enforcement of Act, 2023, therefore, it would not be illegal to continue with selection process in terms of earlier Act of 1982 and not by Act, 2023

35. After considering rival submissions and judgments placed on record, the Court finds that in Dr. Manoj Kumar Rawat (supra) an issue was considered of fresh recommendation to change the place of posting of a wait listed candidate and in such circumstance it was held that earlier recommendation would not be protected after considering the issue of effect of repeal of old Act and enforcement of new Act as well as in terms of Section 6 of U.P. General Clauses Act, whereas in the present case issue is process of a selection which was admittedly commenced after due permission by publishing advertisement before Act, 2023 came into existence, therefore, the Court finds that the facts of Dr. Manoj Kumar Rawat (supra) may not be applicable in the present case.

36. Now the Court takes note of Rachna Hills (supra), however, finds that it is distinguishable on facts and law as well. In present case there is a ‘deemed approval’ also, therefore, approval of Vice Chancellor of University may not be necessary after stipulated time, whereas in Rachna Hills (supra) there was no ‘deeming clause’. Further, in present case it is the stand of State that selection procedure can be continued as per old procedure even after Act, 2023 came into force, whereas in

Rachna Hills (supra) the opposition was of the Government. Other distinguishable features are that in present case selection was started with prior permission and in Rachna Hills (supra), there was an amendment in the Act, whereas in present case a new Act, namely, Act, 2023 was enforced and earlier selection process can still be protected under Repeal and Saving clause, which was done by the order impugned.

37. The Court finds that in given circumstances above referred both judgments are not applicable.

38. Otherwise also there is a judgment passed by a Constitution Bench in Tej Prakash Pathak (supra) wherein issue involved in present case was was considered and it was held that process of recruitment begins with issuance of advertisement and ends with filling of notified vacancies and rules of game cannot be changed after it commenced, therefore, the Court finds that in given circumstances there would be no difficulty to follow the judgment passed by Constitution Bench of Supreme Court in Tej Prakash Pathak (supra) that recruitment process would commence from the date of advertisement.

39. In aforesaid circumstances, the Court finds that in strict interpretation the first petition filed by petitioner-Sunil Kumar Jain is not maintainable on ground of non-joinder of parties. Still the referred issue is answered that in facts and circumstances of present case, this Court follows the judgment passed by a Constitution Bench of Supreme Court in Tej Prakash Pathak (supra) and that the judgments passed by Supreme Court in Dr. Manoj Kumar Rawat (supra) and Rachna Hills (supra) would not be applicable in the present case. There is no allegation that selected candidates were not qualified. Only on a ground that a writ petition is pending from 2010 on a dispute of Committee of Management, there may not be a vacuum as well as students of the College concerned cannot be forced to suffer in absence of teaching staff. The conditions imposed in permission was in anticipation and as discussed above, the selection process was protected by provisions 'Repeal and Savings' of Act, 2023, therefore, such condition has no legal consequence. No candidate has come forward being aggrieved by the impugned decision, therefore, the Court finds that there is no illegality in impugned order dated 21.04.2025. Since advertisements were issued before Act, 2023 was enforced, therefore, procedure applicable earlier vide Act of 2019 was followed and selection process was found to be legal. Further, since approval has also been granted and selected candidates are working, therefore, the outcome of above discussion, on facts and law, is that no interference be caused in order impugned in first petition.

40. In view of above, Writ-A No. 10333 of 2025 filed by petitioner-Sunil Kumar Jain is dismissed. Interim order therein is vacated.

41. Consequently, orders impugned in Writ-A Nos. 5941 of 2026 and 5920 of 2026, i.e., orders dated 02.04.2026 and 26.02.2026 become non-est since they were passed on basis of interim order passed in Writ-A No. 10333 of 2025 and its legal consequence shall follow.

42. Writ-A Nos. 5941 of 2026 and 5920 of 2026 are accordingly disposed of.

43. Writ-C No. 45787 of 2010 (Atul Kumar Jain vs. State of U.P. and others) be listed in third week of July at 12.30 PM before appropriate Bench for final hearing.

(2026) 5 ILRA 503
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 21.05.2026

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Writ A No. 12130 of 2025

Shusheel Tripathi **...Petitioner**
Versus
U.O.I. & Ors. **...Respondents**

Issue for Consideration

(1) Effect of registration of criminal case against the juvenile on his right to seek an appointment.
(2) Effect of submission of Final Report in the criminal case on the right of a selected candidate to get the appointment and joining.

Headnotes

(A) Service law – Appointment – Post of Upper Division Clerk – Petitioner was selected and shortlisted – During police verification, the criminal history of two cases was reported – In one case, the petitioner was declared juvenile and in another case, the Final Report was submitted – However, no joining was given, despite the fact that both criminal cases were disclosed – Direction for giving the joining was sought

Held : Not only the pendency of a criminal case against the juvenile delinquent, but, even if he is convicted, the same would have no bearing so far as the appointment in the job, government or private is concerned. [Para 18]

Held further : If the charges are not serious in nature and the final reports are filed in such cases, the accused persons should not be deprived of for getting the job because of pending consideration of such final reports. Actually, if the final report is rejected and such accused person is convicted, the legal recourse is always open for the government/department concerned to dispense with the services of such employee. [Para 22] (E-1)

Case Law Cited

Union of India And Others vs. Ramesh Bishnoi, (2019) 19 SCC 710; Writ A No. 9462 of 2025, Navodaya Vidhyalaya Samiti and Others vs. Pundarikaksh Dev Pathak and another decided on 16.10.2025; State of Gujarat and another vs. Surya Kant Chunilal Shah, 1999 (1) SCC 529 **– referred to.**

List of Acts

Juvenile Justice (Care and Protection of Children) Act, 2000 **–** Section 19.

List of Keywords

Recruitment, Shortlist, Joining letter, Police verification, Condition precedent, Concealment, Criminal history, Investigation, Absolute bar, Juvenile, Disqualification, Time of committal of offence, Hindrance. Prima facie, Substantial evidence, Material reason, Final report, Adjudication, Acquittal, Conviction, Livelihood, Consequence, Common sense, Vacuum.

Case Arising From

Not issuing the joining letter in favour of the petitioner.

Appearances for Parties

Advs. for the Petitioner : Rohit Kumar Singh; Vijay Bahadur Singh.
Advs. for the Respondents : Ran Vijay Singh.

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

1. Heard Mr. Rohit Kumar Singh, learned counsel for the petitioner, learned counsel for the Union of India, Mr. Ran Vijay Singh, learned counsel for the opposite parties no. 2 & 3, learned counsel for the State and perused the record.

2. By means of the present writ petition, the petitioner has sought prayer for directing the opposite party no. 3 i.e. Regional Director, Employees? State Insurance Corporation (ESIC), Regional Office, Kanpur, U.P., for issuance of a joining letter, within the time stipulated by this court.

3. The factual matrix of the case are that the Employees? State Insurance Corporation (hereafter referred to as ESIC) had issued an advertisement on 28-12-2021 for recruitment on the posts of Upper Division Clerks(UDC), Stenographers and Multi-Tasking Staff (MTS) in Uttar Pradesh region of ESIC. The last date of submission of applications was 15-02-2022, against 119 vacancies of Multi Tasking Staff and the process of the recruitment was to be undertaken within two phases; Phase-I, the preliminary examination and Phase-II, the main examination. The petitioner applied for the post of Multi Tasking Staff (hereinafter referred to as 'MTS') under the unreserved category, through e-applications, on the website of the ESIC and appeared in Phase-I examination and was declared qualified and thereafter, he also appeared in the main examination, which was scheduled to be held on 05-06-2022 at examination centre, Lucknow. The petitioner was shortlisted in the list of additional shortlisted candidates, on 10-06-2024 and was called for the documents verification, scheduled on 20-06-2024, wherein the petitioner appeared and after verification of the documents, he received an offer of appointment alongwith attestation form for the post of MTS, vide e-mail dated 09-07-2024. After receiving the offer of appointment, the petitioner accepted and duly filled the attestation form on 18-07-2024 at the dispatch section of ESIC, Regional Office, Kanpur, wherein the petitioner disclosed the details of two pending criminal cases against him.

4. In furtherance to the shortlisted list of the candidates, the joining letters were issued to them, though the petitioner has not been issued any joining letter and on query being asked, he was informed that he will be issued the joining letter after completion of the police verification. The decision on the police verification is still pending.

5. Contention put forth by the learned counsel for the petitioner is that despite completion of the formalities and submission of the attestation form, the concerned authority did not issue any joining letter to the petitioner, whereas the other similarly situated candidates have already been permitted to join. He added that on 13-02-2025, the petitioner received a reply of letter, wherein it was stated that as per the DoPT letter dated 30-03-2016, the police verification is a condition

precedent prior final acceptance of the appointment and issuance of the joining letter, though subsequent thereof, the petitioner visited the department several times while submitting representations, clarifying the position that in the first information report no. 50 of 2020, the final report no. 57 of 2022, has been submitted by the Investigating Officer concerned.

6. He contends that the criminal history of two cases has been disclosed by the petitioner and there is no concealment as such. He also submits that so far as the N.C.R. 93 of 2015, under sections 323 & 504 of I.P.C. was registered at Police Station-Bhiti, Ambedkar Nagar, the same is pending before the Juvenile Justice Board, wherein he has been declared as juvenile, on 20-12-2024. He submits that in the F.I.R. No. 50 of 2020, under sections 419,420,467,468 & 471 of I.P.C., Police Station-Bhiti, District-Ambedkar Nagar, the investigation has been concluded and the Final Report (Closure Report) No. 57 of 2022, has been submitted before the learned trial court.

7. Adding his arguments, he submits that so far as the N.C.R. No. 93 of 2015 is registered, the petitioner has been declared as juvenile delinquent. He submits that the law is clear that the pendency of any criminal case, would have no bar, in case of juvenile to be appointed in any job/service. He next added that since the first information report has been submitted before the learned trial court and therefore, the same would also not come in the way of the appointment of the petitioner.

8. Concluding his argument, he submits that the petitioner is waiting for his joining since long back and those, who were shortlisted alongwith the present petitioner, have been given joining and they are now continuing in service. Therefore, submission is that the concerned authority may be directed to issue the joining letter to the petitioner and to appoint him on the post of M.T.S.

9. Contrary, submission of learned counsel for the opposite parties no. 2 & 3 is that though an offer of appointment was issued to the petitioner on 09-07-2024, but, the joining has been withheld due to disclosure of two criminal cases and the adverse police verification report. He submitted that the petitioner had moved a representation with respect to his claim on 18-08-2025, which has been referred for legal opinion and therefore, submission is that the relief sought by the petitioner is premature and is not maintainable.

10. Upon considering the submissions of learned counsels for the parties and after perusal of records, what apparent is that the admitted fact in between the parties is that after the completion of the main examination for the post of M.T.S., the offer of appointment was issued to the petitioner, on 09-07-2024 and because of the disclosure of two criminal cases by the petitioner, issuance of joining letter has been withheld. The details of two criminal cases are given as follows :-

(i) N.C.R. No. 93 of 2015, under sections 323 & 504 of I.P.C., Police Station-Bhiti, Ambedkar Nagar.

(ii) F.I.R. No. 50 of 2020, under sections 419,420,467,468,471 of I.P.C., Police Station-Bhiti, District-Ambedkar Nagar

11. Though, it seems that there is no denial letter or any decision taken by the authority for non issuance of the joining letter, but the same has not been issued as yet, whereas the statement made in the Counter Affidavit filed by the opposite parties no. 2 & 3 is apparent that because of the abovenoted two criminal cases, pending against the petitioner, the joining letter has not been issued and further, the matter is referred to the headquarter for legal opinion,which is still pending consideration.

12. When this court examines the question that whether the pendency of the abovenoted two cases can be absolute bar for issuing the joining letter to the petitioner, it emerges that out of two criminal cases, one case is registered as N.C.R. No. 93 of 2015, under sections 323 & 504 of I.P.C., wherein the petitioner is declared as juvenile delinquent on 20-12-2024.

13. In this regard, section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2000(hereinafter referred to as ?Act,2000?), is relevant, which reads as under :-

'19. Removal of disqualification attaching to conviction :- (1) Notwithstanding anything contained in any other law, a juvenile who has Removal of committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

(2) The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be.'

14. A bare reading of the abovesaid provision, makes it abundantly clear that the juvenile, who is alleged to have committed any offence and has been dealt with under the provision of the ‘Act, 2000', would not suffer any disqualification since his/her conviction, though this provision does not disclose regarding any impact. Thus, the intent of the legislature is very clear that such juvenile even convicted for an offence, would not make him disqualified.

15. I am aware of the law rendered by the Hon’ble Apex Court in the case of Union of India And Others Versus Ramesh Bishnoi,reported in (2019) 19 SCC 710, wherein the law has been laid down as under :-

"8. From the facts, it is clear that at the time when the charges were framed against the respondent, on 30-6-2009, the respondent was well under the age of 18 years as his date of birth is 5-9-1991. Firstly, it was not disputed that the charges were never proved against the respondent as the girl and her parents did not depose against the respondent, resulting in his acquittal on 24-11-2011. Even if the allegations were found to be true, then too, the respondent could not have been deprived of getting a job on the basis of such charges as the same had been committed while the respondent was juvenile. The thrust of the legislation i.e. the Juvenile Justice (Care and Protection of Children) Act, 2000 as well as the Juvenile Justice (Care and Protection of Children) Act, 2015 is that even if a juvenile is convicted, the same should be obliterated, so that there is no stigma with regard to any crime committed by such person as a juvenile. This is with the clear object to reintegrate such juvenile back in the society as a normal person, without any stigma. Section 3 of

the Juvenile Justice (Care and Protection of Children) Act, 2015 lays down guidelines for the Central Government, State Governments, the Board and other agencies while implementing the provisions of the said Act. In clause (xiv) of Section 3, it is clearly provided as follows:

"3. (xiv) Principle of fresh start: All past records of any child under the juvenile justice system should be erased except in special circumstances."

9. In the present case, it is an admitted fact that the respondent was a minor when the charges had been framed against him of the offences under Sections 354, 447 and 509 IPC. It is also not disputed that he was acquitted of the charges. However, even if he had been convicted, the same could not have been held against him for getting a job, as admittedly, he was a minor when the alleged offences were committed and the charges had been framed against him. Section 3(xiv) provides for the same and the exception of special circumstances does not apply to the facts of the present case."

16. While dealing with the identical issue, the Hon'ble Apex Court has held that even the juvenile is convicted, that would not be any ground to disqualify him for getting a job, if he was minor at the time of committal of the offence.

17. Placing reliance on the above, the coordinate Division Bench of this court in Writ A No. 9462 of 2025, Navodaya Vidhyalaya Samiti and 2 Others Vs Pundarikaksh Dev Pathak and Another, decided on 16-10-2025, has held in paragraph no. 22 as under :-

"22. From the above discussion, it is crystal clear that even conviction of a juvenile has been found to be irrelevant qua his services and the present case stands on much better footings where trial against the petitioner is pending. Further, as per judgment of Hon'ble Supreme Court in the case of Ramesh Bishnoi (supra), even requirement of disclosing the details of criminal prosecution faced by a juvenile is violative of right to privacy and right to reputation of child, guaranteed under the Constitution of India, and therefore, it is not expected of a juvenile to disclose such details. Same proposition has been laid down by this Court in the case of Shivam Maurya (supra) and the judgment of Hon'ble the Supreme Court in the case of Ramesh Bishnoi (supra) as well as in the case of Shivam Maurya (supra) are being consistently followed by this Court. Reference to the judgement of a learned Single Judge of this Court in Abhishek Kumar Yadav vs. Union of India and 3 others, 2022 (6) ADJ 564, can also be made in this regard. "

18. It is abundantly clear that not only the pendency of a criminal case against the juvenile delinquent, but, even if he is convicted, the same would have no bearing so far as the appointment in the job, government or private is concerned.

19. Now, coming to the next question that whether pendency of the final report in a criminal case for decision before the trial court, would create any hindrance or bar for getting the job?

20. Time and again, there are certain rules framed that if a criminal case is pending, that would disqualify for appointment on the post in government job. After a criminal case is registered and investigation is completed, resulted into filing of the final report, would infact, prima-facie shows

that there is no involvement of such accused or person in the alleged crime, unless such final report is rejected by the trial court.

21. In our country, it is truth that because of the heavy pendency of the cases, the trial courts are overburdened and for these reasons, cases remain pending to be decided, for a long period. Therefore, the question arises that whether in case of specific circumstances like the present, if the Investigating Officer does not find the correctness in the allegations or any substantial evidence against such accused person, files final report and that remains pending consideration for a long period of time, would come into way of getting the job for such person. Infact, the fate of a person, whose career is on stake, cannot be thrown to suffer for there being any material reason. Assuming, if the trial court accepts the final report at a belated stage, such accused person, must suffer irreparable loss and injury, which cannot be compensated by any means. Infact this can never be the intent of any law.

22. It is of worth consideration that if the charges are not serious in nature and the final reports are filed in such cases, the accused persons should not be deprived of for getting the job because of pending consideration of such final reports. Actually, if the final report is rejected and such accused person is convicted,the legal recourse is always open for the government/department concerned to dispense with the services of such employee.

23. I have noticed that in F.I.R. No. 50 of 2020, the final report no. 57 of 2020, has already been submitted by the Investigating Officer. The trial court has failed to pass any order on the final report submitted by the Investigating Officer, thus no otherwise inference can be drawn against the petitioner, in such circumstances.

24. I have also considered the law rendered by the Hon'ble Apex Court in the case of State of Gujarat And Another Vs Surya Kant Chunilal Shah, reported in 1999 (1) SCC 529 and I am of the view that the allegation of the involvement of the accused in a criminal case, does not mean that he is guilty for committing of the offence as is alleged against him. The adjudication of the allegations including the evidences, will take the matter to the final conclusion, which may result into conviction or acquittal and therefore, it would be highly improper and unjusticibale to deprive a person of his livelihood merely on the basis of his alleged involvement. Such decision of the deprival, would have far reaching consequences, for an accused, which is neither justified on common sense, nor under any law. The laws are meant for putting the society in order. The application of laws can never be in vacuum, but, infact, to all the extent, it impacts human being. If the law applies and resulted into soothing the heart of a person,infact in the real sense, the object of such law succeeds. Consequently, the petitioner cannot be thrown to suffer for unlimited period of time, to wait for a job, because of the pending final report for it's adjudication.

25. In view of the aforesaid submissions and discussions, this court finds merit in the writ petition.

26. Ergo, the opposite party no. 3/Regional Director, Employees State Regional Corporation, Regional Office,Kanpur, U.P. is directed to issue the joining letter to the petitioner, ignoring the

pendency of the criminal cases against him, within the period of thirty days, from the date; a certified copy of this order is produced before him.

27. The writ petition is allowed accordingly.

(2026) 5 ILRA 509
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.05.2026

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 29926 of 2016
& Other Connected Cases

Ashwani Kumar Awasthi & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

(1) Enforceability of a Corrigendum having the provision contrary to the provision a Government Order in substance.

Headnotes

(A) Service law – Selection for Training Course – Stipend – Entitlement – GO dated 14.01.2004 provide to pay stipend till the date of appointment – However, the same was denied on the ground that as per Corrigendum letter dated 14.05.2015, it is payable only during the course of training – Validity challenged – Significance of the Government Order and Scope of a Corrigendum letter felt into consideration

Held : A Government order, particularly issued with the approval of the Governor, represents an exercise of executive policy making power and is capable of creating enforceable rights and obligations. A corrigendum, on the other hand, is ordinarily intended to rectify clerical, typographical, accidental, or explanatory errors so as to give effect to the true intent of the original order. The legal permissibility of a corrigendum is thus confined to correction without alteration of substance. [Para 59]

Further held : The original Government order dated 14.01.2004, as amended on 20.02.2004, unequivocally contemplated payment of stipend to the selected trainees till the date of their appointment. The subsequent corrigendum, by restricting such payment only to the duration of training, effectively truncates the period of entitlement and thereby deprives the beneficiaries of a substantive financial benefit which had accrued under the original policy **–** In absence of issuance of a valid Government order with due approval in accordance with Article 166 of the Constitution of India, the said corrigendum cannot be given legal effect. [Para 67 and 72] (E-1)

Case Law Cited

Civil Misc. Writ Petition No. 49574 of 2010, Vishishtha BTC Shikshak Welfare Association and others vs. State of U.P. & Others decided on 08.12.2014; Special Appeal Defective No. 246 of 2015, State of U.P. through Secretary Basic Education & 3 Others vs. Vishishtha BTC Shikshak Welfare Asso. & Others decided on 01.05.2015; B.K. Srinivasan & Ors. vs. State of Karnataka & Ors., (1987) 1 SCC 658 : AIR 1987 SC 1059; State of Bihar vs. D. N. Ganguly & Ors., AIR 1958 SC 1018 : 1959 SCR 1191; Master Construction Co. (P) Ltd. vs. State of Orissa & Another, AIR 1966 SC 1047 : (1966) 3 SCR 99; Indian Council for Enviro-Legal Action &

Ors. vs. Union of India, (1966) 3 SCC 212; S. Nagaraj & Ors. vs. State of Karnataka & another, 1993 Supp (4) SCC 595 : (1993) Supp 2 SCR 1; State of Bihar & Ors. vs. Kripalu Shankar & Ors., (1987) 3 SCC 34; Bachhittar Singh vs. State of Punjab, AIR 1963 SC 395; Commissioner of Police, Bombay vs. Gordhandas Bhanji, AIR 1952 SC 16 : 1952 SCR 135; Sant Ram Sharma vs. State of Rajasthan & Ors., AIR 1967 SC 1910 : (1968) 1 SCR 111; State of Punjab vs. Nestle India Ltd. & Another, (2004) 6 SCC 465; Mohinder Singh Gill & Another vs. Chief Election Commissioner, New Delhi & Others, (1978) 1 SCC 405 : AIR 1978 SC 851; Master Construction Co. (P) Ltd. vs. State of Orissa & Another, AIR 1966 SC 1047 : (1966) 3 SCR 99 **– referred to.**

List of Acts

Constitution of India – Article 14, 16 and 166; Uttar Pradesh Secretariat Instructions and the Uttar Pradesh Authentication (Orders and Other Instruments) Rules, 1975.

List of Keywords

Training Course, Stipend, Corrigendum letter, Training period, Policy, Error, Vested and accrued right, Arbitrary, Unreasonable, Legitimate expectation, Clerical, Explanatory, Clarificatory, Substantive decision, Administrative action, Ministerial in nature, Substantive modification, Legal effect, Material change, Alternation of a substantive determination, Reconsideration, Ambiguities, Accidental mistake, Clarical omission, Inadvertent errors, Accidental mistakes, Perpetuation, Miscarriage of justice, Constitutional practice, Administrative law, Legal permissibility, Alteration of substance, Administrative explanation, Financial entitlement, Unilateral departmental clarification, Post facto rationalizations, Rectification of an obvious mistake, Rewrite the policy, Litigation.

Case Arising From

Corrigendum letter dated 14.05.2015.

Appearances for Parties

Advs. for the Petitioner : Abhishek Mishra; Gopal Verma; H.A.B. Sinha; Hari Manish Bahadur Sinha; Rahul Mishra; Sharad Kumar.
Advs. for the Respondents : C.S.C.

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. The petitioners in the present batch of petitions were selected for the Special BTC Training Course, 2004. The controversy involved in these writ petitions are similar in nature that under the Government Order dated 14.01.2004, it was specifically provided that the candidates selected for the said training course would be paid a stipend of Rs. 2,500/- per month from the commencement of their training until the date of their appointment, however, the respondent authorities have denied to pay the stipend on the ground that, by means of a corrigendum letter dated 14.05.2015, the condition contained in the earlier Government order had been modified, providing that the stipend would be payable only for the duration of the training period and not till the date of appointment, as was originally stipulated.

2. When the petitioners leading writ petition being Writ-A No. 29926 of 2016 along with some other persons, were not paid the aforesaid stipend, they preferred Writ-A No. 64689 of 20151, in which this Court directed the concerned authority to consider the grievance of the petitioners therein and pass appropriate orders. Pursuant thereto, the claim of the petitioners was rejected vide order dated 18.05.2016 on the ground that, by means of a corrigendum letter dated 14.05.2015, the condition contained in the earlier Government order had been modified, providing that the stipend would be payable only for the duration of the training period and not till the date of appointment, as

was originally stipulated. Similarly, the claim of other petitioners in connected two other writ petitions has been rejected by orders dated 09.06.2015 and 30.07.2015, thus, the petitioners herein have challenged the claim rejection orders along with the corrigendum letter dated 14.05.2015.

3. Earlier, Writ-A No. 29926 of 2016 was decided on 03.02.2020 by passing the following order:

"Heard learned counsel for the petitioners and learned Standing Counsel for respondents.

By means of the present writ petition, the petitioners have sought for issuance of writ of certiorari to quash the order dated 18.5.2016 passed by the respondent No.1 and corrigendum dated 14.5.2015 with the further prayer to issue a writ of mandamus to command the respondent No.2 to make immediate payment of remaining stipend as per Clause-3(12) contained under Government Order dated 14.1.2004.

Brief fact of the case is that the petitioners appeared in Special B.T.C. Training Course, 2004, wherein they were selected. Under the Government Order dated 14.1.2004, it was provided that the candidates, who have been selected for Special B.T.C. Training Course shall be given stipend of Rs.2,500/- per month from the start of training till the date of appointment.

In regard to the controversy that whether the training through correspondence course is valid or not for consideration of claim for the selection for Special B.T.C. Training Course was subject matter of challenge before this Court in bunch of writ petition. The petitions were decided and ultimately, the Hon'ble Supreme Court vide judgment and order dated 26.4.2013 held that B.Ed. course through correspondence is valid. After the selection, the petitioners claimed stipend as per the Government Order issued on 14.1.2004. The respondents paid stipend for 6 months only and not till the date of appointment to the petitioners. Although, till date, no appointment letter has been issued to the petitioners.

The controversy in regard to the payment of stipend came before this Court in Writ-A No.49574 of 2010, which was decided vide judgment and order dated 8.12.2014 and following direction was issued :-

"On the other hand, learned counsel appearing for the petitioners again relies upon paragraph 3(12) of the Government Order dated 14.1.2004, which clearly stipulates that from the date of selection for Special BTC Course till the appointment the candidate would be entitled for stipend of Rs.2,500/-.

Paragraph 3(12) of the Government order dated 14.1.2004 is unambiguous and nothing to the contrary has been presented to the Court. In my view, the petitioners are entitled for stipend till they are appointed as Assistant Teachers in the Primary School, therefore, from May 2005 till December 2005 the petitioners are entitled for stipend of Rs.2,500/- per month in case there is nothing contrary in law against such entitlement.

Subject to the aforesaid, writ petition is allowed."

The order passed by the learned Single Judge was subject matter of challenge in Special Appeal (Defective) No.321 of 2015 which was decided vide order dated 27.4.2015, by holding the following observation :-

"The aforesaid provision makes it clear that the stipend was liable to be paid during the period of training and until the order of appointment was issued. The impugned order of the learned Single Judge is hence consistent with the clear mandate of paragraph 3(12) of the Government Order. The reliance which has been placed by the learned Standing Counsel on a subsequent Government Order dated 9 July 2007, which is placed on the record, is misconceived. That Government Order merely states that the recruitment process had been concluded. It has no bearing on the liability to pay stipend, which is governed by paragraph 3(12) of the earlier Government Order extracted above. For these reasons, we find no merit in the special appeal and it is, accordingly, dismissed. There shall be no order as to costs."

Thereafter, the matter went up to the Hon'ble Supreme Court and the S.L.P. filed by the State Government was dismissed vide judgment and order dated 12.10.2015. A review was also sought, which has also been dismissed by the Hon'ble Supreme Court vide order dated 10.11.2016.

In view of the above, the matter is set at rest. The petitioners are also entitled for the benefit claimed in the present writ petition.

Accordingly, the writ petition is finally disposed of with the direction to the respondents to ensure payment of stipend to the petitioners with effect from the date of training till the date of appointment in view of Clause-3(12) contained under Government Order dated 14.1.2004 and as per the judgment passed in Writ-A No.49574 of 2010, Special Appeal (Defective) No.321 of 2015 as well as affirmed in the S.L.P. by the Hon'ble Supreme Court vide judgment and order dated 12.10.2015, within a period of 3 months from the date of production of certified copy of this order."

4. The aforesaid judgment and order dated 03.02.2020 was challenged by the State by filing Special Appeal No. 11 of 20212, wherein the following order was passed on 27.01.2021:

"By this appeal a challenge is made to the impugned order dated 03.02.2020 passed by the learned Single Judge on a writ petition preferred by the non-appellant with the following prayers;

"(a) Issue a writ, order or direction in the nature of certiorari, quashing the impugned order dated 18.05.2016 passed by respondent no. 1 and office order/corrigendum dated 14.05.2015 also be quashed.

(b) Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 2 make immediate payment of remaining stipend amount as mentioned in the Government Order dated 14.01.2004 in Para 3 (12) till his appointment as Assistant Teacher with interest 18%.

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

(d) Award the cost of the petition to the petitioners."

The writ petition has been decided in reference to the earlier litigation and the Government Order dated 14.01.2004, without addressing the issue raised in reference to the subsequent government order/corrigendum dated 14.05.2015. By the aforesaid order, a modification was made in regard to the benefit of stipend. It was made limited to the period of training after entering into Special B.T.C. course.

The issue in reference to the government order/corrigendum dated 14.05.2015 has not been addressed effectively by any of the Court, though, a review petition preferred by the State Government before the Apex Court has been dismissed but the judgment aforesaid does not propound a ratio.

Taking into consideration aforesaid and as prayed by learned counsel for the parties, the impugned order dated 03.02.2020 passed by the learned Single Judge is set-aside with remand of the case to the learned Single Judge to be decided afresh in reference to all the prayers made by the petitioners in writ petition.

Appeal is allowed with the direction given above."

5. The present petitions are being heard afresh in terms of the directions issued by the Division Bench of this Court while deciding the aforesaid Special Appeal, particularly with regard to the issue arising out of the subsequent Government Order/corrigendum dated 14.05.2015.

6. Learned counsel for the petitioners submits that the Government order dated 14.01.2004 was issued with the due approval and sanction of the State Government and specifically provided that the candidates selected for the Special BTC Training Course, 2004 would be entitled to payment of a stipend at the rate of Rs. 2,500/- per month from the commencement of their training till the date of their appointment. It is contended that the said Government order created a substantive and enforceable right in favour of the selected candidates, and the authorities were bound to act in accordance with the terms and conditions contained therein.

7. Learned counsel for the petitioners submits that benefit of payment of stipend from commencement of training till their appointment having been granted by a duly sanctioned Government order, could not subsequently be curtailed or withdrawn retrospectively by means of a mere corrigendum dated 14.05.2015, particularly after the petitioners had already completed the training and acquired a vested right to receive the stipend in terms of the original Government order. According to the petitioners, the corrigendum seeks to alter the very substance of the policy decision contained in the Government order dated 14.01.2004 by restricting payment of stipend only up to the training period instead of till the date of appointment, which amounts to a substantive amendment and not a mere correction or clarification.

8. Learned counsel for the petitioners contends that the corrigendum dated 14.05.2015 travels beyond the scope of a mere corrigendum or clarification, inasmuch as it substantially alters the policy decision embodied in the original Government order dated 14.01.2004. It is argued that a

corrigendum can ordinarily be issued only to correct clerical, typographical, or inadvertent errors and cannot be used as an instrument to amend, modify, or take away substantive benefits already granted under a duly sanctioned Government order.

9. It is further submitted that the petitioners had already acquired a vested and accrued right to receive stipend till the date of appointment in terms of the original Government order, and such right could not have been retrospectively taken away after lapse of several years by issuing the impugned corrigendum. The corrigendum, therefore, according to the petitioners, is arbitrary, unreasonable, and violative of Articles 14 and 16 of the Constitution of India, apart from being contrary to the doctrine of legitimate expectation.

10. Learned counsel for the petitioners submits that the original Government order dated 14.01.2004, having been issued with the sanction of the Governor, was subsequently amended by another Government order dated 20.02.2004, which was also issued with the sanction and approval of the Governor. It is contended that the amendment introduced by the Government order dated 20.02.2004 specifically modified certain conditions relating to the Special BTC Training Course, while maintaining the stipulation regarding payment of stipend to the selected candidates .

11. It is further submitted that the very fact that the earlier Government order dated 14.01.2004 was amended by issuance of a fresh Government order dated 20.02.2004, duly sanctioned by the Governor, clearly demonstrates that any substantive alteration in the conditions of the original policy could only have been made through another properly sanctioned Government order. According to the petitioners, the subsequent corrigendum dated 14.05.2015, not being in the nature of a duly sanctioned amendment but merely styled as a corrigendum, could not legally curtail or withdraw the substantive benefit of stipend payable till the date of appointment, which had been granted under the original Government order.

12. Learned counsel for the petitioners submits that, with respect to the dispute relating to payment of stipend, several writ petitions came to be filed before this Court. One such writ petition, being Civil Misc. Writ Petition No. 49574 of 20103, was allowed by judgment and order dated 08.12.2014. Against the aforesaid judgment, the State preferred Special Appeal Defective No. 246 of 20154, which too was dismissed by order dated 01.05.2015.

13. It is further submitted that, against the aforesaid orders, the State respondents approached the Apex Court by filing SLP (Civil) No. 29614 of 2015, which also came to be dismissed. Similarly, Special Appeal No. 321 of 20155, was also dismissed. Accordingly, paragraph 3.12 of the Government order dated 14.01.2004 stood affirmed and the controversy relating to payment of stipend attained finality up to the Supreme Court.

14. It is further submitted that, thereafter, the State filed Review Application No. 3450 of 2016 in SLP (Civil) No. 29614 of 20156, raising the plea that the issue pertained to Vishisht/Special BTC Training, 2004, the selection process whereof had been conducted pursuant to Government order dated 14.01.2004 as amended by Government order dated 20.02.2004. Reliance was placed upon paragraph 3.12 of the Government order, which provided that stipend at the rate of Rs. 2,500/- per month would be payable to the selected candidates till they completed the requisite

training, passed the examinations conducted under the control of the State Council of Educational Research and Training, and secured regular appointment on the post of Assistant Teacher in Primary Schools of the Board. The State, in the review application, further contended that the Government order dated 14.01.2004 had subsequently been amended by corrigendum dated 14.05.2015 and, therefore, the judgment dated 12.10.2015 required reconsideration in light of the amended Government order. However, the aforesaid review application also came to be dismissed.

15. In view of the aforesaid facts, learned counsel for the petitioners submits that the controversy regarding payment of stipend already stands settled by the Apex Court, and the petitioners, being similarly situated, are entitled to payment of stipend from the commencement of their training till the date of their appointment in terms of the Government order dated 14.01.2004.

16. During the pendency of the present writ petitions, the other petitions were earlier allowed by judgment and order dated 03.02.2020. Against the aforesaid judgment, a Special Appeal was preferred, which came to be decided by order dated 27.01.2021, whereby the matter was remanded to the learned Single Judge for fresh consideration, particularly with regard to the issue arising from the corrigendum dated 14.05.2015.

17. Learned counsel for the petitioners further submits that, in another set of similarly situated matters, the State had filed Special Appeal No. 532 of 2018 before this Court, which was decided by judgment and order dated 18.02.2020. The said appeal was allowed in favour of the claimants holding them entitled to the benefit of stipend in terms of the Government order dated 14.01.2004.

18. It is further submitted that the aforesaid judgment was challenged by the State before the Apex Court by filing SLP (C) No. 137 of 20217, wherein once again the State raised the issue relating to the amended corrigendum dated 14.05.2015. However, despite the aforesaid contention having been specifically raised, the Special Leave Petition also came to be dismissed by order dated 11.07.2022.

19. Accordingly, learned counsel submits that the issue with regard to entitlement of stipend under the Government order dated 14.01.2004, notwithstanding the subsequent corrigendum dated 14.05.2015, already stands concluded against the State by successive judicial pronouncements extending up to the Supreme Court, and therefore the petitioners are entitled to the same relief.

20. In view of the aforesaid submissions, it is contended that the impugned orders cannot be sustained in the eyes of law, inasmuch as the same are arbitrary, illegal, unreasonable and contrary to the Government orders dated 14.01.2004 and 20.02.2004, as well as the law laid down by this Court and affirmed up to the Apex Court. It is, therefore, prayed that the impugned orders may be quashed and set aside, and the petitioners may be granted all consequential benefits, including payment of stipend from the commencement of their training till the date of their appointment, in accordance with the original Government order dated 14.01.2004.

21. Learned Additional Chief Standing Counsel appearing for the respondents, however, submits that the case of the petitioners is founded upon the Government order dated 14.01.2004, under which the petitioners claim entitlement to payment of stipend at the rate of Rs. 2,500/- per

month not only during the training period but also till the date of their appointment. Since the said amount was not paid, the petitioners, along with other similarly situated persons, filed Writ-A No. 64689 of 2015, wherein a direction was issued to the competent authority to consider the grievance of the petitioners and pass appropriate orders.

22. It is submitted that, pursuant to the aforesaid directions, the claim of the petitioners was duly considered and rejected by the Joint Secretary by order dated 18.05.2016 on the ground that, by means of corrigendum letter dated 14.05.2015, the conditions contained in the earlier Government order had been modified so as to make the stipend payable only up to the period of training and not till the date of appointment as originally provided.

23. Learned counsel for the respondents further submits that the petitioners have challenged the corrigendum dated 14.05.2015 mainly on the ground that the same was not issued under the authority or sanction of the Governor and, therefore, could not validly amend the earlier Government order dated 14.01.2004, which had been issued with the approval of the Governor. According to the petitioners, the corrigendum is consequently inoperative in law and, therefore, the order dated 18.05.2016 rejecting their claim for stipend is liable to be set aside.

24. It is further submitted that the challenge to the Government order/corrigendum dated 14.05.2015 is essentially based on the plea that the original policy decision contained in the Government order dated 14.01.2004 had been issued after obtaining specific approval of the Governor, whereas the subsequent modification curtailing the period of stipend was effected only at the level of the Secretary and not through a fresh Government order duly sanctioned by the Governor.

25. Accordingly, the principal legal issue which arises for consideration in the present case is as to whether, by means of a corrigendum issued by the Government, the substantive stipulation relating to payment of stipend till the date of appointment could legally be altered by restricting the period of such payment only up to completion of the training course.

26. The core legal issue, as raised by learned counsel for the respondents, is whether a corrigendum issued for clarifying that stipend to Special BTC trainees would be payable only during the training period, and not till the date of appointment, required fresh approval or sanction of the Hon'ble Governor, particularly when the original Government order dated 14.01.2004, containing the earlier stipulation, had itself been issued with the approval of the Governor.

27. In other words, the question which falls for consideration is whether the corrigendum dated 14.05.2015 merely clarifies the original policy and corrects an inadvertent error, or whether it substantially alters the conditions of the original Government order so as to necessitate issuance of a fresh Government order with the sanction of the Hon'ble Governor.

28. Learned counsel for the respondents submits that, so far as the constitutional scheme governing the conduct of executive business of the State is concerned, it would be apposite to refer to Article 166 of the Constitution of India, which regulates the manner in which the business of the Government of a State is to be transacted.

29. It is submitted that Article 166(1) provides that all executive actions of the Government of a State shall be expressed to be taken in the name of the Governor. Article 166(2) further provides that orders and instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules framed by the Governor, and once so authenticated, the validity thereof cannot be questioned on the ground that the same was not duly made or executed. Article 166(3) empowers the Governor to frame rules for the more convenient transaction of the business of the Government and for allocation of such business amongst the Ministers, except in matters where the Governor is required to act in his discretion.

30. Learned counsel submits that the significance of Article 166 lies in ensuring legal accountability and administrative efficiency by prescribing a formal procedure for executive actions and by enabling systematic delegation of authority within the governmental framework. According to the respondents, under the Rules of Business framed under Article 166(3), only specified categories of matters involving important policy decisions, constitutional or statutory mandates, or issues of substantial significance are required to be placed before the Hon□ble Governor for approval. Routine, clerical, administrative, or clarificatory matters are ordinarily dealt with at the departmental level by the Minister-in-charge or competent departmental authorities and do not require fresh approval of the Governor.

31. It is thus contended that a corrigendum issued merely for correcting or clarifying an earlier Government order does not fall within the category of matters mandatorily requiring approval of the Governor and can validly be issued at the departmental level.

32. Learned counsel for the respondents has further placed reliance upon the judgment of B.K. Srinivasan & Ors. v. State of Karnataka & Ors.8 to contend that the validity of an executive decision primarily depends upon its proper authentication in accordance with Article 166 of the Constitution, whereas the internal process by which such decision is arrived at is regulated by the Rules of Business framed by the State Government. According to the respondents, once an order is duly authenticated in the manner prescribed, its validity cannot ordinarily be questioned on the basis of alleged irregularities in the internal governmental procedure.

33. It is submitted that the aforesaid judgment recognizes the distinction between the formal validity of an executive order and the internal decision-making mechanism within the Government. Learned counsel submits that the Rules of Business framed under Article 166(3) of the Constitution of India permit delegation of governmental functions and allocation of business amongst Ministers and departmental authorities, thereby enabling routine administrative and ministerial functions to be discharged without requiring the Governor's personal approval in every matter.

34. The respondents further submit that the distinction between ministerial acts and substantive policy decisions is well recognized in constitutional and administrative law. Ministerial or administrative acts include routine, clerical, explanatory, or clarificatory actions taken for proper implementation of governmental decisions, whereas substantive acts involve creation of new rights, withdrawal of vested rights, or formulation of fresh policy decisions. According to the respondents, only matters involving important policy decisions, constitutional obligations, or statutory mandates are required to be submitted for approval of the Governor under the applicable Rules of Business.

35. In this regard, reliance has also been placed upon the Uttar Pradesh Secretariat Instructions and the Uttar Pradesh Authentication (Orders and Other Instruments) Rules, 19759 framed under Article 166 of the Constitution of India, which regulate the manner in which Government business is transacted and executive orders are authenticated within the State of Uttar Pradesh. Learned counsel submits that the said Rules, 1975 contemplate that ordinary governmental business is to be disposed of by the Minister-in-charge of the concerned department, and only specified categories of matters of exceptional importance are required to be placed before the Governor.

36. It is thus contended that routine clerical, explanatory, or clarificatory matters do not require fresh approval of the Governor, and therefore a corrigendum clarifying the scope of payment of stipend under the earlier Government order could validly be issued at the department level. According to the respondents, the corrigendum dated 14.05.2015 did not constitute a fresh policy decision but merely clarified the original intent of the Government order dated 14.01.2004, and hence no separate approval of the Governor was legally required.

37. Upon analysis of the constitutional scheme and the Rules of Business framed under Article 166 of the Constitution of India, the critical position which emerges is that only such matters which involve important policy decisions, constitutional obligations, statutory mandates, or issues specifically required under the Constitution or any statute be placed before the Governor for necessary approval or sanction.

38. On the other hand, routine administrative matters, ministerial acts, clerical corrections, explanatory communications, or clarificatory corrigenda are ordinarily excluded from the category of matters requiring the Governor’s approval and may validly be dealt with at the departmental level in accordance with the Rules of Business.

39. Thus, the distinction essentially lies between a substantive decision involving formulation or alteration of governmental policy, creation or extinguishment of rights, or exercise of constitutional/statutory power on the one hand, and routine or clarificatory administrative actions intended merely to explain, correct, or implement an existing decision on the other. While the former category ordinarily requires approval of the Governor in terms of Article 166 and the applicable Rules of Business, the latter category does not.

40. Learned counsel for the respondents submits that a corrigendum issued for the purpose of correcting, explaining, or clarifying an earlier Government order does not fall within the category of matters mandatorily requiring approval of the Governor and, therefore, such corrigendum can validly be issued at the departmental level in accordance with the Rules of Business framed under Article 166 of the Constitution of India.

41. It is further submitted that there exists a well settled distinction between a clerical or clarificatory act, the legal effect whereof is merely ministerial in nature, and a substantive modification amounting to a fresh governmental decision. According to the respondents, a ministerial or clarificatory act intended to remove ambiguity, correct an inadvertent error, or explain the true purport of an earlier order does not require fresh approval of the Governor, since such action does not result in formulation of a new policy or creation of new rights and liabilities.

However, where the alteration is substantive in character and its legal effect amounts to taking a fresh policy decision, modifying vested rights, or introducing a material change in the earlier governmental policy, such action would require approval of the Governor in terms of Article 166 of the Constitution and the applicable Rules of Business.

42. On the strength of the aforesaid distinction, learned counsel for the respondents submits that the corrigendum dated 14.05.2015 was merely clarificatory in nature and intended to rectify the scope of the original Government order dated 14.01.2004 regarding payment of stipend, and therefore the same did not require fresh approval or sanction of the Governor.

43. Learned counsel for the respondents, placing reliance upon the judgment of State of Bihar v. D. N. Ganguly & Ors.10, submits that ministerial or clerical acts do not amount to a fresh exercise of statutory or executive power. It is contended that where an authority merely corrects an apparent error, clarifies an ambiguity, or rectifies an inadvertent omission in an earlier order, such action retains the character of a ministerial act and does not constitute taking of a fresh policy decision.

44. According to the respondents, the principle laid down in the aforesaid judgment recognizes that correction of apparent errors or issuance of clarificatory directions does not amount to review or reconsideration of the original decision, provided the substance of the original policy remains unchanged. It is thus argued that a corrigendum issued for correcting or clarifying the true intent of an earlier Government order can validly be issued at the departmental level without requiring fresh approval of the Governor, since such action is merely ancillary to the implementation of the original decision and not an independent exercise of executive power.

45. Learned counsel for the respondents has further placed reliance upon the judgment of the Apex Court in the case of Master Construction Co. (P) Ltd. v. State of Orissa & Another11 to contend that errors apparent on the face of the record may be corrected by the competent authority, provided such correction does not alter the substance of the original decision.

46. It is submitted that, in the aforesaid judgment, the Supreme Court has recognized the distinction between correction of an accidental or clerical mistake and alteration of a substantive determination. The Court observed that where the correction merely removes an obvious error, omission, or ambiguity so as to give effect to the true intention underlying the original order, such correction would not amount to review or reconsideration of the matter. However, if the purported correction changes the essential nature or substance of the original decision, the same would travel beyond the scope of a mere correction.

47. On the strength of the aforesaid principle, learned counsel for the respondents submits that executive authorities possess inherent ministerial powers to rectify mistakes, remove ambiguities, and issue clarificatory corrigenda for proper implementation of governmental decisions. According to the respondents, the corrigendum dated 14.05.2015 merely clarified the actual scope of the stipend payable under the Government order dated 14.01.2004 and did not introduce any fresh policy decision or substantive alteration requiring approval of the Governor.

48. In the case of Indian Council for Enviro-Legal Action & Ors. v. Union of India12, the Supreme Court has observed that every Court or authority possesses inherent power to correct errors in order to ensure that justice is done and to prevent abuse of the process. The Court recognized that procedural or accidental mistakes, clerical omissions, or errors arising from inadvertence can always be corrected so that the record reflects the true intention of the authority passing the order. The Supreme Court has further observed that the power to rectify accidental slips or omissions is ancillary to the exercise of judicial or executive power and that correction of such mistakes does not amount to review of the original decision, provided the substantive rights determined by the original order are not altered.

49. Relying upon the aforesaid principle, learned counsel for the respondents submits that the executive authorities are competent to issue clarificatory or corrective corrigenda in order to remove inconsistencies or rectify inadvertent errors in earlier Government orders, and such exercise would fall within the scope of ministerial or administrative powers rather than constituting a fresh policy decision requiring approval of the Governor.

50. Lastly, learned counsel for the respondents has placed reliance upon the judgment of Apex Court in the case of S. Nagaraj & Ors. v. State of Karnataka & another13 to contend that every authority possesses inherent power to correct accidental mistakes, slips, or omissions in order to ensure that the record reflects the true intent of the decision originally taken.

51. It is submitted that, in the aforesaid judgment, the Supreme Court observed that justice is a virtue which transcends all barriers and that the purpose of the Court or authority is to render substantial justice. The Court further held that where an error is attributable to accidental slip, omission, or inadvertence, the same may always be corrected, and such correction does not amount to review of the original decision on merits. The Supreme Court emphasized that the power to correct mistakes is inherent in every authority so as to avoid perpetuation of an obvious error and to prevent miscarriage of justice.

52. Learned counsel for the respondents contended that the principle laid down in the aforesaid judgment clearly recognizes the distinction between correction of an accidental or clerical error and reconsideration of the merits of the original decision. While review involves re-examination of the substantive decision itself, correction of an accidental slip merely brings the order in conformity with the true intention underlying the original decision. On the basis of the said principle, learned counsel submits that the corrigendum dated 14.05.2015 was merely corrective and clarificatory in nature, issued to rectify an inadvertent inconsistency in the earlier Government order dated 14.01.2004, and therefore the same cannot be treated as a fresh policy decision requiring approval of the Governor or as an impermissible review of the original Government order.

53. Applying the aforesaid principles to the facts of the present case, learned counsel for the respondents submits that the corrigendum dated 14.05.2015, whereby payment of stipend was confined only to the training period, merely operates as a clarification of the original Government order dated 14.01.2004 and does not amount to formulation of a new policy or withdrawal of any vested right. According to the respondents, the corrigendum only clarifies the actual period for

which stipend was intended to be paid and, therefore, falls within the realm of a ministerial or clarificatory act. Consequently, no separate approval or sanction of the Governor was required for issuance of the said corrigendum.

54. It is further submitted that if approval of the Governor were to be insisted upon for every corrigendum, clarification, or clerical correction issued by the Government, the entire administrative machinery would be rendered unworkable and the very purpose underlying the Rules of Business framed under Article 166 of the Constitution would stand defeated. According to the respondents, settled constitutional practice and administrative law recognize that routine explanatory or corrective actions can validly be undertaken at the departmental level without necessitating approval at the highest executive level.

55. Learned counsel for the respondents further submits that, in the instant case, the corrigendum dated 14.05.2015 does not alter the substance of the policy regarding payment of stipend, but merely clarifies the duration for which such stipend was payable. Since no substantive change in policy was introduced, the corrigendum cannot be treated as a fresh executive decision requiring sanction of the Governor.

56. In view of the aforesaid submissions, learned counsel for the respondents contends that the impugned order rejecting the claim of the petitioners suffers from no illegality warranting interference by this Court under Article 226 of the Constitution of India, and consequently the writ petitions are liable to be dismissed.

57. Heard Mr. H.M.B. Sinha, learned counsel for the petitioners, Mr. Rishi Kumar, learned Additional Chief Standing Counsel for the State and perused the record.

58. The controversy which falls for determination before this Court lies in a narrow compass. The principal issue is whether the corrigendum dated 14.05.2015, whereby the payment of stipend to Special BTC Trainees was confined only to the period of training instead of extending till the date of appointment, constitutes a mere clarificatory or ministerial act, or whether it effects a substantive alteration in the policy embodied in the Government Order dated 14.01.2004, thereby necessitating approval of the Hon'ble Governor in terms of Article 166 of the Constitution of India and the Rules of Business framed thereunder.

59. The distinction between a Government order embodying a policy decision and a corrigendum intended merely to correct or clarify an earlier order is no longer res integra. A Government order, particularly issued with the approval of the Governor, represents an exercise of executive policy making power and is capable of creating enforceable rights and obligations. A corrigendum, on the other hand, is ordinarily intended to rectify clerical, typographical, accidental, or explanatory errors so as to give effect to the true intent of the original order. The legal permissibility of a corrigendum is thus confined to correction without alteration of substance. Once a purported corrigendum travels beyond the realm of clarification and seeks to curtail, modify, or extinguish rights flowing from the original policy decision, it ceases to remain ministerial in character and assumes the colour of a substantive executive determination.

60. The constitutional framework under Article 166 undoubtedly permits allocation and transaction of governmental business at departmental levels, and every routine administrative or clerical action does not require the personal approval of the Governor. Equally well settled is the principle that ministerial or clarificatory acts may validly be undertaken by competent departmental authorities without recourse to the Governor. However, the crucial test is whether the subsequent action merely clarifies the original intent or whether it materially alters the rights and liabilities flowing from the original Government order.

61. In the case of State of Bihar & Ors. v. Kripalu Shankar & Ors.14, the Apex Court referring the observations made in the case of Bachhittar Singh v. State of Punjab15, has expounded the constitutional sanctity attached to executive action under Article 166 of the Constitution of India. The Court lucidly held that mere departmental notings or internal expressions of opinion do not attain the character of enforceable executive action unless the same are formally expressed in the name of the Governor and duly authenticated in the manner prescribed by the Rules of Business. The Supreme Court emphasized that executive action acquires legal efficacy only upon constitutional authentication and communication. The ratio of the aforesaid judgment unmistakably reinforces the principle that a substantive governmental determination issued with the sanction of the Governor cannot subsequently be diluted or modified through an informal departmental exercise lacking corresponding constitutional imprimatur.

62. The Apex Court in the case of Commissioner of Police, Bombay v. Gordhandas Bhanji16, has held that public orders are to be construed objectively with reference to the language employed therein and cannot subsequently be supplemented, varied, or explained away by affidavits or administrative explanations. The Court authoritatively observed that public authorities are bound by the tenor of the order actually issued and not by subsequent attempts to reinterpret its content. Applying the aforesaid principle, once the Government order dated 14.01.2004 expressly contemplated payment of stipend till the date of appointment, the executive could not subsequently curtail the extent of such entitlement under the nomenclature of a □corrigendum□ while retaining the fa□ade of a mere clarification.

63. In the case of Sant Ram Sharma v. State of Rajasthan & Ors.17, the Supreme Court recognized the binding force of executive instructions and administrative policy decisions issued in exercise of executive power. The Court observed that executive instructions, so long as they do not contravene statutory provisions, govern the field of administration and create enforceable norms regulating governmental action. The Government order dated 14.01.2004, therefore, cannot be trivialized as a mere administrative communication devoid of legal consequences, rather, it constituted a substantive executive policy regulating financial entitlement of Special BTC trainees.

64. The doctrine of legitimate expectation and accrued rights flowing from governmental representation has elaborately been considered by the Apex Court in the case of State of Punjab v. Nestle India Ltd. & Another18, wherein it has been held that governmental representations and policy assurances, once acted upon by affected parties, create enforceable expectations which cannot be arbitrarily withdrawn to the detriment of beneficiaries. The Court underscored that fairness in State action is an indispensable component of Article 14 of the Constitution and that executive authorities are not permitted to resile capriciously from representations which have

induced legitimate reliance. In the present case, the trainees entered and completed the Special BTC Training on the assurance contained in paragraph 3.12 of the Government order dated 14.01.2004, and consequently the stipend entitlement acquired an enforceable and accrued character incapable of being extinguished through a unilateral departmental clarification. Equally instructive is the decision in the case of Mohinder Singh Gill & Another v. Chief Election Commissioner, New Delhi & Others19, wherein the Supreme Court propounded the celebrated principle that an order must stand or fall upon the reasons contained therein and cannot subsequently be supplemented by fresh explanations. The Court cautioned against validating executive action on the basis of post facto rationalizations. The attempt of the respondents to characterize the corrigendum dated 14.05.2015 as merely explanatory, despite its palpable effect of curtailing the duration of stipend, therefore cannot withstand judicial scrutiny.

65. The scope of correction of clerical or accidental errors has been examined by the Supreme Court in the case of Master Construction Co. (P) Ltd. v. State of Orissa & Another20, wherein it is observed that accidental slips, typographical mistakes, or apparent omissions may undoubtedly be corrected so long as such correction does not alter the substance of the original determination. The Court drew a clear distinction between rectification of an obvious mistake and modification of the substantive content of an order. A correction which transforms the extent of rights originally conferred necessarily transcends the permissible boundaries of a ministerial correction.

66. The cumulative effect of the aforesaid authorities leaves no room for ambiguity that while executive authorities possess incidental power to issue clerical corrections, explanatory notes, or ministerial clarifications, such authority terminates at the point where the proposed correction materially alters substantive rights, financial entitlements, or policy conditions embodied in the original Government Order. Once the alteration ceases to be explanatory and assumes the character of a substantive modification, the constitutional discipline contemplated under Article 166 becomes indispensable.

67. In the considered opinion of this Court, the corrigendum dated 14.05.2015 cannot be construed as a mere clerical or explanatory exercise. The original Government order dated 14.01.2004, as amended on 20.02.2004, unequivocally contemplated payment of stipend to the selected trainees till the date of their appointment. The subsequent corrigendum, by restricting such payment only to the duration of training, effectively truncates the period of entitlement and thereby deprives the beneficiaries of a substantive financial benefit which had accrued under the original policy. Such curtailment cannot be characterized as correction of an accidental slip or removal of ambiguity. It amounts, in substance and effect, to modification of the original policy decision itself.

68. The submission advanced on behalf of the respondents that the corrigendum merely clarifies the duration of stipend does not commend acceptance. A clarification explains, it does not diminish policy. A corrigendum corrects an error and it does not rewrite the policy. The impugned corrigendum, by materially altering the extent of monetary entitlement granted under the original Government order, travels far beyond the permissible limits of a ministerial correction.

69. This Court is also unable to lose sight of the fact that the original Government order was issued with the sanction and approval of the Governor and constituted the foundational policy governing the Special BTC Training Scheme. Any action having the effect of substantially modifying the conditions of such policy, particularly one affecting vested or accrued benefits, could only have been undertaken through issuance of a fresh Government order in accordance with the constitutional procedure contemplated under Article 166 and the applicable Rules of Business. Such a substantive alteration could not legally have been introduced through a departmental corrigendum lacking corresponding approval.

70. The judgments relied upon by the respondents, including D. N. Ganguly (supra), Master Construction Co. (P) Ltd. (supra), Indian Council for Enviro-Legal Action (supra) and S. Nagaraj (supra), do not support the case of the respondents inasmuch as the principles laid down therein pertain to correction of accidental, clerical, or inadvertent errors without affecting the substantive nature of the original decision. The said judgments cannot be read to confer authority upon the executive to alter substantive policy conditions or extinguish accrued rights under the guise of issuing a corrigendum.

71. Moreover, the issue relating to entitlement of stipend under the Government order dated 14.01.2004 already stands settled in the earlier rounds of litigation extending up to the Hon'ble Apex Court, wherein the entitlement of similarly situated trainees to stipend till the date of appointment stood affirmed. The attempt made through the corrigendum dated 14.05.2015 to dilute the effect of the original policy and the judicial pronouncements rendered thereupon cannot be sustained in law.

72. Accordingly, this Court holds that the corrigendum dated 14.05.2015, insofar as it seeks to restrict payment of stipend only up to the training period, is not a mere clarificatory or ministerial act but constitutes a substantive modification of the original Government order dated 14.01.2004. In absence of issuance of a valid Government order with due approval in accordance with Article 166 of the Constitution of India, the said corrigendum cannot be given legal effect. Consequently, the order dated 18.05.2016 rejecting the claim of the petitioners on the basis of the aforesaid corrigendum is unsustainable and liable to be quashed.

73. The writ petitions accordingly succeed and are allowed. The corrigendum dated 14.05.2015, to the extent indicated above, and the consequential orders under challenge in respective writ petitions, dated 18.05.2016, 09.06.2015 and 30.07.2015 are hereby quashed. The respondents are directed to extend to the petitioners the benefit of stipend in terms of the Government order dated 14.01.2004 read with the Government Order dated 20.02.2004, and to ensure payment of the admissible amount expeditiously, preferably within a period of four months from the date of production of a certified copy of this order before the competent authority.

74. No order as to costs.

(2026) 5 ILRA 525
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.05.2026

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ B No. 12365 of 1981

Laxmi ...Petitioners
Versus
Deputy Director Of Consolidation & Ors. ...Respondents

Issue(s) for consideration

(a) Whether entries of possession in Class-IX/Khasra confer *sirdari* rights when mandatory procedures prescribed under the Land Record Manual were not complied with?
(b) Whether certified copies of a 1965 decree filed for the first time in the High Court in 2023 can overturn findings of fact recorded by consolidation authorities?

Headnotes

A. Land Reform Law – U.P. Consolidation of Holdings Act, 1953: Section 9A(2), 11(1); U.P. Zamindari Abolition and Land Reforms Act, 1951: Section 229-B, 331 - The dispute pertains to plot numbers 720/40, 722/92, 746/40, and 755/24 situated in Village Rampur Bagha, District Deoria, recorded in the basic year of consolidation in the names of petitioner Laxmi and respondent Dhoopai as *sirdari* plots.

Respondent Feku filed an objection u/s 9A(2) of the U.P.C.H. Act, 1953, seeking addition of a 92-dismil area to his *khata*. Petitioner Laxmi and Respondent Kali also filed title objections claiming ownership/possession over the disputed plots. Laxmi claimed rights on the basis of a judgment and decree dated 25.11.1965, passed in a suit u/s 229-B of the U.P.Z.A. & L.R. Act, 1951, allegedly decided in his favor by a Judicial Officer (J.O.), Hata. Laxmi also claimed a compromise before the Assistant Consolidation Officer (ACO) on 24.06.1975. Claimed *sirdari* rights based on continuous possession recorded in the revenue records.

Consolidation Officer (CO) decided title objections on 17.06.1980. Settlement Officer of Consolidation (SOC) dismissed Laxmi's appeal on 02.09.1980, finding that no steps were ever taken to record his name pursuant to the 1965 decree, the alleged ACO compromise was fraudulent/unsupported, and possession entries violated the Land Record Manual. Deputy Director of Consolidation (D.D.C.) dismissed Laxmi's revision on 27.06.1981, noting that the 1965 judgment was never produced on record. Writ Petition was filed in 1981 by Laxmi; interim stay granted on 12.10.1981.

B. Compliance of provision of land record manual is mandatory for claiming benefit of Class-IX entry (possession without title). (Para 11)

Petitioner is claiming benefit of the judgement and decree alleged to be passed by J.O. Hata Kushinagar u/s 229-B of U.P.Z.A. and L.R. Act but the Judicial Officer did not have jurisdiction to entertain and decide the suit u/s 229-B at that time. Moreover, no steps were taken by petitioner- Laxmi for recording his name on the basis of judgment and decree alleged to be passed in the suit u/s 229-B. The compromise alleged to take place before the Assistant Consolidation Officer on 24.06.1975 was also not found genuine by all the three consolidation authorities. (Para 9 to 16)

C. The filing of certified copy of the judgment/decree dated 25.11.1965 before this Court in the year 2023 cannot be taken into consideration as the same was not filed before the Consolidation

Court where the trial of the case was conducted. The finding of fact has also been recorded by Deputy Director of Consolidation while deciding the revision to the effect that copy of the judgment dated 25.11.1965 alleged to be passed in suit u/s 229- B is not available on record, as such, no reliance can be placed upon that. (Para 12, 13)

Considering the categorical finding of fact recorded by the consolidation authorities, there is no scope for interference against the impugned judgments passed in the proceeding u/s 9A (2) of U.P.C.H. Act. (Para 17)

Writ petition dismissed. (E-4)

Case Law Cited

1. Sunder Bhan Vs. Deputy Director of Consolidation Jalaun and Others, 1997 RD 257 (Para 5)
2. Prashant Singh and Others Etc. Vs. Meena and Others Etc., [2024] 5 SCR 492 (Para 5)
3. Surendra Singh and Others Vs. Deputy Director of Consolidation Sultanpur and Others, Consolidation No. 20558 of 2019, dated 02.08.2019. (Para 5)
4. Ambika and another Vs. Deputy Director of Consolidation and Others, 2007 (103) RD 317 (Para 11)

List of Acts

U.P. Consolidation of Holdings Act, 1953; U.P. Zamindari Abolition and Land Reforms Act, 1951.

List of Keywords

consolidation, holdings, land, reforms, benefit, record, manual, mandatory, possession.

Appearances for Parties

For Petitioner(s): Gouri Shanker Mishra, Shriprakash Shrivastava
For Respondent(s): C.S.C., Om Prakash Pandey

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

1. Heard Mr. Shriprakash Shrivastava, learned Counsel for the petitioner, Mr. O.P. Pandey, learned Counsel for the private respondents and Mr. Tarun Gaur, learned Standing Counsel for the State respondents.

2. Brief facts of the case are that dispute relates to khata no. 720/40, 722/92, 746/40, 755/24 situated in Village Rampur Bagha, Tappa Parwar Par, Pargana Sidhuva Jobna, Tehsil Hata, District Deoria which were recorded in the basic year of the consolidation operation in the name of petitioner/ Laxmi and respondent no.10/ Dhoopai son of Jai as sirdari plots. Khata no. 267 was recorded in the name of respondent no.11/ Kali and others, khata no. 93 was recorded in the name of respondent no.8, Feku son of Rajmani. Against the basic year entry of the consolidation operation, obection under Section 9A (2) of U.P. Consolidation of Holdings Act, 1953 hereinafter referred to as U.P.C.H. Act was filed by respondent no.8, Feku son of Rajmani with the prayer that 92 dismil area should be added in his khata. Objection under Section 9A (2) of U.P.C.H. Act were also filed by petitioner/ Laxmi as well as respondent no.11/ Kali. A compromise was alleged to take place between the parties before Assistant Consolidation Officer by which 92 decimal area of disputed plot was settled in favour of petitioner. A suit under Section 229-B of U.P. Zamindari Abolition and Land Reforms Act, 1951 hereinafter referred to as U.P.Z.A. and L.R. Act was alleged to be filed by petitioner/ Laxmi against the respondent no.11/ Kali and others which was stated to be decided in favour of plaintiff by J.O. vide judgement dated 25.11.1965. The title

objection filed by petitioner/ Laxmi was decided by Consolidation Officer vide order dated 17.6.1980. The appeal under Section 11 (1) of U.P.C.H. Act filed against the order of Consolidation Officer was dismissed vide order dated 22.9.1980. The revision under Section 48 of U.P.C.H. Act filed by petitioner/ Laxmi as well as respondent no.8- Feku were dismissed by Deputy Director of Consolidation vide order dated 27.6.1981. Hence this writ petition on behalf of petitioner for the following relief:-

"(अ) माननीय उच्च न्यायालय उठीब प्रकार एक प्रादेश, आदेश या निर्देश जारी करने की कृपा करें और अधीनस्थ न्यायालयों के आदेशो को खंडित करने की कृपा करें और याची को जिस अनुतोष का अधिकारी है उसको प्रदान करने की कृपा करें।

(ब) माननीय उच्च न्यायालय अन्य ऐसा कोई प्र प्रादेश, आदेश या निर्देश जारी करे जिसे मा० उच्च न्यायालय इस प्रकरण में उचित समझे।

(स) तथा याची को याचिका का व्यय दिलाने का आदेश पारित करे।"

3. This Court admitted the writ petition on 12.10.1981 and stayed the dispossession of the petitioner from the disputed plot if the petitioner has not already been dispossessed.

4. In pursuance of the order dated 12.10.1981, the parties have exchanged their pleadings.

5. Learned Counsel for the petitioner submitted that consolidation authorities have failed to decide the title dispute in proper manner, as such, impugned orders passed by the consolidation authorities cannot be sustained in the eye of law. He further submitted that plot no. 722 area 92 dismil is sirdari plot of the petitioner and petitioner is in possession over the same. He further submitted that a suit under Section 229-B of U.P.Z.A. and L.R. Act filed by petitioner was decreed declaring the plot nos. 720/40, 722/92, 746/40, 755/24 as sirdari plot of the petitioner vide judgement dated 25.11.1965, as such, Consolidation Court cannot reject the petitioner's claim filed under Section 9A (2) of U.P.C.H. Act. He further submitted that oral and documentary evidences adduced on behalf of the petitioner before the consolidation authorities have not been taken into consideration, as such, the impugned orders passed by the consolidation authorities cannot be sustained in the eye of law. He submitted that compromise taken place before the Assistant Consolidation Officer in case no. 2428 dated 24.6.1975 has not been taken into consideration while passing the impugned orders. He further placed the certified copy of the decree passed in the suit under Section 229-B of U.P.Z.A. and L.R. Act in order to demonstrate that suit under Section 229-B of U.P.Z.A. and L.R. Act filed by petitioner/ Laxmi was decreed in proper manner by J.O. Hata as Trial Court. He submitted that writ petition should be allowed setting aside impugned orders and matter should be sent back before revisional Court to decide the dispute afresh. He placed the following judgements in support of his argument:-

(i) 1997 RD 257 Sunder Bhan Vs. Deputy Director of Consolidation Jalaun and Others

(ii) [2024] 5 SCR 492 Prashant Singh and Others Etc. Vs. Meena and Others Etc.

(iii) Consolidation No. 20558 of 2019 Surendra Singh and Others Vs. Deputy Director of Consolidation Sultanpur and Others dated 2.8.2019.

6. On the other hand, learned Counsel for the private respondent submitted that all the consolidation authorities have decided the dispute under Section 9A (2) of U.P.C.H. Act in proper manner. He further submitted that evidences adduced by the parties were properly taken into consideration by the consolidation authorities, as such, argument advanced by learned Counsel for the petitioner cannot be accepted that evidence adduced by the petitioner was not taken into consideration. He further submitted that no lawful compromise has taken place before Assistant Consolidation Officer in case no. 2428, as such, the same cannot be relied upon. He submitted that the judgement and decree alleged to be passed on 25.11.1965 in suit under Section 229-B of U.P.Z.A. and L.R. Act cannot be relied upon as no steps were taken by the petitioner for recording of his name on the basis of judgement and decree alleged to be passed on 25.11.1965. He submitted that if there was decree under Section 229-B of U.P.Z.A. and L.R. Act in favour of petitioner then there was no occasion for passing of the order dated 24.6.1975 by Assistant Consolidation Officer. He submitted that different stand has been taken by the petitioner at different point of time, as such, petitioner is not entitled to any relief in the matter. He submitted that along with the writ petition, true copy of the decree alleged to be passed on 25.11.1965 was annexed and certified copy of the decree has been annexed along with the supplementary affidavit dated 20.7.2023 but the consolidation authorities have recorded finding that copy of the judgement/ decree passed under Section 229-B of U.P.Z.A. and L.R. Act has not been filed by petitioner before consolidation Court. He submitted that in view of the provisions contained under the U.P.Z.A. and L.R. Act, the Judicial Officer was not empowered to decide the suit under Section 229-B of U.P.Z.A. and L.R. Act at the relevant point of time, as such, the claim set up by the petitioner cannot be accepted in any manner. He submitted that writ petition filed by petitioner should be dismissed.

7. I have considered the arguments advanced by learned Counsel for the parties and perused the records.

8. There is no dispute about the fact that title dispute against the basic year entry has been decided by consolidation authorities against the petitioner under the impugned orders.

9. It is material to mention that petitioner is claiming benefit of the judgement and decree alleged to be passed by J.O. Hata Kushinagar under Section 229-B of U.P.Z.A. and L.R. Act but the Judicial Officer was not having jurisdiction to entertain and decide the suit under Section 229-B of U.P.Z.A. and L.R. Act at that time. It is also material to mention that no steps has been taken by petitioner- Laxmi for recording his name on the basis of judgement and decree alleged to be passed in the suit under Section 229-B of U.P.Z.A. and L.R. Act. The compromise alleged to take place before the Assistant Consolidation Officer in case no. 2428 on 24.6.1975 was also not found genuine by all the three consolidation authorities.

10. The Settlement Officer of Consolidation has recorded finding that petitioner/ Laxmi Singh has claimed the right in respect to plot nos. 720, 722, 746, 755 on the basis of possession but entry of possession is not according to the provision contained under land record manual. The relevant finding of fact recorded by Settlement Officer of Consolidation will be necessary for perusal which is as under:-

"गाटा 722 के सम्बन्ध में काली व फेंकू दोनों ने अपील प्रस्तुत की है जैसा कि ऊपर कहा गया है कि फेंकू आदि का स्वत्व इस नम्बर में सिद्ध नहीं है। अब केवल यह देखना है कि क्या गाटा 720, 722, 746, 755 में लक्ष्मी सिंह आदि सीरदार हैं या काली आदि का ही स्वत्व या कब्जा है। लक्ष्मी धुपई ने उपरोक्त गाटे पर कब्जे के आधार पर सीरदारी हक माँगे हैं और अपने कब्जे को सिद्ध करने के लिये 1359 फ० 1366, 6776, 77 दाखिल किये हैं यह इन्द्राज भूलेख नियमावली के विरूद्ध है कि पर भी तिथि व रोज नामजे की हवाला नहीं है। 1377 फ० गा० 9 का इन्द्राज किया गया। परन्तु एस०के० का कोई आदेश नहीं है। विद्वान च०अ० ने निर्णय में लिखा है कि लक्ष्मी सिंह ने खतौनी 1377, 1372 फ० दाखिल किया है। उसमें मूल नम्बर 1255 तारीख फ० 25-11-65 का हवाला है जिसके अनुसार काली आदि का नाम खारिज करने का आदेश हुआ है परन्तु इसके अनुसार न तो कोई कागज दुरुस्त हुआ है और न कोई आदेश की प्रतिलिपि दाखिल की गयी है। अतः इसमें कोई लाभ लक्ष्मी आदि को नहीं प्राप्त होते च०अ० ने दूसरा आधा 2428 में च०अ० के निर्णय दिनांक 24-6-75 को लिखा जिसमें सुलहनामें की नकल दाखिल की गयी है। परन्तु इस आदेश की प्रतिलिपि बिल्कुल फर्जी है क्योंकि जैसा कि अपील सं० 1114 का जिक्र करते हुये लिखा गया है। इस नम्बर का कोई मुकदमा स०च०अ० द्वारा तय नहीं किया गया। अतः इसका आधार जो च०अ० ने लिया है उससे सिद्ध है कि लक्ष्मी सिंह अपने कब्जे की सिद्ध करने में असमर्थ रहे। विद्वान च०अ० ने इनको सीरदार घोषित करने में भूल की है और इनेक आदेश को कायम व बहाल नहीं रखा जा सकता।

आदेश

उपरोक्त विवेचन के आधार पर अपील संख्या 1114/1169 खारिज की जाती है तथा अपील संख्या 1113 स्वीकार की जाती है। फलस्वरूप गाटा संख्या 720 रकबा 44 व 722-92, 746-40, 755-20 काली सिंह के खाते में पूर्ववत अंकित रहेगा और इसके सम्बन्ध में लक्ष्मी व धुपई की आपत्ति खारिज समझी जाय। गाटा संख्या 722 फेंके आदि के खाते से खारिज किया जाये। यही आदेश अपील संख्या 1114, 1169 पर भी लागू।

प्रहलाद शरन
ब० चकबन्दी अधिकारी, हाटा
देवरिया।"

11. The finding fact recorded by Settlement Officer of Consolidation as quoted above is in accordance with ratio of law laid down by this Court in the case reported in 2007 (103) RD 317 Ambika and another Vs. Deputy Director of Consolidation and Others that compliance of provision of land record manual is mandatory for claiming benefit of Class-IX entry (possession without title). Paragraph no.9 of the judgement rendered in Ambika (Supra) will be relevant for perusal which is as under:-

"9. In the aforesaid circumstances, Deputy Director of Consolidation erred in giving rights to respondent No. 7 on the basis of adverse possession and holding that P.A. 10 must have been prepared and served particularly when there is no reference in the entries made in remarks column about it. The provision contained in para A-80 and A-81 and A-82 and A-102-C of Land Record Manual are mandatory and if the compliance of the same has not been made, the entries made by Lekhpal would not be deemed to have been made in discharge of his duty. In such a situation there cannot be any escape from the conclusion that entries are inadmissible in evidence. Since there is no reference of P.A. 10 in the entries itself no evidentiary value can be attached to the entries and in the circumstances, finding recorded by Deputy Director of Consolidation holding that respondent No. 7 was in possession from 1367 fasli stands vitiated being based on inadmissible entries contained in remarks column about possession in khasra of 1368 fasli. So far as entries contained in Class-9 is concerned for 1369 to 1377 fasli it may be observed that since the basis of the entry regarding possession becomes doubtful, the entries made in Class-9 of the khatauni cannot be relied

upon for basing the finding on question of possession and Deputy Director of Consolidation has committed a patent illegality."

12. The finding of fact has also been recorded by Deputy Director of Consolidation while deciding the revision to the effect that copy of the judgement dated 25.11.1965 alleged to be passed in suit under Section 229-B of U.P.Z.A. and L.R. Act is not available on record, as such, no reliance can be placed upon the judgement and decree alleged to be passed under Section 229-B of U.P.Z.A. and L.R. Act.

13. The filing of certified copy of the judgement/ decree dated 25.11.1965 before this Court in the year 2023 cannot be taken into consideration as the same was not filed before the Consolidation Court where the trial of the case was conducted.

14. The provision contained under Section 331 of U.P.Z.A. and L.R. Act in 1959 Edition of U.P.Z.A. and L.R. Act was under:-

"331. Cognizance of suits, etc. under this Act.- (1)Except as provided by or under this Act no court other than a court mentioned in Column 4 of Schedule II shall, notwithstanding anything contained in the Civil Procedure Code, 1908 take cognizance of any suit, application, or proceedings mentioned in Column 3 thereof [,]

[Provided that where a declaration has been made under Section 143 in respect of any holding or part thereof, the provisions of Schedule II in so far as they relate to suits; applications or proceedings under Chapter VIII shall not apply to such holding or part thereof.;]

(2)Except as hereinafter provided no appeal shall lie from an order or [decree] passed under any of the proceedings mentioned in Column 3 of the Schedule aforesaid:

3)[An appeal shall lie from an order passed under Section 47, 104 and order 41, rule 1 of the Code of Civil Procedure, 1908 or any final order or decree passed by a court mentioned in Column No. 4 in the proceedings mentioned in Column 3 to the court or authority mentioned in Column No. 5 thereof; and]

(4)A second appeal shall lie on any of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 from the final order or decree, passed in an appeal under sub-section (3), to the authority, if any, mentioned against it in Column 6 of the Schedule aforesaid.]"

15. The Schedule II in the 1959 Edition of U.P.Z.A. and L.R. Act was under:-

Serial No.	Section	Description of proceeding	Court of original jurisdiction	Court of first appeal	Court of second appeal
34	229B 229 C	Suit for declaration of right	Assistant Collector First Class	Commissioner	Board

16. The column No.4/ Court of original jurisdiction/ Assistant Collector First Class was not changed or amended in any matter till the U.P.Z.A. and L.R. Act was repealed, as such, J.O. cannot

entertain or decide the suit under Section 229-B of U.P.Z.A. and L.R. Act accordingly the judgement/ order/ decree alleged to be passed on 25.11.1965 by J.O. Hata under Section 229-B of U.P.Z.A. and L.R. Act cannot be relied upon.

17. Considering the categorical finding of fact recorded by the consolidation authorities, there is no scope for interference against the impugned judgements passed in the proceeding under Section 9A (2) of U.P.C.H. Act.

18. The writ petition is dismissed.

19. No order as to costs.

(2026) 5 ILRA 531
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.05.2026

BEFORE

THE HON'BLE VIKAS BUDHWAR, J.

Writ C No. 6398 of 2021

Uttar Pradesh State Textile Corporation ...Petitioner
Versus
Debt Recovery Appellate Tribunal & Ors. ...Respondents

Issue for Consideration

Whether the Debt Recovery Appellate Tribunal was justified in rejecting the application for condonation of delay and the recall application seeking recall of the ex parte order dated 21.08.2019 passed by the Debt Recovery Appellate Tribunal, Allahabad

Headnotes

Limitation Act, 1963, ss.3, 5. Recovery of Debts Due to Banks and Financial Institutions Act, 1993 – Debt Recovery Appellate Tribunal – Recall application – Delay condonation application – Petitioner-corporation having become sick and its management having been handed over to U.P. State Spinning Company Ltd. – Only three regular employees remaining to manage the affairs of the petitioner-corporation and U.P. State Spinning Company Ltd. – Petitioner-corporation and U.P. State Spinning Company Ltd. declared sick – Management of U.P. State Spinning Company Ltd. suspended and subsequently restored pursuant to settlement under s.12-A of the Insolvency and Bankruptcy Code, 2016 – Ex parte order dated 21.08.2019 passed by the Debt Recovery Appellate Tribunal enhancing interest from 12% simple to 16% p.a. with quarterly rest – Recall application along with delay condonation application filed after restoration of management – DRAT rejecting delay condonation and recall applications vide order dated 01.12.2020 – Writ petition – Justification:

Held :

Rule which says that the Court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition – Each case must depend on its own facts – Substantial justice is paramount.

There was a cloud with respect to the management and affairs of the petitioner-corporation – There happened to be a situation whereby the petitioner-corporation remained sick and only three regular employees were available to manage the affairs of the petitioner-corporation and U.P. State Spinning Company Ltd. – Consequent to the restoration of the management of U.P. State Spinning Company Limited, the management of the petitioner-company was also restored, and thereafter, on 04.09.2000, a recall application along with a delay condonation application came to be preferred for recalling the order dated 21.08.2019 passed by the Debt Recovery Appellate Tribunal - Looking into the overall fact situation which the petitioner-corporation was facing, they can be termed to be negligent to a certain extent, but the same cannot be endorsed as fatal – Grounds taken in the delay condonation application as well as the application seeking recall of the order dated 21.08.2019, though not happily worded but in the facts of the present case, opportunity to be accorded to the petitioner-corporation to put forward its stand before the Debt Recovery Appellate Tribunal, on payment of costs – Order dated 01.12.2020 passed by DRAT set aside – Delay in filing restoration application condoned – Matter remitted to DRAT, Allahabad to decide recall application on merits within three months – Order not to be construed as expression on merits of recall application – Respondent No.3/IARC entitled to costs of Rs.25,000 . Writ petition disposed of. (E-5)

[Paras 28–35, 36–38]

Case Law Cited

Central Bank of India v. Ravindra and Others, **(2002) 1 SCC 367;**
C.K. Sasankan v. Dhanalakshmi Bank Limited, **(2009) 11 SCC 60;**
Punjab and Sind Bank v. Allied Beverage Company Private Limited and Others, **(2010) 10 SCC 640;**
S.P. Polymers v. The Registrar, Debt Recovery Appellate Tribunal, **AIR 2015 Mad 102;**
Pathapati Subba Reddy (Died) by L.Rs. and Others v. The Special Deputy Collector (LA), **(2024) 12 SCC 336;**
H. Guruswamy and Others v. A. Krishnaiah Since Deceased by L.Rs., **2025 2 AWC 1594 SC;**
Divyangnakumari Harisinh Parmar (Dead) and Others v. Union of India and Others, **MANU/SC/1321/2015;**
Inder Singh v. State of Madhya Pradesh, **2025 LiveLaw (SC) 339**

List of Acts

Sick Industrial Companies (Special Provisions) Act, 1985;
Sick Industrial Companies (Special Provisions) Repeal Act, 2003;
Recovery of Debts Due to Banks and Financial Institutions Act, 1993;
Insolvency and Bankruptcy Code, 2016;
Limitation Act, 1963;
Constitution of India.

List of Keywords

Limitation; Condonation of Delay; Delay in Filing Recall Application; Sufficient Cause; Recall of Ex-Parte Order; Restoration Application; Belated and Stale Claims; Exercise of Discretion; Substantial Justice; Due Diligence; Negligence; Sick Company; Non-Availability of Staff; Insolvency Proceedings; Debt Recovery Tribunal; Debt Recovery Appellate Tribunal; Ex-Parte Proceedings; Opportunity of Hearing; Costs.

Case Arising From

Order dated 01.12.2020 passed by the Debt Recovery Appellate Tribunal, Allahabad in M.A. No. 69 of 2020 in Regular Appeal No. 135 of 2018, rejecting the application for condonation of delay and the recall application seeking recall of the ex parte order dated 21.08.2019; and order dated 19.01.2021 passed by the Recovery Officer, Debt Recovery Tribunal, Allahabad in DRC No. 442 of 2018.

Appearances for Parties

Advs. for the Petitioner: Abhinava Krishna Srivastava, Dhirendra Narain Awasthi, Kartikeya Saran, Rajesh Kumar Singh, Sandeep Arora, Siddhartha Krishna Bakhshi, Ujjawal Satsangi

Advs. for the Respondents: Anadi Krishna Narayana, Ashish Kumar Srivastava, Krishna Mohan Asthana, Maneesh Mehrotra, Sandeep Arora

(Delivered by Hon'ble Vikas Budhwar, J.)

IN RE: AMENDMENT APPLICATION NO.21 OF 2025

1. Sri Rakesh Pandey, learned Senior Counsel assisted by Sri Abhinav Krishna Srivastava do not press the amendment application.

2. The amendment application is dismissed as withdrawn.

ORDER ON PETITION

FACTS

1. Heard Sri Rakesh Pandey, learned Senior Counsel assisted by Sri Abhinav Krishna Srivastava for the writ petitioners, Sri Rahul Agarwal, learned Addl. Advocate General assisted by Sri Anshul Nigam for Respondent no.9/State and Sri Anurag Khanna, learned Senior Counsel assisted by Sri Sandeep Arora for Respondent no.3.

2. A joint statement has been made by learned counsels for the rival parties that since affidavits have been exchanged between the parties and they do not propose to file any additional affidavit, the writ petitions be decided on the basis of the documents available on record.

3. With the consent of the parties, the writ petition is being decided at the admission stage.

4. The case of the writ petitioner, Uttar Pradesh State Textile Corporation through its Managing Director, having its registered office at 1, Smith Square, 14/72, Civil Lines, Kanpur-208001, is that it is a Government company incorporated under the Companies Act, 1956, and its entire share capital is owned by the Government of Uttar Pradesh. Earlier, the writ petitioner had five textile units in Meerut, Jhansi, Sandila, Kashipur, and Jaspur. For the purposes of running the above-mentioned five mills, the petitioner company obtained credit facilities to the tune of Rs.16,50,00,000 from the respondent Consortium Bank. A chart showing the credit facility availed by the petitioner company is being quoted herein under:-

S.No.	Name of the Bank	Unit	Limits (Fund Base)		Total
			C/C	B/P	
1.	Bank of Baroda	Sandila	205	170	375
2.	Bank of Baroda	Jaspur	105	70	175
3.	Syndicate Bank	Meerut	215	160	375

S.No.	Name of the Bank	Unit	Limits (Fund Base)		Total
4.	Indian Overseas Bank	Jhansi	205	145	350
5.	Allahabad Bank	Kashipur	205	170	375
	Total		935	715	1650

(Figures in Lakhs)"

5. As per the writ petitioner, on 18.09.1993, the credit facilities stood renewed and, lastly, it was raised to Rs. 2,17,00,00,00. It is claimed that the leader of the Consortium Bank was Bank of Baroda and the second leader was Syndicate Bank.

6. As the ill luck it may be, in the year 1994-95, the units of the petitioner-company went into losses and the production came to a standstill. Due to incurring huge losses, the petitioner-company became sick, attracting the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, and vide order dated 02.02.1995 passed by the Board of Industrial and Financial Reconstruction, (in short BIFR), the petitioner was declared a sick company.

7. On account of the fact that the petitioner company became sick, the staff of the petitioner-company were offered the benefits of VRS lay off and the management of the petitioner-company was handed over to U.P. State Spinning Company Limited. However, U.P. State Spinning Company Limited also became a sick company and there were only three regular employees retained in the company for looking after the works of it and of the petitioner-company. Since the petitioner-company could not maintain financial discipline, so the respondent-bank approached the Debt Recovery Tribunal, Allahabad, while invoking the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, by filing O.A. No. 123 of 2000 and 161 of 2000. In the meantime, on account of bifurcation of the State of Uttar Pradesh, while carving out a new State of Uttarakhand in the year 2000, out of the five units, two units of the petitioner-company, i.e. Kashipur and Jaspur, were transferred to the State of Uttarakhand along with the entire assets and liabilities. On 21.10.2010, the State of Uttar Pradesh passed an order approving the rehabilitation scheme submitted before the then BIFR, by which liabilities of the petitioner-company were supposed to be settled by selling the assets of the petitioner-company. The above rehabilitation scheme remained pending before the BIFR for approval. In the meanwhile, the Union of India promulgated the Sick Industries Companies (Special Provisions) Repeal Act, 2003, due to which BIFR ceased to exist. However, by virtue of the notification dated 01.11.2016, the Insolvency and Bankruptcy Code, 2016 came into effect, whereby the parties to the pending proceedings before the BIFR were allowed to approach the National Company Law Tribunal for disposal of such matters within 180 days from the date of notification. Thereafter, on 19.06.2018, an exparte order came to be passed by the Debt Recovery Tribunal, Allahabad, in Original Application No. 161 of 2000, Bank of India and 3 others versus UP State Textile Corporation Limited and others, which reads as under (relevant extract):- "10. The Original Application is allowed and ordered as under:-

i) That the bank is entitled to recover an amount of Rs. 21,09,15,523.60 (Rs. Twenty One Crore, Nine lacs, Fifteen Thousand, Five Hundred Twenty Three and Paisa Sixty only) out of which the dues of the applicant No.1 Bank of Baroda is Rs. 1,13,71,027.15, the dues of Applicant No.1A- IARC is Rs. 6,54,36,093.33, the dues of applicant no.2 Syndicate Bank is Rs.

6,81,56,112.29 and dues of applicant no.4 Indian Overseas Bank (now assigned to ARCIL) is Rs. 6,59,52,290.83. The applicants are entitled to pendentelite and future interest 12% simple from the date of filing of Original Application i.e. 15.9.2000 till full recovery is made from the defendant No.1 company and defendant no.2 together with costs of the Original Application. ii) The Applicants will be entitled to sell the hypothecated goods as well as other personal movable assets and Immovable properties of the defendant company. iii) The defendants are hereby restrained by means of injunction from depleting, transferring, encumbering, alienating or in any way dealing with its properties/assets without first paying the claim of the applicant bank. iv) A Recovery Certificate be issued u/s 19(22) of Recovery of Recovery of Debts & Bankruptcy Act, 1993. Judgment pronounced in the open court on this 19th Day of June, 2018."

8. It is also the case of the writ petitioner that, in the meantime, insolvency proceedings were initiated against U.P. State Spinning Company Limited, which came to be allowed vide order dated 22.10.2019, and thereafter the management of U.P. State Spinning Company Limited was suspended and handed over to the Resolution Professional.

9. Aggrieved by the order dated 19.06.2018 passed in O.A. No. 161 of 2000 by the Debt Recovery Tribunal, Allahabad, Bank of Baroda and others versus M/s UP State Textile Corporation Limited, whereby only 12% interest was awarded to the third respondent instead of 16% interest per annum with quarterly rests from the date of filing of the original application till realization, the International Asset Reconstruction Company Pvt. Ltd., (in short IARC), preferred an appeal before the Debt Recovery Appellate Tribunal, Allahabad, being Appeal Sr No. 135 of 2018, International Asset Reconstruction Company Pvt. Ltd. versus UP State Textile Corporation Limited and others. The appeal came to be allowed ex-parte on 21.08.2019, operative portion whereof is as under:- "10. The effective rate of interest was 16% at the time of fiting the original application as shown in clause (s) of the O.A. The respondents have not refuted these documents in any manner. The general rule is that the rate of interest during the pendency of the suit and for future period should be at the contractual rate particularly in commercial transactions unless there are circumstances which may disentitle the creditor to get the same. No such circumstances were shown by the borrowers in this case. So, the appellant is entitled to charge the interest on the contractual rate. This view is fortified by the principle laid down in the judgments of Canara Bank Vs. Marshall Cycle (Supra). 11. In view of the aforesaid, the appeal is partly allowed and the impugned order dated 19.06,2018 passed by the Tribunal below is modified to the extent that the appellant-company is entitled to charge the interest @ 16% ??? annum with quarterly rest from the date of filing of the original application till realization. Rest part of the impugned order is confirmed. No order as to costs."

10. According to the writ petitioner, a settlement stood undertaken between U.P. State Spinning Company Limited and Union Bank of India by virtue of an application under Section 12A of the Insolvency and Bankruptcy Code, 2016, whereby the insolvency order dated 22.10.2019 was recalled by virtue of the order dated 25.06.2020 and the management of U.P. State Spinning Company Limited was restored.

11. Consequent to the restoration of the management of U.P. State Spinning Company Limited, the management of the petitioner-company was also restored, and thereafter, on

04.09.2000, a recall application along with a delay condonation application came to be preferred for recalling the order dated 21.08.2019 passed by the Debt Recovery Appellate Tribunal, Allahabad, Appeal Sr No. 135 of 2018, International Asset Reconstruction Company Pvt. Ltd. vs. M/s UP State Textile Corporation Limited. The delay condonation application along with the recall application came to be contested by IARC, the third respondent, by filing a common reply i.e. to the delay condonation application as well as the recall application. The said recall application along with the delay condonation application was registered as M.A. No. 69 of 2020 in Regular Appeal No. 135 of 2018, International Asset Reconstruction Company Ltd. vs. M/s UP State Textile Corporation Limited, and the same came to be rejected on 01.12.2020.

12. Questioning the order dated 01.12.2020 passed by Debt Recovery Tribunal, Allahabad in M.A. No. 69 of 2020 in Regular Appeal No. 135 of 2018 International Asset Reconstruction Pvt. Ltd. vs UP State Spinning Corporation, as well as the relief for direction allowing the application of the writ petitioner, i.e. MA No. 69 of 2020 filed in Regular Appeal No. 135 of 2018 and to recall the order dated 21.08.2019 passed by the Debt Recovery Appellate Tribunal, Allahabad in Regular Appeal No. 134 of 2018, as well as for questioning the order dated 19.01.2021 passed by the Recovery Officer, Debt Recovery Tribunal Allahabad in DRC No. 442 of 2018, Bank of Baroda/ International Assets Reconstruction Company Limited vs. UP State Spinning Corporation, the present petition has been preferred.

13. This Court entertained the writ petition on 19.03.2021 while passing the following orders:- "Notice on behalf of respondent nos. 1, 2 and 8 has been accepted by Sri Vikram Bhalla, Advocate. Sri Sandeep Arora, Advocate has accepted the notice on behalf of respondent no.4. Sri K.M. Asthana, Advocate has accepted the notice on behalf of respondent no.5. Sri Ashish Kumar Srivastava, Advocate has accepted the notice on behalf of respondent no.6. Sri Maneesh Mehrotra, Advocate has accepted the notice on behalf of respondent no.7.

All the respondents are directed to file their counter affidavits within three weeks. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

List immediately thereafter."

14. Counter and Rejoinder affidavits have been exchanged between the parties. Thereafter, on 31.05.2022, the following orders were passed:- "Heard learned counsel for the petitioner and Sri Amit Manohar, Additional Chief Chief Standing Counsel.

An impleament application has been filed on behalf of State of U.P. stating therein that the State of UP is major stake holder in recovery proceedings against the petitioner and State of UP was a party before the Debt Recovery Tribunal but the petitioner has not impleaded State who is a necessary and proper party in the case.

Learned counsel for the petitioner submits that he has no objection if the impleadment application is allowed and the State of UP is impleaded as a party.

In view of aforesaid fact, the Impleadment Application No.3 of 2022 is allowed.

Learned counsel for the petitioner is directed to implead 'State of Uttar Pradesh through Additional Chief Secretary, Industrial Development Department, U.P., Lucknow' as respondent no.9 in the array of party.

It is stated by learned counsel for the petitioner that due to inadvertence, the State of UP was not impleaded as a party but the fact remains that it is not in dispute that the State of UP was a necessary and proper party in the case.

In such view of fact, the Sate of UP should have been impleaded by the petitioner inasmuch as for want of impleadment of State of UP, the writ petition was liable to be dismissed. Accordingly, this Court finds that the stay application may be heard after instructions/counter affidavit may be obtained from the State of UP.

Sri Amit Manohar, Additional Chief Chief Standing Counsel is granted four weeks time to seek instructions in the matter.

List this case on 04.07.2022."

15. On 09.01.2023, the following orders were passed:- "1. Heard Sri Kartikey Saran, learned counsel for petitioner and Sri Anurag Khanna, learned Senior Advocate assisted by Sri Sandeep Arora, learned counsel for Respondent-3.

2. Learned counsel for petitioner seeks and is granted a week?s time to take specific instruction with regard to repayment of loan atleast at the rate of 12% and parties will also come up with calculation regarding payment of loan as on date at the rate of 12%, 16% and 16% per annum quarterly.

3. Learned Standing Counsel may also take instruction, whether there are any progress for settlement of dispute or not."

16. Questioning the said order, the writ petitioner herein preferred Special Leave (Civil) Petition No. (S) 9842 of 2025, Uttar Pradesh State Textile Corporation Ltd. vs. Debt Recovery Tribunal, Allahabad in which on 03.03.2025, the following orders were passed:- "UPON hearing the counsel the Court made the following

ORDER

We dispose of this Special Leave Petition by reserving liberty to the petitioner herein to seek expeditious disposal of the writ petition before the High Court.

If such a request is made by the petitioner to the High Court, the same shall be considered in accordance with law and endeavour shall be made to dispose of the writ petition as expeditiously as possible.

Having regard to the nature of the order passed above, all pending application(s) including the application seeking condonation of delay stand disposed."

17. On 08.07.2025, this Court proceeded to pass the following orders:- "1. Shri Anurag Khanna, learned Senior Counsel assisted by Shri Sandeep Arora, learned counsel appearing for respondent no. 3 submitted that by order dated 09.01.2023, the petitioner was granted a week's time to take specific instruction with regard to repayment of loan at least at the rate of 12% and parties will also come up with calculation regarding payment of loan as on date at the rate of 12%, 16% and 16% per annum quarterly. It has been submitted by learned Senior Advocate that nothing has been done.

2. Learned counsel for the respective parties may provide the amount due as on today as directed by Debt Recovery Tribunal in the original decree within two weeks.

3. List this matter immediately after two weeks."

18. On 15.04.2026, this Court passed the following orders:- "Contention of the learned counsel for the writ petitioner is that initially financial assistance was accorded to the petitioner herein to the tune of Rs. 16,50,00,000/- by the concerned banks thereafter on 18.09.1993, the above-noted credit facilities were renewed and lastly was raised to Rs. 21,70,00,000/-. Since there happened to be certain events which were beyond the control and comprehension of the petitioner resulting to a position whereby the petitioner could not stick to the timelines for making the payments so the respondents-bank preferred an Original Application No. 161 of 2000, Bank of Baroda and others v. U.P. State Textile Corporation Ltd. and by virtue of the order dated 19.06.2018, the original application came to be allowed wherein the following directions were issued:

"10. The Original Application is allowed and ordered as under:-

i) That the bank is entitled to recover an amount of Rs. 21,09,15,523.60 (Rs. Twenty One Crore, Nine lacs, Fifteen Thousand, Five Hundred Twenty Three and Paisa Sixty only) out of which the dues of the applicant No.1 Bank of Baroda is Rs. 1,13,71,027.15, the dues of Applicant No.1A- IARC is Rs. 6,54,36,093.33, the dues of applicant no.2 Syndicate Bank is Rs. 6,81,56,112.29 and dues of applicant no.4 Indian Overseas Bank (now assigned to ARCIL) is Rs. 6,59,52,290.83. The applicants are entitled to pendentelite and future interest @ 12% simple from the date of filing of Original Application le. 15.9.2000 till full recovery is made from the defendant No.1 company and defendant no. 2 together with word costs of the Original Application.

ii) The Applicants will be entitled to sell the hypothecated goods as well as other personal movable assets and immovable properties of the defendant company.

iii) The defendants are hereby restrained by means of injunction from depleting, transferring, encumbering, alienating or in any way dealing with its properties/assets without first paying the claim of the applicant bank.

iv) A Recovery Certificate be issued u/s 19(22) of Recovery of Recovery of Debts & Bankruptcy Act, 1993."

Submission is that the said order was an exparte one thereafter the respondent no. 3, herein, International Asset Reconstruction Company Pvt. Ltd. preferred an Appeal Sr No. 135 of 2018 before the Debts Recovery Appellate Tribunal, Allahabad seeking to question the rate of interest 18.75% per annum and future period which reduced from 16% to 12% per annum and by virtue of an exparte order dated 21.08.2019, the DRAT proceeded to allow the appeal so preferred by the respondent no. 3, exparte while modifying the order of the Tribunal to the extent that the respondent no. 3 being the appellant before the Appellate Tribunal was entitled to charge the interest @ of 16% per annum quarterly raised from the date of filing of the original application till realization. As per the petitioner herein, the said order was an exparte order so a recall application came to be preferred along with the delay condonation application for condonation of the delay in filing the recall application for getting the exparte order dated 21.08.2019 recalled. The said recall application dated 04.09.2020 has been rejected on 01.12.2020. Argument is that they were various factors attributable in filing the recall application beyond the attributable period. One of the same was the fact that the parties were themselves in the process of settlement, which constrained the writ petitioner to approach the appellate tribunal while filing recall application by delay and not within the time stipulated and secondly, on account of the pandemic related to Covid circumstances which were beyond the control and the comprehension of the petitioner in that regard. During the course of argument, a question arose as to what is the exact reply to the delay condontion application so submitted by the respondents. The Court finds that the same is not available on record.

Learned counsel for the petitioner seeks 10 days' time to file the same.

Put up this case on 05.05.2026 under the same caption."

ARGUMENTS OF THE LEARNED COUNSEL FOR THE PETITIONER AND THE LEARNED ADDL. ADVOCATE GENERAL FOR THE STATE

19. Sri Rakesh Pandey, learned Senior Advocate assisted by Sri Abhinav Krishna, for the petitioner-corporation and Sri Rahul Agarwal, learned Additional Advocate General, assisted by Sri Anshul Nigam, learned Standing Counsel who are on the same lines and for common interest, have submitted that the order dated 01.12.2020 passed by the Debt Recovery Appellate Tribunal Allahabad rejecting the delay condonation application as well as the recall application seeking recall of the order dated 21.08.2019 in Appeal Sr No. 135 of 2018 cannot be sustained even for the a single moment.

20. Elaborating the said submission, it is contended that there were exceptional circumstances which necessitated special treatment to be meted to the writ petitioner, particularly when the writ petitioner-corporation had become a sick unit since the Financial Year 1994-95 and by virtue of the order dated 02.02.1995 passed by the BIFR, the petitioner-corporation was declared sick and once the entire staff of the petitioner-corporation were given VRS, lay off and the management of the petitioner-corporation was handed over to U.P. State Spinning Company Limited, and further, the

U.P. State Spinning Company Limited also became a sick company and, there were only three regular employees who remained in the company for looking after the work and affairs of U.P. State Spinning Company Limited as well as the writ petitioner-corporation, namely U.P. State Textile Corporation and also by virtue of the notification dated 01.11.2016, in view of the Insolvency and Bankruptcy Code, 2016, which came into effect, and the pending proceedings before the BIFR stood transferred by operation of law before the National Company Law Tribunal and an order came to be passed on 22.10.2019 whereby, in the insolvency proceedings, the management of U.P. State Spinning Company Limited was suspended and handed over to the Resolution Professional and thereafter, in view of the settlement so entered between Uttar Pradesh State Spinning Corporation and Union Bank of India under Section 12A of the Insolvency and Bankruptcy Code, 2016, the order dated 22.10.2019 was recalled vide order dated 25.06.2020 and the management of U.P. State Spinning Company Limited was restored and thereupon post passing of the orders by the Debt Recovery Tribunal on 19.06.2018 and the order passed by the Debt Recovery Appellate Tribunal, Allahabad, in Appeal Sr No. 135 of 2018 on 21.08.2019, the recall application along with delay condonation application seeking to recall the order dated 21.08.2019 of the Debt Recovery Appellate Tribunal came to be preferred.

21. Contention is that the circumstances were not only abnormal but beyond the control and comprehension, which resulted in a situation where the petitioner corporation could not either participate in the proceedings before the Debt Recovery Tribunal or before the Debt Recovery Appellate Tribunal and then things stood normalized, the recall application came to be preferred, which has illegally been rejected in a cursory manner without considering the said aspect of the matter.

22. The submission is to the effect that though the grounds taken in the delay condonation application for condonation of delay in filing the recall application, as well as the grounds taken in the recall application itself, are not happily worded, yet the facts and circumstances indicated therein do make out a perfect case wherein the recall application ought to have been allowed while condoning the delay in that regard.

23. Sri Rakesh Pandey, learned Senior Advocate, assisted by Sri Abhinav Krishna for the petitioner-corporation, and Sri Rahul Agarwal, learned Additional Advocate General, assisted by Sri Anshul Nigam, submit that the petitioner-corporation has entered into a settlement with the banks, but insofar as IARC, the third respondent, is concerned, the only dispute is with regard to the interest component, which stands saddled upon the writ petitioners by the order of the Debt Recovery Appellate Tribunal, Allahabad, in Appeal Sr No. 135 of 2018, International Asset Reconstruction Company Limited versus State of UP.

24. According to them, as per the instructions received from their clients, they have no objection in complying with the order of the Debt Recovery Tribunal dated 19.06.2018 passed in O.A. No. 161 of 2000. Attention has been drawn towards the fifth supplementary affidavit sworn by one Vinod Kumar Mishra, claiming himself to be authorized representative of the petitioner, dated 23.07.2025, so as to contend that the total principal liability is Rs. 6,54,36,093/- and the interest component is Rs.19,40,27,872/- for the period from 23.10.2000 to 08.07.2025, totaling to Rs. 25,94,63,965/-, which is in line with the order of the DRT dated 19.06.2018 passed in O.A. No.

161 of 2000. However, now, as per the claim set up by the third respondent, IARC, they are claiming benefits in line with the order of the Debt Recovery Appellate Tribunal dated 21.08.2019, wherein the interest is 16% per annum with quarterly rest from the date of filing of the Original Application till realization, which would amount to Rs.32,54,02,039.13. Submission is to the extent that the Debt Recovery Appellate Tribunal has accorded interest at the rate of 16% while enhancing it from 12% that too on quarterly rest basis and without assigning any basis or reasoning. In case the interest at the rate of 12%, as awarded by the Debt Recovery Tribunal was not as per the expectation, then on an appeal before the Debt Recovery Appellate Tribunal, the matter could have been remitted back to the Debt Recovery Tribunal and it was not proper for the Debt Recovery Appellate Tribunal to assume the function itself. Reliance has been placed upon the judgment of the Hon?ble Apex Court in Central Bank of India vs. Ravindra and others (2002) 1 SCC 367, ?.?. Sasankan Vs. Dhanalakshmi Bank Limited, (2009) 11 SCC 60, Punjab and Sind Bank Vs. Allied Beverage Company Private Limited and others with Allied Beverage Company Private Limited and others Vs. Punjab and Sind Bank and others, (2010) 10 SCC 640, S.P. Polymers Vs. The Registrar, Debt Recovery Appellate Tribunal, AIR2015Mad102 so as to contend that the interest cannot be awarded on mere asking and the same is to be adjudged in a correct perspective in that regard. It is thus prayed that the impugned orders rejecting the delay condonation application and the recall application be set aside and the writ petition be allowed in toto.

ARGUMENTS OF THE COUNSEL FOR IARC, THIRD RESPONDENT

25. Countering the said submissions so made by the learned counsels for the writ petitioner and State, Sri Anurag Khanna, assisted by Sri Sandeep Arora, has submitted that none of the contentions so raised by the writ petitioner have any legs to stand. Submission is that right from the very inception, a careless and reckless attitude has been adopted by the petitioner, as though they had full knowledge about the factum of the institution of the proceedings in O.A. No. 161 of 2000 before the Debt Recovery Tribunal, Allahabad, and the passing of the order dated 19.06.2018 as well as the factum of institution of the appeal so preferred by the IARC, third respondent before the Debt Recovery Appellate Tribunal, Allahabad and passing of the order dated 21.08.2019, but they allowed the proceedings to go on ex-parte. However, now when the time came to reap the fruits, a delay condonation application along with the recall application came to be referred for recalling the order of the Debt Recovery Appellate Tribunal that too without any cogent reasons, just for the sake of filing, despite the fact that the notice was served upon the petitioner on 26.9.2018, and there is a delay of 718 days from the date of service of the summons and 350 days from the date of the order of the Tribunal. Contention is that from the perusal of the delay condonation application as well as the recall application, it is clear that the same does not explain the delay on date-to-date basis, and further the entire story so cooked up by the learned Senior Counsel for the petitioner and learned Additional Advocate General for the State is nothing but an eyewash. Reliance has been placed upon the judgment of the Hon'ble Apex Court in Pathapati Subba Reddy (Died) by L.Rs. and Ors. Vs. The Special Deputy Collector (LA), (2024) 12 SCC 336 so as to contend that there should be sufficient cause for adopting a liberal approach for condonation of delay, but the same cannot be as a matter of right and also the judgment in H. Guruswamy and Ors. Vs. A. Krishnaiah Since Deceased By L.Rs. 2025 2 AWC 1594 SC, so as to contend that the length of delay is a relevant factor and the Court must take into consideration while considering whether delay should be condoned or not. Reliance has been placed upon the judgment in Divyangnakumari Harisinh

Parmar (Dead) and Ors. Vs. Union of India (UOI) and Ors, MANU/ SC/1321/2015 so as to contend that whatever has been pleaded in the delay condonation application/recall application that is only to be considered and not anything foreign to it.

ANALYSIS

26. I have heard the submissions made across the bar and perused the records carefully.

27. The bone of contention between the parties is whether the Debt Recovery Appellate Tribunal was justified in rejecting the delay condonation application/ recall application seeking recall of the order dated 21.8.2019 passed by Debt Recovery Appellate Tribunal, Allahabad in Appeal Sr No. 135 of 2018, National Asset Reconstruction Company Private Limited Vs. M/s. UP State Textile Corporation Limited or not.

28. In order to address the said issue, what would be relevant would be the sequence and the chronology of the events, which occurred from time to time. Apparently, financial assistance was extended to the petitioner corporation by the consortium banks. The pleadings reveal that the petitioner-corporation went into losses since the Financial Year 1994-95 and it became Sick by virtue of the provisions contained under Sick Industrial Companies (Special Provisions) Act, 1985, vide order dated 02.02.1995 passed by BIFR. It is claimed that the scheme of VRS and Lay Off was floated and the management of petitioner-corporation was handed over to the U.P. State Spinning Company Limited, and in order to manage the affairs of the petitioner-corporation and U.P. Spinning Company Limited, which also became a sick company, only three regular employees were entrusted with the said work, and they remained in the company. By that time in the year 2000, on account of non-maintenance of financial discipline of the petitioner-corporation, O.A. No. 161 of 2000 came to be instituted by the respondent-bank before the Debt Recovery Appellate Tribunal. Consequent to the U.P. State Reorganization Act 2000, out of five units of petitioner-corporation, two stood transferred along with the assets along with the Uttarakhand and by virtue of the order dated 21.10.2010, the State Government approved the rehabilitation scheme, submitted before the then BIFR by which liabilities of the petitioner were supposed to be paid by selling the assets of the petitioner. Then comes the notification dated 01.11.2016 brought under section 252 of the Insolvency and Bankruptcy Code 2006 by which the parties to the pending proceedings before BIFR were allowed to approach the National Company Law Tribunal vide order dated 01.12.2016 and thereafter, post-repealing of the Sick Industrial Companies Act 1985, the proceedings stood triggered before the Debt Recovery Tribunal and an order came to be passed on 19.06.2018 in O.A. No. 161 of 2024 that too exparte allowing the Original Application of the respondent while making them admissible for an amount of Rs. 21,09,15,523.60 plus 12% interest. Thereafter, on 22.10.2019, the insolvency proceeding against the U.P. State Spinning Company Limited was allowed and thereafter, the management of U.P. Spinning Company Limited was suspended and handed over to the Resolution Personnel. In the meantime, on an appeal preferred by the International Asset Reconstruction Company (IARC), third respondent, against non-award of 16% interest, that too quarterly rest from the date of filing of Original Application till realization, the Appeal Sr No. 135 of 2018 came to be allowed on 21.08.2019 and thereafter, post-settlement so entered into between U.P. State Spinning Corporation and Union Bank of India by virtue of an application under Section 12A of the Insolvency and Bankruptcy Code, 2016, the order dated

22.10.2019 was recalled vide order dated 25.06.2020 and the management of the U.P. State Spinning Company Limited, petitioner-company was restored. Thereafter, a recall application along with delay condonation application came to be preferred on 04.09.2020 for recalling of the order dated 21.08.2019 passed by Debt Recovery Appellate Tribunal, Allahabad. The aforesaid chronology and sequence of events show that there were several developments which occurred since the institution of the proceedings before the Debt Recovery Tribunal and passing of the orders by the Debt Recovery Appellate Tribunal. Therefore, said circumstances do indicate that there was a roller-coaster in the interregnum period.

29. To be more precise, the management of the petitioner-corporation stood disbanded. It became a part of U.P. State Spinning Company Limited and the petitioner-corporation and the U.P. State Spinning Company were declared sick and post-restoration of the management, the legal proceedings by way of recall / restoration application came to be filed.

30. Now the next question, which would arise for consideration is as to what are the pleadings set forth in the delay condonation application / recall application so preferred by the petitioner - corporation for condonation of delay and recall of the order dated 21.08.2019. For the ready reference, the same is quoted as under:-

PLEADINGS OF RECALL APPLICATION

"1. That the Hon'ble Chairperson DRAT had passed can ex-parte order dated 21/08/2019 in above appeal Sr. No. 135 of 2018 arising out from OA No. 161 of 2000.

2. That the OA No. 161 of 2000 had also decided as ex-parte and Applicant could not be able to present themselves neither in the Court below nor in the Court of Hon'ble Chairperson DRAT.

3. That there were circumstances beyond the control of Applicant due to which he is not able to present himself before this Hon'ble Court. The Applicant is narrating entire facts of delay in filing recall application before this Hon'ble Court and before the DRT, Allahabad. The delay in filing this application may be condoned and the matter may be heard on merit basis otherwise serious injustice could be occur which is not sustainable in terms of money.

4. That the Applicant Company had been ceases the operation since 2000 and one of the company who was looking after affairs of the company could not be able to file the recall application in time due to non-availability of staff.

5. That therefore the order passed by this Hon'ble Court dated 21/08/2019 may be recalled which is an ex-parte order may be recalled in the interest of justice.

6. The Applicant will file the W.S. against the appeal within 15 days.

Prayer

In view of the above it is prayed from this Hon'ble Court that this suitable order may be passed for recalling the order cated 21/08/2019 passed in appeal Sr. No. 135 of 2018 in the interest of justice or any other order which this tribunal deems fit and proper in the circumstances of the case."

PLEADINGS OF DELAY CONDONATION APPLICATION

"1) That the Applicant Company had received the order this Hon'ble this Court on 30/08/2019.

2) That it is pertinent to mention here that the above Applicant Company had ceases to operation from the year 2000 and entire staff of the company had been allowed to V.R.S. Thus, there was non-availability of staff in the company. The residual work of the company was handled by the another State Govt. Company i.e. U.P. State Spinning Company Ltd.

3) That the Applicant could not get the permission from the concerned Govt. authority for filing in recall application. Therefore delay had been occurred. The delay is not a deliberate one but it is a genuine and routine in nature. The delay in filing the recall application is 167 days upto 15th March and 5 months of Pandemic Covid-19 may be condoned and the matter may be heard on merit basis. Otherwise the Applicant/ Respondent No. 1 shall suffer the great loss and injury which can not be sustained in terms of money.

(4) That in this regard it is pertinent to mention here that there was a pendency of compromise before the Consortium leader i.e. Bank of Baroda who had neither accepted nor rejected the offer.

Prayer

In view of the above it is prayed from this Hon'ble Court that the suitable order may be passed for condonation of delay in filing the Misc. Application for recall of the order dated 21/08/2019 passed in Appeal Sr. No. 135 of 2018 filed by International Asset Reconstruction Company Pvt. Ltd. (IARC) versus M/s U.P. State Textile Corporation Ltd. and others, The delay may be condoned and the matter may be heard on merit basis."

31. A reply came to be submitted by the IARC, third respondent, to the delay condonation application / recall application which reads as under:

"REPLY/OBJECTIONS TO THE APPLICATION SEEKING RECALL

M.A.60 OF 2020

IN

APPEAL 1350F 2018

I.A.R.C. VS. M/S U.P.STATE TEXTILE CORPORATION LIMITED

The respondent, most respectfully submits as under :-

1. That applicant has made a false statement pertaining to period of delay in its application seeking condonation of delay, applicant was served with the order on 26.08.2019 the recall application, if any, could have been filed within 30 days therefrom, whereas the application seeking recall has been filed on 14.09.2020 l.e 353 days without narrating any sufficient cause of condonation of such an inordinate delay of more than 353 days.

2. That provisions of the Limitation Act, 1963 apply to the proceedings before this Hon'ble Tribunal by virtue of Section 245 of the Act, 1993 and as such in terms of Section 3 of the Limitation Act, 1963 no court has jurisdiction to entertain any application filed beyond the prescribed period of limitation subject to extension of the prescribed period on satisfying the rigors of Section 5 of the Limitation Act, 1963.

3. No cause whatsoever has been pleaded to seek condonation of duration of inordinate delay. The pleadings are vague. It is a matter of record that the applicant was negligent and has not taken necessary steps and has acted without due care and attention as such there is no sufficient cause for condonation of delay and application seeking condonation of delay is liable to be dismissed.

4. That in reply to the contents of para 1 of the recall application it is most respectfully submitted that the applicant herein was duly served with the Memo of Appeal on 26.09.2018, and despite admitted service respondent no.ldid not file any Reply / Written Statement and it had voluntarily chosen not to contest the appeal. Copy of Affidavit filed by Mr.V.K.Mishra, together with copy of notice evidencing service of notice/summons on applicant is ANNEXURE 1

5. That the contents of para 2 pertaining to alleged disability to not contest the Original Application and Memo of Appeal are utterly false and distorted, whereas, applicant was duly represented before the Ld. Presiding Officer, D.R.T., Allahabad since 04.12.2000 through his Counsel and representatives, however, 19.04.2017 applicant/defendant(s) voluntarily abandoned the proceedings pending before Ld. Presiding Officer, D.R.T., Allahabad as such final hearing was concluded exparte after an year on 29.05.2018, as regards the proceedings before this Hon'ble Appellate Tribunal it is most respectfully submitted that the applicant herein was duly served with the Memo of Appeal on 26.09.2018, and despite admitted service respondent no.1did not file any Reply / Written Statement and it had again voluntarily chosen not to contest the appeal despite knowledge and service.

6. That the contents of para 3 are vexatious & misleading applicant herein has always willingly avoided proceedings before the Ld. Presiding Officer, D.R.T... Allahabad and also before this Hon'ble Appellate Tribunal, and has now come up with a lame excuse with an alleged delay of only 7 days, whereas it is a matter of record that applicant herein was duly served with the Memo of Appeal on 26.09.2018 and thereafter as per applicants own admissions, applicant was also served with order dated 21.08.2019, it is further most respectfully submitted that applicant on 26.08.2019 was served with the order dated 21.08.2019 passed by this Hon'ble Tribunal in the proceedings before the Ld. Recovery Officer, applicant was directed by Ld. Recovery Officer to give details of mode and time frame from payment. Copy of Order dated 26.08.2019 is ANNEXURE 2.

7. That the contents of para 4 are misplaced & misleading. Applicant has also made a false statement pertaining to period of delay, applicant was served with the order on 26.08.2019 the recall application, if any, could have been filed within 30 days therefrom, whereas the application seeking recall has been filed on 14.09.2020 i.e. 353 days without narrating any sufficient cause of condonation of such an inordinate delay of more than 353 days. Provisions of the Limitation Act, 1963 apply to the proceedings before this Hon'ble Tribunal by virtue of Section, 245 of the Act, 1993 and as such in terms of Section 3 of the Limitation Act, 1963 no court has jurisdiction to entertain any application filed beyond the prescribed period of limitation subject to extension of the prescribed period on satisfying the rigors of Section 5 of the Limitation Act, 1963.

8. That the contents of para 5 & 6 are denied.

9. That the applicant is not only casual but also taking all provisions for granted including the limitation. The casual attitude in the whole of the application would render the application not only incompetent but deserves to be dismissed with exemplary costs. No indulgence can be granted to a fence sitter. The minimum particulars claimed to be cause of delay have not been stated at all. Application seems to be one of the most casual applications wherein the discretionary power of the Hon'ble DRAT be not exercised. An affidavit in support of the reply is being filed herewith."

32. Evidently the grounds taken in the delay condonation application as well as the application seeking recall of the order dated 21.8.2019 are not happily worded, but looking into the over all aspects of the matter including the orders passed at different stages by appropriate judicial forums, it can be very well said that there was a cloud with respect to the management and affairs and the situation which was emanating was not akin to a situation wherein there was already a management, who was in the helm of the affairs in active control, then too in deep slumber regarding asserting their legal rights. Though in the order dated 01.12.2020 passed by the Debt Recovery Appellate Tribunal rejecting the delay condonation application and the recall application, finding has been recorded that the notice was served upon the petitioner-Corporation on 26.09.2018, then too, no legal action was taken by the petitioner, but what would be relevant is the fact that on 26.09.2018, the petitioner-company was sick. More so, in the application seeking condonation of delay in filing recall application 30.08.2019 is the date mentioned for receiving the copy of the order, but since there happened to be a situation whereby the petitioner-Corporation remained sick, and only there were only three regular employees to manage, the U.P. State Spinning Company, thus the position even otherwise cannot be said to be congenial in that regard. This Court is mindful of the fact that due diligence and promptness is required from the personnel who are in the helm of affairs to assert their right, but looking into the overall fact situation which the petitioner-company was facing, they can be termed to be negligent to certain extent, but the same cannot be endorsed as fatal. There is no quarrel to the proposition of law laid down in Pathapati Subba Reddy (supra), H. Guruswamy (supra), and Divyangnakumari Harisinh Parmar (supra), but here, there lies a slight distinction regarding the developments which occurred from time to time, creating circumstances in favour of the petitioner -corporation to be given a chance to at least put forward their stand by being afforded the opportunity before the appellate forum.

33. Notably, an additional factor is also there regarding the financial liability, which would be fastened upon the State with respect to the import and the impact of the order of the Debt Recovery

Tribunal and Debt Recovery Appellate Tribunal, whereby the interest stood awarded by the Appellate Tribunal while enhancing from 12% simple to 16% quarterly rest from the date of filing of O.A. till realization. Recently, the Hon'ble Apex Court in Inder Singh vs. The State of Madhya Pradesh, 2025 LiveLaw (SC) 339, had the occasion to consider the issue relatable to delay in initiating the proceedings before the competent Court of law and following was observed:-

"16. The Court in Ramchandra Shankar Deodhar v State of Maharashtra, (1974) 1 SCC 317 held: ?10. ?There was a delay of more than ten or twelve years in filing the petition since the accrual of the cause of complaint, and this delay, contended the respondents, was sufficient to disentitle the petitioners to any relief in a petition under Article 32 of the Constitution. We do not think this contention should prevail with us. In the first place, it must be remembered that the rule which says that the Court may not inquire into CIVIL APPEAL NO. OF 2025 belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition. Each case must depend on its own facts. The question, as pointed out by Hidayatullah, C.J., in Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110, 116 :(1969) 2 SCR 824] ?is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit .... It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose?.? (emphasis supplied)

17. No doubt, Ramchandra Shankar Deodhar (supra) relates to a writ petition, but the statement of law laid down is clear. Sheo Raj Singh (supra) has also considered the impersonal nature of the functioning of the State, taking note of what was observed in State of Manipur v Kotin Lamkang, (2019) 10 SCC 408. In A B Govardhan v P Ragothaman, (2024) 10 SCC 613, the Court considered as under: ?37. In Collector (LA) v. Katiji [Collector (LA) v. Katiji, (1987) 2 SCC 107], the Court noted that it had been adopting a justifiably liberal approach in condoning delay and that justice on merits? is to be preferred as against what ?scuttles CIVIL APPEAL NO. OF 2025 a decision on merits?. Albeit, while reversing an order of the High Court therein condoning delay, principles to guide the consideration of an application for condonation of delay were culled out in Esha Bhattacharjee v. Raghunathpur Nafar Academy [Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649: (2014) 1 SCC (Civ) 713: (2014) 4 SCC (Cri) 450: (2014) 2 SCC (L&S) 595]. One of the factors taken note of therein was that substantial justice is paramount [Para 21.3 of Esha Bhattacharjee [Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649: (2014) 1 SCC (Civ) 713: (2014) 4 SCC (Cri) 450: (2014) 2 SCC (L&S) 595]].

38. In N.L. Abhyankar v. Union of India [N.L. Abhyankar v. Union of India, 1994 SCC OnLine Bom 574: (1995) 1 Mah LJ 503], a Division Bench of the Bombay High Court at Nagpur considered, though in the context of delay vis-a-vis Article 226 of the Constitution, the decision in Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur [Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur, (1992) 2 SCC 598] , and held that: (N.L. Abhyankar case [N.L. Abhyankar v. Union of India, 1994 SCC OnLine Bom 574: (1995) 1 Mah LJ 503], SCC OnLine Bom para 22)

‘22. - The real test for sound exercise of discretion by the High Court in this regard is not the physical running of time as such, but the test is whether by reason of delay there is such negligence

on the part of the petitioner, so as to infer that he has given up his claim or whether before the petitioner has moved CIVIL APPEAL NO. OF 2025 the writ court, the rights of the third parties have come into being which should not be allowed to be disturbed unless there is reasonable explanation for the delay.

(emphasis supplied)"

34. Viewing the case from the four-corners law, this Court is of the opinion that an opportunity is to be accorded to the petitioner-corporation to put forward the stand before the Debt Recovery Appellate Tribunal, however, on the payment of cost.

35. Accordingly, the writ petition is being decided in the following terms:

(a). The Order dated 01.12.2020 passed by the Debt Recovery Appellate Tribunal, Allahabad in M.A. no. 69 of 2020 in Regular Appeal no. 135 of 2018, International Asset Reconstruction Company Ltd. vs. M/S U.P. State Textile Corporation Ltd. is set aside.

(b). The delay in filing the restoration application is condoned.

(c). The matter is remitted back to the Debt Recovery Appellate Tribunal, Allahabad to decide the recall application on merits within a period of three months from the date of production of certified copy of the order.

36. Needless to point out that the order passed today may not be construed to be an expression on merit and the Debt Recovery Appellate Tribunal shall pass an order strictly in accordance with law without being influenced with any of the observations made herein above.

37. The third respondent/ IARC is entitled to cost of Rs.25,000/-.

38. With the aforesaid observations, the petition stands disposed of.

(2026) 5 ILRA 548
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.05.2026

BEFORE

THE HON'BLE VIKAS BUDHWAR, J.

Writ C No. 26552 of 2024

Ajeet Nigam **...Petitioner**
Versus
Additional District Judge & Ors. **...Respondents**

Issue for Consideration

Matter pertains to whether the non-functioning of judicial work on the civil side would constitute a ground for not presenting an election petition within the prescribed period of limitation; and whether, in the absence of any specific notification permitting acceptance of an election petition during summer or winter vacations, the period of limitation prescribed under the statute for presenting the election petition can be extended by the Court.

Headnotes

U.P. Municipal Corporation Act, 1959 – ss.62(1)–(4), 71 – U.P. General Clauses Act, 1904 – s.10 – General Rules (Civil), 1957 – rr.13, 32 – Election petition challenging election of Corporator – Election held on 11.05.2023 and result declared on 13.05.2023 – Election petition required to be presented before the District Judge exercising jurisdiction in the City within 30 days of declaration of result, i.e. by 12.06.2023 – Election petition presented on 01.07.2023, after a delay of 18 days – Election Tribunal, vide order dated 31.05.2024, decided Issue No.5 relating to limitation in favour of the election petitioner and against the returned candidate – Returned candidate challenging the said order before the High Court contending that summer vacations from 01.06.2023 to 30.06.2023 and suspension of civil judicial work could not extend the period of limitation and that the election petition could have been presented before the Munsarim or other officer authorised by the District Judge – Election petitioner contending that during summer vacations civil work was suspended and only criminal work was being conducted and, therefore, election petition could not be entertained before reopening of the Court – Whether non-functioning of judicial work on civil side during summer vacations would constitute a ground for not presenting the election petition within the prescribed period of limitation :

Held :

Provisions of the Limitation Act, 1963 do not apply to election petitions – Courts, by a judicial fiat, cannot extend the period of limitation stipulated in the statute for presenting the election petition – Provisions of s.10 of the U.P. General Clauses Act, 1904 do apply – Where the Court or office is closed on the last day of the prescribed period, the act or proceeding, if done or taken on the next day afterwards on which the Court or office is open, would be considered as done or taken in due time – Rules 13 and 32 of the General Rules (Civil), 1957 operate on different fields – Rule 13 relates to work on holidays, whereas Rule 32 provides for the time for presenting applications and petitions before the Munsarim – Question of limitation for filing election petitions during vacations or holidays depends upon the notifications issued by the appropriate authorities – District Court calendar providing that only criminal work would be conducted and civil work would remain suspended except urgent matters, in absence of any rule, notification, circular or order permitting presentation and acceptance of election petitions during summer vacations, would not extend the period of limitation – In the present case, barring Rule 13 and Rule 32 of the General Rules (Civil), 1957, no rule, notification, circular or order was placed on record to show that even during the summer vacations/holidays, the election petition could be accepted – Held, no manifest illegality committed by the Court below in holding the election petition not to be time-barred . Writ petition dismissed. (E-5)

Paras 21–23, 28–32]

Case Law Cited

Reji Thomas and Others Vs. State of Kerala and Others: 2018 LawSuit(SC) 555;
Shahnawaz Ali Vs. Election Tribunal District Judge Muzaffarnagar And 10 Others: 2024 LawSuit(All) 2010
Smt. Sharda Devi Vs. State of U.P. through Secretary and Ors; Civil Misc. Writ Petition No. 56867 of 2012
Ashok Shankarrao Chavan Vs. Anil Trayambakrao Patil: (1988)90BOMLR39;
P. Narappa Vs. A Shanker Alva: 1927 LawSuit(Kar)91;
Harinder Singh vs. S. Karnail Singh, AIR 1957 SC 271

List of Acts

U.P. Municipal Corporation Act, 1959;
U.P. General Clauses Act, 1904;
General Rules (Civil), 1957

List of Keywords

Election of Corporator; election petition; limitation; Section 62(4), U.P. Municipal Corporation Act, 1959; 30-day limitation; declaration of election result; Limitation Act, 1963; non-applicability of Limitation Act; Section 10, U.P. General Clauses Act, 1904; summer vacation; closure of Court; presentation of election petition; General Rules (Civil), 1957; Rules 13 and 32; applicability of Section 10; election petition filed on reopening of Court; condonation/extension of limitation; closed holidays; election law; Article 226; dismissal of writ petition.

Case Arising From

Order dated 31.05.2024 passed by the Additional District Judge, Court No. 6, Ghaziabad in Election Petition No. 20 of 2023, whereby Issue No. 5 relating to limitation was decided in favour of the election petitioner and against the returned candidate.

Appearances for Parties

Advs. for the Petitioner: Sanjai Kumar
Advs. for the Respondents: Akshat Sinha, C.S.C., Sanyukta Singh

(Delivered by Hon'ble Vikas Budhwar, J.)

1. Heard Sri Sanjay Kumar, learned counsel for the petitioner, Sri Sanjay Kumar Singh, learned Additional Chief Standing Counsel for respondent Nos. 1, 3, and 4, and Sri Akshat Sinha for respondent No. 2.

2. Though notices were issued to respondent Nos. 5 and 6 but as per the office report dated 23.10.2024, the notices have been delivered. Till the dictation of the orders, nobody has put in appearance on behalf of respondent Nos. 5 and 6.

3. A joint statement has been made by learned counsel for the parties that they do not propose to file any further affidavit. With the consent of the parties, the writ petition is being decided at the admission stage.

4. The case of the writ petitioner, as worded in the present petition, is that the State Election Commission had issued a notification bearing No. 206/Ra.Ni.Aa.Anu.4/Na.Ni./2023/Lucknow dated 09.04.2023 for the election of Corporators in Nagar Nigam throughout the State of U.P. The writ petitioner herein claims to have contested the election of Corporator, Ghaziabad Nagar Nigam, Ward No. 96, Nehru Nagar-III, on the symbol of camera. Respondent Nos. 2, 5, and 6 also contested the said election, which was scheduled on 11.03.2023. The petitioner was declared elected as the Corporator of Ghaziabad Nagar Nigam, Ward No. 96, Nehru Nagar-III, on 13.05.2023.

5. Being aggrieved by the declaration of the result of the Corporator, Ghaziabad Ward 96, Nehru Nagar-III, the respondent No. 2, Anil Swami son of Sri Krishna Bhargawa, instituted an Election Petition No. 20 of 2023 under Section 62 of the U.P. Municipal Corporation Act, 1959, questioning the election of the writ petitioner before the Court of District Judge, Ghaziabad. The election petition was presented on 01.07.2023. On the presentation of the election petition, the Court of District Judge, Ghaziabad, issued notices to the defendants in the said election petition.

6. Written statements came to be filed on 08.01.2024 by the petitioner-defendant. However, as many as 11 issues were framed by the Court of District Judge, Ghaziabad, on 28.03.2024, which are as under.-

"(1) क्या याची के द्वारा याचिका में दिये गये आधारो पर विपक्षी सं० 1 का निर्वाचन शून्य घोषित कराने एवं स्वयं को निर्वाचित घोषित कराने का अधिकारी हैं?

(2) क्या याची के द्वारा याचिका में दिये गये आधारो पर विपक्षी सं० 2 व 3 के विरुद्ध दण्डात्मक विभागीय कार्यवाही याचित किये जाने योग्य हैं?

(3) क्या याची द्वारा याचिका का मूल्यांकन कम किया गया हैं?

(4) क्या याची द्वारा याचिका में अदा किया गया न्यायशुल्क अपर्याप्त हैं?

(5) क्या याचिका अवधि बाधित हैं?

(6) क्या याचिका दोषपूर्ण होने के कारण आदेश 7 नियम-11 सी पी सी के प्रावधानो से बाधित हैं?

(7) क्या याचिका राज्य निर्वाचन आयोग उत्तर प्रदेश के आदेश संख्या 688/रा0नि0आ0 अनु0 4/2023 दिनांकित 21 जून 2003 से बाधित हैं?

(8) क्या याचिका में पक्षकारो का कुसंयोजन एवं असंयोजन का दोष हैं?

(9) क्या विपक्षी सं० 2 एवं 3 धारा 35 ए सी पी सी के तहत विशेष हर्जा पाने के अधिकारी हैं?

(10) क्या याचिका उत्तर प्रदेश नगर निगम 1959 की धारा-71 के प्रावधानो से बाधित हैं?

(11) क्या याची किसी अनुतोष को पाने का अधिकारी हैं?"

7. Vide order dated 31.05.2024 passed in Election Petition No. 20 of 2023, besides other issues, Issue No. 5 relating to the fact as to whether the election petition was time-barred or not was considered, the issue came to be decided in favor of the election petitioner and against the returned candidate (writ petitioner).

8. Questioning the order dated 31.05.2024 passed by the Court of Additional District Judge Court No. 6, Ghaziabad, in Election Petition No. 20 of 2023, to the extent of deciding Issue No. 5 against the returned candidate (writ petitioner) in favour of respondent No. 2, the present petition has been preferred.

9. This Court entertained the writ petition on 04.09.2024 while passing the following order.-

"1. Heard learned counsel for the petitioner.

2. Learned counsel for the petitioner submitted that election of Corporator was held on 11.05.2023 and the result was declared on 13.05.2023, in which petitioner was declared as elected candidate. He next submitted that against the aforesaid election respondent No. 2 has filed election petition No. 20 of 2023, who has also contested the aforesaid election. He next submitted that post of Mayor, Corporation is governed by the Uttar Pradesh Nagar Nigam Adhiniyam, 1959, Rule 62 of which provides objection upon the election of the Corporator and Rule 60(2) provides limitation of 30 days in which election petition shall be produced before the District Judge. He next submitted that admittedly election petition was filed with delay of 18 days and Issue No. 5 was also framed to this effect and ultimately, the same was decided in favour of respondent No. 2 on the ground that court was closed in the summer vacation and election petition was filed on the opening day after the summer vacation, therefore, he is entitled for the benefit of limitation. He next submitted that law is settled on the point that election petitions are accepted in the office of District Judge and

further, this issue was dealt by this Court on many occasions and the Court has taken the firm view that in the election petition benefit of limitation would not be applicable. Therefore, impugned judgment and order dated 31.05.2024 is bad and liable to be set aside. In support of his contention, learned counsel for the petitioner placed reliance upon the judgments of Hon'ble Apex Court in the matter of Reji Thomas and Others Vs. State of Kerala and Others: 2018 LawSuit(SC) 555, judgment of this Court in the matter of Shahnawaz Ali Vs. Election Tribunal District Judge Muzaffarnagar And 10 Others: 2024 LawSuit(All) 2010 & Civil Misc. Writ Petition No. 56867 of 2012 (Smt. Sharda Devi Vs. State of U.P. through Secretary and Ors.), judgment of Bombay High Court in the matter of Ashok Shankarrao Chavan Vs. Anil Trayambakrao Patil: (1988)90BOMLR39, judgment of Mysore High Court in the matter of P Narappa Vs. A Shanker Alva: 1927 LawSuit(Kar)91.

3. Matter requires consideration.

4. Issue notice to 2, 5 & 6, returnable within six weeks. Steps be taken within a week. 5. List this case on 23.10.2024.

6. Until further order of this Court, effect and operation of impugned judgment and order dated 31.05.2024 and further proceeding of Election Petition No. 20 of 2023 shall remain stayed."

10. Assailing the order dated 04.09.2024, the second respondent, Anil Swami, election petitioner, preferred Special Leave Petition (Civil) Diary No(S). 11311 of 2026, in which the following orders were passed on 23.03.2026.-

"Delay condoned.

We have heard the learned counsel appearing for the petitioner.

In as much as the special leave petition has been filed against an interim order, we find no reason to interfere with the same.

However, taking into consideration the submission made by the learned counsel appearing for the petitioner and the fact that we are dealing with an election petition pertaining to an election that was conducted on 13th May 2023, we request the High Court to dispose of Writ (C) No.26552/2024 within a period of four months.

The Special Leave Petition stands disposed of, accordingly.

Pending application(s), if any, shall also stand disposed of."

11. Counter and rejoinder affidavits have been exchanged between the parties which are available on record.

12. Learned counsel for the returned candidate, the writ petitioner has sought to argue that the order dated 31.05.2024 passed by the Election Tribunal/Additional District Judge Court No. 6, in

Election Petition No. 20 of 2023, deciding Issue No. 5 against the election returned candidate, cannot be sustained even for a single moment. Elaborating the submission, it is contended that as per sub-section (4) of Section 62 of the 1959 Act, the election of a Corporator can be challenged by an unsuccessful candidate while presenting an election petition before the Election Tribunal exercising jurisdiction in the city within 30 days of the declaration of the result of the election. Argument is that, as per the own saying of the election petitioner, the elections were conducted on 11.05.2023 and the results came to be declared on 13.05.2023. Thus, the election petition could only be filed within 30 days, i.e. by 12.06.2023, however, the same came to be filed beyond 30 days, i.e. on 01.07.2023 which is after a delay of 18 days. Submission is that the provisions contained under the Limitation Act, 1963 are thoroughly inapplicable, and thus in absence of any provision for condonation of delay, it was not open for the Election Tribunal to have entertained the election petition. It is submitted that though the consideration which weighed with the election tribunal in treating the election petition to be within time on the premise that there happen to be summer vacations in the district court and the civil work came to be suspended and only criminal matters were being entertained is not a ground to hold the election petition to be within time while extending the period of limitation particularly when, though the courts dealing with civil matters are closed and civil work is not conducted but the office remains open and in order to overcome the hurdle of delay, it was always open for the election petitioner to have presented the election petition during the summer vacation before the Munsarim or the officers so authorized by the District Judge in the district court and while not doing so, the election petition was beyond the limitation period. In order to buttress the submission, reliance has been placed upon the judgment of the Hon'ble Apex Court in Reji Thomas and Others Vs. State of Kerala and Others: 2018 LawSuit(SC) 555, judgment of this Court in the matter of Shahnawaz Ali Vs. Election Tribunal District Judge Muzaffarnagar And 10 Others: 2024 LawSuit(All) 2010 & Civil Misc. Writ Petition No. 56867 of 2012 (Smt. Sharda Devi Vs. State of U.P. through Secretary and Ors.), judgment of Bombay High Court in the matter of Ashok Shankarrao Chavan Vs. Anil Trayambakrao Patil: (1988)90BOMLR39, judgment of Mysore High Court in the matter of P. Narappa Vs. A Shanker Alva: 1927 LawSuit(Kar)91. Thus, it is prayed that the order dated 31.05.2024 passed by the Election Tribunal deciding Issue No. 5 against the petitioner/returned candidate and in favour of the election petitioner/respondent No. 2 be set aside, and the petition be allowed in toto.

13. Countering the submissions so made by the learned counsel for the petitioner, Sri Akshat Sinha, who appears for the election petitioner/ second respondent, has submitted that none of the contentions so raised by the learned counsel for the petitioner has any legs to stand. The submission is that though the provisions of the Limitation Act, 1963 do not apply in the proceedings pertaining to the election of Corporator under the 1959 Act but the provisions contained under Section 10 of the U.P. General Clauses Act, 1904 squarely applies. The argument is that though the election took place on 11.05.2023, the result was declared on 13.05.2023 and as per sub-section 4 of Section 62 of the 1959 Act, the election petition is to be presented before the District Court exercising jurisdiction within 30 days of the declaration of the result. Thus, the limitation period was till 12.06.2023. However, since there were summer vacations in the District Court and the civil work was suspended, and only criminal work was being conducted, and an election petition being a civil dispute could not be entertained, thus, on the conclusion of the summer vacation and opening of the court on 1st July 2023, the election petition came to be presented. Thus, according to the election petitioner, there is no delay in filing the election petition. Reliance has been placed upon the

decision of the Hon'ble Supreme Court in (H. H. Raja) Harinder Singh vs. S. Karnail Singh, AIR 1957 SC 271.

14. The learned Additional Chief Standing Counsel, who appears for the State, has adopted the submissions so made by the learned counsel for the election petitioner/second respondent, and according to him, he has nothing to add except the fact that the order passed by the election tribunal cannot be faulted in any manner whatsoever.

15. I have heard the submissions so made across the bar, and perused the record.

16. Before embarking and inquiry upon the tenability of the arguments of the rival parties, it would be apposite to have a survey of the statutory provisions governing the field.

U.P. Municipal Corporation Act, 1959

"62. Questioning of election of (Corporator).- [(1) The election of any person as [Corporator] may be questioned by any unsuccessful candidate at the election, or by any person whose nomination paper was rejected at the election, or by any elector of the ward concerned.]

(2) The petition may be presented on any one or more of the grounds mentioned in Section 71.

(3) The election of any person as (Corporator) shall not be questioned on the ground that the name of any person qualified to vote, has been omitted from, or the name of any person not qualified to vote, has been inserted in the electoral roll or rolls.

[(4) The petition shall be presented to the District Judge exercising jurisdiction in the City within 30 days of the declaration of result of the election.]"

Uttar Pradesh General Causes Act, 1904

"10. Competition of time.- whereby any Uttar Pradesh Act, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period, then if the court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the court or office is open. Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 applies."

General Rules (Civil), 1957

"[13. Work on Holidays.- Except with the consent of the parties, no suit, case, or appeal shall be heard on a day declared holidays for the subordinate Courts:

Provided that on a day declared holiday for the subordinate Courts, a Courts shall not refuse to do any act or make any order urgently required or which may with propriety be done or made out of Court.

32. Time for Presenting Applications.- Except as otherwise provided by these rules, applications and petitions which can be presented to the Munsarim of a Court shall be received on any day other than an authorised holiday between 10:30 a.m. and such hour as may be fixed by the Court:

Provided that an application or petition presented after such hour and before 4:00 p.m. may be received on the ground, if any, of limitation or any other urgent reason. The Presiding Officers when accepting plaints or applications after Court hours will note on such papers the time of their presentation."

17. Facts are not in issue. It is not in dispute that the election of the Corporator, Ghaziabad Nagar Nigam, Ward No. 96, Nehru Nagar-III, came to be conducted on 11.05.2023. It is also not in dispute that the result was declared on 13.05.2023, and the petitioner herein became the returned candidate. Parties are in agreement that for questioning the election of the Corporator, there happens to be a provision, being Section 62 of the U.P. Municipal Corporation Act, 1959. Perusal of the said provision would go to show that the election of a Corporator may be questioned by an unsuccessful candidate at the election, or by a person whose nomination paper was rejected at the election, or by an elector of the ward concerned, on the specified grounds. As per sub-section (4) of Section 62 of the 1959 Act, the election petition is to be presented before the District Judge exercising jurisdiction in the city within 30 days of the declaration of the result of the election. Meaning thereby, the time period for presenting the election petition is within 30 days of the declaration of the result. As a matter of fact, it is also not in dispute between the parties that there happened to be summer vacations in the month of June 2023, i.e., from 1st June 2023 to 30th June 2023.

18. Interestingly, there is no dispute between the parties, and it is a matter of common knowledge also, that during the summer vacations, criminal work is being conducted irrespective of the summer vacations being there. However, so far as the civil work is concerned, only urgent matters are being entertained. The bone of contention between the parties is whether the non-functioning of the judicial work on civil side would be a ground not to present the election petition or not. In order to address the said issue, what would be relevant would be the notifications/circulars/orders issued from time to time either by the High Court on the administrative side or by the District Judge in that regard.

19. Rule 13 of the General Rules (Civil), 1957 talks about the work on holidays. According to it, except with the consent of the parties, no suit, case, or appeal shall be heard on a day declared a holiday for the subordinate courts and there is a proviso appended thereto that on a day declared a holiday for the subordinate courts, a court shall not refuse to do an act or make any order urgently required, or which may with propriety be done or made out of court.

20. Next comes Rule 32 of the 1957 Rules which itself provides for the time for presenting applications. According to which, except as otherwise provided by the Rules, applications and petitions which can be presented to the Munsif of a court shall be received on any day other than an authorized holiday between 10:30 AM and such hour as may be fixed by the court. A proviso is also appended thereto that the application or petition presented after such hour and before 4:00 PM

may be received on the ground of limitation or any other reason, and the presiding officer then accepting claims or applications after court hours will note on the paper the time of presentation.

21. Rule 13 and Rule 32 of the rules operate on different fields. Rule 13 talks about work on holidays, wherein even on holidays, with the consent of the parties, urgent matters can be entertained, whereas Rule 32 stipulates the time for presenting applications, and in urgency, beyond office hours, on exceptional reasons, while recording the same, the petitions can be accepted.

22. Now the next question which arises for consideration is whether there happens to be any specific notification issued for acceptance of an election petition during the vacations, either summer or winter. On a pointed query being raised to the parties, whether there happens to be any specific notification in that regard, the answer is in the negative. Notably, there is no provision under the 1959 Act which makes the Limitation Act, 1963 applicable. Thus, the courts, by a judicial fiat, cannot extend the period of limitation so stipulated in the statute for presenting the election petition.

23. Another aspect which needs to be noticed is the applicability of the U.P. General Clauses Act, 1904. Section 10 of the U.P. General Clauses Act, 1904 throws light upon the said aspect, according to which, an act or proceeding is directed to be allowed to be done or taken in any court or office on a certain day or within a prescribed period, then if the court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the court or the office is open. Meaning thereby, that once the courts are closed and the limitation period comes to an end on the date when the courts are closed, then on the opening day, if the proceedings are undertaken, then it would be within time and not time-barred. The issue whether the provisions of Section 10 of the General Clauses Act stands applicable in matters pertaining to election petitions is no more res integra. As the Hon'ble Apex Court in (H. H. Raja) Harinder Singh (supra) observed as under.-

"(5) This argument proceeds on an interpretation of S. 10 of the General Clauses Act which, in our opinion, is erroneous. Broadly stated, the object of the section is, to enable a person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is prescribed for the performance of an act in a Court or office, and that period expires on a holiday, then according to the section the act should be considered holiday, then accorded to have been done within that period, if it is done on the next day on which the Court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday. Now, it cannot be denied that the period of fourteen days, provided in R. 119 (a) for presentation of an election petition is a period prescribed, and that is its true character, whether the words used are "within fourteen days" or "not later than fourteen days". That the distinction sought to be made by the appellant between these two expressions is without substance will be clear beyond all doubt, when regard is had to S. 81 of the Act. Section 81 (1) enacts that the election petition may be presented "within such time as may be prescribed", and it is under this section that R. 119 has been framed. It is obvious that the rule-making authority could not have intended to go further than what the section itself had enacted, and if the language of the Rule is construed in conjunction with and under the coverage of the section under which it is framed, the words "not later than fourteen days" must be held to mean the same thing "within a

period of fourteen days". Reference in this connection should be made to the heading of R. 119 which is, "Time with-in which an election petition shall be presented". We entertain no doubt that the Legislature has used both the expressions as meaning the same thing, and there are accordingly no grounds for holding that S. 10 is not applicable to petitions falling within R. 119."

24. The view taken in (H. H. Raja) Harinder Singh (supra) came to be followed in Hukumdev Naraian Yadav Vs. Lalit Narain Mishra (1974) 2 SCC 133, wherein the following was observed.-

"5. On the question whether the petitioner could have filed the petition on Saturday, March 18, 1972, what has to be seen is whether the Court can be said to be closed within the meaning of either Section 4 of the Limitation Act, 1963, or Section 10 of the General Clauses Act, 1897, because under both the provisions where the prescribed period of limitation expires on a day when the Court is closed the petition could be filed on a day when the Court re-opens. Where, however, the pro-visions of the Limitation Act apply, the proviso to Section 10(1) of the General Clauses Act in terms makes that provision itself inapplicable. Under Section 4 of the Limitation Act it is provided that where the prescribed period for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the Court re-opens. The Explanation thereof states that a Court shall be deemed to be closed on any day within the meaning of that Section if during any part of its normal working hours it remains closed on that day. It was sought to be contended that even if the Limitation Act applies, Section 4 would not apply because an election petition is neither a suit, nor an appeal nor an application, notwithstanding the definition of "application" contained in Section 2(b) of the Limitation Act as including a petition. It is, in our view, unnecessary to examine the submission in this context because even if Section 4 of the Limitation Act does not apply, Section 10 of the General Clauses Act will certainly apply to election petitions to be filed under the Act as held by this Court in H. H. Raja Harinder Singh v. S. Karnail Singh. In that case an election petition had to be filed under Rule 119(a) of the Election Rules not later than fourteen days from the terminus a quo prescribed therein, but as the day on which it could be filed was a Sunday he filed it on the next day. The contention of the Solicitor-General was that Section 10 of the General Clauses Act:

"can apply on its own terms only when the act in question is to be done 'within a prescribed period', that under Rule 119(a) of the Election Rules the petition has to be filed 'not later than' fourteen days, that the two expressions do not mean the same thing, the words of the Rule being more peremptory, and that accordingly Section 10 of the General Clauses Act cannot be invoked in aid of a petition presented under Rule 119, later than fourteen days".

This argument was rejected as being erroneous because:

"Broadly stated, the object of the Section is, to enable a person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is prescribed for the performance of an act in a Court or office, and that period expires on a holiday, then according to the Section the act should be considered to have been done within that period, if it is done on the next day on which the Court or office is open. open. For that Section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday."

Of course Section 10(1) of the General Clauses Act does not speak of a holiday, but refers to the Court or office being closed on the last day of the prescribed period to enable a party to do an act or take any proceedings on a certain day or within a prescribed period, as the next day on which the Court or office is open. If the Court is closed on the day when limitation expired, Section 10(1) of the General Clauses Act enables the filing on the next working day of the Court. But is the Court closed on a Saturday when the Judges do not sit though the office of the High Court is open?"

25. The Hon'ble Apex Court, from a judgment of this Court, had the occasion to consider the contingency akin to what is finding presence in the present case relatable to expiring of the limitation period during the summer vacations and in Hari Shanker Tripathi Vs. Shiv Harsh and others (1976) 1 SCC 897, it was held as under.-

6. To begin with we would first deal with the case of Hukumdev Narain Yadav (supra). What had happened in that case was that the election petition was filed on March 20; 1972 instead of being filed on Saturday March 18, 1972 which was the last day on which the limitation expired. The election petitioner sought to cross the bar of limitation on the ground that Saturday not being a working 1 day of the Court, the petitioner was entitled to file the petition on the next working day, namely, Monday. This Court on a consideration of various factors negatived this contention and held that even though the Judges of the High Court did not usually sit on Saturdays it was undoubtedly a working day of the Court and it could not be said that the Court was observing a closed holiday on Saturday. After referring to a large number of decisions and traversing various provisions of the Limitation Act, this Court observed as follows:- ".... for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in s. 4, ss. 9 to 18 and s. 22 shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law..... For all these reasons we have come to the conclusion that the provisions of s. 5 of the Limitation Act do not govern the filing of election petitions or their trial, and in this view, it is unnecessary to consider whether there are any merits in the application for condonation of delay."

This Court accordingly held that s. 4 as also s. S of the Limitation Act had no application to the election petitions on the true interpretation of s. 29(2) of the Limitation Act. The Court also held on a reading of rr. 6 & 7 with r. 26 of the Patna High Court Rules that even though the Judges were not sitting on Saturdays the- election petition could be presented on a Saturday to the Registrar or other officers as envisaged by r. 26 of the Patna High Court Rules. In the instant case, however, the period of limitation provided by s. 81(1) of the Representation of the People Act appears to have expired during the summer vacation which according to the notification of the Allahabad High court was declared to be a closed holiday. By virtue of the notification of the Allahabad High Court dated September 22, 1973 when the High Court Calendar for 1974 was approved by the Court after inviting objections from the members of the public, a list of days had been mentioned to be treated as closed holidays. The last part of this notification runs thus:

"List of days to be observed as closed holidays in the High Court of Judicature at Allahabad during the year 1974.

Name of holidays	Date on which they fall		Days of the week	Number of days
	According to Gregorian Calendar	According to Indian Calendar (Saka Era)		
1	2	3	4	5
Summer Vacation	May 25 to July 7	Jyaistha 4 to Asadha 11, 1896	Saturday to Sunday	44

44 In view of this notification, therefore, the legal position would be that the sunder vacation, namely, the period starting from May 25 and ending on July 7, 1974, would be deemed to be close holidays in the High Court. Thus it follows that June 14, 1974, which fell within this period would also be a closed holiday. If, therefore, the period of limitation under s. 81 of the Representation of the People Act expired on June 14, 1974 which being a closed holiday right upto July 7, 1974, then s. l0 of the General Clauses Act would apply in terms and the appellant would be fully justified in filing the petition on July 8, 1974 when the Court re-opened after the summer vacation. The relevant portion of s. l0 of the General Clauses Act runs thus: "10. (1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any, Court or office on a certain day or within a prescribed period, when, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be ' considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open: Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies."

Analysing the section it would appear that the following conditions must be satisfied before a litigant may take advantage of the protection of s 10 of the General Clauses Act.

(1) that any act or proceeding is allowed to be done or taken in any court or office on a particular day or within a prescribed period; (2) that if the court or office is closed on that day or the last day of prescribed period then the act or proceeding will be deemed to have been taken in due time if-it is done or taken on the next day afterwards on which the Court or office is open.

The proviso to s. 10 makes these provisions inapplicable to cases where the Limitation Act applies. In the instant case which arises out of the election petition it is manifest from the judgment of this Court on Hukumdev Narain Yadav (supra) that the provisions of ss. 4 and S of the Limitation Act do not apply. It is also clear from the notification of the High Court referred to above that the entire period of the summer vacation starting from May 25 to July 7, 1974, was a closed holiday. Thirdly the period of limitation prescribed by s. 8(1) of the Representation of the People Act expired on June 14, 1974 during the summer vacation. In these circumstances the inescapable conclusion would be that s. 10 of the General Clauses Act would apply in terms and the appellant would be entitled to file the election petition on July 8, 1974 as he did.

8. Another reason given by the learned Judge was that even though the High Court was closed its office was open and the Registrar was available to receive any election petition. This reasoning of the High Court fails to consider the distinction between the opening of the Court and opening of

the office. While the Court may be closed, the office may remain open for conducting ministerial business or administrative work. So far as the election petitions are concerned they are matters of moment and if the power to receive these petitions was delegated to the Registrar by the Rules framed by the Allahabad High Court under the Representation of the People Act, the Registrar must be deemed to exercise a judicial power which could not be exercised when the Court was observing a closed holiday. It would appear that under the rules framed by the High Court of Allahabad regarding the trial of election petitions, r. 3 required that every election petition shall be presented to the Registrar and r. 4 laid down that after the office report etc. is complete the petition shall be laid forthwith before the Chief Justice for reference to the Bench concerned. The learned Judge seems to think that in view of these rules there was no impediment in the way of the appellant in filing the election petition before he Registrar who was available luring the summer vacation even though the Court was closed. We are, however, unable to agree with this view. These rules clearly refer to a situation where the Court is open, because the Registrar has to take legal steps, namely, the placing of the petition immediately before the Chief Justice for reference to the Bench concerned and the assignment of a Judge. This could not be done when the Court was observing a closed holiday. The presentation before the Registrar as required by r. 3 of the aforesaid rules must be a legal presentation and not a physical presentation. For instance, if the Registrar visited the High Court on a Sunday or on any public holiday, could it be said that the election petition could be presented to him and the Registrar may be asked to entertain the same. The answer to this question must obviously be in the negative. Therefore, the position would be the same if the Court by virtue of the notification issued on September 22, 1973, was observing a closed holiday during the summer vacation. A similar question appears to have arisen before the Allahabad High Court in a case on appeal to the Federal Court where six weeks time for depositing security money expired during the High Court vacation and the Allahabad High Court clearly pointed out that the mere fact that certain ministerial officers of the Court were available to conduct the routine matters would not indicate that the Court was open. In this connection the Allahabad High Court in Krishna Dhan Mullick v. Umratul Zohra Begam(l) . observed as follows: "The six weeks within which security could be deposited expired during the High Court vacation. If the period expires on a closed holiday, it is not disputed that the time would be excluded in computing the period of six weeks. This is done under section 10 of the General Clauses Act (X of 1897)..... The fact that the Court for its own convenience deputes certain officers to receive the money does not give them a separate existence and it cannot be urged that while the Court is closed the office is open. There may be days when the learned Judges are not sitting and yet the Court may not be closed, but if the Court is closed then it cannot be said that the ministerial officers attached to the Court are an office within the meaning of the term in section 10 of the General Clauses Act and they have a separate existence from the Court."

We find ourselves in complete agreement with the observations made by the Division Bench in the aforesaid decision, and in fact this . clearly brings out the real distinction between the functioning of the office of the High Court and of the High Court itself.

9. Furthermore, it would appear from r. 10 of Ch. V of the Allahabad High Court Rules, that this is the only provision which em powers the Vacation Judge to hear certain types of matters. The rule may be extracted thus: E "10. (1) Criminal work shall continue to be dealt with during the vacation by such Judges as may be appointed for the purpose by the Chief Justice. They may also

exercise the original and appellate jurisdiction vested in the Court in any miscellaneous matter or any civil matter connected with, relating to, or arising out of, the execution of a decree, which may in their opinion, require immediate attention. Such jurisdiction may be exercised even in cases which are under the Rules cognizable by two or more Judges, unless the case is required by any other law to be heard by more than one Judge. G (2) Subject to any general of special order of the Chief Justice, Vacation Judges shall, in the absence of the Chief Justice. exercise jurisdiction at Allahabad or Lucknow, as the case may be, in connection with the arrangement of Benches, listing of cases and other like matters."

A perusal of r. 10 would clearly indicate that only criminal work shall continue to be dealt with during the vacation by such judges as may be appointed for the purpose by the Chief Justice. The second part of r. 10 no doubt gives jurisdiction to the Vacation Judges to entertain other matter, but the rider is that those matters must require immediate attention. This rule no where empowers the Registrar to entertain or to receive an election petition. Rule 10 of Chapter V has a very limited scope and does not include election petitions which cannot be said to be cases of a criminal nature or those requiring immediate attention so as to be taken up even when the Court is observing a closed holiday. It is true, as the learned Judge pointed out, that the office of the High Court was open and the Registrar or the Deputy Registrar etc. were receiving a number of applications, but the mere fact that such a practice had grown which may not have been strictly justified by the statutory Rules would not have the effect of converting what is legally a closed holiday into a working day. Similarly as indicated above, this Court in Hukumdev Narain Yadav's case (supra) was not at all called upon to consider the significance of a closed holiday but was deciding a case where on all accounts the day on which the limitation expired was a working day of the . Court and where the Court was factually and legally held to be open. In these circumstances, therefore, the analogy drawn by the learned Judge from that case does not hold good in the facts of the present case.

10. Mr. S. N. Misra appearing for the respondents advanced two contentions before us. In the first place he drew our attention to r. 3 of Chapter I of the Allahabad High Court Rules, the relevant part of which may be extracted thus: " 'Registrar' includes- - (i) the Deputy Registrar at Lucknow, in matters relating to the Lucknow Bench; (ii) the Joint Registrar or any other officer, with respect to such functions and duties of the Registrar as may have been assigned to the Joint Registrar or such officer by the Chief Justice, and (iii)in the absence of the Registrar, the Joint Registrar or any other officer authorized to act on his behalf;"

Rule 3 no doubt provides that the Registrar includes the Deputy Registrar and other officers. Rule 4 of Chapter I would have no application to the present case because this rule applies only to such cases where the period of limitation is prescribed by the Rules. In r the instant case, be period of limitation is not prescribed by the Rules made by the High Court of Allahabad but by s. 81(1) of the Representation of the People Act itself, and therefore this rule can- . not be of any assistance to the respondents.

11. It was then submitted that under s. 2(1)(h) of the Representation of the People Act, "public holiday" was defined as meaning any day which is a public holiday for the purposes of section 25 of the Negotiable Instruments Act, 1881. It was contended that as the notification issued by the High Court declared the summer vacation to be a closed holiday it could not be construed as a

holiday under s 25 of the Negotiable Instruments Act and it would not be deemed to be a public holiday of which the appellant could have taken any advantage. The argument is undoubtedly attractive but on a deeper probe it does not appear to be tenable. The term "public holiday" referred to in s. 2(1) (h) of the Representation of the People Act has nothing to do with any administrative functions exercised by the High Court but refers only to such contingencies as are mentioned in the conduct of the actual elections under the provisions of the Representation of the People Act. For instance s. 39(1)(a) provides thus:

39. (1) As soon as the notification calling upon the elected members or the members of the Legislative Assembly of a State or the members of the electoral college of a Union territory to elect a member or members is issued, the Election Commission shall, by notification in the official Gazette, appoint-

(a) the last date for making nominations which shall be the seventh day after the date of publication of the first mentioned notification or, if that day is a public holiday, the next succeeding day which is not a public holiday." The word "public holiday" used in s. 39(1) (a) would undoubtedly refer to public holiday as defined in s. 2 (1)

(h) of the Representation of the People Act. So far as the disposal of the election petitions is concerned, once s. 80 confers the power on the High Court to try an election petition, s. 2 (1) (h) would have no`application what soever to the trial of such election petition by the High Court which will be governed either according to the Rules framed by the High Court under the Representation of the People Act or under the general Rules of the High. Court or in accordance with the Code of Civil Procedure. This is borne out by s. 87(1) of the Representation of the People Act which may be extracted as follows:

"87. (1) Subject to the provisions of this Act and of any rules made there under every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits: Provided * * * * *" In the instant case the High Court having framed the Rules under the Representation of the People Act which provided for the presentation of the election petitions to the Registrar, which as we have held could only be done on a day which is not a closed holiday, the term "closed holiday" would have to be referred to as defined by the High Court Rules and not by s. 2(1) (h) of the Representation of the People Act. In these circumstances, therefore, the contention of the respondents on this score must be overruled.

12. For the reasons given above we are satisfied that as the period of limitation expired during the summer vacation which was a closed 6-5225CI/76 holiday by virtue of the notification issued by the High Court, the . Registrar was not competent to entertain the election petition nor could the appellant have presented the election petition legally to the Registrar during such period. We are further satisfied that this is a case in which s. 10 of the General Clauses, Act applies in terms and the appellant was fully justified in filing the election petition on the re opening day of the High Court, namely, July 8, 1974. In these B; circumstances the view taken by the High Court that the election t, petition was barred by time is wrong on a point of law, and the finding of the learned Judge on issue No. 8 cannot, therefore, be sustained. 13. The appeal is accordingly allowed, the

order of the High Court dated February 10, 1975, is set aside and the matter is remitted to the learned Judge for trying the election petition in-accordance with the law. In the special circumstances of this case we make no order as to costs in this Court."

26. Yet in Manohar Joshi v. Nitin Bhaurao Patil and another (1996) 1 SCC 169, again the issue came up for consideration regarding the applicability of Section 10 of the General Clauses Act in the matter of presentation of an election petition, and the following was observed.-

"14. The question now is : Whether the applicability of Section 10 of the General Clauses Act to the presentation of election petitions under the R.P. Act is excluded No doubt the R.P. Act is a self-contained Code even for the purpose of the limitation prescribed therein. This, however, does not answer the question. It has to be seen whether the context excludes the applicability of Section 10 of the General Clauses Act which is in the part therein relating to the General Rules of Construction of all Central Acts. The legislative history of prescribing limitation for presentation of election petitions in accordance with sub- section (1) or Section 81 is also significant for a proper appreciation of the context. Admittedly, Section 10 of the General Clauses Act applied when by virtue of the requirement in the then existing sub-section (1) of Section 81, the period of limitation was prescribed by Rules framed under the R.P. Act, in Rule 119 of the 1951 Rules. This was expressly provided by Rule 2(6) of the 1951 Rules. There is nothing to indicate that providing the period of limitation in sub-section (1) of Section 81 itself by substitution of certain words by Act 27 of 1956 instead of prescribing the limitation by Rules, was with a view to exclude the applicability of Section 10 of the General Clauses Act. The change appears to have been made to provide for a fixed period in the Act itself instead of leaving that exercise to be performed by the rule making authority. An express provision in Rule 2(6) of the 1951 Rules was required since the General Clauses Act ipso facto would not apply to Rules framed under the Central Act, even though it would to the Act itself. The context supports the applicability of Section 10 of the General Clauses Act instead of indicating its exclusion for the purpose of computing the limitation prescribed in sub-section (1) of Section 81 for presentation of election petition."

27. In Chandra Kishore Jha v. Mahavir Prasad and others, (1999) 8 SCC 266, the question relatable to expiry of the limitation period during the vacations came up for consideration, the following was observed.-

"17. In our opinion insofar as an election petition is concerned, proper presentation of an election petition in the Patna High Court can only be made in the manner prescribed by Rule 6 of Chapter XXI-E. No other mode of presentation of an election petition is envisaged under the Act or the Rules thereunder and, therefore, an election petition could, under no circumstances, be presented to the Registrar to save the period of limitation. It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage : Nazir Ahmad Vs. King Emperor, 63 Indian Appeals 372=AIR 1936 PC 253; Rao Shiv Bahadw Singh & Anr. Vs. State of V.P., 1954 SCR 1098 = AIR 1954 SC 322. State of Utter Pradesh v. Singhara Singh & Ors., AIR 1964 SC 358 = (1964) 1 SCWR 57] An election petition under the Rules could only have been presented in the open Court upto 16.5.1995 till 4.15 P.M. (working hours of the Court) in the manner prescribed by Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation.

That, however, was not done. However, we cannot ignore that the situation in the present case was not of the making of the appellant. Neither the designated election Judge before whom the election petition could be formally presented in the open Court nor the Bench hearing civil applications and motions was admittedly available on 16.5.1995 after 3.15 P.M., after the Obituary Reference since admittedly the Chief Justice of the High Court had declared that "the Court shall not sit for the rest of the day" after 3.15 P.M. Law does not expect a party to do the impossible - impossiblium nulla obligatioest as in the instant case, the election petition could not be filed on 16.5.1995 during the Court hours, as far all intent and purposes, the Court was closed on 16.5.1995 after 3.15 P.M.

19. Since, Indian Limitation Act does not apply to an election petition, Section 10 of the General Clauses Act would apply. As already noticed, the Patna High Court was, for all practical purposes, closed after 3.15 P.M. on 16.5.1995. It was, therefore, not possible for the appellant to have presented the election petition to the designated election Judge or in his absence to the Bench hearing civil applications and motions in the open Court on that date, which was the last day of the prescribed period of limitation. Thus, the presentation of the election petition on the very next date i.e. 17.5.1995, in the open Court, would be considered, by virtue of Section 10 of the General Clauses Act, as presentation of the election petition within the prescribed period of limitation. In the established facts and circumstances of the case, the learned designated election Judge fell in error in denying to the appellant the benefit of Section 10 of the General Clauses Act and dismissing the election petition as barred by time. The order of the learned designated election Judge cannot, under the circumstances, be sustained. The election petition must proceed to trial on merits."

28. So far as the reliance placed upon the judgment in Reji Thomas (supra) by the learned counsel for the petitioner is concerned, there is no quarrel with the proposition so laid down therein that no court, so much so the High Court, in exercise of jurisdiction under Article 226, can extend the period of limitation in election matters. As regards the reliance placed upon the judgment of P. Narappa (supra) is concerned, the said judgment is also not applicable, particularly when in the present case in hand there is no provision cited are brought on record to show that during the vacations there is any notification that election petitions could be entertained. With respect to the judgment in Ashok Shankarrao Chavan (supra) is concerned, the said judgment is also not applicable, particularly when in the said case there happen to be a notification issued by the High Court itself authorizing acceptance of election petitions during the vacations. The said notification is missing in the present case. Nonetheless, the judgment in Shahnawaz Ali (supra) is also not applicable, particularly when though Rule 13 and Rule 32 of the General Rules (Civil), 1957 were considered, the Court did not go into the issue which is being raised herein, on the ground that attempts were being made to file the election petition during the summer vacations. Apart from the same, there happens to be a judgment of the Punjab and Haryana High Court in Navjot Singh Vs. Smt. Harsimrat Kaur Badal, 2015 AIR CC 2555, wherein the entire law has been summed up, but the said judgment refers to a notification of the Punjab and Haryana High Court wherein there was a provision that election petitions can be accepted during the vacations.

29. Applying the principles as culled out in the above-noted decisions, in the facts and circumstances of the present case an irresistible conclusions stand drawn (a) The provisions of the Limitation Act, 1963 do not apply to election petitions (b) The provisions of Section 10 of the

General Clauses Act do apply (c) The question of limitation for filing election petitions during vacations or holidays depends upon the notifications so issued by the appropriate authorities.

30. As regards, the reliance placed upon the calendar of the district courts Annexure CA-2 at page 12 relevant extract whereof has been made at page13 of the counter affidavit, the same is also not in aid and assistance of the writ petitioner particularly when the said calendar only refers to the fact that the only criminal work is to be conducted and civil work is suspended except urgent. In absence of any rule/notification/circulars on the said subject, it cannot be said that the election petition is liable to be filed and accepted during the summer vacations particularly when Section 10 of the U.P. General Clauses applies with full force.

31. As noticed above in the present case, barring on Rule 13 and Rule 32 of the General Rules (Civil), 1957, no rule/notification/circular/order has been placed on record by either of the party to show that even in the summer vacations/holidays, the election petition so presented could be accepted.

32. Accordingly, this Court does not find any manifest illegality committed by the court below to accord interference. Resultantly, the writ petition is misconceived and is accordingly dismissed.

33. Interim order, if any, stands vacated.

(2026) 5 ILRA 565
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.05.2026

BEFORE

THE HON'BLE VIKAS BUDHWAR, J.

Writ C No. 34527 of 2023

Munni Devi **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

A. Whether the election petition preferred by the election petitioner against the rejection of her nomination was maintainable;

B. Whether the election petitioner, proposer and seconder were denied an opportunity to attest the photographs appended to the nomination form while such opportunity was afforded to the returned candidate; and what would be the consequences of non-attestation in the light of the circular dated 05.07.2021 issued by the State Election Commission.

Headnotes

U.P. Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961 – ss.237, 264-B – Uttar Pradesh Kshettra Panchayats (Election of Pramukhs and Up-Pramukhs and Settlement of Election

Disputes) Rules, 1994 – rr.11(2)(d), (4), 35, 36, 37 – Constitution of India – Art.243-O – Election petition challenging election of Pramukh – Rejection of nomination paper – Election petition filed by candidate whose nomination was rejected on ground of non-attestation of photograph by candidate, proposer and seconder – Maintainability of election petition – Rule 36 not specifying or limiting the grounds on which an election petition may be filed and employing the expression "ground or grounds" – Whether rejection of nomination paper can constitute a ground for challenging election – Election petition held maintainable – State Election Commission circular dated 05.07.2021, Cl.6(a) requiring signatures over photographs – Whether non-attestation of photograph constituted a ground for rejection of nomination and whether opportunity to rectify the defect was afforded to the election petitioner – Election Tribunal setting aside election of returned candidate – Challenge before High Court :

Held :

A. Election petition challenging election on ground of improper rejection of nomination paper is maintainable – Rules 35, 36 and 37 of the 1994 Rules do not specify or limit the grounds on which an election petition may be presented – Expression "ground or grounds" in Rule 36 is wide enough to include improper rejection of nomination – Had the rule-making authority intended to restrict the grounds of challenge to those specified in the 1961 Act, nothing prevented it from so providing – Court cannot, by judicial fiat, curtail a ground which the rule-making authority has not intended to exclude – Election petition against improper rejection of nomination paper, therefore, maintainable.

B. Nomination paper cannot be rejected on ground of a technical defect or error which is not of a substantial character – No provision either in the Act, Rules or the circular was placed before the Court authorising rejection of the nomination on the ground of absence of self-attestation of the photograph on the nomination paper by the candidate, proposer and seconder – Though Cl.6(a) of the State Election Commission circular dated 05.07.2021 requires signatures of the candidate, proposer and seconder over the photographs appended to the nomination form, no provision under the Act, Rules or circular authorises rejection of nomination merely for absence of such self-attestation – Signatures of candidate, proposer and seconder not alleged to be non-genuine or obtained by fraud – Extreme act of cancellation of nomination, therefore, could not have been done.

C. Whether opportunity was afforded to the election petitioner, proposer and seconder to rectify the defect of non-attestation, particularly when such opportunity was alleged to have been afforded to the returned candidate, was a material question – Communication dated 09.07.2021 of the Assistant Election Commissioner, Gangoh/District Cane Officer and written arguments submitted by the State before the Election Tribunal containing material regarding such opportunity not considered by the Tribunal – Matter required reconsideration – Order dated 20.09.2023 setting aside election of the writ petitioner set aside – Matter remitted to Election Tribunal for fresh order after considering the said documents . Writ petition partly allowed. (E-5)

[Paras 30, 32, 35–37, 45–52]

Case Law Cited

Anil Kumar v. Smt. Suchita, 2009 (3) UPLBEC 2361;
Jyoti Basu and Others v. Debi Ghosal and Others, AIR 1982 SC 983;
Smt. Guddi Devi v. The State Election Commissioner, Haryana and Others, AIR 1995 P&H 101;
Anju v. Addl. Civil Judge (Senior Division), Pehowa and Others, CWP No. 15310 of 1996, decided on 12.03.1998;
Charan Lal Sahu v. Giani Zail Singh and Another, (1984) 1 SCC 390;
Union of India v. Association for Democratic Reforms and Another, (2002) 5 SCC 294.

List of Acts

Constitution of India;
U.P. Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961;
U.P. Kshettra Panchayats (Election of Pramukhs and Up-Pramukhs and Settlement of Election Disputes) Rules, 1994;
U.P. Zila Panchayat (Election of Adhyaksha and Up-Adhyaksha and Settlement of Election Dispute) Rules, 1994

List of Keywords

Election — Panchayat election — Election petition — Election of Block Pramukh — Improper rejection of nomination — Maintainability — Nomination paper — Scrutiny — Self-attestation of photograph — Technical defect — Defect not of substantial character — Curable defect — U.P. Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 — U.P. Kshettra Panchayats (Election of Pramukhs and Up-Pramukhs and Settlement of Election Disputes) Rules, 1994.

Case Arising From

Order dated 20.09.2023 passed by the District Judge/Election Tribunal, Saharanpur in Election Petition No. 217 of 2021, whereby the election of the writ petitioner as Block Pramukh of Block Gangoh, Tehsil Nakud, District Saharanpur was declared null and void and the order dated 10.07.2021 passed by the Election Officer/District Cane Officer, Saharanpur declaring the petitioner elected unopposed was set aside.

Appearances for Parties

Advs. for the Petitioner : Bal Mukund Singh, Bharat Singh Pal, Shivangi Tripathi, Shri Prakash Mishra
Advs. for the Respondents: Narendra Kumar Pandey, C.S.C, Nisheeth Yadav, Pardeep Kumar, Prakhar Saran Srivastava, Sanjay Kumar Yadav, Tarun Agrawal

(Delivered by Hon'ble Vikas Budhwar, J.)

1. Heard Sri K.R. Singh along with Sri Bharat Singh Pal, learned counsel for the petitioner, Sri Sanjay Kumar Singh, learned Addl. Chief Standing Counsel for the State, Sri Prakhar Saran Srivastava, learned counsel for the Election Commission and Shri N.K. Pandey, counsel for the respondent no. 6.

2. The counsel(s) for the rival parties have made a joint statement that they do not propose to file any further affidavits and the writ petition is being decided on the basis of the documents available on record, thus, with the consent of the parties, writ petition is being decided at the admission stage.

FACTS

3. The facts of the case as worded in the petition are that the State of Uttar Pradesh in exercise of powers as conferred therein decided to fill up the office of Block Pramuk throughout the State of Uttar Pradesh including Block Pramuk of Block Gangoh, Tehsil Nakud, District Saharanpur which was earmarked under OBC (Woman) reservation category. The date of the nomination of the candidates for election to the office of Pramukh was 08.07.2021 and nomination could be withdrawn by 09.07.2021 and the date of the election for the office of Pramukh was scheduled on 10.07.2021. As per the writ petitioner/ Munni Devi filed objections (Paper No. 25C/13) against the nomination of Smt. Babli w/o Mem Singh, sixth respondent on the ground that her name stands recorded in Uttarakhand Legislative Assembly-25 at Haridwar and Lok Sabha-5 Haridwar at Serial No. 142, Aryanagar, Jwalapur, U. Bhawan, K.N.-1 and Serial No. 781, Shivalik Shishu Junior High School, Aryanagar, Uttari Bhawan, Tehsil Haridwar. Since the name of the sixth respondent found place at both the places i.e. Saharanpur, Uttar Pradesh and Haridwar, Uttarakhand, thus, her name be deleted from one place to contest election to the other place. Then after scrutiny of the nomination's papers, the nomination of the 6th respondent, (Smt. Babli W/O Mem Singh) and Kavita W/O Vikash Kumar resident of Village Dabkaula was rejected due to non-compliance of

condition No. 6(A) of the Directive issued by State Election Commission, U.P., Lucknow vide Letter No. 4169/ Ra. Ni. Aa.-3/P.Ni./53-21/2021 dated 25.07.2021.

4. It is also the case of the petitioner, that due to the rejection of the nomination of the 6th respondent and Smt. Suman, they raised objection that their nomination paper cannot be rejected. Assistant Returning Officer/ District Cane Officer, Saharanpur, thereafter wrote a letter dated 09.07.2021 to District Election Officer, Saharanpur, apprising all the factual and the legal position and found that the objections of the 6th respondent and Smt. Kavita had no force. The elections were conducted on 10.07.2021 and the petitioner is claimed to be elected unopposed for the office of Block Pramukh of Block Gangoh, Tehsil Nakud, District, Saharanpur, under OBC (Women) Reservation Category.

5. The same led to filing of an election petition by Smt. Babli, 6th respondent, before the District Judge/ Election, Tribunal, Saharanpur, which was numbered as Election Petition No. 217 of 2021 (Smt. Babli v. State of Uttar Pradesh and 4 others), seeking relief to the extent that election for the office of Block Pramukh of Block Gangoh, District Saharanpur be declared void, and an appropriate directions be issued in that regard against the defendants in the election petition.

6. On being noticed, the present petitioner filed his written statement and reply was also filed by the defendant nos. 1 and 3 being the State of Uttar Pradesh, through its Collector, Saharanpur, Collectorate, Saharanpur and the Election Officer, DCO/ Deputy Cane Commissioner, Saharanpur.

7. Vide order dated 03.07.2022, the District Judge/ Election Tribunal, Saharanpur framed two issues, namely, (a) whether on the basis of the averments made in the election petition, the uncontested election of the Opposite Party No. 4 (writ petitioner) and such declaration order dated 10.7.2021 issued by Opposite Party No. 3 (Election Officer / DCO, Ganna Bhavan, Saharanpur) could be set aside and the election of the Opposite Party No. 4 (writ petitioner) can be declared null and void; (b) whether the present election petition is maintainable as per the averments made by Opposite Party No. 4 (writ petitioner).

8. The writ petitioner herein who was defendant No. 4 in the election petition filed an application (34C) along with an affidavit 40-A by which evidences were adduced before the Election Tribunal. The statement of an oath of Smt. Babli W/O Mem Singh, sixth respondent was recorded before the Election Tribunal on 17/25.08.2022. The statement of the petitioner was also recorded an oath before the Election Tribunal on 31.01.2023.

9. However, vide order dated 20.09.2023, the District Judge/ Election Tribunal, Saharanpur proceeded to pass the impugned order by which the election of the Opposite Party No.4 in the election petition/petitioner for the office of Pramukh of Block Gangoh provisional election area No. 98 was declared null and void while setting aside the order dated 10.07.2021 passed by the Election Officer/ DCO, Ganna Bhawan, Saharanpur.

10. Questioning the order dated 20.09.2023 passed by the District Judge/ Election Tribunal, Saharanpur setting aside the election of the petitioner, the office of the Pramukh of Block Gangoh, Saharanpur, the present petition has been preferred.

11. When the matter was taken up, a preliminary objection came to be raised by the respondents herein that the present petition is not maintainable, particularly when, the order in question which is subject matter of challenge is appealable under Rule 49 of the Uttar Pradesh Kshettra Panchayats (Election of Pramukhs and Up-Pramukhs and Settlement of Election Disputes) Rules, 1994 (hereinafter referred to as 'The Rules 1994') as the order dated 20.09.2023 comes within the purview of Rule 44 of the 1994, Rules. The said objection came to be dispelled by this Court vide order dated 27.10.2023 and and interim order came to be passed, restraining the State Election Commissioner (Panchayat and Local Bodies) State Election Commission, U.P., Lucknow from notifying the elections in question without the leave of the Court. Aggrieved against the part of the order impugned in the petition, the petitioner herein preferred Special Leave Petition (C) Diary No. 41647 of 2025 (Munni Devi v. State of U.P. and others), in which on 08.08.2025, the following orders were passed: "Delay condoned. Though we are not inclined to interfere with the impugned order, we appreciate the actual grievance expressed by the learned counsel appearing for the petitioner that out of the 5 years of the election term, nearly 4 years are already over without any adjudication. In such view of the matter, we request the High Court to make an endeavour to dispose of Writ-C No.34527/2023, within a period of four months from the date of receipt of copy of this order. The Special Leave Petition stands disposed of. Pending application(s), if any, shall also stand disposed of."

Argument of learned counsel for the writ petitioner

12. Shri K.R. Singh assisted by Shri Bharat Singh Pal, learned counsel for the writ petitioner has sought to argue that the order dated 20.09.2023 passed by the District Judge/ Election Tribunal, Saharanpur declaring the election of the petitioner as Block Pramukh of Block Gangoh, Tehsil Nakud, Saharanpur on 10.07.2021 as void cannot be sustained for more than one reason. Firstly, the election petition itself was not maintainable, particularly, Chapter VI of the 1994 Rules itself provide for the disputes regarding election of the Pramukh and Up-Pramukhs, Rule 35 further provides for the time and the manner of the presenting petitioner, Rule 36 form etc. of the petitions and Rule 37 relief which may be claimed by the election petitioner but none of the said provisions in any manner whatsoever provide for filing of an election petition when a candidate is aggrieved against rejection of his nomination.

13. Submission is that the principles of benevolent legislation are not applicable in election matters as strict interpretation is to be resorted to. Argument is that there happens to be an enactment by the name and the nomenclature of the Uttar Pradesh Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 wherein Section 13 deals with the disqualification for membership of Kshettra Panchayat and further Section 16 also deals with the removal of Pramukh/ Up-Pramukh whereas Section 27 also deals with dispute as to the membership or disqualifications, thus, only those grounds which are specified in the above noted sections can only be taken into account for the purposes of challenge by means of election petition and no other grounds.

14. In nutshell submission is that the Election Tribunal has exceeded its jurisdiction and travelled beyond the scope and permission and has passed an order which cannot be sustained in the eyes of law. It is also contended that by passing of the order dated 20.09.2023 declaring the

election of the office of Block Pramukh invalid and void, a vacancy has been arisen that too on the basis of certain factors which are beyond the scope and the purview of election petition.

15. Additionally, it has been argued that the basic reason attributable for rejection of the nomination of the Smt. Babli, sixth respondent is the fact that as per Rule 8 of the 1994 Rules, any person who desires to be nominated as the candidate at an election to the office of the Pramukh shall deliver in person or through his proposer and seconder nomination form duly filled in Form-II to the returning officer within the hours of 11 o'clock in the forenoon and 3'O clock in the afternoon on that date and the place specified in the notice under Rule 6, and the nomination paper shall be signed by the candidate and attested himself as assenting to the nomination and also by one member as proposer and other member as seconder. Argument is, here though, there happened to be the photograph of the sixth respondent in the nomination form, but the same was not self-attested, either by the sixth respondent or by the proposer and seconder. Thus, in view of the provisions contained under Clause 6(a) of the circular issued by the State Election Commission, Uttar Pradesh on 05-07-2021, which is mandatory in nature, rightly, the nomination of the sixth respondent, Smt. Babli, was cancelled.

16. Argument is to the extent that circular being mandatory in nature and holding the field would dis-entitle the sixth respondent for any relief and in failing to appreciate the crucial aspect of the matter which goes to the root, the election petition could not have been allowed. It is also contended that in the cross-examination before the Election Tribunal, sixth respondent, Smt. Babli had admitted that the photographs of the nomination form was not self-attested either by her or by the proposer and the, seconder.

17. It is submitted that the allegation so leveled by the sixth respondent, Smt. Babli that though the petitioner was permitted to get the self-attestation done in the photograph so appended in the nomination form and the said request was denied to the sixth respondent is preposterous besides being misconceived for the simple reason that the records even otherwise depict that despite opportunity accorded to the sixth respondent, she did not get the photographs so appended in the nomination form self-attested in that regard. To put in otherwise, according to the learned counsel for the petitioner, there happens to be a communication of the Election Officer/ District Cane Officer, Saharanpur/ Assistant District Election Officer addressed to the District Election Officer, Saharanpur dated 09-07-2021 and also in the written submission so submitted by the State which was marked at paper No. 33-A, a specific ground was taken that despite giving opportunity to be respondent no. 6, Smt. Babli to rectify the defect relating to self-attestation by herself, proposer and seconder, no steps were taken. In order to buttress the submission, reliance has been placed upon, the judgement of the Hon'ble Apex Court in Jyoti Basu and others v. Debi Ghosal and others; AIR 1982 SC 983, Smt. Guddi Devi v. The State Election Commissioner, Haryana and others; AIR 1995 P & H 101 and Anju v. Addl. Civil Judge (Sr. Division) Pehowa and others; CWP No. 15310 of 1996, decided on 12.03.1998. Thus it is prayed that the petition be allowed in toto and the order be set aside.

Argument of the counsel for sixth respondent, Smt. Babli

18. Countering the submissions so made by the learned counsel for the petitioner, Shri N.K. Pandey who appears for the sixth respondent has submitted that none of the contentions raised by the counsel for the petitioner has any legs to stand.

19. Submission is that the basic ground for challenge raised in the election petition under Section 35 of the 1994 Rules is with regard to illegal rejection of the nomination. Chapter VI of the 1994 Rules deals with the disputes regarding the election of Pramukh and Up-Pramukh and Rule 35 prescribes the time and the manner of presenting election petitions, Rule 36, forms etc. of petition, Rule 37 reliefs that can be claimed by the petitioner, thus, according to him, in absence of anything in the said rules restricting the grounds only on which election petition can be filed and it would not be appropriate and rather violence to the provisions so as to introduce something which is not provided while coming up with a stand that rejection or acceptance of nomination is not a ground of challenge in an election petition.

20. Contention is that in view of the language employed in Rule 35, 36, and 37, all the grounds are open to the raised as in case it was the intention of the legislature to restrict certain grounds while excluding others, then obviously they could have been engrafted in the statute. It is also contended that the elections of Pramukh and Up-Pramukh which are subject matter herein is an indirect election in contrast with the elections of Gram Pradhans as per U.P. Panchayati Raj Act, 1947 where the elections are direct elections. According to the learned counsel for the sixth respondent, Section 12-C of the U.P. Panchayati Raj Act, 1947 itself deals with the grounds questioning the elections and one of them is improper acceptance or rejection of any nomination and the said aspect stands provided under Rule 3 of the Uttar Pradesh, Panchayati Raj (Settlement of Election Dispute) Rules, 1994 and the said provisions are pari materia to position which is existing in Section 100 of the Representation of the Peoples Act, 1951. Contention is that in the said enactments, grounds have been given which can only be made the basis for filing election petition, however, in the case of 1994 Rules relatable to Pramukh and Up-Pramukh, no grounds are mentioned except the fact that Rule 36 of the 1994 Rules only specifies that there should be ground or grounds which should be in election petition while questioning the elections.

21. Reliance has been placed upon the judgement of the Coordinate Bench in Anil Kumar v. Smt. Suchita; 2009 (3) UPLBEC 2361 so as to contend that the similar controversy came up for consideration wherein pari materia provisions of the 1994 Rules as available in Uttar Pradesh Zila Panchayat (Election of Adhyaksha and Up-Adhyaksha and Settlement of Election Dispute) Rules, 1994, wherein 35 Rules of 1994 Rules were similar to Rule 33 of the 1994 Rules and it was observed that the grounds of filing of election petitions are quite wide and they cannot be restricted while limiting the same in view of the provisions contained under the 1961 Act.

22. It is also contended that though there happened to be non-self-attestation of photographs in the nomination form of the sixth respondent, proposer and seconder which was required to be done in view of the circular of the State Election Commission dated 25.07.2021, the same cannot be a ground to reject the nomination, particularly, when it is a curable defect and consequences thereof its non-compliance would not be fatal. It is submitted that in the case of the writ petitioner, there also photograph was not self-attested but an opportunity was accorded to the writ petitioner to get the same attested but despite request being raised by the sixth Respondent seeking an opportunity

to get its self-attested, the same was denied on the ground that there is no need for attestation. Contention is that once consequences of non-fulfillment of one of the requirement is not provided then the extreme act of rejection of the nomination cannot be done. Attention has been drawn towards, Rule11 of the 1994 Rules so as to contend that sub-rule (2) of Rule 11 deals with certain grounds which commences from (a) to (g), the case of the six respondent does not stand covered under the same and in view of sub-rule (4) of Rule 11 of 1994 Rules, the returning officer is not required to reject any nomination paper on the ground of any technical defect or any other which is not of substantial character. Argument is that once the proposer, seconder and the candidate himself was present before the returning officer at the time of nomination/ scrutiny and they were asking for self-attestation then the same cannot be a ground to reject the nomination.

Argument of the State

23. Learned Addl. Chief Standing Counsel appearing on behalf of the State has adopted the arguments of the learned counsel for the petitioner, according to him, he has nothing to add except the fact that the order impugned cannot be sustained. The election petition against the rejection of the nomination is not maintainable.

Argument of State Election Commission

24. Shri Prakhar Saran Srivastava who appears for the State Election Commission submits that the real purpose of the incorporation of clause 6(a) of the Circular dated 05.07.2021 is that any person who desires to be nominated as a candidate as an election to the office of the Pramukh shall deliver in person or through its proposer and seconder, a nomination form duly filled in Form-II to the returning officer. Thus, nomination form is to be delivered either by a candidate or his proposer or seconder and there is no mandate that all the three have to be present at the time of filing of the nomination. Further Rule 8(2) provides for signing of nomination form by the candidate as assenting to the nomination and also by one member as proposer and another member as seconder. According to him, Rule 10 describes the procedure for filing of nomination paper which only requires the returning officer to enter therein, the serial number and the date and the hour at which the nomination paper has been delivered to him. There is nothing more to be required to be done else not even point out defects in the nomination paper and Rule 11(1) of the 1994 Rules permits the presence of the candidate, his proposer and seconder to attend the scrutiny. It is at that stage, three persons are permitted to be inside and witness the scrutiny and returning officer is under obligation to give all reasonable facilities to examine the duly nomination paper. According to him, attestation in the photographs over the nomination paper is only to ensure free and fair election and it is mandatory in nature. Contention is that the guidelines of the State Election Commission issued under Section 243-K of the 1961 Act are binding in view of the judgment of the Hon'ble Apex Court in the case of Union of India v. Association for Democratic Reforms and another; 2002 (5) SCC 294.

Constitutional Provisions/ Statutory Enactments/ Circulars/ Communications

PART IX of the Constitution

The Panchayat

Article 243-B Constitution of Panchayats-

1. There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

2. Notwithstanding anything in Clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs. Article 243-C Composition of Panchayats - 1. Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats: Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State. 2. All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

3. The Legislature of a State may, by law, provide for the representation –

a. of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

b. of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

c. of the members of the House of the People and the Members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly Panchayat area at a level other than the village level, in such Panchayat;

d. of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within –

i. a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

ii. a Panchayat area at the district level, in Panchayat at the district level.

4. The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.

5. The Chairperson of –

(a). a Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and

(b). a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof.

Article 243-E Duration of Panchayats, etc.-

1. Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

2. No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in Clause (1).

3. An election to constitute a Panchayat shall be completed –

a. before the expiry of its duration specified in clause (1);

b. before the expiration of a period of six months from the date of its dissolution: Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat.

4. A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under Clause (1) had it not been so dissolved. Article

243-F Disqualifications for membership-

1. A person shall be disqualified for being chosen as, and for being, a member of a Panchayat –

a. if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

b. if he is so disqualified by or under any law made by the Legislature of the State.

2. If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in Clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

Article 243-K Elections to the Panchayats –

1. The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the

Governor.

2. Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine: Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

3. The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by Clause (1).

4. Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

Article 243-O Bar to interference by courts in electoral matters –

Notwithstanding anything in this Constitution –

a. the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243K, shall not be called in question in any Court;

b. no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

The Uttar Pradesh Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961

6. Composition of Kshettra Panchayat – (1) A Kshettra Panchayat shall consist of a Pramukh, who shall be its Chairperson and

(a) all the Pradhans of the Gram Panchayats in the Khand;

(b) elected members, who shall be chosen by direct election from the territorial constituencies in the Panchayat area and for this purpose the Panchayat area shall be divided into territorial constituencies in such manner that, so far as practicable, each territorial constituency shall have a population of two thousand:

Provided that the hill Districts of Nainital, Almora, Pithoragarh, Tehri, Pauri, Dehradun, Chamoli or Uttarkashi, the State Government may declare an area within a radius of one kilometer (diameter of two kilometer) from the center of the village specified by it in this behalf, to be territorial constituency though such area may have a population of less than two thousand:

Provided further that in the territorial constituency of a Kshettra Panchayat, no territorial constituency of a constituent Gram Panchayat shall be included in part.

6-B. Electoral rolls for Kshettra Panchayat - (1) There shall be an electoral roll for each territorial constituency of a Kshettra Panchayat.

(2) The electoral roll for the territorial constituency of a Kshettra Panchayat shall consist of the electoral rolls prepared under Section 9 of the United Provinces Panchayat Raj Act, 1947 for all territorial constituencies of a Gram Panchayat or Gram Panchayats comprised within the territorial constituency of the Kshettra Panchayat and it shall not be necessary to prepare or revise separately the electoral roll for any such territorial constituency of a Kshettra Panchayat;

Provided that any correction, deletion or addition made in the electoral roll after the last date for making nominations for any election to the Kshettra Panchayat and before the completion of that election shall not be taken into consideration for the purposes of that election.

7. **Pramukh and Up-Pramukh**- (1) In every Kshettra Panchayat a Pramukh, a Senior Up-Pramukh and a Junior Up-Pramukh shall be elected by the elected members of the Kshettra Panchayat from amongst themselves.

(2) The election to the office of Pramukh and Up-Pramukh may be held notwithstanding any vacancy in the office of the elected members of Kshettra Panchayat.

(3) Notwithstanding anything to the contrary contained in any other provision of this Act, the persons who have been elected to the office of the Up-pramukh before the commencement of the Uttar Pradesh Panchayat Laws (Amendment) Act, 2007 shall continue to hold the office as such till the expiry of their term as if the said Ordinance were not promulgated.

12. **Filling of casual vacancies** - If a vacancy occurs by reason of death or otherwise in the office of a Pramukh, Up-Pramukh or an elected member of the Kshettra Panchayat. it [shall be filled before the expiration of a period of six months from the date of such vacancy] in the manner provided for in sections 6 or 7, as the case may be, for the residue of the term of his predecessor:

Provided that if on the date of occurrence of such vacancy the residue of the term of the Kshettra Panchayat is less than six months, the vacancy shall not be filled.

13. **Disqualification for membership of Kshettra Panchayat** - A person shall be disqualified for being chosen as and for being a member of a Kshettra Panchayat, if he-

(a) is so disqualified by or under any law for the time being in force for the purposes of election of the State Legislature;

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the aged of twenty-one years.

(b) holds any office of profit under a State Government or the Central Government or a local authority, or a Nyaya Panchayat established under Section 42 of this United Provinces Panchayat Raj Act, 1947;

(c) has been dismissed from the service of a State Government, the Central Government or a local authority or a Nyaya Panchayat or a Co-operative Society registered under the Uttar Pradesh Co-operative Societies Act, 1965 for misconduct;

(d) is in arrears of any tax, fee rate or any other dues payable by him to the Gram Panchayat, Kshettra Panchayat or Zila Panchayat for such period as may be prescribed, or has, inspite of being required to do so by the Gram Panchayat, Nyaya Panchayat, Kshettra Panchayat or Zila Panchayat failed to deliver to it any record or property belonging to it which had come into his possession by virtue of his holding any office under it.

(e) is an undischarged insolvent;

(f) has been convicted of an offence involving moral turpitude.

(g) has been sentenced to imprisonment for a term exceeding three months for contravention of any order made under the Essential Commodities Act, 1955.

(h) has been sentenced to imprisonment for a term exceeding six months or to transportation for contravention of any order made under the Essential Supplies (Temporary Powers) Act, 1946 or the U.P. Control Supplies (Temporary Powers) Act, 1947.

(i) has been sentenced for an imprisonment for a term exceeding three months under the U.P. Excise Act, 1910.

(j) has been convicted for an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985.

(k) has been convicted of an election offence.

(l) has been convicted of an offence under the U.P. Removal of Social Disabilities Act, 1947 or the Protection of Civil Rights Act, 1955.

(m) is debarred from practicing as a legal practitioner by order of any competent authority.

(n) has been declared under Section 23 to have committed any corrupt practice within the meaning of that section and such declaration continues to be effective; or

(o) is not registered in the electoral rolls for any territorial constituency of the Kshettra Panchayat.

Provided that the period of disqualification under clauses (c), (e), (f), (g), (h), (i), (j), (k) or (l) shall be five years from such date as may be prescribed.

Provided further that the disqualification under clause (d) shall cease upon payment of arrears or delivery of the record or property, as the case may be.

Provided also that a disqualification under any of the clauses referred to in the first proviso may, in the manner prescribed, be removed by the State Government

16. **Removal of Pramukh or Up-Pramukh** - (1) If in the opinion of the State Government the Pramukh or any Up-Pramukh of a Kshettra Panchayat willfully omits or refuses to perform his duties and functions under this Act, or abuses the powers vested in him or is found to be guilty of misconduct in the discharge of his duties or becomes physically or mentally incapacitated for performing his duties, the State Government may, after giving the Pramukh or such Up-Pramukh as the case may be, a reasonable opportunity for explanation and after consulting the Adhyaksha of the Zila Panchayat concerned in the matter and taking into consideration his opinion, if received within thirty days from the date of the dispatch of the communication for such consultation, by order, remove such Pramukh or Up-Pramukh, as the case may be, from office, and such order shall be final and not open to be questioned in a Court of law.

Provided that where, in an enquiry held by such person and in such manner as may be prescribed, a Pramukh or 4[x x x] is prima facie found to have committed financial and other irregularities, such Pramukh or Up-Pramukh shall cease to exercise and perform the financial and administrative powers and functions, which shall, until he is exonerated of the charges in the final enquiry, be exercised and performed by a committee consisting of three elected members of the Kshettra Panchayat appointed in this behalf by the State Government.

(2) A Pramukh or Up-Pramukh removed from his officer under this section, shall not be eligible for re-election as Pramukh or Up-Pramukh for a period of three years from the date of his removal.

18. **Composition of Zila Panchayat** - (1) A Zila Panchayat shall consist of an Adhyaksha who shall be its Chairperson, and –

(a) Pramukh of all Kshettra Panchayats in the District;

(b) Elected members, who shall be chosen by direct election from the territorial constituencies in the Panchayat area and for this purpose the Panchayat area shall be divided into territorial constituencies in such manner that, so far as practicable, each such territorial constituency shall have a population of fifty thousand:

Provided that in the hill districts of Nainital, Almora, Pithoragarh, Tehri, Pauri, Dehradun, Chamoli or Uttarkashi, the State Government may declare an area within a radius of seven kilometers (diameter of fourteen kilometers) from the center of the village specified by it in this behalf, or an area equivalent thereto as may be prescribed, to be a territorial constituency though such constituency may have a population of less than fifty thousand.

Provided further that in the territorial constituency of a Zila Panchayat, no territorial constituency of a Kshettra Panchayat comprised within it, shall be included in part.

27. Disputes as to membership or disqualifications - (1) If any dispute arises as to whether a particular person is a member of the Zila Panchayat under [clause (a)] of Section 18, the dispute shall be referred in the manner prescribed to the State Government and the decision of the State Government shall be final and binding.

(2) If a dispute arises as to whether a person -

(a) has been lawfully chosen [x x x] a member of a Zila Psnchayat under Section 18; or

(b) has ceased to remain eligible for being chosen [x x x] a member [x x x] of the Zila Panchayat for the purposes of Section 20; or

(c) has become disqualified to be Adhyaksha or Upadhyaksha for the purposes of Section 19.

the dispute shall be referred in the manner prescribed to the Judge whose decision shall be final and binding.

The Uttar Pradesh Kshettra Panchayats (Election of Pramukhs and Up-Pramukhs and Settlement of Election Disputes) Rules, 1994

8. Nominations.

(1) Any person who desires to be nominated as a candidate at an election to the office of Pramukh of a Panchayat shall deliver in person or through his proposer and seconder a nomination paper duly filled in Form II to the Returning Officer within the hours of 11 O'clock in the forenoon and 3 O'clock in the afternoon on the date and at place specified in the notice under Rule 6.

(2) The nomination paper shall be signed by the candidate himself as assenting to the nomination and also by one member as proposer and another member as seconder.

(3) Where a candidate seeks election to a seat reserved for the Scheduled Tribes or the Scheduled Castes or the backward classes, there shall accompany with the nomination paper a declaration subscribed by him stating that he is a member of the Scheduled Tribes or the Scheduled Castes or the backward classes, as the case may be, specifying the particular tribe or caste to which he belongs.

(4) A nomination paper filed after the last hour mentioned in sub-rule (1) shall forthwith be rejected by the Returning Officer.

10. Procedure of filling of nomination papers.- The Returning Officer shall on receiving a nomination paper under Rule 8 enter thereon its serial number and the date on which and the hour at which the nomination paper has been delivered to him, and shall as soon as may be thereafter, cause to be affixed at some conspicuous place in his office a notice of the nominations in Form III containing descriptions similar to those contained in the nomination paper, both of the candidates and of the persons who have signed the nomination papers as proposer and seconder.

11. Scrutiny of nominations.-

(1) At the scrutiny of nominations, the candidates, their proposers and seconders but no other person, may attend. The Returning Officer shall give them all reasonable facilities for examining the duly received nomination papers.

(2)The Returning Officer shall examine the nomination papers and decide all objections which may be made to any nomination, and may either on such objection or on his own motion after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds-

(a)that the candidate is not qualified to be chosen to the office under the Act;

(b)that the candidate is disqualified for being chosen to the office under the Act;

(c)that there has been any failure to comply with any of the provisions of Rules 8 and 9;

(d)that the signature of the candidate or the proposer or seconder is not genuine or has been obtained by fraud;

(e)that candidate is not a member;

(f)that the proposer or the seconder is not a member;

(g)that the candidate does not belong to the tribe or caste or class or sex for whom the office is so reserved.

(3)Nothing contained in clause (c), (d), (e), (f) or (g) of sub-rule (2) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4)The Returning Officer shall not reject any nomination paper on the ground of any technical defect or other error which is not of a substantial character and may for the purpose of removing

any such defect or error allow any entry to be corrected in the nomination paper including any entry relating to name or number on the election roll.

(5)The order of the Returning Officer allowing any correction to be made under sub-rule (4) shall be final and shall not be questioned in any Court of law.

(6)The Returning Officer shall hold the scrutiny on the date and time appointed in this behalf under Rule 6 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by cause beyond his control.

(7)The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected shall record in writing a brief statement of his reasons for such rejection.

(8)For the purpose of this rule the existence of the name of a person in the list of members prepared under Rule 7 shall be conclusive evidence that he is eligible for election to the post of Adhyaksha.

(9) Immediately after all the nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded, the Returning Officer shall prepare in Form III-A, a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid and affix it to his notice board.

35. Time and manner of presenting petitions.-

(1)An election petition calling in question the election of a Pramukh or Up-Pramukh, may be presented to the Judge at any time within thirty days from the date of declaration of the result under Rule 14 or Rule 29, as the case may be.

(2)It shall be presented in person by the petitions or if there are more than one petitioner, by any one or more of them.

36. Form, etc. of petition.-

(1)An election petition shall specify the ground or grounds on which the election of the returned candidate is questioned and shall contain a summary of the circumstances alleged to justify the election being questioned on such ground.

(2)The person whose election is questioned and where the petitioner claims that any other candidate shall be declared elected in the place of such person, every unsuccessful candidate shall be made a respondent to the petition.

37. Relief that may be claimed by the petitioner.- A petitioner may claim either of the following declarations-

(a)that the election of the returned candidate is void:

(b)that the election of the returned candidate is void and that he himself or any other candidate has been duly elected.

The Uttar Pradesh Zila Panchayat (Election of Adhyaksha and Up-Adhyaksha and Settlement of Election Dispute) Rules, 1994

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Analysis

25. I have heard the submissions made across the bar and perused the record carefully.

26. To begin with there are certain undisputed facts. Namely, a notification to be issued by the State of Uttar Pradesh for filling up the office for Block Pramukh throughout the State of Uttar Pradesh inclusive of Block Pramukh of Block Gangoh, Tehsil Nakud, District Saharanpur which was under OBC (Woman) Category. The date scheduled for nomination was 08-07-2021, the same could be withdrawn by a candidate by 09-07-2021 and the election was scheduled on 10-07-2021. The petitioner/ returned candidate along with the election petitioner, sixth respondent/ Smt. Babli and one Smt. Suman had submitted their nomination form. The nomination form of the sixth respondent, Smt. Babli and of Smt. Suman, seventh respondent, came to be rejected. The ground for rejection of the nomination form of Smt. Babli, sixth respondent was that the photograph so attended in the nomination form was neither attested by the election petitioner/ sixth respondent nor

by the proposer or the seconder. As a matter of fact, the petitioner/ returned candidate also filed an objection (Paper No. 25-C/13) against the nomination of the election petitioner/ sixth respondent, Smt. Babli taking a ground that her name stands recorded in Uttarakhand Legislative Assembly-25 at Haridwar and Loksabha- 5, Haridwar at serial No.142, Aryanagar, Jawalapur, U-Bhavan, K.N.-1 and serial No.781, Shivalik Shishu Junior High School, Aryanagar, Uttari Bhavan, Tehsil and District Haridwar. Thus, the name of the election petitioner/ sixth respondent is to be deleted from one place to contest election at the other place. Aggrieved of the rejection of the nomination by the official respondents, the election petitioner/ sixth respondent instituted instituted an election petition No. 217/2021 before the court of District Judge/ Election Tribunal, Saharapur, Smt. Babli v. State of Uttar Pradesh and others, under Section 35 of the 1994 Rules seeking following relief: "

"(अ) क्षेत्र पंचायत गंगोह प्रादेशिय निर्वाचन क्षेत्र संख्या -98 पर विपक्षी संख्या 4 को प्रमुख के पद पर दिनांक 20215 को निविरोधा निर्वाचित किये जाने सम्बन्धी विपक्षीगण संख्या 1 ता 3 के आदेश को निरस्त कर विपक्षी सं0-4 का चुनाव शून्य घोषित किया जाये।

(ब) अन्य कोई सहायता जो मा० न्यायालय की राय में याची के पक्ष में पारित की जानी उचित प्रतीत हो, याची के पक्ष में एवं विपक्षीगण के विरूद्ध पारित की जाये।

(स) इस चुनाव याचिका का व्यय याची को विपक्षीगण से दिलाया जाये।"

27. The election petition on contest came to be allowed on 20.09.2023 setting aside/ cancelling the election dated 10.07.2021, declaring the election of the writ petitioner as illegal and void. The first and foremost question which arises for consideration is whether the election petition so preferred by the election petitioner against the rejection of nomination is maintainable or not. In order to address the said issue, what would be relevant, would be the legal position in the statutory framework. Chapter-IX of the Constitution of India deals with the Panchayats. Article 243-A talks about Gram Sabha who is to exercise such powers and performs such functions at the village level as the legislature of the State may by law provide, followed by Article 243-B that there shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions, Article 243-C deals with Composition of Panchayats whereas Article 243-E deals with duration of Panchayats, Article 243-F, disqualification of membership, Article 243K, election in the Panchayat. Thereafter comes Article 243-O which provides for a bar to interference by courts in election matters. Article 243-O (b) stipulates that no election to the Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of the State. To put in otherwise, the election petition, questioning an election of any Panchayat can only be called in question in accordance with law before the designated authority as specified by the Legislature. In the present case, the election of Block Pramukh is the subject matter of controversy, thus, in exercise of the powers under Section 237 read with Section 264-B of the Uttar Pradesh Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 (in short, 'The 1961 Act'), the rules by the name and the nomenclature of the The Uttar Pradesh Kshettra Panchayats (Election of Pramukhs and Up-Pramukhs and Settlement of Election Disputes) Rules, 1994 came to be enacted. Chapter IV of the 1994 Rules deals with the dispute regarding elections of Pramukhs and Up-Pramukhs. Notably Rule 35 prescribes the time and the manner of election petition, according to which, an election petition calling in question the election of Pramukh or Up-Pramukh is to be presented to the Judge at any time within 30 days from the date of the declaration of the result under Rule 14 and 29 as the case may be. Rule 36 provides that an election petition shall specify the ground and grounds on

which the election of a returned candidate is questioned and shall contain a summary of circumstances alleged to justify election being questioned on the said ground. Sub-rule (2) of Rule 36 of the 1994 Rules further provides that the person whose election is questioned and where the election petitioner claims that any other candidate shall be declared elected in the place of such person, every unsuccessful candidate shall be made a respondent to the petition. Rule 37 of the 1994 Rules provides for the nature of the relief which can be claimed in the election petition seeking declaration; (a) that the election of the returned candidate is void; (b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected. Interestingly, Rule 35, 36 and 37 of the 1994 Rules do not specify the grounds on which election petition is to be filed question the elections.

28. Apparently, there happens to be an act by the name of Uttar Pradesh Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 wherein Section 6 deals with Composition of Kshettra Panchayat wherein the Kshettra Panchayat shall consist of a Pramukh, who shall be its Chairperson and all the Pradhans of the Gram Panchayats in the Khand and elected members, who shall be chosen by direct election from the territorial constituencies in the Panchayat area for the said purpose. Section 6-B deals with the election rolls for Kshettra Panchayat and Section 6-C provides for right to vote. Now comes Section 7 of the 1961 Act which mandates that in every Kshettra Panchayat, a Pramukh (a senior Up-pramukh and a junior Up-pramukh) shall be elected by elected members of Kshettra Panchayat for amongst others. Section 8 talks about the term of the Kshettra Panchayat and its members. Section 9, terms of Pramukh and Up-pramukh, Section 11 deals with the resignation of Pramukh, Up-pramukh or member and Section 12 further deals with filling of casual vacancies.

29. Section 13 of the 1961 Act talks about the disqualifications of membership of Kshettra Panchayat and Section 14 deals with disputes to the membership or disqualifications and Section 16, removal of Pramukh or Up-pramukh. Section 27 deals with the dispute as to membership or disqualifications.

30. The bone of contention between the parties is whether against the rejection of the nomination, the election petition is maintainable or not. Pertinently, Rules 35, 36 and 37 of the 1994 Rules nowhere provide any specific grounds on which election petition is to be presented. However, the word which has been employed is "ground or grounds" itself is quite wide and had the legislature intended to restrict the grounds so mentioned in the 1961 Act then nothing prevented from not specifying or referring to in Rule 35 of the 1994 Rules. It is also not the case of the parties that the 1994 Rules is ultra vires of the 1961 Act as the 1994 Rules came to be enacted in exercise of the powers under Section 237 read with Section 264-B of the 1961 Act. Certainly, the position might have been different, in case, there was any indication in the Rule 36 of the 1994 Rules that there are specific grounds on which the election petition could be filed but once the Rules are completely silent upon the said aspects and the word 'ground and grounds' have been mentioned then by no stretch of imagination, it can be said that only the grounds for disqualification so provided in the 1961 Act, would only be the ground for filing of the election petition. As regards, the Uttar Pradesh Zila Panchayat (Election of Adhyaksha and Up-Adhyaksha and Settlement of Election Dispute) Rules, 1994 are concerned and they have also been enacted in exercise of the powers under Rule 237 the 1961 Act and Rule 33 of the said Rule is pari materia to the Rule 35 of

1994 Rules whereas Rule 34 is pari materia to Rule 36 of the 1994 Rules and Rule 35 is also the pari materia to Rule 37 of 1994 Rules.

31. In Anil Kumar (supra) wherein an issue was framed regarding the maintainability of the election petition on the ground that Rule 33 of the the Uttar Pradesh Zila Panchayat (Election of Adhyaksha and Up-Adhyaksha and Settlement of Election Dispute) Rules, 1994 did not provide for filing of an election petition with regard to the qualification/ disqualification wherein the following was observed: "22. There is no dispute between the parties that the only ground on which the election petition was filed was that the respondent Smt. Suchita Patel was not 21 years of age on the relevant date and as such was disqualified for being nominated and elected as Adhyaksha of Zila Panchayat. 23. Sri Ravi Kiran Jain, in the view of the provisions of Section 27(2)(c) of the Act contends that as the issue raised in the election petition is with regard to qualification/disqualification of the respondent Smt. Suchita Patel to hold the office of Adhyaksha, the dispute is referable to the Judge and the election petition for the purpose as provided under Rule 33 of the Rules is not maintainable. Section 27 sub clause (2)(c) of the Act which is relevant provides that if a dispute arises as to whether a person has become disqualified to be Adhyaksha or Upadhyaksha, the dispute shall be referred to the Judge as may be prescribed. The manner and procedure of raising dispute under Section 27(2)(c) of the Act has been laid down in rules 48 to 52 of the Rules. For the sake of convenience the relevant part of the Section 27 of the Act is quoted herein below. "

(1) .....

(2) If a dispute arises as to whether a person-

(a) has been lawfully chosen [x x x] a member of a Zila Panchayat under Section 18; or

(b) has ceased to remain eligible for being chosen [x x x] a member [x x x] of the Zila Panchayat for the purposes of Section 20; or

(c) has become disqualified to be Adhyaksha or Upadhyaksha for the purposes of Section 19,

the dispute shall be referred in the manner prescribed to the Judge whose decision shall be final and binding."

24. The power given under Section 27 of the Act is very limited in nature and is confined only to cases where an Adhyaksha or Upadhaksha after being elected becomes disqualified. Thus, it is only in the limited cases where the person subsequent to election for one reason or the other earns disqualification that the matter is referable to the Judge concerned and not otherwise. In other words, where a person who was disqualified from the very beginning to contest for the post of Adhyaksha and to hold the same, the provisions of Section 27(2)(c) of the Act would not come into play. In that event, an election petition under Rule 33 alone would be maintainable as it would amount to incorrect acceptance of nomination of a person who is not qualified.

25. On the contrary Article 243-O of the Constitution provides that no election to any Panchayat (which obviously include the post/office of Adhyaksha) shall be called in question except by an election petition. In consonance thereof Rule 33 of the Rules provide for disputing the election of Adhyaksha or Upadhyaksha by presenting an election petition to the Judge concerned for which no specific grounds have been enumerated.

26. A bare reading of Rule 33 of the Rules demonstrates that it is much wider in amplitude in comparison to Section 27 of the Act. Rule 33 provides that an election of an Adhyaksha or Upadhyaksha of Zila Panchayat can be questioned by filing an election petition before the Judge concerned and such a petition can be on any ground whatsoever as the grounds have not been enumerated therein i.e. adopting corrupt practice, incorrect acceptance or rejection of the nomination paper or even on the ground of disqualification of the person concerned, etc. It would not be proper to give a restrictive meaning to Rule 33 of the Rules so as to exclude the ground of disqualification from its ambit in view of the language used in Article 243-O of the Constitution.

27. Section 18-C of the Act clearly lays down that a person who has not completed the age of 21 years shall not be qualified to be elected as a member or office bearer of the Zila Panchayat. The effect of the aforesaid provision is that the election of a person who does not fulfil the above requirement would be void. In the case of Sushil Kumar Vs. Rakesh Kumar (2003) 8 SCC 673 the Supreme Court observed such a question undisputedly would fall for consideration in an election petition as despite disqualification the acceptance of nomination paper of such a person amounts to incorrect acceptance.

28. There is another angle for arriving at the above conclusion. Both under Section 27(2)(c) of the Act and Rule 33 of the Rules, the matter is to be adjudicated by the Judge concerned which under Section 2(24) of the Act means the District Judge and any other sub-ordinate Civil Judge or judicial officer named or designated by the District Judge in this behalf. As such the dispute in both the cases is to be decided by the same person/authority for which the procedure is also the same. Therefore, it makes no difference if such a dispute comes before the Judge concerned either by reference under Section 27(2)(c) of the Act or though on election petition under Rule 33 of the Rules.

29. In view of the above limited sphere of operation of Section 27(2)(c) of the Act, I am of the firm opinion that the Court below manifestly erred in deciding issue No.3 and holding that the election petition was barred. Therefore, the finding on the said issue deserves to be set aside and is hereby set aside and it is held that the election petition under Rule 33 of the Rules is maintainable even on the ground of disqualification which is said to have existed at the time of nomination."

32. As regards, the reliance placed upon the judgment of the Hon'ble Apex Court in Jyoti Basu and others v. Debi Ghosal and others; AIR 1982 SC 983 so as to contend that Election Tribunal is not a court of preliminary jurisdiction and exercise of jurisdiction is controlled and limited by statute creating it and it can only entertain an election petitioner on the ground as specified in the statute is concerned, there is no quarrel to the said proposition of law. However, there is a distinguishable feature appearing in the present case at hand that Rule 36 does not specify or limit any ground which can be taken for the purposes of filing of an election petition. However, the

words employed in Rule 36 of 1994 Rules itself provides for "ground or grounds" meaning thereby that all the grounds are available to be taken in order to question the elections. So far as the judgment in Charan Lal Sahu v. Giani Zail Singh and another; 1984 (1) SCC 390 is concerned, the same also reiterates the law laid down in Jyoti Basu and others (supra), however, the same may not be of any aid or assistance to the petitioner, particularly when there is nothing in the 1994 Rules restricting or limiting certain grounds. Now comes the judgment of Punjab and Haryana High Court in Smt. Guddi Devi v. The State Election Commissioner, Haryana and others; AIR 1995 P & H 101 in which the provisions of Section 176(4) of the Haryana Pancyati Raj Act,1994 came to be considered. The same for ready reference is quoted hereinunder: "(4) (a) If on the holding such inquiry the civil court finds that a candidate has, for the purpose of election committed a corrupt practice within the meaning of sub-section (5) he shall set aside the election and declare the candidate disqualified for the purpose of election and fresh election may be held. [(aa) If on holding such enquiry the Civil Court finds that- (i) on the date of his election a returned candidate was not qualified to be elected; (ii) any nomination has been improperly rejected; or (iii) the result of the election, in so far it concerns a returned candidate, has been materially affected by improper acceptance of any nomination or by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with or violation of the provisions of the Constitution of India or of this Act, or any rules or orders made under this Act, election of such returned candidate shall be set aside and fresh election may be held.;] (b) If, in any case to which 2[clause (a) or clause (aa)] does not apply, the validity of an election is in dispute between two or more candidates, the court shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the largest number of valid votes in his favour, to have been duty elected : Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote will entitle any of the candidate to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in the favour of such candidate or candidates, as the case may be, elected by lot drawn in the presence of the judge in such manner as he may determine. (Section 176(4)(aa)(i)(ii)(iii) came to be inserted by H.N. No. 17 of 2001.)"

33. Perusal of Section 176(4) of the 1994 Act prior to its amendment, provided the specific grounds for challenge to be raised in the election petition, wherein the grounds were confined to corrupt practices within the meaning of subsection (5) of Section 176 of the Act amongst others. However, there was no ground available relatable to filing of an election petition against any nomination being improperly rejected. Post amendment which was inserted by H.A. No. 17 of 2001 grounds (i) (ii) (iii) of Clause (aa) came to be inserted in subsection (4) of Section 176 of the Act whereby against the rejection of nomination, the election petition was made maintainable.

34. Though in Guddi Devi (supra), the Division Bench of the Punjab and Haryana High Court came to the conclusion that merely because neither under the Act nor under the Rules framed any remedy had been provided against illegal rejection or illegal acceptance of the nomination paper by way of election petition, however, it would not be a bar for the party for taking the said ground in election petition while challenging the validity of the election at a subsequent stage to the declaration of the result. The correctness of the decision in Guddi Devi (supra) was doubted and in Anju v. Addl. Civil Judge (Sr. Division) Pehowa and others; CWP No. 15310 of 1996, decided on

12.03.1998, while relying upon the judgment in Jyoti Basu and other (supra) and others judgments, it was laid down that in Guddi Devi (supra) is not a good law while observing as under: "10. We find support in our view from the authority of the apex Court in N. P. Ponnuswami v. The Returning Officer, Namakkal Constituency, Namakkal, Salem Distt., AIR 1952 SC 64 wherein it was observed that rejection or acceptance of nomination papers is included in the term 'election'. We find further support in our view from the authority of the apex Court in Hari Vishnu Kamath v. Ahmad Ishaque, AIR 1955 SC 233 wherein on the basis of the authority in N. P. Ponnuswami's case (supra), it was held that the word 'election' in Article 329(b) was used in a comprehensive sense as including the entire process of election commencing with the issue of a notification and terminating with the declaration of election of a candidate and that an application under Article 226 challenging the validity of any of the acts forming part of that process would be barred. These are instances of original proceedings calling in question an election, and would be within the prohibition enacted in Article 329(b)." 11. It is true that under sub-section (4) of Section 176 of the Act it is provided that the election shall be set aside for committing corrupt practice within the meaning of subsection (5), However, we are of the firm view that the provision of sub-section (4)(a) for setting aside the election of a candidate on the basis of corrupt practice within the meaning of sub-section (5) cannot in any manner be interpreted to mean that only ground for setting aside the election would be on the basis of corrupt practice and not on the basis of illegal rejection or acceptance or nomination papers of a candidate or illegalities or irregularities committed in preparation of electoral rolls and all such matters connected with the conduct of the election process right from its very beginning up to its final culmination with the declaration of the election results. Mere fact that neither under the Act nor under the Rules framed by the Stale Legislature any remedy has been provided against illegal rejection or illegal acceptance of nomination papers or illegalities or irregularities committed in preparation of the electoral rolls before the culmination of the election process in our view would not in any manner debar the affected party from taking up all such objections in the election petition while challenging the validity of election at a stage subsequent to the declaration of the election results. Rather such an interpretation which we have taken is in consonance with the prime object of completing the entire election process expeditiously, and without any undue delay and would certainly be helpful in holding the election process according to the schedule. The mistakes, irregularities or illegalities committed in the election process can certainly be rectified at a later stage when the affected party approaches the competent authority by way of election petition."

35. Though the learned counsel for the petitioner has heavily relied upon the judgment in Anju (supra) but the said judgment is distinguishable, particularly, when Rule 36 of the 1994 Rules does not provide any specific ground on which an election petition can be filed. Thus, by virtue of a judicial fiat, this Court cannot curtail any ground, once it was never the intention of the rule making authority.

36. Thus, it can be safely said that an election petition is maintainable against the improper rejection of the nomination paper and to the said extent, the order under challenge of the Election Tribunal cannot be faulted.

37. The next question which needs to be addressed is whether the election petitioner, proposer and seconder were denied opportunity attest to the photographs appended on the nomination form

while according opportunity to do so to the returned candidate and also the consequences of non-attestation in the light of the circular of the State Election Commission dated 05.07.2021. Both the questions are interwoven are each other, thus, they are being taken together.

38. Apparently, the allegation of the election petitioner is that along with the proposer and the seconder was present at the time of filing of the nomination and scrutiny. It is also alleged that the petitioner/ returned candidate had also not got the photograph appended on the nomination form attested but opportunity was accorded to the returned candidate/ writ petitioner to rectify the said defect and the writ petitioner/ returned candidate, its proposer and seconder got the self-attestation done but the same was denied to the election petitioner and in the order impugned, it is recorded that the election petitioner, proposer and seconder were present and when the election petitioner asked requested accorded opportunity to self-attest the photograph on the nomination form, the same was refused.

39. In para-6 of the writ petition, the following has been averred: "6. That after scrutiny of Nomination Papers under Rule 11 of the Rules, 1994, the nomination of the respondent no. 6 (Smt. Babli W/O- Mem Singh) and Kavita W/O- Vikas Kumar of Village Dabkaula was rejected due to non-compliance of the endition no. 6(A) of the Directive issued State Election Commission, U.P., Lucknow vide Letter No. 4169/Ra.Ni.Aa.-3/P.Ni./53-21/2021 dated 25.07.2021. Due to rejection of their nomination, respondent no. 6 and Kavita raised objection that their nomination paper can not be rejected. Assistant Returning Officer/ District Cane Officer, Saharanpur wrote a letter vide dated 09.07.2021 to District Election Officer, Saharanpur apprising all the relevant facts and legal position and found that complaint raised by respondent no. 6 and Kavita has no force as their nomination was rejected due to incomplete nomination paper which was not corrected by them. The copy of the letter dated 09.07.2021 written by Assistant Election Officer, Saharanpur to District Election Officer, Saharanpur and State Election commission, U.P., Lucknow letter dated 05.07.2021 are being annexed as Annexure No. 3 and Annexure No. 4 respectively to this writ petition."

40. In support of the same, Annexure-3 page 51 happens to be a communication of the District Cane Officer, Saharanpur/ Assistant Election Officer, Gangoh addressed to the District Election Officer, Saharanpur, according to which, despite opportunity being accorded to the Election petitioner/ sixth respondent to do the needful for getting the self-attestation done in the photograph appended to the application form, the election petitioner/ sixth respondent did not make any attempt to get the self-attestation done. Para-6 of the writ petition has not been specifically denied in pleadings by way of a counter affidavit by the sixth respondent. The communication dated 09-07-2021 has been given a Paper No. being 25-C/12. Basically, the objection of the election petitioner/ respondent no. 6 is that the said communication is of Assistant Election Officer, Gangoh, though addressed to District Election Officer and not a communication of Election Officer or of a Returning Officer, thus, it has got no legal sanctity and it cannot be relied upon.

41. The relevant extract of communication of the District Cane Officer/ Assistant Election Officer, Gangoh addressed to District Election Officer, Saharanpur dated 09.07.2021 is quoted hereinunder:

"उक्त के सम्बन्ध में अवगत कराना है कि श्रीमति बबली पत्नी मेमसिंह ग्राम पूजना के द्वारा प्रमुख क्षेत्र पंचायत के लिए दो सेट में नामांकन पत्र दाखिल किया गया दोनो ही नामांकन पत्र के सेट पर शिकायतकर्ता के द्वारा राज्य निर्वाचन आयोग, उ.प्र. के पत्र संख्या 4169/रा.नि.अ.-3/प.नि./53-21/2021 दिनांक 05.0.7.2021 के प्रस्तर 6 (क) में दिये गये निर्देशानुसार सम्मीदवार तथा उसके प्रस्तावक व अनुमोदक द्वारा नामांकन पत्र पर चस्पा किये गये फोटोग्राफ स्वप्रमाणित नही किये गये थे जबकि शिकायतकर्ता को 3.00 बजे तक पर्याप्त अवसर भी दिया गया परन्तु इनके समक्ष स्कूटनी के पश्चात जब नामांकन पत्र को अवैध घोषित कर दिया गया तत्पश्चात उनके द्वारा बखेडा खडा किया गया। इसके अतिरिक्त नामांकन पत्र इनके द्वारा निर्वाचक नामावली में बबली पत्नी मेमसिंह क्रमाक 98 पर दर्ज होने के बाद भी नामांकन पत्र पर श्रीमति बबली पत्नी मेमसिंह लिखा गया। श्रीमति बबली के विरूद्ध यह भी आपत्ति आई कि रूडकी विधान सभा एवं हरिद्वार लोकसभा उत्तराखण्ड राज्य से यह मतदाता है जिसका कोई उल्लेख शिकायतकर्ता के द्वारा अपने शपथपत्र में नहीं किया गया था आपत्ति इस पत्र के साथ संलग्न है।"

42. Apart from the same, the Court finds that there happens to be a written argument submitted by the State, Annexure-7, page-99. Reference whereof has been given in para-9 of the petition, which reads as under: "9.That in this election petition, Opposite Party No. 1 to 3 have also filed written arguments (33A) before the respondent no. 2 vide dated 15.02.2022. The copy of the written arguments filed on behalf of Opposite Party No. 1 to 3 vide dated 15.02.2022 is being annexed as Annexure No. 7 to this writ petition."

43. The relevant extract of the written submissions of defendant nos. 1 and 3 in the elections and respondent nos. 1 and 3/ State of Uttar Pradesh through connector and Election Officer/ DCO Bhawan Cane, Saharanpur dated 15.02.2022 is quoted hereinunder:

"नाम निर्देशन पत्र जमा हो जानेके बाद जाँच करनेके पश्चात किसी भी उम्मीदवार को त्रुटि ठीक करनेके लिए नही कहा जा सकता परन्तु इसके बावजूद भी याची को 3.00 बजे तक पर्याप्त अवसर भी दिया गया था परन्तु इनके द्वारा इसके बावजूद भी उनके द्वारा ना तो कोई प्रार्थना पत्र दुरूस्ती के लिए दिया गया और ना ही उपरोक्त त्रुटि को ठीक किया गया। जिस पर विधिनुसार याची व अन्य का नाम निर्देशन पत्र त्रुटिपूर्ण होनेके कारण का उल्लेख करते हुए निरस्त किया गया जिसके विरूद्व याची को कुछ भी कहनेका अधिकार नही है। याची ने जो भी आरोप विपक्षीगण नं० 1 ता 3 के विरूद्ध लगाये है वह आधारहीन एवं साक्ष्यहीन है तथा याची के इस कदर झूठे आरोप लगाने से विपक्षीगण नं० 1 ता 3 के पद की गरिमा को ठेस पँहुची है जिसके विषय में याची के विरूद्व कार्यवाही करने का अधिकार सुरक्षित रखा गया।"

44. In the said written argument, the State had come up with a stand that despite opportunity being accorded to the election petitioner/ respondent no. 6/ Smt. Babli to get the self-attestation done and to rectify the error but nothing was done at the end of the election petitioner/ sixth respondent. The written submission was given a Number 33-A. However, Election Tribunal has referred to the said documents but has not considered the same.

45. Certainly, Rule 8 of the 1994 Rules provides for nomination wherein who desires to be nominated as the candidate as to deliver in person or through proposer and seconder, nomination paper duly filled in Form-II to the Returning Officer within the hours of 11 o'clock in the forenoon and 3'O clock in the afternoon on that date and the place specified in under Rule 6, and the nomination paper is to be signed by the candidate and attested himself as assenting to the nomination and also by one member as proposer and other member as seconder. Rule 6 speaks about scrutiny of nomination, according to which, at the scrutiny of the nomination, the candidates, their proposer and seconders are to be present. The returning officer is to examine the papers and decide all objections and after summary inquiry, he has the power to reject on several grounds as apparent from sub-clause (a) to (g) of sub-rule (2) of Rule 11. Sub-rule (4) of Rule 11 of the 1994

Rules goes to show that the returning offier shall not reject any nomination paper on the ground of any technical defect or other error which is not of substantial character and may for the purposes of removing any such defect or error, allow entry to be correct in the nomination paper including entry relating to name and number on the Election Roll.

46. Pertinently, sub-clause (d) of sub-rule (2) of Rule 11 of the 1994 Rules provides that one of the ground amongst others for rejection of the nomination is that the signature of the candidate or the proposer or seconder is not genuine or has been obtained by fraud.

47. Here, it is none of the case of the parties that the signature of the candidate, proposer or seconder was not genuine and had been obtained by fraud. Sub-rule (4) of Rule 11 of the 1994 Rules enjoins the returning officer not to reject nomination paper on the ground of any technical defect or of error which is not substantial character. Then comes the circular of the State Election Commission dated 05-07-2021, Clause 6-(a) itself shows that there has to be a signature of the candidate, proposer and seconder over the photographs so appended to the nomination form. No provisions either in the Act, Rule or in the circular as referred to above has been placed before this Court for rejection of the nomination on the ground that on absence of self-attestation of the photograph on the nomination paper of the candidate, proposer and seconder, thus, it can be very well said that the extreme act of cancellation of nomination could not have been done.

48. However, the entire thing boils upon the fact that whether opportunity was accorded to the election petitioner/ sixth respondent, Smt. Babli to get the self-attestation done on the photograph appended to the nomination paper or not in the wake of the fact that discrimination has been alleged by her. As already noticed two crucial documents, one being the communication dated 09.07.2021 of the Assistant Election Commissioner, Gangoh/ District Cane Officer addressed to District Election Officer and the second, the written arguments submitted by the State before the Election Tribunal reciting therein that despite opportunity being accorded to the election petitioner/ sixth respondent/ Smt. Babli to get the attestation done of the photograph appended on the nomination form, the same was not done.

49. Since the aforesaid documents which goes to the root of the matter has not been considered though it was available before the Election Tribunal in view of the Registration of the paper number to the said documents, thus, in the opinion of the Court, the matter needs to be remitted back to the Election Tribunal to pass a fresh order after considering both the said documents.

50. Accordingly, the writ petition is being partly allowed.

51. The order dated 20.09.2023 is passed by the District Judge/ Election Tribunal, Saharanpur in Election Petition No. 217 of 2021 is set aside.

52. Matter stand remitted back to the Election Tribunal to pass a fresh orders within a period of two months from the date of presentation of the certified copy of the order.

(2026) 5 ILRA 592
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.05.2026

BEFORE

THE HON'BLE SAUMITRA DAYAL SINGH, J.
THE HON'BLE VIVEK SARAN, J.

Writ Tax No. 2707 of 2026

M/S World Phone Internet ...Petitioner
Versus
Superintendent, Range & Anr. ...Respondents

ISSUE FOR CONSIDERATION

Whether issuance of **Form GST DRC-01A** under Rule 142(1A) of the CGST Rules, 2017 is mandatory before issuance of a Show Cause Notice on **Form GST DRC-01**, and whether the assessee retains the statutory right under **Section 74(5) of the GST Act, 2017** to settle the dispute with reduced penalty @ 15% against the full penalty demand created under the impugned adjudication order.

HEADNOTES

Tax Law – Constitution of India - Article 226 – Central Goods and Services Tax Act, 2017 – Section 74(5) - CGST Rules, 2017 – Rule 142(1A) :- Writ Petition under Article 226 - filed against Adjudication Order and Form DRC-07 for FY 2019-20 - seeking relief of reduced penalty under Section 74(5) of the GST Act - Petitioner contended that no DRC-01A was issued prior to the Show Cause Notice, depriving it of the statutory right to settle demand with 15% penalty - The Adjudicating Authority rejected this plea, holding Rule 142(1A) to be directory - The legal question before the High Court was whether issuance of DRC-01A is mandatory and whether the assessee retains the right under Section 74(5) - Court finds that Section 74(5) being part of principal legislation is mandatory, and Rule 142(1A) must be read consistent with it - procedural rules cannot override substantive statutory rights - benefit of reduced penalty survives up to reply stage of DRC-01 – Rules are consistent to the Act and in case of any doubt the Rules must be read consistent to the Act - Held, issuance of DRC-01A is mandatory, and assessee entitled to claim benefits of section 74(5) of the Act, up to the stage of filing of his reply to the SCN on Form DRC-01 to settle demand with 15% penalty – writ Petition allowed - adjudication order satisfied upon payment of tax, interest, and 15% penalty within one month - with liberty to the adjudicating Authority to pass a rectification order if so advised, for statistical purposes.

(Para – 16, 17, 20, 21, 25)

Writ Petition Disposed of. (E-11)

CASE LAW CITED

Skyline Automation Industries v. State of U.P. [2023] 148 taxmann.com 345 (All)
Manpar Exim Inc v. Additional Director DGGI & Ors. 2025: DHC:10737-DB

LIST OF ACTS

Central Goods and Services Tax Act, 2017,
CGST Rules, 2017.

LIST OF KEYWORDS

GST, Section 74(5), Rule 142(1A), DRC-01, DRC-01A, reduced penalty, adjudication order, input tax credit, mandatory vs. directory, waiver of statutory right.

CASE ARISING FROM

Challenge to Adjudication Order dated 12.02.2026 and Form DRC-07 dated 12.02.2026 for FY 2019-20, arising from denial of ITC and imposition of penalty without issuance of DRC-01A.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Vivek Sarin, Sri Harsh Vardhan Gupta,
Counsel for Respondent(s): Shri Amit Mahajan, Sri Parv Agrawal.

(Delivered by Hon'ble Saumitra Dayal Singh, J.
& Hon'ble Vivek Saran, J.)

1. Heard Sri Vivek Sarin along with Sri Harsh Vardhan Gupta, learned counsel for the petitioner and Sri Amit Mahajan, and Sri Parv Agrawal, learned counsel for the revenue.

2. Learned Standing Counsel for the revenue though objected to the relief claimed, he also states, since all facts are clear from a plain reading of the petition, and only legal issues are invloved, no Counter Affidavit is required to be filed. Accordingly, the matter has been heard, at the fresh stage itself.

3. Challenge has been raised to the Adjudication Order dated 12.2.2026 and Form DRC-07 dated 12.2.2026, for F.Y. 2019-2020.

4. Though, formal challenge has been raised to the Adjudication Order, at the very beginning learned counsel for the petitioner has confined the dispute to the rights of the petitioner-to claim benefit of Section 70 (5) of the GST Act, 2017 (hereinafter referred to as 'the Act'), read with Rule 142(1A) of the CGST Rules 2017 (hereinafter referred to as 'the Rules')

5. Thus, it has been submitted, no opportunity was granted to the petitioner, prior to the issuance of the Show Cause Notice, on DRC 01. Thereby, the petitioner was deprived of its statutory right to pay up the disputed demand together with interest, at reduced penalty. By virtue of the own force of law created by Section 74(5) of the Act, the petitioner was entitled to seek adjudication of the dispute against reduced penalty @15%, as against full penalty demand created under the impugned Adjudication Order.

6. On the other hand, Sri Amit Mahajan, learned counsel for the revenue would contend, Rule 142(1A) of the Rules is directory. It does not mandatorily require issuance of DRC-01A, prior to issuance of a show cause notice on DRC-01. Upon a holistic view taken by the Adjudicating Authority, it may choose to issue or to not issue notice on DRC-01A. Only if positive discretion is exercised and notice on DRC-01A is issued to a noticee, in those facts, benefit of Section 74(5) of the Act may be claimed, but not otherwise.

7. Sri Mahajan has relied upon Notification no.79 of 2020 dated 15.10.2020, to submit that the words earlier used "proper officer shall", have been replaced with the words "proper officer may". Thereby, the Central Government has clearly made the Rules directory, with effect from 15.10.2020. Therefore, the earlier decision of a coordinate bench in Skyline Automation Industries vs. State of U.P. [2023] 148 taxmann.com 345 (All), does not apply to the present case.

8. Non issuance of DRC 01 is an admitted fact, in the present case. That objection was raised by the petitioner before the Adjudicating Authority. It is duly recorded in paragraph 5.3 thereof. However, the Adjudicating Authority has rejected the same on the following reason:

5.3 In terms of the above provisions it is clear that to avail the input tax credit, the taxpayer should have received the goods/services. However, in case of a non-existent supplier, a supply of goods/services cannot be made. Only invoices will be issued by the non-existent supplier without actual supply of goods/services with fraudulent motive to pass the inadmissible input tax credit. Thus, the taxpayer has not received the goods /services. Therefore, in terms of the above provisions the taxpayer is not eligible for the input tax credit aken/availed by them. The taxpayer raised contention in respect of the issuance of DRC-01A. The relevant statutory provision i.e. Rule 142(1A) of the CGST Rules, 2017.

RULE 142(1A) The proper officer may, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74 or sub-section (1) of section 74A, as the case may be. communicate the details of any tax, interest and penalty as ascertained by the sid officer, in Part A of FORM GST DRC-01A.

In terms of the above the word may has been used in the above Rule in respect of compliance by the proper officer. Therefore, the issuance of the FORM GST DRC-01A is not a statutory or mandatory requirement. The taxpayer also alleged that they received the SCN for the first time, but as per the para 3 of the SCN the taxpayer was issued a letter on 19.02.2024(DIN 202402254YC0000621546), therefore in this contention of the taxpayer there is no force. The SCN uploaded by the department was alleged to be blurred by the taxpayer, in this regard the taxpayer was also served the copy of SCN dated 10.09.2025 through speed post also. Further, the taxpayer never asked for legible copies despite having repeated opportunities of personal hearing. The taxpayer has submitted nothing on the merits of the case, which means that they have nothing concrete material/defence to defend the allegation of irregular ITC as per the SCN. In view of the above the instant demand raised by the SCN dated 10.09.2025 is sustainable against them.

(emphais supplied)

9. Second, it has been objected that the stage of DRC-01A has long passed. Not only Show Cause Notice on DRC-01 was issued but the petitioner also responded to the same. After hearing the petitioner, final Adjudication Order has been passed. Therefore, the stage of Section 74(5), of the Act does not survive.

10. Shri Parv Agarwal, learned counsel for the revenue, has further submitted that no real prejudice has been caused to the petitioner, inasmuch as, even at the stage of issuance of the Show Cause Notice on DRC-01, the petitioner could seek finalization of the demand against payment of demand of disputed tax together with interest and 25% of the penalty. By not availing that opportunity, the petitioner cannot be heard to complain any further.

11. Having heard learned counsel for the parties and having perused the record, it is fundamental in our jurisprudence that a principal statute stands on a higher pedestal in law, and

must therefore prevail over an inconsistent delegated legislation. Neither there can be any dispute to that principle nor that dispute has been raised, in the present case. Section 74(5) of the Act is reproduced hereinbelow:

"74. Determination of tax , pertaining to the period upto Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-mis statement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-mis statement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment."

(emphasis supplied)

12. To the extent a person who may be issued notice on DRC-01, may never be aware from before, if such notice was about to be issued to him and in any case such person may never have any knowledge of the amount of tax etc. proposed to be demanded from him, for any tax period, there may not exist any situation where settlement of dispute may be claimed, without the demand being proposed by the Adjudicating Authority.

13. Prior to the amendment made to Rule 142 (1A) the words used "the proper officer shall" were read and interpreted to mean that no Show Cause Notice on Form DRC-01 may be issued unless prior notice on Form DRC-01A had been issued. That interpretation made, amongst others by this Court in Skyline (supra) may have led to the amendment made to Rule 142 (1A) of the Rules. Thus, in place of the words earlier used, Rule 142 (1A) now employs the words "the proper officer may".

14. Later Rule 142 (1A) of the Rules was amended vide Notification No.49 of 2019 Central Tax dated 9.10.2019, with effect from that date. For ready reference, the said Rules are reproduced as below:

"RULE 142(1A) The proper officer may, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74 or sub-section (1) of section 74A, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the sid officer, in Part A of FORM GST DRC-01A."

(emphasis supplied)

15. In view of law as stands today, the ratio in Skyline (supra), may not apply. To the extent we may not find ourselves in agreemnt with the line of reasoning in Skyline (supra) so as to reach a conclusion of jurisdictional defect in the notice issued on Form DRC-01, in view of changed statutory law, no need survives to refer the matter to a larger bench.

16. The said Rule is wholly to the benefit of the parties, mainly the noticee-who may pay up without seeking to contest the adjudication proceedings. It is also to the benefit of the revenue that may collect short payment of revenue etc., without having to undertake an adjudication proceeding. Thus, the provision of Rule 142 (1A) of the Rules have to be read in conjunction with Section 74(5) of the Act. To the extent Section 74(5) of the Act leaves no manner of doubt that it is an integral part of the statutory scheme, providing for finalization of proposed demands, before issuance of a formal Show Cause Notice and a person may opt to seek finalization of the demand against full payment of short paid tax, interest and only 15% of the penalty, in face of that clear consequence prescribed under Section 74(5) of the Act, as against higher penalty 25% payable upon issuance of formal show cause notice on DRC-01, and payment of full penalty against an adjudication order (that may be passed in consequence of show cause notice on DRC-01), the provision of Section 74(5) of the Act is unambiguously mandatory, for reason of those consequences provided.

17. To the extent, statutory provision contained in the principal legislation is mandatory, the use of the word 'may' in Rule 142(1A) of the Rules must be given the same interpretation. To interpret Rule 142(1A), to be directory, would be to imagine a conflict between the principal legislation i.e. the Act and the delegated action i.e. the Rules. That may never be done. Presumption exists that the Rules are consistent to the Act and in case of any doubt the Rules must be read consistent to the Act. To the extent the Rules have been enforced to give effect to the Act that position must always be recognized in law. The submission to the contrary, advanced by learned counsel for the revenue-to read Rule 142(1A) as directory, is misconceived.

18. No reliance may be placed on the decision of the Delhi High Court in Manpar Exim Inc vs. Additional Director DGGI and Ors. 2025:DHC:10737-DB, inasmuch as, in that case for reason of DRC-01A not issued, challenge raised to DRC-01 was invalidated. While we may not differ from the view taken by the Delhi High Court in Manpar Exim Inc (supra), we note that such challenge has not been raised in the present petition. As recorded above, learned counsel for the petitioner has confined the present case to secure to the petitioner, its right to avail settlement against payment of 15% of the penalty amount.

19. In view of the above noted reasons, we hold that the provisions of Section 74(5) of the Act read with Rule 142(1A) of the Rules are mandatory to the extent-no demand of penalty-higher than 15% may be raised in the first place, and issuance of notice on DRC-01A is mandatory.

20. Consequently, the benefit flowing therefrom may never be denied to an assessee who raises that plea at the stage of reply to the show cause notice. Thus, the Show Cause Notice issued on DRC-01 may not lack inherent jurisdiction and for want of DRC-01A not issued, prior in time.

21. Yet whenever, a Show Cause Notice on Form DRC-01A is not issued, the noticee will remain entitled to claim benefits of Section 74(5) of the Act, up to the stage of filing his reply to the show cause notice on Form DRC-01.

22. Here, the assessee had chosen to avail that right. Thereafter, it was obligatory upon the Adjudicating Authority to have allowed the petitioner to pay up the disputed demand, in accordance with Section 74(5) of the Act, read with Rules 142(1A) of the Rules.

23. That right may be eclipsed only in such cases-where notwithstanding non-issuance of DRC-01A, the noticee chooses to enter appearance in response to the Show Cause Notice on DRC-01 and disputes its liability to pay the demand so raised, without claiming his right under Section 74(5) of the Act. In those cases the statutory right conferred under Section 74(5) of the Act would be deemed to have been waived, by such notices.

24. The submission of Shri Parv Agrawal also does not support the revenue. In fact, it indicates the statutory intent to give mandatory effect to provisions of Section 74(5) of the Act read with Rule 142(1A). It is so, because this penalty amount would increase from 15% to 25%, at the stage of notice on Form DRC-01.

25. Last, we may note, rules of procedure exist to give effect to the statutory scheme created by the principal legislature. Such statutory Rules/pieces of delegated legislation may never be read to carve out a scheme different to that created by principal legislature.

26. In view of the above, this petition must succeed and is allowed, to the extent discussed above. Subject to the petitioner paying up the disputed demand alongwith interest and 15% penalty computed, strictly in terms of Section 74(5) of the Act with interest as computed on the date of issuance of the show cause notice issued on DRC-01, within a period of one month from today, treating the same to be a notice issued on DRC-01A (on that date), the Adjudication Order would

stand satisfied. In that view, we leave it open to the Adjudicating Authority to pass a rectification order if so advised, for statistical purposes.

27. No orders as to costs.

(2026) 5 ILRA 598
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.05.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Matters Under Article 227 No. 2864 of 2026

Aftab Qureshi @ Raja & Ors. ...Petitioners
Versus
Devendra Dhawan ...Respondent

Issue for Consideration

Whether, in absence of any express statutory provision conferring power of review, the authority concerned could exercise its inherent jurisdiction under Rule 22(f) read with Section 151 C.P.C. to recall its earlier order for correcting a procedural illegality or misconception, and whether such exercise amounts to a permissible procedural review or an impermissible substantive review on merits.

Head Notes

The Constitution of India, 1950-Article 227; The Code of Civil Procedure, 1908-Sections 151, 114 read & Order XLVII Rule 1; The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972- Section 21(1) (a) & 34(1)(g); The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972- Rule 22(f)- The review court, while considering the application moved under Section 151 C.P.C. read with Rule 22(f) of the Rules, examined the controversy from the limited perspective as to whether the earlier appellate judgment had proceeded upon a misconception apparent from the admitted record itself- The review court noticed that although the appellate court had already accepted and recorded the existence of the registered sale deed dated 13.02.1963, it nevertheless applied the statutory requirement of notice under the first proviso to Section 21 despite the admitted position that the property had been purchased through the said registered sale deed dated 13.02.1963, i.e., much prior to the enforcement of the U P Act No.13 of 1972. The review court accordingly held that the earlier appellate judgment had resulted in a palpably erroneous order passed under a misapprehension, insofar as the statutory requirement of notice had been applied despite the foundational facts already borne out from the existing record indicating clear inapplicability of such requirement.

The review court did not reopen any disputed factual controversy requiring adjudication upon competing evidence nor did it undertake reassessment of bona fide need, comparative hardship, or any other substantive issue arising in the release proceedings. The exercise remained confined to correction of the apparent misconception emerging from the admitted documentary record already noticed by the appellate court itself. No fresh adjudicatory exercise upon rival factual claims was undertaken, nor was one possible view substituted by another upon re-appreciation of evidence.

Held- The nature and scope of the jurisdiction exercised by the review court was corrective and procedural in character, and not a substantive review on merits. The interference was confined to removal of an apparent misconception arising from admitted material already existing on record and attributable to the adjudicatory process itself. The review court neither reassessed disputed questions of fact nor reopened the merits of the release proceedings for fresh determination upon re-appreciation of evidence. Such an exercise, directed towards securing the ends of justice and preventing continuation of an error attributable to the authority itself, squarely falls within the limited ambit of procedural review and inherent jurisdiction recognised under Section 151 C.P.C. read with Rule 22(f) of the Rules, and cannot be treated as an impermissible assumption of substantive review jurisdiction in the absence of statutory conferment. **Petition dismissed**. (E-15)

(Para 54 , 55 & 57)

Case Law Cited

Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji (1971) 3 SCC 844; Kalabharati Advertising v. Hemant Vimalnath Narichania 2010) 9 SCC 437; Pushpa Sareen v. State of U.P. AIR 2015 All 83; Grindlays Bank Ltd. v. Central Government Industrial Tribunal 1980 Supp SCC 420; M/s. Bombay T.V. Centre v. Additional District and Sessions Judge, Dehradun 1980 ALJ 537; Reliance General Insurance Company Limited v. Kanika and Others AIR 2026 SC 1188 ; Pushpa Sand v. R.C.E.O./City Magistrate, Kanpur Nagar 1996 SCC Online All 132; Pt. Chet Ram Sharma v. Ist Additional District Judge 2004 SCC Online All 818; Sidh Nath Tripathi (Dr.) v. IInd Additional District Judge 1985 SCC OnLine All 297; Sita Ram Sikhaula v. Prescribed Authority 1978 SCC OnLine All 15; Swaran Singh Chauhan v. Rent Control and Eviction Authorities 2006 (4) ARC 373

List of Acts

The Constitution of India, 1950; The Code of Civil Procedure, 1908; The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 & The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972

List of Keywords

Review; confine to correction of the apparent misconception; No fresh adjudicatory exercise; or Re-appreciation of evidence; Rule 22(f); Substantive review

Case Arising From

The present petition arises out of proceedings initiated under Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 in relation to a shop. The petitioners have assailed the order dated 19.12.2025 passed by the appellate court in Rent Control Appeal No. 30 of 2018, whereby the review application filed by the respondent-landlord has been allowed, the earlier appellate judgment dated 16.10.2025 has been recalled, and the appeal has been directed to be reheard.

Appearances for Parties

Counsel for Petitioner(s) : Rishikesh Tripathi, Shashwat Tripathi
Counsel for Respondent(s) : Rishabh Agarwal

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Heard Sri Rishikesh Tripathi, learned counsel for the petitioners and Sri Atul Dayal, learned Senior Counsel appearing along with Sri Rishabh Agarwal, for the respondent.

2. The present petition arises out of proceedings initiated under Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 19721 in relation to a shop situated in District Jhansi. The petitioners have assailed the order dated 19.12.2025 passed by the appellate court in Rent Control Appeal No. 30 of 2018, whereby the review application filed by the

respondent-landlord has been allowed, the earlier appellate judgment dated 16.10.2025 has been recalled, and the appeal has been directed to be reheard.

3. Briefly stated, the facts giving rise to the present proceedings are that the respondent-landlord instituted P.A. Case No. 79 of 2013 (Devendra Dhawan vs. Aftab Qureshi and others) on 22.10.2013 under Section 21(1)(a) of the U P Act No.13 of 1972 seeking release of the tenanted premises setting up the ground of bona fide requirement for his son. Upon notice, the petitioners-tenants entered appearance on 01.09.2014 and filed their written statement contesting the release application and disputing the alleged need set up by the respondent-landlord.

4. The Prescribed Authority, after considering the pleadings and material brought on record, allowed the release application by judgment and order dated 29.10.2018. Aggrieved by the aforesaid order, the petitioners preferred Rent Control Appeal No. 30 of 2018 before the District Judge, Jhansi. The appellate court, by judgment dated 16.10.2025, allowed the appeal and set aside the judgment of the Prescribed Authority. While deciding the appeal, the appellate court framed points for determination and recorded findings, inter alia, regarding the maintainability of the release application.

5. Thereafter, the respondent-landlord moved a review application in the said appeal seeking recall of the appellate judgment dated 16.10.2025. The petitioners filed objections to the review application and also submitted written arguments on 19.12.2025 opposing the prayer for recall. However, the appellate court, by the impugned order dated 19.12.2025, allowed the review application, recalled its earlier judgment dated 16.10.2025, and directed rehearing of the appeal. Being aggrieved by the order dated 19.12.2025 passed in the review proceedings, Petitioners have approached this Court by means of the present petition.

6. Learned counsel for the petitioners has assailed the impugned order primarily on the ground that the appellate court has exercised a jurisdiction wholly alien to the statutory scheme governing proceedings under the U.P. Act No.13 of 1972 by virtually undertaking a substantive review of its earlier judgment dated 16.10.2025 despite absence of any statutory provision conferring such power. It has been submitted that the power of review is not an inherent power and can be exercised only where specifically conferred by statute or by necessary implication. According to the petitioners, the appellate court, under the guise of exercising inherent powers, has effectively reopened and reconsidered the earlier adjudication on merits, which is legally impermissible.

7. In support of the aforesaid contention, reliance has been placed upon the judgment of the Supreme Court in **Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji,** wherein it was categorically held that the power of review is not an inherent power and must be conferred by law either expressly or by necessary implication. Learned counsel submits that the Court clearly observed that where the parent statute does not confer review jurisdiction, neither the authority nor its delegate can reopen or reconsider an earlier decision. It has therefore been argued that the appellate authority functioning under the U P Act No.13 of 1972 could not have recalled its earlier judgment in absence of statutory conferment of review power.

8. Reliance has further been placed upon **Kalabharati Advertising v. Hemant Vimalnath Narichania**, wherein the Supreme Court reiterated the settled proposition that unless the statute or rules expressly so permit, a review application against judicial or quasi-judicial orders is not maintainable. Learned counsel submits that the Court held that review jurisdiction is a creation of statute and any order passed in purported exercise of review powers without statutory sanction is ultra vires, illegal and without jurisdiction. Particular emphasis has been laid upon the observations that an authority cannot, under the garb of clarification, modification or correction, undertake reconsideration of the matter on merits in absence of statutory power of review.

9. The petitioners have also relied upon **Pushpa Sareen v. State of U.P.** to contend that the power of substantive review cannot be implied and must necessarily emanate from an enabling statutory provision. It has been argued that while the said judgment recognizes existence of a limited procedural review inhering in judicial and quasi-judicial authorities for rectifying defects such as absence of notice or violation of natural justice, the same simultaneously draws a clear distinction between procedural review and review on merits. Learned counsel submits that this Court in the aforesaid judgment expressly held that substantive review remains impermissible in absence of statutory conferment and only a limited procedural review is maintainable in exceptional situations involving procedural defects.

10. Placing reliance upon **Grindlays Bank Ltd. v. Central Government Industrial Tribunal,** learned counsel for the petitioners has further submitted that the Supreme Court itself recognized two distinct categories of review, namely procedural review and review on merits. It has been argued that the Court clearly held that while procedural review may be exercised to cure a procedural defect or inadvertent error committed under misapprehension, review on merits is impermissible unless specifically authorized by statute. According to the petitioners, the present case does not involve any procedural defect rather, the appellate court has effectively reopened the correctness of the earlier judgment itself, thereby entering into the prohibited field of substantive review.

11. The petitioners have additionally relied upon **M/s. Bombay T.V. Centre v. Additional District and Sessions Judge, Dehradun** to contend that grounds relating to alleged fraud, misrepresentation or erroneous appreciation of facts pertain to the merits of adjudication and cannot furnish a valid basis for recall or review in absence of statutory authority. It has been argued that this Court in the aforesaid decision specifically held that reopening an order on grounds touching the merits of the controversy amounts to review and is impermissible where no statutory review power exists.

12. The petitioners have further relied upon **Reliance General Insurance Company Limited v. Kanika and Others** to contend that while limited clarificatory or clerical corrections may be permissible under Sections 151 and 152 C.P.C., the Court cannot alter findings affecting substantive rights under the guise of clarification or correction. It has been submitted that the Supreme Court has clearly held that any exercise which alters substantive adjudication or affects rights of parties would in substance amount to review and must satisfy the strict requirements governing review jurisdiction.

13 On the strength of the aforesaid authorities, learned counsel for the petitioners has contended that the impugned order dated 19.12.2025 does not merely rectify a procedural irregularity but substantially reopens the earlier adjudication and directs rehearing of the appeal on merits. According to the petitioners, the appellate court has therefore exercised an impermissible substantive review in absence of any statutory conferment of such power and consequently the impugned order is wholly without jurisdiction and liable to be set aside.

14. Per contra, learned counsel appearing for the respondents has supported the impugned order and submitted that although the authorities functioning under the U.P. Act No.13 of 1972 do not possess any substantive power of review akin to that contained under Order XLVII Rule 1 C.P.C., nevertheless such authorities retain limited inherent jurisdiction under Rule 22(f) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 19728 read with Section 151 C.P.C. to correct procedural errors, misconceptions, and manifest illegalities so as to secure the ends of justice and prevent abuse of the process of Court. It has been contended that the exercise undertaken by the appellate court in the present case was not a rehearing of the matter on merits, but merely a procedural and corrective exercise undertaken to rectify an error which had occasioned failure of justice.

15. It has been contended on behalf of the respondents that the review court did not undertake any fresh adjudication on merits nor reassess the evidentiary material so as to substitute one possible view by another. It is submitted that the appellate court, while deciding Issue No. 1 in the judgment dated 16.10.2025, had itself taken note of the registered sale deed dated 13.02.1963 executed in favour of Smt. Sarla Devi, through whom the respondent-landlord derived title by testamentary succession. Despite recording the existence and date of the said registered sale deed, the appellate court proceeded to hold that the landlord was required to comply with the statutory requirement of six months notice under Section 21(1)(a) of U P Act No.13 of 1972.

16. It is urged that the review application merely pointed out that the finding so recorded suffered from a manifest misconception apparent from the record itself, inasmuch as the property admittedly stood purchased prior to 15.07.1972 i.e. the date of commencement of the U P Act No.13 of 1972, and, therefore, the statutory embargo regarding six months notice was not attracted at all. It is, thus, submitted that the exercise undertaken by the review court was confined to correction of a patent error arising from misapprehension of the existing record and was, therefore, within the limited ambit of procedural review and inherent jurisdiction recognised under Section 151 C.P.C. read with Rule 22(f) of the Rules, 1972.

17. In support of the aforesaid submission, reliance has been placed upon the judgment of the Supreme Court in **Grindlays Bank Ltd.,** wherein the distinction between a substantive review and a procedural review was recognized. Learned counsel submits that the Court held that while review on merits is not permissible in absence of statutory conferment, every Court or Tribunal possesses inherent jurisdiction to correct a palpably erroneous order passed under a misapprehension or procedural defect in order to prevent abuse of process and secure the ends of justice. Reliance has particularly been placed upon the observation that procedural review inheres in every Court or Tribunal ex debito justitiae and stands on a footing distinct from review on merits.

18. The respondents have further relied upon **Pushpa Sand v. R.C.E.O./City Magistrate, Kanpur Nagar** to contend that where an authority has failed to decide the controversy on merits owing to misconception of law or erroneous assumption regarding its jurisdiction, it is open to such authority to recall its order and reconsider the matter in exercise of powers under Rule 22 (f). It has been argued that this Court in the aforesaid decision recognized that although review of an order passed on merits may not be permissible, recall of an order occasioned by misconception or failure to exercise jurisdiction is legally maintainable. Learned counsel submits that the said judgment further recognizes that even where technical objections regarding review jurisdiction may exist, this Court, while exercising jurisdiction under Article 226 of the Constitution of India, may decline interference if setting aside the impugned order would revive an otherwise illegal or erroneous order.

19. Reliance has also been placed upon **Pt. Chet Ram Sharma v. Ist Additional District Judge,** wherein this Court, after considering Section 34 of the Act and Rule 22(f) of the Rules, held that although no specific power of review is conferred upon appellate authorities functioning under the U P Act No.13 of 1972, such authorities nevertheless retain inherent powers analogous to Section 151 C.P.C. to pass appropriate orders in the ends of justice and to prevent abuse of the process of Court. Learned counsel submits that the aforesaid decision specifically recognizes that Section 151 C.P.C. embodies the inherent jurisdiction of the Court to act ex debito justitiae where circumstances so require.

20. The respondents have further drawn attention to the observations made in the aforesaid judgment that where an order has been passed on grounds which neither arose from pleadings nor were argued by the parties, the authority would be justified in recalling such order so that a litigant does not suffer on account of an inadvertent error committed by the Court itself. It has been argued that the appellate court in the present case has similarly exercised corrective jurisdiction to rectify an error arising from misconception and therefore the impugned exercise cannot be treated as an impermissible review on merits.

21. Reliance has additionally been placed upon **Sidh Nath Tripathi (Dr.) v. IInd Additional District Judge** to contend that where an order has been passed under misconception or by overlooking material aspects on record, the Court is competent to correct such mistake. According to the respondents, the impugned order merely seeks to remedy such misconception and therefore falls within the permissible ambit of inherent procedural jurisdiction.

22. The respondents have also relied upon **Sita Ram Sikhaula v. Prescribed Authority,** wherein this Court upheld exercise of inherent jurisdiction by the Prescribed Authority to set aside an unlawful compromise decree after noticing manifest illegalities apparent from the record. Learned counsel submits that the aforesaid judgment recognizes that where an authority notices illegality apparent on the face of record, it possesses inherent power to rectify the same and that no litigant should suffer because of a mistake committed by the Court. It has been urged that the present case also involves correction of an error which had materially affected the adjudicatory process and therefore the appellate court rightly exercised its inherent jurisdiction.

23. Further reliance has been placed upon **Swaran Singh Chauhan v. Rent Control and Eviction Authorities** to contend that although a review application in the strict sense contemplated under Order XLVII Rule 1 C.P.C. is not maintainable before authorities under the U P Act No.13 of 1972, nevertheless Rule 22(1) read with Rule 22(f) expressly acknowledges the inherent powers of such authorities analogous to Section 151 C.P.C. Learned counsel submits that this Court in the aforesaid decision categorically held that where an order has been passed under misconception, by ignoring material facts on record, or in a manner causing manifest injustice or abuse of process, the authority is competent to correct such error in exercise of inherent jurisdiction and such exercise would not amount to substantive review of the earlier order.

24. It has thus been contended on behalf of the respondents that the impugned order merely restores the appeal for rehearing so as to ensure proper adjudication after rectifying the procedural misconception noticed by the appellate court and does not finally re-adjudicate the controversy on merits. According to the respondents, the exercise undertaken by the appellate court is therefore procedural and corrective in nature and falls squarely within the ambit of inherent jurisdiction preserved under Rule 22(f) read with Section 151 C.P.C. Consequently, it has been submitted that no interference is warranted by this Court in exercise of its supervisiory jurisdiction under Article 227 of the Constitution of India.

25. In light of the rival submissions advanced by learned counsel for the parties, the principal issue which arises for consideration is whether, in absence of any express statutory provision conferring power of review, the authority concerned could exercise its inherent jurisdiction under Rule 22(f) read with Section 151 C.P.C. to recall its earlier order for correcting a procedural illegality or misconception, and whether such exercise amounts to a permissible procedural review or an impermissible substantive review on merits.

26. Before examining the rival submissions on the scope of procedural and substantive review, it would be apposite to refer to the statutory framework governing the powers exercisable by the authorities constituted under the U P Act No.13 of 1972. In the present controversy, particular significance attaches to Rule 22(f) of the Rules framed under the Act read with Section 34(1)(g), which reads as follows:

"22. Powers under the Code of Civil Procedure, 1908 [Section 34 (1) (g)]. [The District Magistrate, the Prescribed Authority or the Appellate or Revising Authority shall, for the purposes of holding any inquiry or hearing any appeal or revision under the Act, shall have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908 (Act No. V of 1908), when trying a suit, in respect of the following matters, namely-

...

...

…

...

(f) the power referred to in Sections 151 and 152 of the Code of Civil Procedure, 1908 (Act No. V of 1908) to make any order for the ends of justice or to prevent the abuse of the process of the authority concerned."

27. A careful examination of Rule 22(f) indicates that the authorities functioning under the U P Act No.13 of 1972 have been vested with certain powers analogous to those exercisable by a Civil Court under the Code of Civil Procedure. Amongst such powers, clause (f) specifically incorporates the powers referred to under Sections 151 and 152 C.P.C. "to make any order for the ends of justice or to prevent abuse of the process of the authority concerned."

28. The incorporation of Sections 151 and 152 C.P.C. within the statutory framework assumes significance inasmuch as the Act itself does not contain any express provision conferring a substantive power of review akin to Order XLVII Rule 1 C.P.C. The scheme of Rule 22(f), therefore, reflects a legislative recognition of the inherent procedural powers exercisable by judicial and quasi-judicial authorities while conducting proceedings under the Act.

29. Section 151 C.P.C., as incorporated through Rule 22(f), does not create or confer jurisdiction in the strict sense but recognizes the existence of inherent powers necessary for administration of justice and for preserving the sanctity of judicial proceedings. Likewise, Section 152 C.P.C. contemplates correction of clerical or accidental errors arising from accidental slips or omissions. The expression employed in Rule 22(f), namely 'to make any order for the ends of justice or to prevent abuse of the process,' is couched in broad terms and bears directly upon the scope of inherent jurisdiction exercisable by authorities under the U P Act No.13 of 1972.

30. The statutory language of Rule 22(f) further indicates that the powers preserved thereunder are procedural and ancillary in nature and are intended to facilitate effective adjudication under the Act. The provision neither expressly incorporates Order XLVII Rule 1 C.P.C. nor employs the expression □review.□ At the same time, the incorporation of Section 151 C.P.C. reflects legislative intent to preserve limited inherent jurisdiction enabling the authority to pass such orders as may be necessary in aid of justice and proper conduct of proceedings.

31. It is a settled principle of law that the power of review is not an inherent power. A substantive review, whereby an authority reconsiders, re-appreciates, or re-adjudicates the correctness of its earlier decision on merits, can be exercised only when such power is specifically conferred by statute or flows by necessary implication from the statutory scheme. In absence of such conferment, no Court or quasi-judicial authority can sit in appeal over its own judgment under the guise of review.

32. A substantive review ordinarily contemplates reconsideration of the merits of the controversy, reassessment of findings already recorded, or re-appreciation of the material forming basis of the earlier adjudication. Such power is analogous to the jurisdiction contemplated under Order XLVII Rule 1 C.P.C. and is purely statutory in nature.

33. On the other hand, procedural review stands on an altogether different footing. Procedural review is not directed towards reconsideration of the merits of the decision, but is confined to correction of procedural defects which may have vitiated the decision-making process itself. Such jurisdiction may be exercised where an order has been passed without notice to a party, in violation of principles of natural justice, under a mistaken assumption, or owing to some manifest procedural irregularity resulting in miscarriage of justice. The foundation of procedural review lies not in re-

examination of the merits of the dispute, but in ensuring fairness of procedure and preventing abuse of the process of Court.

34. The aforesaid distinction was lucidly explained by the Supreme Court in **Grindlays Bank Ltd. v. Central Government Industrial Tribunal**, wherein it was held that while a review on merits is impermissible in absence of statutory conferment, every Court or Tribunal possesses inherent power to recall an order passed under procedural misconception or in violation of natural justice in order to prevent abuse of its process. The Court clarified that procedural review inheres in every judicial or quasi-judicial authority ex debito justitiae, whereas substantive review must necessarily stem from statutory authorization.

35. The distinction drawn in the aforesaid judgment assumes considerable significance in determining the true nature and scope of the jurisdiction exercised by a Court or Tribunal while entertaining an application seeking reconsideration of an earlier order. The Supreme Court expressly recognized that the expression 'review' is not employed in a singular or uniform sense and that a clear conceptual distinction exists between a procedural review and a review on merits. In that context, the Court observed as follows:

"Furthermore, different considerations arise on review. The expression 'review' is used in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a **palpably erroneous order passed under a misapprehension by it,** and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record."

(emphasis added)

36. The aforesaid exposition makes it evident that the source, character and object of the two jurisdictions are fundamentally distinct. A review on merits contemplates re-examination of the correctness of conclusions already arrived at upon adjudication of rival claims and necessarily involves reconsideration of the substance of the controversy. Such exercise directly affects the finality attached to judicial determinations and, therefore, can be undertaken only where the statute expressly or by necessary implication confers such authority. In contradistinction, procedural review is not directed towards re-adjudication of the dispute itself, but is confined to rectifying a defect in the decision-making process which has resulted in a manifest procedural illegality, misconception, inadvertence, or denial of fair opportunity.

37. What is of particular relevance is that the Supreme Court did not treat procedural review as a species of appellate or substantive reconsideration. Rather, the same was recognized as an inherent jurisdiction inhering in every judicial and quasi-judicial authority to ensure that its own procedure does not occasion injustice. The emphasis of the Court was not upon correction of an erroneous conclusion on merits, but upon correction of the process through which such conclusion came to be recorded. Thus, where an order is shown to be a palpably erroneous order passed under a misapprehension by the authority itself, the jurisdiction exercised for correction thereof partakes the character of procedural review and not substantive review.

38. The principle laid down therein thus furnishes the controlling test for determining whether the jurisdiction exercised by the authority is truly procedural in nature or whether it amounts, in substance, to a review on merits. The inquiry, therefore, is not governed merely by the nomenclature of the application or the provision invoked, but by the real nature of the correction undertaken, the source of the error sought to be rectified, and the extent to which the authority re-enters into adjudication of the substantive controversy already decided.

39. The distinction between substantive review and procedural review was examined by this Court in **Pushpa Sareen** while considering the scope of review jurisdiction exercisable by authorities functioning under the rent control legislation. The Full Bench, after examining the principles laid down in **Patel Narshi Thakershi** and **Grindlays Bank Ltd.,** expressly recognized the distinction between a substantive review on merits and a limited procedural review inhering in judicial and quasi-judicial authorities. It was observed that the power of substantive review is not an inherent power and cannot be assumed in absence of express statutory conferment or necessary implication. Simultaneously, it was clarified that where the error sought to be corrected arises from a procedural defect, inadvertent mistake, misconception, or violation affecting the fairness of the adjudicatory process itself, a limited procedural review may legitimately be exercised in exercise of inherent jurisdiction to secure the ends of justice and prevent abuse of process.

40. Thus, the legal position which emerges from the aforesaid authorities is that the determinative test lies in the nature of the exercise undertaken by the authority. If the authority merely corrects a procedural defect affecting the fairness of adjudication, such exercise may legitimately fall within the ambit of procedural review or inherent jurisdiction. However, where the authority enters into reconsideration of the correctness of findings already rendered, reassesses the merits of the controversy, or recalls a judgment for fresh adjudication on grounds touching the substance of the dispute, the exercise ceases to be procedural and assumes the character of a substantive review, which cannot be undertaken in absence of statutory conferment of such power.

41. The following broad tests may, therefore, be culled out for determining whether the exercise undertaken by an authority constitutes a permissible procedural recall under its inherent jurisdiction, or an impermissible substantive review in absence of statutory conferment of review power:-

(i) Nature of the defect corrected: Where the defect sought to be corrected pertains to the procedural framework of adjudication, including misconception of an admitted or undisputed factual position already borne out from the existing record, accidental omission, procedural irregularity, or an error attributable to the authority itself in the course of decision-making, the exercise may legitimately partake the character of procedural review; however, where the authority proceeds to reassess disputed findings upon re-appreciation of evidence or rival claims, the exercise enters the field of substantive review.

(ii) Object of the exercise: Where the object of the exercise is confined to correcting a palpably erroneous order passed under a misapprehension by the authority itself, restoring procedural fairness, preventing abuse of process, or curing an inadvertent error affecting the legitimacy of adjudication, invocation of inherent jurisdiction may be permissible; however, where

the object is to undertake a fresh determination of issues already adjudicated on merits independent of such misconception, the exercise assumes the nature of substantive review.

(iii) Extent of reconsideration involved: A limited reconsideration undertaken solely for rectifying a procedural defect, misconception arising from admitted record, or inadvertent error attributable to the authority itself, without entering into re-appreciation of disputed evidence or rival factual claims, may fall within the ambit of procedural review; however, where the authority undertakes reassessment of contested findings or substitutes one adjudicatory conclusion by another upon re-examination of merits, the exercise becomes substantive in character.

(iv) Consequence of Correction: Where the resultant order is directed towards removal of a procedural or foundational error arising from misconception of an admitted or undisputed factual position already existing on record, the exercise may continue to retain its procedural character notwithstanding that consequential restoration or rehearing becomes necessary thereafter; however, where the authority undertakes a fresh examination of disputed merits independent of such foundational error, the exercise would assume the nature of substantive review.

(v) Source of the error: An inadvertent error arising from the act of the authority itself, including proceeding upon a misconception regarding an admitted factual position, overlooking material already existing on record, or recording findings contrary to the undisputed record, may justify exercise of inherent jurisdiction ex debito justitiae; however, a mere assertion that another interpretation on facts or law is possible would not by itself furnish foundation for procedural review.

(vi) Affect on finality of concluded findings: Mere reopening of proceedings or restoration of the matter for lawful reconsideration does not by itself render the exercise a substantive review where the reopening is occasioned solely for correcting a palpably erroneous order passed under a misapprehension by the authority itself; however, where concluded findings are reopened for re-appreciation of merits or substitution of one adjudicatory view by another, the exercise would impinge upon finality and partake the character of substantive review.

(vii) Correction of the decision-making process or the decision itself: The determinative consideration is whether the authority is fundamentally correcting the decision-making process vitiated by misconception, inadvertence, or procedural error attributable to itself, or whether it is reassessing the correctness of the conclusion on merits; for correction of a manifest misconception arising from the existing record may legitimately fall within inherent jurisdiction, whereas substitution of one possible view by another upon reappraisal of merits would amount to substantive review.

(viii) Exercise ex debito justitiae: Inherent powers may legitimately be invoked ex debito justitiae where failure to intervene would perpetuate procedural injustice attributable to the authority itself or result in abuse of the process of the Court; however, such jurisdiction remains supplementary and cannot be utilised as a substitute for an appellate remedy or a substantive power of review not conferred by statute.

(ix) Existence or absence of statutory review jurisdiction: In absence of an express or necessarily implied statutory conferment of review jurisdiction, the authority cannot assume unto itself a substantive power to reopen and reconsider adjudicated issues on merits merely by invoking inherent powers under Section 151 C.P.C. or analogous provisions, for inherent jurisdiction cannot be exercised in a manner that defeats legislative limitations upon review.

(x) Substance over nomenclature: The true nature of the jurisdiction exercised must be determined not from the nomenclature employed in the application or the terminology used in the

order, but from the real substance, purpose, scope, and effect of the exercise undertaken by the authority concerned.

42. The aforesaid principles are neither exhaustive nor capable of rigid application, for the distinction between a procedural review and a substantive review ultimately depends upon the nature of the jurisdiction exercised, the purpose sought to be achieved, and the effect produced by the impugned exercise. The enquiry, therefore, must not remain confined to the form or terminology employed by the authority, but must extend to the substance of the exercise actually undertaken. It is only upon application of the aforesaid tests to the facts and tenor of the impugned order that the Court may determine whether the authority merely corrected a procedural defect in aid of justice and to prevent abuse of process, or whether it in effect reopened and reconsidered the adjudication on merits in absence of statutory conferment of review jurisdiction.

43. Having considered the rival submissions advanced by learned counsel for the parties and upon perusal of the material brought on record, this Court finds that the controversy involved in the present case essentially turns upon the true nature of the jurisdiction exercised by the appellate court while passing the impugned order dated 19.12.2025. The determinative question is not merely whether the authority possessed power of substantive review, but whether the exercise undertaken by it was, in fact, a substantive reconsideration on merits or a permissible procedural correction intended to rectify an apparent illegality affecting the adjudicatory process itself.

44. From a careful perusal of the impugned order, it is evident that the appellate court has not proceeded to re-adjudicate the controversy on merits nor has it recorded fresh findings reversing its earlier conclusions upon re-appreciation of evidence. The appellate court has merely recalled its earlier judgment dated 16.10.2025 and directed rehearing of the appeal upon noticing that certain aspects bearing upon the legality and correctness of the adjudication had not been properly considered. The exercise undertaken by the appellate court was thus essentially corrective in nature and intended to ensure that the proceedings receives adjudication in accordance with law after due consideration of all relevant aspects.

45. At this stage, it becomes necessary to notice the distinction between substantive review and procedural review. A substantive review necessarily involves reconsideration of the correctness of findings already recorded on merits. Such power is not inherent and must emanate from an express or necessarily implied statutory conferment, as contemplated under Section 114 read with Order XLVII Rule 1 C.P.C. In the absence of such conferment, no court or tribunal can assume unto itself a general power to reopen concluded adjudication merely because another view on facts or law may appear possible.

46. Procedural review, however, stands on a fundamentally different footing. It is rooted not in statutory conferment but in the inherent obligation of every court and tribunal to ensure that its own procedure does not occasion injustice. Thus, where an order has resulted from procedural misconception, inadvertent omission, absence of notice, clerical mistake, misunderstanding of admitted record, or any error attributable to the adjudicatory process itself, the authority may invoke its inherent jurisdiction ex debito justitiae to correct such defect and restore procedural

legality. The object of such exercise is not to reconsider the merits of the controversy but to remove the procedural impediment which prevented lawful adjudication.

47. Section 151 C.P.C., which preserves the inherent powers of the Court to secure the ends of justice and prevent abuse of process, operates in a field distinct from substantive review jurisdiction under Order XLVII Rule 1 C.P.C. What is prohibited in the absence of statutory conferment is a rehearing on merits through reassessment of evidence, rival claims, or legal findings. What remains permissible is correction of defects striking at the fairness, legality, or integrity of the decision-making process itself.

48. The distinction between these two jurisdictions has been judicially recognized in **Grindlays Bank Ltd. v. Central Government Industrial Tribunal,** wherein it was explained that though a power of substantive review must arise from statute, every judicial or quasi-judicial authority nevertheless possesses inherent jurisdiction to correct procedural errors, misconceptions, or inadvertent mistakes attributable to the adjudicatory process itself. Procedural review inheres in every forum ex debito justitiae and may legitimately be exercised where the earlier order suffers from procedural misconception or from a palpably erroneous order passed under a misapprehension by the authority itself.

49. The principle underlying such jurisdiction is founded upon the maxim actus curiae neminem gravabit, namely, that an act of the Court shall prejudice no person. A court or tribunal cannot be rendered powerless to correct an error arising due to its own inadvertence or misconception which, if permitted to stand, would perpetuate injustice and undermine confidence in the adjudicatory process. The inherent jurisdiction preserved under Section 151 C.P.C. and acknowledged under Rule 22(f) of the Rules exists precisely to enable the authority to remedy such situations where continuance of an order suffering from manifest misconception or procedural defect would itself amount to abuse of the process of the Court. Such jurisdiction is corrective rather than appellate in nature and is directed towards rectification of the decision-making process rather than substitution of one adjudicatory conclusion by another.

50. Tested on the aforesaid principles, this Court finds that the impugned order does not partake the character of a substantive review akin to jurisdiction under Order XLVII Rule 1 C.P.C. The appellate court has not finally altered or substituted its earlier findings by undertaking a reappraisal of the controversy. It has merely recalled the earlier judgment itself for rehearing of the appeal so as to remove what it perceived to be a procedural infirmity which had occasioned failure of justice.

51. From the material brought on record, it transpires that while deciding Rent Control Appeal No. 30 of 2018 by judgment dated 16.10.2025, the appellate court had referred to the certified copy of the registered sale deed dated 13.02.1963 executed in favour of Smt. Sarla Devi, through whom the respondent-landlord claimed successionary rights by virtue of testamentary devolution. The appellate court had also specifically noticed that the said document formed part of the original record and that the tenancy in question existed much prior to the institution of the release proceedings.

52. However, despite recording the existence, contents, and undisputed date of the aforesaid registered sale deed, the appellate court proceeded to hold that the respondent-landlord was mandatorily required to serve six months notice under Section 21(1)(a) of U.P. Act No. 13 of 1972 prior to institution of the release application, treating non-compliance thereof as fatal to maintainability of the proceedings.

53. This Court finds substance in the submission advanced on behalf of the respondents that authorities functioning under the U.P. Act No.13 of 1972 retain limited inherent jurisdiction under Rule 22(f) read with Section 151 C.P.C. to secure the ends of justice and prevent abuse of process of Court. The exercise of such jurisdiction, where confined to rectification of procedural irregularity or misconception, cannot be equated with a substantive review of the earlier adjudication.

54. The review court, while considering the application moved under Section 151 C.P.C. read with Rule 22(f) of the Rules, examined the controversy from the limited perspective as to whether the earlier appellate judgment had proceeded upon a misconception apparent from the admitted record itself. In that context, the review court noticed that although the appellate court had already accepted and recorded the existence of the registered sale deed dated 13.02.1963, it nevertheless applied the statutory requirement of notice under the first proviso to Section 21 despite the admitted position that the property had been purchased through the said registered sale deed dated 13.02.1963, i.e., much prior to the enforcement of the U P Act No.13 of 1972. The review court accordingly held that the earlier appellate judgment had resulted in a palpably erroneous order passed under a misapprehension, insofar as the statutory requirement of notice had been applied despite the foundational facts already borne out from the existing record indicating clear inapplicability of such requirement.

55. Significantly, the review court did not reopen any disputed factual controversy requiring adjudication upon competing evidence nor did it undertake reassessment of bona fide need, comparative hardship, or any other substantive issue arising in the release proceedings. The exercise remained confined to correction of the apparent misconception emerging from the admitted documentary record already noticed by the appellate court itself. No fresh adjudicatory exercise upon rival factual claims was undertaken, nor was one possible view substituted by another upon re-appreciation of evidence.

56. It further appears that the consequence of the impugned order dated 19.12.2025 is merely restoration of the appeal for rehearing in accordance with law and not final adjudication of substantive rights afresh. The petitioners continue to retain full opportunity to address the appellate court on all questions available to them in law during rehearing of the appeal and no irreversible prejudice is shown to have been occasioned merely by restoration of the proceedings.

57. In the considered view of this Court, the nature and scope of the jurisdiction exercised by the review court was corrective and procedural in character, and not a substantive review on merits. The interference was confined to removal of an apparent misconception arising from admitted material already existing on record and attributable to the adjudicatory process itself. The review court neither reassessed disputed questions of fact nor reopened the merits of the release

proceedings for fresh determination upon re-appreciation of evidence. Such an exercise, directed towards securing the ends of justice and preventing continuation of an error attributable to the authority itself, squarely falls within the limited ambit of procedural review and inherent jurisdiction recognised under Section 151 C.P.C. read with Rule 22(f) of the Rules, and cannot be treated as an impermissible assumption of substantive review jurisdiction in the absence of statutory conferment.

58. Accordingly, for the reasons recorded hereinabove, this Court finds no jurisdictional error, manifest illegality, or perversity in the impugned order dated 19.12.2025 passed by the appellate court in exercise of its inherent and procedural jurisdiction under Section 151 C.P.C. read with Rule 22(f) of the Rules. The impugned order merely restores the appeal for rehearing after correction of an apparent misconception attributable to the appellate court itself and does not amount to an impermissible substantive review on merits.

59. No case for interference under Article 227 of the Constitution of India is, therefore, made out.

60. The petition is, accordingly, **dismissed**.

61. No order as to costs.

(2026) 5 ILRA 612
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.05.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Matters Under Article 227 No. 5153 of 2026

Akhilesh Kumar **...Petitioners**
Versus
Sanjay Sahgal **...Respondent**

Issue for Consideration

Whether the mere absence of a written tenancy agreement renders proceedings before the Rent Authority non-maintainable and relegates the landlord to the jurisdiction of the Court of Small Causes

Head Notes

The Constitution of India, 1950-Article 227; The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021- Section 4, 21 & 38- The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 does not exclude oral, month-to-month, or otherwise unwritten tenancies from its statutory ambit merely because such arrangements were not reduced into writing or because the prescribed particulars were not furnished before the Rent Authority. Where the relationship of landlord and tenant is admitted or otherwise established, and the dispute falls within the field occupied by the statute, proceedings before the Rent Authority remain maintainable notwithstanding the absence of a written tenancy agreement.

Sections 4(1) and 4(3)(b) are mandatory regulatory provisions intended to formalise, record and bring certainty to tenancy arrangements through written documentation and disclosure of particulars before the statutory authority. Section 4(7), in turn, contemplates the consequence of non-furnishing of such information and leaves no manner of doubt that the Legislature did not intend procedural non-compliance to result in wholesale exclusion from the operation of the Act. These provisions cannot, therefore, be construed as creating a blanket exclusion from the statutory framework, nor as rendering proceedings before the Rent Authority inherently non-maintainable in every case of non-compliance, nor as otherwise creating a jurisdictional bar against recourse to the specialised forum constituted under the enactment.

Section 38(2), properly construed, excludes adjudication of disputes relating to title and ownership and confines the jurisdiction of the Rent Authority to landlord-tenant disputes entrusted to it under the statute. It does not require ordinary tenancy disputes to be relegated to the Court of Small Causes merely because the tenancy arrangement is oral, month-to-month or unwritten, or because the prescribed particulars were not submitted in the manner contemplated under Section 4 of the Act.

Held-That absence of a written tenancy agreement, by itself, does not denude the Rent Authority of jurisdiction under the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 where the tenancy relationship is admitted or otherwise established in accordance with law- **Petitions dismissed**. (E-15)

(Para 115 to 120)

Case Law Cited

Amit Gupta v. Gulab Chandra Kanodia 2021 SCC OnLine All 825 ; Lavendra Singh v. Devendra Kumar Nagariya 2025:AHC:26938 ; Sri Raman Arora v. Susheel Kumar (Deceased) 2025 SCC OnLine All 1251; Vishal Rastogi v. Rent Controller/Additional District Magistrate (Judicial) and Another 2024 SCC OnLine All 8125; Canara Bank Branch Office and another v. Sri Ashok Kumar 2025 SCC OnLine All 8073; Amarjeet Singh v. Smt. Shiv Kumari Yadav 2024 SCC OnLine All 2744

List of Acts

The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021; The Constitution of India, 1950

List of Keywords

The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021; does not exclude oral, month-to-month, or otherwise unwritten tenancies ; from its statutory ambit; Section 4, 21 & 38

Case Arising From

Petitioner-Tenant is in occupation of Shop at a monthly rent of Rupees 3,000/-. Respondent-landlord, instituted Rent Case No.47 of 2024 under Sections 10 and 21(2)(m) of the Act, 2021 before the Rent Authority, Jhansi, seeking eviction, arrears of rent, and damages for unauthorized use. The landlord pleaded that the tenancy was month-to-month and that no fresh tenancy agreement had been executed between the parties. Upon notice, the tenant entered appearance and filed an objection/application dated 21.10.2024 contending that no written or registered tenancy agreement existed and, therefore, proceedings under the Act, 2021 were not maintainable; jurisdiction, if any, lay before the Court of Small Causes under the Provincial Small Causes Courts Act. It was urged that the landlord had not complied with the requirements contemplated under Section 4 of the Act. The said objection was rejected by the Rent Authority vide order dated 14.08.2025 holding the proceedings maintainable. Aggrieved thereby, the tenant preferred Miscellaneous Civil (Rent Control) Appeal No.85 of 2025 before the Rent Tribunal, Jhansi, which was dismissed by judgment dated 19.01.2026, affirming the order of the Rent Authority.

In the other petition, petitioner, is a tenant in respect of premises, and claims tenancy through her predecessors. The respondent-landlords instituted proceedings under Section 21(2)(a)(b) of the Act, 2021, seeking eviction on the grounds of default and personal requirement. The petitioner appeared before the Rent

Authority and filed a preliminary objection/application dated 12.09.2025 under Section 38(2) of the Act, specifically pleading that no tenancy agreement existed between the parties, that the tenancy was admittedly month-to-month, and, therefore, proceedings under the Act, 2021 were not maintainable before the Rent Authority. It was further asserted that the landlords had failed to comply with Section 4 of the Act and that any remedy lay before the Court of Small Causes. The Rent Authority rejected the objection vide order dated 16.09.2025 and held the proceedings maintainable. The appeal preferred by the tenant under Section 35 of the Act, 2021, being Miscellaneous Civil (Rent Control) Appeal No.05 of 2026, was also dismissed by the Rent Control Tribunal, Jhansi, vide judgment and order dated 08.01.2026, affirming the order passed by the Rent Authority

Appearances for Parties

Counsel for petitioner(s) : Kamlesh Kumar Tiwari
Counsel for respondent(s) : Mohit Kumar Shukla

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Heard Sri Kamlesh Kumar Tiwari, learned counsel for the petitioner; Sri Mohit Kumar Shukla and Sri Ram M Kaushik, learned counsel appearing for the respondents; and Sri Rahul Agarwal, learned Additional Advocate General, assisted by Sri Gaurav Singh, learned Standing Counsel, on the interpretation of the statutory provisions involved.

Factual Background

2. These two petitions raise a common and recurring question concerning the scope and operation of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 20211, namely, whether the mere absence of a written tenancy agreement renders proceedings before the Rent Authority non-maintainable and relegates the landlord to the jurisdiction of the Court of Small Causes. The issue assumes considerable significance, for its resolution depends upon the true construction and interplay of Sections 4, 21 and 38 of the Act, 2021 read in the context of the overall statutory scheme and legislative purpose underlying the enactment. The controversy is of particular importance in the State, especially in view of the large number of urban tenancy arrangements that continue to subsist on oral understandings, month-to-month occupations, rent receipts, or long-standing informal arrangements unsupported by formal written agreements.

3. In the first petition, petitioner-tenant, Akhilesh Kumar, is in occupation of Shop No. 18, Gandhi Road, Mohalla Chaudhariyana, Bada Bazar, Jhansi, at a monthly rent of Rupees 3,000/-. Respondent-landlord, Sanjay Sehgal, instituted Rent Case No.47 of 2024 under Sections 10 and 21(2)(m) of the Act, 2021 before the Rent Authority, Jhansi, seeking eviction, arrears of rent, and damages for unauthorized use. The landlord pleaded that the tenancy was month-to-month and that no fresh tenancy agreement had been executed between the parties. Upon notice, the tenant entered appearance and filed an objection/application dated 21.10.2024 contending that no written or registered tenancy agreement existed and, therefore, proceedings under the Act, 2021 were not maintainable; jurisdiction, if any, lay before the Court of Small Causes under the Provincial Small Causes Courts Act. It was urged that the landlord had not complied with the requirements contemplated under Section 4 of the Act. The said objection was rejected by the Rent Authority vide order dated 14.08.2025 holding the proceedings maintainable. Aggrieved thereby, the tenant preferred Miscellaneous Civil (Rent Control) Appeal No.85 of 2025 before the Rent Tribunal,

Jhansi, which was dismissed by judgment dated 19.01.2026, affirming the order of the Rent Authority.

4. In the other petition, petitioner, Smt. Suman Dwivedi, is a tenant in respect of premises, bearing House No.3A, Lal Bahadur Shastri Marg, Station Road, Jhansi, and claims tenancy through her predecessors. The respondent-landlords Sanjeev Sahani and another instituted proceedings under Section 21(2)(a)(b) of the Act, 2021, seeking eviction on the grounds of default and personal requirement. The petitioner appeared before the Rent Authority and filed a preliminary objection/application dated 12.09.2025 under Section 38(2) of the Act, specifically pleading that no tenancy agreement existed between the parties, that the tenancy was admittedly month-to-month, and, therefore, proceedings under the Act, 2021 were not maintainable before the Rent Authority. It was further asserted that the landlords had failed to comply with Section 4 of the Act and that any remedy lay before the Court of Small Causes. The Rent Authority rejected the objection vide order dated 16.09.2025 and held the proceedings maintainable. The appeal preferred by the tenant under Section 35 of the Act, 2021, being Miscellaneous Civil (Rent Control) Appeal No.05 of 2026, was also dismissed by the Rent Control Tribunal, Jhansi, vide judgment and order dated 08.01.2026, affirming the order passed by the Rent Authority.

5. Since both petitions involve identical questions touching the jurisdiction of the Rent Authority under the Act, 2021 in the absence of a written tenancy agreement, and assail substantially similar orders passed by the Rent Authority and Rent Tribunal, they are being heard and decided together by this common judgment.

6. It deserves emphasis, at the outset, that the record discloses no dispute regarding the petitioners' status as tenants in occupation of the respective premises. The central controversy is not a denial of tenancy in the factual sense, but the legal consequence flowing from the absence of a written tenancy agreement and the proper statutory forum before which the landlords must proceed. This distinction is material, for the Act, 2021, is designed not merely to record tenancies, but to regulate landlord-tenant relations and to provide an expeditious adjudicatory mechanism for disputes arising therefrom.

Issues for Determination

7. Having regard to the controversy arising in these petitions, the following issues arise for consideration:

7.1 Whether, the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 excludes oral or month-to-month tenancies from its statutory ambit.

7.2 Whether, in the absence of a written tenancy agreement, proceedings under the Act, 2021 are maintainable before the Rent Authority, or whether disputes of such nature are triable only by the Court of Small Causes under the Provincial Small Causes Courts Act, 1887.

7.3 Whether, Sections 4(1) and 4(3)(b) constitute conditions precedent to the maintainability of proceedings before the Rent Authority, or whether they are mandatory regulatory provisions intended to ensure formalisation, disclosure and evidentiary certainty.

7.4 Whether, Section 38(2) excludes the jurisdiction of the Rent Authority where the parties have failed to execute, reduce into writing, or intimate a tenancy agreement in the manner contemplated by the Act.

Submissions

On Behalf of the Petitioners

8. Counsel for the petitioners has submitted that the initiation of proceedings before the Rent Authority under the Act, 2021 is without jurisdiction, since it is an admitted position that no written tenancy agreement exists between the parties. It is contended that the tenancies in question are purely oral and month-to-month in nature and, therefore, fall outside the statutory framework contemplated under Sections 4 and 38 of the Act.

9. It is further urged that the jurisdiction of the Rent Authority is confined to disputes arising out of tenancy agreements executed and submitted before the Rent Authority in accordance with Section 4 read with the First Schedule appended to the Act. According to the petitioners, the statutory scheme proceeds on the existence of a formally reduced and notified tenancy arrangement and does not extend to unwritten or oral tenancies.

10. In support of this submission, reliance has been placed on the decisions in **Amit Gupta v. Gulab Chandra Kanodia, Lavendra Singh v. Devendra Kumar Nagariya and Sri Raman Arora v. Susheel Kumar (Deceased),** to contend that although the Act contemplates regulation through written tenancy arrangements, the legislature has not expressly devised a complete remedial mechanism for unwritten tenancies, and that the jurisdiction of the Rent Authority is confined to tenancy agreements submitted before it under Section 4 of the Act.

11. It is, accordingly, submitted that in the absence of a written tenancy agreement, the Rent Authority lacked jurisdiction to entertain the proceedings and that the orders passed by the Rent Authority as well as the Rent Tribunal are unsustainable in law. The proceedings instituted by the respondent-landlords under the Act, 2021 are, therefore, liable to be held not maintainable, leaving it open to the landlords to pursue such remedies as may otherwise be available to them under the general law or before the Court of Small Causes.

12. Learned counsel for the petitioners has further submitted that the aforesaid decisions disclose a divergence in judicial approach on the interpretation of Sections 4 and 38 of the Act, 2021. According to the submission, while **Amit Gupta** and **Raman Arora** proceed on the premise that absence of a written tenancy agreement carries jurisdictional consequences, **Amarjeet Singh** and **Canara Bank** adopt a materially different approach by treating such absence as not affecting the maintainability of proceedings before the Rent Authority. It is, therefore, urged that the issue involves an apparent conflict between coordinate Bench decisions on a question touching jurisdiction and consequently deserves consideration by a Larger Bench so that the legal position may be authoritatively settled.

On behalf of the Respondent-Landlords

13. Counsel appearing for the respondent-landlords submits that the proceedings instituted before the Rent Authority are fully maintainable notwithstanding the absence of a written tenancy agreement. It is contended that the Act, 2021 nowhere excludes oral tenancy arrangements and that the expression 'tenancy agreement' occurring in Section 38(2) cannot be construed so narrowly as to confine the jurisdiction of the Rent Authority only to written agreements. Reliance has been placed upon **Vishal Rastogi v. Rent Controller/Additional District Magistrate (Judicial) and Another** and **Canara Bank** to contend that a tenancy agreement may be oral or written and that the jurisdiction of the Rent Authority is not ousted merely because the tenancy arrangement was not reduced into writing or its particulars were not submitted before the Rent Authority.

14. It is further submitted that Section 38 of the Act, 2021 is not a provision conferring jurisdiction, but one merely regulating and circumscribing the scope of adjudication by the Rent Authority. Placing reliance upon the reasoning in **Canara Bank**, learned counsel submits that Section 38(2) only limits the Rent Authority from adjudicating disputes relating to title or ownership and does not exclude unwritten tenancies from the ambit of the Act. It is argued that Section 4(3) itself contemplates pre-existing unwritten tenancies and permits submission of tenancy particulars even where no formal written agreement exists. Accordingly, once the relationship of landlord and tenant is admitted or otherwise established, the jurisdiction of the Rent Authority cannot be defeated merely on account of absence of a written tenancy agreement.

15. It has also been submitted that the view taken in **Lavendra Singh**, relying upon **Raman Arora**, that unwritten tenancies fall outside the purview of the Act, 2021, stands considerably diluted in view of the subsequent order passed by the Supreme Court of India in appeal therefrom, wherein the interference made by the High Court with the concurrent findings of the authorities below was specifically disapproved.

16. Counsel for the respondents further submits that the decisions relied upon on behalf of the petitioners do not disclose any irreconcilable conflict so as to require reference to a Larger Bench. According to the submission, Amit Gupta and Raman Arora were rendered in a distinct factual and statutory context concerning the maintainability and continuance of proceedings before the ordinary civil forum or the Court of Small Causes, whereas **Amarjeet Singh** and **Canara Bank** directly examine the extent of the Rent Authority's jurisdiction under the Act, 2021. It is urged that the apparent divergence is more superficial than real and arises from differences in the questions considered and the statutory provisions interpreted, rather than from any conflicting principle of law calling for authoritative reconsideration by a Larger Bench.

On behalf of the State

17. Learned Additional Advocate General, supporting the maintainability of proceedings under the Act, 2021 even in cases of unwritten tenancies, submits that **Canara Bank Branch Office and another v. Sri Ashok Kumar** exhaustively examines the statutory framework of the Act and authoritatively interprets the effect of Sections 4, 9 and 38 thereof. It is urged that the said decision specifically clarifies that **Amit Gupta** dealt with an entirely different issue and that there is no real conflict between the coordinate Bench decisions rendered by this Court. According to the submissions advanced, **Amit Gupta** was principally concerned the continuance and maintainability

of proceedings before the Court of Small Causes instituted prior to the enforcement of the Act, 2021, whereas in **Canara Bank** the issue directly arising for consideration was the legal status and adjudicability of unwritten tenancies under the Act itself.

18. It is further submitted that the judgment in **Lavendra Singh**, relying upon **Raman Arora**, proceeded on the premise that tenancies unsupported by written agreements fall outside the purview of the Act, 2021. However, the judgment was carried in appeal before the Supreme Court of India, where, upon hearing learned counsel for the parties and examining the record, the Court observed that the High Court was not justified in interfering with the concurrent findings returned by the authorities below. Consequently, the appeal was allowed, the judgment of the High Court was set aside, and the orders passed by the Rent Authority as well as the Rent Tribunal were restored. It is urged that the said order effectively disapproves the reasoning adopted in **Lavendra Singh**, which itself had drawn support from the line of reasoning in **Raman Arora.**

19. It is next contended that even the observations in **Raman Arora** show that the reservations expressed regarding the correctness of the view taken in **Amarjeet Singh v. Smt. Shiv Kumari Yadav** were primarily founded on three considerations, namely, the existence of an earlier coordinate Bench decision in **Amit Gupta**, the absence of detailed consideration of the scope of Section 38(2), and non-consideration of the legal effect of a State enactment having received Presidential assent.

20. Learned Additional Advocate General further submits that there is no conceptual distinction between a State enactment which has received the assent of the Governor and one which has received the assent of the President; in either case, the legislation remains an enactment of the Uttar Pradesh Legislature. The distinction, according to the submission, lies only in the constitutional field of operation. Presidential assent under Article 254 of the Constitution of India is obtained to remove or save repugnancy with a Central enactment operating in the Concurrent List, whereas assent of the Governor suffices where no such repugnancy arises or where the subject falls within the State List. It is, therefore, urged that Section 42 of the Act, 2021, which gives overriding effect to the Act over inconsistent State laws, would prevail, to the extent of inconsistency, over the suit-based dispute resolution framework referable to the Provincial Small Causes Courts Act as modified by the U.P. Civil Laws Amendment Act, 1972.

21. Developing the submission further, learned Additional Advocate General argues that Section 38(2) has been elaborately interpreted in **Canara Bank**, wherein it was held that the provision is not one conferring jurisdiction upon the Rent Authority but merely one regulating and circumscribing the extent of exercise of such jurisdiction. It is submitted that the reasoning in **Amit Gupta** does not sufficiently consider the effect of Section 4(7), the proviso to Section 9(5), and Section 42 of the Act. According to the submission, any interpretation excluding unwritten tenancies from the ambit of the Act would render these provisions otiose, particularly when Section 4(7) itself contemplates consequences arising from failure to furnish particulars of tenancy and the proviso to Section 9(5) expressly recognises situations where no written tenancy agreement exists.

22. Learned Additional Advocate General contends that no reference to a Larger Bench is warranted, inasmuch as the decisions relied upon by the petitioners do not lay down irreconcilable

propositions on the same question of law. According to the State, **Amit Gupta** and **Raman Arora** arose in a distinct statutory and transitional context concerning the continuance of proceedings before the Court of Small Causes, whereas Amarjeet Singh and Canara Bank directly examine the scope of the Rent Authority's jurisdiction under the Act, 2021. It is urged that the later decisions do not depart from the earlier line of authority but merely clarify the statutory position governing proceedings under the special enactment, particularly in light of Section 4(7), the proviso to Section 9(5), and the overriding effect of Section 42. The apparent conflict, according to the submission, is therefore more seeming than real and does not warrant reference to a Larger Bench.

23. It is lastly submitted that the principal concern which weighed with the Court in Amit Gupta was to ensure that a landlord is not rendered remediless in cases involving unwritten tenancies. However, the precise question whether unwritten tenancies stand excluded from the operation of the Act, 2021 did not directly arise therein. In contrast, the issue arose squarely in Canara Bank, where the statutory scheme was comprehensively analysed and it was held that unwritten tenancies are not excluded merely because the tenancy agreement had not been reduced into writing or its particulars had not been furnished before the Rent Authority.

Statutory Background and Scheme

24. To appreciate the rival submissions, it becomes necessary to examine the statutory background and the overall scheme of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021. The enactment is intended to regulate urban tenancies within the State. Prior to its commencement, a substantial number of tenancies in urban areas were governed through oral arrangements, informal understandings, rent receipts, inherited occupations, and long-standing possession unsupported by formal written instruments. Such informal arrangements frequently generated uncertainty, evidentiary disputes, delay in adjudication, and forum-shopping. The legislative mischief sought to be remedied was, therefore, the absence of a structured and transparent framework governing landlord-tenant relationships in urban areas.

25. The Act seeks to replace informality and uncertainty with a regime founded upon transparency, certainty of contractual terms, defined reciprocal rights and obligations, and expeditious adjudication through specialised fora. To achieve this objective, the statute requires tenancy arrangements to be reduced into writing and simultaneously establishes a dedicated adjudicatory framework comprising the Rent Authority as the primary forum and the Rent Tribunal as the appellate forum. The legislative policy is further reflected in the calibrated exclusion of the jurisdiction of ordinary civil courts in matters entrusted to the statutory authorities.

26. The enactment extends to the whole of Uttar Pradesh and applies to the urban areas specified under Section 1(3), with deemed commencement from 11.01.2021. The definition of "premises" under Section 2(c) is of wide amplitude and includes any building or part thereof let on rent for residential, commercial, or educational purposes, excluding premises used for industrial purposes and subject to further exclusions specified under Section 3(1). The breadth of the definition, read together with the institutional framework created under the Act, manifests a legislative intent to comprehensively regulate urban tenancy relationships through specialised mechanisms rather than through ordinary civil proceedings.

27. The statute must, therefore, be construed as an integrated and purposive code, and not as a collection of isolated provisions capable of producing inconsistent or self-defeating consequences. The requirement of a written tenancy agreement is one component of the broader statutory architecture and cannot be interpreted in a manner that frustrates the larger legislative design of efficient tenancy regulation and expeditious dispute resolution. Any interpretation that revives the very uncertainty, procedural complexity, and multiplicity of proceedings which the enactment sought to eliminate would run contrary to settled principles of purposive statutory construction.

Relevant Statutory Provisions

28. Since the controversy in these petitions turns fundamentally upon the construction of the statute itself, it is necessary, at the outset, to notice, in some detail, the provisions which are material to the present determination. The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 is a self-contained enactment intended to regulate landlord-tenant relations in urban premises through a specialised framework. The questions raised before this Court, therefore, require examination of the relevant statutory framework and the interrelationship of the provisions governing the formalisation of tenancies, the jurisdiction of the statutory forum, the exclusion of civil court jurisdiction, and the overriding effect of the enactment.

29. **Section 4(1)** provides that after the commencement of the Act, no person shall let or take on rent any premises except by an agreement in writing, and such agreement is to be informed to the Rent Authority in the prescribed manner. The provision is indicative of the legislative preference for written tenancy arrangements, transparency in the relationship between landlord and tenant, and record-based administration of tenancies under the statutory regime.

30. **Section 4(3)(b)** deals with pre-existing tenancies where no written agreement existed prior to the commencement of the Act, and requires the landlord and tenant to enter into such agreement and present the same before the Rent Authority within the prescribed period. The object of this clause is evidently to bring pre-existing or continuing tenancies within the discipline of the new enactment without disrupting existing occupancy arrangements.

31. The first proviso to **Section 4(3)** is of particular significance. It contemplates a situation where the parties either fail to present jointly a copy of the tenancy agreement or fail to reach at an agreement within the specified period. In such eventuality, each party is required separately to file particulars of the tenancy before the Rent Authority within prescribed period and the landlord may seek eviction on this ground alone, where he has submitted his particulars but the tenant has failed to do so. The proviso thus discloses that the statute does not proceed on the assumption that every tenancy will, in fact, be reduced into a formal written instrument before the statutory authority; rather, it expressly provides for contingencies of non-compliance by either party.

32. **Section 4(7)** is equally material. It declares that the information furnished under sub-sections (1), (2), (3) of Section 4 shall constitute □conclusive proof□ of the facts relating to tenancy and matters connected therewith. It further provides that in the absence of any statement of information, the landlord may file an application for eviction on that ground alone. This provision is significant not merely for what it affirms, but also for what it implies. It shows that the

Legislature attached evidentiary importance to formal disclosure, but simultaneously contemplated the consequences of failure to furnish such information without thereby destroying the statutory remedy itself. The provision, therefore, must be read as part of the larger scheme of regulation and proof, and not as a clause creating a jurisdictional vacuum.

33. **Section 21(2)** confers power upon the Rent Authority, on an application moved by the landlord, to order eviction and recovery of possession of the premises on the grounds enumerated therein. It is the principal remedial provision under the Act and provides the substantive machinery by which disputes relating to eviction are to be adjudicated within the special statutory framework.

34. **Section 38(1)** enacts that, save as otherwise provided in the Act, no Civil Court shall entertain any suit or proceeding insofar as it relates to the provisions of the Act.

35. **Section 38(2)** stipulates that the jurisdiction of the Rent Authority shall be limited to tenancy agreements submitted to it as specified in the First Schedule, and shall not extend to questions of title or ownership of premises.

36. **Section 42**, finally, gives overriding effect to the Act over anything inconsistent contained in any other law for the time being in force within the State.

37. Read together, these provisions reveal a legislative design that is both regulatory and remedial. Section 4 governs the formalisation and disclosure of tenancy arrangements; Section 21 provides the substantive remedy of eviction and related relief; Section 38 excludes the ordinary civil forum in respect of matters governed by the Act and defines the limits of the Rent Authority's jurisdiction; and Section 42 ensures that the statutory regime prevails over inconsistent legal provisions. The combined effect of Sections 21, 38 and 42 is that once a dispute falls within the statutory field occupied by the Act, the forum, remedy and procedure are intended to be governed by the special machinery created thereunder.

38. It is in that statutory setting that the controversy in the present petitions falls to be determined. The core question is not merely whether a written tenancy agreement exists, but what legal consequence follows from the absence of such an agreement where the landlord-tenant relationship is otherwise admitted or established and the dispute otherwise falls within the framework of the Act. The answer to that question must, therefore, be found by reading the provisions harmoniously, purposively and in light of the object which the Legislature sought to achieve.

Comparative Position Under the Earlier Law

39. For purposes of comparison, it is necessary to notice that the scheme underlying the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 19728 rested upon a materially different legislative framework. The earlier enactment essentially operated as a rent-control and release statute structured around the District Magistrate/Prescribed Authority model. Its provisions principally dealt with regulation of letting, control of rent and premium, determination of standard rent, restrictions upon eviction, and release of premises in specified contingencies. The

emphasis of the legislation was thus upon administrative regulation and controlled eviction within a predominantly rent-control framework.

40. The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 marks a conscious legislative departure from that model. Unlike the Act, 1972 the new enactment is not confined merely to rent control or regulation of eviction; rather it establishes a comprehensive and specialised framework governing urban tenancy relationships through formalised contractual arrangements and dedicated adjudicatory mechanisms. The constitution of the Rent Authority and the Rent Tribunal, coupled with the exclusionary provisions contained in Sections 38 and 42, manifests a clear legislative intent to shift tenancy adjudication away from the ordinary Civil Court structure and the earlier administrative-control regime towards specialised statutory fora exercising exclusive jurisdiction in matters covered by the Act.

41. This legislative reorientation is of considerable interpretative significance. Under the earlier regime, landlord-tenant litigation often proceeded through conventional civil or small cause processes, shaped by doctrines and procedures evolved in a different statutory environment. The Act, 2021, by contrast, introduces a self-conscious regulatory frame work in which the tenancy relationship is expected to be documented, disclosed and administered within a statutory system supported by specialised fora. The creation of the Rent Authority, the appellate Rent Tribunal, the bar of civil court jurisdiction in specified matters, and the overriding effect conferred upon the enactment all indicate that the Legislature intended to move away from the uncertainties of the prior regime and towards a more self-contained code for urban tenancy regulation.

42. The transition from the Act, 1972 regime to the framework introduced by the Act, 2021 is therefore not merely institutional but conceptual in nature. The former legislation proceeded primarily on the basis of regulatory control over eviction and rent, whereas the latter seeks to create a tenancy regime founded upon contractual certainty, disclosure obligations, specialised adjudication and expeditious dispute resolution.

Interpretative Consequence

43. The interpretative consequence of this legislative transition is of considerable significance. Once it is recognised that the Act, 2021 was enacted not as a minor procedural supplement to the earlier regime but as a later and more specialised statutory framework, its provisions must be construed in a manner that advances, rather than defeats, that legislative transformation. The Court must therefore read the Act as a whole and give due weight to its structural features, its adjudicatory design and the mischief which it seeks to remedy.

44. The mischief sought to be addressed by the enactment is evident from its scheme. Informal and undocumented tenancies, uncertainty regarding the terms of occupation, multiplicity of proceedings, forum-related objections and delay in adjudication were all features capable of frustrating both landlord remedies and tenant protections. The Act, 2021 responds to those deficiencies by introducing a framework that insists upon greater formality and disclosure, while simultaneously creating specialised fora for adjudication of disputes arising out of tenancy relations.

45. The significance of that statutory scheme lies in the fact that the Act contemplates not merely cases of strict and ideal compliance, but also situations in which the parties may have failed to adhere fully to the procedural discipline contemplated by the enactment. A construction which renders the statutory forum powerless upon every departure from the formal requirements of the Act would, in substance, undermine the very machinery which the Legislature has set in place. The Court must, therefore, avoid any interpretation that would allow the substantive remedial framework of the Act to be defeated by procedural non-compliance alone. If the provisions of the Act were construed so as to disable the Rent Authority from acting in the absence of prior strict compliance, while Section 38 simultaneously excludes recourse to the ordinary civil forum, the inevitable consequence would be the creation of a remedial vacuum. Such a consequence would frustrate, rather than further, the object and purpose of the statute. The Act must, accordingly, receive a construction that preserves its remedial efficacy even in cases of imperfect compliance, subject always to the express language and consequences enacted by the Legislature.

46. The true import of Sections 4, 21, 38 and 42 emerges when the statute is viewed as an integrated scheme. While Section 4 seeks to introduce certainty and transparency through documentation and disclosure of tenancy arrangements, Section 21 creates the substantive mechanism for adjudication of eviction and allied claims. Section 38 correspondingly excludes the jurisdiction of ordinary civil courts in matters assigned to the statutory authorities, and Section 42 reinforces the primacy of the enactment by conferring overriding effect upon its provisions. Collectively, these provisions disclose a legislative intention to entrust disputes arising out of landlord-tenant relationships, within the ambit of the Act, to the specialised adjudicatory framework constituted under the later enactment rather than to the ordinary forum structure operating under the earlier regime.

47. This does not mean that every question arising under the Act stands answered merely by invoking its overriding or exclusionary provisions. It does, however, mean that interpretation must proceed on the premise that the Act, 2021 is intended to be workable, self-executing and remedially effective. The Court must avoid an interpretation that revives the very uncertainty, fragmentation and procedural complexity that the legislation was enacted to overcome. Equally, the Court must avoid construing any one provision in a manner that nullifies the larger statutory design.

48. Accordingly, the provisions of the Act must receive a harmonious and purposive construction that preserves both facets of the legislative scheme, namely, formalisation of tenancy arrangements and effective adjudication of tenancy disputes through specialised statutory fora. It is in the light of that broader statutory context that the true effect of Sections 4, 21, 38 and 42 falls to be considered.

Precedents

49. The authorities cited at the Bar and otherwise, relevant to the controversy, may now be noticed.

50. In **Amit Gupta v. Gulab Chandra Kanodia**, the Court was principally concerned with two questions. The first was whether proceedings pending before the Court of Small Causes,

together with revisions arising therefrom, stood saved or abated upon enforcement of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021. The second pertained to the scope of the bar contained in Section 38 of the Act, namely, whether such bar was absolute in nature or whether proceedings before the Court of Small Causes would continue to remain maintainable in respect of tenancies not governed by tenancy agreements contemplated under the Act, 2021.

51. While examining the aforesaid questions, the Court undertook an analysis of the legislative history, including the effect of the U.P. Civil Laws Amendment Act, 1972, and the transition from the earlier rent-control regime to the statutory framework introduced under the Act, 2021. The Court held, in substance, that the jurisdiction of the Court of Small Causes under the earlier regime was not entirely extinguished and would continue to survive, particularly in relation to disputes concerning tenancies not covered by tenancy agreements executed or submitted in accordance with Section 4 of the Act, 2021.

52. In paragraph 96 of the judgment, as subsequently noticed in the later decisions, it was observed, in substance, that Section 4(3) specifically contemplates a situation where the landlord furnishes the prescribed particulars before the Rent Authority but the tenant fails to comply with the corresponding statutory obligation, in which event eviction proceedings are contemplated under the Act. The Court further observed that where both parties fail to comply with the requirement of furnishing or executing a written tenancy agreement, the statute does not expressly provide a specific mechanism for eviction under the Act, 2021.

53. In **Amarjeet Singh v. Smt. Shiv Kumari Yadav**, the controversy was comparatively narrower, though more directly connected with the issue arising in the present case. The tenant therein questioned the maintainability of proceedings instituted under Section 21(2) of the Act on the ground that no unique identification number had been allotted, no digital platform contemplated under the Rules had been created, and that the jurisdiction of the Rent Authority extended only to tenancy agreements formally submitted before it in accordance with Section 4. The landlord, on the other hand, asserted that the tenant had been called upon through notice to execute the tenancy agreement and furnish the requisite particulars before the Rent Authority, but had failed to comply, whereafter eviction proceedings came to be instituted.

54. The Court in **Amarjeet Singh** undertook a detailed examination of Section 4 and held that the requirement of furnishing information to the Rent Authority in the format prescribed under the First Schedule is primarily intended to attach evidentiary conclusiveness to such information in relation to the facts of tenancy and connected matters. It was expressly held that furnishing of such information is not a sine qua non for maintaining proceedings under Section 21(2) of the Act. The Court also observed that where the existence of the tenancy relationship is admitted, strict formal compliance with Section 4 cannot be treated as indispensable for invoking the jurisdiction of the Rent Authority, and that in cases where tenancy is disputed, the parties remain at liberty to adduce evidence before the authority in accordance with law.

55. The Court also observed that the earlier decision in **Amit Gupta** did not conclude the controversy arising before it, since that case had arisen in a different factual and legal context and, according to the learned Judge, had not sufficiently adverted to the import and effect of Section

4(7) of the Act. The decision in **Amarjeet Singh** thus marked a discernible shift away from a purely formal interpretation of Section 38(2), towards a more purposive construction of Sections 4 and 21 in the context of the broader statutory scheme.

56. In **Raman Arora v. Susheel Kumar (Deceased)** and connected matters, the Court considered the differing approaches adopted in **Amit Gupta and Amarjeet Singh** concerning the applicability and reach of the Act, 2021 in relation to pre-existing tenancies. Upon examining the divergent lines of reasoning, the Court ultimately held, on the facts of the case before it, that proceedings instituted before the Court of Small Causes continued to remain maintainable, particularly as no written tenancy agreement had been executed between the parties and the earlier forum-creating legislation, having received Presidential assent, continued to operate in the field.

57. At the same time, the Court expressed reservations regarding certain aspects of the reasoning adopted in **Amarjeet Singh** and emphasised the necessity of maintaining doctrinal consistency while interpreting Sections 4 and 38 of the Act, 2021. The decision thus reflected the differing judicial approaches regarding the extent to which the absence of a written tenancy agreement affects the jurisdiction of the Rent Authority under the new statutory regime.

58. Prior to the subsequent line of authority, **Vishal Rastogi v. Rent Controller/Additional District Magistrate (Judicial) and Another** had adopted the view that a tenancy agreement may be either oral or written and that the mere absence of a written instrument does not, by itself, exclude the applicability of the Act, 2021. The Court observed that the expression 'tenancy agreement' occurring in Section 38(2) cannot be construed in an unduly restrictive manner so as to exclude oral tenancies altogether from the statutory framework. It was further held that the jurisdiction of the Rent Authority is not extinguished merely because the tenancy arrangement has not been formally reduced into writing or because the particulars contemplated under the First Schedule have not been furnished before the authority.

59. The reasoning adopted in **Vishal Rastogi** proceeds on the premise that the Act is fundamentally intended to regulate landlord-tenant relationships and provide a specialised adjudicatory mechanism, and that procedural non-compliance with the requirement of formal documentation cannot be permitted to defeat the substantive operation of the statute. The decision thus lends support to a broader and purposive construction of the enactment consistent with its underlying legislative object.

60. The later decision in **Canara Bank Branch Office and Another v. Sri Ashok Kumar** carries the discourse further and directly addresses the question whether the absence of a written tenancy agreement or non-furnishing of tenancy particulars before the Rent Authority divests the authority of jurisdiction in cases where the tenancy relationship itself is admitted. The Court framed the issue in express terms, namely, whether the Rent Authority under the Act, 2021 possesses jurisdiction to entertain proceedings initiated by the landlord where no written tenancy agreement has been executed and the landlord has also not furnished the particulars of tenancy before the authority in the prescribed manner.

61. In **Canara Bank**, the Court undertook a comparative examination of the Model Tenancy Act and the Act, 2021, and noticed a conscious legislative departure adopted by the State Legislature. Under the Model Tenancy Act, failure to intimate either the execution or non-execution of a tenancy agreement attracted the consequence that the landlord and tenant would not be entitled to seek relief under the enactment. The Uttar Pradesh Legislature, however, while enacting the Act, 2021, consciously omitted any such disabling consequence and instead incorporated Section 4(7), which expressly contemplates that, in the absence of any statement of information, the landlord may institute proceedings for eviction on that ground alone.

62. That distinction assumes considerable significance in determining the true legal effect of non-compliance with Section 4. The legislative choice not to incorporate a provision barring remedies under the Act in cases of non-registration or non-furnishing of particulars indicates that the statute does not treat such default as jurisdictionally fatal. Rather, the scheme of Section 4(7) demonstrates that the Legislature envisaged adjudication by the Rent Authority even in situations of non-compliance, thereby reinforcing the broader remedial and regulatory purpose underlying the enactment.

63. A synthesis of the aforesaid decisions indicates that while the Act, 2021 undoubtedly introduces a structured statutory regime emphasising written tenancy arrangements and disclosure of prescribed particulars, the operation of the enactment is not intended to be frustrated solely on account of procedural non-compliance, particularly in cases where the existence of the landlord-tenant relationship is otherwise admitted or capable of being established from the material on record. The judicial trend, as reflected in the later authorities, has been to preserve the efficacy of the specialised adjudicatory framework created under the Act and to avoid an interpretation that would render its remedial provisions ineffective in relation to a substantial category of urban tenancy disputes founded upon oral, informal or pre-existing arrangements.

64. The decisions, when read harmoniously, reflect an underlying recognition that the statute is fundamentally regulatory and remedial in character. Consequently, procedural requirements relating to execution or furnishing of tenancy agreements are not to be construed in a manner that defeats the substantive jurisdiction of the Rent Authority or revives the very uncertainties and multiplicity of proceedings which the enactment sought to remedy.

Whether Reference to a Larger Bench is Warranted

65. Read together, **Amit Gupta, Amarjeet Singh, Raman Arora and Canara Bank Branch Office and Another** indicate a discernible path toward a coherent and workable reconciliation of the statutory scheme. While Raman Arora cautions against casual departure from earlier precedent and emphasises that any doctrinal evolution must rest upon clear statutory reasoning and, where necessary, authoritative reconsideration, Canara Bank supplies such reasoning through a detailed examination of Section 4(7) and the conscious legislative departure from the framework of the Model Tenancy Act.

66. It is, however, necessary to notice that in **Raman Arora** considerable emphasis was placed upon the circumstance that the forum of the Judge, Small Causes in landlord-tenant disputes

had been preserved under the U.P. Civil Laws Amendment Act, 1972, an enactment which had received Presidential assent. The reasoning in that decision proceeds substantially on the premise that, in the absence of clear and irreconcilable inconsistency, a subsequent State enactment ought not lightly to be construed as impliedly displacing or effacing a forum created under an earlier law enjoying such assent.

67. That aspect undoubtedly deserves due weight and careful consideration. At the same time, the controversy arising in the present petitions must be examined in the context of the overall scheme, object and interrelationship of the provisions of the Act, 2021. The duty of the Court is to construe the later enactment in a manner that preserves the continued operation of the earlier forum legislation in fields not occupied by the subsequent statute, while simultaneously giving full and meaningful effect to the specialised remedies, overriding provision and jurisdictional bar incorporated in Sections 21, 38 and 42, wherever the dispute pertains to premises and tenancy relationships governed by the Act, 2021, particularly in cases where the existence of the landlord-tenant relationship is admitted or otherwise capable of being established.

68. The mere fact that the U.P. Civil Laws Amendment Act, 1972 received Presidential assent does not elevate the forum provisions preserved or introduced thereunder to an immutable constitutional status. Presidential assent under Article 254 of the Constitution operates to remove or save repugnancy in relation to an existing Central enactment operating within the Concurrent field; it does not freeze the earlier statutory framework or forum structure in perpetuity so as to denude the competent State Legislature of authority to enact a subsequent law occupying the same legislative field. Consequently, where a later enactment creates a specialised adjudicatory mechanism, incorporates an overriding clause and manifests a clear legislative intention to confer exclusive jurisdiction in respect of a defined class of disputes, full effect must ordinarily be given to the later legislative scheme to the extent of any inconsistency between the two enactments.

69. The distinction noticed in Canara Bank is of considerable interpretative significance. It demonstrates that the Legislature did not intend non-compliance with Section 4 to operate as a statutory dead end or to compel parties to revert, by default, to the older forum structure. On the contrary, the statute itself treats non-submission of the prescribed information as a circumstance enabling invocation of the statutory remedy before the Rent Authority.

70. The analysis undertaken in Canara Bank demonstrates that non-compliance with Section 4 cannot be treated as resulting in a jurisdictional extinction of the authority of the Rent Authority in cases where the existence of the landlord-tenant relationship is admitted or otherwise established. Rather, the decision clarifies that the legislature, despite emphasising formalisation of tenancy arrangements, deliberately refrained from providing that failure to execute or furnish a written tenancy agreement would altogether deprive parties of remedies under the Act. The statutory consequence contemplated under Section 4(7) instead indicates continued adjudicatory competence of the Rent Authority even in situations of procedural default.

71. Viewed in this manner, the aforesaid decisions are capable of being harmoniously understood as recognising that while the Act, 2021 strongly encourages written tenancy arrangements and disclosure of prescribed particulars, the absence of such compliance does not, by

itself, oust the jurisdiction of the specialised forum in matters where the tenancy relationship itself is not in serious dispute.

72. The submission advanced on behalf of the petitioners-tenants that the jurisdictional issue arising in the present petition deserves reference to a Larger Bench on the ground of an asserted conflict between the decisions in **Amit Gupta** and **Raman Arora** on the one hand**,** and **Amarjeet Singh** and **Canara Bank** on the other, does not commend acceptance. A reference to a Larger Bench is not to be made as a matter of course merely because multiple coordinate Bench decisions are cited; such reference is warranted only where there exists a real and irreconcilable conflict on a material question of law which cannot be resolved by settled principles of precedent and interpretation.

73. Judicial discipline requires the Court, in the first instance, to undertake a genuine exercise to reconcile apparently divergent decisions and to ascertain whether the perceived inconsistency relates to the ratio decidendi or merely arises from differences in factual context, statutory setting, or the extent of observations made. Where earlier decisions can stand together by confining each to its appropriate field of operation, the Court must adopt that course rather than multiply references where the law is, in substance, capable of coherent application.

74. The perceived inconsistency between precedents does not invariably arise from any divergence in the governing principles of law; more often, it is attributable to differences in the factual matrices to which those principles were applied. It is well settled that the binding force of a decision lies in its ratio decidendi, namely, the principle of law emerging from the application of the legal rule to the facts actually determined, and not in every incidental observation or in the ultimate conclusion reached on superficially similar facts. Even a single distinguishing circumstance may materially alter the legal outcome notwithstanding an apparent similarity in the issues involved. This principle was authoritatively stated in **Regional Manager v. Pawan Kumar Dubey,** where it was observed that apparent conflict between decisions often disappears once their respective ratios are properly ascertained. The classic formulation in **Quinn v. Leathem** likewise affirms that a case is an authority only for what it actually decides, and not for what may logically or incidentally follow from it. Precedents must, therefore, be applied with due regard to the factual and statutory context in which the governing principle was laid down, and not by a mechanical comparison of conclusions.

75. Tested on the aforesaid principle, this Court finds that no such irreconcilable conflict exists. The line of decisions represented by Amit Gupta and Raman Arora principally addressed the maintainability of proceedings before the civil court or the Court of Small Causes in relation to unwritten or oral tenancies, and, in that context, held that such proceedings are not rendered non-maintainable merely upon enforcement of the Act, 2021. On the other hand, Amarjeet Singh and, more pointedly, Canara Bank considered the converse issue, namely, whether the Rent Authority is denuded of jurisdiction to entertain eviction proceedings merely because no written tenancy agreement has been executed or its particulars have not been furnished.

76. Thus, the two lines of authority operate in distinct though cognate fields. The former concerns the survival and maintainability of proceedings before the ordinary Civil or Small Causes

Court under a transitional or parallel statutory framework, whereas the latter concerns the scope of jurisdiction of the Rent Authority under the Uttar Pradesh Act No. 16 of 2021. Once this distinction is appreciated, the apparent conflict substantially dissolves, as the decisions do not lay down irreconciable propositions on the same legal issue but address different facets of the statutory scheme.

77. The decision in Canara Bank furnishes the necessary doctrinal bridge between Amit Gupta and Amarjeet Singh by demonstrating, from the statutory text itself, that the Act, 2021 contemplates enforceable rights and adjudicatory remedies even in situations where the tenancy arrangement has not been reduced into writing and the prescribed particulars have not been furnished before the Rent Authority. The decision thus reinforces the principle that procedural non-compliance under Section 4 cannot, by itself, be construed as extinguishing the jurisdiction of the specialised forum created under the enactment.

78. This conclusion is reinforced by the legislative contrast noticed in Canara Bank between the U.P. enactment and the Model Tenancy framework, wherein the latter expressly provides disabling consequences, whereas the former consciously omits such stipulation. Where the Legislature, despite being aware of a statutory model, has chosen not to incorporate a disabling consequence, such omission cannot be supplied by judicial interpretation. Viewed thus, Canara Bank does not depart from Amit Gupta or Raman Arora, but clarifies the jurisdictional position within a distinct statutory inquiry.

79. It is well settled that the principle of harmonious construction governs not only statutory interpretation but also the approach to apparently divergent judicial precedents. Where the underlying ratios can be reconciled by reference to their statutory context, factual foundation, or the distinction between binding ratio and general observation, a reference to a Larger Bench is not warranted. Such reference is justified only where reconciliation is impossible, and not where the law merely requires contextual alignment.

80. The circumstances warranting reference are, therefore, clearly absent. First, the perceived divergence does not arise from conflicting ratio on the same legal issue but from differing statutory and factual contexts. Secondly, no issue of fact necessitates reconsideration. Thirdly, the position of law, particularly after Canara Bank, is sufficiently clear that the Rent Authority is not divested of jurisdiction merely because the tenancy is oral or unrecorded. Fourthly, broader observations in earlier decisions must be confined to the issues actually decided therein.

81. In view of the above, this Court is of the considered opinion that the matter does not warrant reference to a Larger Bench. The apparent divergence in the authorities cited is capable of reconciliation on settled principles of precedent, contextual reading, and harmonious construction. Canara Bank provides a coherent exposition of the statutory scheme by clarifying that absence of a written tenancy agreement or non-furnishing of particulars does not, by itself, operate as a bar to the jurisdiction of the Rent Authority, and this position can coexist with the earlier decisions when each is confined to its proper sphere.

82. Having thus held that no reference to a Larger Bench is warranted, and having considered the rival submissions, the statutory framework, and the precedents governing the field, this Court now proceeds to examine the objection founded on the absence of a written tenancy agreement in the light of the relevant provisions of the Act, 2021 and to determine the issues arising for consideration.

Analysis

83. The foremost principle that must guide the interpretative exercise is that the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 is a special and self-contained enactment designed to regulate urban tenancy relationships within the State through a specialised adjudicatory structure comprising the Rent Authority and the Rent Tribunal.

84. The statute does not merely create substantive rights and obligations between landlords and tenants; it simultaneously establishes a complete procedural and remedial framework, including a designated forum of adjudication, summary procedure, appellate mechanism, execution process and a carefully structured scheme of finality. The legislative intent underlying such an enactment is plainly to provide an effective and expeditious mechanism for resolution of tenancy disputes within the statutory framework itself.

85. Consequently, the provisions of the Act cannot be construed in a manner that renders its principal remedial machinery ineffective in relation to the very class of disputes which the legislation was principally enacted to govern. An interpretation that excludes a substantial body of existing urban tenancies from the jurisdiction of the Rent Authority solely on account of absence of formal written documentation would substantially undermine the efficacy of the statutory scheme and defeat the broader legislative purpose underlying the enactment.

86. Ultimately, the Act, 2021 must receive a construction that advances its remedial object and avoids an interpretation that results in denial of remedy in a class of disputes which the statute otherwise seeks to regulate. A construction that makes the jurisdiction of the Rent Authority contingent solely upon procedural compliance by parties who themselves may be in default would run contrary to the legislative intent and materially impair the efficacy of the statutory framework.

87. The need to adopt a coherent and workable construction assumes added significance in view of the divergent approaches being taken by subordinate courts and statutory authorities on the scope and interrelation of Sections 4 and 38 of the Act, 2021. It has, therefore, become necessary to clarify the legal position so that the statute is applied with consistency and litigants are not driven from one forum to another on the basis of differing interpretations. Precedential clarity is of particular importance in rent matters, where the forum, remedy and consequences of default directly affect the rights of both landlord and tenant, and where uncertainty at the trial stage is liable to generate recurring jurisdictional objections, procedural delay and avoidable multiplicity of proceedings.

88. The Court must equally remain guided by the settled principle of harmonious construction. Where two interpretations are reasonably possible, the Court ought to adopt that construction which

reconciles the statutory provisions and advances the legislative object rather than one which produces inconsistency or conflict between them. Courts ought not to read conflicts where none truly exist, nor readily infer inconsistency or repugnancy where the statutory provisions can be read together and allowed to operate coherently. Sections 4, 9, 21, 38 and 42 of the Act , 2021 admit of such harmonious construction. A construction which preserves the efficacy of the specialised forum, gives full effect to the remedial framework created by the statute, and avoids unsettling a substantial body of pending and future tenancy disputes must, therefore, be preferred.

Nature of Section 4

89. Section 4 occupies a pivotal position within the legislative framework of the Act, 2021; yet, it cannot be construed in isolation or divorced from the larger statutory scheme embodied in Sections 21, 38 and 42 of the Act. The enactment contemplates not merely situations of ideal compliance through formally executed written tenancy agreements, but also situations in which the parties, despite the statutory mandate, fail to execute or furnish such agreements before the Rent Authority. In such cases, the legislative response is not the collapse of the statutory mechanism or the exclusion of jurisdiction, but the continued operation of the specialised fora created under the Act itself.

90. The statutory scheme indicates that the requirement of a written tenancy agreement is intended to advance certainty, transparency, disclosure and evidentiary discipline in urban tenancy relations. At the same time, the adjudicatory framework established by the Act is designed to ensure that disputes arising out of landlord-tenant relationships are not rendered remediless merely because the parties have failed to conform to the prescribed formal structure. A contrary interpretation would permit the substantive remedial framework of the statute to be defeated by procedural non-compliance and would revive the very uncertainty, multiplicity of proceedings and forum-related confusion which the legislation sought to remove.

91. Section 4 must, therefore, be understood as assuming an enabling, regulatory and evidentiary character. Its object is to encourage disclosure, documentary certainty and administrative supervision, and not to nullify the statutory remedies available to either landlord or tenant in the event of dispute. The Act does not indicate that failure to comply with the formal requirements under Section 4 results in forfeiture of rights or extinction of jurisdiction. On the contrary, the structure of the enactment suggests that such non-compliance may attract evidentiary or procedural consequences, but not the drastic consequence of ousting the jurisdiction of the specialised authority.

92. Although Section 4 employs the expression □shall□, the statute does not prescribe any consequence divesting the landlord of the right to seek eviction merely because the prescribed particulars were not furnished before the Rent Authority. A construction which elevates prior intimation into a jurisdictional precondition for the maintainability of proceedings under the Act would substantially frustrate the object and operation of the enactment itself. It is a settled principle of interpretation that procedural prescriptions intended to facilitate justice are not ordinarily construed so as to destroy substantive rights unless the statute clearly commands such a result.

93. Section 4, therefore, cannot be read as a disabling provision intended to defeat the jurisdiction of the statutory forum. Its evident purpose is to formalise tenancy relationships, minimise disputes concerning the terms of tenancy, and introduce documentary certainty through submission of prescribed information and allotment of a unique identification number. The provision is thus regulatory and evidentiary in character, intended to strengthen transparency and institutional record-keeping within the statutory regime, and not to transform procedural default into a jurisdictional bar.

94. Section 4(7) is particularly significant in this regard. While it provides that information furnished before the Rent Authority shall constitute conclusive proof regarding facts relating to tenancy and connected matters, the absence of such information does not result in annihilation of the tenancy relationship nor extinguishment of the landlord□s statutory remedy. On the contrary, the structure of the enactment suggests that non-submission of the prescribed information may itself furnish a ground enabling the landlord to invoke the eviction mechanism under the Act. The provision, therefore, reinforces the conclusion that procedural default under Section 4 does not operate as a jurisdictional bar to proceedings before the Rent Authority.

Proof of Tenancy and Existence of Tenancy

95. The evidentiary function of Section 4 also necessitates a distinction between proof of tenancy and the existence of tenancy itself. Section 4 provides a statutory mechanism for formal proof, disclosure and institutional record of tenancy arrangements, and information furnished thereunder carries evidentiary value within the scheme of the Act. However, the absence of such formal compliance does not ipso facto extinguish the underlying landlord-tenant relationship where its existence is otherwise admitted or is capable of being established from the material on record.

96. In cases where the relationship of landlord and tenant is admitted and undisputed, the principal evidentiary object underlying Section 4 stands substantially satisfied by such admission itself. To insist, in every case, upon prior submission of particulars in the First Schedule as an inflexible condition precedent to the jurisdiction of the Rent Authority would amount to elevating procedural form over substantive rights and remedies, a consequence not borne out by the language, structure or purpose of the enactment. Properly construed, Section 4 regulates the mode of formalisation and proof of tenancy; it does not determine the very existence of the jural relationship itself in cases where that relationship is otherwise admitted or established.

97. This distinction assumes particular importance in applying the Act to pre-existing or unwritten tenancies. The statutory requirement of reduction into writing serves the object of certainty and orderly administration; but the absence of such formalisation cannot, in itself, efface an otherwise admitted tenancy relationship or place the dispute beyond the regulatory field of the Act. To hold otherwise would be to confuse the statutory mode of evidencing tenancy with the legal existence of tenancy, and thereby to attribute to Section 4 a disabling consequence which the Legislature has nowhere chosen to impose.

Construction of Section 38(2)

98. It is in the aforesaid backdrop that Section 38(2) falls to be construed. To read that provision as wholly excluding the jurisdiction of the Rent Authority whenever no written tenancy agreement exists would substantially defeat the scheme of the Act itself. Such an interpretation would render Section 4(3)(b) largely unworkable, notwithstanding that the provision expressly contemplates pre-existing oral or unwritten tenancies and requires such arrangements to be reduced into writing. It would equally render otiose the first proviso to Section 4(3) and Section 4(7), both of which are predicated upon failure to arrive at agreement or failure to submit particulars before the Rent Authority. An interpretation that reduces these provisions to futility or redundancy cannot be accepted.

99. Indeed, any construction suggesting that the Act provides no adjudicatory remedy in relation to unwritten tenancies would run directly contrary to the evident remedial and regulatory purpose underlying the enactment. Courts ordinarily avoid interpretations that create rights without remedies, obligations without enforceability, or statutory fora without effective jurisdiction. A construction that excludes a substantial category of existing urban tenancies from the operation of the Act merely because the parties failed to formalise the arrangement in writing would revive the very uncertainty and multiplicity of proceedings which the legislation sought to remedy.

100. Equally significant is the consequence that would ensue if the tenant□s objection were accepted. If absence of a written tenancy agreement were to oust the jurisdiction of the Rent Authority, while Section 38 simultaneously excludes the jurisdiction of civil courts, the result would be a legal vacuum whereby an admitted tenancy dispute would be left without any effective forum. Such a construction would defeat the object of the Act, 2021 and produce consequences which the Court must avoid when a coherent alternative interpretation is available.

101. Properly construed, Section 38(2) is intended to confine the jurisdiction of the Rent Authority to disputes arising out of landlord-tenant relationships governed by the Act and to exclude adjudication of complicated questions of title and ownership more appropriately triable before ordinary civil courts. The reference to tenancy agreements submitted before the authority indicates that information furnished in the prescribed manner ordinarily constitutes the basis for streamlined and summary adjudication under the statutory scheme. However, the provision cannot be interpreted to mean that an admitted or otherwise established landlord-tenant relationship ceases to fall within the ambit of the Act merely because the parties defaulted in complying with the procedural requirements of Section 4.

102. The expression concerning tenancy agreements submitted to the authority cannot be read divorced from Section 4(3)(b) and Section 4(7), for the statute itself expressly envisages situations where no written agreement was executed or where the prescribed particulars were not furnished. Section 38(2), therefore, does not operate to exclude oral or unwritten tenancies altogether from the statutory framework, nor does it mandate that every such dispute must necessarily be relegated to the Court of Small Causes. To accept such a construction would not only render certain provisions of Section 4 substantially otiose, but would also undermine the legislative intention of creating a specialised and self-contained adjudicatory mechanism for regulation of urban tenancy disputes under the Act, 2021.

103. Accordingly, the correct interpretative approach is to read Section 4 and Section 38(2) harmoniously, so that the formal requirements of the statute are given due effect without permitting procedural non-compliance to destroy the remedial framework established by the Legislature. So understood, the Act continues to operate as a workable and effective code regulating tenancy relations through specialised fora, while preserving the distinction between proof of tenancy, existence of tenancy, and the jurisdictional limits of the Rent Authority.

Legislative Purpose

104. The aforesaid interpretation also accords with the broader legislative purpose underlying the enactment. The Act, 2021 was introduced with the object of replacing the earlier regime by establishing a more, efficient and specialised mechanism for adjudication of disputes relating to urban tenancies. The statute seeks to regulate landlord-tenant relationships through a comprehensive framework emphasising transparency, certainty and expeditious resolution of disputes before specialised fora.

105. If cases involving admitted or otherwise established tenancies are nevertheless driven outside the statutory framework merely because the parties failed to comply with the procedural requirements of Section 4, the consequence would be anomalous. The greater the non-compliance with the statutory mandate, the stronger would become the argument for excluding applicability of the Act itself. Such a construction would effectively permit parties to defeat the operation of the statute by relying upon their own default and would undermine the efficacy of the specialised adjudicatory mechanism created by the Legislature.

106. The Court must, therefore, avoid an interpretation that rewards procedural non-compliance and frustrates the legislative object underlying the enactment. The statute was intended to bring informal and unstructured urban tenancy arrangements within a regulated legal framework, not to render the statutory remedies unavailable precisely in relation to the class of tenancies that historically existed without formal written documentation.

Reconciliation of the Earlier Decisions

107. The observations in **Amit Gupta** must be understood in the factual and legal context in which that decision was rendered. The principal controversy there concerned the survival of pending proceedings before the Court of Small Causes and the extent to which the Act, 2021 affected the earlier forum structure preserved under the U.P. Civil Laws Amendment Act, 1972. The decision cannot be construed as laying down an inflexible proposition that every unwritten tenancy necessarily falls outside the ambit of the Act, 2021, irrespective of the nature of the dispute or the admitted existence of the landlord-tenant relationship.

108. Similarly, **Raman Arora**, while emphasising the continued relevance of the earlier forum structure and cautioning against casual departure from precedent, arose in the context of reconciling the new enactment with the jurisdiction historically exercised by the Court of Small Causes. The decision underscores the need for doctrinal consistency, but does not conclusively hold

that the Rent Authority is divested of jurisdiction in every case where the tenancy arrangement has not been reduced into writing.

109. On the other hand, **Vishal Rastogi** recognised that a tenancy arrangement may be oral as well as written and held that absence of formal documentation does not, by itself, exclude the applicability of the Act, 2021. **Amarjeet Singh** directly addressed the question whether furnishing of information under Section 4 constitutes a condition precedent to maintainability of proceedings under Section 21(2), and answered the issue in the negative where the tenancy relationship is admitted. The reasoning subsequently elaborated in **Canara Bank**, particularly with reference to Section 4(7) and the conscious legislative departure from the Model Tenancy Act, further clarifies that procedural non-compliance under Section 4 was not intended to result in extinction of the statutory remedy or ouster of the jurisdiction of the Rent Authority.

110. Read harmoniously, the aforesaid decisions support the conclusion that while the Act strongly encourages formalisation and disclosure of tenancy arrangements, the absence of a written tenancy agreement does not, by itself, place an admitted landlord-tenant dispute outside the adjudicatory framework created under the Act, 2021.

Harmonious Principle

111. The statutory scheme, when harmoniously construed, leads to the conclusion that where the premises are covered by Section 1(3), are not excluded from the operation of the statute, and the existence of the landlord-tenant relationship is admitted or otherwise undisputed, the provisions of the Act, 2021 would apply notwithstanding the absence of a written tenancy agreement or non-submission of the prescribed particulars before the Rent Authority. In such cases, disputes relating to eviction, arrears of rent, revision of rent and allied reliefs are required to be pursued before the specialised forum constituted under the Act, and the jurisdiction of the ordinary civil court, including the Court of Small Causes, would stand excluded by virtue of Section 38(1).

112. Conversely, where the dispute substantially involves questions of title or ownership, or where the premises fall outside the territorial, subject-matter or statutory ambit of the Act, including cases expressly excluded from its operation, the bar contained in Section 38 would not operate so as to exclude recourse to the ordinary civil forum. Such a construction preserves the legitimate scope and content of Section 38(2) without permitting the provision to defeat or consume the broader statutory framework itself.

113. The Court is, therefore, of the considered opinion that the Act, 2021 maintains a clear distinction between non-compliance with regulatory formalities and the substantive applicability of the statutory regime. Failure to execute or furnish a written tenancy agreement may entail statutory consequences, evidentiary limitations, or procedural complications, but it does not, in cases of admitted or otherwise established tenancy, operate to oust the jurisdiction of the Rent Authority to entertain proceedings otherwise maintainable under the Act.

114. The Court is, therefore, of the considered opinion that the Act, 2021 draws a clear and categorical distinction between non-compliance with regulatory formalities and absence of

jurisdiction. Failure to execute or furnish a written tenancy agreement may attract such statutory consequences as the Act itself contemplates and may, in an appropriate case, bear upon proof or procedure; it does not, however, in a case of admitted or otherwise established tenancy, operate to denude the Rent Authority of jurisdiction to entertain proceedings otherwise maintainable under the Act. Any other construction would not merely elevate form over substance; it would impermissibly enable a party to derive advantage from its own default and would frustrate the very remedial scheme which the Legislature has enacted.

Conclusions

115. Upon consideration of the submissions advanced, the statutory framework, and the material placed on record, this Court finds the challenge raised by the petitioners to be untenable. The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 does not exclude oral, month-to-month, or otherwise unwritten tenancies from its statutory ambit merely because such arrangements were not reduced into writing or because the prescribed particulars were not furnished before the Rent Authority. Where the relationship of landlord and tenant is admitted or otherwise established, and the dispute falls within the field occupied by the statute, proceedings before the Rent Authority remain maintainable notwithstanding the absence of a written tenancy agreement.

116. Sections 4(1) and 4(3)(b) are mandatory regulatory provisions intended to formalise, record and bring certainty to tenancy arrangements through written documentation and disclosure of particulars before the statutory authority. Section 4(7), in turn, contemplates the consequence of non-furnishing of such information and leaves no manner of doubt that the Legislature did not intend procedural non-compliance to result in wholesale exclusion from the operation of the Act. These provisions cannot, therefore, be construed as creating a blanket exclusion from the statutory framework, nor as rendering proceedings before the Rent Authority inherently non-maintainable in every case of non-compliance, nor as otherwise creating a jurisdictional bar against recourse to the specialised forum constituted under the enactment.

117. Section 38(2), properly construed, excludes adjudication of disputes relating to title and ownership and confines the jurisdiction of the Rent Authority to landlord-tenant disputes entrusted to it under the statute. It does not require ordinary tenancy disputes to be relegated to the Court of Small Causes merely because the tenancy arrangement is oral, month-to-month or unwritten, or because the prescribed particulars were not submitted in the manner contemplated under Section 4 of the Act.

118. This Court is of the considered opinion that absence of a written tenancy agreement, by itself, does not denude the Rent Authority of jurisdiction under the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 where the tenancy relationship is admitted or otherwise established in accordance with law. The objections raised by the petitioners on the ground of maintainability, therefore, do not merit acceptance.

119. It is, however, clarified that the observations made hereinabove shall not be construed as diluting the statutory mandate embodied in Section 4 of the Act, nor as creating any disincentive for execution and intimation of written tenancy agreements in the manner contemplated therein.

Decision

120. For the foregoing reasons, this Court holds that the Rent Authority possessed jurisdiction to entertain the proceedings in both petitions, and the Rent Tribunal committed no error in affirming that view. No jurisdictional infirmity, patent illegality, or perversity has been demonstrated so as to warrant interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

121. Accordingly, both petitions are **dismissed**. The impugned orders dated 14.08.2025 and 19.01.2026 in the first petition, and the orders dated 16.09.2025 and 08.01.2026 in the connected petition, are affirmed. No order as to costs.

(2026) 5 ILRA 637

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 21.05.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Matters Under Article 227 No. 6007 of 2026

Fayyazuddin ...Petitioners

Versus

Prashant Kumar Singh & Anr. ...Respondents

Issue for Consideration

(i) Whether the petitioner-tenant validly tendered rent to the landlords and whether refusal thereof was established so as to justify recourse to proceedings under Section 30(1) of U.P. Act No.13 of 1972

(ii) Whether the deposits allegedly made by the petitioner under Section 30(1) of the Act were valid statutory deposits in compliance with Rule 21 of the Rules framed there under and, consequently, liable to be adjusted while considering the petitioner's claim for benefit under Section 20(4) of the Act

(iii) Whether the petitioner was disentitled from claiming the benefit of Section 20(4) of the Act in view of the proviso appended thereto on account of acquisition of another residential accommodation by a member of his family within the same municipal limits.

(iv) Whether the notices determining tenancy and demanding arrears were duly served upon the petitioner and whether the tenancy stood validly terminated in accordance with law;

Head Notes

The Constitution of India, 1950-Article 227; The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972- Section 20(2)(a)& 30(1); The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972- Rule 22(f)- The statutory scheme of Section 30 and Rule 21 mandates that every deposit must be accompanied by procedural compliances intended to ensure notice and intimation to the landlord, and the requirement of accompanying the deposit with process fee and notice in prescribed Form 'F' thus constitutes an integral part of the statutory mechanism governing valid deposits under Section 30 of the Act. Consequently, unless

the deposit is made strictly in accordance with Rule 21, the tenant cannot claim the legal fiction contemplated under Section 30(6) treating such deposit as valid payment to the landlord.

The evidence on record clearly demonstrates that no material whatsoever was produced by the petitioner to establish compliance with the mandatory requirement of furnishing notice in prescribed Form 'F' together with requisite process fee to the landlords regarding subsequent deposits. On the contrary, during cross-examination the petitioner himself admitted that no notice regarding deposits under Section 30 had been furnished to the respondent-landlords, and both courts have concurrently recorded this admission.

The mandatory requirement contained in Rule 21 is not an empty formality; its purpose is to ensure that the landlord receives intimation regarding deposit and is enabled to withdraw the amount deposited in court. Unless such requirement is complied with, the deposit cannot legally operate as a substitute for payment to the landlord and the statutory fiction under Section 30(6), whereby a valid deposit is deemed to be payment to the landlord, becomes operative only when the deposit is made strictly in the manner prescribed by law.

A defective or irregular deposit cannot extinguish the default contemplated under Section 20(2)(a) of the Act. Consequently, the courts below rightly held that the deposits relied upon by the petitioner could not be treated as valid deposits under Section 30 and, therefore, could not be adjusted while extending benefit under Section 20(4) of the Act.

The record also contains an admission of the petitioner during cross-examination that the disputed premises had originally been taken on rent for residential purposes. In such circumstances, the plea that the accommodation was commercial in nature and that acquisition of residential accommodation by the tenant's family would not attract the proviso to Section 20(4) does not merit acceptance.

Once it is found that the tenancy related to residential accommodation and that the tenant or a member of his family has acquired another residential building in the same municipality and is residing therein, the statutory disqualification contemplated under the proviso clearly stands attracted and the petitioner cannot claim the protective relief under Section 20(4) of the Act.

Held- The concurrent findings recorded by the courts below regarding default in payment of rent, invalidity of the deposits purportedly made under Section 30(1) of the Act, due service of notices determining tenancy and disentitlement of the petitioner from claiming protection under Section 20(4) are fully borne out from the evidence on record and stand in complete consonance with the provisions of the Act and the Rules framed there under. **Petition dismissed**. (E-15)

(Para 40, 49, 50, 51, 57, 58 & 66)

Case Law Cited

Hari Gopal v. Vijay Kumar & Ors 2006 SCC OnLine All 1050; Dinkar Verma @ Jay Singh v. Rajan Kumar Gupta & Ors 2024 (11) ADJ 759; Smt. Rani Devi & Others v. Addl. District & Sessions Judge RENT CONTROL No. - 77 of 2017; E. Palanisamy v. Palanisamy (2003) 1 SCC 123; Jagat Prasad v. District Judge, Kanpur 1995 Supp (1) SCC 318 (1)

List of Acts

The Constitution of India, 1950; The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972; The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972

List of Keywords

Act 13 of 1972; Section 30(1) ; Section 20; Rule 21(5) not mere formality; Every deposit must accompanied by procedural compliances ; Ensure Notice to Landlord; Irregular deposit u/s 20(2)(a); Tenant/family member acquired another residential building ; Same municipality ; No protective relief u/s 20(4) of the Act

Case Arising From

Judgment and decree dated 02.03.2019 passed by the Judge, Small Causes Court, Bijnor in SCC Suit No.35 of 2012, whereby the suit instituted by the respondent-landlords for eviction, recovery of arrears of rent and damages came to be decreed, as well as the judgment and order dated 28.03.2026 passed by the revisional court in SCC Revision No.11 of 2019 affirming the same.

Appearances for Parties

Counsel for Petitioner(s) : Digvijay Singh
Counsel for Respondent(s) : Abhijeet Mukherji, Sushmita Mukherjee

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Heard Sri Shashi Kant Shukla, learned Senior Counsel appearing along with Sri Digvijay Singh, learned counsel for the petitioner and Sri Tarun Agrawal, learned Senior Counsel appearing along with Ms. Sushmita Mukherjee and Sri Abhijeet Mukherji, counsel for the respondents.

2. The present petition has been instituted by the tenant under Article 227 of the Constitution of India assailing the judgment and decree dated 02.03.2019 passed by the Judge, Small Causes Court, Bijnor in SCC Suit No.35 of 2012, whereby the suit instituted by the respondent-landlords for eviction, recovery of arrears of rent and damages came to be decreed, as well as the judgment and order dated 28.03.2026 passed by the revisional court in SCC Revision No.11 of 2019 affirming the same.

3. The disputed premises, namely Haveli No.293 comprising two eastern-facing rooms, one southern-facing room together with a verandah, inner and outer courtyards and a boundary wall situated at Kasba Haldaur, District Bijnor, was admittedly let out to the petitioner-tenant on 01.12.1962 by the erstwhile owner, late Kunwar Shiv Mahendra Kumar Singh. The tenancy was pleaded to be a month-to-month tenancy commencing from the first day of each English calendar month and terminating on the last day thereof, and it is not in dispute that the provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 19721 were applicable to the premises in question.

4. According to the plaint allegations, the petitioner-tenant committed default in payment of rent as well as municipal taxes. It was specifically pleaded that although rent had remained unpaid with effect from 01.04.1993, the respondent-landlords, keeping in view the law of limitation, restricted their claim for arrears to the period from 01.09.2009 to 31.08.2012.

5. It was further alleged that despite repeated demands and service of notice, the tenant neither cleared the outstanding dues nor vacated the tenanted premises. The landlords caused a notice dated 09.10.2012 to be issued through counsel demanding payment of arrears and terminating the tenancy, which was returned unserved with a postal endorsement indicating that the addressee was not available. Subsequently, another notice dated 25.10.2012 was sent requiring the tenant to clear the arrears of rent, municipal taxes and notice expenses within one month and intimating

termination of tenancy under Section 106 of the Transfer of Property Act upon expiry of the notice period; this notice was returned with a postal endorsement of refusal dated 31.10.2012.

6. Consequently, the respondent-landlords instituted SCC Suit No.35 of 2012 seeking eviction of the defendant-tenant, recovery of arrears of rent and municipal taxes and damages for use and occupation for the period 01.09.2009 to 31.08.2012.

7. The petitioner-tenant entered appearance and filed written statement contesting the suit. It was pleaded that the original landlord, late Kunwar Shiv Mahendra Kumar Singh, had received rent up to 31.03.1993 and, upon his death on 21.04.1996, the respondent-landlords along with their mother became entitled to receive the same. According to the petitioner, repeated attempts were made to tender rent personally to the landlords but the same was refused, and rent was thereafter remitted through various money orders which too were returned unpaid.

8. The petitioner further asserted that upon refusal of rent he instituted proceedings under Section 30(1) of the Act before the Civil Judge (Junior Division), Bijnor, registered as Miscellaneous Case No.22 of 2007, wherein rent for the period from 01.04.1993 to 31.03.2007 was deposited. It was also pleaded that subsequent rent continued to be deposited in court through tenders and that by January 2012 rent stood deposited up to 31.12.2012, and on that basis it was contended that no arrears were due and the tenant could not be treated as a defaulter within the meaning of Section 20(2)(a) of the Act.

9. The petitioner-tenant denied service of notices dated 09.10.2012 and 25.10.2012 and alleged collusion between the respondent-landlords and the postal authorities on the premise that the Post Office was situated in a building belonging to the landlords and that the concerned postman was under their influence, on account whereof false postal endorsements had allegedly been procured. The petitioner further contended that the notices in question were invalid and contrary to the requirements of Section 106 of the Transfer of Property Act as well as Section 20 of the Act no. 13 of 1972.

10. It was additionally pleaded that the disputed premises was not residential in nature but was being used for the purposes of timber and wood depot business, that the eastern boundary disclosed in the plaint was incorrect, and that a platform/chabutra forming part of the tenancy had not been included in the suit premises, rendering the suit defective on account of partial eviction.

11. The petitioner-tenant also claimed the benefit of Section 20(4) of U.P. Act No.13 of 1972 on the ground that on the first date of hearing, namely 21.01.2013, he had deposited the entire amount of alleged arrears together with interest, costs of the suit, advocate□s fee and clerk's fee and was, therefore, entitled to statutory protection against eviction.

12. The respondent-landlords filed replication controverting the assertions made in the written statement and specifically pleaded that no notice or intimation regarding the deposits allegedly made under Section 30(1) of the Act had ever been furnished to them in the manner contemplated under Rule 21(5) of the Rules framed thereunder. It was further denied that the premises in question was being used for commercial purposes or that the petitioner was carrying on any timber

business therein, and the landlords asserted that the disputed premises was residential in nature and that the petitioner along with his family had already acquired another residential accommodation within the same municipal limits, thereby disentitling him from claiming the benefit of Section 20(4) of the Act.

13. In support of their case, the respondent-landlords examined PW-1 Suresh Singh, Mukhtar-e-Khas of the plaintiff Prashant Kumar Singh, and proved the notices dated 09.10.2012 and 25.10.2012, postal receipts, returned envelopes, municipal assessment records, electoral rolls and documents obtained under the Right to Information Act relating to acquisition of residential property by the petitioner□s son, Danish, within Nagar Palika Haldaur. The petitioner-tenant examined himself as DW-1 and produced documentary evidence in support of his case.

14. Upon a consideration of the pleadings, documentary material and oral evidence brought on record, the Judge, Small Causes Court, Bijnor by judgment and decree dated 02.03.2019 decreed the suit. The trial court, inter alia, recorded findings that the disputed premises was governed by the provisions of U.P. Act No.13 of 1972, that the defendant-tenant had committed default in payment of rent as well as municipal taxes, and that the deposits purportedly made under Section 30(1) of the Act were not legally valid on account of non-compliance with the mandatory requirement contained in Rule 21(5), inasmuch as no notice or intimation of such deposits had been served upon the landlords.

15. The trial court further held that the notices determining the tenancy had been duly and validly served and consequently the tenancy stood lawfully terminated. It was additionally found that the tenant was disentitled to the benefit contemplated under Section 20(4) of the Act, having acquired, through his family, another residential accommodation within the same municipal limits, and the suit was decreed directing eviction of the defendant-tenant from the premises in dispute, recovery of arrears of rent and municipal taxes amounting to Rs.1545/-, and payment of damages for use and occupation at the rate of Rs.1000/- per month from the date of institution of the suit until delivery of vacant possession.

16. Aggrieved, the defendant-tenant preferred S.C.C. Revision No.11 of 2019 under Section 25 of the Provincial Small Cause Courts Act before the District Judge, Bijnor. The revisional court, upon an appraisal of the pleadings, evidence and material on record, affirmed the findings returned by the trial court and dismissed the revision by judgment and order dated 28.03.2026.

17. The revisional court, in particular, recorded a finding that the revisionist himself had admitted non-payment of rent with effect from 01.04.1993. It further observed that the money orders relied upon by the tenant neither contained proper addresses nor carried any endorsement of refusal so as to establish a valid tender of rent, and that compliance with the mandatory requirement of Rule 21(5) relating to service of notice of deposits made under Section 30(1) of the Act had not been proved and, on the contrary, the tenant admitted in his cross-examination that no notice regarding such deposits had been furnished to the landlords.

18. The revisional court additionally affirmed the finding that the tenant had acquired another residential accommodation through his family within the same municipal limits and was, therefore,

disentitled to claim the benefit of Section 20(4) of the Act. The finding recorded by the trial court with regard to valid termination of tenancy through notices dated 09.10.2012 and 25.10.2012 was also upheld, the revisional court observing that the tenant had failed to rebut the statutory presumption arising from refusal of notice sent.

19. Challenging the aforesaid concurrent judgments, the defendant-tenant has instituted the present petition under Article 227 of the Constitution of India invoking the supervisory jurisdiction of this Court.

20. Learned counsel for the petitioner submitted that the tenant had bona fide deposited rent before the court with a genuine intention to discharge his obligations as a tenant and to avoid any allegation of default. It was contended that the landlords were throughout aware of the deposits so made and, therefore, strict insistence upon procedural formalities under Rule 21 ought not to defeat the substantive protection available to the tenant under the Act.

21. It was urged that substantial compliance with the statutory requirements stood sufficiently established and that the deposits could not have been ignored while considering the petitioner's entitlement to the protective benefit contemplated under Section 20(4) of the Act. It was further contended that in any case the petitioner had deposited the entire amount contemplated under Section 20(4) of the Act on the first date of hearing and thereby fully complied with the statutory conditions required for seeking relief against eviction.

22. According to learned counsel, once the entire arrears together with interest and costs stood deposited, the courts below committed manifest illegality in decreeing the suit for eviction instead of extending to the tenant the statutory protection envisaged under Section 20(4) of the Act. It was lastly submitted that the accommodation in question was commercial in nature and had been utilised for business purposes and, therefore, the subsequent acquisition of a residential accommodation by the tenant or a member of his family could not operate as a disqualification for claiming protection under Section 20(4) of the Act.

23. It was argued that acquisition of a residential premises has no nexus with continuance of tenancy rights in respect of a commercial accommodation and, consequently, the courts below erred in invoking the proviso appended to Section 20(4) for denying the statutory protection otherwise available to the petitioner-tenant.

24. Per contra, learned counsel appearing for the respondents-landlords supported the impugned judgments and submitted that the deposits allegedly made by the petitioner-tenant under Section 30(1) of U.P. Act No.13 of 1972 were wholly invalid and non est in the eye of law, inasmuch as the mandatory requirements prescribed under Rule 21 of the Rules framed under the Act were admittedly not complied with.

25. It was contended that the statutory protection contemplated under Section 20(4) of the Act could be claimed only on the basis of valid deposits made strictly in accordance with the prescribed procedure and not on the basis of defective or irregular deposits. Learned counsel submitted that under the statutory scheme governing Section 30 of the Act, every subsequent deposit is required to

be accompanied by requisite process fee and notice in prescribed Form "F" so as to ensure due intimation to the landlord regarding the deposit made before the court and that, once such mandatory compliance was absent, the deposits lost their statutory character and could not legally be treated as valid deposits within the meaning of Section 30 of the Act.

26. It was further contended that the petitioner had failed to deposit the entire amount legally recoverable from him and consequently continued to remain a defaulter within the meaning of Section 20(2)(a) of the Act. Mere deposit of certain amounts before the court, without satisfying the mandatory statutory requirements and without clearing the entire legally recoverable dues, could not absolve the tenant from the consequences of persistent default contemplated under the Act.

27. Learned counsel for the respondents lastly submitted that the trial court had rightly denied the benefit of Section 20(4) of the Act to the petitioner also on account of the proviso appended thereto. It was argued that the evidence available on record clearly established that the son of the petitioner-tenant had acquired a residential accommodation within the limits of the same municipality and that the petitioner himself was residing therein, and consequently the case stood squarely covered by the statutory disqualification contained in the proviso to Section 20(4), thereby independently disentitling the petitioner from claiming protection against eviction. In supporting the aforesaid submission, reliance was placed upon the decisions in **Hari Gopal v. Vijay Kumar & Ors., Dinkar Verma @ Jay Singh v. Rajan Kumar Gupta & Ors. and Smt. Rani Devi & Others v. Addl. District & Sessions Judge .**

28. Upon consideration of the pleadings of the parties, the evidence brought on record, the findings returned by the courts below and the submissions advanced on behalf of the respective parties, the following questions arise for determination in the present petition:

(i) Whether the petitioner-tenant validly tendered rent to the landlords and whether refusal thereof was established so as to justify recourse to proceedings under Section 30(1) of U.P. Act No.13 of 1972;

(ii) Whether the deposits allegedly made by the petitioner under Section 30(1) of the Act were valid statutory deposits in compliance with Rule 21 of the Rules framed thereunder and, consequently, liable to be adjusted while considering the petitioner's claim for benefit under Section 20(4) of the Act;

(iii) Whether the petitioner was disentitled from claiming the benefit of Section 20(4) of the Act in view of the proviso appended thereto on account of acquisition of another residential accommodation by a member of his family within the same municipal limits.

(iv) Whether the notices determining tenancy and demanding arrears were duly served upon the petitioner and whether the tenancy stood validly terminated in accordance with law;

29. In order to properly appreciate the controversy, it is apposite to notice the statutory provisions governing eviction on the ground of default, deposit of rent before the court and the conditional protection available to a tenant under U.P. Act No.13 of 1972. The relevant provisions are extracted herein below :

"Section 20. Bar of suit for eviction of tenant except on specified grounds.

… … ...

(4) In any suit for eviction on the ground mentioned in clause (a) of sub-section (2), if at the first hearing of the suit the tenant unconditionally pays or tenders to the landlord or deposits in Court the entire amount of rent and damages for use and occupation of the building due from him (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's costs of the suit in respect thereof, after deducting therefrom any amount already deposited by the tenant under sub-section (1) of Section 30, the Court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on that ground:

Provided that nothing in this sub-section shall apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area."

Section 30. Deposit of rent in Court in certain circumstances

(1) If any person claiming to be a tenant of a building tenders any amount as rent in respect of the building to its alleged landlord and the alleged landlord refuses to accept the same then the former may deposit such amount in the prescribed manner and continue to deposit any rent which he alleges to be due for any subsequent period in respect of such building until the landlord in the meantime signifies by notice in writing to the tenant his willingness to accept it.

(2) Where any bona fide doubt or dispute has arisen as to the person who is entitled to receive any rent in respect of any building, the tenant may likewise deposit the rent stating the circumstances under which such deposit is made and may, until such doubt has been removed or such dispute has been settled by the decision of any competent Court or by settlement between the parties, continue to deposit the rent that may subsequently become due in respect of such building.

(3) The deposit referred to in sub-section (1) or sub-section (2) shall be made in the Court of the Munsif having jurisdiction.

(4) On any deposit being made under sub-section (1), the Court shall cause a notice of the deposit to be served on the alleged landlord, and the amount of deposit may be withdrawn by that person on application made by him to the Court in that behalf.

(5) On any deposit being made under sub-section (2), the Court shall cause notice of the deposit to be served on the person or persons concerned and hold the amount of the deposit for the benefit of the person who may be found entitled to it by any competent Court or by a settlement between the parties and the same shall be payable to such person.

(6) In respect of a deposit made as aforesaid, it shall be deemed that the person depositing it has paid it on the date of such deposit to the person in whose favour it is deposited in the case referred to in sub-section (1) or to the landlord in the case referred to in sub-section (2)."

30. Rule 21 of the Rules framed under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 lays down the manner in which the rent has to be deposited in Court under Section 30 of the Act. Rule 21 provides as follows:

"21. Deposit of rent [Section 30].-(1) Any person desirous of depositing rent under Section 30 shall apply in Form "E". The application shall be accompanied by as many copies thereof as there are opposite parties and also the process fee and notices in Form "F". (2) The deposit shall be made under the head "P-Deposits and Advances-II-Deposits not bearing interest-C-

Other Deposit Accounts (B)-Departmental and Judicial Deposits-Civil Deposits-Civil Court's Deposits".

(3) On such deposit being made, the Court shall cause notice of the deposit to be served on the opposite party along with a copy of the application.

(4) Where a notice of the deposit is returned unserved, the Court shall fix a date on or before which the applicant shall deposit fresh process fee and notice in Form "F". If within the time so allowed or within such extended time, as the Court may grant, the applicant fails to take steps as above, the application shall be rejected and the amount deposited shall be refunded to the applicant.

(5) In the case of continuance of deposit of rent for any subsequent period, fresh application shall not be necessary. But process fee and the notice in Form "F" shall accompany every deposit."

31. The interrelationship between Sections 20 and 30 of the Act is, therefore, of considerable significance in determining the present controversy. The entitlement of a tenant to claim the protective umbrella of Section 20(4) is dependent not merely upon the factum of deposit, but upon the existence of a valid and lawful deposit made in accordance with Section 30 and Rule 21 of the Rules framed thereunder. Consequently, before examining whether the petitioner had complied with the requirements of Section 20(4) and was entitled to relief against eviction, it becomes necessary to first consider whether the deposits allegedly made by him under Section 30(1) were founded upon a valid tender and refusal of rent and whether such deposits satisfied the mandatory procedural requirements prescribed by the statutory scheme.

32. Section 20(2)(a) of the Act recognises default in payment of rent for a period of not less than four months, coupled with failure to clear the same within one month from the date of service of notice of demand, as a statutory ground for eviction. Section 20(4) carves out a limited statutory protection in such suits, enabling the court, in lieu of passing a decree for eviction on the ground of default, to relieve the tenant against his liability for eviction if at the first hearing of the suit the tenant unconditionally pays or tenders to the landlord or deposits in court the entire amount of rent and damages for use and occupation due from him together with interest at nine per cent per annum and the landlord□s costs of the suit in respect thereof, after deducting therefrom any amount already deposited by the tenant under Section 30(1).

33. The proviso to Section 20(4) excludes from the benefit of that sub-section any tenant who, or any member of whose family, has built or otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area. The relief under Section 20(4) is thus in the nature of a conditional statutory indulgence, intended to protect a tenant despite default, but available only upon strict fulfilment of the conditions stipulated therein.

34. Section 30 of the Act, on the other hand, provides a statutory mechanism for deposit of rent before the court in specified contingencies. Under Section 30(1), where any person claiming to be a tenant tenders rent to the alleged landlord and the latter refuses to accept the same, such person may deposit the amount in the prescribed manner and continue to deposit any subsequent rent likewise until the landlord signifies in writing his willingness to accept it, while Section 30(2) covers cases of bona fide doubt or dispute as to the person entitled to receive rent. Sections 30(3) to

30(5) regulate the court□s jurisdiction and mandate that notice of the deposit be served on the landlord or persons concerned and the amount held for the benefit of the person found entitled.

35. Section 30(6) enacts a legal fiction whereby a deposit made in accordance with Section 30 is deemed to be payment of rent to the landlord. The Act is supplemented by Rule 21 of the Rules framed thereunder, which prescribes the manner in which deposits under Section 30 are to be made and requires that the application for deposit be accompanied by requisite process fee and notice in Form □F□ for service upon the landlord or other concerned persons.

36. A conjoint reading of Section 30 of the Act together with Rule 21 leaves little room for doubt that the legislature did not contemplate a mere mechanical or unilateral deposit of rent in court. The statutory scheme clearly mandates that every such deposit must be accompanied by procedural compliances intended to ensure due notice and intimation to the landlord so that he may, if he so chooses, withdraw the amount.

37. The scheme underlying Sections 20 and 30 of U.P. Act No.13 of 1972 thus reflects a careful legislative balance between the landlord□s right to seek eviction on account of persistent default and the protection afforded to a tenant against forfeiture of tenancy for mere technical non-payment. While Section 20(2)(a) recognises default as a ground of eviction, Section 20(4) grants a conditional opportunity to purge the default; Section 30 enables a willing tenant to avoid default in limited contingencies where rent cannot be paid directly, subject always to strict compliance with the prescribed procedure, including service of notice.

38. Viewed in the context of the aforesaid scheme, Rule 21 of the Rules framed under the Act assumes considerable significance. The Rule prescribes the manner in which deposits under Section 30 are to be made and specifically mandates that the application for deposit shall be accompanied by requisite process fee and notices in Form □F□. The requirement is not an empty procedural formality but is intended to ensure that notice of the deposit reaches the landlord and that the deposited amount remains available for his withdrawal.

39. A procedural requirement assumes mandatory character where its no-compliance defeats the substantive purpose underlying the provision or prejudicially affects the rights of the opposite party. In the present statutory scheme, service of notice regarding deposits under Section 30 is the very mechanism through which the landlord becomes aware of the deposit and is enabled to withdraw the amount, and the requirement therefore directly subserves the substantive rights of the landlord and cannot be treated as merely directory in nature.

40. The statutory scheme of Section 30 and Rule 21 mandates that every deposit must be accompanied by procedural compliances intended to ensure notice and intimation to the landlord, and the requirement of accompanying the deposit with process fee and notice in prescribed Form “F” thus constitutes an integral part of the statutory mechanism governing valid deposits under Section 30 of the Act. Consequently, unless the deposit is made strictly in accordance with Rule 21, the tenant cannot claim the legal fiction contemplated under Section 30(6) treating such deposit as valid payment to the landlord.

41. The deeming fiction under Section 30(6), whereby a valid deposit is treated as payment to the landlord, operates only upon strict compliance with the procedure prescribed by the Act and the Rules. Since such deposit has the effect of wiping out the default and defeating the landlord's right to eviction under Section 20(2)(a), compliance with Rule 21, including service of requisite notice upon the landlord, is mandatory. A deposit made without such compliance cannot be treated as a valid statutory deposit nor adjusted while considering benefit under Section 20(4), and the burden to establish validity of such deposits squarely lies upon the tenant seeking protection against eviction.

42. Section 30 is undoubtedly a beneficial provision intended to protect a bona fide tenant from the consequences of default in situations where the landlord refuses to accept rent or where a genuine dispute exists regarding the person entitled to receive the same. However, the provision is not an unstructured licence permitting unilateral deposits in court at the mere volition of the tenant; the legislative object is to balance the interests of both landlord and tenant by ensuring that while the tenant is protected against technical default, the landlord simultaneously receives notice of the deposit and remains entitled to withdraw the amount in accordance with law.

43. The principle that strict compliance with the rent statute is mandatory is settled by authority. In **E. Palanisamy v. Palanisamy,** it was emphasized that the steps prescribed by the statute must be followed in sequence and that a tenant cannot bypass mandatory preconditions and directly claim the benefit of statutory protection. The ratio is particularly apposite where the Act creates a legal fiction only after compliance with the prescribed mode of deposit. Such fiction cannot be invoked in the absence of compliance.

44. In **Jagat Prasad v. District Judge, Kanpur,** it was observed that tender of rent in the court would constitute a valid defence to a petition for eviction on the ground of arrears of rents only when done in accordance with statutory provisions prescribed as to the deposit under U.P. Act no. 13 of 1972 and not otherwise.

45. This Court in **Hari Gopal, Jay Singh and Smt. Rani Devi** has emphasised that the benefits conferred under rent legislation can be availed only upon strict compliance with the statutory provisions and that mere deposit of rent in court, without satisfying the prescribed procedure under Rule 21, does not amount to a valid statutory deposit for purposes of avoiding default or claiming protection under Section 20(4).

46. Applying the aforesaid principles to the facts of the present case, it emerges from the record that the petitioner-tenant admittedly paid rent only up to 31.03.1993 to the original landlord, late Sri Kunwar Shiv Mahendra Kumar Singh. Even according to the petitioner's own pleadings, after the death of the original landlord no regular payment of rent was made and attempts to remit rent through money orders were allegedly initiated only in the year 2005 for accumulated arrears commencing from 01.04.1993.

47. The money order receipts brought on record merely contain endorsements to the effect that the addressees were □not found□ and do not bear any endorsement of refusal. It is also significant that the addresses of the landlords were not properly disclosed therein, and in such circumstances

the courts below rightly held that no valid tender or refusal of rent stood established in accordance with law so as to satisfy the precondition for resort to Section 30(1).

48. The validity of the deposits allegedly made by the petitioner under Section 30(1) of the Act and his consequential entitlement to claim compliance with the requirement of depositing the □entire amount□ contemplated under Section 20(4) therefore fall for consideration. The record further reflects that the petitioner thereafter instituted proceedings under Section 30(1) of the Act being Miscellaneous Case No.22 of 2007 and deposited rent in court for various periods commencing from 01.04.1993 onwards. However, the crucial issue is whether such deposits constituted valid statutory deposits within the meaning of Section 30 read with Rule 21 of the Rules framed under the Act.

49. The evidence on record clearly demonstrates that no material whatsoever was produced by the petitioner to establish compliance with the mandatory requirement of furnishing notice in prescribed Form 'F' together with requisite process fee to the landlords regarding subsequent deposits. On the contrary, during cross-examination the petitioner himself admitted that no notice regarding deposits under Section 30 had been furnished to the respondent-landlords, and both courts have concurrently recorded this admission.

50. The mandatory requirement contained in Rule 21 is not an empty formality; its purpose is to ensure that the landlord receives intimation regarding deposit and is enabled to withdraw the amount deposited in court. Unless such requirement is complied with, the deposit cannot legally operate as a substitute for payment to the landlord and the statutory fiction under Section 30(6), whereby a valid deposit is deemed to be payment to the landlord, becomes operative only when the deposit is made strictly in the manner prescribed by law.

51. A defective or irregular deposit cannot extinguish the default contemplated under Section 20(2)(a) of the Act. Consequently, the courts below rightly held that the deposits relied upon by the petitioner could not be treated as valid deposits under Section 30 and, therefore, could not be adjusted while extending benefit under Section 20(4) of the Act.

52. The material on record further establishes that rent remained unpaid from April 1993 onwards and that the alleged deposits substantially related to long accumulated arrears extending over several years. The protection contemplated under Section 20(4) is available only upon strict compliance with the statutory conditions requiring deposit of the entire amount due in the manner recognised by law, and the statutory benefit cannot be extended merely because some amount was deposited in court irrespective of compliance with the mandatory procedural safeguards prescribed under the Act and the Rules.

53. In view of the finding that the deposits relied upon by the petitioner did not constitute valid statutory deposits under Section 30 of the Act, the petitioner necessarily failed to establish compliance with the essential requirement of depositing the entire legally recoverable amount in the manner contemplated under Section 20(4). The courts below were therefore fully justified in holding that the petitioner was not entitled to protection against eviction under the said provision.

54. So far as service of notice is concerned, the respondents-landlords proved notices dated 09.10.2012 and 25.10.2012 along with postal receipts and returned envelopes, and the subsequent notice dated 25.10.2012 was returned with endorsement of refusal. Although the petitioner alleged collusion with postal authorities, no independent evidence whatsoever was produced to substantiate the said allegation; the concerned postman was never examined and no material was brought on record to dislodge the statutory presumption attached to postal endorsement of refusal.

55. The courts below, therefore, rightly held that the tenancy stood validly terminated after failure of the petitioner to clear the arrears within the prescribed period, and this Court finds no perversity in the said conclusion.

56. The courts below have further concurrently held that the petitioner was not entitled to the benefit of Section 20(4) also in view of the proviso appended thereto. Documentary evidence including municipal assessment records, electoral rolls and RTI material established that the son of the petitioner had acquired a residential house within the same municipal limits of Haldaur and that the petitioner himself was residing therein, and the petitioner failed to rebut this documentary evidence in any meaningful manner.

57. The record also contains an admission of the petitioner during cross-examination that the disputed premises had originally been taken on rent for residential purposes. In such circumstances, the plea that the accommodation was commercial in nature and that acquisition of residential accommodation by the tenant□s family would not attract the proviso to Section 20(4) does not merit acceptance.

58. Once it is found that the tenancy related to residential accommodation and that the tenant or a member of his family has acquired another residential building in the same municipality and is residing therein, the statutory disqualification contemplated under the proviso clearly stands attracted and the petitioner cannot claim the protective relief under Section 20(4) of the Act.

59. The scope of interference under Article 227 of the Constitution is supervisory and not appellate; this Court does not reappreciate evidence or substitute its own conclusions merely because another view may be possible on the material available on record. Interference is warranted only where the findings suffer from manifest perversity, patent illegality, jurisdictional error or are based on no evidence, and concurrent findings of fact, particularly those resting upon appreciation of oral and documentary evidence, are ordinarily immune from supervisory correction unless shown to be wholly arbitrary or perverse.

60. In the present case, both the trial court as well as the revisional court have concurrently held, upon appreciation of oral and documentary evidence, that the petitioner failed to establish compliance with the mandatory requirements prescribed under Rule 21 in relation to the deposits purportedly made under Section 30(1) of the Act. The courts below have also recorded categorical findings that no notice regarding such deposits was furnished to the landlords and that the tenant himself admitted the absence of such compliance in his cross-examination.

61. Further, the revisional court has affirmed the finding that the tenant had failed to establish valid tender of rent through money orders, inasmuch as the money orders neither contained proper addresses nor carried endorsements evidencing refusal by the landlords, and the foundational requirement for invoking Section 30(1), namely prior tender and refusal of rent, therefore remained inadequately established on the material brought on record.

62. The protection contemplated under Section 20(4) is intended to safeguard bona fide tenants who exhibit readiness and willingness to discharge their statutory obligations by making full and lawful payment of rent, damages, interest and costs in the manner contemplated by the Act. The legislative object underlying the provision is not to extend an unconditional immunity against eviction, but to afford a limited equitable relief to a tenant who demonstrates genuine compliance with the statutory requirements.

63. Viewed holistically in the backdrop of the statutory framework and the evidence on record, the petitioner has failed to demonstrate either compliance with the mandatory statutory requirements or any jurisdictional infirmity in the concurrent judgments rendered by the courts below. The findings recorded by the courts below are fully consistent with the statutory scheme governing Sections 20 and 30 of the Act as well as the settled principles laid down in the authorities noticed hereinabove, and the petitioner has not been able to demonstrate that the said findings suffer from perversity, are based on no evidence or have been arrived at by ignoring any material evidence on record.

64. In supervisory jurisdiction under Article 227 of the Constitution, this Court would not interfere merely because another view on facts may also be possible, and no case for interference has been made out.

65. The present case illustrates the statutory balance maintained under U.P. Act No.13 of 1972 between protection of tenants against arbitrary eviction and preservation of the landlord's right to receive rent in the manner recognised by law. While the Act undoubtedly confers protection upon tenants, such protection remains conditional upon faithful observance of the statutory obligations imposed by the Act and the Rules framed thereunder, and a tenant who seeks statutory protection must necessarily demonstrate strict adherence to the procedural framework through which such protection is made available.

66. Upon an overall consideration of the pleadings, oral and documentary evidence available on record and the statutory scheme governing the field, this Court finds that the concurrent findings recorded by the courts below regarding default in payment of rent, invalidity of the deposits purportedly made under Section 30(1) of the Act, due service of notices determining tenancy and disentitlement of the petitioner from claiming protection under Section 20(4) are fully borne out from the evidence on record and stand in complete consonance with the provisions of the Act and the Rules framed thereunder.

67. Accordingly, the petition is dismissed. The judgment and decree dated 02.03.2019 passed by the Judge, Small Causes Court, Bijnor in SCC Suit No.35 of 2012, as well as the judgment and

order dated 28.03.2026 passed by the revisional court in SCC Revision No.11 of 2019, are hereby affirmed.

68. There shall be no order as to costs.

(2026) 5 ILRA 651
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.05.2026

BEFORE

THE HON'BLE VINOD DIWAKAR, J.

Matters Under Article 227 No. 8129 of 2023

Baru Singh & Anr. **...Petitioners**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

Systematic and sustained violation of the fundamental rights of child rape victims enshrined under Article 21 of the Constitution, Section 39 of the POCSO Act, Section 3(2)(b) of the Medical Termination of Pregnancy Act as amended in 2021, and the directions of the Supreme Court of India in X v. Principal Secretary, Health and Family Welfare Department, NCT of Delhi (supra) has been observed across the State

Head Notes

The Medical Termination of Pregnancy Act, 1971- Section 3(2-D); The Medical Termination of Pregnancy Rules, 2003- Rules 3 & 3A; The Juvenile Justice (Care and Protection of Children) Act, 2015- Section 27(10); The Protection of Children from Sexual Offences (POCSO) Act, 2012- Section 39- To take a conscious decision regarding termination of pregnancy, it must be borne in mind that a fetus ordinarily cannot be aborted once the pregnancy exceeds 24 weeks. Time, therefore, is of the essence of the entire jurisprudence governing termination of pregnancy. The significance of time becomes even more critical because the Medical Board's opinion serves as the foundational basis for deciding whether termination is medically and legally permissible. In this case, the time consumed in taking a decision regarding termination of the victim's pregnancy is therefore a critical factor and must have been carefully examined and adjudicated timely.

In matters of such nature, every single day is crucial to the mental and physical well-being of the victim. Every authority through which the victim passed was headed by educated, professionally qualified persons holding responsible public offices, yet none discharged their statutory duties with the minimum degree of sensitivity, responsibility, or sincerity expected of them. It was only after this Court intervened that consequential steps were initiated, the Medical Board was constituted, and the victim was admitted to the hospital. On 12.08.2023, a baby girl was delivered through surgical intervention, and thereafter the newborn child was shifted to the Government Child Centre, Rampur, as the victim expressed her inability to raise the child in a healthy and secure environment.

Held-Court deems it appropriate to issue structured directions coupled with recommendations. (E-15)

(Para102-129 & Para 133-155)

Case Law Cited

X' v. Principal Secretary, Health and Family Welfare Department, Government of N.C.T. of Delhi and Other (2022) SCC OnLine SC 1321; Snehlata Singh v. State of Uttar Pradesh, in PIL No.14588 of 2009, vide order dated 09.03.2018; Bachpan Bachao Andolan v. Union of India (2023) 9 SCC 133; Nipun Saxena v. Union of India (2019) 2 SCC 703; Suchita Srivastava & Anr. v. Chandigarh Administration (2009) 9 SCC 1; D. Rajeswari v. State of Tamil Nadu and others, (1996) SCC OnLine Mad 850; Jyotsna Singwani v. Union of India and others, (2020) SCC OnLine Del 561; Mahima Yadav v. Government of NCT of Delhi and Others, (2021) SCC OnLine Del 2828; X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and Another, (2023) 9 SCC 433; Minor S (Thr. Father B) v. State and Another, (2025) SCC OnLine Del 2506; "A" through her Father "F" v. State of U.P. and Other 2015 SCC OnLine All 4735

List of Acts

The Medical Termination of Pregnancy Act, 1971; The Medical Termination of Pregnancy Rules, 2003

List of Keywords

Medical Termination of Pregnancy; Fetus; 24 weeks; Cannot be aborted; Time is essence; Termination of pregnancy; Medical Board's opinion; Foundational basis

Case Arising From

Present petition has been filed with two-fold prayers: (i) seeking a direction to the learned Additional District Judge/Special Judge (POCSO Act), Meerut, to allow petitioner no.2 (hereinafter referred to as 'X') to terminate her unwanted pregnancy of approximately five months; or, in the alternative, and (ii) directing the Chief Medical Officer, Meerut, to terminate the said pregnancy. The victim 'X' is a minor girl of unsound mind, aged approximately 17 years, and a survivor of rape. She has been living under the guardianship of her maternal grandfather, who is arrayed as petitioner no.1. Her biological father abandoned the family approximately ten years prior to the present proceedings, and his whereabouts remain unknown. Her mother is also a woman of unsound mind.

Appearances for Parties

Counsel for Petitioners(s) : Parvat Singh, Guru Prasad Singh
Counsel for Respondent(s) : G.A.

(Delivered by Hon'ble Vinod Diwakar, J.)

A law which a man cannot obey, nor act according to it, is void and no law: and it is impossible to obey contradictions, or act according to them- Vaughan, C.J., in Thomas v. Sorrell, 1677.

This judgment will open with the aforesaid aphorism, to reflect upon the troubling tendency of bureaucratic systems to render the law ineffective in practice, despite its clear mandate in statute.

1. Heard Shri Suresh Kumar Maurya, holding the brief of Shri Parvat Singh, learned counsel for the petitioners, Ms. Vijeta Singh, learned Amicus Curiae, learned A.G.A. for the State, and perused the material available on record.

2. The present petition has been filed with two-fold prayers: (i) seeking a direction to the learned Additional District Judge/Special Judge (POCSO Act), Meerut, to allow petitioner no.2 (hereinafter referred to as 'X') to terminate her unwanted pregnancy of approximately five months; or, in the alternative, and (ii) directing the Chief Medical Officer, Meerut, to terminate the said

pregnancy. The victim 'X' is a minor girl of unsound mind, aged approximately 17 years, and a survivor of rape. She has been living under the guardianship of her maternal grandfather, who is arrayed as petitioner no.1. Her biological father abandoned the family approximately ten years prior to the present proceedings, and his whereabouts remain unknown. Her mother is also a woman of unsound mind.

3. On perusal of the record, it transpires that an FIR bearing Case Crime No.0080 of 2023, under sections 328, 376, 506 IPC read with Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 was registered on 11.06.2023 at P.S. Rohta, District Meerut against the accused- Lalu by the grandfather of the victim. When the symptoms of advance pregnancy were noticed, the victim disclosed to her grandfather about the unfortunate incident that had befallen her. The victim was taken to the police station on 11.06.2023 and thereafter produced on 12.06.2023 before the Medical Officer at the CHC Rohta, Meerut, for medical examination. The Medico Legal Examination Report of Sexual Violence was prepared, and a pregnancy of 22 weeks and 6 days was detected.

I- CHRONOLOGICAL SUMMARY OF ORDERS PASSED BY THIS COURT:

4. Before adverting to the larger institutional issues that emerged in the course of these proceedings, it is appropriate to briefly recapitulate the orders passed by this Court so as to obtain a bird's-eye view of the entire matter. The following chronological summary is accordingly set out.

5. After registration of the FIR, the victim's grandfather approached the Chief Medical Officer (CMO), Meerut, on 05.07.2023 seeking termination of the unwanted pregnancy of his granddaughter. The CMO, Meerut, did not entertain the request. Finding no relief, the grandfather, on 19.07.2023, preferred an application before the Court of the learned Additional District Judge/Special Judge (POCSO Act), Meerut, seeking permission for termination of the pregnancy. The said application was returned with the endorsement that the applicant may approach the High Court for appropriate redressal. The writ petition was filed on 22.07.2023 and came to be listed before this Court on 04.08.2023. In the entire process, 54 days- that is, almost seven weeks- were consumed between the date of registration of the FIR and the date on which the applicant was compelled to approach this Court.

6. Vide order dated 04.08.2023, the Chief Medical Officer, Meerut, was directed to constitute a Medical Board under Section 3(2-D) of the Medical Termination of Pregnancy Act, 1971 (hereinafter 'the MTP Act'), with a direction that if the fetus could be aborted without danger to the life of the victim, a team of doctors under the guidance of the CMO shall carry out the abortion. It was also directed that the wishes of the grandfather, under whose guardianship the minor victim was residing, be obtained after due verification. Sensing the urgency, the CMO was directed to furnish a compliance report within one week and, in the event of non-compliance, to file a personal affidavit stating reasons therefor. The attention of the CMO was also invited to the directions issued by the Supreme Court in ***'X' v. Principal Secretary, Health and Family Welfare Department, Government of N.C.T. of Delhi and Others.***

7. In compliance with the order dated 04.08.2023, the CMO filed a compliance report through the Chief Judicial Magistrate, Meerut, stating that the victim was admitted to the hospital on 05.08.2023 and was under treatment at Pyare Lal Sharma District Hospital, Meerut. A Medical Board was constituted, and on its advice, the doctors conducted delivery of the victim on 13.08.2023. The newborn baby was sent to the Medical College, Meerut, and the victim was handed over to the police on 15.08.2023.

8. However, on 22.08.2023, it was noticed upon perusal of the record that the CMO, Meerut, had not constituted the Medical Board in accordance with the provisions of the MTP Act, 1971, and the Medical Termination of Pregnancy Rules, 2003. The CMO was directed to file a personal affidavit responding to the observations made in the earlier orders and to apprise the Court as to whether the State Government has constituted a Medical Board in accordance with the requirements of Section 3(2-D) of the MTP Act, 1971, and Rules 3 and 3A of the MTP Rules, 2003.

9. The Senior Superintendent of Police, Meerut, was simultaneously directed to file an affidavit disclosing the number of cases, police station-wise, registered in District Meerut involving unwanted pregnancies detected in rape cases during the previous five years.

10. On 06.09.2023, three separate affidavits were filed by the CMO, Meerut; the SSP, Meerut; and the District Probation Officer, Meerut, respectively. Ms. Vijeta Singh, Advocate, who was present in Court, was appointed Amicus Curiae to assist the Court in suggesting measures for effectively administering the physical and mental requirements of victims and newborn children in such circumstances, as well as their rights and the applicable laws.

11. On perusal of the affidavit filed by the CMO, Meerut, it was observed that the second part of the directions contained in the order dated 22.08.2023 remained non-complied with. On 06.10.2023, it was recorded that the learned Amicus Curiae had submitted that the Child Welfare Committee had forwarded its order dated 06.07.2023 to the District Magistrate, Meerut, for information; however, the District Magistrate has also not taken cognizance of the matter thereof. A conjoint reading of the affidavit dated 15.09.2023 filed by the District Probation Officer, Meerut, and the affidavit dated 12.09.2023 filed by the Chairman, Child Welfare Committee (CWC), Meerut, further revealed that neither the Support Person nor the Consultant appointed by the CWC on 15.06.2023 had taken any steps to discharge their duties, nor had the Chairman taken stock of the situation.

12. The Chairman, CWC, Meerut, was directed, vide order dated 06.09.2023, to file an affidavit setting out the guidelines, rules, or statutory provisions enabling the issuance of such caveats as were found in the order dated 06.07.2023. The entire case file relating to steps taken by the Support Person, Consultant, and Chairman of the CWC was further directed to be placed before the Court. It was also directed that information be furnished as to whether the CWC maintained a dedicated website and whether the Health Department possessed Technical and Procedural Guidelines for Safe Abortion Services in cases of voluntary, and emergent termination of pregnancy of rape victims in Uttar Pradesh.

13. The CMO, Meerut constituted a Medical Board on 07.09.2022 under Section 3(2-D) of the Medical Termination of Pregnancy Act, 1971, read with Rules 3 and 3A of the Medical Termination of Pregnancy Rules, comprising the CMO as Chairman, Additional CMO as Convener, a Gynaecologist from Community Health Centre, Mawana, a nominated member, and a representative from Ipas Development Foundation, Meerut, for a term of two years. However, upon perusal of the affidavit dated 13.09.2023, the Court found that the Board was largely ceremonial and ineffective in nature.

14. The affidavit filed by the S.S.P., Meerut, discloses that FIR No.0080 of 2023 was registered under Sections 328, 506, and 376 IPC read with Sections 3/4 of the POCSO Act, 2012 at P.S. Rohta on 11.06.2023. The victim was sent for medical examination at CHC Rohta on 12.06.2023, where she was found to be pregnant for approximately 22 weeks and 6 days. The victim was produced before the Child Welfare Committee on 06.07.2023, and the Child Welfare Committee, on the same day, directed that the victim be placed under the supervision of her uncle, namely Sonu s/o Baru Singh. It was further directed that the victim be properly taken care of and not be subjected to abortion. On the same date, i.e., 06.07.2023, the A.C.J. (J.D.), Meerut, recorded the statement of the victim under Section 164 Cr.P.C., wherein '*she stated that she did not wish to keep the child.'*

(emphasis supplied)

II- APPREHENSIONS RAISED BY THE LEARNED AMICUS CURIAE:

15. One member of the Medical Board constituted by CMO, Meerut was posted at CHC Mawana, which is almost 20 km away from the District Headquarters, thereby she raised doubts about the effective functioning of the Board.

16. The credentials and professional profile of the resource person appointed by CMO, who was apparently shown to be associated with Ipas Development Foundation, had neither been displayed nor uploaded on the Ipas Development Foundation website.

17. Upon visiting the Ipas Development Foundation's website, it was observed that the NGO has its registered office in New Delhi and that no such activity is carried out in Uttar Pradesh, even though the website claims to have introduced the concept of Comprehensive Abortion Care (CAC) in India.

18. Across the State, Medical Boards are neither constituted at the district level nor, if constituted, they are functional.

19. The Sub Inspector, a Lady Constable posted at Police Station Rohta, District Meerut and Counselor, and Social Worker attached with the victim appeared to have not taken adequate steps in respect of the plight of the victim, thereby compelling her to approach the Court for termination of the unwanted pregnancy after a delay of 54 days.

20. The Child Welfare Committee, Meerut, and the District Magistrate, Meerut has not taken cognizance of the petitioner□s plight despite this Court□s specific direction(s).

21. A conjoint reading of the affidavit dated 15.09.2023 filed by the D.P.O., Meerut, and the affidavit dated 12.09.2023 filed by the Chairman, CWC, Meerut, revealed that neither the Support Person nor the Consultant had taken any steps to discharge the duties for which they were appointed, nor had the Chairman taken stock of the situation.

III- DETAILS DIRECTED TO BE FURNISHED BY THE PRINCIPAL SECRETARY, MEDICAL HEALTH AND FAMILY WELFARE, UTTAR PRADESH: At the outset, a systematic denial of medical termination services to child rape victims has been observed.

22. The first set of directions was issued vide order dated 21.09.2023 and includes: (i) Whether the statutory requirements of Section 3(2-D) of the Medical Termination of Pregnancy Act, 1971 (as amended in 2021), read with Rules 3 and 3A of the Medical Termination of Pregnancy Rules, are complied with in all the districts of Uttar Pradesh, (ii) If yes, then the copies of notifications issued by each district constituting a Medical Board at the district level be furnished, (iii) Rules and Regulations framed, if any, ensuring that every child victim of sexual violence/aggression carrying an unwanted pregnancy was produced before the Board, (iv) A copy of notification, if any, issued by the department for comprehensive workshops or training programmes for up-gradation of skills be furnished, and (v) Rules, if any, fixing accountability on errant officers responsible for non-enforcement and non-implementation of guidelines issued from time to time by Constitutional Courts or statutory provisions be placed on record.

23. The second set of directions was issued vide order dated 09.11.2023 and includes: (i) Yearly district-wise details of unmarried rape victims, including their age, produced before the Medical Boards constituted under the Medical Termination of Pregnancy Act, 1971 for medical assistance since 2013, and (ii) District-wise details of medical assistance provided to facilitate easy access to safe abortion and care in cases of unmarried rape victims.

IV- DETAILS DIRECTED TO BE FURNISHED BY THE PRINCIPAL SECRETARY, DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT:

24. The first set of directions was issued vide order dated 21.09.2023, and includes: (i) The scheme and statutory framework governing the appointment of the Chairman and Members of the Child Welfare Committee, along with the regulatory measures undertaken in that regard, (ii) Whether any checklist, guidelines, or code of conduct prescribing the "dos and don'ts" for the functioning of the Child Welfare Committee has been formulated, so as to ensure accountability in cases of non-application of mind or dereliction of duty by its Members, and (iii) Whether any training programmes or institutional mechanisms has been introduced for: (a) enhancement of emotional intelligence; (b) capacity building and sensitization programmes; (c) innovation and awareness generation activities; and (d) monitoring and evaluation at the State and District levels- along with copies of relevant guidelines, Rules, Regulations, Government Orders, or policy documents governing such programmes be placed on record.

25. The second set of directions was issued vide order dated 09.11.2023, and includes: (i) Total number of support persons engaged in each Child Welfare Committee, district-wise details in Uttar Pradesh, and the number of cases assigned to each support person during the last five years,

year-wise, (ii) District-wise quantified data of the number of cases dealt with by each Child Welfare Committee during the last five years, (iii) Facilities and resources provided to the Child Welfare Committees for discharge of their duties in consonance with the objectives of the enactments under which they are constituted, (iv) Details of homes/shelters in Uttar Pradesh for children born to minor rape victims, (v) The policy of the State Government regulating the care and protection of children born out of rape, including compensation, education, accommodation, and other incidental requirements necessary to ensure a dignified life, (vi) The legal status of children born out of rape in cases where both the biological mother and the offender have abandoned the child- namely, whether such a child would be treated as a victim or otherwise, (vii) The number of inspections/visits conducted by the Principal Secretary, Department of Women and Child Development, to children's homes for girls established for care, protection, treatment, education, training, development, and rehabilitation during the last five years.

V- DETAILS DIRECTED TO BE FURNISHED BY THE DIRECTOR GENERAL OF POLICE, UTTAR PRADESH:

26. Details of FIRs registered in all police stations across the districts during the last five years where pregnancies were detected in unmarried child rape victims.

27. Details of cases in which such victims were produced before the Medical Boards constituted under the Medical Termination of Pregnancy Act, 1971 by the police authorities.

VI- FACTS AND FINDINGS EMERGING FROM THE AFFIDAVIT OF THE PRINCIPAL SECRETARY, MEDICAL HEALTH AND FAMILY WELFARE, UTTAR PRADESH- Systematic Denial of Medical Termination Services to Child Rape Victims:

28. The Principal Secretary, Medical Health and Family Welfare, Uttar Pradesh, filed two affidavits. The affidavit dated 31.10.2023 stated that, in compliance with the provisions of Section 3(2-D) of the Medical Termination of Pregnancy Act, 1971 (as amended in 2021), read with Rules 3 and 3A of the Medical Termination of Pregnancy Rules, 2003 the State Government (Medical Education Department-I) issued a Notification dated 10.08.2022 constituting a permanent Medical Board under the Chairmanship of the Head of the Department of Obstetrics and Gynaecology, KGMU, Lucknow.

29. Besides the constitution of the aforesaid permanent Medical Board, the State Government, vide Notification dated 10.06.2004, also constituted a Medical Board in every district comprising three members headed by the Chief Medical Officer, in accordance with Section 4(b) of the Medical Termination of Pregnancy Act, 1971. District-Level Committees have also been constituted. Further, the Central Government, in exercise of powers conferred under Section 6 of the Medical Termination of Pregnancy Act, 1971, framed the Medical Termination of Pregnancy Rules, 2003. The amended Rules prescribe the powers and functions of the Medical Board as well as the eligibility criteria for termination of pregnancy. Under the amended framework, a woman is eligible for termination of pregnancy up to 24 weeks.

30. The affidavit further disclosed that, for ensuring safe and effective termination of pregnancies, a tripartite Memorandum of Understanding was executed on 01.04.2023 at Lucknow between the Director General, Family Welfare, Uttar Pradesh; the Mission Director, National Health Mission, Uttar Pradesh; and the Ipas Development Foundation. Under the said Memorandum, the Ipas Development Foundation is entrusted with strengthening the capacity building of the State and its resources to facilitate effective and easy access to safe abortion services in furtherance of the amended Medical Termination of Pregnancy Act, 1971. It was further stated that approximately 1,200 doctors had been trained by the Ipas Development Foundation up to the time of filing of the affidavit.

31. In so far as fixing accountability of erring officers responsible for non-implementation of guidelines issued from time to time by the Constitutional Courts, or the statutory provisions contained in the Medical Termination of Pregnancy Act, 1971 and the Rules framed thereunder, is concerned, the affidavit disclosed that the Director General, Family Welfare, Uttar Pradesh, issued a letter dated 17.02.2019 to all Chief Medical Officers of the State directing compliance with orders passed by the Courts. This Court, in *Snehlata Singh*, observed that any laxity in implementing the provisions of the Medical Termination of Pregnancy Act, 1971 and the Rules framed thereunder shall be treated as the personal responsibility of the concerned Chief Medical Officer, who shall be liable for appropriate action along with the erring officials.

32. In response to the query raised by this Court as to whether the Health Department has technical and procedural guidelines for safe abortion services in cases of voluntary termination of pregnancy of rape victims in Uttar Pradesh, the affidavit states that the Mission Director, National Health Mission, Uttar Pradesh, vide Letter No. NHM/FP-CAC/104/2021-22/6475-3 dated 10.01.2022, issued and circulated detailed guidelines regarding safe abortion services to all State and District Level Officers. Under the said guidelines, the upper gestational limit for termination of pregnancy has been extended from 20 weeks to 24 weeks. Under special circumstances, termination beyond 24 weeks is permitted for: (i) survivors of rape, sexual assault, or incest; (ii) minors; (iii) change in marital status during pregnancy; (iv) women with physical disabilities; (v) mental illness, including intellectual disability; (vi) foetal abnormality posing substantial risk to life, or likelihood that the child, if born, would suffer from serious physical or mental abnormality; and (vii) humanitarian settings or disaster/emergency situations, as may be notified by the Government.

33. Women falling in special categories- including survivors of rape or sexual assault, disabled women, and other vulnerable groups- may seek termination beyond the standard limit, up to 24 weeks, as per the Medical Board's decision. A Medical Board constituted under Section 3(2-B) of the Act has been empowered to: (i) consider whether continuation of the pregnancy poses a grave risk to the woman's life, or whether the fetus is likely to suffer from serious abnormalities; (ii) decide on termination of pregnancies beyond 24 weeks; (iii) seek assistance of other specialists as required; and (iv) approve or reject applications for termination. The major functions of the Medical Board are to: (i) examine the pregnant woman and her reports referred under Section 3(2)(b); (ii) provide its opinion in Form-F (Medical Board's Opinion Form) regarding approval or rejection within three days of receiving the application; and (iii) ensure that once the Medical

Board advises termination, the procedure under Section 3(2)(b) is completed within five days of the application date, with all due precautions.

34. The affidavit dated 26.11.2023, containing district-wise details from 2013 to 2023 of unmarried rape victims produced before Medical Boards under the Medical Termination of Pregnancy Act, 1971, placed before this Court indicates a disturbing character that it demands the most urgent judicial attention. The data reveals that child rape victims of the most tender ages- an 11-year-old in Sultanpur in 2021; 12-year-old in Ayodhya, Barabanki, Gautam Budh Nagar, Bulandshahr, and Lucknow; and 13-year-old in Barabanki, Ghaziabad, Shahjahanpur, and Lucknow- were produced before Medical Boards for termination of pregnancies resulting from sexual assault.

35. The district-wise data further reveals that virtually every one of the 106 cases recorded across 11 years involves a victim under 18 years of age, confirming that these cases relate almost entirely to child sexual assault resulting in pregnancy under the POCSO Act, 2012- with ages ranging from 7 to 17 years recorded across districts including Lucknow, Gautam Budh Nagar, Bulandshahr, Gorakhpur, Kaushambi, Jalaun, Raebareli, Meerut, Varanasi, Pratapgarh, Ghaziabad, Hapur, Mahoba, Mainpuri, Moradabad, Chandauli, Etah, Jhansi, Agra, and Badaun.

36. This data, devastating as it is, almost certainly represents a severe under-count of the true scale of child rape and resultant pregnancies across the State. The surge of cases in 2023- with Lucknow recording 12 cases and Gautam Budh Nagar recording 13 cases in a single year- is demonstrably litigation-driven rather than reflective of any genuine institutional improvement, coinciding as it does with the bulk reconstitution of District-Level Committees in October 2023, triggered by the present proceedings. This indicates that child rape victims in earlier years, including those aged between 7 and 13, received no Medical Board referral and no formal medical termination of pregnancy services, owing to the State's administrative machinery simply not functioning, and it began functioning, even minimally, only under the compulsion of judicial oversight.

37. For the entire State of Uttar Pradesh, with a population of approximately 24 crores, only 106 procedures were performed under the formal Medical Board framework over 11 years- fewer than 10 per year across 75 districts- a figure so starkly disproportionate to the documented scale of child sexual violence in the State. A systematic and sustained violation of the fundamental rights of child rape victims enshrined under Article 21 of the Constitution, Section 39 of the POCSO Act, Section 3(2)(b) of the Medical Termination of Pregnancy Act as amended in 2021, and the directions of the Supreme Court of India in *X v. Principal Secretary, Health and Family Welfare Department, NCT of Delhi (supra)* has been observed across the State.

VII- FACTS AND FINDINGS EMERGING FROM THE AFFIDAVIT OF THE PRINCIPAL SECRETARY, DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT, GOVERNMENT OF UTTAR PRADESH- Systematic Denial of Statutory Rights of Children in Need of Care and Protection:

38. The affidavit dated 02.11.2023 affirms that the appointment of the Chairperson and Members of the Child Welfare Committee is carried out in accordance with the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, framed by the Central Government, and the Uttar Pradesh Juvenile Justice (Care and Protection of Children) Rules, 2019, read with Sections 27(1) and 27(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015. Rule 15 prescribes the composition and qualifications of the Members of the Committee, while Rule 87 provides for the selection criteria and composition of the Selection Committee.

39. The affidavit further states that the State Government, vide Notification dated 16.11.2018, constituted a Selection Committee under the Chairmanship of a Hon'ble Senior Judge (Retired) of the High Court of Judicature at Allahabad for the selection of Chairpersons and Members of the Child Welfare Committees for all 75 districts of Uttar Pradesh. The last selection by the said Committee was conducted on 23.07.2021. Insofar as regulatory measures are concerned, the mechanism is provided for under Sections 27(8) and 27(10) of the Juvenile Justice (Care and Protection of Children) Act, 2015. It is further averred that Sections 27 to 40 of the Act, read with Rules 16, 17, 18, 19, and 20 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, lay down the powers, functions, responsibilities, and other relevant aspects pertaining to the functioning of the Child Welfare Committee.

40. The compliance affidavit further states that the Department of Women and Child Development, Government of Uttar Pradesh, organizes various online and offline training programmes from time to time for sensitization and capacity building of the Chairpersons and Members of the Child Welfare Committees. It is stated that: (i) during October and November 2021, a training programme was organized in collaboration with the National Institute of Public Cooperation and Child Development (NIPCCD), Regional Centre, Lucknow, for the Chairpersons and Members of the Child Welfare Committees; (ii) during February, March, June, and July 2022, online training programmes were organized for sensitization and enhancement of emotional intelligence of the Chairpersons and Members of the Child Welfare Committees, with the assistance of NIPCCD, Lucknow, in collaboration with the National Institute of Mental Health and Neuro-Sciences (NIMHANS), Bangalore, and the Women and Child Security Organization (WCSO); and (iii) during February, March, April, and May 2023, offline training programmes were conducted in batches for the Chairpersons and Members of the Child Welfare Committees.

41. Being dissatisfied with the affidavit dated 02.11.2023, this Court, vide order dated 09.11.2023, directed the Principal Secretary, Department of Women and Child Development, Uttar Pradesh, to file a comprehensive affidavit furnishing the details delineated in paragraph 5 of the aforesaid order. In compliance therewith, the affidavit dated 27.11.2023 explained that Support Persons are experienced and qualified individuals with substantial knowledge in the fields of child welfare, sociology, and psychology, and are appointed on a case-by-case basis. Support Persons are selected by a Committee comprising: (i) the District Magistrate; (ii) the Secretary, District Legal Services Authority, or his nominee; (iii) the District Probation Officer/District Child Protection Officer; (iv) the Chairperson/Members of the Child Welfare Committee; and (v) a representative from an NGO or Educational Institution.

42. On a critical examination of the data, it emerges that there has been an explosive rise in cases coming before Child Welfare Committees over the last five years (from 2018-19 to 2022-23) against a backdrop of chronically insufficient Support Persons, revealing a system in crisis. The five-year trend in the total number of cases presented before Child Welfare Committees across Uttar Pradesh reveals a deeply concerning trajectory that demands urgent judicial and administrative attention.

43. In the year 2018-19, a total of 14,857 cases were placed before CWCs across the State, which marginally declined to 14,760 in 2019-20, and further depressed the figure to 10,554 in 2020-21. However, this apparent decline must not be misread as an improvement in child welfare, it almost certainly reflects a collapse in case registration and reporting during the pandemic period, rather than any genuine reduction in child distress or need for protection. The true scale of the problem became starkly visible in the post-pandemic years: cases surged to 19,556 in 2021-22, representing an 85% single-year increase over 2020-21, and climbed further to 28,351 in 2022-23- the highest figure in the five-year period and a 91% increase over 2018-19.

44. This upward trajectory, far from reflecting improved reporting alone, signals a genuine and accelerating crisis in child welfare across the State. Read alongside the chronically insufficient number of Support Persons available during the same period, these figures paint a picture of a child protection system that is structurally overwhelmed, under-resourced, and failing in its fundamental statutory duty to every child brought before a Child Welfare Committee in Uttar Pradesh.

45. The Juvenile Justice (Care and Protection of Children) Act, 2015, and the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, mandate that every child brought before a Child Welfare Committee is entitled to: (i) a Support Person to assist and guide them through the proceedings; (ii) prompt, child-friendly, and dignified handling of their case; and (iii) disposal of the case within four months, in terms of Section 37 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

46. Section 39 of the Protection of Children from Sexual Offences Act, 2012, further mandates that there shall be a dedicated Support Person for every child victim of a sexual offence. The Supreme Court of India, in ***Nipun Saxena v. Union of India***, has strongly emphasized the State's duty to appoint adequate number of Support Persons.

47. The most alarming finding emerging from the data is the catastrophic mismatch between the number of cases brought before Child Welfare Committees and the number of Support Persons available across the State. In 2018-19, each Support Person was nominally responsible for 275 cases. Even in 2022-23, which represents a comparatively improved year, each Support Person bore responsibility for over 52 cases- rendering genuine, individualized, child-friendly support a complete legal fiction. The total number of cases presented before Child Welfare Committees increased by 91% between 2018-19 and 2022-23, rising from 14,857 to 28,351, while Support Persons increased only ten-fold from a negligible base of 54- a figure still wholly inadequate for a State of Uttar Pradesh's size and population.

48. A cross-analysis of cases against Support Persons for the year 2022-23 in the most critical districts reveals even a graver picture. Gorakhpur is the single most alarming district, with 1,142 CWC cases and only 2 Support Persons, meaning each Support Person is nominally responsible for 571 children simultaneously- a situation that amounts not merely to inadequacy but to a complete absence of support in practical terms. Lucknow, the State capital and administrative headquarters, recorded 1,632 cases with only 3 Support Persons, yielding 544 cases per Support Person, demonstrating that even the best-administered district in the State has failed to implement the statutory mandate. Other districts present an equally grim picture: Prayagraj recorded 863 cases with only 2 Support Persons (432 cases per SP); Kannauj recorded 610 cases with only 2 Support Persons (305 cases per SP); Varanasi recorded 913 cases with only 3 Support Persons (304 cases per SP); Gautam Budh Nagar recorded 944 cases with 3 Support Persons (315 cases per SP); and Lakhimpur Kheri recorded 619 cases with only 2 Support Persons (310 cases per SP). Most critically, Auraiya district recorded 324 active cases with zero Support Persons- leaving every child before the CWC entirely without statutory support.

49. The data further reveals that several districts reported zero cases before the Child Welfare Committee for one or more consecutive years, despite being substantially populated districts- a pattern that is highly misrepresented and demands explanation. Mathura, Hathras, and Azamgarh each recorded zero cases for three consecutive years from 2018-19 to 2020-21; Azamgarh then recorded 500 cases in 2022-23, and Auraiya, similarly dormant for three years, recorded 324 cases in the same year. Gonda recorded zero cases in 2018-19, followed by a sudden appearance of cases thereafter, while Bahraich recorded zero cases for 2018-19 and 2019-20, followed by 210 cases in 2020-21. Zero cases in a district is not evidence of the absence of child welfare issues. It is evidence of non-registration of cases, administrative failure, or deliberate suppression of data. The sudden and dramatic jumps in several districts strongly suggest prior under-reporting rather than any genuine absence of cases. Badaun district additionally shows "NA" for both 2021-22 and 2022-23, meaning no data was submitted for two consecutive years. Again a failure that is itself a matter of serious concern.

50. The situation becomes even more alarming when the cases actually assigned to Support Persons are examined against the total CWC caseload in individual districts. In Gorakhpur, out of 1,142 CWC cases in 2022-23, only 75 were assigned to Support Persons, leaving 1,067 children unserved. In Lucknow, out of 1,632 cases, only 51 were assigned, leaving 1,581 unserved. In Prayagraj, out of 863 cases, only 11 were assigned, leaving 852 unserved. In Chandauli, all 956 cases proceeded without any Support Person assignment whatsoever. In Varanasi, all 913 cases similarly proceeded without any Support Person. In Auraiya, despite there being no Support Person at all, 48 cases were nominally recorded as assigned- a figure that is itself inexplicable and raises further data integrity concerns. This cross-analysis establishes that in virtually every district, the actual number of cases assigned to Support Persons is a negligible fraction of the total CWC caseload, meaning thereby the overwhelming majority of children appearing before Child Welfare Committees are proceeding without any Support Person at all.

51. On a consolidated examination of the data, it emerges that the State authorities have failed to function in accordance with the applicable legal provisions. The mandate of Section 39 of the POCSO Act, 2012, requiring the State to provide a Support Person to every child victim, remains

systematically unfulfilled. Rule 4 of the POCSO Rules, 2020, requiring immediate arrangement of a Support Person upon registration of a case, is structurally impossible to comply with given the present numbers. Section 27(10) of the Juvenile Justice (Care and Protection of Children) Act, 2015, which requires the Child Welfare Committee to ensure the best interests of the child is protected.

52. Section 37 of the Juvenile Justice Act, which mandates disposal of cases within four months, is rendered difficult to comply with owing to the inadequate support infrastructure. The directions of the Supreme Court of India in Nipun Saxena (supra), on child-friendly procedures and Support Person appointment, are being violated at scale across the State.

53. As per the guidelines of the Mission Vatsalya Scheme dated 05.07.2022, formulated by the Government of India, each Member of the Child Welfare Committee is paid Rs.2,000/- per sitting, subject to a maximum of 20 sittings for which bills may be raised. Each Child Welfare Committee has been provided with an Assistant-cum-Data Entry Operator, while other requirements are to be fulfilled by the Protection Officer of the District Child Protection Unit. The Child Welfare Committees have also been provided with office space equipped with furniture, computers, printers, internet facilities, and other necessary logistic support as and when required. There are 23 Child Care Institutions maintained by the State Government and 87 institutions operated by Non-Governmental Organizations. Besides Government Child Homes (Shishu) and separate Government Homes for girls and boys, five Government Specialized Adoption Agencies are functioning in the State. The Child Care Institutions are categorized according to age groups, namely: (i) children between 0 to 5 years of age; (ii) children between 6 to 10 years of age; and (iii) girls and boys between 10 to 18 years of age.

54. The affidavit clarifies that children, including newborn babies, who are either surrendered or abandoned by rape victims or their families, are provided shelter in Child Care Institutions upon intervention by the Child Welfare Committee. Such children are provided with all necessities, protection, and an environment conducive to their holistic development, including free education, medical facilities, food, and skill development programmes. The affidavit further clarifies that children born to rape victims, or children abandoned or surrendered by such victims, are treated as "children in need of care and protection" in accordance with Section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

55. The affidavit further states that Child Care Institutions are regularly inspected and visited by various authorities and committees. In addition to the Juvenile Justice Committee of the Allahabad High Court, comprising Hon'ble Judges, and committees constituted by the District Judge, the following inspection mechanisms are in place: (i) the State Inspection Committee conducts surprise inspections; (ii) committees nominated by the Commissioner conduct annual inspections; (iii) committees nominated by the District Magistrate conduct monthly inspections; (iv) the District Level Inspection Committee conducts inspections once every three months; (v) the District Probation Officer conducts inspections fortnightly; (vi) the Child Welfare Committee conducts inspections twice a month; and (vii) the Superintendent of the Child Care Institution conducts inspections twice daily. A point-wise agenda containing 12 parameters has been formulated for the aforesaid inspections.

56. The inspection agenda prescribed by the State for Child Care Institutions purports to cover 12 inspection points. A critical examination of this agenda, however, reveals that it is fundamentally inadequate, structurally deficient, and fails to comply with the mandatory requirements of the Juvenile Justice (Care and Protection of Children) Act, 2015, the JJ Model Rules, 2016, the POCSO Act, 2012, and the NCPCR Guidelines on Child Care Institutions. The deficiencies in each point may be briefly noted as follows.

56.1 A building inspection should check more than just ownership or rental status. It must also verify structural safety, fire certificates, minimum space requirements for children, and whether rented premises offer security of tenure. NGO registration checks must confirm whether the registration is current and whether every child is held under a valid legal order. Without this, cases of illegal detention or trafficking can go undetected.

56.2 Identifying overcrowding is important, but relying solely on Aadhaar cards to count children is problematic. Many trafficked or remote-area children do not have Aadhaar. Dormitories must also be checked for proper separation by age, gender, and case type. Food quality checks must go beyond surface observation. They must verify nutritionist-approved menus, individual dietary needs, and whether children can raise food-related complaints.

56.3 Security checks must do more than note the presence of guards. They must confirm whether female guards are posted in girls' homes, whether staff have passed background and police verification, and whether night-time and emergency protocols exist. CCTV coverage must be carefully regulated. Cameras must be strictly prohibited in girls bathrooms, sleeping areas, and changing rooms. Clear rules on who monitors footage and how long it is retained are essential.

56.4 Individual Care Plans must not merely exist on paper. They must be prepared within fifteen days, involve the child in the process, and show evidence of actual implementation. School enrollment checks must verify age-appropriate placement, access for children with disabilities, and availability of bridge courses for those with interrupted education.

56.5 Skill training must lead to recognized certification and align with each child's reintegration plan. Staff checks must go beyond counting numbers. Qualifications, background verification, prescribed staff-to-child ratios, and mandatory training under the POCSO and JJ Acts must all be verified. Female-only staff must be confirmed in girls' homes.

56.6 Children held in observation homes for petty offences must not be overlooked. Each case must be reviewed for bail eligibility, legal aid, and compliance with maximum detention periods. They must also be kept separate from children accused of serious offences.

56.7 Children who have spent six months or more in institutional care represent the gravest failure of the child protection system. Their situation demands far more than a brief report. Specific barriers to restoration must be identified. Family counseling efforts must be verified. Foster care, adoption, and the role of the Sponsorship and Foster Care Approval Committee must all be actively considered.

57. Beyond the deficiencies within individual points, several critical inspection areas are entirely absent from the agenda. The agenda contains no provision for medical health check-ups or healthcare access for resident children, despite Rule 29(3) of the JJ Model Rules mandating the same. Mental health assessment and counseling services, required under Section 53 of the JJ Act and NCPCR Guidelines, are entirely unaddressed. There is no requirement to verify the existence of a child-accessible grievance mechanism against staff, mandated under Rule 73, nor any

reference to Children's Committees through which children participate in institutional management under Rule 40.

58. The agenda contains no requirement to examine records of incidents of abuse, punishment, or staff misconduct- a critical gap given that Section 75 of the JJ Act criminalizes cruelty to children in institutional care and Section 82 prohibits corporal punishment. The status of family reconciliation efforts for surrendered children under Section 35, pending adoption or foster care cases for long-stay children under Chapter VIII, and compliance with the prohibition on solitary confinement under Rule 76, are all absent. Finally, there is no suicide or self-harm prevention protocol verification, despite specific NCPCR Safety Guidelines on the subject.

59. The affidavit also sets out certain deficiencies noticed and suggestions made during inspections, which do not require detailed examination by this Court at this stage. However, the details relating to inspections conducted by the Principal Secretary, Department of Women and Child Development, Uttar Pradesh, of Child Care Institutions during the past five years disclose a return of "NIL"- that is, the Principal Secretary conducted no inspections whatsoever during this period.

60. Inspection records for Girls' Child Care Homes across Uttar Pradesh over five years reveal a near-total failure of senior-level oversight. The Principal Secretary of the Department of Women and Child Development is the highest officer legally responsible for inspecting Girls' Homes. Over five years, this officer conducted fewer than ten inspections across the entire State. Uttar Pradesh has 75 districts and thousands of girl children in institutional care. This level of oversight is not merely inadequate. It amounts to a near-complete abandonment of the legal duty imposed under Section 54 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Rule 64 of the JJ Model Rules, 2016.

61. The majority of districts recorded zero inspections over the entire five-year period. This includes some of the most populous, urbanized, and administratively important districts in the State. Districts with operational Girls' Homes that were never inspected even once include Azamgarh, Ballia, Prayagraj, Kaushambi, Pratapgarh, Meerut, Saharanpur, Shamli, Bijnor, Amroha, Sambhal, Gorakhpur, Deoria, Maharajganj, Basti, Sant Kabir Nagar, Jhansi, Lalitpur, Sonbhadra, Chitrakoot, Hamirpur, Mahoba, Banda, Shahjahanpur, Lakhimpur Kheri, Bahraich, and Shravasti.

62. Barabanki recorded only one inspection in five years. Kanpur recorded only three. Lucknow, the State capital and the best-performing district, recorded just six inspections over five years. This averages to barely one visit per year.

63. These figures establish beyond doubt that the legal mandate of regular and rigorous senior-level inspection has been reduced to nothing across virtually the entire State. Such inspections are the single most critical safeguard against abuse, exploitation, and trafficking of girl children in institutional care. This failure is in direct violation of the JJ Act, 2015, the JJ Model Rules, 2016, and the NCPCR Guidelines on Child Care Institutions. It also disregards the repeated directions of the Supreme Court of India issued after the Muzaffarpur shelter home tragedy. In that case, the

absence of exactly this kind of senior oversight allowed years of systematic sexual abuse of girl children to go undetected and unpunished.

VIII- FACTS AND FINDINGS EMERGING FROM THE AFFIDAVIT FILED BY THE DIRECTOR GENERAL OF POLICE, UTTAR PRADESH:

64. In response to the information sought from the office of the Director General of Police regarding the number of cases in which pregnancies were detected in unmarried child rape victims during the last five years, the affidavit reveals that 525 such cases were reported across the State of Uttar Pradesh. The zone-wise distribution of these cases discloses a pattern of institutional failure that extends across both rural and urban areas of the State.

65. The Lucknow Zone recorded the highest concentration of cases in the State, with 115 cases accounting for 21.9% of the State total. Within this zone, Sitapur and Unnao each recorded 20 cases, Raebareli 15, Hardoi 14, and Lakhimpur Kheri 10, with Lucknow Urban contributing a further 17 cases and the Ayodhya sub-zone adding 36. It categorically dispels any notion that this is a problem of rural neglect alone and demonstrates institutional failure at the very heart of the State's administrative apparatus. Unnao's 20 cases are especially alarming, given its documented history as a persistent flashpoint for crimes against women and children.

66. The Prayagraj Zone recorded 96 cases, constituting 18.3% of the State total, with Pratapgarh alone accounting for 29 cases- the highest figure for any single district in the entire State. Pratapgarh simultaneously reported 385 CWC cases in 2022-23 with only 6 Support Persons, exemplifying the combination of high vulnerability and critically low support infrastructure. Fatehpur contributed 26 cases, Chitrakoot 16, and Kaushambi 10. Chitrakoot's 16 cases from a small, economically backward, and tribal-dominated district signal the disproportionate vulnerability of marginalized populations.

67. Urban Commissionary areas across the State collectively accounted for 106 cases- fully one in five of all cases statewide- establishing beyond argument that this crisis is as much an urban as a rural phenomenon. Cases were reported across all seven major Urban Commissionary areas, including Prayagraj with 22 cases, Lucknow and Ghaziabad each with 17, Varanasi with 15, Gautam Budh Nagar with 13, Agra with 12, and Kanpur Nagar with 10.

68. The remaining zones contributed as follows: the Bareilly Zone recorded 52 cases (9.9%), with Sambhal contributing 16 and Shahjahanpur 12; the Kanpur Zone recorded 37 cases (7.0%), with Kanpur Dehat contributing 13 and Etawah 6; the Agra Zone recorded 34 cases (6.5%), with Aligarh contributing 11 and Mathura and Firozabad 8 each; the Meerut Zone recorded 31 cases (5.9%), with Meerut contributing 8 and Hapur 5; the Gorakhpur Zone also recorded 31 cases (5.9%), with Bahraich contributing 15 and Gonda 6; and the Varanasi Zone recorded 23 cases (4.4%), with Ghazipur contributing 9 and Chandauli 7.

69. The most alarming finding in the entire dataset is not where cases are high- it is where they are inexplicably zero. Gorakhpur city, the largest city in eastern Uttar Pradesh, recorded zero cases despite having the highest CWC caseload in the entire State, namely 1,142 cases in 2022-23, with

only 2 Support Persons. Similarly, Mau, Ballia, Sonbhadra, and Bhadohi each recorded zero cases despite significant CWC caseloads. The only credible explanations- each deeply troubling- are failure of access to justice, fear and suppression of victims and their families, or systematic non-registration of cases by local authorities.

70. The gap between institutional Child Welfare Committee caseloads and the number of cases registered across key districts reveals an acute and systemic failure of access to justice that strikes at the very foundations of the child protection framework. Gorakhpur, which recorded the highest CWC caseload in the entire State at 1,142 cases in 2022-23, reflects zero registered cases of pregnancy in unmarried child rape victims. Lucknow, with 1,632 CWC cases, accounts for only 17 such registered cases. Chandauli, with 956 CWC cases, is represented by a mere 7; Bulandshahr, with 732 cases, by only 3; while Maharajganj, Mau, Sonbhadra, and Ballia- with CWC caseloads of 580, 245, 271, and 334 respectively- contribute absolutely zero cases despite their substantial and documented child welfare burdens. This cross-analysis establishes that the 525 cases placed before this Court represent only the most visible portion of a vastly larger crisis of child rape, institutional failure, and unremedied suffering. The true number of unmarried child rape victims who became pregnant and received no meaningful institutional support, medical care, or legal redress is immeasurably greater than the number registered with the police. What this data reveals is a deeply troubling inverse relationship between vulnerability and legal access- the districts bearing the most acute child welfare crises, the most overwhelmed Child Welfare Committees, and the most inadequate support infrastructure are precisely those where victims and their families are least able to approach the courts, least informed of their rights, and most susceptible to fear, suppression, and administrative indifference. This structural inequity demands the most urgent and far-reaching systemic intervention by this Court.

IX- FACTS AND FINDINGS EMERGING FROM THE AFFIDAVIT FILED BY THE CHAIRMAN, NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS:

71. While hearing the issues raised in the present petition and having come across several connected and incidental concerns, this Court requested the Member Secretary, National Commission for Protection of Child Rights, to furnish the Commission's comments, suggestions, and observations, with the objective of seeking its insight for arriving at a logical conclusion. The affidavit filed by the Chairman, NCPCR, sets forth the Commission's stand and sheds light on the issues involved from a multidimensional perspective.

72. The affidavit records that the NCPCR is a statutory body constituted under Section 3 of the Commissions for Protection of Child Rights Act, 2005, and is entrusted with monitoring the proper and effective implementation of the Protection of Children from Sexual Offences Act, 2012, the Juvenile Justice (Care and Protection of Children) Act, 2015, and the Right of Children to Free and Compulsory Education Act, 2009. It is further mandated under Section 13(1)(j) of the Commissions for Protection of Child Rights Act, 2005, to take suo motu cognizance of matters relating to deprivation and violation of child rights. The Commission is committed to ensuring child welfare, strengthening institutional mechanisms, promoting decentralization at the community level, and fostering greater social concern towards child rights.

73. The affidavit further records that the NCPCR has formulated training modules for Child Welfare Committees and has advised the Government of Uttar Pradesh to conduct organized training programmes, orientation courses, and capacity building programmes for the Chairpersons and Members of Child Welfare Committees. The affidavit clarifies that the role of Support Persons, as envisaged under the POCSO Rules, 2020, is crucial in ensuring the protection and care of child victims. The Hon'ble Supreme Court, vide order dated 18.08.2023, passed in ***Bachpan Bachao Andolan v. Union of India,*** directed the NCPCR to formulate Model Guidelines with respect to Support Persons in consultation with the State Governments and Union Territories, and further directed the States and Union Territories to frame Rules based upon such Model Guidelines. It is stated that after consultative meetings and deliberations with various stakeholders, including Non-Governmental Organizations, the NCPCR was under process for finalization of the Model Guidelines at the time of filing of the said affidavit.

74. In discharge of its monitoring and implementation role under the POCSO Act, 2012, the NCPCR has developed a dedicated portal for real-time tracking of cases involving child sexual abuse victims, along with monitoring of the release of compensation and rehabilitation measures for their care and protection. The portal operates in five stages: collection of details of the child; preparation of a Social Investigation Report containing details regarding the requirement of a Support Person, translator, and other individual needs of the child; formulation of a rehabilitation plan linked with compensation and welfare schemes; and culminating in the preparation of a comprehensive report, which is thereafter transmitted to the District Legal Services Authority for further action.

75. The affidavit further discloses that, on the POCSO Tracking Portal maintained by the NCPCR, only 129 cases from the State of Uttar Pradesh had been uploaded till the date of filing. During an inter-departmental review meeting held on 15.12.2023, the State of Uttar Pradesh informed the NCPCR that 227 Support Persons had been appointed, of whom 190 belonged to Government Departments and the remaining 37 to Non-Governmental Organizations. It is pertinent to note that this figure of 227 is significantly lower than the figure of 538 Support Persons stated in the affidavit filed by the Principal Secretary, Department of Women and Child Development- a discrepancy that itself raises serious questions regarding the reliability of the data placed before this Court.

76. The affidavit filed on behalf of the NCPCR contains several substantive suggestions. First, a child victim must mandatorily be produced before the Child Welfare Committee at the earliest opportunity and without any delay. If the Child Welfare Committee arrives at a subjective satisfaction that the child should be removed from the family or shared household, the child should be immediately placed in a shelter home, keeping in mind her best interests.

77. Second, where a child is a victim of an offence under the POCSO Act and is found to be pregnant, the provisions of Rule 6 of the POCSO Rules, 2020 shall be invoked, and the child shall be produced before a medical practitioner for counseling of the child, her parents or guardians, or the Support Person, regarding the various lawful options available under the Medical Termination of Pregnancy Act, 1971 and the Juvenile Justice (Care and Protection of Children) Act, 2015, as amended from time to time.

78. Third, Section 19(6) of the POCSO Act mandates that the local police or the Special Juvenile Police Unit shall produce the child before the Child Welfare Committee within 24 hours of recording the report, and the Child Welfare Committee shall take immediate steps to safeguard and protect the rights of the child.

79. Fourth, in cases where the pregnancy cannot be terminated for medical or other reasons, the child victim and her family should be counselled to enable the child to carry the pregnancy in her best interest and to secure proper healthcare. The victim and her family should also be informed about welfare and rehabilitation schemes framed by the Government, as well as the adoption policy relating to the newborn child, particularly in cases where the victim is a minor and is not mentally, physically, or financially capable of caring for the child. In cases where the minor mother agrees to surrender the newborn child for adoption, she may also be apprised of the provisions of Section 7(8) of the Adoption Regulations, 2022.

80. Fifth, the Social Investigation Report and Individual Care Plan of the victim should be prepared strictly having regard to her social, psychological, and behavioural profile, along with her specific needs and requirements, and should comprehensively address all aspects related to her growth, dignity, and legal rights.

81. Sixth, a comprehensive report relating to compliance with the provisions of Section 45 of the Juvenile Justice (Care and Protection of Children) Act, 2015, benefits available under the Mission Vatsalya Scheme, other State-sponsored schemes, initiation of the process for declaring the child legally free for adoption, and the Social Investigation Report and Individual Care Plan of the victim, should be forwarded to the Special Judge, POCSO Court, with a copy to the District Magistrate for periodic supervision, ensuring effective compliance in the best interest of the victim and the newborn child, particularly in cases where a minor victim under the POCSO Act conceives an unwanted pregnancy and gives birth to a child as a consequence of the offence committed upon her.

X- SUBMISSIONS OF THE LEARNED AMICUS CURIAE:

82. Ms. Vijeta Singh, learned Amicus Curiae, submitted that the victim was a minor at the time of the unfortunate incident, that both the victim and her mother were of unsound mind, and that the biological father of the victim had abandoned the family nearly ten years prior to the incident. The victim, her mother, and younger brother were being looked after by the victim's grandfather, who approached this Court seeking directions for termination of the victim's pregnancy. It was further submitted that after the FIR was registered on 11.06.2023, the victim was produced for medical examination at the Community Health Centre, Rohta, on 12.06.2023, and her statements under Sections 161 and 164 Cr.P.C. were recorded by the Additional Civil Judge (Junior Division) on 06.07.2023.

83. It was further submitted that the petitioner had submitted a request before the Chief Medical Officer, Meerut, on 05.07.2023 seeking termination of the pregnancy, but the same was not entertained. Thereafter, the petitioner filed an application before the Additional District and Special Judge (POCSO) on 19.07.2023, seeking a direction to the Chief Medical Officer, Meerut,

to terminate the pregnancy. The Reader of the Court returned the said application with an endorsement directing the petitioner to approach this Court for appropriate directions. It was under these circumstances that the petitioner approached this Court.

84. It was further submitted that the Chief Medical Officer, Meerut, acted negligently in discharging the duties and responsibilities entrusted to him under the Medical Termination of Pregnancy Act, 1971, read with the relevant provisions of the POCSO Act, 2012, and the Rules framed thereunder. No Medical Board existed in compliance with the statutory requirement under Section 3(2-D) of the Medical Termination of Pregnancy Act, 1971, and the State Government Notification dated 10.06.2004, issued for the constitution of Medical Boards in accordance with Section 4(b) of the said Act, had not been complied with by the Chief Medical Officer, Meerut.

85. It was also submitted that the Chairperson and Members of the Child Welfare Committee, Meerut, acted negligently and insensitively in the discharge of their duties and responsibilities under the Juvenile Justice (Care and Protection of Children) Act, 2015, and the Rules framed thereunder. The Support Person attached to the victim was unprofessional and unqualified and therefore failed to understand the victim's needs and requirements during the crucial period. The entire administrative machinery- including the constitution and functioning of the Child Welfare Committee, the appointment of Support Persons, the office of the Chief Medical Officer, and the judicial officer who recorded the statement of the victim- acted in a highly irresponsible and insensitive manner, resulting in a delay of 54 days before the matter was brought before this Court.

86. The learned Amicus Curiae further submitted that the "Guidelines and Protocols: Medico-Legal Care for Survivors/Victims of Sexual Violence" issued by the Ministry of Health and Family Welfare, Government of India, had not been implemented in their true spirit by the concerned authorities, and that the Chief Medical Officer, Meerut, had not followed the circular dated 10.01.2022 issued by the National Health Mission. It was further pointed out that after the year 2003, the Medical Board at Lucknow had been reconstituted 12 times, whereas in other districts Medical Boards had been reconstituted only once or twice- in complete disregard of the mandate of the Medical Termination of Pregnancy Act, 1971.

87. The scale and magnitude of non-compliance with the provisions of the Medical Termination of Pregnancy Act, 1971, and the related provisions of the POCSO Act, 2012, and the Juvenile Justice (Care and Protection of Children) Act, 2015, are demonstrated by data indicating that between 1st June 2016 and 3rd February 2018, out of 74 rape survivors, 23 were denied permission for termination of pregnancy by the Medical Board. Of these 23 victims, 13 were compelled to approach the Courts through human rights lawyers, even though their pregnancies were below 20 weeks.

88. It was further submitted that one of the major difficulties faced by rape victims in India is the delay in detection and reporting of pregnancy, as a result of which victims reach an advanced stage of pregnancy and are consequently subjected to severe mental agony and physical trauma. The reasons for such delay include lack of awareness, delay in reporting the offence, and inconsistent implementation of the provisions of the Medical Termination of Pregnancy Act, 1971, and the Juvenile Justice (Care and Protection of Children) Act, 2015. In many cases, the victim

either does not understand or remains unaware of the pregnancy until it reaches an advanced stage. The Chief Medical Officer, the police authorities, the Chairperson and Members of the Child Welfare Committee, and the concerned judicial officers fail to discharge their duty of educating and counseling the victim of sexual assault at the earliest stage.

89. It was further contended that there exists no effective accountability mechanism to assign responsibility to Chief Medical Officers, Chairpersons and Members of the Child Welfare Committees, and other stakeholders for dereliction of duty. The need for judicial intervention by the Supreme Court in *Bachpan Bachao Andolan (supra)* to enforce the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, and the POCSO Act, 2012, itself reflects the callousness of the executive machinery and its inadequate commitment to implementing the statutory provisions. It was also submitted that welfare and rehabilitation schemes for rape victims- such as the Nirbhaya Fund, One Stop Centres established by the Ministry of Women and Child Development, the Uttar Pradesh Rani Laxmi Bai Mahila Samman Kosh Scheme, the Mission Vatsalya Scheme, 2021, and the NALSA Compensation Scheme for Women Victims/Survivors of Sexual Assault and Other Crimes, 2018- lack effective rule-bound implementation mechanisms and fail to provide accountability against erring officers.

XI- SUGGESTIONS OF THE LEARNED AMICUS CURIAE:

90. The learned Amicus Curiae suggested that an additional clause be incorporated in the Medico-Legal Examination Report relating to sexual violence, recording that the victim and her guardian have been informed, counselled, and apprised of the status of the pregnancy, where the victim is found to be pregnant, and have also been informed of the provisions of the Medical Termination of Pregnancy Act, 1971, read with the relevant provisions of the POCSO Act, 2012.

91. It is further suggested that the Support Person, Chairperson, and Members of the Child Welfare Committee should make a separate endorsement in the Social Investigation Report and the Individual Care Plan of the victim regarding counseling and dissemination of information concerning the provisions of the Medical Termination of Pregnancy Act, 1971, the POCSO Act, 2012, Government compensation schemes, welfare schemes, and rehabilitation measures available to the victim. The Child Welfare Committee should, in consultation with the Medical Board constituted under the Medical Termination of Pregnancy Act, 1971, immediately decide on termination of pregnancy in cases involving minor rape victims.

92. It is further submitted that there exists a stark conflict between the protectionist approach of the Medical Termination of Pregnancy Act, 1971, and the autonomy-based approach evolved through constitutional jurisprudence. The presumption that a guardian always acts in the best interest of the minor may not hold true in cases of sexual assault. Accordingly, it is suggested that a collective and conscious decision be taken by the Chief Medical Officer, the Chairperson and Members of the Child Welfare Committee, the Support Person, and the Counselor, guided solely by the best interests of the child, particularly in cases where the opinion of the minor pregnant victim differs from that of her guardian.

93. It is further suggested that a proper mechanism be established to ensure mandatory coordination between the police authorities, the Chief Medical Officer, and the Child Welfare Committee, so that each authority functions as part of a unified mechanism for the immediate exchange of information, the prompt transmission of medical and legal reports, and strict adherence to the time-bound procedures prescribed under the Medical Termination of Pregnancy Act, 1971, the POCSO Act, 2012, and the Juvenile Justice (Care and Protection of Children) Act, 2015. In furtherance of this objective, a Special Coordination Committee should be constituted in every district, comprising one representative from the police department, one doctor from the office of the Chief Medical Officer, one Member of the Child Welfare Committee, and one Judicial Officer, for supervision and day-to-day monitoring of such cases.

94. A dedicated Digital Case Tracking System should be created to monitor cases involving pregnancies of minor sexual assault victims in real time. It should track every stage, from FIR registration and medical examination to Medical Board constitution, submission of reports, CWC referral, and court disposal of termination applications. Officers who cause delay or fail in their duty, whether the Investigating Officer, Chief Medical Officer, or Child Welfare Committee, must face strict consequences. These should include civil and criminal prosecution, compensatory costs, and departmental action.

95. The Amicus Curiae raised an important question about the legal status of a child born as a result of sexual assault. Currently, it is unclear whether such a child qualifies as a "victim" under Section 2(wa) of the Code of Criminal Procedure, 1973, or under the POCSO Act, 2012. This gap in the law has serious consequences for the rights and protection of such children. It is therefore suggested that a separate clause be added to Section 2 of the POCSO Act, 2012, and to the relevant provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023, clearly defining the legal status of children born as a result of offences under the POCSO Act.

XII- CASES RELIED UPON BY THE LEARNED AMICUS CURIAE:

96. The learned Amicus Curiae has placed reliance upon the following decisions in support of the submissions advanced before this Court.

96.1 The learned Amicus Curiae has placed reliance upon ***Suchita Srivastava & Anr. v. Chandigarh Administration*** to contend that the consent of the woman is paramount in matters relating to medical termination of pregnancy, subject to limited exceptions concerning mentally ill women. It is further submitted that where divergent medical opinions exist regarding termination of pregnancy, greater weight must be accorded to the opinion of the medical practitioner. Reliance has also been placed on the proposition that denial of termination causes severe mental anguish, trauma and irreparable harm to the victim. It is further argued that where the pregnancy exceeds the statutory gestational limit of 20 weeks, a Multi-Disciplinary Medical Board must be constituted to mitigate the associated risks. The learned Amicus Curiae also submits that termination of pregnancy may be permitted even beyond 24 weeks in cases involving fetal abnormalities or grave risk to the life and health of the mother. It is emphasized that reproductive choice is a matter of personal autonomy and that even where the guardian or the State prefers a different course of action, the wishes of the minor, if capable of forming an opinion, must receive primary

consideration. It is lastly submitted that the Medical Board must be constituted immediately upon the matter being reported either to the police authorities or a doctor, and that the report of the Medical Board should be furnished within 24 hours, as compelling the victim to approach the Court merely for obtaining a medical opinion amounts to procedural failure on the part of the State authorities11

XIII- RIGHTS OF CHILDREN BORN OUT OF SEXUAL ASSAULT- AN INTERNATIONAL COMPARATIVE ANALYSIS:

97. The learned Amicus Curiae has placed before this Court a comparative analysis of the legislative frameworks adopted by several jurisdictions in addressing the rights of children born as a consequence of sexual assault.

98. In the **United Kingdom**, landmark legislation has recently been enacted explicitly recognizing the rights of such children. Section 2(b) of the *Victims and Prisoners Act, 2024*, defines "victim" to include a child born directly as a result of criminal conduct. Such children are entitled to support from criminal justice agencies and are eligible for compensation under the Criminal Injuries Compensation Scheme. The legislation further restricts the rapist-father from exercising parental responsibilities or visitation rights, thereby ensuring that neither the survivor-mother nor the child is compelled to maintain any connection with the perpetrator.

99. In **South Africa**, the issue is addressed through the framework of parental rights and succession under the Children's Act 38 of 2005, under which the child born of such an assault is entitled to claim maintenance from the rapist-father.

100. In the **United States of America**, a decentralized approach is followed through State-specific statutes supported by federal grants. The Victims of Crime Act, 1984, the California Victim Compensation Board, and the Texas Crime Victims Compensation Act recognize "derivative victims"- including children of direct victims- and permit them to claim compensation for counseling and support. The Rape Survivor Child Custody Act encourages States to permit women to seek termination of the parental rights of rapists. Most States in the United States now have Termination of Parental Rights statutes in cases involving conception through sexual assault, thereby preventing the rapist from seeking custody or visitation rights.

101. In **New Zealand**, a "no-fault" model is followed under the Accident Compensation Act, 2001, which categorizes pregnancy resulting from rape as "personal injury." The legislation entitles the victim-mother to broad compensation covering costs associated with the pregnancy and resulting mental injury. Although the child is not treated as a direct claimant for the rape injury itself, the State provides comprehensive support to the family unit.

XIV- FINDINGS OF THE COURT:

102. To take a conscious decision regarding termination of pregnancy, it must be borne in mind that a fetus ordinarily cannot be aborted once the pregnancy exceeds 24 weeks. Time, therefore, is of the essence of the entire jurisprudence governing termination of pregnancy. The

significance of time becomes even more critical because the Medical Board's opinion serves as the foundational basis for deciding whether termination is medically and legally permissible. In this case, the time consumed in taking a decision regarding termination of the victim's pregnancy is therefore a critical factor and must have been carefully examined and adjudicated timely.

103. The FIR was lodged on 11.06.2023 by the grandfather of the victim, alleging that his 17-year-old granddaughter, who was mentally challenged, had remained disturbed and under stress for a considerable period, and upon being taken into confidence, disclosed that one Lalu had repeatedly subjected her to sexual assault after intoxicating her, as a consequence of which she had become pregnant. After the FIR was registered, the victim was produced before the Community Health Centre, Rohta, on 12.06.2023, where the Medical Officer prepared a Medico-Legal Examination Report recording a provisional medical opinion that the patient was approximately five to six months pregnant and advising an ultrasonography for fetal well-being. On the same date, a radiological examination conducted at the District Women's Hospital, Meerut, confirmed that the victim was carrying a pregnancy of 22 weeks and 6 days.

104. The victim's statements under Sections 161 and 164 Cr.P.C. were recorded on 06.07.2023, wherein she categorically stated that she did not wish to continue with the pregnancy. On the same day, she was produced before the Child Welfare Committee, Meerut, which handed over her custody to her uncle with a direction that the pregnancy should not be terminated and that regular follow-up medical check-ups be continued. During this period, the victim had also approached the Chief Medical Officer, Meerut, on 05.07.2023, seeking termination of the pregnancy.

105. During the aforesaid period, none of the concerned authorities- namely, the Chief Medical Officer, the police authorities, the concerned Judicial Officer, or the Child Welfare Committee- paid due heed to the victim's request. Left with no efficacious remedy, the victim approached the Special Judge (POCSO), Meerut, who also advised her to approach this Court for appropriate directions. The writ petition was filed on 22.07.2023 and listed before this Court on 04.08.2023. Thus, from the date of registration of the FIR till 04.08.2023, a total of 54 days elapsed, during which the pregnancy advanced further and the risks associated with termination increased manifold.

106. In matters of such nature, every single day is crucial to the mental and physical well-being of the victim. Every authority through which the victim passed was headed by educated, professionally qualified persons holding responsible public offices, yet none discharged their statutory duties with the minimum degree of sensitivity, responsibility, or sincerity expected of them. It was only after this Court intervened that consequential steps were initiated, the Medical Board was constituted, and the victim was admitted to the hospital. On 12.08.2023, a baby girl was delivered through surgical intervention, and thereafter the newborn child was shifted to the Government Child Centre, Rampur, as the victim expressed her inability to raise the child in a healthy and secure environment.

107. The Medical Termination of Pregnancy Act, 1971 was enacted on 10 August 1971. It allows registered medical practitioners to terminate certain pregnancies under specified conditions.

The Act was necessary because the Indian Penal Code, drafted nearly a century earlier, treated abortion as a criminal offence. Both the woman and the person performing the abortion could be punished. The only exception was where termination was necessary to save the mother's life.

108. Section 3(2-D) of the Act requires every State Government or Union Territory to constitute a Medical Board by official notification. This Board must include a gynaecologist, a paediatrician, a radiologist or sonologist, and such other members as may be notified. Section 3(2-B) of the Act further requires a Medical Board to be constituted in every district. This district-level Board is specifically meant to consider cases where termination is sought beyond 24 weeks of pregnancy.

109. The District Level Committee constituted under Section 4(b) of the Act is required to give its opinion within three days of receiving a reference. The termination procedure must then be completed within five days of that opinion. These strict timelines assume that a fully functional, properly constituted, and regularly updated committee exists in every district of the State.

110. The record furnished by the Joint Director, Directorate of Family Welfare, Lucknow, Uttar Pradesh, dated 08.11.2024, discloses a disturbing picture of administrative apathy and prolonged disregard for Parliament's mandate. The Medical Termination of Pregnancy Act came into force in 1971, yet the overwhelming majority of districts in Uttar Pradesh constituted their Medical Boards only in 2012-13- more than four decades after the Act. Only four districts constituted their Committees before 2010: Lucknow in 2003, that is, 32 years after the Act came into force; Mathura in 2004; Rampur in 2006; and Varanasi in 2011. Every other district allowed the statutory mandate to lie dormant for between 32 and 52 years.

111. The most egregious failures are those of Jhansi, Gonda, and Prayagraj, each of which constituted its Medical Board and District Level Committee only in 2023- a full 52 years after the Act came into force- meaning that for over five decades, every woman in these districts who required Committee approval for termination beyond standard gestational limits was effectively denied her statutory right and left with no option but to continue an unwanted or dangerous pregnancy, seek an unsafe illegal abortion, or undertake the burden and cost of traveling to a distant district.

112. Kaushambi, created as an independent district in 1997, constituted its Medical Baord only in 2018, meaning that for 21 years of its existence as a separate administrative unit, women in Kaushambi had no local Committee and were compelled to travel to Prayagraj- a serious and disproportionate barrier for poor and rural women. This represents a fundamental and prolonged violation of women's reproductive rights under Article 21 of the Constitution of India.

113. The record further reveals that Medical Boards were constituted 12 times in Lucknow; 4 times in Bareilly; 3 times each in Bulandshahr, Chandauli, Hapur, Mahoba, and Meerut; 2 times each in Amroha, Banda, Etawah, Firozabad, Jaunpur, Kanpur Dehat, Mathura, Moradabad, Raebareli, Rampur, Sitapur, and Unnao; whereas in the remaining 53 districts, the Medical Board was constituted only once till the year 2023.

114. Even where Medical Board were constituted, the data reveals that the vast majority have been reconstituted only once in their entire existence, rendering them almost certainly non-functional in practice. Medical Board members appointed a decade ago would have retired, been transferred, or in some cases deceased; a Medical Board that exists only on paper but cannot be convened within the mandatory three-day statutory deadline does not merely fall short of adequacy- it actively denies women their statutory rights while providing the State a paper shield against accountability.

115. One of the most revealing patterns in the data is the bulk reconstitution of over 40 District Level Committees in a single week around 18-19 October 2023, immediately preceding the filing of data before this Court in November 2023. This extraordinary convergence of administrative activity raises serious and unavoidable questions as to whether these reconstitutions were genuine exercises in compliance or paper formalities executed defensively in anticipation of judicial scrutiny, and whether the women who needed Committee approval in the months and years preceding October 2023 were served by any functional committee at all.

116. The mass reconstitution pattern strongly suggests that compliance with the Act was litigation-driven rather than institutionally internalized. Two districts- Hamirpur and Sultanpur- submitted no information whatsoever regarding Board constitution, reconstitution, or current status, raising the serious possibility that no Medical Board has ever been constituted in these districts. Additionally, three districts- Azamgarh, Ballia, and Maharajganj- have document integrity issues, with entries marked "not clear" or "without sign," rendering the data legally unreliable and raising questions about the authenticity of the affidavit material filed before this Court.

117. The affidavit filed by the Chairman of the Child Welfare Committee, Meerut, a former member of the district judiciary of Uttar Pradesh, reveals an equally disturbing state of affairs. Despite categorical averments in the FIR and in the statements recorded under Sections 161 and 164 Cr.P.C. that the victim was mentally challenged and unwilling to continue with the pregnancy, the Chairman sought to justify the Committee's inaction on the ground that neither the doctor, nor the Magistrate, nor the Investigating Officer had formally described the victim as mentally disabled.

118. The Committee had the benefit of all relevant records before passing its order dated 06.07.2023, including the FIR, statements under Sections 161 and 164 Cr.P.C., the Medical Examination Report, and the Ossification Test Report, yet no effective or meaningful step appears to have been taken in the victim's best interest. The Chairman further sought to shift responsibility onto the police authorities, the Chief Medical Officer, and the Magistrate, without appreciating that he himself occupied a position of statutory responsibility alongside other members with expertise in their respective fields. Such an approach, particularly from a former judicial officer appointed as Chairman by a Committee headed by a former Judge of the High Court, is wholly unsatisfactory. The record further reveals that the Committee failed to enquire as to why the victim was produced before it nearly 25 days after registration of the FIR, despite the fact that she was carrying an advanced and unwanted pregnancy resulting from a sexual offence.

119. The data pertaining to Support Persons appointed under the POCSO Act, 2012, and the Juvenile Justice (Care and Protection of Children) Act, 2015, across Uttar Pradesh over the last five years reveals a picture of gross inadequacy and wide district-wise disparity. Under Section 39 of the POCSO Act, 2012, the State Government is required to make arrangements for providing Support Persons to child victims to assist them through the process of investigation and trial.

120. Under the Juvenile Justice (Care and Protection of Children) Act, 2015, Support Persons are similarly mandated to assist children in need of care and protection appearing before Child Welfare Committees. Despite a nominal rise in numbers- from 54 Support Persons in 2018-19 to 538 in 2022-23- the position remains wholly inadequate. In 2022-23, 538 Support Persons were available across 75 districts, averaging barely seven per district, against a total of 2,740 assigned cases, yielding an average of over five cases per Support Person simultaneously. In 2018-19, each of the then-existing 54 Support Persons bore an average burden of over 275 cases. In 2018-19 and 2019-20, more than 20 districts had zero Support Persons, representing a complete failure of the statutory mandate for at least two full years across a majority of districts.

121. The district-wise data for 2022-23 reveals extreme case overload in several districts. Firozabad recorded only 2 Support Persons for 213 assigned cases, yielding over 106 cases per Support Person, the most egregious instance in the State. Meerut recorded 4 Support Persons for 392 cases, yielding 98 cases per Support Person. Gautam Budh Nagar recorded 3 Support Persons for 273 cases, and Etawah recorded 2 Support Persons for 152 cases. At the other extreme, Auraiya district had 48 cases with zero Support Persons, meaning every child victim in the district received no statutory support whatsoever. Similarly, Rampur and Hamirpur recorded zero Support Persons with no cases registered- raising the question of whether the absence of Support Persons itself contributed to the absence of case registration.

122. A severe and irrational district-wise disparity is also evident: Saharanpur recorded 252 Support Persons for 252 cases, and Muzaffarnagar recorded 68 Support Persons for 68 cases, both anomalously equal figures that suggest possible data entry error or administrative irregularity- while neighbouring Meerut had only 4 Support Persons for 392 cases. Districts such as Jalaun, Ambedkar Nagar, and Deoria each recorded 2 Support Persons against zero registered cases, suggesting either systematic non-registration of cases or complete administrative failure in those districts.

123. Upon consideration of the documents and affidavits furnished by the Chief Medical Officer, the Child Welfare Committee, the District Probation Officer, the Principal Secretary, Department of Women and Child Development, and the Principal Secretary, Medical Health and Family Welfare, this Court is constrained to observe that the entire system appears to function more on paper than in actual implementation. Government departments possess notifications, schemes, programmes, and statutory frameworks, yet the practical implementation of such measures- particularly in matters relating to unwanted pregnancies arising from sexual offences and child care mechanisms- remains grossly inadequate.

124. The affidavit filed by the Chairman, NCPCR, has highlighted that under Section 19(6) of the POCSO Act, 2012, the local police or the Special Juvenile Police Unit is under a statutory

obligation to report every case of sexual offence against a child to the Child Welfare Committee within 24 hours of receiving information, whereafter the Child Welfare Committee is required to take immediate measures to safeguard the child and pass appropriate orders in the child's best interest. The POCSO Tracking Portal maintained by the NCPCR further reveals that only 129 cases have been registered from the State of Uttar Pradesh, thereby raising serious concerns about reporting mechanisms, institutional coordination, and implementation capacity at the State level.

125. While enacting the Medical Termination of Pregnancy Act, 1971, Parliament consciously granted statutory protection to registered medical practitioners for acts done in good faith under the Act. Despite such protection, the record reflects persistent reluctance and non-compliance on the part of the authorities entrusted with implementing the Act, particularly at the district level. The Principal Secretary, Medical Health and Family Welfare, has stated in the affidavit filed before this Court that approximately 1,200 doctors have been trained by the Ipas Development Foundation under the tripartite Memorandum of Understanding. However, when admittedly no Medical Board existed till 2013 and, thereafter, in the majority of districts the Boards were constituted only once over a prolonged period, the authenticity and reliability of the statistical data furnished regarding district-wise details of unmarried rape victims produced before Medical Boards since 2013 becomes doubtful.

126. The present matter is, unfortunately, not an isolated instance. This Court regularly encounters cases where the intervention of the High Court or the Supreme Court becomes necessary in matters relating to termination of pregnancy arising out of sexual assault. By the time such matters reach the constitutional courts, the pregnancy has often advanced to a critical stage, making it increasingly difficult for medical experts to take a considered decision regarding termination after assessing the health risks to both the victim and the fetus.

127. The Supreme Court has delivered a series of judgments on the subject, and the High Courts have repeatedly issued directions for the timely constitution of Medical Boards and for taking necessary steps in the best interests of victims. Despite such judicial pronouncements, the material on record demonstrates a persistent failure on the part of the State machinery to effectively implement the provisions enacted by Parliament, the directions issued by constitutional courts, and the notifications issued by the State Government from time to time. The plight of child victims in such cases reflects deep institutional insensitivity. This Court records these findings with considerable anguish, but the facts brought on record leave no option except to place them on the judicial record and issue necessary directions, in the hope that the institutional authorities may discharge their statutory duties with greater responsibility, sensitivity, and accountability in the future.

128. Questions relating to reproductive rights, bodily autonomy, and abortion jurisprudence have consistently engaged constitutional courts across jurisdictions, lying at the intersection of constitutional guarantees, ethical considerations, societal values, and medical jurisprudence. While extensive judicial discourse exists concerning the reproductive rights of women, the independent legal status and rights of a child born as a consequence of sexual assault have not yet received comprehensive legislative recognition in India.

129. Section 2(1)(y) of the Bharatiya Nagarik Suraksha Sanhita, 2023, defines a "victim" as a person who has suffered any loss or injury caused by reason of the act or omission of the accused person, and includes the guardian or legal heirs of such victim. However, the said definition may not adequately address the independent legal status of a child born as a consequence of sexual assault. Such a child cannot merely be treated as an extension of the victim-mother for the purpose of legal remedies, as both constitute distinct individuals possessing separate legal identities and interests. Comparative jurisprudence from the United Kingdom, New Zealand, and the United States reflects an evolving recognition of the rights of such children.

130. A Division Bench of this Court in ***"A" through her Father "F" v. State of U.P. and Others,*** while dealing with similar issues, requested the State Government to undertake a socio-psychological study concerning the incidence of rape, children born out of rape, abandoned children, the trauma suffered by victims, rehabilitation measures, and related ancillary issues. More than a decade has elapsed since those observations, yet no material has been placed before this Court to indicate that any such comprehensive study has been conducted either by the Principal Secretary, Medical Health and Family Welfare, Uttar Pradesh, or by the Principal Secretary, Department of Women and Child Development, Government of Uttar Pradesh. Conducting empirical research and collecting reliable data in matters of such grave social significance would assist the State in framing informed and effective policies and institutional responses.

131. The Constitution of India vests the High Courts with extensive constitutional powers to ensure the effective administration of justice and preservation of the rule of law. Among these powers, Articles 226 and 227 occupy a central position in maintaining constitutional governance, judicial discipline, and institutional accountability.

132. In appropriate circumstances, a constitutional court may invoke Article 227 through its writ jurisdiction under Article 226, to issue guidelines or directions to the State Government where a legal, procedural, or administrative vacuum threatens the proper administration of justice. When Articles 226 and 227 are read harmoniously, the High Court possesses sufficient constitutional authority to issue interim, supplemental, or gap-filling guidelines in situations where statutory silence or executive inaction impedes the administration of justice. Such directions may legitimately be issued where there exists a statutory vacuum affecting judicial administration, or where executive action is required for implementation of judicial mandates. Initially, this Court had contemplated issuing recommendations to the State authorities. However, upon considering the observations made by the Division Bench in *"A" through her Father "F" v. State of U.P. and Others (supra)* and having regard to the facts brought on record in the present matter, this Court deems it appropriate to issue structured directions coupled with recommendations.

XV- GENERAL DIRECTIONS TO THE FIELD OFFICERS:

133. In all cases where a victim of rape or sexual assault is found to be pregnant, the victim shall, without loss of even a single day, be produced before the concerned Chief Medical Officer along with the report prepared under Section 27 of the POCSO Act, 2012, statements recorded under Sections 180 and 184 of the Bharatiya Nagarik Suraksha Sanhita, 2023, a copy of the FIR, the Medico-Legal Examination Report of Sexual Violence, and such other relevant documents as

may be necessary to assess the physical and mental condition of the victim and to enable an informed decision regarding termination of pregnancy.

133.1 In cases where the victim is a minor and unmarried, the concerned Station House Officer shall immediately inform the Senior Superintendent of Police or the Commissioner of Police, as the case may be, who shall ensure that the victim is produced before all concerned authorities in accordance with the requirements of the Medical Termination of Pregnancy Act, 1971, and the POCSO Act, 2012. The concerned Station House Officer shall also record in the General Diary maintained at the police station all steps taken by the police authorities in this regard.

134. If the Chief Medical Officer, or the Chairman of the Child Welfare Committee, fails to attend to the victim or to take the necessary action, such refusal or omission shall also be recorded in the General Diary maintained at the concerned police station. The concerned Station House Officer shall, upon making such an entry, immediately transmit a copy thereof to the Senior Superintendent of Police and the District Magistrate, who shall take immediate corrective action and record the same in writing within 24 hours of receipt of such information.

135. The concerned Station House Officer shall record in the General Diary the departure and arrival entries of the police personnel deputed to escort the victim for production before the Chief Medical Officer, the Child Welfare Committee, and the jurisdictional Magistrate. The Circle Officer concerned shall countersign such entries on the same day, and the entries shall further be reviewed and countersigned fortnightly by the concerned Senior Superintendent of Police. The Senior Superintendent of Police shall submit a monthly compliance report to the Director General of Police, Uttar Pradesh, consolidating the entries so made across all police stations in the district, for the purpose of centralized monitoring of compliance with these directions.

136. The Chief Medical Officer shall record, on the medical report itself, a certification that the Medical Board has duly counselled the victim and her parent(s) or guardian(s) regarding the provisions of the Medical Termination of Pregnancy Act, 1971, and the medical, legal, and psychological implications arising therefrom. If the victim is of tender age, counselling sessions shall be repeated as may be necessary to ensure meaningful comprehension. The Medical Board shall also record, in Form F, the specific reasons for approval or rejection of an application for termination of pregnancy, in sufficient detail to enable judicial review, and a copy of Form F shall be forwarded to the Secretary, District Legal Services Authority, on the same day as it is prepared.

137. The Chairman of the Child Welfare Committee shall specifically record, in every order or report prepared under Sections 30, 31, 36, 37, 39, and 40 of the Juvenile Justice (Care and Protection of Children) Act, 2015, that the relevant provisions of the Medical Termination of Pregnancy Act, 1971, the POCSO Act, 2012, and the Juvenile Justice (Care and Protection of Children) Act, 2015, relating to termination of pregnancy, rehabilitation measures, compensation schemes, and their consequences, have been duly explained to the victim and her guardian(s) in simple and comprehensible language. The Child Welfare Committee shall further record whether the victim has been informed of her right to approach the District Legal Services Authority for free legal aid and representation, and whether such aid has been arranged.

138. The Support Person appointed in such cases shall maintain regular contact with the victim and shall visit her at least once every week to provide necessary assistance, counseling, and support. A weekly contact report shall be prepared by the Support Person and submitted to the Chairman of the Child Welfare Committee and to the Secretary, District Legal Services Authority, within two days of each visit. In the event that the Support Person fails to maintain such contact or submit such reports, the Chairman of the Child Welfare Committee shall immediately bring the matter to the notice of the District Probation Officer and the District Magistrate for remedial action, including replacement of the Support Person.

139. The Principal Secretary, Medical Health and Family Welfare, Government of Uttar Pradesh, shall ensure that every district in the State has a duly constituted and functional Medical Board in accordance with Section 3(2-B) and the related provisions of the Medical Termination of Pregnancy Act, 1971. Monthly reports shall be called for from each district regarding the functioning of such Medical Boards, and continuous supervision shall be ensured so that the Medical Boards discharge their duties in letter and spirit. In particular, the Principal Secretary shall ensure that no Medical Board remains without reconstitution for a period exceeding one year, and shall maintain a centralized register of the constitution, reconstitution, and current membership of Medical Boards across all 75 districts of Uttar Pradesh, which shall be updated on a quarterly basis and made available to the Secretary, District Legal Services Authority, of the concerned district.

140. The Principal Secretary, Department of Women and Child Development, Government of Uttar Pradesh, shall ensure that all Child Welfare Committees function strictly in accordance with Government Notifications, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, and the Rules framed thereunder. Proper supervision shall be exercised over the functioning of the Child Welfare Committees and all authorities engaged in implementing the statutory framework for child protection and rehabilitation. The Principal Secretary shall ensure that no district is left without the requisite number of Support Persons as mandated under Section 39 of the POCSO Act, 2012, and shall maintain such record, within three months from the date of receipt of a certified copy of this order. A district-wise action plan for achieving an adequate Support Person-to-case ratio across all 75 districts of Uttar Pradesh, having regard to the case burden data shall be prepared and maintained for future reference and record.

141. The Principal Secretary, Department of Women and Child Development, shall, in coordination with the National Commission for Protection of Child Rights, conduct regular training and sensitization programmes for Chairpersons and Members of Child Welfare Committees, Support Persons, District Probation Officers, and all stakeholders involved in the implementation of the POCSO Act, 2012, the Medical Termination of Pregnancy Act, 1971, and the Juvenile Justice (Care and Protection of Children) Act, 2015. Such training programmes shall be conducted at least twice a year in every district, and attendance records and outcomes shall be reported to the Principal Secretary and to the NCPCR on a half-yearly basis.

142. The Chairman of the Child Welfare Committee and the Chief Medical Officer shall ensure that all proceedings conducted by the Child Welfare Committee and the Medical Board in such cases are forwarded to the Secretary, District Legal Services Authority, for supervision and monitoring of compliance. The Secretary, District Legal Services Authority, shall maintain a

separate record on a case-by-case basis for monitoring, supervision, and future reference. A copy of all proceedings shall also be forwarded to the concerned District Magistrate for supervision, record-keeping, guidance, and necessary administrative oversight. The Secretary, District Legal Services Authority, shall convene a monthly review meeting with the Chief Medical Officer, the Chairman of the Child Welfare Committee, the District Probation Officer, and one Senior Police Officer of the district, to monitor the status of all pending cases involving minor rape victims who are pregnant or have delivered, and shall submit a monthly report to the Member Secretary, State Legal Services Authority, Uttar Pradesh, for onward transmission to the Principal Secretary, Medical Health and Family Welfare, and the Principal Secretary, Department of Women and Child Development for their record and reference.

XVI- DIRECTIONS FOR THE STATE:

143. The State Government is directed to undertake a comprehensive socio-psychological study, based upon an appropriate survey, concerning the number of rape cases; the number of children born as a consequence of rape; the number of abandoned children; the psychological condition and responses of victims; mechanisms required to address the trauma suffered by victims; the expectations of victims regarding rehabilitation; and all related and ancillary issues. Accordingly, the **Chief Secretary, Uttar Pradesh**, is hereby directed to constitute an **Expert Committee** comprising academicians, research scholars, data scientists, policy experts, bureaucrats, and doctors.

143.1 The Expert Committee shall also undertake visits to Child Care Institutions run by both Governmental and Non-Governmental Organizations, CWC, and other academic institutions as may be deemed necessary to achieve the object, to examine the impact of bureaucratic procedures and administrative rigidity upon the implementation of welfare schemes, statutory provisions, rules, regulations, and institutional mechanisms, besides constant in allocation and availability of funds. The State Government shall issue a notification constituting such Expert Committee within a period of three months from the date of receipt of a certified copy of this order. Assistance from Indian Institutes of Management and Indian Institutes of Technology may also be sought to achieve the desired objective. The Expert Committee shall submit its preliminary report within six months of its constitution and a final report within twelve months thereof, and such reports shall be placed before the Chief Secretary for consideration.

144. The State Government shall further examine and evolve an institutional mechanism to fix accountability for failure to adhere to the statutory obligations under the POCSO Act, 2012, the Juvenile Justice (Care and Protection of Children) Act, 2015, the Medical Termination of Pregnancy Act, 1971, Government Notifications, and welfare schemes framed for victims and children. Such exercise shall specifically examine lapses attributable to the Chief Medical Officer, Members of the Child Welfare Committee, District Probation Officers, and Superintendents of Child Care Institutions. The dignity and rights of children born as a consequence of sexual assault, as well as the rights of victims of such offences, require meaningful institutional protection through effective implementation of the statutory framework and accountable governance. The State Government shall, within twelve months months from the date of receipt of a certified copy of this order, send a draft accountability framework, including proposed amendments to service rules or

Government Orders, establishing clear timelines for action, consequences for dereliction, and a designated authority for receiving and acting upon complaints of non-compliance, the Registrar General of this Court, who shall in turn place the said accountability framework in the record of this case.

145. The Principal Secretary, Medical Health and Family Welfare, Uttar Pradesh, shall ensure that every district has a functional Medical Board as mandated under Section 3(2-D) of the Medical Termination of Pregnancy Act, 1971.

146. Until the State Government formulates a structured and effective accountability mechanism as directed above, the ***Member Secretary, DLSA at State Level and In-charge, District Legal Services Authority,*** of each district shall supervise the functioning of the Child Welfare Committee and the Chief Medical Officer, insofar as the constitution of the Medical Board, compliance with the terms of this order, and compliance with the orders passed by the Supreme Court of India are concerned.

146.1 Any party aggrieved by the conduct of the Chairman or a Member of the Child Welfare Committee, or of the Chief Medical Officer, may approach the ***In-charge, District Legal Services Authority,*** of the concerned district. The In-charge, District Legal Services Authority, after affording the concerned officer or member an opportunity of being heard, and upon being satisfied that there has been negligence, dereliction of duty, non-compliance with Section 3(2-D) of the Medical Termination of Pregnancy Act, 1971, or non-adherence to the relevant provisions of the POCSO Act, 2012, the Juvenile Justice (Care and Protection of Children) Act, 2015, or the terms of this order, shall immediately write to the Principal Secretary, Medical Health and Family Welfare, and the Principal Secretary, Department of Women and Child Development, Government of Uttar Pradesh, with a copy to the Chief Secretary, Uttar Pradesh, recommending that immediate steps be taken to relieve the Chief Medical Officer from his official duties.

146.2 Where justified, the In-charge, District Legal Services Authority, may also recommend attachment of one month's salary of the Chief Medical Officer for utilization towards the welfare of the victim(s), and the initiation of a departmental inquiry. The In-charge, District Legal Services Authority, may, in its discretion, write to the police to initiate a criminal investigation under the relevant provisions of Chapters XII and XIII of the Bharatiya Nagarik Suraksha Sanhita, 2023. In cases involving the Chairman or a Member of the Child Welfare Committee, the In-charge, District Legal Services Authority, shall write to the Additional Chief Secretary (Home) with a copy to the concerned District Magistrate, recommending that the pecuniary benefits of the defaulting Chairman or Member be withheld or stopped, as the case may be.

146.3 The In-charge, District Legal Services Authority, shall conduct monthly visits to and inspections of the records of the Medical Board and the proceedings of the Child Welfare Committee, and shall record its findings in a register maintained for this purpose in its office.

XVII- OBJECTIVE AND REASONS FOR RECOMMENDING THE ENACTMENT OF A NEW STATE LEGISLATION:

147. A child born as a consequence of rape, especially in cases involving a minor unmarried girl, must never be viewed through the lens of stigma, shame, or social prejudice. The circumstances of birth are not the choice of the child, and therefore no moral, social, or legal dishonour can ever attach to that life. A civilized and justice-oriented society must recognize that every child is born with equal dignity, equal humanity, and equal constitutional protection. Neither social customs nor personal prejudices can diminish the intrinsic value of a human life. The child of a minor rape survivor is not a symbol of dishonour; rather, the true dishonour lies in the violence, exploitation, and injustice inflicted upon the victim. The responsibility of the State and society is therefore not to condemn or exclude, but to protect, nurture, and uphold the rights of both the survivor and the child.

148. Justice requires compassion guided by constitutional morality. A child cannot inherit stigma from a crime committed by another person. To deny such a child respect, identity, opportunity, or dignity would amount to punishing an innocent human being for an act over which the child had no control. The State must therefore ensure equal protection, social acceptance, education, healthcare, and a life of dignity for every such child, affirming that human worth is determined not by the circumstances of birth but by the equal humanity shared by all.

149. Human civilization has attained extraordinary advancement in science, philosophy, law, and governance, yet it remains entirely beyond human capacity to determine the destiny, character, or moral worth of a child- whether before birth, at the moment of birth, or by reason of the circumstances that led to the birth. History bears witness to the fact that individuals who later transformed society and brought new dimensions to statesmanship- among them Chandragupta Maurya, founder of the Maurya dynasty, and numerous figures from religious and mythological traditions whose lives have shaped the ethical consciousness of generations- were once children whose future greatness no one could have foreseen.

150. Even in royal lineages, no person could accurately predict whether a child would emerge as a wise and compassionate sovereign, a great emperor, or otherwise. Human character is not predetermined by birth, lineage, social status, legitimacy, or the circumstances surrounding conception; it is shaped by values, education, opportunity, and the choices made throughout life. If the circumstances of birth, or the conditions that led to it, were permitted to define the worth and dignity of a human being, civilization would stand in judgment of the innocent- a proposition wholly incompatible with constitutional morality, natural justice, and the foundational values of a humane society.

151. This principle acquires even greater significance in cases involving children born as a consequence of sexual violence. A child born to a minor unmarried girl as a result of rape carries no guilt, stigma, or dishonour. The crime belongs solely to the perpetrator, and no moral or social burden can justly be transferred to an innocent child. To attach shame or discrimination to such a child would be contrary to the principles of humanity, constitutional morality, and natural justice. The foundation of a just and civilized society must therefore rest upon the recognition that every child, irrespective of the circumstances of birth, possesses inherent dignity, equal humanity, and an equal right to life, identity, respect, and opportunity. The State, as the guardian of constitutional values and social justice, bears a solemn duty to protect both the survivor and the child from

discrimination, exclusion, and indignity. Justice demands not condemnation but compassion; not stigma but protection; and not prejudice but equal treatment under law.

152. At present, there is no specific legislation in India comprehensively addressing the independent rights, status, protections, and entitlements of a child born to a minor- whether married or unmarried- as a direct consequence of sexual assault or rape, including offences committed in detention or custodial situations. ***It is recommended that the State Government examine the need for a separate legal framework to protect the independent rights of a child born to an unmarried minor as a result of sexual assault. While framing such a framework, the State Government may, if it considers appropriate, take into account the findings and recommendations of the Expert Committee constituted under this order.***

XVIII- FURTHER RECOMMENDATIONS:

153. The National Medical Commission and the Uttar Pradesh Medical Council should hold detailed discussions on whether a separate chapter on medical jurisprudence should be added to the curriculum of medical colleges. This would help achieve the objectives of the National Medical Commission Act, 2019. Such discussions should also consider how medical professionals can be given adequate legal knowledge and how their understanding of medico-legal obligations can be strengthened.

154. The concerned authorities should also examine whether the capacity of medical professionals needs to be improved in the following areas. First, a better understanding of forensic science. Second, basic principles of the law of evidence, particularly regarding the admissibility and evidentiary value of medico-legal opinions and related documents. Third, the provisions of the Medical Termination of Pregnancy Act, 1971, and other related laws. Fourth, the study of landmark judgments of Constitutional Courts on medical jurisprudence, including guidelines issued by those Courts.

155. To achieve these objectives, medical colleges may consider making it mandatory to engage a jurist, a practicing advocate, or a former Judge to deliver guest lectures or serve as permanent faculty for teaching medical jurisprudence.

XIX- DIRECTIONS FOR CIRCULATION AND IMPLEMENTATION:

156. The Registrar (Compliance) is directed to transmit a certified copy of this order to the following authorities for information, circulation, and compliance: (i) The Chief Secretary, Government of Uttar Pradesh, (ii) The Chairman, National Commission for Protection of Child Rights; (iii) The Secretary, Ministry of Women and Child Development, Government of India for information, and necessary action; (iv) The Additional Chief Secretary (Home), Uttar Pradesh, for sensitizing District Magistrates and Chairpersons of Child Welfare Committees; (v) The Principal Secretary, Department of Women and Child Development, Government of Uttar Pradesh; (vi) The Principal Secretary, Medical Health and Family Welfare, Uttar Pradesh, who shall further circulate the same to all Chief Medical Officers of the State; and (vii) The Director General of Police, Uttar Pradesh, for issuing appropriate circulars to officers of the respective departments and for ensuring

that Senior Superintendents of Police across the State secure compliance with the directions contained in this order.

157. All the District Judges shall discuss this order in a weekly and monthly judicial meetings and sensitize the Magistrates and Judges of their judgeship regarding its contents and the obligations arising therefrom.

158. The Director, Judicial Training and Research Institute, Lucknow immediately upon receipt of a certified copy of this order, shall prepare study material on the subject and shall thereafter convene regular meetings and workshops for Member Secretary, Legal Services Authority, and all In-charge District Legal Services Authorities across the State, for the purpose of sensitizing and educating them regarding this order and the relevant orders of the Supreme Court. Such meetings shall be convened at least once every six months. A report of each such meeting, together with a list of participants and topics covered, shall be kept by the Director, JTRI for record and future reference.

159. A copy of this order shall also be forwarded to the National Medical Commission and the Uttar Pradesh Medical Council, for deliberation on the necessity and desirability of incorporating a separate chapter on statutory provisions related to medical jurisprudence in the curriculum of medical colleges, so as to further the objectives of the National Medical Commission Act, 2019.

160. The National Medical Commission and the Uttar Pradesh Medical Council shall submit their response and deliberations on these recommendations to the Registrar General of this Court within six months from the date of receipt of this order, who shall keep the response with the record of this case.

161. No further order on merits is required, inasmuch as the grievances raised by the petitioner stood substantially redressed pursuant to the order dated 04.08.2023. Accordingly, the petition stands disposed of in the above terms.

162. This Court places on record its sincere appreciation for the invaluable assistance rendered by Ms. Vijeta Singh, learned Amicus Curiae, whose diligent efforts, sustained engagement, and thoughtful submissions throughout the proceedings have been of considerable assistance to this Court in adjudicating the complex issues arising in the present matter. The Court also acknowledges with appreciation the contributions of Ms. Pratima Vishwakarma, learned Advocate, and Mr. Jatin Rana, Research Associate attached to this Court, whose dedicated research and scholarly inputs have materially enriched the Court's consideration of the legal, statutory, and constitutional questions involved herein.

163. The Registrar General is directed to ensure that all case records are properly scanned and preserved for future reference. This includes affidavits filed by the Chairman, Child Welfare Committee, Meerut; Chief Medical Officer, Meerut; Senior Superintendent of Police, Meerut; Principal Secretary, Department of Women and Child Development; Principal Secretary, Medical Health and Family Welfare; Director General of Police, Uttar Pradesh; and Chairman, NCPCR. It

also includes the affidavit of the learned Amicus Curiae, any reports submitted in compliance with earlier orders of this Court, and any affidavits that may be filed in compliance with this order.

164. The judgment opens with the judicial maxim of Vaughan C.J. in Thomas v. Sorrell (1677) to reflect upon a troubling reality. Despite a comprehensive legal framework enacted by Parliament over several decades, its implementation on the ground has remained deeply inadequate.

165. I conclude with concern that Parliament enacted the Medical Termination of Pregnancy Act in 1971 to regulate and permit termination of pregnancies under specified conditions. The Medical Termination of Pregnancy Rules and Regulations were subsequently framed in 2003 to provide a detailed procedural framework for implementation of the Act. The Protection of Children from Sexual Offences Act was enacted in 2012 to provide stringent protection to children against sexual abuse and exploitation.

166. In the field of juvenile justice, the Children Act, 1960 was the first central legislation in independent India dealing with the welfare of children and juveniles. It was replaced by the Juvenile Justice Act, 1986, which was enacted to bring Indian law in line with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, known as the Beijing Rules, adopted in 1985. However, after India ratified the United Nations Convention on the Rights of the Child in 1992, the 1986 Act was found to be inadequate. It was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000, which adopted a child-friendly approach, shifting the focus from punishment to reformation and rehabilitation. It established Juvenile Justice Boards for children in conflict with the law and Child Welfare Committees for children in need of care and protection. The Act was amended in 2006 and 2011 to address gaps in implementation, and was finally replaced by the more comprehensive Juvenile Justice (Care and Protection of Children) Act, 2015, which introduced the significant provision of trying certain juveniles as adults for heinous offences.

167. Notwithstanding this extensive legislative framework built over more than five decades, the facts of the present case reveal that the law, in practice, has remained largely unimplemented. It is this gap between the law on paper and its reality on the ground that the opening maxim seeks to highlight.

168. In a country as vast and diverse as India, minor unmarried girls from remote villages who are victims of sexual assault are compelled to approach multiple authorities, including the police, hospitals, Child Welfare Committees, and courts, merely to enforce a right that the law already provides. Most of these girls belong to poor, illiterate, and socially marginalized families. They have no access to legal aid or informed guidance. By the time their cases reach a court, (it is noticed that such cases, in routine, reach up to the Supreme Court) weeks and months have been lost. In many cases, the pregnancy has already crossed the permissible limit for termination, not because the law was inadequate, but because the authorities entrusted with its implementation failed to discharge their statutory obligations in time.

169. In this background, a question of fundamental importance arises. Who bears responsibility for this failure? The answer is unambiguous. Neither the minor victim nor the child

born as a consequence of such assault. The responsibility rests entirely with the State and its officers, who were under a clear and non-negotiable legal duty to act promptly and effectively. Every officer who delayed, every authority that remained inactive, and every institution that failed to function as mandated by law must be held accountable. The law casts this obligation without exception, and its breach cannot be excused on any ground.

(2026) 5 ILRA 688
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 22.05.2026

BEFORE

THE HON'BLE RAJNISH KUMAR, J.
THE HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

Application U/S 378 No. 40 of 2022

State of U.P. ...Applicant
Versus
Chandrasen @ Chailu & Anr. ...Opposite Parties

Issue for Consideration

Whether the leave to appeal can be granted even when upon consideration of the evidence and material on record, the learned trial Court recorded acquittal in a case where not only the complainant but the victim herself has not supported the prosecution case and the victim admitted that she, on her own, left her parental house, solemnized marriage with the accused/respondent and whether the State was justified in preferring such an application at all

Head Notes

The Code of Criminal Procedure, 1973- Section 378(3); The Indian Penal Code, 1860- Section 363, 366 & 376; **The Protection of Children from Sexual Offences Act, 2012- Sections 5 & 6 - Victim was about 17 years and 6 months of age on the date of the incident. She categorically stated in her deposition before the trial Court as well as in her statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C., that she, on her own, had left her parental home and gone with the accused/respondent. She further stated that she had married the accused/respondent and they were living together as husband and wife, and out of the said wedlock, a son was also born**

It cannot be said that the victim had not attained the age of discretion merely because she was short by about six months of attaining the age of 18 years. Even otherwise, the prosecution has failed to prove its case beyond all reasonable doubt. Thus, the continuation of the proceedings would amount nothing but harassment of the accused/ respondent, particularly when the alleged victim, who is now the mother of a child, is residing happily with the accused/respondent. Even the complainant himself admitted in his evidence that his daughter is living happily at her matrimonial home with the accused/respondent and therefore, he also does not wish to pursue the matter further.

Held-The State, before invoking the provisions of Section 378(3) Cr.P.C. to seek leave to appeal, is expected to examine the matter carefully and proceed appropriately because nothing could be above welfare of family and society. **Application dismissed**. (E-15)

Case Law Cited

Sadhu Saran Singh Vs. State of Uttar Pradesh and others; (2016) 4 SCC 357; Ramesh and Others versus State of Haryana; (2017) 1 SCC 529; Guru Dutt Pathak Vs. State of U.P; (2021) 6 SCC 116; Rajpal Singh Vs. Rajveer and others ; 2025 SCC OnLine SC 2823; Shaheen Parveen and another Vs. State of U.P. and others; 2015 SCC OnLine All 9489; Mafat Lal and another Vs. State of Rajasthan; (2022) 6 SCC 589; Ayyub Malik and another Vs. State of Uttarakhand and another; 2026 INSC 331;

List of Acts

The Code of Criminal Procedure, 1973; The Indian Penal Code, 1860; The Protection of Children from Sexual Offences Act, 2012

List of Keywords

Leave to Appeal; 378(3); Victim not supported prosecution case; Solemnized marriage with Accused; Residing happily with accused; Welfare of family and society; Prosecution failed to prove its case; Beyond reasonable doubt

Case Arising From

Grant of leave to appeal preferred by the State under Section 378(3) of the Code of Criminal Procedure, 1973, to challenge the judgment and order dated 26.04.2022 passed by the learned Additional Sessions Judge/Special Judge (POCSO Act), Court No. 44, Barabanki, in Sessions Trial No. 429 of 2020, arising out of Case Crime No. 211 of 2019, under Sections 363, 366 and 376 of the Indian Penal Code and Section 5/6 of the Protection of Children from Sexual Offences Act, 2012, Police Station Baddupur, District Barabanki, whereby the accused/respondent was acquitted of the charges framed against him.

Appearances for Parties

Counsel for Applicant(s) : G.A.
Counsel for Opposite Party(s)

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

1. Heard learned Additional Government Advocate (here-in-after referred as A.G.A.) for the State and perused the records.

2. The issue, in the instant application for grant of leave to appeal preferred by the State under Section 378(3) of the Code of Criminal Procedure, 1973 (here-in-after referred to as ?Cr.P.C.?), to challenge the judgment and order dated 26.04.2022 passed by the learned Additional Sessions Judge/Special Judge (POCSO Act), Court No. 44, Barabanki, in Sessions Trial No. 429 of 2020, State vs. Chandrasen alias Chailu, arising out of Case Crime No. 211 of 2019, under Sections 363, 366 and 376 of the Indian Penal Code (hereinafter referred to as ?IPC?) and Section 5/6 of the Protection of Children from Sexual Offences Act, 2012 (here-in-after referred to as ?POCSO Act?), Police Station Baddupur, District Barabanki, whereby the accused/respondent, Chandrasen alias Chailu, was acquitted of the charges framed against him, is as to whether the leave to appeal can be granted even when upon consideration of the evidence and material on record, the learned trial Court recorded acquittal in a case where not only the complainant but the victim herself has not supported the prosecution case and the victim admitted that she, on her own, left her parental house, solemnized marriage with the accused/respondent and on the date her evidence was recorded before the trial Court, she was having in her lap, their infant child aged about ten months.

Considering the same, the trial Court also took into consideration the fact that the victim was residing happily with her husband and family.

3. The State, which is the protector of not only the rights but welfare of citizens also, unable to accept the judgment and order without considering the facts and law on the issue, consequently, to disturb a settled family, has filed this application for leave to appeal. Be that as it may, by the time the respondent/accused was acquitted, the victim had attained majority and had a child and was living peacefully with her husband and family. The complainant, who is the father of the victim, had also accepted the marital relationship and expressed happiness regarding the welfare of his daughter and her family. Despite these circumstances and considering the peculiar facts of case, the State has preferred the present application seeking leave to appeal against the judgment of acquittal, which, may not only prolong harassment to the respondent but may also adversely affect the victim and the child by exposing them to unnecessary social stigma and hardship, whereas the State is required to see the welfare of family life of its citizens, proper upbringing of children so that they may have no grudge towards family / society and welfare of society.

4. This Court, therefore, is required to examine not only as to whether leave to appeal ought to be granted in the peculiar facts and circumstances of the present case and the law on the issue but also whether the State was justified in preferring such an application at all. Accordingly, this Court deems it appropriate first to consider the statutory provisions governing grant of leave to appeal and the settled legal principles on the subject.

5. Section 378(1)(b) Cr.P.C. provides that the State Government may, in any case, direct the Public Prosecutor to present an appeal before the High Court against an original or appellate order of acquittal passed by any court other than a High Court. Section 378(3) Cr.P.C. places a restriction on the entertainment of an appeal against acquittal by providing that no such appeal shall be entertained by the High Court unless special leave to appeal is granted. Thus, while the restriction under sub-section (3) of Section 378 Cr.P.C. is for the Court to consider, the language employed in Section 378(1)(b), particularly the expression ?may direct,? equally casts a responsibility upon the State Government to examine as to whether an appeal ought to be filed in a given case. It also makes it clear that it is not mandatory for the State to challenge every order of acquittal, rather, the State must first satisfy itself that the case is appropriate for filing such an appeal, particularly, where prima facie injustice appears to may have been caused either to the complainant or the victim, or where the matter may have a substantial impact upon society at large.

6. It is a settled law that every accused is presumed innocent unless proven guilty. Such presumption of innocence stands further reinforced upon an order of acquittal passed after appreciation of evidence and material available on record. More particularly, where the prosecution witnesses themselves have not supported the prosecution case and the dispute appears to have arisen from social discord or suspicion within a family, the State is expected to exercise greater caution before disturbing a settled matrimonial and family life, subject of course, to impact on society. The Hon’ble Supreme Court has repeatedly considered the scope of interference in appeals against acquittal and has consistently held that leave to appeal should not ordinarily be granted unless a strong prima facie case is made out, indicating reasonable likelihood of conviction upon re-appreciation of evidence and findings recorded by trial Court are totally perverse.

7. The Hon'ble Supreme Court, in the case of **Sadhu Saran Singh Vs. State of Uttar Pradesh and others;** (2016) 4 SCC 357, has observed in paragraph no. 20 and 21 as under:-

"20. Generally, an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against conviction. In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. This Court, while enunciating the principles with regard to the scope of powers of the appellate court in an appeal against acquittal, in Sambasivan v. State of Kerala 1998 SCC (Cri) 1320 has held:

"7. The principles with regard to the scope of the powers of the appellate court in an appeal against acquittal, are well settled. The powers of the appellate court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate court cannot substitute its view in the place of that of the trial court. It is only when the approach of the trial in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate court can interfere with the order of acquittal." 21. This Court, in several cases, has taken the consistent view that the appellate court, while dealing with an appeal against acquittal, has no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded. If the appellate court, on scrutiny, finds that the decision of the court below is based on erroneous views and against settled position of law, then the interference of the appellate court with such an order is imperative.".

8. The Hon'ble Supreme Court, in the case of **Ramesh and Others versus State of Haryana;** (2017) 1 SCC 529, has held that before an appeal is entertained on merits, leave of the High Court is to be obtained, which means that normally judgment of acquittal of the trial court is attached a definite value which is not to be ignored by the High Court. In other words, presumption of innocence in favour of an accused gets further fortified or reinforced by an order of acquittal. The relevant paragraphs 24 and 26 are extracted hereinbelow:-

"24. We have duly appreciated the submissions advanced by the counsel for the parties on both sides. No doubt, the High Court was dealing with the appeal against the judgment of the trial court which had acquitted the appellants herein. The scope of interference in an appeal against acquittal is undoubtedly narrower than the scope of appeal against conviction. Section 378 of the Code of Criminal Procedure, 1973 confers upon the State a right to prefer an appeal to the High Court against the order of acquittal. At the same time, sub-section (3) thereof mandates that such an appeal is not to be entertained except with the leave of the High Court. Thus, before an appeal is entertained on merits, leave of the High Court is to be obtained which means that normally judgment of acquittal of the trial court is attached a definite value which is not to be ignored by the High Court. In other words, presumption of innocence in favour of an accused gets further fortified or reinforced by an order of acquittal. At the same time, while exercising its appellate power, the High Court is empowered to reappreciate, review and reconsider the evidence

before it. However, this exercise is to be undertaken in order to come to an independent conclusion and unless there are substantial and compelling reasons or very strong reasons to differ from the findings of acquittal recorded by the trial court, the High Court, as an appellate court in an appeal against the acquittal, is not supposed to substitute its findings in case the findings recorded by the trial court are equally plausible.

25. x x x x x

26. This legal position is reiterated in Govindaraju v. State (2012) 4 SCC 722 and the following passage therefrom needs to be extracted: (SCC p. 732, paras 12-13)

"12. The legislature in its wisdom, unlike an appeal by an accused in the case of conviction, introduced the concept of leave to appeal in terms of Section 378 CrPC. This is an indication that appeal from acquittal is placed on a somewhat different footing than a normal appeal. But once leave is granted, then there is hardly any difference between a normal appeal and an appeal against acquittal. The concept of leave to appeal under Section 378 Cr.P.C. has been introduced as an additional stage between the order of acquittal and consideration of the judgment by the appellate court on merits as in the case of a regular appeal. Sub-section (3) of Section 378 clearly provides that no appeal to the High Court under sub-section (1) or (2) shall be entertained except with the leave of the High Court. This legislative intent of attaching a definite value to the judgment of acquittal cannot be ignored by the courts."

13. Under the scheme of CrPC, acquittal confers rights on an accused that of a free citizen. A benefit that has accrued to an accused by the judgment of acquittal can be taken away and he can be convicted on appeal, only when the judgment of the trial court is perverse on facts or law. Upon examination of the evidence before it, the appellate court should be fully convinced that the findings returned by the trial court are really erroneous and contrary to the settled principles of criminal law."

9. The Hon'ble Supreme Court, in the case of **Guru Dutt Pathak Vs. State of U.P;** (2021) 6 SCC 116, has held that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court and if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

10. The Hon'ble Supreme Court, in the case of **Rajpal Singh Vs. Rajveer and others ;** 2025 SCC OnLine SC 2823, has held that even when the appellate Court re-appreciates the evidence while dealing with the judgment and order of acquittal, the innocence attributed to the accused acquitted from the charges of offences would be a weighty rebuttable factor. The relevant para-9.2 is extracted here-in-below :-

"9.2 It is a well-settled principle enunciated by series of judgments of this Court that there must exist substantial and compelling reasons to upset the acquittal. Once the court acquits the accused, the presumption of innocence is reinforced. Thereafter, the interference by the appellate court would be minimal and has to be guided by strong and cogent reasons. Reversal of acquittal should not be a matter of course just because the other view is considered to be possible

by the appellate court. Even when the appellate court re-appreciates the evidence while dealing with the judgment and order of acquittal, the innocence attributed to the accused acquitted from the charges of offences would be a weighty rebuttable factor."

11. Keeping in mind the aforesaid statutory provisions and the presumption in favour of the respondent/accused and the principles for grant of leave to appeal enunciated by Hon'ble Supreme Court, we proceed to consider the instant application for leave to appeal.

12. Seeking grant to leave to appeal, learned A.G.A. submitted that the impugned judgment and order of acquittal has been passed by learned trial Court without appropriately considering the evidence and material on record, which is not only against the law but also not in the interest of justice. It is further alleged that learned trial Court has failed to consider that the victim was minor in age on the date of the incident and the victim was arrested along with the accused. Learned trial Court has also failed to consider that the victim, who was minor, had conceived pregnancy, which is an offence under the POCSO Act. Learned trial Court also failed to consider the documentary evidence of age. Thus, it has been stated that the judgment and order passed by learned trial Court is not tenable in the eyes of law. Hence leave to appeal may be granted and accused/respondent may be summoned so that the appeal may be decided on merit.

13. We have considered the submissions advanced by learned A.G.A. and perused the material on record.

14. The prosecution case, in short, is that written complaint dated 20.12.2019 (Ext. Ka. 4) was submitted by the complainant Kamlesh Kumar, alleging therein that his daughter (name not disclosed) aged about 16 years has been eloped suddenly at about 02:00 in the night of 13.12.2019. He searched a lot, then he came to know that respondent Chandrasen alias Chailu son of Ram Avatar, resident of Sadrapur, Police Station Baddupur, district Barabanki has eloped and kidnapped his daughter. Accordingly, report may be registered and appropriate action may be taken.

15. On the basis of the aforesaid written report of the complainant, check F.I.R. (Ext. Ka. 7), bearing Case Crime No. 211 of 2019, under Sections 363 and 366 I.P.C. was lodged against the accused/respondent Chandrasen alias Chailu on 20.12.2019 and corresponding entry was made in G.D. Thereafter, the investigation was made.

16. During investigation, medical examination of the victim was also conducted upon her recovery. The medical examination report (Ext. Ka. 5) and supplementary report (Ext. Ka.6) have been placed on record. After completion of investigation, the Investigating Officer filed the charge-sheet against the accused/respondent under sections 363, 366 and 376 I.P.C. and Section 5/6 of POCSO Act, whereupon the cognizance was taken by learned Magistrate and he committed the case to the Court of Session, where charges were framed against the accused/respondent under Sections 363, 366 and 376 I.P.C. and Section 6 of POCSO Act. Accused/respondent denied the charges and pleaded for trial, hence the trial commenced.

17. In order to prove its case, the prosecution examined the victim as P.W.1, the complainant Kamlesh as P.W.2, Dr. Kailipar Kannaujia as P.W.3, S.I. Abhishek Kumar as P.W. 4 and Narayan

Dutt Mishra as P.W.5. The prosecution had also placed on record and proved documentary evidence i.e. recovery memo of the victim as Ext. Ka. 1, statement of the victim recorded under Section 161 Cr.P.C. as Ext. Ka.2, statement of the victim recorded under Section 164 Cr.P.C. as Ext. Ka. 3, request letter for the medical examination as Ext. Ka. 4, medical examination report as Ext. Ka. 5, supplementary report as Ext. Ka. 6, check F.I.R. as Ext. Ka. 7, corresponding G.D. entry as Ext. Ka. 8, site plan as Ext. Ka. 9 and charge-sheet as Ext. Ka. 10.

18. After conclusion of the prosecution evidence, the statement of the accused/respondent was recorded under Section 313 Cr.P.C., in which he denied the occurrence and stated that witnesses have given false evidence. The case has been lodged against him on account of enmity. In additional statement, he stated that he had not committed any offence and he is innocent and he has falsely been implicated. Though he stated to produce the defence witness, but no oral or documentary evidence has been led by the defence.

19. Learned trial Court, thereafter, after affording opportunity to learned Counsel for the parties and considering the evidence and material on record, has passed the judgment and order dated 26.04.2022, acquitting the accused/respondent, hence the State has come up with this application for grant of leave to appeal.

20. The victim appeared as P.W.1. She has not supported the prosecution case. She has stated in her evidence that she had studied upto Class-V in Gendapurwa School. Accused Chandrasen is of her village and is residing in front of her house. She, on her own, has gone with accused to Bhatinda, where she got married with Chailu and lived as husband and wife taking a room. She became pregnant from Chandrasen alias Chailu. In the meantime, lockdown was imposed, on account of which they were returning to whom and the police had caught them. Thereafter, her statement was recorded at Mahila Police Station. She proved her statement given at police station under Section 161 Cr.P.C. She also admitted that her medical examination was got conducted at Government Hospital, Ghunghetar and Government Hospital, Barabanki. Her statement was also recorded under Section 164 Cr.P.C. before the Magistrate Court at Barabanki. She also proved her photograph and signature on the statement. She also deposed that a son was born, to whom she has brought to the Court. She admitted that she is residing at her father's home with her child. She also stated that she wants to live with Chandrasen and she got married to him. Her father had lodged a false report. Her house and the house of Chandrasen are adjacent to each other. The son, who is in her lap, is of Chandrasen. She admitted that when she was caught, her age was 17 years but on the date of the evidence before the trial Court, her age was 20 years. Thus, it is apparent that the victim has, not only not supported the prosecution case, but in statement recorded under Section 161 Cr.P.C. and statement recorded under Section 164 Cr.P.C. and the evidence adduced before the trial court also, categorically stated that she wants to live with Chandrasen (accused) as she had married to him and she had also a son from Chandrasen (accused). She also categorically stated that she, on her own, gone with the Chandrasen (accused/respondent) and she had not allured or forcefully took her.

21. The complainant, Kamlesh, who is the father of the victim, appeared as P.W.2. He admitted that he had lodged the F.I.R. and reiterated the contents thereof in his examination-in-chief. In his cross-examination, he also admitted the manner and circumstances in which the victim

was recovered. He stated that he did not know the date of birth of his daughter. He deposed that the name of his daughter was entered in the school records at the instance of the Pradhan Ji, who had also recorded her date of birth. Thus, it is apparent that the complainant, being the father of the victim, neither knew the exact date of birth of his daughter nor had he himself got recorded the same in the school documents. Such a statement appears natural for a rustic villager. Even today, illiterate villager(s) often do not remember the exact date of birth of their children. Nothing has come on record to indicate that the complainant is a literate person.

22. Complainant (P.W.2) further deposed that he had not seen her daughter going away with anyone nor had he seen anyone taking her away. He does not know as to how her daughter had gone. The report of incident was got written on the basis of sucpicion. He further deposed that his daughter, who is the victim, is residing at the house of the accused and he has no objection in it. He further deposed that her daughter had told that the son, who is in her lap, is of Chandrasen; she had married with Chandrasen alias Chailu; she had no problem in it. He further deposed that he and accused are of one caste and relative. The son, who is in the lap of his daughter, is more than one year old. He does not want to contest the case now. He does not want to trouble to his daughter. His daughter and maternal grand son are living happily in her in-laws? house, therefore, he has not objection with their marriage. He does not want to continue with the case against his son-in-law Chandrasen. He denied the suggestion that he is giving false evidence on account of some pressure. He further deposed that he had asked the police that he does not want to continue with the case but the police had told that formalities are to be completed.

23. In view of above, from the evidence P.W.2, it is evident that he admitted that he had lodged the F.I.R. on account of suspicion with a delay of one week and upon coming to know that her daughter had married with accused/respondent and a son was born from Chandrasen, he does not want to continue with the case and the same was also told to the police but the police told him that formalities are to be completed. Hence, P.W.2 has not supported the prosecution case. The victim, who appeared as P.W.-1, has also not supported the prosecution case. Thus, the offences for which the charges were framed are not made out except if the victim is minor. Even then, it is to be seen as to whether the case for leave to appeal is made out.

24. P.W.3-Dr. Kailipar Kannaujiya, who had medically examined the victim, had proved the medical examination report (Ext. Ka.5) and supplmentary report (Ext. Ka. 6). She had not mentioned any injuries on the body of the victim. She further deposed that based on the pathelogy report and x-ray report, she prepared the supplementary report (Ext. Ka.6), according to which, her age was 17 years. She further deposed that as per the certificate issued by C.M.O., age of the victim was 17 years, but the C.M.O. has not been examined.

25. In view of above, the sole question which requires consideration is as to whether, the victim was aged about 17 years of age or what was her actual age at the time of the incident and as to whether she can be treated minor, if she had gone with the accused/respondent of her own free will or had been kidnapped. Apart from this aspect, neither the victim nor the complainant supported the prosecution case.

26. P.W.5, Narayan Dutt Mishra, Principal of Primary School, Sadarpur, Vikas Khand Fatehpur, District Barabanki, proved the date of birth of the victim as recorded in the school register to be 01.07.2003, which has also been brought on record as Ext. Ka-11. The learned trial Court, after considering the aforesaid evidence, came to the conclusion that the victim was of about 17 years of age on the date of the incident i.e. 13.12.2019. However, from the educational record, the age of the victim appears to be approximately 17 years and 6 months and admittedly the said date of birth was not recorded by her parents and the person, who got it recorded has not been examined. As per the medical report, her age was assessed more than 17 years.

27. It is well settled that in medical age determination, a variation of two years on either side is permissible. It is for the reason that an accurate date of birth cannot be determined and a person can not be said to attain the wisdom of taking independent decision in the intervening night of attaining majority because on attaining majority, he/she is deemed to take decisions for himself/herself independently. Thus, considering the age of the victim and the nature of the alleged offence committed by the accused/respondent, it is required to be examined, as to whether the accused/respondent could be held guilty of the offence, particularly when the victim herself has not supported the prosecution case and specifically stated that she had gone with the accused/respondent of her own free will, married to him and also have child from him with her sweet will and volition. However, in such circumstances, the charge under Section 366 I.P.C. can not be said to have been proved, as the essential ingredient of kidnapping, necessary to constitute an offence under the said section, has not been established.

28. A Co-ordinate Bench of this Court, in the case of **Shaheen Parveen and another Vs. State of U.P. and others;** 2015 SCC OnLine All 9489, which has also been considered by learned trial Court, in which the victim was a few months less than 18 years when she left with the company of the accused, has held that a girl, who has attained the age of discretion and was on the verge of attaining majority and is capable of knowing, what was good and what was bad for her, cannot be said to be a victim of inducement, particularly when the case of the victim/girl herself is that it was on her initiative and on account of her voluntary act that she had gone with the boy and got married to him. In such circumstances, desire of the girl/victim is required to be seen. Ingredients of Section 361 I.P.C. are required to be considerd accordingly, and not in mechanical or technical interpretation. It is also held that so as to show an act of criminality on the part of the accused, some kind of inducement held out by the accused person or any active participation by him in the formation of the intention of the minor to leave the house of the guardian, is required to be shown. The relevant paragraphs 23 to 25 are extracted here-in-below :-

"23. A girl who has attained the age of discretion and was on the verge of attaining majority and is capable of knowing what was good and what was bad for her, cannot be said to be a victim of inducement, particularly when the case of the victim/girl herself is that it was on her initiative and on account of her voluntary act that she had gone with the boy and got married to him. In such circumstances, desire of the girl/victim is required to be seen. Ingredients of Section 361 I.P.C. are required to be considered accordingly, and not in mechanical or technical interpretation.

24. Ingredients of Section 361 I.P.C. cannot be said to be satisfied in a case where the minor having attained age of discretion, alleged to have been taken by the accused person, left her

guardian's protection knowingly (having capacity to know the full import of what she was doing) and voluntarily joins the accused person. In such a case, it cannot be said that the victim had been taken away from the keeping of her lawful guardian.

25. So as to show an act of criminality on the part of the accused, some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian, is required to be shown. Conclusion might be different in case evidence is collected by the investigating agency to establish that though immediately prior to the minor leaving the guardian's protection, no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. (The Court in above regards takes a cue from the judgment rendered by Hon'ble Supreme Court of India reported in (1965)1 SCR 243 S. Varadarajan versus State of Madras)."

29. The Hon'ble Supreme Court, in the case of M***afat Lal and another Vs. State of Rajasthan;*** (2022) 6 SCC 589, has held that Section 366 I.P.C. would come into play only where there is forceful compulsion for marriage by kidnapping or by inducing a woman. The offence under the said provision would not be made out where the abductee has clearly stated that she was in love with the abductor and had left her parental home on account of disturbed circumstances therein, particularly when such relationship was not acceptable to her father and that she had married the abductor of her own free will without any inducement or influence exercised by him. In the said case, the victim/abductee was a minor on the date of the incident. She had voluntarily left her parental home and married the person with whom she was in love and from the said wedlock, a child was also born. She had further joined in filing the appeal before the Hon'ble Supreme Court against the order passed by the High Court. The Hon'ble Supreme Court observed that no fruitful purpose would be served by relegating the matter for conducting a trial, as the same would not be conducive to the interest of either of the appellants and would merely be a futile exercise and accordingly, all consequential proceedings arising therefrom were quashed.

30. In a recent judgment, the Hon'ble Supreme Court, in the case of **Ayyub Malik and another Vs. State of Uttarakhand and another;** 2026 INSC 331, has held that it may be true that fleeing with a girl, who is not of marriageable age and who is minor, is an offence under law, however, the subsequent development of marriage between the two lovers and the fact that they have been merrily living would outweigh the need to take the alleged offence or the criminal proceedings to their logical end. In the fact situation like one obtained in the present one, continuation of criminal proceedings against appellant no.1 would become harassing and stand as an abuse of process of law. The relevant paragraphs 6 and 6.1 are extracted here-in-below :-

"6. It may be true that fleeing with a girl who is not of marriageable age and who is minor is an offence under law, however, the subsequent development of marriage between the two lovers and the fact that they have been merrily living would outweigh the need to take the alleged offence or the criminal proceedings to their logical end. In the fact situation like one obtained in the present one, continuation of criminal proceedings against appellant No.1 would become harassing and stand as an abuse of process of law.

6.1 Any litigation brings a kind of botheration for the parties. The uncertainty of the outcome of the litigation always looms large. When it is a criminal case, its pendency becomes burdensome and worrisome. For appellant No.1 as well as appellant No.2, negotiating the criminal proceedings in a court of law, notwithstanding that both are now husband and wife living together, would operate as painful

interference in their happy life. The High Court would have done justice to the parties only by quashing the criminal proceedings against appellant No.1 initiated by the complainant-father of appellant No.2."

31. Adverting to the facts of the present case and considering the law laid down in the aforesaid decisions of the Co-ordinate Bench of this Court as well as the Hon'ble Supreme Court, what we find is that the victim was about 17 years and 6 months of age on the date of the incident. She categorically stated in her deposition before the trial Court as well as in her statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C., that she, on her own, had left her parental home and gone with the accused/respondent. She further stated that she had married the accused/respondent and they were living together as husband and wife, and out of the said wedlock, a son was also born. In such circumstances, it cannot be said that the victim had not attained the age of discretion merely because she was short by about six months of attaining the age of 18 years. Even otherwise, the prosecution has failed to prove its case beyond all reasonable doubt. Thus, the continuation of the proceedings would amount nothing but harassment of the accused/ respondent, particularly when the alleged victim, who is now the mother of a child, is residing happily with the accused/respondent. Even the complainant himself admitted in his evidence that his daughter is living happily at her matrimonial home with the accused/respondent and therefore, he also does not wish to pursue the matter further.

32. In view of the aforesaid legal proposition and upon consideration of the findings recorded by the learned trial Court, the evidence available on record, and the overall facts and circumstances of the case, this Court is of the considered view that the application seeking grant of leave to appeal is misconceived and has been filed on wholly untenable grounds. In fact, considering the facts of the case and the settled legal position on the issue, such an application ought not to have been filed. The State, before invoking the provisions of Section 378(3) Cr.P.C. to seek leave to appeal, is expected to examine the matter carefully and proceed appropriately because nothing could be above welfare of family and society. Mahatma Gandhi once stated that *"a true measure of any society can be found in how it treats its most vulnerable members."* Benjamin N. Cardozo, Former Associate Justice of Supreme Court of United States stated stated that *"the final cause of law is the welfare of society."* Thus, the State should also have accepted the decision of it's citizen and trial Court in the facts and circumstances of the case.

33. The application is, accordingly, **dismissed**. Consequently, the memo of appeal stands **rejected**.

(2026) 5 ILRA 698
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 22.05.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 482 No. 3927 of 2018

Ram Pal Singh & Ors. **...Applicant**
Versus
State of U.P. & Anr. **...Opposite Parties**

Issue for Consideration

Issue pertains to whether a complaint u/s 138 of Negotiable Instruments Act, 1881, filed by Managing Director of payee company against the Managing Director and Directors of drawer company in their individual capacity, without impleading either company as a party, and without service of statutory notice of demand upon the drawer company, was maintainable in law.

Headnotes

Negotiable Instruments Act, 1881 - s. 138 - Dishonour of cheque - Insufficient funds - Complaint by individual on behalf of payee company, not by a company - Statutory notice of demand - Not issued - Company (drawer) not impleaded as opposite party - Mandatory requirement - Maintainability of - Complaint and summoning order - Quashing of - The petitioners, being the Managing Director and Directors of M/s. Mahalaxmi Power Corporation Limited, entered into a Memorandum of Understanding dated 08.05.2013 with M/s. Gayatri Dham Colonizers and Constructions (India) Limited, represented by its Managing Director/complainant, for purchase and development of certain plots of land, pursuant whereto a cheque dated 30.06.2014 for Rs. 1,73,00,000/- was issued by Mahalaxmi Power Corporation Limited in favour of payee company, which, upon presentation on 22.09.2014, was returned unpaid on 29.03.2024 for insufficiency of funds, whereafter the complainant issued a legal notice dated 4/7.10.2014 which went unheeded, resulting in a complaint being filed u/s 138 of Negotiable Instruments Act by the complainant in his individual capacity against the petitioners in their individual capacity, culminating in the impugned summoning order dated 22.08.2017 and non-bailable warrant dated 15.05.2018, without either company being arraigned as a party to proceedings, aggrieved whereby the petitioners approached the High Court u/s 482 Cr.P.C. for quashing of said order and consequent proceedings.

Held: In the instant case, the company in whose favour a cheque was issued has not come forward to file a complaint - The company which had issued the cheque has not been issued a notice u/s 138 of Negotiable Instruments Act and has not been made an opposite party in the complaint - Therefore, the complaint was not maintainable for this reason - The trial court has passed the impugned summoning order dated 22.08.2017 without considering this aspects of matter which vitiates the trial court's order - Accordingly, application allowed, entire proceedings quashed. [Paras 18, 19] (E-13)

Case Law Cited

Himanshu v. B. Shivamurthy and others: **(2019) 3 SCC 797 - referred to**

List of Acts

Negotiable Instruments Act, 1881

List of Keywords

Application u/s 482 Cr.P.C; Complaint; Managing Director; Directors of Company; Memorandum of Understanding; Cheque; Dishonour; Insufficiency of Funds; Legal Notice; Demand; Impleaded; Juristic person; Summoning order; Non-Bailable Warrant; Maintainability of Act; Vakalatnama; Interim order; Coercive action; Proviso to s. 138 Negotiable Instrument Act; Application allowed; Impugned order and entire proceedings quashed.

Case Arising From

ORIGINAL JURISDICTION: Application U/S 482 No. - 3927 of 2018
From the Order dated 22.08.2017, passed by the learned Additional Judicial Magistrate, Court No.6 in Complaint No.82529 of 2014, as well as non-bailable warrant dated 15.05.2018 relating to Police Station Hazratganj, District Lucknow.

Appearances for Parties

Advs. for the Applicant(s):

Ravindra Kumar, Arvind Kumar Shukla, Supriya Singh, Vinay Prakash Katiyar

Advs. for the Opposite Party(s):
Govt. Advocate, Padam Kant Mishra

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

1. Heard Shri Anand Kumar Shukla, learned counsel for the petitioners and Shri Shivam Mishra, learned AGA for the State.

2. By means of the application filed under Section 482 Cr.P.C. the petitioners/applicants have challenged the validity of an order dated 22.08.2017, passed by the learned Additional Judicial Magistrate, Court No.6 in Complaint No.82529 of 2014, under Section 138 of N.I. Act, as well as non-bailable warrant dated 15.05.2018 relating to Police Station Hazratganj, District Lucknow whereby the petitioners were summoned to face trial for the offence under Section 138 of Negotiable Instruments Act.

3. The cause list shows the name of Shri Padam Kant Mishra, as learned counsel for the private respondent but neither he is present in the court nor has any request been made on his behalf for adjournment of the case. The matter is pending since 2018. Therefore, the court proceeds to pass appropriate orders after hearing the submissions of learned counsel for the petitioner and the learned Government Advocate and perusing the record.

4. The aforesaid case has been instituted on the basis of a complaint filed by opposite party No. 2 - Laxmi Narayan Pandey, against the petitioners namely, Ram Pal Singh, Vinod Singh and Vijay Singh, stating that the complainant is the Managing Director of M/s. Gayatri Dham Colonizers and Constructions (India) Limited and the petitioners herein (opposite parties in the complaint) are the Managing Director and Directors of Mahalaxmi Power Corporation Limited.

5. The complainant and the present petitioners had entered into a Memorandum of Understanding (in short 'MOU') dated 08.5.2013, in respect of purchase and development of certain plots of land at Village Natkur, Bhadarsa, Chandrawal and other adjoining villages of Nyay Panchayat, Bijnore, Tehsil Sasar, District Lucknow. In pursuance of the aforesaid agreement, the petitioners have given a cheque dated 30.06.2014 for Rs.1,73,00,000/- (One Crore Seventy three lakh only) to M/s. Gayatri Dham Colonizers and Constructions (India) Limited. The complainant presented the cheque in the bank account of M/s. Gayatri Dham Colonizers and Constructions (India) Limited on 22.09.2014. On 29.03.2024, the Bank returned the cheque unpaid for the reason of insufficiency of funds. Thereafter, the complainant sent a legal notice dated 4/7.10.2014 to the petitioners but they did not pay the amount. Upon this complaint, the impugned summoning order dated 22.08.2017 has been passed after recording the aforesaid facts.

6. A copy of the MOU dated 08.05.2013 referred to in Para 2 of the complaint has been annexed as Annexure No.6 to the Writ Petition. Although the complaint states that the MOU was entered into between the complainant- Laxmi Narayan Pandey and the petitioners Ram Pal Singh, Vineet Singh and Vijay Singh, its copy annexed as Annexure No. 4, reveals that this MOU was in fact, entered into between Mahalaxmi Power Corporation Limited, a Company registered under the

Companies Act, 1956, through its Directors namely - Ram Pal Singh, Vineet Singh, Vijay Singh and M/s. Gayatri Dham Colonizers and Constructions (India) Limited. through its Managing Director, Laxmi Narayan Pandey.

7. A Company is a juristic person which is distinct and different from its Managing Director/Directors. When the MOU was executed between the aforesaid two Companies, it cannot be said that it was executed between the complainant and the petitioners.

8. The complaint itself states that Mahalaxmi Power Corporation Limited has issued a cheque in the name of M/s. Gayatri Dham Colonizers and Constructions (India) Limited. This cheque was returned by the bank unpaid. Therefore, the person aggrieved by the dishonour of the cheque was the Company to whom the cheque was given and in whose bank account it was presented, namely Gayatri Dham Colonizers and Constructions (India) Limited.

9. The aggrieved Company has not filed the complaint under Section 138 of Negotiable Instruments Act. Moreover, the drawer of the cheque was Mahalaxmi Power Corporation Limited and this Company has also not been impleaded in the complaint.

10. Notice on the application was issued to the opposite party No.2, by means of an order dated 18.6.2018 and four weeks' time was granted to file counter affidavit.

11. On 13.06.2019, the office reported that the notice had been served personally on the opposite party No. 2. However, the opposite party No. 2 did not put in appearance and thereafter on 03.07.2019, a co-ordinate Bench of this Court, keeping in view the aforesaid facts and the legal position in consideration, had passed an interim order on 03.07.2019 providing that no coercive action shall be taken against the applicants in pursuance of the Complaint Case No.82529 of 2014, under Section 138 of the Negotiable Instrument Act.

12. Although Mahalaxmi Power Corporation Limited is not a party to this case, but he has not filed any counter affidavit. Shri Vinay Prakash Katiyar, Advocate has filed Vakalatnama on behalf of M/s. Mahalaxmi Power Corporation Limited on 01.03.2021.

13. In these circumstances, the facts pleaded in the petition remain uncontroverted and nothing has been brought on record to dispute the correctness of the documents annexed with the petition.

14. Section 138 of the Negotiable Instruments Act, 1881 reads as follows:

"138. Dishonour of cheque for insufficiency, etc., of funds in the account.?Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other

provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless?

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation. -For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.]"

15. Learned counsel for the petitioners has placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Himanshu vs. B. Shivamurthy and others: (2019) 3 SCC 797,*** wherein the Hon'ble Supreme Court has held that in absence of the Company being arraigned as an accused, a complaint against the appellant would not maintainable. The person who had signed the cheque as a Director of the Company and for and on its behalf, may not be tried for the offence in absence of a notice of demand being served on the Company and without compliance with the proviso to Section 138 of N.I. Act.

16. In the present case also, the record reveals that the MOU was executed between Mahalaxmi Power Corporation Limited and the cheque in question was also issued by M/s. Gayatri Dham Colonizers and Constructions (India) Limited in favour of Mahalaxmi Power Corporation Limited. None of the companies is a party to the complaint under Section 138 of Negotiable Instrument Act.

17. In these circumstances, the complaint under Section 138 the Negotiable Instruments Act would not be maintainable if the Company in whose favour, the cheque was issued and which was aggrieved by non-payment of the amount of cheque, does not come forward to file the complaint. Secondly, ifthe Company which had issued the cheque, and which was liable to pay the amount upon the cheque being dis-honoured, was not sent any notice, the complaint filed by any other person including the Managing Director and the Directors of the Company, would not be maintainable. Further, in absence of the Company which had issued the cheque, being impleaded as an opposite party, a complaint under Section 138 of the Negotiable Instruments Act would not be maintainable.

18. In the present case, the company in whose favour a cheque was issued has not come forward to file a complaint. The company which had issued the cheque has not been issued a notice under Section 138 of Negotiable Instruments Act and has not been made an opposite party in the complaint. Therefore, the complaint was not maintainable for the aforesaid reason. The trial court has passed the impugned summoning order dated 22.08.2017 without considering the aforesaid aspects of the matter which vitiates the trial court's order.

19. Accordingly the petition under Section 482 Cr.P.C. is **allowed**. The impugned order dated 22.8.2017 passed by the learned Additional Judicial Magistrate, Court No.6, in Complaint No.82529 of 2014 under Section 138 of N.I. Act, non-bailable warrant dated 15.05.2018 relating to Police Station Hazratganj, District Lucknow as well as the entire proceedings of the complaint case are quashed.

(2026) 5 ILRA 703
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 19.05.2026

BEFORE

THE HON'BLE BRIJ RAJ SINGH, J.

Application U/S 528 No. 1531 of 2026

Roli **...Applicant**
Versus
State of U.P. & Ors. **...Opposite Parties**

Issue for Consideration

Issue pertains to whether the Chief Judicial Magistrate, Gonda was justified in treating the applicant's application u/s 175(3) of BNSS, 2023 as a complaint case instead of directing registration of an FIR, despite the disclosure of a cognizable offence of a grave sexual nature, and whether such exercise of discretion was judiciously exercised having regard to gravity of offence and the nature of evidence required, rather than being founded merely on the applicant's personal knowledge of incident.

Headnotes

Bharatiya Nagarik Suraksha Sanhita, 2023 - ss. 173(4), 175(3), 223 - Code of Criminal Procedure, 1973 - ss. 173, 190, 200, 202 - Registration of FIR - Application - Magistrate treated as complaint case - Cognizable offence - Molestation with intent to rape - Scope and ambit of Magistrate's discretion - The applicant, a married woman aged about 22 years, alleged that on 25.12.2025, while collecting sugarcane leafs from her field, she was ambushed, molested, and forcibly dragged with intent to rape by opposite parties no. 2 to 5, who fled upon her raising an alarm, following which she suffered injuries and had her clothes torn - Despite lodging an application the same day at Police Station Kotwali Colonelganj, District Gonda, seeking registration of an FIR and her medical examination, the police neither registered the FIR nor conducted her medical examination, compelling her to get herself examined at District Hospital, Gonda the next day - Thereafter, despite repeated representations to Inspector General of Police, Hon'ble Chief Minister, Superintendent of Police, and Deputy Inspector General of Police, no FIR was lodged, pursuant to which the applicant filed an application u/s 175(3) of BNSS, 2023 before Chief Judicial Magistrate, Gonda, which came to be treated as a complaint case, on the ground that the applicant had personal knowledge of facts capable of being proved by her and other witnesses, and the matter was fixed for her statement on 20.04.2026, aggrieved by which the instant application u/s 528 of BNSS, 2023 was filed before the High Court seeking setting aside of said order.

Held: It is settled law that in a case where the complainant is in possession of complete details of the case and also the material evidence and the investigation by the police may not be required, the Magistrate may follow the procedure of a complaint case - It is, thus, not necessary that in every case where a complaint has

been filed u/s 200 of Cr.P.C., the Magistrate should direct the police to investigate the crime merely because an application has also been filed u/s 156(3) Cr.P.C. even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, with the assistance of court or otherwise - In the instant case, after perusing the complaint, the Court finds that there is no such evidence, which requires any investigation by the police - Therefore, the Magistrate has rightly passed the impugned order treating the application as a complaint case, which needs no interference - Hence, application rejected - Directions accordingly. [Paras 28 to 30] (E-13)

Case Law Cited

Lalita Kumari v. State of U.P., **(2014) 2 SCC 1;** *Mukesh Kharwar v. State of U.P. and others,* **2024 SCC OnLine All 6035;** *XYZ v. State of Madhya Pradesh and others,* **(2023) 9 SCC 705;** *Anmol Singh v. State of U.P. and others,* **2021 SCC OnLine All 7;** *Gulab Chand Upadhyaya v. State of U.P. and others***, 2002 SCC OnLine All 1221;** *Waseem Haider v. State of U.P. and others*, **2020 SCC OnLine All 1866;** *Sukhwasi v. State of U.P.,* **2007 SCC OnLine All 2637;** *Kailash Vijay Vargiya v. Rajlakshmi Chaudhuri and others,* **(2023) 14 SCC 1;** *Priti Agarwalla and others v. The State of GNCT of Delhi and others,* **2024 SCC OnLine SC 973;** *Om Prakash Ambadkar v. State of Maharashtra and others*, **(2026) 2 SCC 622;** *X v. State of U.P. and others*, **Criminal Revision No.808 of 2025 decided on 22.089.2025;** *Shaligram v. State of U.P. and others,* **Application U/s 482 No.25994 of 2024, decided on 23.08.2024;** *Kailash Nath Dwivedi v. State of U.P. and others,* **2021 SCC OnLine All 478 - referred to**

List of Acts

Bharatiya Nagarik Suraksha Sanhita, 2023; Code of Criminal Procedure, 1973.

List of Keywords

Application u/s 528 BNSS; Cognizable offence; Molestation and sexual assault; Medical examination; First Information Report; Investigation; Superintendent of Police; Deputy Inspector General of Police; Registered Post; Chief Judicial Magistrate; Complaint Case; Personal knowledge; Preliminary enquiry; Gonda; Without applying judicious mind; Sexual offence; Investigating agency; Writ of Mandamus; Registrar General; District Judges; Application rejected.

Case Arising From

ORIGINAL JURISDICTION: Application U/S 528 BNSS No. - 1531 of 2026

From the Order dated 20.03.2026 passed by the Chief Judicial Magistrate, Gonda in Criminal Misc. Case No.535 of 2026, Police Station Colonelganj, District Gonda.

Appearances for Parties

Advs. for the Applicant(s):
Dwijendra Mishra, Rajneesh Mishra, Vishva Deep Pandey

Adv. for the Opposite Party(s):
G.A.

(Delivered by Hon'ble Brij Raj Singh, J.)

1. The present application under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 has been filed seeking setting aside the order dated 20.03.2026 passed by the Chief Judicial Magistrate, Gonda in Criminal Misc. Case No.535 of 2026, CNR No.UPGD040035172026, Smt. Roli Vs. Kanaiyalal and others, under Section 173(4) of BNSS, 2023, Police Station Colonelganj, District Gonda.

2. Brief facts of the case are that on 25.12.2025 at 6 P.M. when the applicant, who is a married women aged about 22 years, was bringing sugarcane leafs for feeding the animals from her sugarcane field, opposite parties no.2 to 5, ambushed in the sugarcane field, caught hold the applicant and started molesting her with malicious intent and forcibly dragged her to sugarcane filed with intention to rape her. When the applicant resisted, they beat her and tore her cloths due to which the applicant suffered severe injuries on her body. On alarm raised by the applicant, opposite parties no.2 to 5 ran away from there. On 25.12.2025 itself, the applicant gave an application to the Police Station Kotwali Colonelganj for lodging an FIR against opposite parties no.2 to 5 and also requested for her medical examination, but the police neither lodged the FIR against the opposite parties no.2 to 5 nor medical examination of the applicant was conducted. The applicant along with her husband went to the District Hospital, Gonda to get her medically examined on the very next day i.e. 26.12.2025.

3. It is said that when the police of police of Police Station Kotwali Colonelganj did not lodge the FIR on the application of the applicant, she moved applications to the Inspector General of Police Devipatan Zone, Gonda and to the Hon'ble Chief Minister on 27.12.2025 requesting therein to lodge an FIR against opposite parties no.2 to 5 and for taking appropriate action under the relevant provision of the Bharatiya Nyaya Sanhita, 2023. On 12.01.2026, the applicant also moved applications to the Superintendent of Police, Gonda and to the Deputy Inspector General of Police, Devipatan Range, Gonda through Registered Post for lodging an FIR against the accused.

4. When the police authorities did not lodge the FIR despite the repeated requests of the applicant, she moved an application under Section 175(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 on 20.02.2026 before the Chief Judicial Magistrate, Gonda for lodging an FIR. However, the Magistrate instead of passing an order for lodging the FIR, has treated the application as a complaint case vide impugned order 20.03.2026 without applying his judicious mind by indicating that applicant has personal knowledge of all the facts, which she can prove herself and by way of other witnesses ignoring the fact that the evidence required in this matter to unearth the truth is not in the access of the applicant and is only in access of the police, who can collect the evidence after thorough investigation and fix for statement of the applicant under Section 223 of Bharatiya Nagarik Suraksha Sanhita, 2023 on 20.04.2026.

5. Sri Dwijendra Mishra, counsel for the applicant has submitted that once the cognizable offence is made out for which an application under Section 175(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 is filed, then the FIR must be registered in the light of the law laid down by the Hon’ble Supreme Court in the case of ***Lalita Kumari Vs. State of U.P.,*** (2014) 2 SCC 1. He has further submitted that the application is regarding sexual offence and the same can be investigated by the police after registration of the FIR, but the Magistrate has treated the application under Section 175(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 as a complaint case without application of mind.

6. To buttress his argument, counsel for the applicant has placed reliance upon the following judgements:-

1. Lalita Kumari Vs. State of U.P., (2014) 2 SCC 1;

2. Mukesh Kharwar Vs. State of U.P. and others, 2024 SCC OnLine All 6035;
3. XYZ Vs. State of Madhya Pradesh and others, (2023) 9 SCC 705;
4. Anmol Singh V. State of U.P. and others, 2021 SCC OnLine All 7; and
5. Gulab Chand Upadhyaya Vs. State of U.P. and others, 2002 SCC OnLine All 1221.

7. On the other hand, Sri Anurag Varma, learned AGA-1 has submitted that the Magistrate is not bound in each and every case to pass an order to register the case if the cognizable offence is made out. The Magistrate is fully competent to use his judicial discretion in the case. He has further submitted that the Magistrate is empowered under Section 190 Cr.P.C. to take the cognizance directly or to pass an order directing the police to investigate and take cognizance or submit a report under Section 173 Cr.P.C. The Magistrate is not always bound to pass an order to register a case when an application under Section 156(3) Cr.P.C. is moved.

8. Learned AGA-I has further submitted that when a complaint is presented before a Magistrate, he has two options; one is to pass an order contemplated by Section 156(3) Cr.P.C. and the second is to direct examination of the complainant on oath and the witness present, and proceed further in the manner provided by Section 202 Cr.P.C. An order under Section 156(3) Cr.P.C. is in the nature of a peremptory reminder or intimation to the police to exercise its plenary power of investigation under Section 156(1) Cr.P.C. He has further submitted that the inner and outer limit of the exercise of this jurisdiction is on a case-to-case basis dependent on the complaint, nature of allegations and offence set out by such a complaint. While exercising the discretion, the Magistrate has to take judicious decision.

9. Learned AGA-I has further submitted that judgement of ***Lalita Kumari*** (supra) has laid down the ratio that police has no option but to register the offence in shape of FIR under Section 154 Cr.P.C. on receipt of first information regarding commission of cognizable offence. Further, it has been submitted that though the Hon?ble Supreme Court while formulating the question in paragraph-6 made reference to Sections 156 and 157 Cr.P.C., but the entire judgement of ***Lalita Kumari*** (supra) and final directions issued therein, centre around the statutory obligation of the police to register the offence under Section 154 Cr.P.C. with only passing reference of Sections 156 and 157 Cr.P.C. without laying down any law as regards these provisions (Sections 156 and 157 Cr.P.C.). The judgement of ***Lalita Kumari*** (supra) does not lay down any dictum in respect of remedies available to the informant under the Code of Criminal Procedure to be invoked in case of failure on the part of the police to perform its statutory duty under Section 154(1)/154(3) Cr.P.C. as a sine qua non for seeking Writ of Mandamus.

10. To Buttress his argument, learned AGA-I has placed reliance upon the following judgements:-

1. Waseem Haider Vs. State of U.P. and others, 2020 SCC OnLine All 1866;
2. Sukhwasi Vs. State of U.P., 2007 SCC OnLine All 2637;
3. Kailash Vijay Vargiya Vs. Rajlakshmi Chaudhuri and others, (2023) 14 SCC 1;
4. Priti Agarwalla and others Vs. The State of GNCT of Delhi and others, 2024 SCC OnLine SC 973;
5. Om Prakash Ambadkar Vs. State of Maharashtra and others, (2026) 2 SCC 622;

6. Criminal Revision No.808 of 2025, X Vs. State of U.P. and others, decided on 22.089.2025;

7. Application U/s 482 No.25994 of 2024, Shaligram Vs. State of U.P. and others, decided on 23.08.2024; and

8. Kailash Nath Dwivedi Vs. State of U.P. and others, 2021 SCC OnLine All 478.

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

12. In the case of ***Lalita Kumari*** (supra), Hon?ble Supreme Court has held that FIR is mandatory under Section 154 Cr.P.C. if information discloses commission of cognizable offence. Paragraphs 120.1, 120.2, 1203, 120.4 and 120.5 of the aforesaid judgement read as under:-

"120.1 The Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence."

13. In the case of ***Mukesh Kharwar*** (supra), a coordinate Bench of this Court has held that gravity and seriousness of the evidence required should be looked into by the Magistrate for the purposes of launching a successful litigation. Paragraphs 19, 20 and 21 of the aforesaid judgement read as under:-

"19. Perusal of the impugned order shows that no sufficient reason has been disclosed, on the basis of which, the Magistrate has proceeded to treat the application under section 156(3) Cr.P.C. as a complaint. Merely because the facts are in the knowledge of the applicant, direction to lodge FIR cannot be refused. The gravity/seriousness of the offence; the requirement of the evidence for the purpose of launching a successful prosecution, and basically the interest of justice depending on the facts of each case, need be considered in passing the order under Section 156(3) Cr.P.C. The impugned order does not assign any valid reason nor reflects application of judicious mind and has been passed in a mechanical manner only on the ground that the facts of the case were within the knowledge of the applicant, thus, the same is liable to be set-aside.

20. The present Application U/S 482 is ***allowed****.*

21. Accordingly, the impugned order dated 08.05.2024 is set aside with the direction to the court concerned to pass a fresh order on the application under Section 156(3) Cr.P.C. filed by

the applicant after affording opportunity of hearing to both the parties, in accordance with law, within a period of one month from the date of production of certified copy of this order."

14. In the case of ***XYZ*** (supra), Hon?ble Supreme Court has held that it is not possible for the complainant to retrieve important evidence regarding her complaint. It may not be possible to arrive at the truth of the matter in the absence of such evidence. If such evidence cannot be produced by the complainant and there is a complaint of sexual harassment and there is evidence of CCTV footage, then FIR should be lodged. Paragraphs 24, 25, 26 and 29 of the aforesaid judgement read as under:-

"24. Especially in cases alleging sexual harassment, sexual assault or any similar criminal allegation wherein the victim has possibly already been traumatized, the Courts should not further burden the complainant and should press upon the police to investigate. Due regard must be had to the fact that it is not possible for the complainant to retrieve important evidence regarding her complaint. It may not be possible to arrive at the truth of the matter in the absence of such evidence. The complainant would then be required to prove her case without being able to bring relevant evidence (which is potentially of great probative value) on record, which would be unjust.

25. In this backdrop, we are clearly of the view that the JMFC ought to have exercised jurisdiction under Section 156(3) of CrPC to direct the police to investigate.

26. At this stage, the Court is not called upon to decide upon the veracity of the allegations in the complaint, save and except to underscore the importance of an investigation by the police in a matter where the CCTV footage (or other evidence) is not under the possession or control of the appellant, but to be inquired into in the course of an investigation by the police. The discretion which has been conferred upon the Magistrate by Section 156(3) CrPC, must be exercised in a judicious manner.

29. Finally, we wish to once again reiterate the importance of courts dealing with complainants of sexual harassment and sexual assault in a sensitive manner. It is important for all courts to remain cognizant of the fact that the legal process tends to be even more onerous for complainants who are potentially dealing with trauma and societal shame due to the unwarranted stigma attached to victims of sexual harassment and assault. At this juncture, especially in cases where the police fails to address the grievance of such complainants, the Courts have an important responsibility. As the Delhi High Court held in Virender v State (NCT of Delhi), courts have to remain alive to both treating the victim sensitively while also discharging the onerous task of ensuring that the complete truth is brought on record so as to facilitate adjudication and answering the basic question regarding the complicity of the accused in the commission of the offence. In that case, the High Court held that:

22. It is to be noted that the embarrassment, and reservations of those concerned with the proceedings including the prosecutrix, witnesses, counsel may result in a camouflage of the trauma of the victim's experience. The judge has to be conscious of these factors and rise above any such reservations to ensure that they do not cloud the real facts and the actions which are attributable to the accused persons. The trial courts must be alive to the onerous responsibility which rests on their shoulders and be sensitive in cases involving sexual abuse.

(emphasis supplied)"

15. In the case of ***Anmol Singh*** (supra), a coordinate Bench of this Court has passed judgement making an observation that once cognizable offence is disclosed regarding sexual offence, then the FIR should be lodged. Paragraphs 14 and 15 of the aforesaid judgement read as under:-

"14. It is true that every application under Section 156(3) Cr.P.C. disclosing commission of a cognizable offence may not be directed for investigation by police and the Magistrate has jurisdiction to treat the same as a complaint case but in exercise of such jurisdiction the Magistrate has to keep in view various factors as laid down in Lalaram (supra), which are only illustrative and not exhaustive. The exercise of jurisdiction is basically guided by interest of justice, from case to case.

15. Perusal of the order clearly shows that the Magistrate has not applied judicious mind to the facts of the case and in particular paragraph no.3 of the application, which not only made out commission of a cognizable offence but an offence of molestation and sexual assault on the mother of the applicant. The application clearly stated that the accused persons are related to influential persons and as such neither the FIR was being lodged nor the medical of the applicant's mother was carried out. In such matters the medical examination of the victim is necessary. The medical report of the victim is of importance. Merely because the facts are in the knowledge of the applicant, direction to lodge FIR cannot be refused. The gravity/seriousness of the offence; the requirement of the evidence for the purpose of launching a successful prosecution, and basically the interest of justice depending on the facts of each case, need be considered in passing the order under Section 156(3) Cr.P.C. The offence, as per the contents of the application is not a matrimonial, commercial or family dispute, etc. The order does not assign any valid reason nor reflects application of judicious mind to relevant considerations and does not stand the test of the law as laid down in the cases of "Ram Deo Food Products' (Supra) and 'Gulab Chand Upadhyay' (Supra)."

16. In the case of ***Sukhwasi*** (supra), a Division Bench of this Court has held that a complaint disclosing cognizable offence may well justify a Magistrate in sending the complaint under Section 156(3) Cr.P.C. to the police for investigation. There is no reason why the time of the Magistrate should be wasted when primarily the duty to investigate in cases involving cognizable offences is with the police. On the other hand, there may be occasions when the Magistrate may exercise his discretion and 'Take' cognizance of a cognizable offence. The Magistrate has authority to treat an application under Section 156(3) Cr.P.C. as a complaint case. The Magistrate is always not bound to pass an order to register a case and investigate when an application under Section 156(3) is moved. Paragraphs 13, 15, 19 and 23 of the aforesaid judgement read as under:-

"13. It is clear from the judgment of the Supreme Court in the case Suresh Chandra Jain Vs. State of Madhya Pradesh and another, 2001 (42) A.C.C. 459, that a Magistrate has the authority to treat an application under Section 156 (3) Cr.P.C. as a complaint. This will become clear from the reference in the said report to the case of Gopal Das Sindhi and others Vs. State of Assam and another, A.I.R. 1961 S.C. 986, in which the following observations were made:

"If the Magistrate had not taken cognizance of the offence on the complaint filed before him, he was not obliged to examine the complainant on oath and the witnesses present at the time of filing of the complaint. We cannot read the provisions of Section 190 to mean that once a

complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of any offence. We are unable to construe the word 'may' in Section 190 to mean 'must'. The reason is obvious. A complaint disclosing cognizable offences may well justify a Magistrate in sending the complaint, under Section 156(3) to the police for investigation. There is no reason why the time of the Magistrate should be wasted when primarily the duty to investigate in cases involving cognizable offences is with the police. On the other hand, there may be occasions when the Magistrate may exercise his discretion and 'Take' cognizance of a cognizable offence."

15. It is hardly possible to infer from the aforesaid observations that the Magistrate cannot treat an application under Section 156(3) Cr.P.C. as a 'Complaint'. Even a nebulous of far fetched interpretation will not lead to that inference. The inference drawn by Hon'ble Vinod Prasad, J. is not logical.

19. In a recent pronouncement, Hon'ble Mr. Justice Shiv Charan Sharma in the case of Chandrika Singh Vs. State of U.P. and others [2007(58) ACC, 777] has held that a Magistrate can treat an application under Section 156 (3) Cr.P.C. as a complaint. The Hon'ble Judge referred to various cases in his judgment and has come to this conclusion thereafter. It was observed by Shiv Charan, J. as follows:

"In view of this judgment of Full Bench, the Magistrate is fully competent to pass an order to register a case and investigate on an application under Section 156 (3) Cr. P.C., all the application under Section 156(3) Cr.P.C. may be treated as complaint and in the circumstance, the Magistrate shall follow the procedure as provided in Chapter XV Cr.P.C. This judgment of Full Bench has not been set aside. Hence, in view of the Apex Court and Full Bench of this Court the Magistrate is fully competent to treat an application under section 156 Cr.P.C. as a complaint and in the present case the Magistrate passed an order in the circumstances of the case that it may be registered as a complaint case and proceed to record the statement under Sections 200 and 202 Cr.P.C. There appears no illegality and impropriety in the order of the Magistrate.

This controversy must come to an end that an application under section 156(3) Cr.P.C. can only be treated as an application for passing an order for registration of the case and investigation cannot be treated as a complaint case. The Magistrate is not bound in each and every case to pass an order to register a case and investigate if cognizable offence is made out. The Magistrate is fully competent to use this judicial direction in the matter. This is wrong notion that if an application has been moved under section 156(3) Cr.P.C. that the only order can be passed for registration in the matter. The magistrate has got direction under Section 190 Cr.P.C. to take the cognizance directly or to pass an order that the police to investigate and then take cognizance on submissions of a report under Section 173 Cr.P.C. The Magistrate is also expected to act under some guidelines and it should not be left at the arbitrary discretion of the Magistrate to pass an order or not to pass an order to register the case and investigation under Section 156(3) Cr.P.C. In Gulab Chandra Upadhyaya Vs. State of U.P. Hon'ble Single Judge of this Court laid down the guidelines for the guidance of Magistrate while deciding the application under Section 156(3) Cr.P.C. and the guidelines cannot be said against any provision of law or check on the judicial direction of the Magistrate. Even Hon'ble Apex Court also held that the Magistrate has got a direction to pass an order to register the case and investigation under Section 156(3) Cr.P.C. or to treat an application as a complaint case.

In the law laid down by Hon'ble the Apex Court and various judgments of this Court clearly laid down that the Magistrate is not always bound to pass an order to register a case and

investigation when application under Section 156(3) Cr.P.C. is moved. It will not be proper to deal with this hypothetical position that if the Magistrate is of opinion that false and frivolous allegation has been made in application than he may reject the application or it is for the investigating officer to decide the truthfulness of the story and if found false then launch prosecution against the applicant. But it is discretion of the Magistrate to be used judiciously while disposing of the application.

For the reasons mentioned above, I am of the opinion that the Magistrate is not always bound to pass an order for register of the case and investigation after receipt of the application under Section 156(3) Cr.P.C. disclosing a cognizable offence. The Magistrate may use his discretion judiciously and if he is of the opinion that in the circumstances of the case, it will be proper to treat the application as a complaint case then he may proceed according to the procedure provided under Chapter XV of Cr.P.C. I am also of the opinion that it is not always mandatory in each and every case for the Magistrate to pass an order to register and investigate on receipt of the application under Section 156(3) Cr.P.C. In the present case, the Magistrate is perfectly within the judicial power to treat the application under section 156(3) Cr.P.C. as a complaint case. There is no illegality or impropriety in the order. The revision is devoid of merit and is liable to be dismissed".

23. The reference is, therefore, answered in the manner that it is not incumbent upon a Magistrate to allow an application under Section 156(3) Cr.P.C. and there is no such legal mandate. He may or may not allow the application in his discretion. The second leg of the reference is also answered in the manner that the Magistrate has a discretion to treat an application under Section 156 (3) Cr.P.C. as a complaint."

17. In the case of ***Wasim Haider*** (supra), a Division Bench of this Court has held that while interpreting the statutory provision under Section 154 Cr.P.C. in the case of ***Lalita Kumari*** (supra), nothing further as regards remedy available to the informant whose information of commission of cognizable offence does not invoke any response from the police and judgement of ***Lalita Kumari*** (supra) does not lay down any law in respect of the remedies available to the informant under Cr.P.C. to be invoked in case of failure on the part of the police to perform its statutory duty under Section 154(1)/154(3) Cr.P.C. as a sine qua non for seeking Writ of Mandamus. Paragraphs 20, 21, 22, 23, 26, 27, 28 and 29 of the aforesaid judgement are extracted herein below:-

"20. Perusal of the judgment of Lalita Kumari (supra) and the final directions passed in paragraphs 120.1 to 120.8 clearly reveal the laying down of ratio that the police has no option but to register the offence in shape of FIR under Section 154 Cr.P.C. on receipt of first information regarding commission of cognizable offence without verifying the veracity of the first information.

21. Though the Apex Court while formulating the question in paragraph 6 (supra) made reference to Sections 156 & 157 but the entire judgment of Lalita Kumari and final directions issued therein centre around the statutory obligation of the police to register the offence under Section 154 Cr.P.C, with only passing reference of Section 156 & 157 without laying down any law as regards these provisions (Section 156 and 157 Cr.P.C.).

22. Therefore, it can safely be concluded that the Apex Court while interpreting the statutory provision under Section 154 Cr.P.C said nothing further as regards remedy available to the informant whose information of commission of cognizable offence does not invoke any response from the police. Thus, the judgment of Lalita Kumari does not lay down any law in respect of

remedies available to the informant under Cr.P.C. to be invoked in case of failure on the part of the police to perform its statutory duty under Section 154(1)/154(3) Cr.P.C. as a sine qua non for seeking writ of mandamus.

23. Consequently, the case of Lalita Kumari of the Apex Court does not answer the principal issue No.1 framed by this Court.

26. The Code of Criminal Procedure provides various avenues before the informant/victim to initiate criminal prosecution. The first avenue is of lodging of FIR under Section 154(1)/154(3) which can be availed by the victim and as well as a stranger to the offence, provided the first information discloses commission of cognizable offence. The lodging of FIR under Section 154 Cr.P.C. sets the investigative machinery into motion without prior permission of the Magistrate as is otherwise required for non-cognizable offences.

27. The second avenue available to the victim and as well as a stranger to the cognizable offence, is under Section 156(3) by approaching the concerned Magistrate by informing commission of cognizable offence. The Magistrate can then conduct an enquiry himself or direct the concerned police station to register the offence alleged, thereby triggering the investigation.

28. The third avenue available is under Section 190 Cr.P.C empowering the competent Magistrate to take cognizance of any offence upon receipt of complaint of facts containing allegation constituting the offence, or upon a police report of such facts or upon information received from any person other than a police officer, or upon his own knowledge of commission of cognizable and as well as non-cognizable offence, except offences punishable under Chapter XX of IPC, for which procedure prescribed under Section 198 Cr.P.C. is to be adhered to.

29. The fourth avenue is under Section 200 Cr.P.C where a complaint, oral or in writing if made before the competent Magistrate leads to hearing by the Magistrate on the question of taking cognizance of offence or not and if it is found that complaint discloses commission of any offence punishable in law then the Magistrate issues summons to the proposed accused on appearance of whom statements of rival parties are recorded and the Magistrate decides on the question of framing of charge or discharging the accused. If charges are framed then trial proceeds."

18. In the case of **Kailash Vijay Vargiya** (supra), Hon'ble Supreme Court has held that when a complaint is presented before the Magistrate, he has two options; one is to pass an order under Section 156(3) Cr.P.C. and the second is to direct examination of the complainant and the witness present and proceed further in the matter provided by Section 202 Cr.P.C. Once the Magistrate has taken cognizance under Section 190 Cr.P.C., he cannot ask for an investigation by the police. Paragraphs 16, 18, 39, 41, 42, 59 and 61 of the aforesaid judgment read as under:-

"16. The present proceedings arise out of a complaint filed by the original complainant under Section 156(3) Cr.P.C. The learned CJM, by a detailed order and giving cogent reasons, dismissed the said application/complaint under Section 156(3) Cr.P.C and refused to direct the police to register an FIR. It is not even disputed by the State that prior to filing of the application/complaint by the complainant under Section 156(3) Cr.P.C., complaints were made to the police authorities, namely, Officer in Charge of Bahela Police Station, DCP (South Division) and the SHO. The SHO conducted a preliminary enquiry as mandated by a Constitution Bench of this Court in the case of Lalita Kumari (supra) and upon finding that there was a delay of about two years in filing the complaint, refused to register the FIR. That thereafter, the original

complainant filed a complaint/application before the learned CJM under Section 156(3) Cr.P.C. and on a careful consideration of the allegations in the complaint/application under Section 156(3) Cr.P.C., by a detailed reasoned order, the learned CJM dismissed the said application under Section 156(3) Cr.P.C.

18. While quashing and setting aside the order passed by the learned CJM, the High Court was of the opinion that at the stage of considering the application under Section 156(3) Cr.P.C., it was not open for the learned CJM to verify the truth and veracity of the allegations. The High Court was of the opinion that in view of the decision of this Court in the case of Lalita Kumari (supra), what was required to be considered was, whether the allegations in the complaint/ application disclose prima facie commission of a cognizable offence or not and if so, the Magistrate has to pass an order directing the concerned police officer to register an FIR. That thereafter, pursuant to the impugned judgment and order passed by the High Court and on remand, the learned CJM has straightway directed to register the application/complaint as an FIR. Therefore, as such, the subsequent order passed by the learned CJM is a consequential order passed by the High Court on quashing and setting aside the order passed by the learned CJM dismissing the application/complaint.

39. We would now refer to the power of the Magistrate to take cognizance, postpone issue of process and follow the procedure under Section 202 of the Code.

Difference in the power of Police to register and investigate an FIR under Section 154(1) read with 157 of the Code, and the Magistrate?s direction to register an FIR under Section 156(3) of the Code. Power of the Magistrate to direct registration of an FIR under Section 156(3) in contrast with post-cognizance stage power under Section 202 of the Code.

41. The power of Magistrate to direct investigation falls under two limbs of the Code: one is pre-cognizance stage under Section 156(3), and another on cognizance under Chapter XIV (?Conditions Requisite for Initiation of Proceedings?; Sections 190-199) read with Chapter XV (?Complaints to Magistrates?; Sections 200-210). These two powers are different and there also lies a procedural distinction between the two.

42. A three Judge Bench decision of this Court in Ramdev Food Products Private Limited (supra) had examined the distinction between powers of the Magistrate to direct registration of an FIR under Section 156(3) and power of the Magistrate to proceed under Section 202 of the Code. It was observed that the power under the former Section is to be exercised, on receiving a complaint or a Police report or information from any person other than the Police officer or upon his own knowledge, before he takes cognizance under Section 190. Once the Magistrate takes cognizance, the Magistrate has discretion to take recourse to his powers under Section 202, which provides for postponement of the issue of process and inquire into the case himself or direct investigation to be made by a Police officer or by such other person as he thinks fit for the purpose of deciding whether or not there are sufficient grounds for proceedings. The proviso to Section 202 states that no direction for investigation shall be made where a complaint has not been made by a Court, unless the complainant and the witnesses present (if any) are examined on oath under Section 200. When it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions, he shall call upon the complainant to produce all his witnesses and examine them on oath. However, in such cases, the Magistrate cannot issue direction for investigation of an offence.

59. The decision in Mona Panwar v. High Court of Judicature of Allahabad through its Registrar and Others, (2011) 3 SCC 496 is rather succinct. This Court held that when a complaint is presented before a Magistrate, he has two options. One is to pass an order contemplated by

Section 156(3). The second one is to direct examination of the complainant on oath and the witness present, and proceed further in the manner provided by Section 202. An order under Section 156(3) is in the nature of a peremptory reminder or intimation to the police to exercise its plenary power of investigation under Section 156(1). However, once the Magistrate has taken cognizance under Section 190 of the Code, he cannot ask for an investigation by the Police. After cognizance has been taken, if the Magistrate wants any investigation, it will be under Section 202, whose purpose is to ascertain whether there is prima facie case against the person accused of the offence and to prevent issue of process in a false or vexatious complaint intended to harass the person named. Such examination is provided, therefore, to find out whether there is or not sufficient ground for proceeding further.

61. We were informed that the Magistrate, on remand, has passed an order under Section 156(3) directing registration of the FIR. He has misread the order and directions given by the High Court. In terms of the judgments of this Court, the Magistrate is required to examine, apply his judicious mind and then exercise discretion whether or not to issue directions under Section 156(3) or whether he should take cognizance and follow the procedure under Section 202. He can also direct a preliminary inquiry by the Police in terms of the law laid down by this Court in Lalita Kumari."

19. In the case of **Priti Agarwalla and others** (supra), Hon'ble Supreme Court has held that the Magistrate while exercising his power under Section 156(3) Cr.P.C. has to exercise his discretion on case-to-case basis dependent on the complaint, nature of allegations and the offence set out by such complaint. Paragraphs 14.3 and 26 of the aforesaid judgment read as under:-

"14.3 We do not propose to multiply citations on the point and succinctly stated, the Magistrate, under section 156(3) of the CrPC, asks himself a question: whether the complaint, as presented, makes out a case for directing the registration of an FIR or calls for inquiry or report from the jurisdictional police station. The inner and outer limit of the exercise of this jurisdiction is on a case-to-case basis dependent on the complaint, nature of allegations and offence set out by such a complaint. Therefore, it is fairly well-settled and axiomatic by the decisions rendered under Section 156(3) of the CrPC that the Magistrate does not act mechanically and exercises his discretion judiciously by applying mind to the circumstances complained of and the offence alleged against the accused for taking one or the other step. The case on hand principally concerns deciding whether the discretion is invalidly exercised by the Magistrate while ordering a report from the SHO.

26. From the above consideration, the available conclusion is that firstly, the Metropolitan Magistrate at the relevant point of time was justified in ordering a preliminary inquiry on the application dated 09.05.2018 and receiving the Action Taken Report from the jurisdictional police station. Further, the accusations in the complaints do not satisfy as having been made in any place within public view. Therefore, in a case such as the present, directing registration of FIR and further steps is unsustainable. Points A and B are answered in favour of the Appellants."

20. In the case of ***Om Prakash Ambadkar*** (supra), Hon?ble Supreme Court has held that it is the discretion of the Magistrate concerned whether to order police investigation under Section

156(3) Cr.P.C. or take cognizance upon the complaint and issue process or dismiss the complaint under Section 203 Cr.P.C. Paragraphs 10 and 12 of the aforesaid judgment read as under:-

"10. Ordinarily, Section 156(3) of the Cr.P.C. is invoked by the complainant when the police authorities decline to register a First Information Report. In such circumstances, a private complaint may be made in the court of the Judicial Magistrate and the complainant may pray that police investigation be ordered under Section 156(3) of the Cr.P.C. However, it is the discretion of the concerned Magistrate whether to order police investigation under Section 156(3) of Cr.P.C. or take cognizance upon the complaint and issue process or dismiss the complaint under Section 156(3) Cr.P.C. Over a period of time and in view of many decisions of this Court, if the officer in-charge of the concerned Police Station for some reasons declines to register the FIR, then the law has left it open for the complainant to file an appropriate application before the Magistrate and pray for police investigation. Once an order is passed for police investigation under Section 156(3) of the Cr.P.C., then it becomes a police case.

11. However, what is important to observe is that whenever any application is filed by the complainant before the Court of Judicial Magistrate seeking police investigation under Section 156(3) of the Cr.P.C., it is the duty of the concerned Magistrate to apply his mind for the purpose of ascertaining whether the allegations levelled in the complaint constitute any cognizable offence or not. In other words, the Magistrate may not undertake the exercise to ascertain whether the complaint is false or otherwise, however, the Magistrate is obliged before he proceeds to pass an order for police investigation to closely consider whether the necessary ingredients to constitute the alleged offence are borne out on plain reading of the complaint."

21. Further, in the case of ***Om Prakash Ambadkar*** (supra), Hon'ble Supreme Court has held that the Magistrate is not obliged to pass an order for registration of the FIR in every case if the evidence is within the possession of the complainant and the same can be produced by summoning the witnesses with the assistance of the court otherwise. Paragraphs 26 and 27 of the aforesaid judgment read as under:-

"26. ***It is, thus, not necessary that in every case where a complaint has been filed under Section 200 of the Cr.P.C. the Magistrate should direct the Police to investigate the crime merely because an application has also been filed under Section 156(3) of the Cr.P.C. even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, with the assistance of the court or otherwise****. The issue of jurisdiction also becomes important at that stage and cannot be ignored.*

27. In fact, the Magistrate ought to direct investigation by the police only where the assistance of the Investigating Agency is necessary and the Court feels that the cause of justice is likely to suffer in the absence of investigation by the police. The Magistrate is not expected to mechanically direct investigation by the police without first examining whether in the facts and circumstances of the case, investigation by the State machinery is actually required or not. If the allegations made in the complaint are simple, where the Court can straightaway proceed to conduct the trial, the Magistrate is expected to record evidence and proceed further in the matter, instead of passing the buck to the Police under Section 156(3) of the Cr.P.C. Of course, if the allegations made in the complaint require complex and complicated investigation which cannot be undertaken without active assistance and expertise of the State machinery, it would only be

appropriate for the Magistrate to direct investigation by the police authorities. The Magistrate is, therefore, not supposed to act merely as a Post Office and needs to adopt a judicial approach while considering an application seeking investigation by the Police."

22. In paragraph-27 of the case of ***Om Prakash Ambadkar*** (supra), Hon'ble Supreme Court has categorically held that if the allegations made in the complaint require complex and complicated investigation which cannot be undertaken without active assistance and expertise of the State machinery, it would only be appropriate for the Magistrate to direct investigation by the police authorities.

23. In the case of ***X Vs. State of U.P.*** (supra), a coordinate Bench of this Court has held that application under Section 156(3) Cr.P.C. can be entertained by giving a direction to lodge an FIR on the given facts and circumstances or to treat such application as a complaint case. Paragraph 17 of the aforesaid judgment read as under:-

"17. In other words, the Magistrate/Court of competent jurisdiction while dealing with an application under Section 156(3) Cr.P.C. is empowered to pass an order for registration of FIR and investigate into the matter or to treat such application as a 'Complaint Case', if Investigation in the matter is not required and he is fully empowered to reject the application under Section 156(3) Cr.P.C."

24. In the case of ***Shaligram*** (supra), a coordinate Bench of this Court has held that there is no illegality or irregularity in the order impugned and after collecting the report from the police station concerned or the report otherwise the Magistrate is of the view that no investigation from the police is required and he has rightly directed the present case to be treated as complaint case. Paragraph 13 of the aforesaid judgment read as under:-

"13. In light of the above facts and above proposition of law, this Court is of the view that there is no illegality or irregularity in the order impugned and after collecting the report from the police station concerned or the report otherwise the Magistrate is of the view that no investigation from the Police is required and he has rightly directed the present case to be treated as complaint case."

25. In the case of ***Kailash Nath Dwivedi*** (supra), a coordinate Bench of this Court has held that in a case where the complainant is in possession of the complete details of the case and also the material evidence, such that investigation by the police may not be required, the Magistrate may follow the procedure of a complaint case. Paragraphs 27 and 29 of the aforesaid case read as under:-

"27. It is, therefore, seen that upon an application received under Section 156(3) disclosing a cognizable offence, the Magistrate may direct the police to register the F.I.R. and investigate or alternatively the Magistrate can take cognizance of the complaint, register it as complaint case and follow the procedure under Chapter XV of the Code. While exercising this discretion and taking either of the courses, it would be incumbent upon the Magistrate to apply judicial mind and the exercise of discretion would have to be guided by interest of justice,

depending upon the facts of the case. In a situation where the investigation required is of a nature which can only be made by a police officer upon whom the statute has conferred the powers of investigation, the Magistrate may be well within his discretion to direct the registration of an F.I.R. and its investigation by the police officer. ***In a case where the complainant is in possession of the complete details of the case and also the material evidence, such that 'investigation' by the police may not be required, the Magistrate may follow the procedure of a complaint case.*** *(Emphasis applied)*

29. In the facts of the present case, the courts below have taken notice of the fact that civil and criminal litigation was pending between the parties and the applicant had full knowledge of the facts and also the material evidence in respect of the case and accordingly the order passed by the Magistrate while exercising discretionary powers under Section 156(3) of the Code and directing the registration of the case as complaint case and also its affirmation by the revisional court cannot be said to suffer from any material illegality or procedural irregularity so as to warrant interference."

26. After discussing various judgements of the Hon?ble Supreme Court as well as by this Court on the issue in question, this Court comes to the conclusion that inner and outer limit of exercise of this jurisdiction is on a case-to-case basis dependent on the complaint, nature of allegations and offence set out by the complainant. The Magistrate while exercising his discretion, has to apply his mind judiciously considering the nature of the complaint and the evidence available with the complainant at the time of filing the complaint. Once an application under Section 156(3) Cr.P.C. is entertained by the Magistrate, he has two options; one is to pass an order under Section 156(3) Cr.P.C. for registration of the FIR and, the second is to direct examination of the complainant on oath and the witness present and proceed further in the manner provided by Section 202 Cr.P.C. Once the Magistrate has taken cognizance under Section 190 Cr.P.C., he cannot ask for an investigation by the police. It is, however, to be looked into that in a case where evidence like CCTV footage, unknown accused and any such evidence, which can only be collected by thorough investigation by the police, the Magistrate will pass an order for registration of the FIR based on objective satisfaction. The Magistrate has to look into the seriousness of the case and nature of evidence while passing an order for registration of the FIR under Section 156(3) Cr.P.C. by applying his judicial mind, as the power under Section 156(3) Cr.P.C. is discretionary in nature and required to be exercised cautiously based on case-to-case basis. However, it is borne in mind that the Magistrate is not always bound to pass an order to register a case and investigation when an application under Section 156(3) Cr.P.C. is moved.

27. After the aforesaid discussion of factual and legal aspect, the case can be summarized in the following manner:-

While exercising the power under Section 175(3) of B.N.S.S., 2023 (erstwhile Section 156(3) Cr.P.C.), the Magistrate has the following options:-

(i) to pass an order for registration of the FIR;

(ii) to treat the application as a complaint case and proceed accordingly

(iii) in case the evidence of such nature which can only be collected by doing thorough investigation by the police, the Magistrate has to pass an order for registration of the FIR. However, while exercising his power, he has to apply his mind judiciously.

(iv) in case the complainant is in possession of the complete details of the case and also the material evidence and the investigation by the police may not be required, the Magistrate may follow the procedure of a complaint case. However, he may exercise this jurisdiction is on a case-to-case basis dependent on the complaint, nature of allegations and offence set out by the complainant.

28. It is settled law that in a case where the complainant is in possession of the complete details of the case and also the material evidence and the investigation by the police may not be required, the Magistrate may follow the procedure of a complaint case. It is, thus, not necessary that in every case where a complaint has been filed under Section 200 of the Cr.P.C., the Magistrate should direct the police to investigate the crime merely because an application has also been filed under Section 156(3) Cr.P.C. even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, with the assistance of the court or otherwise. In the present case, after perusing the complaint, this Court finds that there is no such evidence, which requires any investigation by the police. Therefore, the Magistrate has rightly passed the impugned order treating the application as a complaint case, which needs no interference.

29. Application being devoid of merit, is ***rejected***.

30. Registrar General of this Court is directed to circulate a copy of this judgement to all the subordinate courts through the District Judges for perusal.

(2026) 5 ILRA 718
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 20.05.2026

BEFORE

THE HON'BLE VIVEK KUMAR SINGH, J.

Application U/S 528 No. 29363 of 2025

Sanjay @ Sanjay Kashyap **...Applicant**
Versus
State of U.P. & Anr. **...Opposite Parties**

Issue for Consideration

Issue pertains to whether the material on record collected by the Investigating Officer during investigation, including the statements of victim recorded u/ss. 161 and 164 Cr.P.C., made out a prima facie case of rape and connected offences under relevant sections of IPC against the applicant, or whether continuation of criminal proceedings, charge-sheet dated 09.06.2024 and cognizance order dated 08.02.2025 would tantamount to an abuse of process of law, warranting quashing u/s 528 BNSS.

Headnotes

Indian Penal Code, 1860 - ss. 376, 323, 342 and 506 - Code of Criminal Procedure, 1973 - ss. 161, 164 - Rape - False promise of marriage - Breach of promise - Allegation of - Consensual

relationship - Victim major - Details of time, place etc not in FIR - Statement of victim - Charge-sheet - Cognizance order - Quashing of - The applicant, invoked the inherent jurisdiction of High Court u/s 528 BNSS seeking quashing of charge-sheet dated 09.06.2024, cognizance order dated 08.02.2025, and entire criminal proceedings in Case No. 159 of 2025 arising out of Case Crime No. 238 of 2024 registered under relevant sections of IPC at Police Station Pipraich, District Gorakhpur, pending before the court of J.M./Civil Judge Junior Division-14, Gorakhpur - The prosecution's case, founded on a First Information Report lodged by opposite party no. 2/victim alleged that the applicant, after meeting the victim at a marriage ceremony, gifted her a mobile phone, developed intimacy with her over a period of about one year on a promise of marriage made before family members, forcibly established physical relations with her, subsequently refused to marry her, and assaulted and threatened her when confronted - While the applicant's contention was that victim, admittedly a major aged about 20-21 years as per ossification test and educated up to Class 9th, had maintained a consensual relationship with him for a year without any injury or corroborating particulars of date, time or place of occurrence, such that the FIR, lodged only upon the relationship turning sour, constituted a false and frivolous complaint amounting to misuse of the criminal process.

Held: In the instant case, no offence of rape is made out against the applicant, and the FIR was lodged by prosecutrix as she was annoyed by the behaviour of applicant, and was unwilling to leave the applicant - Therefore, the subsequent incident of physical assault on 26.03.2024 has been concocted by prosecutrix only for the purpose of lodging the FIR - Nothing was stated by victim in respect of incident dated 26.03.2024 when her statement was recorded u/s 164 Cr.P.C - However, she later developed a story that relationship was forcibly established by the applicant at the house of his friend Krishna, which is not substantiated during the investigation since no statement of Krishna was recorded and he is not one of the witnesses in the charge-sheet - The victim expressed her desire, in her statement recorded u/s 164 Cr.P.C., that she wanted to get married to the applicant - It appears from her statement that the F.I.R. was lodged by victim to exert pressure upon the applicant to get married to the victim - Accordingly, application allowed, and entire criminal proceedings quashed. [Paras 45, 47] (E-13)

Case Law Cited

R. Kalyani v. Janak C. Mehta and Others **reported in 2009 (1) SCC 516;** *State of Karnataka v. M. Devendrappa,* **(2002) 3 SCC 89; 2002 SCC (Cri) 539;** *Vineet Kumar v. State of U.P.,* **(2017) 13 SCC 369;** *Mahesh Damu Khare v. State of Maharashtra and Another,* **(2024) 11;** *Prashant v. State of NCT of Delhi,* **(2025) 5 Supreme Court Cases 764;** *Samadhan Versus State of Maharashtra and Another,* **2025 SCC OnLine SC 2528;** *Rajnish Singh @ Soni v. State of U.P. And Another,* **2025 (4) SCC 197;** *Shiv Shanker v.. State of Karnataka,* **(2019) 18 SCC 204;** *Naim Ahamed v. State (NCT of Delhi),* **(2023) 15 Supreme Court Cases 385;** *Pramod Kumar Navratna v. State of Chhattisgarh and Others*, **2026 SCC OnLine SC 154;** *Ravish Singh Rana v. State of Uttarakhand & Anr.,* **2025 SCC OnLine SC 1055;** *Pramod Suryabhan Pawar v. State of Maharashtra And Another,* **(2019) 9 Supreme Court Cases 608;** *Uday v. State of Karnataka,* **(2003) 4 SCC 46;** *Sonu @ Subhash Kumar v. State of Uttar Pradesh and Another,* **(2021) 18 SCC 51;** *Deepak Gulati v. State of Haryana*, **(2013) 7 SCC 675;** *Dileep Singh v. State of Bihar,* **(2005) 1 SCC 88;** *Manish Yadav v. State of Uttar Pradesh and another,* **2025 SCC OnLine SC 363;** *Kunal Chatterjee v. The State of West Bengal & Ors.*, **2025 7 Supreme 489;** *Nitin B. Nikhare v. The State of Maharashtra & Anr.* **(arising out of SLP (Crl.) No.1889/2024), decided on 21.01.2025;** *Dhruvaram Murlidhar Sonar v. State of Maharashtra*, **(2019) 18 SCC 191;** *Maheshwar Tigga v. State of Jharkhand,* **(2020) 10 SCC 108;** *Amal Bhagwan Nehul v. The State of Maharashtra,* **SLP (Crl.) No.10044/2024, decided on 26.05.2025 - referred to**

State of Haryana and others v. Ch. Bhajan Lal, **AIR 1992 SC 605 - followed**

List of Acts

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

List of Keywords

Application u/s 528 BNSS; FIR; Cognizance order; Charge-sheet; Investigating Officer; Marriage ceremony; Investigation; Victim; False promise of marriage; Consent; Decline to marry; Physical assault; Wrongful confinement; Threat; Misconception of fact; Long-standing; Consensual physical relationship; Rape; Ossification test; ss. 161, 164 Crpc; Anticipatory Bail; Cognizable offence; Rarest of rare case; Mala fide; Chief Medical Officer; Gorakhpur; Application allowed; Entire criminal proceedings quashed.

Case Arising From

ORIGINAL JURISDICTION: Application U/S 528 BNSS No. - 29363 of 2025

From the Charge-sheet dated 09.06.2024 and Cognizance order dated 08.02.2025 arising out of Case Crime No.238 of 2024, Police Station Pipraich, District-Gorakhpur, pending in the court of J.M./ Civil Judge Junior Division-14, Gorakhpur.

Appearances for Parties

Advs. for the Applicant(s):
Ashwani Kumar Singh, Devendra Singh Kushwaha

Advs. for the Opposite Party(s):
Mahesh Kumar Sahani, G.A.

(Delivered by Hon'ble Vivek Kumar Singh, J.)

1. Heard Sri Ashwani Kumar Singh, learned counsel for the applicant, Sri Mahesh Kumar Sahani, learned counsel for opposite party no.2/ victim and Sri Prashant Kumar Singh, learned A.G.A. for State- opposite party no.1.

2. Present application under Section 528 B.N.S.S. has been preferred for quashing the charge-sheet dated 09.06.2024 and cognizance order dated 08.02.2025 as well as entire criminal proceeding of Case No.159 of 2025, arising out of Case Crime No.238 of 2024, under Sections 376, 323, 342 and 506 of I.P.C., Police Station Pipraich, District-Gorakhpur, pending in the court of J.M./ Civil Judge Junior Division-14, Gorakhpur.

3. The brief facts of the case are to the effect that a First Information Report was lodged by opposite party no. 2/victim of the present case, which was registered on 30.03.2024 at 16:55 hours as Case Crime No. 238 of 2024, under Sections 376, 323, 342, and 506 I.P.C. at Police Station Pipraich, District Gorakhpur. The date and time of the incident have not been mentioned in the FIR. It is alleged in the FIR that the victim met the applicant a year ago in a marriage ceremony. The applicant purchased a mobile phone and gifted the same to the informant/victim. Thereafter, conversations were exchanged between the applicant and the victim, and a promise of marriage was made by the applicant before the family members of the victim. On account of the promise of marriage, made by the applicant, they developed intimacy, and when the victim pressurized on the applicant to marry her, he made excuses and later threatened to kill her. The victim reached the house of the applicant on 26.03.2024, where the applicant allegedly physically assaulted her. The applicant ultimately declined to marry her.

4. The Investigating Officer started the investigation and recorded the statement of the victim under Section 161 Cr.P.C., wherein she claimed herself to be about 20 years of age and educated up

to Class 9th. Further, the allegations made in the FIR were reiterated by the victim in her statement recorded under Section 161 Cr.P.C. As per the ossification test report, the victim was aged above 20?21 years. In her statement recorded under Section 164 Cr.P.C., she again claimed to be a major girl and stated that she had been in a relationship with the applicant for the last one year. On 30.05.2023, she was called by the applicant and taken to the house of his friend, where the applicant forcibly established physical relations with her. The applicant had stated that he would marry the victim, but now he is refusing to do so. Lastly, the victim stated that she wanted to marry him.

5. Initially, the arrest of the applicant was stayed by the Division Bench of this Court vide order dated 30.04.2024, passed in Criminal Misc. Writ Petition No. 6840 of 2024, and later on, he was released on anticipatory bail by this Court on 19.05.2025. The Investigating Officer completed the investigation and submitted the charge sheet against the applicant on 09.06.2024. Thereafter, the learned Magistrate took cognizance of the offence on 08.02.2025.

6. It is the contention of the learned counsel for the applicant-accused that a false and frivolous FIR was lodged by the informant/victim, wherein she claimed that she was subjected to rape on the false promise of marriage. It is the admitted case of the victim that she had been in touch with the applicant for the last one year, which substantiates that the FIR is a result of a broken relationship. The FIR was lodged when the things did not work out between them. There is no mention of the date, time, and place of the incident in the FIR where the alleged offence of rape was committed for the first time. The version of the victim kept changing in her averments made in the FIR and in her statements given to the Investigating Officer under Section 161 Cr.P.C. and to the Magistrate while recording her statement under Section 164 Cr.P.C.

7. Further submission was made by the learned counsel for the applicant that the Investigating Officer has not taken into consideration that the statements are bereft of particulars. No external injury was seen on the body of the victim, and she was in a consensual relationship. She admitted that she was a major girl aged about 20 years. When the relationship became sour, the FIR was lodged by the victim due to ulterior motives. It is further submitted that no criminal offence is made out against the applicant under Sections 376, 323, 342, and 506 I.P.C. considering the facts and circumstances of the present case. Therefore, continuation of the criminal proceedings against the applicant would tantamount to a miscarriage of justice.

8. Learned counsel for the opposite party no.2/ victim and Sri Prashant Kumar Singh, learned A.G.A. for the State, have submitted that the applicant had continuously exploited the victim for the last one year. The applicant, in order to save himself, assured the victim of marriage, which was a false assurance from the very beginning. On the basis of this false promise of marriage, the victim was continuously subjected to rape for one year. The FIR was lodged when the victim came to know that the applicant would not solemnize marriage with her. The applicant has spoiled the life of the victim and committed rape on the false promise of marriage. When the victim approached the applicant, she was physically abused and threatened in the presence of the applicant's family members. The Investigating Officer has found sufficient material against the applicant for submission of the charge sheet, and a prima facie offence is made out from the perusal of the FIR

and statements of the victim recorded under Sections 161 and 164 Cr.P.C.. Therefore, the present application lacks merit and deserves to be dismissed.

9. I have heard the rival submissions of the parties and perused the record.

10. The point for consideration in the present application is whether the material on record collected by the Investigating Officer during investigation, including the statements of the victim makes out a prima facie case of rape against the applicant, or whether continuation of the proceedings would tantamount to an abuse of the process of law.

11. The perusal of the FIR reveals that the victim came in contact with the applicant in a marriage ceremony, and later on, a mobile phone was gifted to the victim and numbers were exchanged between the applicant and the victim. The applicant had promised, in the presence of the victim's family members, that he would marry her, but he later broke the said promise. The subsequent allegation is continued of committing rape on false promise of marriage by the applicant. There are no details and particulars in the FIR where the victim was continuously being raped on the false promise of marriage. The FIR is silent regarding the date, time, and place of such occurrences. The prosecution case reveals only bald allegations against the applicant.

12. The victim is a major girl and had studied up to Class-9th, and she was in a relationship with the applicant for the last one year. As per the report of Chief Medical Officer, Gorakhpur dated 08.04.2024, the victim was aged about 20 years. No injury was noticed on the body of the victim when she was medically examined on 02.04.2024.

13. The applicant filed a Criminal Misc. Writ Petition No.6840 of 2024 and his arrest was stayed by Division Bench of this Court vide order dated 30.04.2024. After submission of charge-sheet, the applicant applied for anticipatory bail which was allowed by this Court on 19.05.2025 in Application U/S 482 B.N.S.S. No.2758 of 2025. Thereafter, the applicant challenged the legality and validity of the charge-sheet dated 09.06.2024 as well as cognizance order dated 08.02.2025.

14. First, this Court will examine whether the charge sheet can be quashed by this Court under Section 528 of the BNSS or Section 482 Cr.P.C., as the case may be.

15. The legal position on the issue of quashing of criminal proceedings is well-settled that the jurisdiction to quash a complaint, FIR or a charge-sheet should be exercised sparingly and only in exceptional cases. However, where the allegations made in the FIR or the complaint and material on record even if taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, the charge-sheet may be quashed in exercise of inherent powers under Section 482 of the Cr.P.C./ 528 B.N.S.S. In well celebrated judgment reported in **AIR 1992 SC 605 State of Haryana and others Vs. Ch. Bhajan Lal,** Supreme Court has carved out certain guidelines, wherein FIR or proceedings may be quashed but cautioned that the power to quash FIR or proceedings should be exercised sparingly and that too in the rarest of rare cases. Guidelines are as follows:-

"(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can every reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

16. In the case of **R. Kalyani v. Janak C. Mehta and Others reported in 2009 (1) SCC 516,** the Hon'ble Apex Court has held as under:-

"(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."

17. In **State of Karnataka v. M. Devendrappa [State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89; 2002 SCC (Cri) 539,** it was held that while exercising powers under Section 482 CrPC, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It was further held as under : (SCC p. 94, para 6)

"6. ... It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

(Emphasis Supplied)

18. In **Vineet Kumar v. State of U.P., (2017) 13 SCC 369**, the Apex Court has held as under:

"41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. ... Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of oppression or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding. ... the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.

(Emphasis Supplied)

19. The Hon'ble Supreme Court has held that the powers of the High Court invoking under Section 482 Cr.P.C. or 528 B.N.S.S. are very wide, but should be exercised with circumspection and in rarest of rare and appropriate cases. This power does not confer arbitrary jurisdiction to act accordingly to whims and caprices and is used to prevent the abuse of process of law and for securing the ends of justice.

20. To ascertain, whether the present case falls within the category of rarest of rare cases, it would be expedient to consider the facts of the present case as well as judgments of Hon'ble Supreme Court on this issue.

21. In the case of **Mahesh Damu Khare Versus State of Maharashtra and Another, (2024) 11 Supreme Court Cases 398,** the Hon?ble Supreme Court has made observation that where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise of marriage. A woman may have reasons to have physical relationship other than the promise of marriage like, personal liking for the male partner. The relevant paragraphs of **Mahesh Damu Khare (supra)** are reproduced hereunder: -

"27. In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of

marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties.

28. Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact."

22. In case of **Prashant Versus State of NCT of Delhi, (2025) 5 Supreme Court Cases 764,** the Hon'ble Supreme Court has observed that it is inconceivable that the complainant would continue to meet the accused or maintain a prolonged association or physical relationship with him in the absence of voluntary consent on her part. The relevant paragraphs of Prashant (supra) are being reproduced hereunder:-

"18. It is inconceivable that the complainant would continue to meet the appellant or maintain a prolonged association or physical relationship with him in the absence of voluntary consent on her part. Moreover, it would have been improbable for the appellant to ascertain the complainant's residential address, as mentioned in the FIR unless such information had been voluntarily provided by the complainant herself.

19. It is also revealed that, at one point, both parties had an intention to marry each other, though this plan ultimately did not materialize. The appellant and the complainant were in a consensual relationship. They are both educated adults. The complainant, after filing the FIR against the appellant, got married in the year 2020 to some other person. Similarly, the appellant was also married in the year 2019. Possibly the marriage of the appellant in the year 2019 has led the complainant to file the FIR against him as they were in a consensual relationship till then.

20. In our view, taking the allegations in the FIR and the charge- sheet as they stand, the crucial ingredients of the offence under Section 376(2)(n) IPC are absent. A review of the FIR and the complainant's statement under 164 CrPC discloses no indication that any promise of marriage was extended at the outset of their relationship in 2017. Therefore, even if the prosecution's case is accepted at its face value, it cannot be concluded that the complainant engaged in a sexual relationship with the appellant solely on account of any assurance of marriage from the appellant. The relationship between the parties was cordial and also consensual in nature. A mere breakup of a relationship between a consenting couple cannot result in initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marital relationship. Further, both parties are now married to someone else and have moved on in their respective lives. Thus, in our view, the continuation of the prosecution in the present case would amount to a gross abuse of the process of law. Therefore, no purpose would be served by continuing the prosecution."

23. Furthermore, the Hon'ble Supreme Court in the case of **Samadhan Versus State of Maharashtra and Another, 2025 SCC OnLine SC 2528** observed that on numerous occasions, taken note of the disquieting tendency wherein failed or broken relationships are given the colour of criminality. The offence of rape, being of the gravest kind, must be invoked only in cases where there exists genuine sexual violence, coercion, or absence of free consent. To convert every sour

relationship into an offence of rape not only trivialises the seriousness of the offence but also inflicts upon the accused indelible stigma and grave injustice. Such instances transcend the realm of mere personal discord. The misuse of the criminal justice machinery in this regard is a matter of profound concern for the judiciary already facing a heavy load and calls for condemnation. The relevant paragraphs of **Samadhan (supra)** are being reproduced hereunder:-

"28. We find that the present case is not a case where the appellant lured respondent No.2 solely for physical pleasures and then vanished. The relationship continued for a period of three long years, which is a considerable period of time. They remained close and emotionally involved. In such cases, physical intimacy that occurred during the course of a functioning relationship cannot be retrospectively branded as instances of offence of rape merely because the relationship failed to culminate in marriage.

29. This Court has, on numerous occasions, taken note of the disquieting tendency wherein failed or broken relationships are given the colour of criminality. The offence of rape, being of the gravest kind, must be invoked only in cases where there exists genuine sexual violence, coercion, or absence of free consent. To convert every sour relationship into an offence of rape not only trivialises the seriousness of the offence but also inflicts upon the accused indelible stigma and grave injustice. Such instances transcend the realm of mere personal discord. The misuse of the criminal justice machinery in this regard is a matter of profound concern and calls for condemnation."

24. The Hon'ble Supreme Court in **Rajnish Singh @ Soni Vs. State of U.P. And Another, 2025 (4) SCC 197** held that where a woman willingly engages in a long-term relationship with a man, fully aware of its nature, and there is no cogent evidence to show that such relationship was induced by a misconception of fact or a false promise of marriage made in bad faith from the inception, the man cannot be held guilty of rape under Section 376 of the IPC. The relevant portions of the judgment are extracted as under:-

"33. There is no dispute that from the year 2006 onwards, the complainant and the appellant were residing in different towns. The complainant is an educated woman and there was no pressure whatsoever upon her which could have prevented her from filing a police complaint against the accused if she felt that the sexual relations were under duress or were being established under a false assurance of marriage. On many occasions, she even portrayed herself to be the wife of the appellant thereby, dispelling the allegation that the intention of the appellant was to cheat her right from the inception of the relationship.

34. We cannot remain oblivious to the fact that it was mostly the complainant who used to travel to meet the appellant at his place of posting. Therefore, we are convinced that the relationship between the complainant and appellant was consensual without the existence of any element of deceit or misconception.

35. Further, the application filed by the complainant at One Stop Center, Lalitpur on 23rd March, 2022, makes it abundantly clear that she was in a consensual relationship with the appellant since 2006. It is alleged in the complaint that when she had proposed that they should marry and live together, the appellant physically abused her and beat her up. If at all there was an iota of truth in this allegation then the FIR should have been registered immediately after this incident. However, it is only when it came to the knowledge of the complainant that the appellant

was getting married to another woman, in an attempt to stop his marriage, she filed aforesaid complaint at the One Stop Center wherein she also admitted that she was equally guilty as the appellant and therefore, his marriage must be stopped.

36. Further, on the perusal of the statement made by the complainant under Section 161 CrPC, it is evident that she came to know about the relations between the appellant and Namrata in the year 2020-2021. Thus, once the complainant was aware that the appellant had broken the ties with her and was involved in a relationship with another woman, there was no reason for her to hold back from filing the FIR.

39. It is, therefore, clear that the accused is not liable for the offence of rape if the victim has wilfully agreed to maintain sexual relations. The Court has also recognised that a prosecutrix can agree to have sexual intercourse on account of her love and passion for the accused."

25. The Hon'ble Supreme Court in case of **Shiv Shanker Vs. State of Karnataka, (2019) 18 SCC 204** had quashed criminal proceedings on the ground that it is difficult to hold sexual intercourse in the course of a relationship, which continued for eight years, as "rape" especially when the complainant therein had alleged that they lived together as husband and wife. The relevant extract of **Shiv Shanker (supra)** is reproduced hereinbelow:-

"4. In the facts and circumstances of the present case, it is difficult to sustain the charges levelled against the appellant who may have possibly, made a false promise of marriage to the complainant. It is, however, difficult to hold sexual intercourse in the course of a relationship which has continued for eight years, as "rape" especially in the face of the complainant's own allegation that they lived together as man and wife."

(emphasis supplied)

26. The Hon'ble Supreme Court in the case of **Naim Ahamed Vs. State (NCT Of Delhi), (2023) 15 Supreme Court Cases 385** has held that the prosecutrix had also given consent for a sexual relationship with the accused therein, upon an assurance to marry. The prosecutrix, who was herself a married women having three children had continued to have such a relationship with the accused, at least for about five years till she gave the complaint. In the conspectus of such facts and circumstances, the Hon'ble Supreme Court observed as under:-

"21. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of law and the case fell under the Clause Secondly of Section 375 IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceited the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfill his promise. So, it would be a folly to treat each breach of promise to marry as a false

promise and to prosecute a person for the offence under Section 376. As stated earlier, each case would depend upon its proved facts before the court.

22. In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. Undisputedly, she continued to have such relationship with him at least for about five years till she gave complaint in the year 2015. Even if the allegations made by her in her deposition before the court, are taken on their face value, then also to construe such allegations as "rape" by the appellant, would be stretching the case too far. The prosecutrix being a married woman and the mother of three children was matured and intelligent enough to understand the significance and the consequences of the moral or immoral quality of act she was consenting to. Even otherwise, if her entire conduct during the course of such relationship with the accused, is closely seen, it appears that she had betrayed her husband and three children by having relationship with the accused, for whom she had developed liking for him. She had gone to stay with him during the subsistence of her marriage with her husband, to live a better life with the accused. Till the time she was impregnated by the accused in the year 2011, and she gave birth to a male child through the loin of the accused, she did not have any complaint against the accused of he having given false promise to marry her or having cheated her. She also visited the native place of the accused in the year 2012 and came to know that he was a married man having children also, still she continued to live with the accused at another premises without any grievance. She even obtained divorce from her husband by mutual consent in 2014, leaving her three children with her husband. It was only in the year 2015 when some disputes must have taken place between them, that she filed the present complaint. The accused in his further statement recorded under Section 313 of Cr.P.C. had stated that she had filed the complaint as he refused to fulfill her demand to pay her huge amount. Thus, having regard to the facts and circumstances of the case, it could not be said by any stretch of imagination that the prosecutrix had given her consent for the sexual relationship with the appellant under the misconception of fact, so as to hold the appellant guilty of having committed rape within the meaning of Section 375 of IPC."

27. In the case of **Pramod Kumar Navratna Versus State of Chhattisgarh and Others, 2026 SCC OnLine SC 154,** the Hon'ble Supreme Court held that the Courts have to be extremely careful and cautious in identifying the genuine cases filed under Section 376(2)(n) of the IPC by identifying the essential ingredients to constitute the said offence. Such genuine cases must be clearly demarcated from the litigation that arises from the cases of consensual relationships between consenting adults going acrimonious on account of dispute and disagreement or a future change of mind. The relevant paragraphs of **Pramod Kumar Navratna (supra)** are reproduced hereunder:-

"18. It has been time and again settled by this Court, that the mere fact that the parties indulged in physical relations pursuant to a promise to marry will not amount to a rape in every case. An offence under Section 375 of the IPC could only be made out, if promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intent of fulfilling said promise from the very beginning and that such false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. The issue for consideration is whether, given the facts and circumstances of the case and after examining the

FIR, the High Court was correct in refusing to quash the ongoing criminal proceedings against the accused-appellant arising out of FIR No.213/2025 dated 06.02.2025 and the Chargesheet No.269/2025.

22. The Courts have to be extremely careful and cautious in identifying the genuine cases filed under Section 376(2) (n) of the IPC by identifying the essential ingredients to constitute the said offence i.e. there should be a promise of marriage made by the accused solely with a view to obtain consent for sexual relations and without having any intent of fulfilling said promise from the very beginning, and that such false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. Such genuine cases that deserve prosecution of the accused must be clearly demarcated from the litigation that arises from the cases of consensual relationships between consenting adults going acrimonious on account of dispute and disagreement or a future change of mind. In view of the aforesaid settled position of law, the respondent No.1-State and the complainant-respondent No.3 has failed to place any material on record to show how the accused-appellant on the subsequent meetings managed to repeatedly coax and dupe the complainant-respondent No.3 into having physical relations with him on the false pretext of marriage considering the fact that within initial meetings, both parties were aware about the marital status of the victim and therefore it cannot be, by any stretch imagination said that the consent of the complainant-respondent No.3 has been vitiated or obtained on fraud and misrepresentation made by the accused-appellant."

28. The Hon'ble Supreme Court in the case of **Ravish Singh Rana Versus State of Uttarakhand & Anr., 2025 SCC OnLine SC 1055** has made observation that the two able minded adults, if maintained a long term physical relations, then the presumption would arise that they have voluntarily chose the consensual relationship and subsequent non- fulfillment of promise of marriage would not attract any offence. The relevant paragraphs of **Ravish Singh Rana (supra)** are reproduced hereunder:-

"10. An overview of the facts makes it clear that relationship between the appellant and the second respondent (the informant) had been there since 2021. This relationship was not merely of knowing each other but of living together as a couple under one roof in a rented accommodation. The FIR does not allege that physical relationship was established only because there was a promise of marriage. Besides, physical relationship continued for over two years without a complaint in between. In such circumstances, a presumption would arise of there being a valid consent for initiating and maintaining the physical relationship that spanned over two years.

14. In the instant case also, we find that the relationship between the appellant and the second respondent (the informant) was spread over two years. Further, they not only admit of having physical relations with each other but also of living together in a rented accommodation as a live-in couple. In our view, if two able-minded adults reside together as a live-in couple for more than a couple of years and cohabit with each other, a presumption would arise that they voluntarily chose that kind of a relationship fully aware of its consequences. Therefore, the allegation that such relationship was entered because there was a promise of marriage is in the circumstances unworthy of acceptance, particularly, when there is no allegation that such physical relationship would not have been established had there been no promise to marry.

15. Moreover, in a long drawn live-in relationship, occasions may arise where parties in that relationship express their desire or wish to formalize the same by a seal of marriage, but that

expression of desire, or wish, by itself would not be indicative of relationship being a consequence of that expression of desire or wish. A decade or two earlier, live-in relationships might not have been common. But now more and more women are financially independent and have the capacity to take conscious decision of charting their life on their own terms. This financial freedom, inter alia, has led to proliferation of such live-in relationships. Therefore, when a matter of this nature comes to a court, it must not adopt a pedantic approach rather the Court may, based on the length of such relationship and conduct of the parties, presume implied consent of the parties to be in such a relationship regardless of their desire or a wish to convert it into a marital bond."

29. The Hon'ble Supreme Court in the case of **Pramod Suryabhan Pawar Versus State of Maharashtra And Another, (2019) 9 Supreme Court Cases 608** held that where the promise to marry is false and the intention of the maker, at the time of making the promise, itself was not to abide by it, but to deceive the woman so as to convince her to engage in sexual relations, there is a ?misconception of fact? that vitiates the woman?s ?consent?. However, mere breach of a promise cannot be said to be a false promise. Therefore, to establish a false promise, it would have to be demonstrated that the maker of the promise had no intention of upholding his word at the time of making the promise. The relevant paragraph of **Pramod Suryabhan Pawar (supra)** is reproduced hereunder:-

"16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The "consent" of a woman under Section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act. In Deepak Gulati this Court observed:(SCC pp. 682-84, paras 21 & 24)

"21. - There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently."

...

"24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance". Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl

in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."

(Emphasis supplied)

30. In **Uday Vs. State of Karnataka, (2003) 4 SCC 46,** the complainant was a college going girl when the accused promised to marry her. The victim was aware that there would be significant opposition from both families to the proposed marriage. Even then she engaged in sexual intercourse with the accused. The Hon'ble Supreme Court observed that in these circumstances, the accused's promise to marry the victim was not of immediate relevance to the complainant's decision to engage in sexual intercourse with the accused, which was motivated by other factors. The relevant paragraph of **Uday (supra)** is reproduced hereunder:-

"25. There is yet another difficulty which faces the prosecution in this case. In a case of this nature two conditions must be fulfilled for the application of Section 90 IPC. Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. We have serious doubts that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant. She knew, as we have observed earlier, that her marriage with the appellant was difficult on account of caste considerations. The proposal was bound to meet with stiff opposition from members of both families. There was therefore a distinct possibility, of which she was clearly conscious, that the marriage may not take place at all despite the promise of the appellant. The question still remains whether even if it were so, the appellant knew, or had reason to believe, that the prosecutrix had consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. There is hardly any evidence to prove this fact. On the contrary, the circumstances of the case tend to support the conclusion that the appellant had reason to believe that the consent given by the prosecutrix was the result of their deep love for each other. It is not disputed that they were deeply in love. They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, are permitted only to a person with whom one is in deep love. It is also not without significance that the prosecutrix stealthily went out with the appellant to a lonely place at 12 o'clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married....."

(Emphasis supplied)

31. In **Sonu @ Subhash Kumar Vs. State of Uttar Pradesh and Another, (2021) 18 SCC 517,** the Hon'ble Supreme Court quashed the FIR and the proceedings upon noticing that relationship between the accused and the victim was of consensual nature and parties were in relationship for a period of one and a half years, and subsequently the accused had expressed disinclination to marry the prosecutrix which led to registration of FIR.

32. In **Deepak Gulati v. State of Haryana, (2013) 7 SCC 675**, the Apex Court has held as under:

"21. .....There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently....."

.....

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."

33. The Hon'ble Supreme Court in **Dileep Singh Vs. State of Bihar, (2005) 1 SCC 88** acquitted and set aside the conviction of the accused holding that while there was a breach of promise to marry, it was not a case of false promise of marriage. The relevant extract is reproduced hereinunder:-

"35. ***The remaining question is whether on the basis of the evidence on record, it is reasonably possible to hold that the accused with the fraudulent intention of inducing her to sexual intercourse, made a false promise to marry.*** *We have no doubt that the accused did hold out the promise to marry her and that was the predominant reason for the victim girl to agree to the sexual intimacy with him. PW 12 was also too keen to marry him as she said so specifically.* ***But we find no evidence which gives rise to an inference beyond reasonable doubt that the accused had no intention to marry her at all from the inception and that the promise he made was false to his knowledge. No circumstances emerging from the prosecution evidence establish this fact. On the other hand, the statement of PW 12 that "later on", the accused became ready to marry her but his father and others took him away from the village would indicate that the accused might have been prompted by a genuine intention to marry which did not materialise on account of the pressure exerted by his family elders. It seems to be a case of breach of promise to marry rather than a case of false promise to marry.*** *On this aspect also, the observations of this Court in Uday case [(2003) 4 SCC 46 : 2003 SCC (Cri) 775 : (2003) 2 Scale 329] at para 24 come to the aid of the appellant."*

(emphasis supplied)

34. The Hon'ble Supreme Court in **Manish Yadav Vs. State of Uttar Pradesh and another, 2025 SCC OnLine SC 363** held that the victim and the accused were competent enough to make

rational decisions and their initial physical relations were consensual in nature which had developed on the basis of mutual attraction and therefore, the same cannot fall within the ambit of a relationship flowing from a promise to marry. In the aforesaid case, the proceedings under Sections 376, 323, 504 and 506 IPC and Sections 3(1)(r), 3(1)(s), 3(2)(5a) and 3(2)(v) of the SC/ST Act were quashed on the ground that consensual relationship has turned sour due to certain intervening events. The relevant paragraphs of Manish Yadav (supra) are reproduced hereunder:-

"14. In our opinion, it is clearly discernible that both the appellant and the complainant were major and thus, both were competent enough to make rational decisions. As per the statement of the complainant (supra), their initial physical relations were consensual in nature, and without there being any promise of marriage being offered by the appellant. While it can be said that initially the relationship between the complainant and appellant had developed on the basis of mutual attraction and affection, the same cannot by any stretch of imagination fall within the ambit of a relationship flowing from a promise to marry.

18. Applying the above principle to the case at hand, it is clearly discernible that in the present case, the complainant had agreed to indulge in intimate relations with the appellant on the accord of her own desires and not on the basis of any false promise of marriage made by the appellant. Therefore, while the present case may involve a breach of promise, it does not constitute a case of an inherently false promise to marry. Based on the circumstances, it cannot be concluded that the appellant obtained the complainant's consent to engage in a physical relationship under the pretext of a false promise of marriage.

20. Thus, the theory put forth by the prosecution in the chargesheet that the appellant induced the complainant to indulge in physical relations under a false promise of marriage is neither corroborated nor established by the best evidence available on record, which is in the form of the statement of the complainant recorded under Section 164 CrPC.

22. In view of the above discussion, we are of the opinion that the present case appears to be one where a consensual physical relationship between two adults has turned sour due to certain intervening events. Hence, allowing the prosecution of the appellant for the offences mentioned above would tantamount to sheer abuse of the process of law and nothing else."

35. The Hon'ble Supreme Court in case of **Kunal Chatterjee Versus The State of West Bengal & Ors., 2025 7 Supreme 489** quashed the proceedings against accused wherein the victim claimed herself to be a minor girl and the FIR was lodged by her when she attained the age of majority. It was held that promise to marriage and subsequent physical relationship between two with consent would not amount to rape. The relevant paragraphs of Kunal Chatterjee (supra) are reproduced hereunder:-

"7. We have heard learned counsel for the parties at length. Learned counsel appearing for the State has relied upon the definition of ?Rape? and would argue that the consent given by the minor is no consent and it would still be a rape. In our considered opinion, as regarding the rape being committed by the appellant when the prosecutrix was a minor, there is absolutely no evidence, and definitely no forensic evidence with the prosecution. It is only an allegation in the FIR after more than 03 years, in order to make out a case under the POCSO Act that such an act of rape was committed three years back when she was a minor. She also categorically states that she consented to the act as there was a promise of marriage by the appellant.

8. This Court has held in several decisions that promise to marriage and the subsequent physical relationship between the two with consent would not amount to rape and the reasons therein have been assigned (See: Prithivirajan v. State 2025 SCC OnLine SC 696, Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608, Maheshwar Tigga v. State of Jharkhand, (2020) 10 SCC 108).

9. Under the present facts and circumstances of the case and the nature of the evidence with the prosecution, particularly the long delay in lodging the FIR itself suggest that the present criminal proceedings lodged against the appellant are nothing but an abuse of the process of law and the High Court ought to have invoked its inherent jurisdiction in the case of the appellant as well as it did while quashing the proceedings for the remaining accused."

36. In another recent judgment, the Hon'ble Surpreme Court in case of **Nitin B. Nikhare Versus The State of Maharashtra & Anr. (arising out of SLP (Crl.) No.1889/2024), decided on 21.01.2025** has held that mere fact that physical relations were established pursuant to a promise to marry will not amount to rape unless it is proved that promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intention of fulfilling the said promise from the very beginning. The relevant paragraphs of **Nitin B. Nikhare (supra)** are reproduced hereunder:-

"5. On the other hand, the prosecution?s case is that the prosecutrix entered into a sexual relationship with the appellant solely for the reason that he had promised to marry her and this relationship continued for some time and was broken when the promise of marriage was not fulfilled. In other words, the main allegation of the prosecutrix is that had it not been for the promise of marriage made by the appellant she would have never entered into a physical relationship with him and considering that this was done by cheating, the same amounts to rape.

6. This Court in a catena of judgments has held that the mere fact that physical relations were established pursuant to a promise to marry will not amount to a rape in every case. In order for the offence of rape to be made out, two conditions need to be satisfied i.e. that the promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intention of fulfilling said promise from the very beginning, and that the false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. [See: Pramod Suryabhan Pawar v. The State of Maharashtra and Ors. (2019) 9 SCC 608; Mahesh Damu Khare v. The State of Maharashtra and Ors. 2024 SCC OnLine SC 347]

7. From a perusal of the record, it is clear that this was a case of a consensual relationship from the beginning. Even if the case of the prosecutrix is accepted, it does not appear that the initial promise to marry was in bad faith. It was only the subsequent circumstances that prevented fulfilment of alleged false promise to marry. Resultantly, the relationship turned sour which has given rise to the present FIR. Further, in view of the material on record, we do not see this as a case where provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act can be attracted."

37. Further, in **Dhruvaram Murlidhar Sonar Vs. State of Maharashtra, (2019) 18 SCC 191,** the Apex Court has held as under:

"23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC."

(Emphasis Supplied)

38. In **Maheshwar Tigga Vs. State of Jharkhand, (2020) 10 SCC 108,** the Apex Court has held that the misconception of the fact about promise to marry has to be in proximity of time to occurrence and cannot be spread over for long period of time. The Apex Court has observed as under:

"13. The question for our consideration is whether the prosecutrix consented to the physical relationship under any misconception of fact with regard to the promise of marriage by the appellant or was her consent based on a fraudulent misrepresentation of marriage which the appellant never intended to keep since the very inception of the relationship. If we reach the conclusion that he intentionally made a fraudulent misrepresentation from the very inception and the prosecutrix gave her consent on a misconception of fact, the offence of rape under Section 375 IPC is clearly made out. It is not possible to hold in the nature of evidence on record that the appellant obtained her consent at the inception by putting her under any fear. Under Section 90 IPC a consent given under fear of injury is not a consent in the eye of the law. In the facts of the present case, we are not persuaded to accept the solitary statement of the prosecutrix that at the time of the first alleged offence her consent was obtained under fear of injury.

14. Under Section 90 IPC, a consent given under a misconception of fact is no consent in the eye of the law. But the misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of four years. It hardly needs any elaboration that the consent by the appellant was a conscious and informed choice made by her after due deliberation, it being spread over a long period of time coupled with a conscious positive action not to protest. The prosecutrix in her letters to the appellant also mentions that there would often be quarrels at her home with her family members with regard to the relationship, and beatings given to her.

.....

18. We have given our thoughtful consideration to the facts and circumstances of the present case and are of the considered opinion that the appellant did not make any false promise or intentional misrepresentation of marriage leading to establishment of physical relationship between the parties. The prosecutrix was herself aware of the obstacles in their relationship because of different religious beliefs. An engagement ceremony was also held in the solemn belief

that the societal obstacles would be overcome, but unfortunately differences also arose whether the marriage was to solemnised in the church or in a temple and ultimately failed. It is not possible to hold on the evidence available that the appellant right from the inception did not intend to marry the prosecutrix ever and had fraudulently misrepresented only in order to establish physical relation with her. The prosecutrix in her letters acknowledged that the appellant's family was always very nice to her."

(Emphasis Supplied)

39. The Hon'ble Supreme Court in a recent judgment in case of **Amal Bhagwan Nehul Vs. The State of Maharashtra, SLP (Crl.) No.10044/2024, decided on 26.05.2025,** quashed the criminal proceeding arising out of F.I.R., registered under Sections 376, 376(2)(n), 377, 504 & 506 of I.P.C. wherein the parties continued meeting outside and engaged in sexual intercourse for a period of 13 months. The victim, mother of a 4 year son, was a married lady in that case, had not obtained divorce from her husband when she entered into a sexual relationship with the accused. The Hon'ble Supreme Court observed as hereunder:-

"8. Having heard both sides in this case and after carefully considering the material on record, the following attributes come to the fore:

(a) Even if the allegations in the FIR are taken as a true and correct depiction of circumstances, it does not appear from the record that the consent of the Complainant/Respondent no. 2 was obtained against her will and merely on an assurance to marry. The Appellant and the Complainant/Respondent no. 2 were acquainted since 08.06.2022, and she herself admits that they interacted frequently and fell in love. The Complainant/Respondent no. 2 engaged in a physical relationship alleging that the Appellant had done so without her consent, however she not only sustained her relationship for over 12 months, but continued to visit him in lodges on two separate occasions. The narrative of the Complainant/Respondent no. 2 does not corroborate with her conduct.

(b) The consent of the Complainant/Respondent no. 2 as defined under section 90 IPC also cannot be said to have been obtained under a misconception of fact. There is no material to substantiate "inducement or misrepresentation" on the part of the Appellant to secure consent for sexual relations without having any intention of fulfilling said promise. Investigation has also revealed that the Khulanama, was executed on 29.12.2022 which the Complainant/Respondent no. 2 had obtained from her ex-husband. During this time, the parties were already in a relationship and the alleged incident had already taken place. It is inconceivable that the Complainant had engaged in a physical relationship with the Appellant, on the assurance of marriage, while she was already married to someone else. Even otherwise, such promise to begin with was illegal and unenforceable qua the Appellant. (d) There is also no reasonable possibility that the Complainant/Respondent no. 2 or any woman being married before and having a child of four years, would continue to be deceived by the Appellant or maintain a prolonged association or physical relationship with an individual who has sexually assaulted and exploited her.

(c) There is no evidence of coercion or threat of injury to the Complainant/Respondent no. 2, to attract an offence under section 506 IPC. It is improbable that there was any threat caused to the Complainant/Respondent no. 2 by the Appellant when all along the relationship was cordial, and it was only when the Appellant graduated and left for his hometown to Ahmednagar, the Complainant/Respondent no. 2 became agitated. We also cannot ignore the conduct of the

Complainant/Respondent no. 2 in visiting the native village of the Appellant without any intimation, which is also unacceptable and reflects the agitated and unnerved state of mind of the Complainant/Respondent no. 2. For the same reason, the criminal prosecution against the Appellant herein is probably with an underlying motive and disgruntled state of mind.

(d) There is also no reasonable possibility that the Complainant/Respondent no. 2 or any woman being married before and having a child of four years, would continue to be deceived by the Appellant or maintain a prolonged association or physical relationship with an individual who has sexually assaulted and exploited her.

9. In our considered view, this is also not a case where there was a false promise to marry to begin with. A consensual relationship turning sour or partners becoming distant cannot be a ground for invoking criminal machinery of the State. Such conduct not only burdens the Courts, but blots the identity of an individual accused of such a heinous offence. This Court has time and again warned against the misuse of the provisions, and has termed it a folly3 to treat each breach of promise to marry as a false promise and prosecute a person for an offence under section 376 IPC.

40. Therefore, from the aforesaid judgments, it is crystal clear that if the parties were in a long-standing and continuous consensual physical relationship, without any element of cheating from the inception, such a relationship would not amount to rape.

41. This Court has seen in a large number of cases, that there is a growing trend that consensual relationships going on for a prolonged period, upon turning sour, have been sought to be criminalised by invoking criminal jurisprudence.

42. Thus, from the perusal of aforesaid judgments, it is apparent that each and every promise of marriage would not be considered as a fact of misconception for the purpose of consensual sexual intercourse unless it is established that such promise of marriage was a false promise of marriage on the part of the accused since the beginning of such a relationship. Unless it is alleged that, from the very beginning of such a relationship, there was some element of cheating on the part of the accused while making such promise, it would not be treated as a false promise of marriage. Once, a promise was made in good faith and, subsequently after change of circumstances when the relationship between the parties went wrong for various other reasons, such breach of promise would not be treated as misconception for the purpose of consent of establishing physical relationship. When a woman of competent age, having sufficient understanding of the physical activities in which she is involved on the basis of a promise of marriage, understands the risks associated with such a physical relationship as there is a significant difference between marriage and a mere promise of marriage.

43. In the present case, the victim has not alleged that the applicant had no intention to marry right from the beginning. Therefore, the basic ingredients constituting an offence of rape are not made out. The promise of marriage as alleged in the instant case was of no consequence to prove the charges against the applicant. The prosecutrix cannot blame the applicant for breach of promise as the promise itself was non-est at the time of beginning of the relationship between the applicant and the prosecutrix.

44. From the record, it is clear that the victim in the present case admitted that she was a major girl and had studied up to Class-9th. She came in contact with the applicant for the last one year, and a promise of marriage was made by the applicant and this fact was in the knowledge of the family of both sides. However, the marriage could not materialize, and after one year, the FIR was lodged by the prosecutrix against the applicant.

45. Therefore, this Court is of the considered opinion that in the instant case, no offence of rape is made out against the applicant herein, and the instant FIR was lodged by the prosecutrix as she was annoyed by the behaviour of the applicant, and was unwilling to leave the applicant. Therefore, the subsequent incident of physical assault on 26.03.2024 has been concocted by the prosecutrix only for the purpose of lodging the FIR. Nothing was stated by the victim in respect of the incident dated 26.03.2024 when her statement was recorded under Section 164 Cr.P.C. However, she later developed a story that relationship was forcibly established by the applicant at the house of his friend Krishna, which is not substantiated during the investigation since no statement of Krishna was recorded and he is not one of the witnesses in the charge-sheet. The victim expressed her desire, in her statement recorded under Section 164 Cr.P.C., that she wanted to get married to the applicant. It appears from her statement that the F.I.R. was lodged by the victim to exert pressure upon the applicant to get married to the victim.

46. The facts of the case discussed here-in-above including the legal propositions, this Court finds that the present case stands on the footing of rarest of rare case to invoke the inherent jurisdiction for quashing the criminal proceedings, as continuing with the criminal proceedings would be in futility and gross misuse of criminal jurisdiction. The present case squarely falls under categories enumerated in guidelines (1), (5) & (7) as identified by Hon'ble Supreme Court in **Bhajan Lal case (supra).** The other allegations of physical assault, wrongful confinement and threat have not been supported by any material particulars. Hence, the application under Section 528 B.N.S.S. has merit and liable to be allowed.

47. Accordingly, the instant application is **allowed** and the entire criminal proceedings of Case No.159 of 2025, arising out of Case Crime No.238 of 2024, under Sections 376, 323, 342 and 506 of I.P.C., Police Station Pipraich, District-Gorakhpur, pending in the court of J.M./ Civil Judge Junior Division-14, Gorakhpur as well as charge-sheet dated 09.06.2024 including cognizance order dated 08.02.2025, are hereby quashed against the applicant.

(2026) 5 ILRA 738
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.05.2026

BEFORE

THE HON'BLE DR. AJAY KUMAR-II, J.

Criminal Appeal No. 178 of 1987

Furkan & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

ISSUE FOR CONSIDERATION

Whether the conviction of appellants under Sections 148 and 307/149 IPC was sustainable in light of alleged delay in FIR, contradictions in witness statements, and absence of corroborative recovery evidence.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Section 313 - Indian Penal Code, 1860 – Sections 148, 149, 307: - Criminal Appeal - against conviction & Sentence – FIR lodged after delay, initially at wrong police station, later corrected – complaint of bomb attack on motorcycle riders, injured sustained grievous injuries corroborated by medical evidence – investigation - statements recorded - charge-sheet filed – charges framed under Sections 148 and 307/149 IPC - trial initiated – conviction – sentenced - appellants pleaded false implication due to enmity, delay, contradictions, chance witnesses – Evaluation of Evidence - Court finds that, a long delay in lodging FIR can be condoned if the informant/witnesses of the prosecution has/have no motive for implicating the accused – the prosecution has not been able to prove reasonable justification of delay in delayed registration of the FIR – Long-standing enmity and pending murder/revenue cases between parties – FIR lodged after 12 hours, delay unexplained – no blood recovery from spot or motorcycle, no damage report – informant (PW-1) had no injury, presence doubtful – PW-2's presence not proved, statement recorded late – injured PW-4's version improbable, no first-aid proof, injury report proved only by secondary evidence – testimony of PW-4 not of sterling quality – prosecution story full of improbabilities and suspicious circumstances – held, prosecution failed to prove charges beyond the reasonable doubt – hence, false implication due to enmity cannot be ruled out – appeal allowed – conviction and sentence is set aside – surviving appellants acquitted of all charges – they are on bail, need not surrender, subject to compliance with Section 437-A CrPC – trial court record to be sent back for compliance.

(Para – 40, 41, 45, 47, 48, 49, 50)

Appeal Allowed. (E-11)

CASE LAW CITED

Mahavir & others; Ramvir; Sarvesh vs. State of U.P., 2017 LawSuit (All) 643
State of U.P. vs. Nahar Singh, (1998) 3 SCC 561
Laxmibai (Dead) vs. Bhacwantbuva (Dead), (2013) 4 SCC 97
Gian Chand & others vs. State of Haryana, (2013) 14 SCC 420

LIST OF ACTS

Indian Penal Code (IPC) – Code of Criminal Procedure (Cr.P.C.)

LIST OF KEYWORDS

Bomb blast, FIR delay, injured witness, ocular vs. medical evidence, enmity, chance witness, contradictions, charge-sheet, conviction, appeal.

CASE ARISING FROM

Sessions Trial No. 405 of 1983, State vs. Furkan & others - Judgment dated 13.01.1987 by IVth Additional District & Sessions Judge, Allahabad.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Sri Saghir Ahmad (Sr. Counsel), Sri Javed Akhtar, Mohd. Saghir Ali.

Counsel for Respondent(s): A.G.A. Sri Santosh Kumar Upadhyay, Sri Malik Juned Ahmad.

(Delivered by Hon'ble Dr. Ajay Kumar-II, J.)

1. Heard Sri Saghir Ahmad, learned Senior Counsel assisted by Sri Javed Akhtar and Mohd. Saghir Ali, learned counsel for the appellants, learned AGA for the State and Sri Santosh Kumar Upadhyay alongwith Sri Malik Juned Ahmad, learned counsel for the informant.

2. Challenge in this Criminal Appeal is to the judgment and order dated 13.01.1987 passed by IVth Additional District & Sessions Judge, Allahabad in Sessions Trial No. 405 of 1983 (State Vs. Furkan and others) convicting all appellants to undergo rigorous imprisonment for two years under Section 148 IPC and further convicting the appellant no. 2 to 4 to undergo rigorous imprisonment for a period of five years under Section 307 IPC readwith Section 149 IPC. The appellant Furkan was further convicted to undergo rigorous imprisonment for five years under Section 307 I.P.C. All the sentences were directed to run concurrently.

3. This appeal already stands abated against the appellant no. 4 Ajeem Uddin vide this Court's order dated 11.2.2020. CJM, Allahabad has informed vide its report dated 1.10.2021 that appellant no. 2 Imam Uddin had died. Therefore, the present appeal against appellant no. 2 Imam Uddin also stands abated vide this Court?s order dated 5.2.2021. Now this appeal survives only for appellant nos. 1 and 3 namely Furkan and Mannu.

4. Brief facts of the case according to the first information report lodged by Sri Malik Mohd. Yusuf (PW-1) at P.S. Soraon, District Allahabad are that the first informant Sri Malik Mohd. Yusuf (PW-1) alongwith his son Sri Malik Jamil Ahmad (P.W.4) were coming to Allahabad by a motorcycle No. UTW 6936 from their village Khojapur, P.S. Mau Aima, District Allahabad. When they reached near Birapur Mandir at about 8:30 A.M., the accused persons Furkan, Imamuddin, Mannu and Ajeem alongwith three others were standing on the road. Accused Furkan was having bomb in his hand and other accused persons were having bombs and pistols in their hands. There was old enmity with these accused persons. When the motorcycle reached within the reach of the accused persons, accused Furkan on the exhortation of accused Imamuddin threw a bomb on them, causing injury below his Pakhora i.e. below right side shoulder blade (scapula region) of Sri Malik Jamil Ahmad (P.W.4) and there was a loud explosion. The shirt and baniyan (vest) of Malik Jamil Ahmad were burnt at the place of the injury. The occurrence was seen by the eye witnesses Bhagwan Das (P.W.2) and Heera Lal belonging to their village. The first aid was given to the injured at Hartsmen Hospital and thereafter the injured Malik Jamil Ahmad (P.W.4) was admitted in the Emergency ward of the Medical College, Allahabad where he was given blood and was operated upon.

5. The son of informant Malik Vakil Ahmad (PW-3) brought this written report (Ext. Ka-1) to police station Soraon where the first information report (Ext. Ka-3) was lodged at 8:20 pm on same day.

6. As per prosecution story, the informant has sent written report through his son Malik Vakil Ahmad (PW-3) to Police Station Tharwai under the impression that the place of occurrence falls within the circle of Tharwai Police Station. This witness Malik Vakil Ahmad was told by the Police of P.S. Tharwai that the place of occurrence lies within the jurisdiction of P.S. Soraon. Sri Malik Vakil Ahmad (P.W.-3) came back to the Medical College and got the police station corrected in the First Information Report (Ext. Ka-1) and then went to P.S. Soraon, where the First Information Report (Ext. Ka-1) was lodged at 8:20 P.M. on the same day.

7. Accordingly Chick Report (Ext. Ka-3) was prepared by Constable Moharrir Sri Rajendra Prasad Dwivedi (P.W.6) and the case was registered at G.D. Report No.38 at 20:20 P.M. on

20.6.1983 (Ext. Ka-4) against the aforesaid four accused persons alongwith three other unknown persons.

8. The case was initially investigated by sub Inspector Sri Balram Yadav, who has recorded the statement of the witnesses. The memo (Ext. Ka-6) of the blood-stained clothes was prepared by this witness at Medical College, Allahabad on 21.6.1983. He has prepared the site-plan (Ext.Ka-7) of the place of occurrence on 21.6.1983. Thereafter, he was transferred from the police station Soraon and the investigation was completed by S.I. Sri Dina Nath Singh (P.W.-5) who took over the investigation on 20.7.1983 and recorded the statements of the witnesses Bhagwan Das, Heera Lal and Mohammad Yunus and blood stained cloths of injured were received by him from the hospital. He has submitted charge-sheet (Ext. Ka-2) against the accused persons on 13.8.1983. Thereafter the case was committed to the Court of Sessions. After hearing both the parties, charges were framed against charge-sheeted accused on 6.12.1983, under Sections 307/149, 148 IPC. The accused pleaded not guilty and claimed trial.

9. In order to prove it's case, prosecution adduced PW-1 Malik Mohd Yusuf, (eye witness & informant), PW-2 Sri Bhagwan Das (eye witness), PW-3 Sri Malik Vakil Ahmad, PW-4 Sri Malik Jamil Ahmad (injured witness), PW-5 IO Sri Dinanath Singh, PW-6 Sri Rajesh Prasad Dwivedi, (Moharrir, who had prepared Chik report and G.D.), PW-7 Dr. Deepak Gupta, radiologist, PW-8 Dr. J.K. Mishra (who operated the injured Jamil Ahmad), PW-9 Sri Balram Yadav, who initially investigated the case and PW-10 Sri Krishna Nand Chaube (Pharmacist who has proved the injury report. The witnesses adduced by the prosecution have given their respective oral evidence, which were marked as exhibits. The same are tabulated herein below:-

Sl. No.	**Name**	**Nature of Evidence**	**Documents Proved**
PW-1	Sri Malik Mohd. Yusuf	First informant and eye witness	Written report/Tehrir as Ext. Ka-1, Shirt and Banyian as material Ext. 1 and 2
PW-2	Sri Bhagwan Das	Eye witness	-
PW-3	Sri Malik Ahmad, Vakil	Brother of injured who brought written report/Tehrir to concerned police station.	-
PW-4	Sri Malik Jamil Ahmad	Injured witness	Burnt Shirt and Banyian as material Ext. 3 and 4
PW-5	SI Dina Nath Singh	Who completed the investigation and submitted charge-sheet	Charge-sheet as Ext. Ka-2
PW-6	Constable Rajendra Prasad Dwivedi	Who prepared the Chik report and GD	Chik FIR as Ext. Ka-3; G.D. entry as Ext. Ka-4

PW-7	Dr. Deepak Gupta	Radiologist	X-ray report as Ext. Ka-5
PW-8	Dr. J.K. Mishra	Who operated the injured Jamil Ahmad	-
PW-9	SI Balram Yadav	Who investigated case at the initial stage	Recovery memo as Ext. Ka-6; Site Plan as Ext. Ka-7
PW-10	Sri Krishna Nand Chaubey	Pharmacist, who proved the injury report prepared by Dr. Yogesh Bihari	Injury report as Ext. Ka-8

10. After completion of the prosecution evidence, the statement of the accused persons were recorded under section 313 Cr.P.C. They denied the prosecution version and commission of alleged offence. The accused also claimed their innocence. They stated that prosecution witnesses have given false evidence against them.

11. By the impugned judgment dated 13.01.1987, Court below has convicted the accused of the charges framed against them under Sections 307/149 and 148 IPC.

12. Thus, feeling aggrieved by the impugned judgment passed by Court below, the present criminal appeal has been preferred by the convicts -appellants

13. Learned counsel for appellants submits that the impugned judgment is illegal, erroneous and, therefore, liable to be set-aside by this Court. He further submits that Court below without appreciating the evidence adduced by the appellants, has illegally and erroneously, convicted them of the charges. As such, the impugned judgment is illegal and perverse and therefore liable to be set-aside by this Court.

14. It was argued that the FIR has been registered with a delay of about 12 hours and same has not been satisfactorily explained by the prosecution. No blood stained soil or material indicative of bomb blast on the spot, were recovered from the spot by the investigating officer. Even prosecution has not adduced any evidence that the motorcycle, which was driven by the injured at the time of incident, has sustained any damage or not. Even recovery of blood stained cloth of the injured is suspicious. It is unbelievable that the informant Malik Mohd. Yusuf who was pillion rider at the time of incident has not sustained any injury and even his clothes were not found to stained with blood of the injured, inspite of the fact that at the time of incident, injured was driving the motorcycle and PW-1 was just sitting at his back as pillion rider. Therefore, presence of PW-1 on the spot is highly suspicious and he is not reliable witness. PW-2 Bhagwan Das is a chance witness and his presence on the spot is also doubtful. The injured has sustained injuries at different time, place and manner, however, on account of previous enmity, FIR has been lodged after due deliberation and with legal advise to falsely implicate the appellants. Lastly, it was urged by learned counsel for the appellants that the present appeal be allowed and the impugned judgment and order be set aside.

15. Learned A.G.A. for State has vehemently opposed the present appeal. He submits that the impugned judgment passed by Court below does not suffer from any illegality of law or fact much less an illegal error so as to warrant interference by this Court. Court below has examined the prosecution case in the light of the evidence on record threadbare without leaving any aspect of the matter untouched. Court below has thus, rightly convicted the accused persons. Lastly, it has been argued that no ground to interfere in the impugned judgment is made out. Learned A.G.A. thus urged for dismissal of the present appeal.

16. Learned counsel for the informant has vehemently opposed the present appeal as well as arguments of learned counsel for the appellants. He argued that delay has properly been explained by the prosecution as written report was earlier sent to police station Tharwai and police officials informed the son of informant that the place of occurrence comes under the jurisdiction of P.S. Soraon, therefore, he returned back to the hospital and after getting amendment in the written report from the informant, he again went to P.S. Soraon and lodged the FIR. Thus there is no delay in lodging of the FIR.

17. It was further argued that Sri Malik Jamil Ahmad PW-4 is an injured witness who has deposed regarding the incident and involvement of the accused in the incident. The deposition of PW-4 found corroboration from the deposition of PW-1 and PW-2. The injury found on the body of the injured is fully corroborated by the medical evidence. The prosecution has successfully proved the charges against the appellants and no ground to interfere with the impugned judgment is made out. Learned counsel for the informant has placed reliance on the judgment of this Court in **Mahavir & others; Ramvir; Sarvesh vs. State of U.P,. 2017 LawSuit (All) 643,** as well as Hon'ble Apex Court in **State of U.P. Vs. Nahar Singh, 1998 (3) SCC 561, Laxmibai (dead) vs. Bhacwantbuva (dead), 2013 (4) SCC 97, Gian Chand and others vs. State of Haryana, 2013 (14) SCC 420.** Lastly, learned counsel for the informant has urged for dismissal of the present appeal.

18. Informant Malik Mohd. Yusuf PW-1 in his examination-in-chief has stated that on the date of incident at about 8:30 AM, he was coming to Allahabad on a motorcycle driven by his son Jameel Ahmad and he was a pillion rider. When they arrived at the place of incident they also met Harilal and Bhagwan Das coming from Allahabad on bicycle. **Thereafter, they saw Furkan, Imamuddin, Munnu standing on the right side of the road with three young boys**. Furkan was having a bomb, Imamuddin was having a pistol, Ajeem and Mannu were having bombs. Three young boys were having sticks in their hand. They all were covering the road. They were having an old enmity with Imamuddin. On seeing these persons, they apprehended a danger. In the meanwhile their motorcycle had gone near to these persons, Imamuddin exhorted to kill them on which Furkan hurled bomb which struck on the right side back of his son Malik Mohd. Yusuf. Both of them tilted in front side. There was a big noise. He was also wearing shirt and vest. The vest and shirt of his son were burnt, where bomb struck. On the spot Bhagwan Das and Hari Lal also arrived there. They ran away from the spot and saved themselves. On the way, they got first aid in Hartsmen hospital. Thereafter he came to Medical College and admitted his son in emergency and got started treatment of his son. The accused ran away towards eastern side after the incident. Thereafter his son Vakil Ahmad came at about 2:30 PM and he sent a written report through him to concerned police station, the written report was written by him which has been proved by this

witness as Ext. Ka-1. Report was initially sent to P.S. Tharwai where police informed that this incident pertains to Police Station Soraon. Thereafter, his son came back to this witness and he amended Tharwai as Soraon and made his signature, thereafter his son went to police station Soraon. He has proved vest and shirt of his son as material Ext.1 and 2. He has shown the spot to the Investigating Officer. Earlier a criminal case under section 147/323 IPC was lodged against the accused wherein the accused persons had injured him. In the aforesaid case Ajeem and Mannu were accused and they were convicted. This witness has submitted a certified copy of the aforesaid judgment and also stated that there was a litigation in 1963 under Section 307 IPC with Mohd. Yaseen etc., in which this witness as well as Mohd. Yunus sustained injuries. In the aforesaid case Mannu and Ajeem were also accused and they were convicted and sentenced for 4-4 years. Even in the appeal, aforesaid sentence was affirmed.

19. PW-1 in his cross-examination has stated that **on coming to Allahabad from the place of incident, Phaphamau police outpost falls on the way. He used to consider this outpost as the police outpost of Police Station Tharwai** at the time of incident. As medical aid was urgently required, therefore, he took his son to the Medical College. Vakil Ahmad had come to this witness at 2:30 PM and at 3?O? Clock he had sent Vakil Ahmad to file written report in the concerned Police Station. Vakil Ahmad did not know how to drive the motorcycle, therefore, he was not sent by motorcycle. They were having Yezdi motorcycle. Vakil Ahmad returned at about 7:00 PM from police station Tharwai and stayed there about 2-4 minutes and then went to Police Station Soraon. When they arrived in the Medical College, the injured was medico legally examined. Doctor removed the bandage and thereafter conducted the examination. Thereafter, injured was taken to emergency department, where his X-ray was done and thereafter injured was operated upon. The injured came after operation at about 3 O' clock. This witness fairly conceded in his cross examination that he opposed the bail application of accused Furkan in High Court and he also filed his affidavit in opposition of his bail application. His affidavit was correct, however, he has not stated in his affidavit that after the operation of his son he went to Police Station Tharwai. **It was also not stated on oath (i.e. in affidavit) that after finding out in Police Station Tharwai that incident is of Police Station Soraon, he went to Police Station Soraon that too** at 7 O' clock and filed his report. He cannot tell how the lawyer wrote this matter in his affidavit. He also fairly conceded in his cross examination that from the place of incident they straight forward came to Hartsmen hospital which was situated at distance of 6-7 KM. From the spot. Motorcycle was driven by Jamil Ahmad himself. From the aforesaid hospital they left within 5 minutes and came to Medical College on motorcycle, which was then driven by this witness. Medical college is situated at 10-12 KM from Hartsmen Hospital. Road of incident is going from east to west. He saw the accused from 25-30 steps and they did not try to turn back. **The accused were standing on the north side of road and three men were standing on middle of the road.** He further stated that he did not give this statement to the investigating officer that accused Furkan was holding a country made pistol/ Tamancha in his right hand. He also did not give this statement that everyone with common intention started throwing bombs and he stated that he do not know that how this has been written by the investigating officer. The case under Section 307 IPC which was proceeded in the year 1963 against Mohd. Yaseen, however Mannu and Ajeem were not accused in this case. When bomb was thrown, accused were at a distance of about 5-6 steps towards north. He was an accused under Section 307 IPC for shooting one Vindeshwari, in which Harilal's uncle was his defense witness. His son Jamil Ahmad was an accused in a fake case of dacoity. **A case of murder of**

Yaseen is pending against Vakil, Mustaq, Istiyak and Abrar. The deceased Yaseen was the father of accused Mannu of this case and accused Vakil of this murder case is his son whereas accused Abrar, Mustaq etc. are his nephews. Before the incident, several revenue cases were fought between the parties i.e. between family of this witness and family of accused Imamuddin and other accused. Accused Imamuddin was Vice Chairman/ Up-Sabhapati of his village, who filed a case regarding village community land against him and said case was decided against this witness.

20. Bhagwan Das P.W.2 in his examination-in-chief has stated that on the date of incident at about 8:00 - 8:30 A.M., he alongwith Hari Lal was coming to Allahabad by two separate bicycles. When they reached near the temple of village Beerapur, Jamil and Yusuf came from behind on motorcycle. They met them and went away. Mannu, Imamuddin, Azeem, Furkan and three other persons were also standing there whom he do not know. **Mannu and Furkan had guns in their hand**. Imamuddin exhorted other accused to kill them and don't let them escape. On this, Furkan hurled bomb which hit Jamil and Jamil got injured. Injury was inflicted on his pakhura (below right side shoulder blade i.e. scapula region). Thereafter, Jamil and Yusuf went away on motorcycle**. Blood fell from the wound on the spot. Accused persons went towards northern side and they went towards Allahabad.** Old rivalry was continuing between accused persons and Jamil & others.

21. In his cross-examination, this witness (P.W.2) has stated that before this incident, he mortgaged his field to Imamuddin and after a few days of aforesaid mortgage, he sold his field to Yusuf by executing a sale deed, who took possession of aforesaid field on the strength of sale deed. Thereafter this witness had returned the money of Imamuddin. Even after mortgage, he used to plough / sow this field on half sharing basis on behalf of accused Imamuddin. There were several dacoity cases against Hari Lal in District Pratapgarh. He did not give this statement to the Investigating Officer that Furkan, who was holding a country made pistol in his hand and a bomb in his right hand, then everyone with common object hurled bombs on Jamil and Yusuf, which they were holding in their respective hands. He do not know that how this statement was recorded by the Investigating Officer. **All the accused persons were standing on the left side of the road.** The bomb was thrown from a distance of 4-5 paces. Due to fear of death, the motorcycle drivers leaned down. Other passers-by were also passing through the road. **It is very important to note that statement of this witness was recorded by the second I.O. only on 23.7.1983 i.e. after more than a month of the incident. Late recording of this statement by the I.O. also raises suspicion on the truthfulness of deposition of this witness. The prosecution has miserably failed to explain the delay in recording the statement of this witness, inspite of this witness being available and also being specifically mentioned to be an eye witness in the written report/ Tehrir.**

22. Malik Vakil Ahmad P.W.3 in his examination-in-chief has stated that **on the date of incident, his brother Mohd. Zubair informed him about the incident in Court.** Upon receiving this information, he firstly went to Beli Hospital at 2:00 P.M. However, his brother Jamil and father Yusuf were not there at Beli Hospital. Thereafter he went to Medical College, where his brother Jamil was admitted in the Emergency ward, however his father was not there. He met his father at 3:00 P.M., who came there and wrote the report which is Ext.Ka.-1. The report was addressed to

Police Station Tharwai. When this witness took the report to Tharwai Police Station, he was informed by police personnel that the place of incident comes under the jurisdiction of Police Station Soraon, therefore, he came back to his father at the Medical College, where his father made a cutting on 'Tharwai Police Station' and in its place wrote 'Soraon' and thereafter he proceeded with this written report to Soraon Police Station and gave this written report at 8:00 P.M. whereupon the first information report was lodged. **This witness has further stated that his father did not receive any injury in the incident.**

23. On his cross-examination, this witness (P.W.-3) has clearly conceded that **he is doing the work of typing in the district Court for the last four years and used to sit in Mukhtarkhana. Advocates Kalimuddin and Ramnihor also used to sit with him.** He has further stated that he informed the Investigating Officer that he firstly went to Police Station Tharwai but do not know why same was not written in his statement. The fact of going to Tharwai and coming back and getting the report corrected was also narrated to the Investigating Officer, however, he do not know why the same was not written in the statement. He went to Tharwai and Soraon alone and his father did not accompany him.

24. The injured Malik Jamil Ahmed PW-4, who has stated his profession as a Legal Practitioner, has stated in examination-in-chief that on the date of incident at about 8:30 am, he was coming from his village Khojapur to Allahabad by motorcycle with his father. He was driving motor-cycle and his father was sitting behind. When they reached near Birapur Temple at around 8 O'clock, then they met Harilal and Bhagwan Das of the village, who were coming on bicycles while coming towards the city. Greetings were exchanged between them. As soon as they moved ahead, they saw Furkan, Imamuddin, Mannu, Ajeem near Birapur Harijan Mildtone. **Furkan had a bomb in his hand, Imamuddin had a pistol, and Mannu and Ajeem were carrying bombs, while standing on the north side of the road.** Three young boys who were armed with sticks, were standing surrounding the road. On seeing these persons, they sensed danger. **They were having old enmity with accused.** With intention to save his life, he leaned forward by then, Imamuddin exhorted to kill them. On this, Furkan with intention to kill, threw bomb held by him in his hand upon them. The aforesaid bomb hit below his right shoulder blade. There was a loud explosion. We perceived danger to life and by somehow driving the motorcycle went to Hartsmen Hospital (the witness showed his injury on his shoulder blade by removing his clothes). In the aforesaid Hospital after bandaging his wound, the Doctor said that there is a danger to his life, therefore, advised him for immediate admission to Swaroop Rani Hospital. Thereafter, his father drove the motorcycle and made this witness sit behind his father on the motorcycle. He was brought to the Swaroop Rani Hospital and was got admitted, where he was medico legally examined. His X-ray was taken and he was also operated upon. He remained in the Hospital for about one and half month at the time of incident, he was wearing a cream colored shirt and vest, which were burnt and blown away below the shoulder blade in the incident. He proved shirt as material Ext. Ka-3 and vest as material Ext.Ka-4. The cloths were deposited in the hospital. When bomb exploded at that time, Harilal and Bhagwan Das also arrived. Their several cases were going on with accused. In the case under Section 147/323 IPC, Mannu and Ajeem were convicted, in which, he, his father and his brother were beaten. Their appeals were also dismissed by the Sessions Court. The father of Mannu and Ajeem and two other persons were also convicted under Section 307 IPC, in which, his father was beaten.

25. PW-4 in his cross-examination has stated that conviction in the case of 147/323 IPC was held after the incident of present case, however, accused were granted benefit of probation. The father of Mannu and Azeem was convicted in a case under Section 307 IPC but he does not know whether there was any cross case regarding it or not. He was falsely implicated in a case of robbery out of enmity, in which, he has been acquitted. He was a named accused in the aforesaid case of docaity. A case under sections 420, 466, 468 IPC was pending against him, in which he was on bail. He told the Investigating Officer that his father was driving the motorcycle from Hartsmen Hospital to the Medical College, if the Investigating Officer, had not recorded this in his statement, he cannot state the reason for the same. His father is a licensee of gun, which licensed gun was taken because of his challan in the docaity case for the reason that the same was used in the docaity. He told the Investigating Officer that he got bandaging of his injury in Hartsmen Hospital, If the Investigating Officer has not recorded the same in his statement, he cannot state the reason for the same, He became an Advocate before this incident. His date of enrollment is 28.05.1983. He had not told the Investigating Officer that in one hand of Furkan, there was a country made pistol, he did not know how that was written, he cannot state the reason for the same. He did not tell the Investigating Officer that everyone started hitting with bombs, how that was written, he cannot state the reason for the same. Both of them leaned forward to save their lives. Before bomb hit him, the witnesses could not arrive. They might have arrived later on. Among the accused four were towards the north side and three were towards the road.

26. Deenanath PW-5 was the subsequent Investigating Officer, who in his examination in chief has stated that he took over the investigation after transfer of first Investigating Officer, Sub Inspector Balram Singh. He recorded the statement of witnesses Bhagwan Das, Hari Lal, informant Mohd. Yunus and thereafter recovered blood stained cloth of the injured from the hospital in a sealed cloth bundle. Thereafter, he recorded statement of accused and prepared the charge-sheet (Ext. Ka-2).

27. Rajendra Prasad Dwivedi, PW-6 was scribe of first information report (Chik FIR), who is formal witness and has proved same as Ext. Ka-3. This witness also recorded this information in G.D. No. 38 dated 20.6.1983, copy of which has been proved as Ext. Ka-4.

28. Dr. Deepak Kumar Gupta PW-7 has proved the X-ray report of the injured Jameel Ahmad as Ext. Ka-5. This witness in his examination in chief has stated that he had done X-ray of the injured and found his 3rd and 4th ribs of left side broken which were towards back side. He proved X-ray plate as material Ext.-5. In his cross examination this witness could not tell that from which weapon, injuries could have been caused to the injured.

29. Dr. J.K. Mishra PW-8, who operated upon the injured on 20.6.1983 in SRN Hospital. This witness stated that the injured sustained injuries from bomb blast, there was a deep wound on his back, which was bleeding. He stated that he operated upon the injured after cleaning his wound. His ribs were found fractured at three places. His scapula bone was also found broken. (However as per PW-7, only two ribs of injured were found broken). The injured was also operated upon for skin grafting. The injured was discharged from the hospital on 3.8.1983. The injured could have died from the injuries. In his cross examination this witness has stated that after medico legal

examination of the injured he was admitted in emergency and he treated the patient after his admission. He cannot tell the time, when patient was admitted.

30. Balram Yadav PW-9 was first Investigating Officer, who started investigation after registration of the case. He recorded statement of Vakil Ahmad and also recorded injuries of the injured Jamil Ahmad in the case diary soon after registration of case. One Tericot shirt and one full sleves vest was taken into possession and its recovery memo was also prepared. The aforesaid cloths were brought by Vakil Ahmad in the police station. He proved the recovery memo of aforesaid cloths as Ext. Ka-6, which was prepared on 21.6.1983. He recorded the statement of informant Yusuf and injured Malik Jamil Ahmad on 21.6.1983. He prepared the recovery memo of clothes in the hospital. He inspected the spot alongwith informant and prepared the site plan, which has been proved by this witness as Ext. Ka-7. He obtained warrant and process u/s 82 and 83 Cr.P.C. against the accused, thereafter he was transferred. **In his cross examination this witness has stated that Yusuf has given him statement that Furkan was carrying a bomb in his right hand and country made pistol in his left hand. He also gave statement that accused with their common intention started throwing bombs.** He could not record statement of Bhagwan Das which was recorded by second Investigating Officer. **He recorded the statement of Jamil Ahmad in which he has not stated that his father drove the motorcycle from Hartsmen hospital to medical college, even aforesaid Jamil Ahmad has not stated anything regarding getting bandage in Hartsmen hospital. Jamil Ahmad also gave statement that Furkan was carrying a country made pistol in his hand, Mannu and Ajeem were carrying bomb and pistol. All started throwing bombs.** The statement of Vakil Ahmad was taken on 20.6.1983 and that of Jamil Ahmad on 21.6.1983. **Statement of Bhagwan Das was taken on 23.7.1983 by subsequent I.O. as he could not find Bhagwan Das.**

31. The then Pharmacist Krishna Nandan Chaubey P.W.-10 has proved the medico legal injury report of the injured as Ext. Ka.-8 in secondary evidence, because whereabouts of Dr. Yogendra Bihari, who conducted the medico legal examination of the injured, could not be found. It is thus clear that this witness could not have been cross- examined qua the injury recorded in injury report of the injured.

32. In his cross-examination, this witness (P.W.-10) has stated that injured Jamil Ahmad was not medico legally examined in his presence. The injury report of the injured has been proved in secondary evidence by this witness and as medico legal examination of the injured was not conducted in his presence, therefore, this witness has proved the injury report by merely identifying the signature of the doctor. Thus, it was not possible for this witness to state anything about nature of injury or duration of injury or even status of injured at the time of his medico legal examination. As per Ext.Ka.-8, the injured was medico legally examined in Swaroop Rani Nehru Hospital, Allahabad on 20.06.1983. Injured was brought by Malik Yusuf at 9:30 A.M. on 20.06.1983. During medico legal examination, the doctor found following injury on his person:-

"Lacerated wound with fragmentation of tissue with fresh bleeding of size about 3½" × 2½" × depth to be ascertained by surgeon on the right upper part of back of chest with inverted margin and blackening of margin of wound and blackening in the surrounding area of the wound with multiple multi directional abrasion in the adjacent area of wound of size 1" to ½" to 0.4" to

0.1" with yellow sulphur powder washable about 4" from the right shoulder joint with blackening on the top of right shoulder and right upper 1/3rd right arm lateral aspect."

33. The present case is based on direct evidence and in this background there was no requirement for the prosecution to plead and prove motive. However, specific plea of motive has been taken from the very beginning i.e. in the written report/ Tehrir Ext. Ka-3. Previous enmity has been specifically assigned as the motive behind the crime. Law is well settled that enmity is double edged weapon which can be used by either of the side. It can be a ground for false implication and it can be a motive for commission of crime.

34. Admittedly, several criminal and revenue cases were fought between the parties. The informant Malik Mohd. Yusuf PW-1 in his deposition has stated that from their side, two criminal cases were instituted against the accused persons, one under Section 147/323 IPC and other under Section 307 IPC. The injured Malik Jamil Ahmad PW-4 in his deposition has also affirmed the aforesaid facts of two criminal cases. However, it is very important to observe that PW-1 in his cross-examination has admitted that his son Vakil and his nephews Abrar, Mustaq etc. are the accused in a case of murder of Yaseen, who was the father of accused Mannu of this case. He also admitted that aforesaid murder case was pending and he also admitted that several revenue cases were fought between the parties. It is thus clear that accused party got convicted in two criminal cases instituted by the side of the informant, however, the informant side was facing a murder case of father of the accused Mannu of the present case. The charge of murder on informant side is much serious than the cases already decided against the accused parties. Therefore, the enmity in the present case is certainly a double edged weapon, which not only can be ground of false implication but can be a motive for commission of crime. Accused party already got convicted and informant side was facing a criminal trial for the charges of murder and there might be a fear of stringent punishment arising in near future with respect to criminal prosecution pending against son and nephews of the informant of the present case. Therefore, admittedly there is strong enmity between the parties and in this backdrop, this Court has to weight the prosecution evidence very carefully including the delay in lodging of FIR.

35. As per Written Report/Tehrir (Ex.Ka-1), the alleged incident is of 8:30 am and the FIR of the same was registered at 20:20 hours i.e. 8:20 pm. A perusal of the FIR (Ext.Ka-3) reveals that the same has been registered after about 12 hours of the alleged incident and the place of incident was only at a distance of about 6 miles from the concerned Police Station Soraon. Therefore, the FIR has been lodged with a delay of about 12 hours. To explain the delay, the prosecution has put forward a specific case that Written Report/Tehrir was earlier addressed to S.O., Police Station Tharwai and same was, therefore, taken to Police Station Tharwai, where, Police Official informed PW-3 that the place of incident comes under the jurisdiction of P.S. Soraon, therefore, PW-3 came back to the Hospital and got corrected the report from his father and thereafter came to the police station for registration of the FIR and FIR was thus lodged therein.

36. In the present case, it was Vakil Ahmad PW-3 who is son of informant who has lodged the FIR/ written report, which was written by PW-1. PW-3 in his deposition has admitted that he received information from his brother Mohd. Juber in Court and upon receiving the same he went to Beli hospital at 2:00 pm. Therefore, information of the incident was received by the PW-3 much

prior to 2:00 pm and that too from his brother Mohd. Juber. However, PW-3 met his father at 3:00 pm and left for lodging the FIR to Police Station Tharwai where from he came back to Medical College at about 7:00 pm and then again went to Police Station Soraon where FIR was lodged at 20:20 pm. It is admitted case of the prosecution that injured PW-4 was a practicing advocate at the time of incident and PW-3 was working as a typist in the Court with whom two advocates namely Kalimuddin and Ramnihor were also used to sit.

37. PW-1 informant in his deposition had admitted that the parties were having several criminal and revenue cases pending and decided against each other. Therefore, in this background, it is quite unbelievable that written report was wrongly written in the name of Police Station Tharwai instead of Police Station Soraon as there is strong enmity between the parties. PW-1 in his cross-examination has fairly admitted that while coming to Allahabad from the place of incident, Phaphamau police outpost falls on the way, but he did not know which police station it belongs to. However, he used to consider this outpost as police outpost of Police Staton Tharwai. In this background, when written report/ Tehrir was written in the name of Police Station Tharwai, then why this informant had not stopped at police outpost Phaphamau to even orally report the incident and also to seek protection and immediate medical aid to his badly injured son is quite surprising and raises doubts over prosecution reasoning given for delay in lodging of FIR. The explanation for delay from 3:00 pm to 7:00 pm is not satisfactorily at all that too without bringing the actual distance between medical college and Police Station Tharwai on record.

38. Moreover, it was the bounden duty of the prosecution to satisfactorily explain the delay in lodging the FIR, however, no such plausible explanation has come forward. The prosecution has not brought on record the distance of Police Station Tharwai from Medical College and distance of Police Station Soroan from Medical College as well as the mode of transport used by PW-3.

39. Hon'ble Apex Court in **Jai Prakash Singh vs. State of Bihar (2012) 4 SCC 379**, has held as under:-

"The FIR in criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye- witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it looses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question."

40. FIR become very useful if it is recorded before there is time and opportunity to embellish or before the informant's memory fades. Undue unreasonable delay in lodging the FIR, therefore, inevitably gives rise to suspicion which puts the court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version. However, mere delay in lodging the first information report is not always as a

matter of law, fatal to the prosecution. But there must be some plausible explanation for such delay. There is no hard-and-fast rule which can be applied to determine the effect of delay in filing the FIR, but the Court is duty-bound to determine whether the explanation afforded is plausible enough based on the given facts and circumstances of each case. Even a long delay in lodging the FIR can be condoned if the informant/ witnesses of the prosecution has/have no motive for implicating the accused.

41. PW-3 in his deposition has stated that he met his father at 3:00 pm and thereafter, he brought Written Report/Tehrir to Police Station Tharwai, from where he came back to the Medical College to get corrected the report and thereafter he went to Police Station Soraon. He reached the Police Station Soraon at 8:00 pm. This witness was working as a typist in Court for last several years and therefore, it cannot be presumed that he was not aware that the place of incident was not under the jurisdiction of the Police Station Tharwai. Report has been written by his father in his presence, he could have informed his father that it is the Police Station Soraon not Tharwai, which has the jurisdiction over the matter. It has come in evidence of injured PW-4 as well as father of this witness, who is the informant of this case that there were several Criminal and Revenue Cases pending and decided between the parties in various Courts, meaning thereby it can easily be presumed that they were aware about the jurisdictional aspect of the place of incident, even the injured PW-4, who is brother of this witness, is a Practicing Advocate. It is important to observe here that the registration of the FIR was recorded in GD No.38 at 20:20 hours, which has also been proved as Ext.Ka-4 and in this G.D., it is specifically stated that it was PW-3, who brought Written Report/Tehrir to the concerned Police Station for registration of the FIR. It has come in depositions of PW-3 and PW-1 that PW-3 had actually gone at 3:00 pm for registration of the FIR from hospital. It has come in evidence of PW-1 that PW-3 came back to Medical College at 7:00 pm and after getting correction, rushed to the Police Station Soraon. However, PW-3 has not stated any such thing to the Investigating Officer during the course of the investigation in his statement recorded under Section 161 Cr.P.C. It is an admitted fact that the injured, who is a Practicing Advocate, was admitted in Hospital for treatment and informant did not sustain any injury in the alleged incident. The injured was medico legally examined at 9:30 am on the date of incident, i.e., 20.06.1983. The prosecution has not placed on record either orally or by way of documentary evidence the distance between Medical College and Police Station Tharwai and Soraon. Informant even failed to inform the incident to police officials of police post Phaphamau, which was in the way from the place of incident to Hartsmen hospital. Even the informant side has motive to falsely implicate the appellant side. **Therefore, in this background, the prosecution has not been able to prove reasonable justification of delay in delayed registration of the FIR.**

42. Informant Malik Mohd. Yusuf PW-1 is the father of injured, who according to prosecution story, was accompanying the injured on a motorcycle on the date of incident. PW-1 in his written report (Ext. Ka-1) as well as in his deposition on oath has clearly stated that he was sitting as a pillion rider at the time of incident on the motorcycle, which was being driven by his son. As per prosecution story, PW-1?s son Jamil Ahmad was struck by a bomb on his right scapula area. As per deposition of this witness, shirt and vest of his son Jamil Ahmad were burnt from explosion. Injury as recorded in injury report (Ext. Ka-) of Jamil Ahmad was a severe injury of lacerated wound and even yellow sulphar powder was found in the adjacent area of his wound. Looking into severity of the alleged wound of Jamil Ahmad, it is quite surprising that no injury, whatsoever, was sustained

by PW-1 inspite of sitting just at the back of Jamil Ahmad on the motorcycle. What to talk of an injury, there was not even slightest of the harm even to the clothes worn by PW-1, at the time of incident, whereas as per deposition of this witness, it was a powerful explosion. PW-1 in his deposition has stated that they firstly reached at Hartsmen hospital where bandage was applied on the wound of his son and thereafter they came to Medical College, where injured was admitted and medico legally examined. In his cross examination, PW-1 has clearly stated that before medico legal examination of the injured, doctor first removed the bandage of the injured and thereafter he examined the injured. In the light of this specific statement of the injured, medico legal injury report Ext. Ka-8 is perused, however, there is no such mention of earlier first aid treatment of the injured over his wound or even removal of any bandage from wound. Pharmacist Krishna Nand Chaubey PW-10 has merely proved this injury report in secondary evidence as Ext. Ka-8, who has clearly stated in his cross-examination that the injured Jamil Ahmad was not medically examined in his presence, therefore, no question regarding removal of bandage prior to medico legal examination of the injured could have been asked from this witness. Admittedly, when two persons are riding a motorcycle sitting very close to each other and when driver of such motorcycle sustains a bomb injury on his scapula region, then it is nearly impossible for pillion rider, who is just sitting behind driver?s back to escape any type of injury. Therefore, the presence of PW-1 at the time of incident is clearly doubtful and when his presence is found to be doubtful, his deposition fails to inspire any confidence.

43. PW-2 Bhagwan Das is an alleged eye witness of the incident, who is a chance witness on the spot at the time of incident and has deposed that it was accused Furkan who has thrown bomb, which struck Jamil Ahmad. This witness has stated that at the time of incident, injured Jamil Ahmad and Yusuf were coming on motorcycle from behind and crossed him and his companion Hari Lal. **PW-2 in his deposition has clearly stated that after the commission of incident, all the accused persons went towards northern side, however, as per site plan (Ext. Ka-7) and the deposition of PW-1, accused persons run away to eastern side.** This is a very sharp contradiction in the deposition of this witness qua specific prosecution story that accused after commission of crime ran away towards eastern side not towards northern side. **This witness has clearly stated that all the accused were standing on left side of the road, however, as per site plan, accused were standing on the right side of the road. This witness has stated that motorcycle of the injured was on the left side of the road and has also stated that the accused were also standing on the left side of the road just to strengthen the prosecution story that by standing on left side of the road the accused have easily committed this incident. Prosecution story as far as place of standing of accused persons is concerned, is consistent that at the time of incident, injured was coming from eastern direction to the western direction and all the accused persons were standing on the right side of the road i.e. in northern side which has been clearly shown by the IO in the site plan Ext.Ka-7, therefore, presence of this witness on the spot is not established at all and he is not an eye witness. Therefore, deposition of PW-2 is wholly unreliable.**

44. Injured Malik Jamil PW-4 is admittedly a legal practitioner, who at the time of incident was practicing advocate and has stated in his deposition that he on the date of incident was coming to Allahabad from his village, he was driving a motorcycle and his father was sitting behind. This Court has already come to the conclusion that presence of father of this witness is doubtful,

therefore, deposition of this witness that on the date of incident, he was accompanied by his father on his motorcycle and that he met Hari Lal PW-2 near the place of incident is suspicious. This Court has already found that PW-2 was not present on the spot and presence of PW-1 has been found to be doubtful. This witness is an injured witness, therefore, his evidence stands at a higher pedestal and therefore, his evidence is required to be scrutinized after leaving such portion of the deposition of this witness which is found to be suspicious one.

45. PW-4 stated that when he saw accused standing on road armed with deadly weapons, he sensed danger because of old enmity with them and and leaned forward to save himself, while driving his motorcycle. **By then on the exhortation of Imamuddin, Furkan threw a bomb which struck below his right shoulder blade i.e. in scapula region and there was loud explosion. He however, drove his motorcycle to Hartsmen hospital where doctor covered his wound with bandage and advised his immediate admission to Swaroop Rani Nehru Hospital. After admission to Swaroop Rani Nehru hospital he was medico legally examined and was also operated upon. He remain admitted in the said hospital for about one and half months. However, prosecution has not proved any oral or documentary evidence regarding this witness being initially treated at Hartsmen hospital. As per the deposition of this witness, he got bandage over his wound in the said Hartsmen hospital, however, this fact is not supported by his medico legal injury report Ext. Ka-8. As per deposition of this witness he drove the motorcycle from the place of incident to Hartsman hospital himself, which is situated at a distance at about 6-7 km from the place of incident. In this backdrop, injury report Ext. Ka-8 is carefully perused, which is prepared at 9:30 am in which doctor has recorded his pulse as feeble, blood pressure is not recorded, general condition is low and patient was found to be in shock and drowsy. Doctor further made remarks that nature of injury was dangerous to life caused by bomb blast and was fresh in duration. After sustaining lacerated wound at the scapula region in a life threatening bomb blast, how this injured drove his motorcycle to a hospital which is situated at a distance of 6-7 km from the place of incident is not easily believable.** When this incident is also looked into from another aspect, then no evidence from the side of prosecution has been brought on record that any type of damage was even caused to the motorcycle of this witness as a result of bomb blast. No blood has been found from the place of incident by the investigating officer. It is true that conviction could have been sustained on the sole testimony of an injured witness if his testimony inspire confidence and is found to be wholly reliable. But in the present case the deposition of this injured witness is not of such a sterling quality that conviction could be sustained on his sole testimony.

46. Hon'ble Apex Court in **State of U.P. Vs. Nahar Singh, 1998 (3) SCC 561,** while reversing the judgment of acquittal of the High Court, has affirmed the judgment of conviction of the trial court. In this case, trial Court convicted six accused i.e. A-1 to A-6, however, High Court confirmed the conviction of accused A-1 but acquitted remaining accused i.e. A-2 to A-6 on several grounds including delay in lodging of the FIR. Other grounds were also considered by the High Court, out of which one ground was that no specific role was assigned to other accused i.e. A-2 to A-6. The case law in **Laxmibai (dead) vs. Bhacwantbuva (dead), 2013 (4) SCC 97,** pertains to Hindu Adoption and Maintenance Act, 1956. The case law in **Gian Chand and others vs. State of Haryana, 2013 (14) SCC 420,** pertain to recovery of contraband in which no question was put to investigating officer, as to absence of chits on bags, and therefore, Hon'ble Supreme Court held

that such question cannot be raised now. In this case examination of independent witness was also under consideration. Case Law in **Mahavir & others; Ramvir; Sarvesh vs. State of U.P,. 2017 LawSuit (All) 643,** relates to an appeal against conviction of the appellant for the charge of murders of Jagatpal, Jagdish and Sanyogita and for attempt to murder and causing serious injury to other victims. In this case law, object of cross examination and suggestion made in cross examination have been discussed. In this case, post mortem report and injury report of the deceased and injured were not challenged during arguments. The depositions of injured witnesses were found to be trustworthy and on the appreciation of evidence on record, this Court affirmed the judgment of conviction passed by trial court while rejecting the criminal appeal. The facts of all above case laws are totally different from the facts of the present case. In the present case in hand, the evidence of all witnesses have been carefully appreciated in the light of well settled principle of law and therefore, all above case laws are not helpful to the informant of the present case, because of totally different facts.

47. From the above analysis, following facts clearly emerges which cast serious doubt on the prosecution story.

(1) There is an admitted rivalry between both the parties and a number of criminal and revenue cases were pending and fought between the parties prior to the incident. Yaseen, who was father of accused Mannu was murdered and Vakil son of informant and his nephews Abrar, Mustaq etc. were accused in the murder of Yaseen. This murder case of deceased Yaseen was pending adjudication before this incident. Therefore, there was imminent apprehension of severe punishment to informant side in the aforesaid murder case.

(2) There is an inordinate delay of about 12 hours in registration of the FIR. From the place of incident to the Hartsmen hospital, Phaphamau police outpost was situated on the way, however, injured PW-4 did not stop there either to inform or to seek protection or to seek immediate medical aid.

(3) The prosecution has failed to give any plausible explanation for delay of about 12 hours in registration of the FIR.

(4) No blood was recovered from the spot. No blood was even recovered from the motorcycle. There is no damage report of the motorcycle on record.

(5) The informant PW-1, who was allegedly sitting at the back of injured PW-4 at the time of incident as a pillion rider, had not sustained any injury and even there were no blood stains on his cloths, therefore, his presence on the spot as well as his presence at the time of incident has been found to be doubtful.

(6) Prosecution could not establish the presence of PW-2 Bhagwan Das on the spot at the time of incident.

(7) As per deposition of injured PW-4, he after sustaining lacerated wound (which injury was dangerous to his life) in his right side scapula, in a life threatening bomb-blast drove his motorcycle for 6-7 km, which seems to be quite improbable. He after sustaining a dangerous to life injury, got first aid treatment in Hartsmen hospital, however no oral or documentary medical evidence regarding his first aid treatment was produced by the prosecution. The prosecution has not produced Dr. Yogendra Bihari, who prepared injury report (Ext. Ka-8) of PW-4 and has proved the same by secondary evidence of PW-10. PW-10 has merely identified the signature of Doctor and injured PW-4 was not medico legally examined in his presence. Therefore, no question could have

been asked from this witness (PW-10) regarding first aid treatment of PW-4. Ext. Ka-8 does not support deposition of PW-4 as far as his first aid treatment is concerned. Non- recovery of blood both from motorcycle and spot also raises serious doubt on the veracity of statement of PW-4.

(8) The deposition of injured PW-4 is not of such sterling quality that conviction can be sustained on his deposition. His deposition was full of improbabilities and was also suspicious as far as presence of PW-1 with him at the time of incident as a pillion rider and presence of PW-2 on the spot at the time of incident, is concerned.

(9) Thus, from the above conspectus, the prosecution story is full of improbabilities and there are several suspicious circumstances in the prosecution story, which remained unexplained.

48. Resultantly, from the nature of evidence placed on record by the prosecution, possibility of the appellants being falsely implicated on account of previous enmity cannot be ruled out. The prosecution has failed to prove the charges against the appellants beyond reasonable doubt and thus, the appellants are entitled to benefit of doubt.

49. Consequently, this appeal for surviving appellants no. 1 and 3, Furkan and Mannu, is "Allowed". The judgment and order dated 13.1.1987 passed by IVth Additional District and Sessions Judge, Allahabad for the surviving appellants no. 1 and 3, Furkan and Mannu, is hereby set aside. The surviving appellants i.e. appellant no. 1 Furkan and appellant no. 3 Mannu are acquitted of all the charges for which they have been tried. The surviving appellants are reported to be on bail, therefore, they need not surrender subject to compliance of provision of Section 437-A of Cr.P.C. to the satisfaction of the trial Court concerned at the earliest.

50. The record of the "Trial Court" be sent back immediately with a copy of this judgment for necessary information and compliance.

(2026) 5 ILRA 755
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 15.05.2026

BEFORE

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

Criminal Appeal No. 370 of 1987

Dhan Pal & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

ISSUE FOR CONSIDERATION

Whether the FIR was ante-timed and unreliable.
Whether the prosecution proved the guilt of the accused beyond reasonable doubt.
Whether conviction under Section 302 IPC and Section 302/34 IPC was sustainable.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Section 207, 313 - Indian Penal Code, 1860 – Sections 34, 302: - Criminal Appeal – against conviction and Sentence – FIR – offence of murder by assault with fawda (spade) and lathi – investigation - inquest and autopsy confirmed death due to shock and haemorrhage – statements of husband (PW-1) and minor son (PW-2) corroborated by independent witnesses – charge-sheet – Session trial – applicant pleaded FIR ante-timed and unreliable – Court finds that, discrepancy in distance entries not sufficient to discard FIR - eyewitness testimony consistent - medical evidence corroborative - common intention established – FIR not ante-timed – testimony of PW-4 is of unshaken credit and sterling in character - held, prosecution have proved their case beyond all reasonable doubt – appeal fails and is dismissed - conviction of appellant under Section 302 IPC sustained and the appeal abated for co-accused – direction issued to serve out the sentence awarded to him.

(Para – 61, 64, 65, 66, 67, 69, 70)

Appeal Dismissed. (E-11)

CASE LAW CITED

Shyama Charan v. State of U.P., 1984 SCC OnLine All 527.
Tunda v. State, 1988 SCC OnLine All 887.
Kaushal Kumar Upadhyay v. State of U.P., 2020 SCC OnLine All 1983.

LIST OF ACTS

Indian Penal Code (IPC) – Code of Criminal Procedure (Cr.P.C.)

LIST OF KEYWORDS

Murder, FIR ante-timed, Inquest report, Eyewitness testimony, Common intention, Spade (fawda), Lathi, Shock and haemorrhage, Autopsy, Section 302 IPC, Section 34 IPC.

CASE ARISING FROM

Sessions Trial No. 437 of 1985, Case Crime No. 694 of 1985, P.S. Kotwali Etah, District Etah.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri T.C. Sharma / Amicus Curiae Sankalp Goswami.
Counsel for Respondent(s): A.G.A. Shashi Shekhar Tiwari.

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

1. This appeal has been preferred by three convicts, Dhanpal, Mitthoo and Bhagirath, who stood their trial before Mr. A.B. Shukla, the then IV Addl. District & Sessions Judge, Etah, in Sessions Trial No. 437 of 1985 (arising out of Case Crime No. 694 of 1985), under Section 302/34 of the Indian Penal Code, 1860 (for short, 'IPC'), Police Station Kotwali Etah, District Etah. Whereas Dhanpal was convicted under Section 302 IPC, Mitthoo and Bhagirath were held guilty of the offence punishable under Section 302/34 IPC. All the three convicts were sentenced to imprisonment for life.

2. A First Information Report (for short, 'FIR') in this case was lodged by Ram Prasad regarding an incident dated 22.08.1985, that happened at 9 o'clock in the morning hours. The report was lodged on the same day at 15 minutes past 12 o'clock in the afternoon. According to the FIR, the informant Ram Prasad was a resident of Village Nagla Khokhal, P.S. Kotwali Etah. There is a land, admeasuring 5 biswa, belonging to the Gram Samaj in the vicinity of the informant's house. About 15-16 years antedating the occurrence, the aforesaid land was granted to the informant's brother, Prem Raj, on a patta. On some part of the said land, the informant too raised a kuchcha

boundary wall, circumscribing his house, including it within his premises. Some part of this land, outside the boundary wall, according to the informant, was lying vacant. The informant's family would tether their cattle on this part of land outside the boundary wall. These facilities, which the informant availed, did not go down well with Dhanpal and Bhagirath, both sons of Nannu, and Mitthoo son of Chobdar, who are neighbours and shared the same community as the informant. They would say that in the open land outside the informant's house, where he tethered his cattle, their cattle ought to be tethered. This contention had led to an exchange of sharp words in the past as well. However, residents of the village had intervened and quelled the matter. The informant says that today at 9 o'clock in the morning, he was present at home. His wife Smt. Birma Devi and son Lankush were tethering their cattle on the vacant land outside. Suddenly, his wife and son raised alarm, causing the informant to come out of his house. The alarm also caused Uma Shankar, Vijay Pal, Ganga Ram, Devendra and others, all natives of the village, to reach the spot. They saw that Dhanpal was assaulting the informant's wife with a fawda (spade) and Mitthoo with a stick (lathi). Bhagirath was exhorting the two to assault, saying that she was the source of all trouble. All those, who had gathered there, challenged the assailants, in consequence of which, the three of them made good their escape towards the east, but holding out threats with abuses that they would take care of the informant as well. The FIR says that the informant's wife died on the spot. The FIR was scribed by Bhoop Singh son of the informant.

3. On the basis of the written information addressed to the Officer In-charge, P.S. Kotwali Etah, marked as Ex. Ka-1, a check FIR was registered on 22.08.1985 at 12.15 hours. It was marked Ex. Ka-2. A G.D. Entry, contemporaneously with the registration of the crime and drawing up of the check FIR, was made vide G.D. Entry No.37. The investigation of the case was entrusted to Sub-Inspector Lajja Ram Yadav. He set about his task, reaching the place of occurrence at 1.45 p.m. Upon seeing the dead body, he held inquest and prepared an inquest report. The inquest commenced on 22.08.1985 at 1.45 p.m. and the proceedings were over by 3.20 p.m. The panch witnesses opined that death had occurred on account of the injuries sustained by the deceased, but in order to ascertain the cause of death, an autopsy was necessary.

4. After drawing up the inquest report, the Investigating Officer prepared a photo lash, challan lash, a letter to the R.I. and another to the Medical Officer, In-charge District Hospital, Etah. He sealed the dead body and prepared a sample of the seal, Ex. Ka-7. The dead body was sealed at about 3.20 p.m. and handed over to Constables Rameshwar Dayal and Brij Bhushan for the purpose of conveying the same to the mortuary. The Constables delivered the cadaver to the Reserve Inspector on the following day i.e. 23.08.1985 at 10.40 a.m. The Reserve Inspector issued a letter to the C.M.O. for the purpose of undertaking the autopsy. The C.M.O. assigned the autopsy to Dr. Onkar Singh. In the meantime, back at the site of occurrence, the Investigating Officer prepared a site plan, marked Ex. Ka-11. He took samples of bloodstained earth and unstained earth from the spot, drawing up a memo for the purpose and sealing away both kinds of earth in separate containers, that were duly secured.

5. Dr. Onkar Singh conducted the autopsy on 23.08.1985 at 3.00 p.m. The autopsy doctor found that the deceased was a woman of about 46 years. The time of death was estimated by the doctor to be about a day and a quarter before the time of the autopsy. The rigor mortis was absent in the upper extremities, but present in the lower extremities. The breast was swollen, blisters

present over the body and foul smell emitting. The tongue was protruded. The autopsy doctor noticed the following five antemortem injuries:

"1. Incised wound 13 X 2cm X bone deep on the right side of face extending 3cm in front from tragus of right ear up to the middle of nose, on dissection under the tissue (sort), maxilling bone and nasal bone cut in direction of wound.

2. Incised wound 7 X 3cm X trachea deep on the left side of neck, wound situate 4cm below the left ear, upto the middle of neck, on dissection neck muscle, jugular veins and trachea cut in the direction of wound.

3. Incised wound 3 X 1cm X bone deep over the superior occipital protuberance, on dissection cut mark present over the occipital bone.

4. Contusion 8 X 6cm on the top of shoulder joint (left).

5. Abrasion 6 X 1cm situated between both scapula, vertically downward."

6. In the opinion of the doctor, the cause of death was shock and haemorrhage, as a result of antemortem injuries.

7. The Investigating Officer recorded the statements of witnesses, and after completing the investigation, submitted a charge-sheet against the appellants, Ex. Ka-13 before the learned Chief Judicial Magistrate, Etah. The accused were produced before the learned Magistrate. They were furnished with copies of the relevant prosecution papers under Section 207 Cr.P.C. Thereafter, the case was committed to the Court of Sessions for trial vide order dated 07.11.1985.

8. The learned Sessions Judge, Etah, before whom the case came up after committal, framed two separate charges on 11.12.1985, one against Dhanpal for an offence punishable under Section 302 IPC and a separate charge against Mitthoo and Bhagirath, charging them of committing murder of Smt. Birma Devi, along with Dhanpal, on 22.08.1985 at about 9.00 a.m. in furtherance of a common intention of all of them. Mitthoo and Bhagirath were charged under Section 302 read with Section 34 IPC. All the convicts denied the charge and claimed trial.

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

1. PW-1 - Ram Prasad, husband of the deceased and the first informant,
2. PW-2 - Lankush, son of the deceased and an eye-witness of the incident,
3. PW-3 - HC Sahju Lal, who scribed the check FIR and made other G.D. Entries,
4. PW-4 - Devendra, an independent eye-witness of the incident,
5. PW-5 - Constable No. 80 Rameshwar Dayal, who conveyed the dead body for postmortem,
6. PW-6 - S.I. Lajja Ram Yadav, who conducted investigation and submitted the charge-sheet,
7. PW-7 - Dr. Onkar Singh, who conducted postmortem of the deceased.

10. The prosecution produced the following documentary evidence:

Sr. No.	Exhibit No.	Exhibited documents with brief particulars

1	Ex. Ka-1	Written report dated 22.08.1985 lodged with Police Station Kotwali Etah, District Etah, proved by PW-1, Ram Prasad
2	Ex. Ka-2	Check FIR dated 22.08.1985, proved by PW-3, HC Sahju Lal
3	Ex. Ka-3	Copy of GD Entry No.37 Time 12.30 hours dated 22.08.1985, proved by PW-3, HC Sahju Lal
4	Ex. Ka-4	Inquest report dated 22.08.1985, proved by PW-6, S.I. Lajja Ram Yadav
5	Ex. Ka-5	Letter to the S.P., proved by PW-6, S.I. Lajja Ram Yadav
6	Ex. Ka-6	Challan Lash dated 22.08.1985, proved by PW-6, S.I. Lajja Ram Yadav
7	Ex. Ka-7	Sample of Seal dated 22.08.1985, proved by PW-6, S.I. Lajja Ram Yadav
8	Ex. Ka-8	Letter to the C.M.O. dated 22.08.1985, proved by PW-6, S.I. Lajja Ram Yadav
9	Ex. Ka-9	Letter to the R.I. dated 22.08.1985, proved by PW-6, S.I. Lajja Ram Yadav
10	Ex. Ka-10	Photo Lash dated 22.08.1985, proved by PW-6, S.I. Lajja Ram Yadav
11	Ex. Ka-11	Site-plan of the place of occurrence dated 22.08.1985, proved by PW-6, S.I. Lajja Ram Yadav
12	Ex. Ka-12	Memo taking possession of the bloodstained earth and unstained earth, proved by PW-6, S.I. Lajja Ram Yadav
13	Ex. Ka-13	Charge sheet dated 09.09.1985 submitted for the offence punishable under Section 302/34 IPC, proved by PW-6, S.I. Lajja Ram Yadav
14	Ex. Ka-14	Postmortem Report of the deceased Birma Devi dated 23.08.1985, proved by PW-7, Dr. Onkar Singh
15	Material Ex. 1 to 5	Blouj, Dhoti, Petikot,, Bichhua, Bangles.
16	Material Ex. 6	Bloodstained earth
17	Material Ex. 7	Unstained earth

11. After conclusion of evidence, the statements of the accused, now the convicted appellants, were recorded under Section 313 Cr.P.C. on 04.11.1986. The accused entered defence and produced two witnesses, to wit, DW-1 Shiv Swarup, Assistant Jailer, District Jail Etah and DW-2 Brij Kishor Lekhpal.

12. After hearing parties, the learned Sessions Judge vide judgment and order dated 31.01.1987 proceeded to convict and sentence each of the three appellants in the manner already indicated hereinabove.

13. Aggrieved, this criminal appeal has been instituted by all the three convicts.

14. At this stage, it would be relevant to mention that out of the three convicts, who appealed, Mitthoo and Bhagirath have passed away pending appeal, and this appeal, instituted jointly on behalf of all the three convicts, was ordered to abate at the instance of appellant Nos.2 and 3, to wit,

Mitthoo and Bhagirath, vide order 15.09.2025. This appeal, therefore, now proceeds at the behest of Dhanpal alone.

15. Heard Mr. Sankalp Goswami, learned Amicus Curiae appearing for the appellant Dhanpal, Mr. Shashi Shekhar Tiwari, learned AGA appearing on behalf of the State and perused the record.

If the FIR is an ante-timed document

16. The foremost submission of Mr. Sankalp Goswami, learned Amicus Curiae is that the FIR in this case is an ante-timed document, which casts a grave shadow of doubt upon the prosecution case. To establish this fact, Mr. Goswami does not have many telltale facets of evidence, but would urge that the inquest report by itself is enough to show that the FIR is ante-timed. He has drawn our attention to the check FIR, where the distance of the police station is mentioned in the relevant column as '12 kilometers south-east'. He then calls attention to the inquest report, where the distance of the police station entered is '8 kilometers south'. The submission is that in the process of writing the inquest report, the details about the case crime and the time of lodging the FIR as also the distance of the place of occurrence from the police station are all facts and data to be entered in the inquest form on the basis of whatever is written in the check FIR. A fortiori, if the distance of the police station and the direction as well are different from what is written in the check FIR, the only possible conclusion to draw is that the FIR was registered on an ante-timed basis, after the inquest had already been held and the report prepared. The FIR would, therefore, lose its fidelity as an accurate and the earliest version of the occurrence.

17. There is no quarrel on facts that there is a clear discrepancy in the distance of the police station recorded in the check FIR and that in the inquest report. If Mr. Goswami's submission were accepted, everything happened first, right up to the drawing up of the inquest report and the check FIR was registered later. In short, it would have to be held ante-timed.

18. We must remark that there are cases, where dead bodies are found unidentified and inquest is held straight away. In those cases, the FIRs are registered later on. In cases, such as these, not even the crime number is mentioned in the inquest report, but that is not the case here. In the normal sequence of things, an inquest report generally comes after the FIR, or where an FIR is registered, doing a prompt reporting of the crime and before the body is discovered, the inquest held later on, leads to a report, where entries about the crime number and the distance of the place of occurrence from the police station are borrowed from what is already entered in the relevant columns of the check FIR.

19. Our attention, for what the learned *Amicus Curiae* has urged, has been drawn to a Bench decision of this Court in **Shyama Charan v. State of U.P., 1984 SCC OnLine All 527: 1984 All LJ 1303**, where it has been observed:

"7. The first-information-report in this case is said to have been lodged at 12.30 p.m., the distance of police station as mentioned in the F.I.R. is two miles. The incident is said to have taken place at 10.30 a.m. and prima facie this report appears to be quite prompt. The defence in this case has suggested that the first-informant Ram Kumar P.W. 1 is a clerk to a lawyer practising at

Jalalabad and did not witness any incident and was called later on and this report came into existence much later and had been ante-timed. The argument advanced appears to have some force when we examine the inquest report. In the inquest report in the column of the person who informed about the death, the name of Ram Kumar is mentioned. Then in the column of distance of the village from the police station, entry made is 3 miles to the south. If this F.I.R. had come into existence at 12.30 p.m. the distance given in that report namely two miles would have also been found in the inquest report and not three miles. The distance given in the F.I.R. does not tally with the First-Information-Report….."

20. This position of the law was put in perspective by a later Bench decision of this Court in **Tunda v. State, 1988 SCC OnLine All 887: 1990 Cri LJ 868** and the law was explained to say that it was not thumb rule that if the distance of the police station mentioned in the inquest report was different from that given on the check form, the FIR would have to be regarded as ante-timed. In **Tunda** (supra), explaining the earlier Bench decision in **Shyama Charan** (supra), it was held:

"17. A perusal of the first information report would show that the name of Narain Singh is mentioned in it and actually the contention is that it was only to show the market to this guest of the family that the two brothers took him towards the Bazar. The Investigating Officer reached the spot without losing much time at about 8 or 8.30 p.m. and interrogated this witness after about 11 p.m. the same day. Hence undoubtedly the witness was present in Mathura at the house of the deceased where he was interrogated the same night. There is nothing on record to suggest that after the occurrence any action was taken to summon him from Haryana in order to be a witness in this case. The allegation that the first information report has been ante-timed is also not established. Our attention was, however, drawn to a Division Bench decision of this Court in the matter of Shyama Charan v. State of U.P., (1985 All Cri C) (Summary of Cases S. No. 11 at pp. 12 and 13) (and also Summary of Case No. 55 at pp. 57) where discrepancy in the distance given in two documents, i.e. the first information report and the inquest memo, was allegedly taken to give rise to the inference that the first information report came into existence later on. The Court in that case found three things which were intriguing and on that basis this opinion was expressed. The first was that the distance in the first information report did not tally with that in the inquest memo. The second was that the inquest report's examination as a whole showed some discrepancy in the writing and the signatures of the Panches, which suggested that the impressions of the Panches were obtained earlier and the writing portion was executed later on. Thirdly, it was found as a matter of fact that additions had been made subsequently as regards the various sections of the IPC which could be applicable to the case. Considering all these facts and other circumstances of the case, the Court came to the conclusion that the first information report did not come into existence at the time at which it purports to have been lodged. This ruling does not lay down that in each and every case in which there is a discrepancy in the mention of the distance between the first information report and the inquest memo the natural and normal inference will be that the first information report was ante-timed.

19. The situation before us is not much different. The inquest memo is on a prescribed form, and in column No. 1 the time of occurrence and the time when the inquest is started, have to be mentioned. Usually the time of the occurrence is to be taken from the first information report itself in which for the first time it is mentioned. The Officer carrying out the inquest has no personal knowledge about it, but in the whole of the form there is nothing to show that everything

had to be taken down or copied from the first information report. After all the officer who conducts the inquest is also a human being and an intelligent one for the matter of that, who is expected to be conversant with the preparation of these documents. When he travels the distance from the Thana to the place where the inquest is to be done, he has his own impressions about the distance. Under no provision of the law and even as a matter of practice is he required to note down in the relevant columns the distance from the Thana by copying it out from the first information report, although at times it may be different from what his own impression about it is. He is not called upon to copy out this fact from the first information report. Therefore, in our view, the mere fact that there is a discrepancy in the distance as given in the first information report and the inquest memo will not by itself be sufficient to claim that the first information report should be discarded as ante-timed. Even the case of Shyama Charan (supra) does not lay down that law. We are of the view that in most of the cases the officer conducting the inquest reports has his own impression about the distance. In some cases he may note down the distance as given in the first information report, but in no case his action in this respect can result in the conclusion that either the inquest memo is fake or the first information report is ante-timed, unless there are other circumstances to justify such a conclusion."

21. The same question was considered in a much later Bench decision of this Court in **Kaushal Kumar Upadhyay v. State of U.P., 2020 SCC OnLine All 1983**. In **Kaushal Kumar Upadhyay** (supra), though the Court held that it was incumbent upon the officer writing the inquest report to mention the same distance that was mentioned in the check form, but writing a different distance was a reckless act and even if the FIR is held to be ante-timed on that ground, it would not affect the prosecution case because both the FIR and the inquest report are not pieces of substantive evidence. To our understanding, the reasoning of the Division Bench in **Kaushal Kumar Upadhyay** may not be very convincing, but the conclusion is trite that ultimately a discrepancy, between the distance of the place of occurrence mentioned on the check form and that mentioned on the inquest report, would not affect the prosecution case.

22. The reasons given in **Tunda** are clear, as we have remarked earlier. Generally, if an FIR is registered and an inquest is held, entries relating to the time of occurrence, the distance of the police station ought be picked up from the check form. But, there is no principle of law, statute or rule that mandates entries in the check form regarding the distance between the place of occurrence and the police station to be transcribed verbatim by the author of the inquest report in the relevant column. If there is a discrepancy between the two figures on the check form and the inquest report, it could be credited to the individual act of the author of the inquest report, who, on the basis of his own knowledge, might differently perceive the distance and make an entry of it according to his judgment. There is no law, which mandates that he must copy it from the check form. Therefore, a discrepancy in the distance of the place of occurrence and the police station on the check form and the inquest report by itself would not be proof of the fact that the FIR is ante-timed. There has to be other evidence to reach that conclusion as the one considered in **Shyama Charan** and explained in **Tunda**. Here also, since there is no other evidence to lead to the conclusion that the FIR was got registered much later than the time shown on the check form, an inference of that kind could not be drawn.

23. In the circumstances, we are of opinion that the submission advanced by the learned Amicus Curiae based on this discrepancy regarding the distance between the place of occurrence and the police station mentioned on the check form and the inquest report, respectively, cannot be accepted.

Time, place and manner of occurrence

24. According to the FIR lodged by PW-1 Ram Prasad, the place of occurrence was outside his house, abutting his boundary wall and adjacent to his door. This is a place outside PW-1's house, where cattle were tethered during the daytime. The time of occurrence was 9.00 a.m., as mentioned in the FIR. The first informant PW-1, who is an eye-witness, was inside his house, a fact mentioned in the FIR. His wife and son had gone to the place, where cattle are tethered for the purpose of tethering their bullocks. According to the FIR, his son and wife raised an alarm, hearing which he came out of his house and reached the place of occurrence and witnessed the incident. He saw Dhanpal assault his wife with a spade (fawda) and Mitthoo with a stick (lathi), Bhagirath was exhorting them to finish off his wife Birma Devi, saying that she is the source of all trouble. Upon the first informant PW-1 and others, who had gathered there, challenging the appellants, they retreated to the east, threatening PW-1 that they would get even with him too. Birma Devi died on the spot as a result of the injuries sustained in the assault. The first informant PW-1 has mentioned the presence of Uma Shankar son of Man Singh, Vijay Pal son of Jeesukh, Ganga Ram son of Babu Ram and Devendra son of Munshi Lal, amongst others, who were present and witnessed the incident.

25. PW-1, in his dock evidence has said in the examination-in-chief that out of the three assailants, Dhanpal and Bhagirath were related to him and explained the relationship. Mitthoo, the third assailant, was a neighbour. About the date, time and manner of occurrence, it is testified by PW-1 Ram Prasad that there is a space adjacent to his house kept apart for tethering cattle. He has described it in vernacular as 'ladavani'. This land, which houses the ladavani, was used by PW-1 for tethering his livestock. The appellants would say that this land belonged to them. PW-1 and the appellants had a quarrel on two or three occasions in the past as well over the right to use the ladavani. The residents of the village had called a panchayat and settled the matter. On the day of occurrence, PW-1's wife Birma Devi and son Lankush had gone to the ladavani to tether his bullocks. The appellants, on one hand, and the witness's wife and son, on the other, created noise at about 9.00 a.m., which led PW-1 to come out of his house. Upon emerging from his house, PW-1 saw the appellants assault his wife. Dhanpal assaulted with a spade (fawda) and Mitthoo with a stick (lathi). Bhagirath was exhorting others to do Birma Devi to death, saying that she was the source of all trouble, kill her. The witness said that his son Lankush had concealed himself by the side of the wall. The incident was witnessed, according to PW-1 by Devendra, Ganga Ram, Vijay Pal and Uma Shankar. It is next said that upon the witnesses challenging the assailants, they retreated to the east. His wife died. He wailed for some time, grieving her death.

26. In his cross-examination, in answer to a suggestion that he was not at home but was tilling the field of one Nekshu, because PW-1 does work as a labourer, he said:

"मैं मजदूरी करता हूँ खेती नहीं, अपने गांव में भी मजदूरी करता हूँ और बाहर भी। गांव में हल चलाने व निराई का काम भी करता हूँ। मुझे ध्यान नहीं कि कत्ल से एक दिन पहले मजदूरी करने गया था या नहीं। कत्ल वाले दिन मजदूरी नहीं लगी थी टलुआ था। शाम को ही मजदूरी के लिये दूसरे दिन के लिये कह जाते हैं। घटना से पहली बाली शाम को कोई नहीं कह गया था। कुछ लोग सुबह भी बुलाने के लिये आ जाते हैं और सुबह 7 बजे कोई 8 बजे काम की कह जाता है। यह कहना गलत है कि घटना वाले दिन मैं नेंकसू के खेत में हल चला रहा था।

घटना के समय मैं छप्पर में बैठा रोटी खा रहा था, जब मैने शोर सुना था। सुबह के करीब 9 बजे थे जब मैनें अपनी बीबी को पहली बार देखा तब गिर पड़ी थी, मैं चिल्लाया, मेरे चिल्लाने पर भी मुल्जिमान मारते रहे। मैने मुल्जिम को 2, 3 बार फावड़ा मारते देखा, फावड़ा मारकर भाग गये। मैने एक लाठी मारते देखा, मैंने यह नहीं देखा कि लाठी किस जगह मारी। जब मैने देखा तब मेरी बीबी चित्त पड़ी थी।

जहां लाश थी दरबाजे से गजभर दूर था, में गज समझता हूँ। दरोगाजी ने खून पड़ी हुई जगह को देखा था।"

27. The other witness of fact is PW-2 Lankush, the son of the deceased Birma Devi and PW-1 Ram Prasad. He was 13 years old, when he appeared in the dock on 09.10.1986 to testify to his mother's murder. The date of incident is 22.08.1985. At that time, he would have been 14 months younger, making him aged about 11-12 years. According to this witness, the incident happened about two years ago. It was 9 o'clock in the morning. He and his mother had moved the bullocks out of the house to the ladavani to tether them there. He has said that the ladavani abuts their house. It is testified that the appellants, who are present in Court, were sitting on their chabutara (platform for the purpose of sitting). As soon as they saw the witness and his mother, Dhanpal armed with a spade (fawda), Mitthoo with a stick (lathi) and Bhagirath barehanded, moved closer and forbade his mother and the witness from tethering their bullocks there. They said that the place belonged to them and they would not permit his mother to tether the animals there. Upon this, the witness's mother said that the land was theirs and since a long time, their cattle/ animals have always been tethered at that place. Bhagirath, thereupon, exhorted the others to kill the witness's mother, saying that she was the root cause of all trouble. The witness and his mother raised alarm and called rescue, leading his father to come out. Dhanpal assaulted his mother with the spade (fawda) whereas Mitthoo struck her with the stick (lathi). She collapsed and died. PW-2 Lankush says that, apart from him, Vijay Pal, Devendra, Ganga Ram and Uma Shankar saw the occurrence, besides others. Upon his father and the witnesses raising alarm, the accused retreated to the east and fled away. The witness stayed around his mother and kept weeping. In his cross-examination, the witness has said:

"घटना वाले दिन वह एक दिन पहले मेरे पिता हल जोतने नहीं गये घर पर थे,

जब मैं घर से बाहर मदेशी बांधने आया था उस समय मेरे पिता रोटी खा रहे थे, मैं या मेरी मां ने रोटी नहीं खाया था, मेरी मां ने मेरे सामने कुछ नहीं खाया था, जैसे ही मेरी मां जानवर बांधने के लिये झुकी, मुल्जिमान ने उसके ऊपर फावड़ा मार दिया। लेकिन मेरी मां गिरी नहीं, दूसरा फावड़ा पहला फावड़ा मारने के तुरन्त बाद ही मारा। वह दूसरा फावड़ा भी मेरी मां को लगा, मेरी मां तव गिर पड़ी, गिरने के बाद एक फावड़ा

और मारा। मेरी मां चित्त गिरी थी। पहला कावड़ा सर में, दूसरा फावड़ा नांक व गाल पर तथा तीसरा फावड़ा गर्दन पर गिरा। पहला फालड़ा लगते ही मैं चिल्लाया। वहां बहुत जगह पर खून फैल गया था। नाद के पास खून फैल गया था। नांद से एक दो कदम की दूरी पर मेरी मां गिर गई थी।

दूर था। मुझे इस बात का पता नहीं कि मेरे पिता थाने गये। पुलिस के आने से पहले व घटना के बाद मेरे पिता घर पर नहीं रहे, वह कहा गये थे मुझे नहीं पता। में रोता रहा मेरे पिता कहां गये मुझे नहीं मालूम। मैने अपने पिता को नहीं बतलाया कि में आड़ में छिपा था। जब मैं आड़ में से जिंकला तब मेरे पिता रोते हुये मिले।"

28. The third witness of fact is PW-4 Devendra son of Munshi Lal. This witness has said in his examination-in-chief that he knew the deceased. The incident happened 14 months antedating the time when he testified in Court. It happened in the month of Savan at 9 o'clock in the morning hours. He was returning home from his fields. As he neared the hut of one Jeesukh, he heard the alarm raised by the deceased and her son Lankush, which drew his attention to the occurrence. He has testified that Dhanpal was assaulting Birma Devi with a spade (fawda) and Mitthoo with a stick (lathi). Bhagirath was exhorting the two, telling them that she was the source of all trouble. He identified the three appellants in the dock, about whom he said that they belonged to his village. He said that besides himself, Uma Shankar, Vijay Pal, Ganga Ram, Ram Prasad and Lankush had seen the occurrence. He has further on said in his examination-in-chief that Dhanpal struck the deceased with the spade (fawda) and Mitthoo with a stick (lathi), and on account of the blows that she suffered, she died on the spot. In his cross-examination, the witness has said that his house is not located in the centre of the village. If one moves towards the north from his house, it is the most thinly populated part of the village. He has said that he was returning after overseeing his field, which is located to the north of the village, at a distance of about one furlong. He was returning after overseeing the weeding being done in his field. The place of occurrence is located in the north-east corner. In order to reach his house from his field, one has to pass through the place of occurrence, and it is incorrect to say that the way to his house from his field is not through the place of occurrence. Further on in his cross-examination, this witness has testified:

"मुझे नहीं पता कि 9.12.85 को मैं एटा जेल में धनपाल मुल्जिम की मिलाई करने आया था या नहीं। मुझे पता नहीं है कि मैं धनपाल मुल्जिम की मिलाई करने एटा जेल आया या नहीं।

सवाल- आप एटा जेल में धनपाल मुल्जिम की मिलाई करने गये और उनसे पांच हजार रुपया की मांग किया और उसने रुपया देने से मना कर दिया तब आप गवाही देने आये हैं।

जवाब- मुझे पता नहीं कि में जिला जेल एटा में मिलाई करने गया था या नहीं। अगर आप जेल में मिलाई करने का सबूत देंगे तब मैं बताऊंगा।

मेरे गांव के रामप्रसाद वगैरह भी निराई का काम करते हैं। रामप्रसाद से मैने निराई के लिये नहीं कहा क्योंकि वह खुद अपनी निराई का काम कर रहा था।

मैं जीसुख की मड़इया के पास खड़ा था जब मैने वाक्या देखा। घटनास्थल से जीसुख की लड़इया 10, 12 कदम उत्तर है।

दरोगाजी ने मुझे पूछतांछ की और मेरा व्याम लिया। दरोगाजी जीसुक की मढ़इया पर गये थे। मढ़या वहां से उत्तर पश्चिम में दो गज दूर हैं। जीसुक की मढ़ाईया के उत्तर पश्चिम में गली है। जहां मैं खड़ा था उसके पश्चिम में रामवीर का मकान था। जहां में खडा था वहा से कत्ल वाली जगह 15, 20 कदम दूर थी। जब मेरी आंख पहली बार पड़ी तो मेने देखा कि धनपाल फावड़े से, मिटठू लाठी से और भागीरथ कह रहा था कि यही झगड़े की जड़ है, उसे खत्म कर दो। मैने तीनों फावड़ा लगते हुये देखा। जब पहला फावड़ा लगा सामने लच गयी थी। धनपाल मृतिका से पूरब की ओर था औरत का मुंह दक्षिण की ओर था, पहला फावड़ा मृतिका के सर में पीठ की ओर लगा। पहला फावड़ा लगने में वह नहीं गिरी, दूसरा फावड़ा जब उसे लगा वह चित्त गिरी हुई, दूसरा फावड़ा कनपटी पर लगा, तीसरा फावड़ा गर्दन में लगा। उसके गिरने के बाद मिटठू ने लाठी से मारा लेकिन यह नहीं बता सकता कि कितनी लाठियों से मारा।"

29. We must remark that two of the three witnesses are decidedly natural witnesses. PW-1 and PW-2 are natural witnesses because they are the husband and son of the deceased, who live in the same house and the place of occurrence is just outside the house, adjacent to the boundary wall and next to the entrance that leads outside, or allows entry into the house. It is a place, which PW-1 and PW-2 have described as ladavani. It is a place by the side of the entrance, just outside the boundary wall, used for the purpose of tethering cattle/ live stock. There is no cavil about the date of occurrence, which was 22.08.1985. No doubt, the witnesses have not spoken of the date, but apparently there was so much certitude about it that no question was put to them as to the date at all. The witnesses, way back in the year 1985, were natives of a village and apparently rustic men, one of them a young boy with no claims to refinement or discipline that comes with education. Therefore, it is absolutely natural that no issue being raised about the date of occurrence, they have not expressly spoken about it and assumed it to be an admitted fact.

30. The date of occurrence is mentioned in the FIR clearly as 22.08.1985 and during cross-examination, there has been no challenge to it. The FIR has been duly proved by PW-1, establishing the date of occurrence beyond cavil. About the time of occurrence, all the three witnesses have consistently spoken and said that it was 9 o'clock in the morning. The place of occurrence also the witnesses have consistently spoken to be the ladavani, the place just adjacent to the boundary wall and next to the deceased's house, used for the purpose of tethering animals. In fact, the place of occurrence is all the more verified because contention between parties, that led to the crime, was about the right to use the land, described as ladavani, between the deceased's family and the appellants Dhanpal and Bhagirath, who laid a claim to it on whatever basis. In fact, the occurrence, as would appear from the testimony of PW-2 Lankush, happened at a time when the mother and son were tethering their bullocks at the ladavani, after leading them outside of the house, where the bullocks were housed for the night.

31. The appellants, who, according to the witness, were sitting on the platform outside their house, upon seeing PW-2 and his mother tethering the animals, came over, two of them armed and forbade them from tethering the bullocks there, claiming the ladavani to be theirs. Their claim was repudiated by the deceased, which precipitated the occurrence. This fact, apart from being a detail of the manner of occurrence, or the relevant fact immediately leading to the occurrence, establishes the place of occurrence as the ladavani outside the deceased's house indubitably.

32. A perusal of the site plan shows the house of the informant PW-1 located to the east of the houses of the appellants, Dhanpal, Bhagirath and Mitthoo. The closest house is that of Mitthoo. The informant's house is oriented in the north-south direction with the length of the premises being north to south. There are two gates, one to the east and the other to the west. The place of occurrence is just outside the gate on the western side, where the ladavani is shown by symbols ㄱㄱㄱ. The place where the deceased fell is shown by the symbol ※ ※ ※. It is adjacent to the western gate of the informant's house and described in the site-plan as three paces to the west from the gate. The place, where the informant was in his house at the time of occurrence, is shown by the alphabet 'A'. The place, from where PW-4 Devendra saw the occurrence, is shown by the alphabet 'D'. It is part of a way, passing to the east of the informant's house and the place of occurrence. It is true that the places of vantage, wherefrom PW-1 and PW-2 saw the occurrence, is not shown in the site plan, but going by the consistent description of witnesses, not only the place of occurrence is well established, but the fact that the witnesses saw it from close quarters.

33. The one most closely to watch and the most of it is PW-2, the victim's son, who was all along present with her when the mother and son moved out of their house to tether the bullocks outside their home in the ladavani. Apparently he had concealed himself behind a wall, very close to the place of occurrence and watched the assault. At that time, he was a young boy of about 11-12 years. His cognizance and understanding apparently cannot be doubted because he was on the verge of adolescence and would have had a clear span of attention. At the time he testified, he was 13 years old and has given a graphic description, that has remained unshaken during the cross-examination.

34. It must be remarked that PW-1 and PW-2 are absolutely natural witnesses because being the husband and son of the deceased, they lived in the same house. Notwithstanding a searching cross-examination and suggestions given to PW-1 that he was away from home to work as a labourer on the fields of others, PW-1 has remained steadfast about the fact that on the day of occurrence, he had not been hired by anyone. Apparently, his job is casual and he does not have the engagement of working as a labourer on fields each day. There are days of forced rest as well and the day of occurrence was one of these. The alarm, the call for rescue and the resultant noise from the assault brought PW-1 to the scene of crime from inside his house, where he was eating his meal. A close reading of the testimony of PW-1 in comparison with that of PW-2 or PW-4 shows the natural shortcomings in PW-1's account, which would be there for a witness, who suddenly reaches the spot after the alarm and almost the beginning of the assault. It is for this reason that PW-1 says that Dhanpal struck his wife with the spade (fawda) 2-3 times. On the other hand, PW-2 and PW-4, who watched the occurrence from the beginning to the end, are more graphic and accurate in their description. They have both attributed three blows of the spade to the appellant Dhanpal, almost consistent about the site of the injuries that the deceased suffered on account of the blows from the spade. The first landed on the head, the second on the face and the third on the neck. PW-1 and PW-2 are consistent about it. This aspect of the evidence would be analyzed further, later in this judgment.

35. So far as PW-4 is concerned, his description is typical to his vantage and the relative detachment that he would have as an outsider. Though, he is urged to be a natural witness, he is entirely not so. He is not an immediate neighour of the first informant and the victim, who would

come rushing out upon hearing alarm like the informant himself. His house is located somewhere close by, but he has to pass by the deceased's home and the place of occurrence when proceeding from his field back to his home. The way that he treaded on the fateful day, is shown to the east of the place of occurrence and the place, we have already noted, from which he watched the occurrence, is shown by the letter 'D' in the site plan. He is in fact a chance witness in the sense that he was returning home from his field at the time of the occurrence and had opportunity to watch. The fact that he was returning home and the way he took to travel back home from his field passed by the place of occurrence, are facts that he has remained consistent about and unshaken in his testimony during a searching cross-examination at the behest of the appellants. Though a chance witness, he is not one of the kinds of those chance witnesses, whose presence at the spot must be regarded as providential or fantastic, and, therefore, suspicious. To the contrary, it is logical.

36. It is observed that all the three eye-witnesses are consistent about the time, place and manner of occurrence. Mr. Sankalp Goswami, learned Amicus Curiae, appearing for the appellants, has pointed out certain contradictions in the evidence of these three witnesses in order to show their account is undependable. It is pointed out by the learned Amicus Curiae that whereas PW-1 Ram Prasad has said in his evidence that he heard calls of alarm from his wife and son, and as he rushed out, he saw the assailants attacking his wife, but PW-2 has said that the assailants were sitting on a platform outside their house and initially they came over and forbade the deceased and PW-2 Lankush from tethering their bullocks there. When the deceased argued about the matter, the assault commenced. These are no contradictions. Rather, there are differences, as we have said elsewhere, of vantage and time, that is to say, the position from which the witness saw and the time he saw it. PW-1 Ram Prasad saw the occurrence after hearing his wife and son call rescue or raise alarm, whereas PW-2 Lankush, who had accompanied the deceased along with the bullocks, saw all the events unfold. Therefore, there is no contradiction in the evidence of PW-1 and PW-2 in this regard.

37. Even if there are minor discrepancies in the accounts of PW-1, PW-2 and PW-4, which are inconsequential here, such discrepancies have to be credited to differences of perception, memory and recapitulation by different men. These in no way detract from the substance of testimony, which is broadly consistent on all material facts. In this connection, reference may be made to the decision of the Supreme Court in **State of A.P. v. Pullagummi Kasi Reddy Krishna Reddy alias Rama Krishna Reddy and others, (2018) 7 SCC 623**. In **Pullagummi Kasi Reddy Krishna Reddy** (supra), it has been observed by the Supreme Court:

"11. .... Minor contradictions and omissions in the evidence of a witness are to be ignored if there is a ring of truth in the testimony of a witness [State of U.P. v. Dan Singh, (1997) 3 SCC 747, p. 759, para 32 : 1997 SCC (Cri) 469] . The High Court was oblivious to this settled position of law. The High Court highlighted the minor inconsistencies and omissions in the evidence of PWs 1 to 3 and PWs 5 to 7 to disbelieve them. The High Court wrongly refused to believe the eyewitnesses on the ground that they attempted to implicate as many persons as possible by making omnibus allegations. The High Court further erred in holding that PWs 1, 6 and 7, who were the eyewitnesses travelling in the jeep with the deceased, were not speaking the truth as they were close relatives and supporters of Deceased 1. The rejection of the evidence of

PWs 2, 3 and 5 by the High Court on the ground that they did not attribute specific overt acts to each accused is also erroneous."

38. It is next submitted on behalf of the appellants by Mr. Goswami that two of the most vital eye-witness accounts come from the closest of kin of the deceased, and, therefore, these should be received with due caution. He submits that PW-1 Ram Prasad and PW-2 Lankush are the husband and the son of the deceased, respectively, and to repose unflinching faith in their testimony, is a perilous course. We are afraid that this submission of the learned Amicus Curiae, which equates a blood relative's testimony with interested testimony, or as they are called interested witnesses, is a fallacious submission. A related witness is not at all an interested witness. In a given situation, he might be an interested witness, if he has some motivation of his own to falsely implicate; else, there is no principle by which the testimony of a related witness is to be viewed with suspicion, treating it as one coming from the mouth of an interested witness. It has long ago been held that more often than not, a related witness would be the farthest from desiring a wrong man to be convicted and the real offender escape. In this connection, reference may be made to the decision of the Supreme Court in **Dalip Singh v. State of Punjab, (1953) 2 SCC 36**. In **Dalip Singh** (supra), it was held:

"23. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased, we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in Rameshwar v. State of Rajasthan [Rameshwar v. State of Rajasthan, 1951 SCC 1213 at pp. 1233-34 : 1952 SCR 377 at p. 390] . We find, however, that it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel.

24. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

39. Apart from petty squabbles, amongst relatives, particularly, who are neighbours as the one in this case about the right to tether cattle at the ladavani outside the deceased's house, or may be, some other similar petty issues, no such profound interest has been brought to our notice based on evidence, which may lead PW-1 Ram Prasad and PW-2 Lankush to falsely implicate the appellants in Birma's murder.

40. Similarly in **Baban Shankar Daphal v. State of Maharashtra, 2025 SCC OnLine SC 137**, relying on **Dalip Singh**, it has been remarked:

"29. The distinction between "interested" and "related" witnesses has been clarified in Dalip Singh v. State of Punjab, (1953) 2 SCC 36 : 1954 SCR 145 where this Court emphasized that a close relative is usually the last person to falsely implicate an innocent person. Therefore, in evaluating the evidence of a related witness, the court should focus on the consistency and credibility of their testimony. This approach ensures that the evidence is not discarded merely due to familial ties, but is instead assessed based on its inherent reliability and consistency with other evidence in the case. This position has been reiterated by this Court in:

i. Md. Rojali Ali v. The State of Assam Ministry of Home Affairs through secretary, (2019) 19 SCC 567;

ii. Ganapathi v. State of T.N., (2018) 5 SCC 549;

iii. Jayabalan v. Union Territory of Pondicherry, (2010) 1 SCC 199;

30. Though the eyewitnesses who have been examined in the present case were closely related to the deceased, namely his wife, daughter and son, their testimonies are consistent with respect to the accused persons being the assailants who inflicted wounds on the deceased. As is revealed from the sequence of events that transpired, one of the family members was subjected to an assault. It was thus quite natural for the other family members to rush on the spot to intervene. The presence of the family members on the spot and thus being eyewitness has been well established. In such circumstances, merely because the eyewitnesses are family members, their testimonies cannot be discarded solely on that ground."

41. We must add here that if there were any doubt, still lingering on the fidelity of the testimony of PW-1 and PW-2, suspecting marriage and kinship in case of one and the other witness as the culprits tainting a truthful account of the occurrence, the testimony of PW-4, who is an utter stranger to the deceased's family, is an infallible assurance of the soundness of testimony of PW-1 and PW-2.

42. There is one feature of the matter, to which allusion must be made here. Apart from the fact that the eye-witness account is consistent about the time, place and manner of the assault in the dock evidence, there is a broad consistency between the testimony of witnesses and the FIR version. It is well-known that an FIR is not a substantive piece of evidence, but it has its own unique value. In this connection, reference may be made to the decision of the Supreme Court in **Meharaj Singh v. State of U.P., (1994) 5 SCC 188**, where it has been observed:

"12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for

certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8."

43. The FIR carries the earliest account of the occurrence before the adulterating factors, such as, afterthought, deliberation, manipulation and some natural distortion can affect the truthfulness of facts that form the foundation of the prosecution case. If, therefore, there is anything essentially inconsistent about the prosecution case in the FIR and that which figures in the dock evidence, it might throw a legitimate doubt. Here we find that the FIR version and the testimony of the prosecution witnesses does not vary in any material particular or fact about the time, place and manner of occurrence or almost anything of relevance to the fact in issue, except that the FIR version comes with its natural brevity of description, where all and the finer details of relevant facts cannot be expected.

44. We, therefore, hold that the prosecution have been able to establish the time, place and manner of occurrence. And, we must say that in the nature of things, the three relevant facts found established, a fortiori lead to establishment of the assailants identity.

The ocular version and the medico-legal evidence, if consistent about the prosecution case

45. While the time, place and manner of the occurrence and identity of the assailants might be held established on the evidence so far considered. Upon the establishment of these facts, it has to be determined still, if all the above facts are established beyond all reasonable doubt, because Mr. Goswami urges that there is a serious challenge to the veracity of the eye-witness account posed by the medico-legal evidence in this case, which we must consider. We will proceed to do that hereinafter.

46. It has now to be seen, if the ocular version is supported by the medico-legal evidence. The foremost parameter is the injuries sustained by the deceased medically found and opined, on one hand, and the ocular version about the manner of assault, on the other. A perusal of the autopsy report shows that the deceased sustained three incised wounds. The first is an incised wound 13 X

2cm X bone deep into right side of the face, extending 3 cm in front from tragus of the right ear, up to the middle of the nose; the second is an incised wound 7 X 3cm X trachea deep on the left side of neck; and, the third is an incised wound 3cm X 1cm X bone deep over the superior occipital protuberance. The incised wound can be attributed to assault by the spade (fowda). PW-1 Ram Prasad, who suddenly reached the place of occurrence after assault had commenced, in the nick of time to witness it, saw the appellant Dhanpal strike his wife with the spade 2-3 times. He saw the other assailant, now deceased Mitthoo, assault her with a stick (lathi), which in his cross-examination he has said that he saw one stick (lathi) blow being delivered to her, but could not see the part of her body to which it was delivered.

47. PW-2 Lankush, who was with his mother when hostilities commenced and before the assault, had concealed himself behind a wall with a vantage that enabled him to watch the occurrence at close quarters, has graphically described the assault in his cross-examination. He has said that the first blow from the spade struck his mother on the head, the second on her nose and cheek and the third on her neck. He has said in his examination-in-chief about the weapons wielded that his mother was assaulted with a spade (fowda) by Dhanpal, the appellant, and with a stick (lathi) by the deceased appellant Mitthoo, repeatedly.

48. The third eye-witness, PW-4 Devendra, in his cross-examination has said that he saw all the three blows from the spade strike the victim. The first did not make her fall, but stagger. The first blow from the spade struck the deceased on her head towards the backside; the second struck her around the temple; and, the third landed on her neck. After the deceased had fallen, Mitthoo struck her with a stick (lathi), but he could not say how many stick (lathi) blows were delivered.

49. A comparison of the ocular version of the occurrence in all its graphic detail clearly establish that three blows from the spade were delivered to the deceased, one on the head, the other on her cheek, nose and temple, and, the third on her neck. A perusal of the autopsy report shows that amongst the ante-mortem injuries noticed, there are three incised wounds, a contusion and an abrasion. The contusion is cited on the top of the left shoulder joint and the abrasion is located between both scapula, vertically downward.

50. A perusal of the testimony of PW-7 Dr. Onkar Singh, the doctor who carried out the autopsy on the deceased's cadaver, has opined in his examination-in-chief that injury Nos. 1, 2 and 3 could have been possibly caused by a spade (fowda); injury No.4 by a stick (lathi); and, injury No.5 on account of a fall. It has also been opined that the ante-mortem injuries were sufficient in the ordinary course of nature to cause death. The only injury, that has been the subject matter of some cross-examination of the autopsy doctor, is injury No.1. About this injury, PW-7 in his cross-examination has said that the first injury was horizontal. It is possible to sustain the same by a spade, both in the standing position and after falling down. A close comparison of the ocular version with the medico-legal evidence, spares little doubt that so far as the injuries go, there is no irreconcilable incompatibility between the ocular version and the medico-legal opinion. To the contrary, the ocular version is so pristinely supported by the medico-legal evidence that there has to be a wholehearted acceptance of the ocular evidence.

51. The next point, that has been urged by Mr. Sankalp Goswami, is that the entire prosecution case is utterly unreliable, because the time of death, consistently spoken of by the three eye-witnesses, is belied by the medico-legal evidence. The foremost point, that he urges on this score, is that whereas the time of death, according to the ocular version, is 9 o'clock, and PW-2 in his evidence has said that his mother had not eaten anything, a perusal of the autopsy report shows that the stomach had about 100 ml semi-fluid unidentified nature present under process of digestion. The autopsy report further shows that the small intestine contained some solid food material under process of digestion an unidentified matter. The large intestine contained faecal matter, sticking to the walls. Mr. Goswami would urge that from the commonly prevailing bowel habits in rural areas, the deceased would have relieved herself in the morning, leaving no faecal matter in the large intestine. It is further emphasized that also by the prevalent practice in rural areas, food is eaten in the morning, but invariably after the men folk have partaken of it. It has come in the evidence of PW-2 that his father was eating food in the morning, but PW-2 and his mother had not eaten anything. Mr. Goswami has invited our attention to the following part of the testimony of PW-2, occurring in his cross-examination:

"जब मैं घर से बाहर मवेशी बांधने आया था उस समय मेरे पिता रोटी खा रहे थे, मैं या मेरी मां ने रोटी नहीं खाया था, मेरी मां ने मेरे सामने कुछ नहीं खाया था,....."

52. It is argued with much emphasis by the learned Amicus Curiae that at 9 o'clock in a rural setting, not only would the large intestine be free of any faecal matter, but given the fact that the man of the house was eating his food, there is no reason to believe that the deceased would have eaten before him. This is dictated by such a consistent phenomena of the times when the incident happened, particularly in the rural social milieu that it is impossible to imagine that the woman of the house would have eaten before her husband, which has to be the case, if the contents of the digestive system of the deceased are taken into account and the time of her death given by the witnesses believed. Also, it is argued that there is positive evidence coming from PW-2, who would have accurate knowledge of the fact that his mother had not eaten anything until time they moved out of house to tether the bullocks.

53. Mr. Shashi Shekhar Tiwari, learned A.G.A., has opposed this part of the submission and argued that a dependable ocular account cannot be discarded on the basis of such assumed consistencies of eating and bowel movement habits.

54. We have given our thoughtful consideration to this part of the matter. Generally speaking, it is true that almost persons, and particularly those in the rural areas early morning relieving of the bowels, is part of the daily routine. But, this is not an infallible standard or a thumb rule. There are individualities of each person's system and problems, like constipation which may present a different condition of the stomach and intestines. So far as the contents of the stomach and the small intestine are concerned, it is true that, generally speaking, women folk in the rural areas at the relevant time could not eat before men, but that too is not a universal truth. There could be individual habits, some associated with the socioeconomic class to which an individual belonged. The evidence of PW-2 that his mother had not eaten anything, though evidence aliunde on the

point, is not so infallible as to disbelieve a consistent ocular evidence of three witnesses, two natural and relatives and one outsider and a chance witness, whose presence was well explained.

55. It sometimes does happen that a person may not necessarily pay heed to an insignificant event, like some food being partaken in the early morning hours by another in the family for reasons best understood by the person, who has done so. An indifferent or unconventionally timed consumption of food, cannot be ruled out in the face of consistent ocular evidence, which on some parameter, may be incompatible with it. In this connection, reference may be made to **Jitender Kumar v. State of Haryana, (2012) 6 SCC 204**. In Jitender Kumar (supra), the following remarks of the Supreme Court are very pertinent:

"50. The entire basis for this submission is the statement of PW 3, Dr L.L. Bundela, who stated that the stomach of the deceased contained some semi-digested food. It is worthwhile to note that the statement of this very witness that the death of Indra could have taken place between 1.00 to 1.30 a.m. remained unchallenged. Furthermore, it cannot be stated as a rule of universal application that after a lapse of two to three hours stomach of every individual, without exception, would become empty. It would depend upon a number of other factors like the caloric content and character of the solid food. Further, addition of fats, triglycerides and carbohydrates such as glucose, fructose and xylose to a solid meal can delay its emptying from the stomach, presumably because of their effect on the initial lag phase of digestion of solids. Furthermore, the presence of liquids in the stomach prolongs this initial lag phase of solid emptying. In fact, ingestion of a liquid bolus 90 minutes after a solid meal can induce a second lag phase of solid emptying from the stomach.

51. Foods high in fat content are handled duly by the stomach and their emptying pattern should be considered separately from those of other liquids and solids. Many foods are solid or semi-solid prior to their ingestion. However, after they are consumed and warmed to the body temperature in the stomach, they are converted into a liquid. Despite this, the liquid foods are emptied from the stomach much more slowly than are the aqueous liquids. This aspect has been dealt with by prominent authors on the subject with definite emphasis on the emptying of the stomach.

52. The gastric emptying of indigestible solids has been appropriately dealt with in the Textbook of Gastroenterology, Vol. 1, by Tadataka Yamada, David H. Alpers, Chung Owyang, Don W. Powell and Fred E. Silverstein as follows:

"Gastric emptying of indigestible solids. The final class of consumed components of a meal to be discussed are the indigestible solids, that non-nutritive fibrous debris remaining from a meal that is not emptied with the dispersible, calorie containing digestible solids. In general, indigestible solids exit the stomach with initiation of the gastric Phase III activity of the MMC after completion of the fed motor pattern. The main characteristic that distinguishes the Phase III motor pattern from fed motor activity is the presence of an open pylorus during fasting, which permits intestinal delivery of large particles.

The major factor in determining when an indigestible solid is emptied from the stomach is its size. Indigestible spheres smaller than 1 mm in diameter freely pass into the intestine during the fed period, often at rates faster than solid nutritive food. Larger spheres pass more slowly, usually after an initial lag period, with spheres up to 2.4 mm in diameter passing with the calorie containing components of a solid meal. Spheres as large as 7 mm do not empty with solid food at

all and are retained until gastric Phase III activity resumes in the interdigestive period. It has been reported that undigested materials as large as 2 cm in diameter can pass into the intestine during the fasting period under normal conditions.

Other physical factors play a role in determining the gastric emptying of indigestible solid material."

53. Besides the above, with regard to the external regulation of gastric emptying, it has been stated that in addition to being controlled by various characteristics of the ingested bolus within the stomach, there is extensive modulation of gastric emptying by external influences. Gastric motility and emptying is also subject to extensive modulation by the central nervous system. The nutritional properties of an ingested liquid modify the speed at which it exits the stomach. Because of this, carbohydrate, protein or fat containing liquids can be digested and absorbed completely prior to reaching the distal small intestine. Certain physical characteristics of the ingested meal may alter the function of the stomach to selectively retain or expel the large particles. If the viscosity of the meal is increased sufficiently, the ability of the stomach to discriminate between large and small particles is abolished and much larger particles may be delivered into the duodenum.

54. The above findings are based on medical studies and are well established in the field of gastroenterology.

55. It may be useful at this stage to refer to Modi's Medical Jurisprudence and Toxicology (23rd Edn.) which has specifically concluded that there is no absolute and definite standard that every human being would empty his stomach within two to three hours of taking the meals, irrespective of what kind of meal had been taken by the person concerned.

56. Judging the time of death from the contents of the stomach, may not always be the determinative test. It will require due corroboration from other evidence. If the prosecution is able to prove its case beyond reasonable doubt and cumulatively, the evidence of the prosecution, including the time of death, is proved beyond reasonable doubt and the same points towards the guilt of the accused, then it may not be appropriate for the court to wholly reject the case of the prosecution and to determine the time of death with reference to the stomach contents of the deceased.

57. While discussing various judgments of this Court, Modi in the aforesaid book at p. 543 has recorded as under:

"... The state of the contents of the stomach found at the time of medical examination is not a safe guide for determining the time of the occurrence because that would be a matter of speculation, in the absence of reliable evidence on the question as to when the deceased had his last meal and what that meal consisted of (Masji Tato Rawool v. State of Maharashtra [(1971) 3 SCC 416 : 1971 SCC (Cri) 664] , Gopal Singh v. State of U.P. [(1978) 3 SCC 327 : 1978 SCC (Cri) 398 : AIR 1979 SC 1822] , Sheo Darshan v. State of U.P. [(1972) 3 SCC 74 : 1972 SCC (Cri) 394]). The presence of faecal matter in the intestines is not conclusive, as the deceased might be suffering from constipation. Where there is positive direct evidence about the time of occurrence, it is not open to the court to speculate about the time of occurrence by the presence of faecal matter in the intestines (Sheo Darshan v. State of U.P. [(1972) 3 SCC 74 : 1972 SCC (Cri) 394]). The question of time of death of the victim should not be decided only by taking into consideration the state of food in the stomach. That may be a factor which should be considered along with other evidence, but that fact alone cannot be decisive (Ram Prakash v. State of U.P. [(1969) 1 SCC 48])"

58. Such an approach would even otherwise be justifiable as in some cases the evidence may not be sufficient to establish as to what the last meal was and what article of food, if any, was taken by the deceased. So also, the □sluggish chronometric sense of the countryside community of India is notorious□ and even urban folk make mistakes about time, when there is no particular reason to observe and remember a minor event like taking of a morning meal. In such circumstances where semi-digested food was found in the stomach, the contention, that it must be inferred from it that the occurrence must have taken place after the deceased had taken his evening meal may not be accepted.

59. This Court in Shivappa v. State of Karnataka [(2008) 11 SCC 337 : (2009) 1 SCC (Cri) 143] stated the dictum that medical opinion is admissible in evidence like all other types of evidence and there is no hard-and-fast rule with regard to appreciation of medical evidence. It is not to be treated as sacrosanct in its absolute terms. Agreeing with the view expressed in Modi's book on Medical Jurisprudence and Toxicology, this Court recorded that so far as the food contents are concerned, they remain for long hours in the stomach and the duration thereof depends upon various other factors.

"18. Indisputably, a large number of factors are responsible for drawing an inference with regard to the digestion of food. It may be difficult if not impossible to state exactly the time which would be taken for the purpose of digestion." (Shivappa case [(2008) 11 SCC 337 : (2009) 1 SCC (Cri) 143] , SCC p. 343, para 18)

60. Similarly, in Jabar Singh v. State of Rajasthan [1994 SCC (Cri) 1745] the Court was dealing with the evidence of DW 1 who had opined that since there was some semi-digested food, the occurrence must have taken place earlier and not at 3.00 a.m. The Court reiterated the principle that this was an opinion evidence and the possibility of the deceased having eaten late in the night could not be ruled out.

61. In view of the above medical references, the view expressed in Modi's book (supra paras 55 and 57) and the principles stated in the judgments of this Court, it can safely be predicated that determination of the time of death solely with reference to the stomach contents is not a very certain and determinative factor. It is one of the relevant considerations. The medical evidence has to be examined in light of the entire evidence produced by the parties. It is certainly a relevant factor and can be used as a significant tool by the court for coming to the conclusion as to the time of death of the deceased but other factors and circumstances cannot be ignored. The court should examine the collective or cumulative effect of the prosecution evidence along with the medical evidence to arrive at the correct conclusion.□

56. This point, that we are presently considering, also appears to have been argued before the Trial Judge and we consider it necessary to record his remarks in rejecting a similar contention urged on behalf of the appellant, who was an accused at the trial. The learned Trial Judge has held in this regard:

"The second ground of attack is that there is difference in the medical and oral evidence. The learned counsel for the accused contended that according to the postmortem report, the stomach contained about 100ml. semi digested food material of unidentified nature under process of digestion. The doctor also found that small intestine contained unidentified semi-solid food material under process of digestion while large intestine contained faecal matter. The doctor stated in cross-examination that the deceased might not have eased herself at the time of death. The

learned counsel referred the statement of Lankush P.W.2 who stated that when he had gone to tether the cattle he had not eaten anything. His mother also had not eaten anything in his presence. The doctor Onkar Singh stated that there could be difference of six hours in the time of death either way. On the basis of this evidence, the learned counsel for the accused contended that the lady would have taken her meals in the evening at about 10 or 11:00 P.M. and she would have been murdered sometime at about 2 or 3:00 A.M. and that is why the undigested food material in the process of digestion and faecal matter was found. He contended that in villages, the ladies go to ease themselves normally early in the morning. Therefore, if the murder would have been committed at about 9:00 A.M. the faecal matter could not have been found in her face stomach. He contended that according to the son, the mother had not eaten anything on that day. Therefore, if the murder would have been committed at 9:00 A.M. there would have been no semi-digested food material under process of digestion. On this basis, he contended that this a very strong circumstance that the murder was committed sometime in the night. This argument appears to be convincing. But when we look into the evidence closely and the circumstances, we find that this argument cannot be accepted as there is direct evidence of the murder. The postmortem shows that only 100 ml semi digested food-material was found under process of digestion. The occurrence took place in the month of August. The sun rises at about 6:00 A.M. in the month of August and we can take judicial notice of it. It has come in evidence that the deceased was Jatav by Caste. She belonged to a labour class. It is not unnatural or improbable for a labour class to take breakfast early in the morning at 6 or 7:00 A.M. because thereafter they go for work. The boy Lankush P.W.2 did not remain till he rose from the bed, till the incident with his mother.

He only said when his mother, did not eat in his presence. It was not necessary for the mother to have eaten something in the presence of this boy. Normally in villages, the ladies do the domestic work rising early in the morning. Therefore, if the deceased also would have risen early in the morning and would have taken some breakfast, Lankush P.W.2 could not have seen. If she took the breakfast early in the morning it was quite right, for the doctor to have found semi digested food-material under process of digestion. As regards faecal matter, that was found in very small quantity. I think had the deceased been patient of constipation, the faecal matter could have been found even if she had eased herself. It depends on the habit of every individual. If it would have been the habit of Smt.Birma Devi not to go to ease in the morning, it cannot be said to be an improbability or unnaturality. Therefore, to my mind, the medical report is not such which may be said to be contrary to the oral evidence. We cannot conclude on the basis of the postmortem report that the death would have been caused some time in the night by unknown assailants."

57. The learned Trial Judge has reasoned along lines similar that commend to us. The learned Trial Judge though has remarked about the eating habits amongst the labour classes of the time with a more contemporaneous perception than ours, but it leads to the same result, may be for slightly different reasons. The learned Trial Judge has remarked that amongst the working or the labour classes, women folk get up early and since they have to go out to work, they eat early too. We have thought that in the times harking back to the 1980s, women in the rural areas normally ate after the men, and on that basis still we have thought that Birma could have eaten an early meal or a half meal, unnoticed by PW-2 or anyone else. But, we have no reason to discard the learned Trial Judge's understanding of the matter, who tried the case in those times, just 14 months after the occurrence and had the advantage of better knowing the habits of the parties before him with reference to their social background etc. Whichever way, the matter is looked at, Birma eating a

quick meal or a half meal early in the morning, is not such an impossibility that on the basis of the contents of her stomach and small intestine, one may doubt an otherwise dependable and consistent by ocular version of the three eye-witnesses about the time of occurrence. We, therefore, decline to accept the submission advanced on behalf of the appellant that Birma died under some different set of circumstances, at a different hour of the clock than that propounded by the prosecution.

58. The next submission to question the time of death that the learned Amicus Curiae has advanced is the formation of blisters and the foul smells emitting from the body, which the autopsy doctor noticed. The autopsy was done on 23.08.1985 at 3.00 p.m. and death, according to the ocular version, occurred on 22.08.1985 at 9.00 a.m. Therefore, there was a lapse of time period of about 30 hours between the time of death and the postmortem examination. The learned Amicus Curiae emphasizes that the presence of blisters shows that the time of death would have been between 36-48 hours. He has drawn the Court's attention to the following passage in **Medicolegal Postmortems in India** by Dr. C. K. Parikh, where at page No.31 of the Treatise, it is said:

*"**Changes in skin, hair and wounds**: Putrefactive blisters (blebs or bullae) appear under the skin in about 36-48 hours. They should not be confused with blisters from burns. A putrefactive blister contains mainly gas and little reddish coloured fluid. When punctured, gas escapes; and the blister being a post- mortem phenomenon, there is no evidence of a vital reaction. However, when a putrefactive blister breaks, patches of raw skin simulating fresh scalds may be seen."*

59. Thirty hours since death according to the autopsy doctor and 36-48 hours for the appearance of putrefactive blisters is not such a variation in time that what is noticed in the postmortem report, may be held to belie the ocular version about the time of death. The question fell for consider before a three Judge Bench of the Supreme Court **in Daryao Singh v. State of M.P., (1991) 2 SCC 588,** where after a reference to Modi's *Medical Jurisprudence and Toxicology* (20th Edition), it was held:

"11. Counsel for the appellant, however, emphasised that the statement of PW 2 in cross-examination clearly establishes the existence of blisters, an objective fact, which clearly supports the defense theory that death had taken place 14 to 20 days prior to the date on which the post-mortem examination was held and thereby disprove the prosecution version that the victim of assault died on the evening of September 25, 1970. It is interesting to note that the table on which the learned counsel for the appellant relies is omitted from the 19th and 20th edition of the book. But that apart at pages 128-129 to the book (20th edn.) it is stated as under:

"From twelve to eighteen hours after death in summer the green coloration spreads over the entire abdomen and the external genitals . Side by side with the appearance of the greenish patch on the abdomen the body begins to emit a nauseating and unpleasant smell owing to gradual development of the gases of decomposition, some of which are sulphuretted hydrogen, marsh gas, carbon dioxide, ammonia and phosphoretted hydrogen.

From twelve to eighteen hours after death in summer these gases collect in the intestine, consequently abdomen swells up. The sphincters relax, and the urine and faeces may escape.

From eighteen to thirty-six or forty-eight hours after death the gases collect in the tissues, cavities and hollow viscera under considerable pressure with the result that the features become bloated and distorted, the eyes are forced out of their sockets, the tongue is protruded between the

teeth, and the lips become swollen and everted. A frothy, reddish fluid or mucus is forced from the mouth and nostrils. Ultimately the features become obliterated and unrecognizable. The abdomen becomes greatly distended; hence on opening the cavity the gas escapes with a loud explosive noise. Owing to the pressure of the gases the stomach contents are forced into the mouth and larynx and are seen running out of the mouth and nostrils. The breast of female bodies are greatly distended. The penis and scrotum become enormously swollen. The cellular tissues are inflated throughout, so that the whole body appears stouter and older than it actually is.

These gases form blisters under the skin containing a reddish coloured fluid on the various parts of the body. When these bursts, the cuticle being softened peels off easily. These are characterised by absence of vital reaction."

It will thus be seen that blisters appear after the process of decomposition sets in within eighteen to forty-eight hours. It shows that the existence of blisters does not mean that death had taken place 14 to 20 days ago. That is why PW 2 is cautious to use the phraseology "the duration of the injury since death could be 14 to 20 days also". Having regard to the nature of the direct testimony to which we have adverted earlier and the passage reproduced above, we find it difficult to accept the belated submission of the learned counsel for the appellant that the opinion of the medical expert PW 2 destroys the version of the prosecution witnesses, particularly PWs 1, 3, 4 and 10, that the deceased suffered a fatal wound on the evening of September 25, 1970 to which he succumbed on that very day. We, therefore, reject this submission.

(emphasis by Court)

60. Now, here the blistering has been noticed after 30 hours, whereas relying on Modi's opinion expressed in his Treaties, it has been held by their Lordships of the Supreme Court that blistering could occur within 18-48 hours. Going by the passage in Dr. Parikh, upon which Mr. Goswami has relied as well, blistering could happen between 36-48 hours. Eighteen-Forty Eight hours, as held by the Supreme Court in **Daryao Singh** (supra), would squarely explain the blistering. Dr. Parikh's opinion apparently too would not make it entirely incompatible with the time of death based on ocular evidence. Apart from all other things, where there is a robust and consistent ocular testimony of a dependable character, medico-legal evidence, like any other opinion evidence, pales into insignificance unless the incompatibility be of such contrast that both cannot be true. That is not even remotely the case here. We cannot, therefore, accept the learned Amicus Curiae's submission on this score as well to hold that the time of occurrence, which the prosecution have come up with, is an impossibility in the face of medico-legal evidence. To the contrary, broadly speaking, the medico-legal evidence is consistent with the ocular testimony.

If the appellants have a plausible defence and the defence evidence read together, creates a doubt about the prosecution case

61. In the statement of the appellant Dhanpal under Section 313 Cr.P.C., he has generally denied the circumstances appearing against him by words of cryptic denial, like 'it is wrong', false report has been made', □has nothing to say□, 'out of enmity'. In answer to the question, if the appellant had anything further to say, it was stated by the appellant Dhanpal:

"देवेन्द्र गवाह सबूत मुझसे जेल मिलने आया था। कहा कि 5000/- दो, नहीं तो गवाही दूँगा।"

62. In the statement under Section 313 Cr.P.C., therefore, there is no wholesome explanation of the evidence and the circumstances appearing against him, except that the credit of one of the three eye-witnesses, Devendra (PW-4) is sought to be impeached in order to establish that Devendra was an unreliable witness and he testified against him because Dhanpal refused to bribe him an offer, which PW-4 made to Dhanpal, during his jail visit. The appellant has examined DW-1 Shiv Swarup. DW-1 Shiv Swarup was an Assistant Jailer, posted at the District Jail Etah at the relevant time, when Dhanpal was there as an under-trial. He has testified to the fact that Devendra had gone to meet the appellant Dhanpal on 13.01.1986 along with two others, Sonvir and Urmila. They met him on the said day. This witness in his examination-in-chief has testified:

"13.1.86 को भी मैं जि. कारागार एटा में वहैसियत असिसटेंट जेलर तैनात था। उस दिन का जेल का मिलाई राजिस्टर व पर्ची लेकर आया हूँ। धनपाल पुत्र नंन्नू मुलजीम से मिलने देवेन्द्र गया था। उसके साथ दो आदमी सोनवीर व उर्मिला भी थे। इनके नाम के आदमियों ने बन्दी धनपाल से उस दिन मुलाकात किया था। मिलाई पर्ची व मिलाई राजिस्टर मेरे सामने है जिसे देखकर मैं यह व्यान दे रहा हूँ।"

63. In his cross-examination, this witness has said:

"देवेन्द्र का वल्दियत का सकूनत मिलाई पर्ची या रजिस्टर मे नही लिखा है। देवेन्द्र का निशानी अंगूठा पर्ची पर लगाते है। लेकिन उसे किसी से वेरीफाई नही कराया गया है। कोई भी आदमी जो अपना नाम बताता है, उसी नाम से पुकार की जाती है व मिलाई कराई जाती है। एक पर्ची पर 3 आदमी से ज्यादा मिलाई करने वाले नहीं हो सकते है। सोनवीर व उर्मिला का भी कोई पता पर्ची में नही लिखा है। पर्ची मे पृष्ठ भाग पर बन्दी पता लिखा जाता है। मैं पर्ची दखिल कर रहा हूँ।"

64. From a reading of this witness's testimony, including his cross-examination, it is apparent that DW-1 was an Assistant Jailer, who did not know PW-4 Devendra personally. He was testifying on the basis of record. His cross-examination establishes in ample measure that he could not at all say that the man Devendra, who met Dhanpal on 13.01.1986, was the same man as PW-4. The witness has said that there is no record of Devendra's parentage and residence in the meeting register or the meeting slip, the two documents, on the basis of which, he was testifying. There is a thumb impression of the visitor Devendra on the meeting slip, but he has not got it verified, if it was of PW-4 Devendra. DW-1 has also said in his cross-examination that a visitor, who discloses any name for himself, is called by that name and permitted to meet a prisoner, whom he has come to meet. It is also said that Sonvir and Urmila are not recorded on the meeting slip and that three persons can meet on a single slip. Though, it is said that on one part of the slip, the prisoner's address is written and he was submitting the slip, the testimony of DW-1 does not even remotely establish that it was PW-4 indeed, who met Dhanpal. The Trial Judge has remarked that if it was Devendra, who met the appellant Dhanpal, it shows that it was Dhanpal, who wanted to win over the witness, but PW-4 Devendra did not fall for his offer and testified truthfully according to the call of his conscience.

65. Even if we do not agree with the latter part of the learned Trial Judge's reasoning, there is no cavil about the first part, which has also weighed with the learned Trial Judge that DW-1 has not

at all been able to establish that it was Devendra after all, who met the appellant Dhanpal in Jail. The testimony of DW-1, therefore, does not further the appellant's case, much less create any doubt about the prosecution case. It does not, in any manner, impeach the reliability or the credit of PW-4 Devendra.

66. It has also been put to PW-4, if he went to the Etah Jail on 09.12.1985 and met the appellant Dhanpal. It was also asked of him, if there was any one else besides him by his name in the village. He has said that there is no other man by his name in the village. In answer to the question, if he went to meet Dhanpal, he has said that he did not know if he went to the District Jail Etah to meet Dhanpal or not. This, though, is an elusive reply, but the witness has also said that if the prosecution produce any evidence to show that he indeed went and met Dhanpal, he will then answer it. The suggestion was also given to the witness that he demanded money of Dhanpal and since Dhanpal did not pay, he testified against him. He was non-committal about meeting Dhanpal in jail. Before the credit of this witness could be impeached on the ground that he was testifying against Dhanpal out of a retaliatory motive because he had demanded money, which was not paid by the appellant, it is the defence's burden to establish that indeed Devendra (PW-4) met Dhanpal in the District Jail Etah. Devendra in his testimony did not admit the fact that he went to the District Jail Etah or met Dhanpal. He might have been elusive about it, but that does establish the fact because the witness meeting the appellant in Jail is a positive fact, that has to be established. It could be established either by Devendra admitting to it in his cross-examination, or by evidence to that effect being produced in defence.

67. The appellant Dhanpal did endeavour to produce evidence after taking a plea to that effect in his statement under Section 313 Cr.P.C., but the evidence that he produced, that is to say, DW-1, an Assistant Jailer, posted at the relevant time at the District Jail Etah, could not prove that in fact PW-4 Devendra ever met the appellant Dhanpal in Jail. He has evidence with him to show that a man, called Devendra, met Dhanpal in Jail, but there is nothing on record to show that it was indeed Devendra (PW-4), who met the appellant. Notwithstanding the fact that there is no man by the name Devendra in the village other than PW-4, the records, which DW-1 produced before the Court, are utterly wanting on the parentage and address of the man Devendra, who met Dhanpal in Jail. In the absence of the address of the visitor, who met Dhanpal in Jail, it cannot be said that it was PW-4, who met him notwithstanding his admission that there is no man by his name in the village. After all, it could well have been another Devendra from another village or place. This is particularly so as the parentage of the visitor is also not recorded. On the visitors or the meeting slip, there is a thumb impression of the man, who met Dhanpal, called Devendra. No endeavour was made by the appellant to get the thumb impression on the slip, which the Jailer had on him, compared with that of the witness Devendra, a step which could very easily have been taken at the relevant time, the parties having gone to trial within 14 months of the occurrence and the defence witness, the Assistant Jailer (DW-1), being examined on 12.01.1987. Memories, records and even thumb impressions, would have been sparklingly fresh at the time. The appellant's failure to get the thumb impression of PW-4 compared with that on the visitors or the meeting slip that DW-1 produced in Court, shows that the appellant knew that Devendra, who came to meet him, was another man. On a wholesome analysis of this part of the evidence, we hold that it could not be established by the appellant that PW-4 went to the District Jail Etah and met him at all, let alone the conversation they had or the impact thereof on the witness's credit.

68. This takes us to the other defence witness. He is a Lekhpal and has endeavoured to show by his evidence that PW-4's field is located elsewhere than that described by him. Merely because there was an error in the description of boundaries of his field by PW-4, it cannot be said that the broad and robust evidence about the place wherefrom the witness saw the occurrence, can be doubted. It has been remarked by the Trial Judge that PW-4 had recently bought the field, that is to say, within a period of 6-7 months of the time that he was making a statement about it or testifying, and, therefore, could be mistaken for its location with reference to its boundaries. On this issue and generally about the credit of this witness, the learned Trial Judge has remarked:

"The learned counsel also contended that the boundary told by this witness does not tally with the boundary, as is clear from the statement of Lekhpal, Brij Kishore D. W.2. It is true that from the statement of Lekhpal, the boundary told by this witness does not tally. But the defence has got clarified the position by putting certain questions from this witness in which he clarified that he had purchased that land only 6 or 7 months back. In these circumstances, if this witness could not tell the correct boundary of his field that cannot be a reason to discard his testimony. This witness does not belong to the caste of the parties. There is nothing on the record to show that he has got any enmity with the accused or affiliation with the complainant. No motive could be shown for this witness to depose falsely against the accused. The statement of this witness is natural and probable. He is an independent eye-witness. Therefore, I place reliance on his testimony."

69. It has to be borne in mind that the offence, subject matter of this appeal, was committed on 22.08.1985 and judgment was delivered by the learned Trial Judge on 31.01.1987, that is to say, within a period of about one and a half years. Not only the witness's memories about the incident were fresh, but their testimony was heard by the same Trial Judge, who rendered judgment in the case, that is say, Mr. A.B. Shukla, IV Additional District and Sessions Judge. For the said reason, it is evident that the Trial Judge had the advantage of watching the demeanour of PW-4 in Court as he went through his cross-examination and generally testified in Court. In the face of all the discrediting questions and matters placed before the witness, the Trial Judge has found his credit unimpeached and the witness reliable. This is a matter, where the Trial Judge has a distinct advantage over us as he watched the witness's demeanour, which did not. There is no reason, therefore, to take a different view of the creditworthiness of this witness merely because he faltered on describing the boundaries of his field located in the village or the adjoining village. We, therefore, hold that the testimony of PW-4 is of unshaken credit and sterling in character. The learned Trial Judge has rightly placed reliance on it. We, therefore, hold that read as a whole, the appellant, by his evidence and the defence that he has taken, has not succeeded even remotely in creating a plausible doubt about the prosecution case. On the other hand, we hold that the prosecution by their evidence have proved their case beyond all reasonable doubt.

70. In the result, this appeal fails and is **dismissed**. The appellant Dhanpal is in jail. He will serve out the sentence awarded to him.

71. Let this judgment and order be communicated to the appellant Dhanpal through the Jail Superintendent of the Jail, wherever he is serving by the Chief Judicial Magistrate, Etah.

72. This judgment and order shall be communicated to the Chief Judicial Magistrate, Etah by the Registrar (Compliance).

73. Let the lower court records be returned.

(2026) 5 ILRA 783
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.05.2026

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE DR. AJAY KUMAR-II, J.

Criminal Appeal No. 462 of 2003

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

ISSUE FOR CONSIDERATION

Whether appellant (survived appellant) had motive to commit murder.
Whether FIR was promptly lodged.
Whether non-examination of witness is fatal.
Whether prosecution proved case beyond reasonable doubt.
Whether multiple fractures on head could be caused by knife blows.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Section 374(2), 313 - Indian Penal Code, 1860 – Sections 34, 120-B, 302 - Arms Act – Sections 4, 25: - Criminal Appeal under Section 374(2) CrPC - filed against conviction and sentence – since appellant no. 1 of instant appeal as well as other appellants of connected appeals were died during pendency of appeal, therefore present appeal survives only for appellant no. 2 - Sessions Trial - arising from FIR - offence under Sections 302/34 IPC and 4/25 Arms Act - The prosecution case was that due to a long-standing land dispute, accused persons were attacked on victim – investigation - recovery of weapons, including knife from survived-appellant - charge-sheet - trial initiated – appellant pleaded false implication, denial of presence, and challenged credibility of eye-witnesses and recovery – evaluation of evidence – Court finds that, land dispute as motive is established - FIR promptly lodged - non-examination of one eye-witness not fatal - medical evidence corroborated testimony of PW-1 and PW-2 - fractures consistent with repeated knife blows - recovery of knife on pointing out of appellant proved - post-mortem corroborated incised wounds and fractures - defence plea rejected – Held, conviction under Section 302/34 IPC and Section 4/25 Arms Act justified - Appeal dismissed - conviction and sentence affirmed - surviving appellant to serve remaining sentence imposed by trial court.

(Para – 90, 91, 95, 97, 98, 99, 101)

Appeal Dismissed. (E-11)

CASE LAW CITED

Mahendra Singh & Others v. State of U.P., (2022) 7 SCC 157
Deny Bora v. State of Assam, (2014) 14 SCC 22
Joginder Singh v. State of Haryana, (2014) 11 SCC 335
Harvinder Singh @ Bacchu v. State of Himachal Pradesh, 2023 SCC OnLine SC 1347

LIST OF ACTS

Indian Penal Code (IPC) – Code of Criminal Procedure (Cr.P.C.) – Arms Act.

LIST OF KEYWORDS

Murder, Land dispute, Common intention, Knife recovery, Eye-witness testimony, FIR promptness, Post-mortem corroboration, Defence witnesses, Arms Act, Section 302 IPC.

CASE ARISING FROM

Sessions Trial No. 148/1998 (State v. Mukesh & others) under Section 302/34 IPC.
Sessions Trial No. 149/1998 (State v. Mukesh & others) under Sections 25 & 4/25 Arms Act.
Police Station Dhaulana, District Ghaziabad.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Jitendra Kumar Shishodia, assisted by Shri Arvind Giri, Swati Pandey, Shri Pranshu Gupta.
Counsel for Respondent(s): Ms. Archana Singh.

(Delivered by Hon'ble Dr. Ajay Kumar-II, J.)

1. Heard Shri Jitendra Kumar Shishodia, Advocate assisted by Shri Arvind Giri, Advocate, Ms. Swati Pandey, Advocate as well as Shri Pranshu Gupta, Advocate for appellant no. 2 and Ms. Archana Singh, Advocate, representing the State-respondent and perused the record.

2. The instant Criminal Appeal under Section 374(2) of Cr.P.C. has been filed against the judgment and order dated 27.01.2003 passed by Additional and Sessions Judge, Ghaziabad in Sessions Trial No. 148/1998, arising out of Case Crime No. 47/1998, (State vs. Mukesh and others), under Section 302/34 IPC and in Sessions Trial No. 149/1998, (State vs. Mukesh and others) under Sections 25 & 4/25 Arms Act, Police Station Dhaulana, District Ghaziabad, convicting and sentencing the appellants for the offence under Section 302/34 IPC for life imprisonment and Rs.10,000/- fine and in default of payment of fine, one year additional rigorous imprisonment and under Section 25 and Section 4/25 Arms Act for one year and six months rigorous imprisonment respectively.

3. During the pendency of the instant appeal, the appellant no.1 Leela had died and appeal against him was declared to have abated vide order dated 17.03.2023. In connected Criminal Appeal No. 552/2003, the appellant no.1 Mukesh had died on 18.10.2017 and the appellant no.2 Bablu had died on 17.08.20214, appeal against them was declared to have abated vide order dated 17.03.2023. The instant appeal survives adjudication only so far as it concerns the appellant no. 2 Pravesh.

4. Brief facts of the case are that the informant Mahipal filed an oral report at Police Station Dhaulana, District Ghaziabad stating that he had a land dispute case pending against Chheda, resident of his village, since around 1972. After Chheda's death, his sons Mukesh and Bablu alias Pappu were pursuing the case on his behalf. The informant had won the case in the Court of the Munsif Magistrate. Thereafter, the informant had also obtained a decree against Mukesh in connection with the case. Due to this case, Mukesh and his brother Bablu alias Pappu harbored enmity towards him and his son Jagpal Singh. On 16.04.1998, his son Jagpal and his brother-in-law

(Sadhu) Shri Om, were going together on a bicycle from their village to Hapur via Sapnawat to meet lawyer regarding case. The informant and Rohtash Singh were following them on foot. His son Jagpal and his brother-in-law were about 50-60 steps ahead of them. At around 8:45 am, as they reached the culvert near Eklaidi on the canal embankment, four persons came from the direction of Eklaidi. These persons were Mukesh, Bablu alias Pappu, Pravesh, and Leela, all from their village. Mukesh said, "Let's see how he takes the land. Kill the bastard!" Then Pravesh and Leela hit Jagpal with sticks, causing him to fall off his bicycle. Mukesh then fired a shot from country-made pistol at Jagpal with intention to kill him, but the shot missed. Then, while Jagpal was lying on the ground, Mukesh attacked him with country made pistol and Bablu attacked him with a knife. Shri Om shouted and ran towards Eklaidi. They both also shouted, but Mukesh pointed the barrel of his country made pistol to them, so they jumped into the canal to save their lives. Hearing the commotion, many people from Eklaidi village chased these four accused. Mukesh was apprehended in sugarcane field of Amar Pal, but he managed to escape.

5. On the basis of aforementioned Written Report/Tehrir (Ex.Ka-1), a First Information Report bearing Case Crime No. 47/1998, under Section 302 IPC was registered on 10.04.1998 at 10:30 am at Police Station Dhaulana against the accused. Thereafter, the Investigating Officer Mahendra Pal Singh PW-5, who was posted as the then S.H.O., Dhaulana Police Station, started the investigation himself and recorded the statements of the informant Mahipal and Head Constable Mulchand Verma. He inspected the place of incident and prepared the site plan (Ex.Ka-9) of the place of incident. The Investigating Officer collected the blood stained and plain soil from the place of incident and prepared its recovery memo (Ex.Ka-5). Head Constable Mulchand PW-3 prepared recovery memo of a bicycle (Ex.Ka-6) and also of documents related to the deceased (Ex.Ka7). Thereafter, the Investigating Officer recorded the statement of the witness Rohtash. The inquest report (Ex.Ka-8) was prepared by Head Constable Mulchand PW-3 in his presence. Thereafter, he raided the houses of accused persons and recorded the statements of other witnesses. On 27.04.1998, the accused Mukesh, Bablu alias Pappu and Pravesh were taken into police custody for questioning and their statements were recorded. They were again taken into police custody on 02.05.1998 and a country made pistol was recovered on pointing out of accused Mukesh and a knife each on the pointing out of Bablu and Pravesh. The recovery memo (Ex.Ka-5) was prepared and sealed at the place of incident. The site plan (Ex.Ka-4) of the place of recovery was also prepared and thereafter statements of Smt. Gurdevi, Sushila Devi and Priyanka and others were also recorded.

6. On 11.04.1998 at 10:30 am, the autopsy of deceased Jagpal was performed by Dr. Shyam Khandelwal PW-4 at the District Hospital, Ghaziabad, who found following injuries on his person:

1. Incised wound 2 cm x 1 cm x bone deep on occipital region of the head, with a fracture of the underlying bone. Blood clots were present in brain matter and the brain was lacerated.

2. Incised wound 1 cm x 0.5 cm x 0.5 cm, bone deep, on the left side of the forehead, in the middle part.

3. Incised wound 3 cm x 0.5 cm x bone deep above the left eyebrow.

4. Incised wound 1 1/2 cm x bone deep on the left side of the forehead above the left eyebrow. The underlying bone was found to be fractured. Blood clots were present in the brain. The brain was ruptured.

5. Incised wound 3 cm x 1 cm x skin deep, above the root of the nose.

6. Incised wound 4 cm x 1 cm x bone deep on the chin.

7. Incised wound 2 cm x 1 cm x bone deep just above injury number 6.

8. Multiple abrasions in an area of 28 cm x 13 cm on the front of the neck and right shoulder. Size ranging from 0.5 cm x 0.5 cm to 4 cm x 5 cm.

As per opinion of the Doctor, the cause of death of the deceased was due to coma resulting from the injuries sustained on the body of the deceased.

7. After completion of the investigation, charge sheet (Ex.Ka-10) was submitted against the accused under Sections 302/34 and 120B IPC and a separate charge sheet was filed against the accused-appellant under Section 4/25 Arms Act. Thereafter, cognizance was taken upon the same and the case was committed to the Court of Sessions.

8. After hearing both the parties, charge under Section 302/34 IPC was framed against appellant-convict alongwith other accused in S.T. No. 148/1999 and a separate charge under Section 4/25 Arms Act was also framed against the appellant-convict in S.T. No.149/1999. However, the accused denied the charges levelled against him and claimed trial.

9. In order to prove it's case, the prosecution adduced six witnesses, i.e., PW-1 Mahipal Singh, (informant and son of the deceased), PW-2 Shri Om (eye witness of the incident), PW-3 Head Constable Mulchand (Scribe of Chik FIR), PW-4 Dr. Shyam Khandelwal (Autopsy Surgeon), PW-5 Mahendra Pal Singh (Investigating Officer), PW-6 Constable Mangan Singh (in whose presence knife and pistol were recovered on the pointing out of the accused persons) in S.T. No. 149/1999. The prosecution also adduced two witnesses, i.e. PW-1 Head Constable Mulchand and PW-2 Lala @ Hari Om in S.T. No. 149/1999.

10. The witnesses adduced by the prosecution have given their respective oral evidence and also proved 10 prosecution papers and 7 material objects, which were marked as exhibits. The detail of evidence in S.T. No. 148/1999, is tabulated herein below:

Sl. No.	Name	Nature of evidence	Documents proved
PW-1	Mahipal Singh	Informant and eye witness of Case Crime No. 47 of 1998 (son of deceased)	First Information Report as Ex. Ka-1. Oral Evidence of incident
PW-2	Shri Om	Eye witness of the incident	Oral Evidence of incident
PW-3	Head Constable Mulchand Chik	Writer of Crime No. 47/1998, who also made G.D. Entry of Case Crime No. 47/1998	G.D. Entry as Ex.Ka-2
PW-4	Dr. Shyam Khandelwal	Autopsy Surgeon	Post mortem report of the deceased as Ex.Ka-3
PW-5	Mahendra Pal Singh	Investigating Officer	Site Plan of place of murder as Ex.Ka-9, recovery memo of blood stained and plain soil as Ex.Ka-5, recovery memo of deceaseds bicycle

			as Ex.Ka-6, recovery memo of documents related to the deceased as Ex.Ka-7. Inquest report as Ex.Ka-8, Site Plan of recovery as Ex.Ka-4, Charge Sheet as Ex.Ka-10.
PW-6	Constable Mangan Singh	Recovery witness of murder weapons and witness of S.T. No.149/1998	Knife as material Ex.1, cloth as material Ex.-2, knife recovered from Pravesh as material Ex.3 and cloth as material Ex.4, 0315 bore country made pistol and one cartridge recovered from Mukesh as material Exs. 5, 6 and 7. Recovery Memo of country made pistol and two knives as Ex.Ka-1 in S.T. No.149/1998.

11. The detail of evidence in S.T. No. 149/1999, is tabulated herein below:

Sl. No.	Name	Nature of evidence	Documents proved
PW-1	Head Constable Mulchand	Who prepared Chik FIR of Case Crime No.64/1998, U/s 4/25 Arms Act against accused Pravesh and also made entry of G.D.	FIR of Case Crime No. 64/1998 as Ex.Ka-2, G.D. Kayami as Ex.Ka-3, Charge Sheet as Ex.Ka-6
PW-2	Lala @ Hari Om	Recovery witness of one country made pistol and two knives as Ex.Ka-1	Oral Evidence of recovery of murder weapons

12. In addition to the aforementioned evidence, through list 111 kha, the prosecution has submitted a copy of the judgment passed in Appeal No. 67/65, Rajbir vs. State, a copy of the application in Execution Case No. 12/96, Mahipal vs. Mukesh, a copy of the decree dated 04.04.1998, mutation documents etc. and a copy of the order sheet in Execution Case No.12/96.

13. After conclusion of prosecution evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C., in which the accused Pravesh denied the incident and stated that on the date of incident, he was not present in the village and has been falsely implicated. He further stated that no illegal weapon was recovered from his possession. The prosecution witnesses were relatives of the deceased and therefore, they were giving false testimony.

14. The accused in their defence produced five defence witnesses, i.e., DW-1 Nathi Singh, DW-2 Manvir Singh, DW-3 Arjun Singh, DW-4 Ravi Kumar and DW-5 Omveer Singh.

15. The trial Court after having heard learned counsel for the parties and after going through the entire record, vide impugned judgment and order, convicted and sentenced the appellant-

convict under Section 302/34 IPC and Section 4/25 Arms Act. Hence, feeling aggrieved with the said judgment and order, the appellant-convict has filed the present criminal appeal.

16. Assailing the findings, learned counsel appearing for appellant vehemently argued that alleged eye-witness Rohtash was intentionally withheld by the prosecution, therefore, adverse inference is to be drawn against the prosecution. The informant Mahipal and prosecution witness Shri Om have not signed the inquest report and other police papers including recovery memos prepared on the spot, which shows that they were not the eye witnesses, otherwise they must have participated in police proceeding conducted on the spot after registration of the FIR. Injury no.1, which is an incised wound on the body of the deceased, is coupled with multiple fractures, such injury cannot be caused by knife and could have been caused by some heavy sharp edged weapon not otherwise.

17. It was further argued that the depositions of PW-1 and PW-2 regarding the manner of incident is not corroborated by ocular and documentary medical evidence. PW-2 Shri Om was the star witness, who was allegedly present on the spot but his statement was recorded later on by the Investigating Officer, which affects its veracity. There are material contradictions in the depositions of PW-1 and PW-2 regarding position of dead body of the deceased and number of police personnel present on the spot. Therefore, their depositions are not trustworthy. Neither PW-1 nor PW-2 made any attempt to save the deceased, which casts doubt on their depositions. PW-2 Shri Om witness of murder case and PW-2 Hari Om witness of Arms Act, both are the chance witnesses and these witnesses cannot be relied upon. The injuries mentioned in the post mortem report do not corroborate the version of PW-1 and PW-2. In the FIR only a stick has been assigned to the appellant-convict, however, during the course of evidence, the prosecution witnesses have improved the prosecution story as put forth in the FIR by assigning knife to appellant-convict. Therefore, their depositions as well as use of knife by the appellant-convict is concerned, cannot be relied upon. The alleged recovery of knife on the pointing out of appellant-convict, is completely suspicious and the prosecution has failed to prove the same.

18. The learned trial Court has misinterpreted the evidence available on record and has not given due waitage to the defence evidence produced by the convict more particularly DW-3 and DW-5, which completely belies the prosecution story, which is against the norms of well established legal principles. The prosecution has miserably failed to prove any charge against the appellant-convict, however, the learned trial Court has misread the evidence and wrongly convicted and sentenced the appellant-convict. The learned counsel for the appellant has relied upon following case laws in support of his contentions:

I. Mahendra Singh & Others vs. State of U.P., (2022) 7 SCC 157
ii. Deny Bora vs. State of Assam, (2014) 14 SCC 22
iii. Joginder Singh vs. State of Haryana (2014) 11 SCC 335
iv. Harvinder Singh @ Bacchu vs. State of Himachal Pradesh, 2023 SCC OnLine SC 1347.

19. Learned A.G.A. for the State vehemently opposed the submissions made on behalf of the appellant-convict and submitted that first information report in the present case has been lodged

promptly. There was a land dispute between the deceased and accused. The father of deceased had won the case in the Court of the Munsif Magistrate and because of which, the deceased, who was son of the informant was murdered. PW-1 and PW-2 in their respective depositions have consistently deposed regarding date, time, place of the incident as well as manner of incident.

20. In the present case, appellant-convict alongwith his other co-accused have used stick and knives in the incident causing as many as seven incised wounds on the body of the deceased. Incised wound was caused on the occipital region of head of the deceased with a great force that underlying bone was fractured. The manner of incident as disclosed by both the eye witnesses, i.e., PW-1 and PW-2 is fully corroborated by ante-mortem injuries found on the body of the deceased. All the accused arrived at the spot with a common intention to murder the deceased, who was prosecuting the land dispute cases on behalf of the informant. The weapons used in the crime, have also been recovered on the pointing out of the accused. Knife used by the appellant-convict was also recovered on his pointing out. The depositions of PW-1 and PW-2 are reliable, which also find corroboration from oral as well as documentary medical evidence. The appellant-convict has committed murder of the deceased with the help of knife, hence while going through the evidence, it cannot be said that offence under Section 302/34 and Section 4/25 Arms Act, are not made out against the appellant-convict Pravesh. The trial Court has not committed any error of law in convicting and sentencing the appellant-convict. There is no merit in the appeal and learned A.G.A. thus urged for dismissal of appeal.

21. In the light of above arguments, following questions arise for consideration of present appeal:

(i) Whether the appellant-convict Pravesh had any motive to commit murder of the deceased or not?

(ii) Whether there is any delay in lodging FIR?

(iii) Whether non examination of alleged eye witness Rohtash is fatal to the prosecution and adverse inference is to be drawn against the prosecution or not?

(iv) Whether the prosecution could be said to have proved its case against the appellant-convict beyond reasonable doubt?

(v) Whether multiple fractures on head can be caused by a knife or repeated blows of knife?

ANALYSIS

ORAL EVIDENCE ON RECORD

22. The prosecution has examined informant Mahipal Singh PW-1 and Shri Om PW-2 as eye witnesses of the incident and on the strength of their depositions, the learned trial Court has decided the case against the appellant-convict. Therefore, evaluation of depositions of these two witnesses will be dealt with later on in this judgment.

23. **Head Constable Mulchand Verma PW-3** is a formal witness, who was scribe of the first information report of the Case Crime No. 47/1998 and has stated on oath that he recorded the FIR

(Ex.Ka-1). He made an entry of FIR in the G.D. No.12 on 10.04.1998 at around 10:30 am, which G.D. Entry has been proved by this witness as Ex.Ka-2.

24. **Dr. Shyam Khandelwal PW-4** has conducted the post mortem examination of the deceased Jagpal on 11.04.1998 at 10:30 am and prepared his post mortem report, which has been proved by this witness as Ex.Ka-4. The injuries found by this Doctor on the person of the deceased, have already been mentioned in para-6 of this judgment. This Autopsy Surgeon found seven incised wounds on the person of the deceased. Six incised wounds out of total seven incised wounds, were found to be bone deep. One bone deep incised wound was found on the head of the deceased and on internal examination, underlying occipital bone was found fractured. Blood clots were also found to be present in the brain and brain matter was also found lacerated. Two incised wounds were found on the forehead, one incised wound was found on the root of nose and two incised wounds were found on the bone of chin of the deceased. Incised wound 1 1/2 cm x bone deep was found on the left side of forehead above the left eyebrow. The underlying bone of this incised wound on the forehead above left eyebrow was found to be fractured. Blood clots were found to be present in the brain and brain was also found ruptured. In the opinion of this Doctor, duration of above seven incised wounds and eighth injury of multiple abrasions on the front of neck and right shoulder was about one day old. Therefore, the deceased could have received these injuries on 10.04.1998 at about 8:45 am. The cause of death in the opinion of this Autopsy Surgeon was coma resulting from ante-mortem injuries. It is thus clear that death of the deceased was homicidal death. **Two incised wounds have been caused with such great force, which resulted into fracture of occipital bone and bone above left eyebrow with laceration and rupture of brain below these injuries.**

25. **The Investigating Officer, Mahendra Pal Singh PW-5** has stated that on 10.04.1998, he was posted as the then S.H.O., Dhaulana Police Station. He took over the investigation after registration of the first information report. On 10.04.1998, he also recorded the statement of the informant, inspected the place of incident and prepared the site plan, which has been proved by him as Ex.Ka-9. He collected the blood stained and plain soil from the murder spot and prepared its recovery memo, which has been proved by him as Ex.Ka-5. Bicycle of the deceased was seized on the spot and its recovery memo (Ex.Ka-6) was prepared. The memo for seizing documents (Ex.Ka-7) related to the deceased was also prepared by him and he also recorded the statement of the witness Rohtash. This witness stated that inquest report (Ex.Ka-8) was prepared in his presence by Head Constable Mulchand and he also prepared site map (Ext. Ka-9). He thereafter raided the house of accused and recorded statements of various other witnesses on 11.04.1998 including Shri Om PW-2. On 27.4.1998, he took the accused Pravesh, Mukesh and Bablu @ Pappu into police custody for interrogation and for recording their statements. These three accused were again taken to police custody and on their pointing out a country made pistol was recovered from Mukesh and a knife each from Bablu and Pravesh respectively. He prepared the recovery memo (Ext. Ka-1) regarding this recovery and also prepared site map (Ex.Ka-4) of the place of recovery. After recording the statements of some other witnesses and completion of investigation, he submitted charge-sheet (Ext. Ka-10).

26. PW-5 in his cross examination stated that the informant Mahipal came to Police Station at 10:30 am and filed a report, at this time Rohtash was with him and report was given verbally.

Mahipal signed in Urdu in his presence and Mahipal and Rohtash stayed for about 10-12 minutes after lodging of the FIR. After recording the statement of the informant and Head Constable, he went with other Police Officials to the place of incident and informant was accompanying the Police party. They all reached place of incident at about 11:30 am. At that time, many people from both villages were present on the spot. He stayed at the spot for a considerable time and body of the deceased had not been tampered with, until he arrived. He further stated that body of the deceased was sent for post mortem at 2:30 to 3:00 pm by a tractor trolly. This witness clearly denied the suggestion of defence that the informant Mahipal did not report the incident. He further denied the suggestion that FIR was lodged later on.

27. **Constable Mangan Singh PW-6** is a witness of recovery of country made pistol and knives. He in his examination-in-chief has stated that on 02.05.1998, he was posted at Dhaulana Police Station. On that day, Mukesh, Bablu and Pravesh were taken into custody. S.H.O. Mahendra Pal Singh PW-5 brought these accused to recover the weapons (knives and country made pistol). **The accused Pravesh produced a knife after taking out from a clump of grass at the south-eastern corner of the bridge**. Mukesh also got recovered a country made pistol, accused Pappu got recovered a knife. **Both knives recovered were found stained with blood, a recovery memo was prepared on the spot, which bears his signature. Recovery memo available in S.T. No.149/1998, has been proved by this witness as Ex.Ka-1. Knife recovered from accused Bablu was proved by this witness as Material Ex.-1, cloth as Material Ex.-2, knife recovered from accused Pravesh as Material Ex.-3 and cloth as Material Ex.-4,** 0315 bore country made pistol and one cartridge recovered from Mukesh along with cloth as Material Exs. 5, 6 and 7. This witness is a witness of recovery. In his cross examination this witness stated that he had seen the murder-spot. This witness was thereafter cross-examined regarding recoveries made at the pointing out Bablu and Mukesh, however no question regarding recovery on pointing out of the present appellant was asked from this witness, therefore, his deposition regarding recovery of blood stained knife (Material Ex.3) on the pointing out of appellant-convict Pravesh, remained uncontroverted.

28. As S.T. No. 148/1999 was decided alongwith S.T. No. 149/1999, therefore, the prosecution adduced two witnesses, Head Constable Mulchand as PW-1 and independent witness Bhola @ Hariom as PW-2 as far as Case Crime No. 64/1998 under section 4/25 of Arms Act is concerned. Head Constable Mulchand PW-1 stated in his examination-in-chief that on the basis of recovery memo (Ext.Ka-3) relating to recovery of a pistol, two knives and cartridges, he registered Case Crime No. 58/1998 under Section 25 of Arms Act against Mukesh, Case Crime No. 62/1998, 63/1998, 64/1998 under Section 4/25 of Arms Act against Bablu and Pravesh. He proved FIR (Ex.Ka-2) and GD diary entry (Ex.Ka-3) regarding these case crime numbers. This witness has also confirmed recovery memo (Ex.Ka-1) on the basis of which aforesaid FIR and GD entry were made. He proved charge-sheet no. 48 (Ex.Ka-8) against the appellant in secondary evidence by identifying the signature of Raj Singh, who after concluding the investigation has filed the aforesaid charge-sheet. He is a formal witness.

29. **Lala @ Hariom PW-2** in S.T. No. 149/1999 is a witness of recovery, who in his examination-in-chief has stated that on 02.05.1998, he was visiting relatives in Parpa village at around 12:30 pm, when he was going from Parpa to Eklaidi, he saw Police Officers standing near a jeep. Mukesh, Bablu and Pravesh, who were handcuffed, were with the Police Officers and had

come there to help recover the weapons. **The Police Officers asked him to be a witness. Thereafter, Pravesh produced a knife from the east-west direction, accused Bablu also produced a knife.** He stated that there was blood on the knives. He also stated that on the spot, the accused said that they had killed Jagpal. This witness has confirmed that the recovery memo was prepared by the Police on the spot in his presence and recovery memo bears his signature. This witness in his cross examination had confirmed that recovery took place in between Eklaidi and Parpa villages. He further stated that Mahipal is his relative and on the date of incident he was returning from Parpa and was alone, even from this witness no question regarding recovery from present appellant was asked in his cross examination. He also stated that he frequently visits Parpa village. This witness has denied the defence suggestion that he was not present on the spot and that he was giving false evidence because he is a relative.

30. **Natthi Singh, DW-1** in his deposition has stated that he knows accused Leela, who had taken the land regarding which there was litigation between Jagpal and Pravesh, which was taken by Leela on sharing basis The aforesaid land was taken on sharing basis for one year and because of this, the informant Mahipal has falsely implicated Leela in this case. In his cross-examination, this witness fairly conceded that the Investigating Officer visited his village but, he did not tell the aforesaid fact to the Investigating Officer. He neither gave any kind of application to the Court nor Higher Authorities. Admittedly DW-1 is not an eye witness.

31. **Manvir Singh DW-2** has also deposed on the same line as that of Natthi Singh DW-1. The land, whose dispute was going on between accused Pravesh and his uncle Mahipal was taken by Leela on sharing basis from the father of accused Mukesh. This witness has stated that on the day of incident, the accused Leela was at the compound of Pradhan Chanderpal Singh and remained there till the inquest report of the deceased Jagpal was prepared, thereafter, he reached home. Accused Leela has been falsely implicated due to enmity of aforesaid land, which was taken by him on sharing basis from the father of accused Mukesh. In his cross-examination, this witness has stated that at the time of incident, he was in his compound, his compound and Village Pradhans compound are adjacent and having no wall. Therefore, he knows that Leela was in the compound at that time. **He further stated that the inquest report was prepared in his presence and he was a witness of the inquest report and has also signed same**. However, this witness stated that he did not tell the Investigating Officer that the accused Leela was in the compound of village at the time of incident, because the Investigating Officer had not asked him anything about this. **He further stated that he was witness of inquest and accused Leela was also present at the time of inquest.** He also confirmed that the dead body was taken away by tractor for post mortem examination in his presence. However, this witness has not stated that at which time, he received the information of death/murder of the deceased and at which time, this witness arrived at the spot with accused Leela. This witness is also not an eye witness but is a witness of inquest report.

32. **Arjun Singh DW-3** has stated in his examination-in-chief that he does not know Mukesh. **He stated that incident occurred at 7:00 am on 10.04.1998 but specifically denied his presence at the spot at the time of incident**. He further stated that two girls Beena and Jamuna, were the first to arrive at the spot. The place of incident was a furlong distance from his compound. He reached on the spot after hearing the girls shouts. On arriving the place of incident, he saw a man lying dead there and did not recognize him. People from Parpa village were also there, who

identified the deceased as Jagpal. Jaipal and Khadku were among one, who identified the deceased Jagpal and also informed Jagpals family. This witness has stated that family members of deceased arrived on the spot around 3-4 pm and the Police arrived around 4-5 pm. The deceaseds father arrived at 8:00 pm, but he denied to recognize him. He further stated that the dead body was taken at 9:00 pm. In this cross-examination, he stated that when he reached the spot, blood was flowing from the deceaseds body. He further stated that he does not know Mukesh, therefore, he cannot say that Mukesh was near around the place of occurrence. **He further stated that he did not know Jagpals father, therefore, he cannot say that whether he was on the spot or not. He further stated that he remained on the spot from 7:00 am till the Police took the body away. He fairly admitted that paper work was completed by the Police during this time, but he denied signing those papers**. He further stated that a lot of papers were prepared on the spot and however, his signature was not taken on any of the police papers. This witness is not an eye witness.

33. **Ravi Kumar DW-4** in his deposition has stated that Mukesh was married with his niece and Mukesh was in his village on the date of the incident. This witness has been examined in support of accused Mukesh regarding his plea of ali-bi. However, this witness has stated that he did not inform Sub-Inspector regarding this either orally or through written application. This witness is also not an eye witness.

34. **Omveer Singh DW-5** in his examination-in-chief has stated that deceased Jagpal was murdered at 8:00 am on 10.04.1998. He was informed by Bijendra, who was husband of Asha Balmiki of his village that a man had been killed in the village. When he reached at the spot, he saw that Jagpal of Parpa village was lying dead. He sent Village Chowkidar Kishori to inform this to the Police at Police Post Sapnawat. Therefore, a Constable from the Police Post came on the spot and then one Sub-Inspector arrived at 5:00 pm. He further stated that he knows the complainant Mahipal, who was not present on the spot, however, he arrived at 8:00 pm and the dead body remained on the spot. Therefore, the deceaseds family members did not allow the body to be moved. **The inquest of the dead body of the deceased was prepared at around 8:30- 8:45 pm and he signed the same. He further stated that he did not know any of the accused at that time. This witness in his cross-examination has admitted that recovery memos (Exs.Ka-5, Ka-6 and Ka-7) bears his signature and all these recovery memos were prepared in his presence.** He does not remember that aforesaid recovery memos were prepared prior to or before preparation of the inquest report. He was asked to sign the inquest report but he does not remember whether his signature was obtained or not, because it was night time. He denied the prosecution suggestions that inquest report was prepared at 11:00 am. He further stated that body of the deceased was covered with blood and he arrived on the spot at about 9:00 am after about half an hour of the incident. Information to police was sent orally through Chaukidar. When he arrived at spot, there was no family members of the deceased. However 200 people were present on the spot. Investigating Officer has recorded his statement. He came to know the name of the accused after registration of the FIR**. Lastly, this witness stated that he could not say whether accused named in the FIR, are the real accused persons or not, because he was not present on the spot at the time of the incident, therefore, this witness is also not an eye witness.**

35. In this case, the defence also summoned the prosecution witness Rohtash. As per prosecution story, he was an eye witness of the incident, however Rohtash appeared in person

before the Court and submitted an Application No. 127-Kha that he had been summoned to give evidence in defence of the accused persons. However, he is an old and sick person and is relative of both the parties, therefore, he does not want to depose/testify. He, therefore, requested to discharge from giving his testimony.

(i) **Whether the appellant-convict Pravesh had any motive to commit murder of the deceased or not?**

36. Learned counsel for the appellant- convict has vehemently argued that the appellant Pravesh had no motive to commit crime in question. However, learned counsel for the appellant fairly conceded that motive, if any, was with accused Mukesh, Bablu, Chanderpal and other accused Leela. In the Written Report/Tehrir, the prosecution has come forward with a specific motive regarding long pending case of a land dispute between informant and Chheda son of Khachedu since 1972. It has also been specifically mentioned in the Written Report that after the death of Chheda, his sons Mukesh and Bablu @ Pappu were pursuing the case on his behalf, whereas on behalf of informant, his son deceased Jagpal was pursuing the aforesaid case. The informant, Mahipal PW-1, in his deposition, has affirmed these facts stated in written report and has clearly stated that the aforesaid civil case for land dispute was pending between him and father of accused Mukesh, namely Chheda. PW-1 further stated that in a case of illegal harvesting of his crop, accused Chanderpal was an accused. His son Jagpal was pursuing the aforesaid case on his behalf, whereas from other side, accused Mukesh was pursuing the case. They won the aforesaid case and got a decree in their favour. The land in dispute was auctioned, which was purchased by him in the auction of aforesaid land. In his cross examination, this witness again affirmed the aforesaid facts and has stated that the cases in the Courts of Hapur and Ghaziabad were still going on regarding the aforesaid dispute. He further affirmed the involvement of accused Chanderpal in the criminal case regarding illegal harvesting of his crop.

37. Shri Om PW-2 has also affirmed aforesaid pendency of cases regarding land dispute between the parties in his deposition. It was a clear case of the prosecution that as the land in question was purchased by the informant in an auction, therefore, the accused were having a grudge and thus, they committed the present crime. Thus, from the side of prosecution, aforesaid land dispute and purchase of land in question by the informant in an auction was the motive behind the murder of the deceased Jagpal. This question was subsequently put to all the accused in their statement recorded under Section 313 Cr.P.C.. The accused Mukesh in answer to question no. 3 has clearly stated that the aforesaid land case started in 1972 between the informant Mahipal, Chheda and father of accused Pravesh, therefore, the accused Mukesh clearly admitted pendency of aforesaid civil suit. Accused Pravesh however denied the aforesaid question no.3, but stated that there was no litigation between him i.e. accused Pravesh and informant side. Accused Pravesh kept silent regarding pendency of aforesaid civil suit between the informant and his father as was stated by his co-accused Mukesh. Accused Pravesh in answer to question no.13 has stated that whatsoever the statement of Mukesh , the same be read as his statement.

38. However, prosecution has placed on record certified copies of orders etc. relating to the land case before the learned trial Court vide its application 111-Kha. The aforesaid documents have been annexed as 112Kh-1, 112Kh-2, 121-Kha, 117-Kha in the file of learned trial Court. The

prosecution has also filed certified copy of the order-sheet of Execution No. 12/1996, Mahipal vs. Chheda as 121-Kh vide application 120-Kh.

39. DW-1 Natthi Singh, who is a defense witness has clearly stated in his deposition that the civil suit regarding land dispute was contested between deceased Jagpal and accused Pravesh etc. and the aforesaid land was taken on sharing basis by accused Leela for accused Chanderpal

40. The deposition of Manvir Singh DW-2 is much more important, as he in his deposition has clearly stated that civil suit was contested between his uncle Mahipal and accused Pravesh etc. He further stated that the land in dispute was taken by Leela from father of accused Mukesh on sharing basis. In the aforesaid civil case, Mahipal also impleaded Leela as a party. Thus, it is crystal clear that there was an enmity of land dispute between the parties. Not only the accused but their defense witnesses have also admitted this fact. Thus, admittedly on account of this, there was an enmity between both the parties on account of continuous litigation regarding land dispute since 1972.

41. We have carefully gone through the reasons recorded by the learned trial Court on this issue and we are of the opinion that the reasons given by the trial Court are in accordance with oral and documentary evidence available on record. However, as learned counsel for the appellant argued that accused Pravesh had no motive, therefore, we have carefully perused the record and find that the aforesaid argument of learned counsel is completely baseless because the defense witnesses themselves have clearly stated that in the aforesaid litigation, accused Pravesh was also a party and accused Mukesh has clearly stated in his statement recorded under Section 313 Cr.P.C. that aforesaid litigation was pending not only between his father and informant but also between father of accused Pravesh. In the light of aforesaid fact, we have perused the documents available on record. The Execution No. 32/1981 arising out of Original Suit No. 327/1970 was between the informant and accused Mukesh and Pappu, whereas Execution No. 49/1985 arising out of Original Suit No. 327/1970 was between the informant and Bramha, Jagvir and Chanderpal. Meaning thereby that in Civil Suit No. 327/1970 informant and Chheda, Bramha, Jagvir and Chanderpal were parties.

42. After the death of Chheda, his sons Mukesh, Pappu @ Bablu, daughter Meena Kumari and widow Gayatri Devi were impleaded as party. Bramha is father of present appellant Pravesh. Therefore, it is clear that father of accused Pravesh also lost the aforesaid civil suit and therefore, he was also having a motive to commit the aforesaid crime. Thus, he (appellant-convict) cleverly made a statement in his statement recorded under Section 313 Cr.P.C. that there was no litigation between him and the informant side and concealed the fact of litigation between his father and the informant side. Therefore, the prosecution has been able to successfully prove the motive on the side of accused party more particularly in this appeal against the present appellant-convict i.e. Pravesh also.

43. Law is well settled that enmity is a double edge weapon which can be used by either of the side. It can be a ground for false implication and it can be a motive for commission of crime. The law on this issue is already well established that when ocular testimony inspires the confidence of the Court, the prosecution is not required to prove the motive. Mere absence of motive would not impinge on the testimony of a reliable eye witnesses. Motive is an important factor for

consideration in a case of circumstantial evidence. But when there are direct eye witnesses, motive is not significance.

44. Honble Supreme Court in **Chandan vs. State (Delhi Admn.) (2024) 6 SCC 799,** has held that the principle that the lack or absence of motive is inconsequential when direct evidence establishes the crime. In the present case, prosecution has produced PW-1 and PW-2, who in their depositions have stated that the appellant-convict has stabbed the deceased with knife along his co-accused, with common intention to murder him (deceased), therefore, motive in the present case, pales into significance. However, the prosecution has been able to prove even the motive against the appellant-convict, even from the depositions of defence witnesses as well as statement of co-accused recorded under Section 313 Cr.PC.

45. From perusal of certified copies available on the record of trial Court, it is clear that informant Mahipal succeeded in the litigation and purchased the land of the accused in an auction. Therefore, the informant side won the litigation and it was the accused side, who lost the auction. In this circumstances, the accused side had a strong motive on account of resentment that their ancestral land was taken over by the informant side by winning the litigation, therefore, we are of the opinion that the motive to commit crime is stronger on the part of the accused persons rather than informant falsely implicated them. **Question no. I is answered in the Affirmative.**

(ii) Whether there is any delay in lodging FIR?

46. In the present case, on the oral information of the informant Mahipal PW-1, FIR (Ex.Ka-1) was lodged at 10:30 am. As per the FIR, time of incident was 8:45 am and place of incident was about 12 km away from the concerned Police station. As per inquest report (Ex.Ka-8), information was received in the concerned Police Station at 10:30 am on 10.4.1998 and Head Constable Mulchand arrived at the place of incident at 11:00 am and concluded the proceedings of inquest at around 12:15 pm/noon. The informant PW-1 was cross-examined at length to prove that the FIR was lodged belatedly, however, nothing material came in cross examination to doubt that he had not arrived in the concerned Police Station at the time shown in the FIR. Head Constable Mulchand PW-3 in his deposition has clearly stated that on 10.4.1998, FIR was lodged at 10:30 am, however, this witness was not cross-examined by the defence. Meaning thereby that evidence of this witness regarding registration of FIR by this witness at 10:30 am, remained uncontroverted. Investigating Officer Mahendra Pal PW-5 in his deposition has stated that aforesaid case crime number was registered in his presence and he has been thoroughly cross examined and nothing suspicious came in his cross-examination that the aforesaid FIR was not lodged in the morning of 10.4.1998. Therefore, we have carefully perused the oral as well as documentary evidence with regard to registration of the FIR at the instance of informant and we are of the opinion that the FIR was lodged promptly and there is no unnecessary delay in lodging the FIR. **Question no. II is answered in Negative.**

(iii) Whether non examination of alleged eye witness Rohtash is fatal to the prosecution and adverse inference is to be drawn against the prosecution or not?

47. Learned counsel for the appellant has vehemently argued that material witness Rohtash has been intentionally withheld by the prosecution and, therefore, an adverse inference has to be drawn against the prosecution. Law on this point is well settled that it is not the number of witnesses, which is important and material for prosecution to prove its case, rather it is the quality of the deposition of the witnesses, which is important and material for the prosecution to prove its case.

48. In **Bhimappa Chandappa v. State of Karnataka (2006) 11 SCC 323,** the Hon'ble Supreme Court held that testimony of a solitary witness can be made the basis of conviction. The credibility of the witness requires to be tested with reference to the quality of his evidence which must be free from blemish or suspicion and must impress the Court as natural, wholly truthful and so convincing that the Court has no hesitation in recording a conviction solely on his uncorroborated testimony.

49. The Honble Apex Court in **Joy Devaraj v. State of Kerala, (2024) 8 SCC 102** has held that even otherwise, Section 134 of the Evidence Act, 1872 ordains that no particular number of witnesses is required, in any case, to prove a fact. Therefore, it is not the law that a conviction cannot be recorded unless there is oral testimony of at least two witnesses matching with each other. It is the quality of evidence and not the quantity that matters. If the evidence of a solitary witness appeals to the Court to be wholly reliable, the same can form the foundation for recording a conviction.

50. The Apex Court in the case of **Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434** has held that the prosecution is not bound to examine all the cited witnesses, and it can drop witnesses to avoid multiplicity or plurality of witnesses. The accused can also examine the cited, but not examined witnesses, if he so desires, in his defence. It is the discretion of the prosecutor to tender the witnesses to prove the case of the prosecution and the Court will not interfere with the exercise of that discretion unless, perhaps, it can be shown that the prosecution has been influenced by some oblique motive. In an extraordinary situation, if the Court comes to the conclusion that a material witness has been withheld, it can draw an adverse inference against the prosecution, as has been provided under Section 114 of the Evidence Act. Undoubtedly, the public prosecutor must not take the liberty to pick and choose his witnesses, as he must be fair to the Court, and therefore, to the truth. In a given case, the Court can always examine a witness as a Court witness, if it is so warranted in the interests of justice. In fact, the evidence of the witnesses must be tested on the touchstone of reliability, credibility and trustworthiness. If the Court finds the same to be untruthful, there is no legal bar for it to discard the same.

51. The Honble Supreme Court while summarising the law in the case of **Ravasaheb v. State of Karnataka, (2023) 5 SCC 391** has observed that when a case involves a large number of offenders, prudently, it is necessary, but not always, for the court to seek corroboration from at least two more witnesses as a measure of caution. Be that as it may, the principle is quality over quantity of witnesses.

52. The Apex Court in the case of **Avtar Singh v. State of Haryana, (2012) 9 SCC 432** has interpreted the law as :

"18. The learned counsel further submitted that though the prosecution would claim injuries on several persons of the complainant party, the other persons who were stated to have been injured or were present at the place of occurrence were not examined. In this context, it will be relevant to refer to the decision of this Court reported in Tej Parkash v. State of Haryana [(1996) 7 SCC 322 : 1996 SCC (Cri) 412] wherein this Court held that all the witnesses of the prosecution may not be called and it is sufficient if witnesses who were essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution. The legal position has been stated in para 18 as under : (SCC p. 330)

18. In support of his contention that serious prejudice was caused to the appellant by non-examination of Phool Singh who had been cited by the prosecution as one of the witness, Mr Ganesh relied upon Stephen Seneviratne v. R. [(1936) 44 LW 661 : AIR 1936 PC 289] , Habeeb Mohammad v. State of Hyderabad [(1953) 2 SCC 231 : AIR 1954 SC 51 : 1954 Cri LJ 338 : 1954 SCR 475] and State of U.P. v. Jaggo [(1971) 2 SCC 42 : 1971 SCC (Cri) 401] . The aforesaid decisions can be of little assistance to the appellant in the present case. What was held by the Privy Council and this Court was that witnesses who were essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution whether the effect of their testimony is for or against the case for the prosecution and that failure to examine such a witness might affect a fair trial. It was also observed that all the witnesses of the prosecution need not be called. In the present case, the witnesses who were essential to the unfolding of the narrative had been examined.

19. The law on this aspect can be succinctly stated to the effect that in order to prove the guilt of the accused, the prosecution should make earnest effort to place the material evidence both oral and documentary which satisfactorily and truthfully demonstrate and fully support the case of the prosecution. Where there were several persons stated to have witnessed the incident and the prosecution examined those witnesses who were able to depose the nature of offence committed more accurately leaving no room for doubt about the involvement of the accused in the occurrence and the extent of their involvement with specific overt act and also were able to withstand the cross-examination by maintaining the sequence and the part played as originally stated, it will be wholly irrelevant and unnecessary to multiply the number of witnesses to repeat the same version."

53. The Apex Court in State of **M.P. Vs. Balveer Singh, (2025) 8 SCC 545** has held that there is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subordination of witnesses.

54. Thus, law on this issue is well settled that no particular number of witnesses is required in any case to prove a particular fact. It is the quality of the evidence and not the quantity, which matters, if the evidence of a solitary witness appeals to the Court to be wholly reliable, the same can form the foundation in recording a conviction. The prosecution is not bound to examine all the cited witnesses, and it can drop witnesses to avoid multiplicity or plurality of witnesses. If number of persons are injured in an incident, then it is not essential for the prosecution to examine all such witnesses and the prosecution may choose to examine such number of witnesses, who in its opinion are essential to prove the prosecution story. In a given case, not only the accused but Court can always examine a witness as a Court witness, if it is so warranted in the interest of justice. The defence can examine any cited witness, who has been dropped by the prosecution, if it so desires.

Therefore, the prosecution can prove its story not only with the help of a reliable solitary witness, but can also call some other witnesses, not necessarily all the eyewitnesses or all the injured witnesses, which it finds essential for proving its case. There might be a number of reasons for the prosecution for not examining all the cited witnesses in a case, if quality of the oral evidence of a single witness or any number of witnesses adduced by it, are sufficient to prove its case.

55. In the present case, the informant Manipal PW-1 and Shri Om PW-2 have been examined as eye witnesses of the incident. Both of these witnesses were cross-examined on different dates and that too at length. The deposition of PW-1 started on 2.12.1999 and concluded on 25.08.2000, whereas the deposition of PW-2 started on 3.11.2000 and concluded on 04.04.2001. Thus, these witnesses were examined at length. However, prosecution witness Rohtash was summoned by the defence as a defence witness. The aforesaid prosecution witness Rohtash appeared in person before the trial Court and submitted an application clearly stating that he is a relative of both the parties, therefore, he does not want to depose and requested to be discharged from giving his testimony. Therefore, neither the prosecution nor defence has examined this witness. PW-1 and PW-2 have given detailed evidence regarding the incident, therefore, non examination of Rohtash, who is a relative of both the informant and defence, is not fatal at all to the prosecution and no adverse inference can be drawn against the prosecution for his non examination. **Question no. III is thus answered in Negative.**

(iv) Whether the prosecution could be said to have prove its case against the appellant-convict beyond reasonable doubt?

56. On the point of appreciation of oral evidence of a witness the Apex Court in **Balu Sudam Khalde v. State of Maharashtra, (2023) 13 SCC 365** held the law in following words:

"Appreciation of oral evidence

25. The appreciation of ocular evidence is a hard task. There is no fixed or strait jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eyewitness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of

a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.

[See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat [Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217 : 1983 SCC (Cri) 728 : AIR 1983 SC 753] , Leela Ram v. State of Haryana [Leela Ram v. State of Haryana, (1999) 9 SCC 525 : 2000 SCC (Cri) 222 : AIR 1999 SC 3717] and Tahsildar Singh v. State of U.P. [Tahsildar Singh v. State of U.P., 1959 SCC OnLine SC 17 : AIR 1959 SC 1012]

27. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the

facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence."

57. The Honble Supreme Court in the case of **Bhagwan Jagannath Markad v. State of Maharashtra, (2016) 10 SCC 537** explained that :

"19. While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. Section 155 of the Evidence Act enables the doubt to impeach the credibility of the witness by proof of former inconsistent statement. Section 145 of the Evidence Act lays down the procedure for contradicting a witness by drawing his attention to the part of the previous statement which is to be used for contradiction. The former statement should have the effect of discrediting the present statement but merely because the latter statement is at variance to the former to some extent, it is not enough to be treated as a contradiction. It is not every discrepancy which affects the creditworthiness and the trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting the credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted [Leela Ram v. State of Haryana, (1999) 9 SCC 525, pp. 532-35, paras 9-13 : 2000 SCC (Cri) 222] . Want of independent witnesses or unusual behaviour of witnesses of a crime is not enough to reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit. The evidence may be closely scrutinised to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a partisan or interested witness may lead to failure of justice. It is well known that principle falsus in uno, falsus in omnibus has no general acceptability [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381, pp. 392-93, para 15 : 2003 SCC (Cri) 32] . On the same evidence, some accused persons may be acquitted while others may be convicted, depending upon the nature of the offence. The court can differentiate the accused who is acquitted from those who are convicted. A witness may be untruthful in some aspects but the other part of the evidence may be worthy of acceptance. Discrepancies may arise due to error of observations, loss of memory due to lapse of time, mental disposition such as shock at the time of occurrence and as such the normal discrepancy does not affect the credibility of a witness.

20. Exaggerated to the rule of benefit of doubt can result in miscarriage of justice. Letting the guilty escape is not doing justice. A Judge presides over the trial not only to ensure that no innocent is punished but also to see that guilty does not escape. [Gangadhar Behera case, (2002) 8 SCC 381, p. 394, para 17]

31. As already observed, the discrepancies of trivial nature could not be the basis of rejecting the evidence of injured eyewitnesses nor non-examination of some of the witnesses be a ground to reject the prosecution case when injured eyewitnesses were examined.

32. We may also refer to the judgment of this Court in Masalti v. State of U.P. [Masalti v. State of U.P., AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] to the effect that the evidence of interested partisan witnesses though required to be carefully weighed, the same could not be discredited mechanically. When a crowd of unlawful assembly commits an offence, it is often not possible to accurately describe the part played by each of the assailants. Though the appreciation of evidence in such cases may be a difficult task, the court has to perform its duty of sifting the evidence carefully."

58. The Honble Apex Court in **State of M.P. v. Balveer Singh, (2025) 8 SCC 545** has held that when eyewitness are examined at length, it is quite possible for them to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. The role of courts in such circumstances assumes greater importance and it is expected of the courts to deal with cases like one in hand, in a more realistic manner and not allow the criminals to go scot-free on account of procedural technicalities, perfunctory investigation or insignificant lacunas in the evidence as otherwise serious crimes would go unpunished.

59. In the light of above well settled legal position regarding appreciation of oral evidence, we shall now be evaluating the depositions of PW-1 and PW-2.

60. **Informant Mahipal Singh PW-1** in his deposition has stated that the incident occurred on 10.04.1998, when his son Jagpal Singh and his brother-in-law Shri Om were going from their village to Hapur on a bicycle. They had a land dispute with Chheda, (father of accused Mukesh) and accused Chanderpal was also involved in harvesting their crops. His son Jagpal was pursuing their side and accused Mukesh was pursuing other side. On the date of incident, he (informant) and Rohtash were going together to Eklaidi to hire labourers. About 50 steps before the place of incident, his son Jagpal and his brother-in-law (Shri Om) crossed path with them and when they reached the culvert near Eklaidi, it was around 8:45 am, then four accused Mukesh, Bablu, Pravesh and Leela came out there together and Mukesh immediately said Beat them up and kill that bastard! Lets see how he takes the land. on this, accused Pravesh, Leela attacked Jagpal with sticks (lathi). Before this as soon as Mukesh spoke, Shri Om jumped off his bicycle. Mukesh had a country made pistol and Bablu had a knife. Mukesh fired from his country made pistol, but it missed. Then, Mukesh and Bablu started attacking with country made pistol and knife. Thereafter, Mukesh took out a knife from his pocket and attacked Jagpal. Accused Pravesh also took out his knife and stabbed Jagpal. When they shouted to save Jagpal, then accused pointed their country pistol on us and ran towards us. He (informant) and Rohtash jumped towards the canal. Shri Om ran towards Eklaidi, while shouting. More people came on hearing shouts. The accused fled towards Parpa village. The accused were chased. Mukesh was caught but he managed to escape. Thereafter, he (informant) and Rohtash went to the Police Station, where he dictated his report, which this witness has proved as Ex.Ka-1.

61. In his cross-examination, Mahipal Singh PW-1 fairly stated that his son (deceased) was pursuing his civil case for last 6-7 years. He also used to accompany him. His statement was taken by the Investigating Officer soon after recording of the first information report at around 10:45 am. When they arrived on spot, then, Jagpal had already passed away. Blood was oozing out from the wounds of knives blows, he (deceased) sustained several knife injuries on his face. The deceased was having stabbing marks of knives on several places of his face. He (informant) remained on the spot for half an hour. There were two girls, aged about 15/16 and 9/10 years. The deceased Jagpal was lying on the road, half on paved road and half unpaved road, towards north-east of culvert. The deceased was wearing a coca-cola colour pant and was also a wearing a full sleeved white shirt having green strips. The deceased was also wearing shoes and was carrying a bag containing papers relating to his case. He could not remember whether the Investigating Officer remained on the spot from 10:45 to 11:45 am, however, he (Investigating Officer) remained on spot for considerable length of time.

62. In this cross-examination, PW-1 further stated that on the spot, there were 3-4 Sub Inspectors, 2-3 Constables and one driver. He further stated that his signature was not taken on any paper. He affirmed that on the date of incident, he and Rohtash were going from their village to hire labourers for harvesting their corps. The statement of brother-in-law of the deceased, namely, Shri Om was probably taken on the next day or day after next day by the Investigating Officer. He further confirmed that accused Chanderpal used to pursue this case between him and Chanderpal, which was pending since 1975. Before Chanderpal, Chheda was pursuing the aforesaid case. His litigation against the father of the accused Mukesh is pending since 1972 regarding chakbandi. The aforesaid cases are pending in the Courts of Hapur and Ghaziabad. **The disputed land is 6 bigha, which was owned by Jagvir, Brahma and Chanderpal.** The aforesaid land was purchased by this witness in an auction. He also purchased another land of 9 bigha, however, Mukesh etc. did not have any relation with this land. The accused Chanderpal is also an accused of illegal harvesting of his (PW-1s) crops. This incident is of 10.04.1998 and had occurred toward western side of village Eklaidi. **Just before the incident, the deceased Jagpal had crossed him and moved about 50 steps ahead at the time of incident. The accused came from eastern side, i.e., from Eklaidi. The statement of this wintess in examination-in-chief and aforesaid reply in cross-examination fully corroborated the site plan (Ex.Ka-9).** The accused Mukesh was wearing black pant and a dirty white shirt, Bablu was wearing a full-sleeved shirt and Pravesh was wearing brown colour pant and a grey half-sleeved shirt. Mukesh had a country made pistol, Pravesh had a stick in his hand and Bablu had a knife in his hand and Leela also had a stick in his hand. All the accused persons had surrounded the deceased, therefore, he could not run at the time of incident. It was Mukesh, who exhorted and said Kill the bastard, I will see how he gets the land. and fired a shot from country made pistol, which missed. At the behest of Mukesh, Leela and Pravesh attacked the deceased with sticks, Jagpal fell down from his bicycle, Bablu has stabbed him 2-3 times. Mukesh also took out a knife, he was also having a country made pistol in his other hand. **The present appellant-convict Pravesh and Mukesh also stabbed the deceased. Pravesh was also having a stick in his other hand. When Jagpal fell down his head was in northern direction and his legs were in southern direction**. He reached the Police Station at 10:15 -10:30 am, soon after his arrival, he lodged the first information report and soon after registration of FIR, his statement was recorded by the Investigating Officer. The Police arrived at the spot of incident at about 11:15 am. The inquest report was prepared, blood stained soil was collected, dead-body of the deceased was

sealed and several documents were prepared. However, he has not signed any such papers. This witness denied suggestion of defence that he was not present on the spot, therefore, he has not signed any documents. He further stated that he cannot tell that how long the Police party was present at the spot but they have stayed for a considerable period. He did not go alongwith the dead body and he cannot tell at which time, the dead body was taken for the post mortem.

63. **Shri Om PW-2** was brother-in-law of the deceased Jagpal, who in his examination-in-chief stated that on 10.4.1998 he was going to Hapur with Jagpal Singh by a bicycle. Jagpal was riding it (bicycle) and he was sitting behind. A bag, in which documents were kept, was hanging on the front handle of the bicycle. When they reached near culvert of the canal track, opposite to unpaved path near village Eklaidi then at 8:45 am Mukesh, Leela, Pravesh and Bablu came towards Eklaidi in front of them. Mukesh said, let us see how he takes the land and exhorted for killing him. Mukesh had country made pistol in his hand. Bablu had a knife in his hand. Both Leela and Pravesh were having sticks in their hands. He jumped from the bicycle and Leela and Pravesh attacked the bicycle with sticks because of which, Jagpal fell down on the ground from his bicycle. Mukesh shot at Jagpal, which was missed, thereafter, Mukesh with butt of his country made pistol and Bablu with knife started assaulting Jagpal on his face. Mukesh and Pravesh also took out their knives and attacked Jagpal, he ran screaming towards Eklaidi on which many people of Eklaidi came on the spot, then accused after hitting Jagpal ran away in the opposite direction. The people of Eklaidi chased them, Mukesh was caught in the field of Amarpal, however, he was freed by Amarpal and thereafter he ran away. When he returned to the culvert, Jagpal had already died. He admitted that the informant Mahipal and Rohtas also arrived at the spot alongwith people of Eklaidi. Mahipal and Rohtash were coming behind them, whom they met in the way. Mahipal and Rohtash went to Police station.

64. PW-2 in is cross examination stated that he had not run from the spot, however, he was only at a distance of 10 steps from the place of incident. He saw the incident from there and Police arrived on the spot after about 2 and hours of the incident (which is around 11:15 am). Police party was consisting of 3-4 Sub Inspectors and 7-8 Constables. **Feet of the deceased were in southern direction whereas his head was in northern direction.** Handle of the bicycle was in northern direction whereas back side bicycle was in western direction. His right leg was entangled in the back side of wheel of the bicycle. When Mukesh exhorted and threatened to kill, he immediately get away from bicycle to save his life because accused were armed with weapons. Police party remained on the spot for about 1 -2 hours. Inquest report was prepared in his presence. He had not gone alongwith dead body, therefore, he cannot tell who accompanied the dead body. He knew appellant Pravesh even before the incident. As soon as the accused persons exhorted, he jumped from the bicycle and after going 10-15 steps, stood there and watched. Pravesh and Leela firstly struck with sticks, he cannot tell whose stick hit first. **He also stated that Pravesh also hit with a knife. Pravesh was having a stick in his left hand and Pravesh had assaulted the deceased with knife once or twice.** Mukesh also attacked the deceased with knife. Bablu, Mukesh and Pravesh were carrying knife in the hands. The incident took place in 2-3 minutes. He did not attempt to save his brother-in-law because accused were carrying weapons in their hands. Two girls came and remained present on the spot. He chased the accused with people of Eklaidi because he was hoping that his brother-in-law has been left alive and that was the reason that he immediately did not return to his brother-in-law. However, when he returned, then he found his brother-in-law

dead. Father of the deceased was about 50 steps behind them. When he returned back on the spot, he saw the deceaseds father sitting in Taanga. Father of the deceased arrived on the spot after lodging the FIR at about 11.30 am on a Jeep, he was accompanied by Police party and Rohtash. Police personnel were 11-12 in numbers, who collected blood stained soil and also prepared documents of the deceased. Police also recorded statement of Rohtash and prepared deceaseds inquest report, however, he has not signed any papers. Police remained on the spot for about 1:30-1:45 hours. The dead body was sent for post mortem examination at around 12:30 noon. He cannot tell who accompanied the dead body for post mortem as he has not gone to the mortuary. He denied the defense suggestion that he did not recognize Pravesh. When he was cross examined on behalf of accused Chanderpal he stated that he saw accused from a distance of 4-5 steps. After getting off bicycle he ran towards eastern direction and after running for 10-15 steps he stopped and kept standing there for 3-4 minutes and watched the incident. After the incident, he ran towards southern side for chasing the accused for about 1 km.

65. The examination-in-chief of informant Mahipal Singh PW-1 was conducted on 2.12.1999, however, his cross-examination was deferred and this witness was cross-examined at length on 12.05.2000, 24.05.2000, 24.08.20000 and 25.08.2000. Similarly, the examination-in-chief of Shri Om PW-2 was conducted on 03.11.2000, however, his cross-examination was also deferred and PW-2 was also cross-examined at length on 15.03.2001 and 04.04.2001. It is thus, fairly clear that lot of time was taken by the defence in conclusion of cross-examination of both these witnesses. Both these witnesses have been cross-examined extensively that too on different dates, therefore, some contractions are bound to occur in their depositions. Learned counsel for the appellant has drawn attention of this Court towards the contradictions regarding different numbers of Police Personnel present near the dead body of the deceased when the Police party arrived on the crime scene, however, this contradiction is not a material contradiction. We have carefully gone through the depositions of both these witness, however, their depositions as far as date, place and manner of incident is concerned, remained consistent and whatever contradictions are there in their depositions, those contradictions are minor contradictions, which do not affect the credibility of prosecution story.

66. Honble Supreme Court in **Motiram Padu Joshi and others vs. State of Maharashtra (2018) SCC 429,** has clearly observed that it is unreasonable to contend that evidence given by a related witness should be discarded only on the ground that such witness is related. It is fairly well settled that relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Honble Supreme Court in this case, has also observed that evidence of eye witnesses cannot be doubted on the ground that they did not intervene in the attack nor made attempts to save the deceased. On witnessing a crime, each person reacts in his own way and their evidence cannot be doubted on the ground that the witness has not acted in a particular manner. Therefore, evidence of an eye witness, is not to be disbelieved simply because he has not reacted in a particular manner. In this case, PW-2 and PW-3 and PW-4 stated that on seeing a number of accused armed with deadly weapons, they got frightened and went inside the house and stood near the window and saw the occurrence, however Honble Supreme Court held that their evidence cannot be doubted on the ground that they did not intervene in the attack nor made attempt to save the deceased. In this case, the name of PW-

2 was mentioned in the FIR, but the names of PW-3 and PW-4 were even not mentioned whereas all these were brothers of the deceased.

67. In the present case, PW-1 and PW-2 are father and brother-in-law (Sadhu) of the deceased respectively. However, their relationship is not a factor to affect the credibility of these witnesses. Both these witnesses have clearly deposed in their depositions that the accused were armed with deadly weapons and when PW-1 shouted to save his son, then accused threatened PW-1 and his companion with country made pistol, on which, they jumped into canal. PW-2 in his deposition has clearly stated that he jumped from bicycle to save his life and he could not save his brother-in-law (Sadhu) because accused were armed with deadly weapons. Thus, it is apparently clear that PW-1 and PW-2 got frightened and saved their lives. Therefore, their evidence cannot be doubted on the ground that they neither intervened in the attack nor made attempts to save the deceased. We are, therefore, not impressed with the argument advanced by the learned counsel for the appellant-convict on this point.

68. It was strenuously argued by the learned counsel for the appellant that P.W.1 and P.W.2 inspite of being eyewitnesses and also inspite of being present on spot at the time of inquest proceedings, had not signed police papers including the inquest report, therefore, they are not the eye witnesses and were not present on the spot. There is no requirement of law that an eyewitness, who if present on the spot at the time of inquest proceedings, is required to sign the inquest report and other recovery memos so as to prove his presence on the spot as well as to prove that he is an eye witness of the incident.

69. Honble Supreme Court in **Brahm Swaroop and Another Vs. State of U.P., A.I.R. 2011 Supreme Court 280** in para 7 of this judgment has categorically held that evidence of eye witnesses cannot be discarded, if their names do not figure in the inquest report prepared at the earliest point of time. The inquest report cannot be treated as substantive evidence but may be utilized for contradicting the witnesses of inquest. The whole purpose of preparing an inquest report is to investigate into and draw up a report of the apparent cause of death, describing such wounds as may be found on the body of the deceased and stating as in what manner, or by what weapon or instrument such wounds appear to have been inflicted. The object of the proceedings under Section 174 Cr.P.C. is merely to ascertain whether a person died under suspicious circumstances or met with an unnatural death and, if so, what was its apparent cause.

70. Similarly, Honble Supreme Court in **Radha Mohan Singh Vs. State of U.P., (2006) 2 SCC 450** in para 15 has clearly held that an investigation under Section 174 Cr.P.C. is limited in scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under Section 174. In **Shakila Khader v. Nausher Gama AIR 1975 SC 1324** the contention raised that non-mention of a person's name in the inquest report would show that he was not an eye witness of the incident was repelled on the ground that an inquest under Section 174 Cr.P.C. is concerned with establishing the cause of death and only evidence necessary to establish it need be brought out. The same view was taken in Eqbal Baig v. State of Andhra Pradesh, AIR 1987 SC

923, that the non-mention of name of an eye-witness in the inquest report could not be a ground to reject his testimony. The view taken in **Podda Narayan v. State of A.P. (supra)** was approved by a three-Judge Bench in **Khujji @ Surendra Tiwari v. State of Madhya Pradesh, AIR 1991 SC 1853** and it was held that the testimony of an eye-witness could not be discarded on the ground that their names did not figure in the inquest report prepared at the earliest point of time. There is absolutely no requirement in law of mentioning the details of the FIR, names of the accused or the names of the eye-witnesses or the gist of their statement nor it is required to be signed by any eye-witness. **Therefore, the contention of learned counsel for the appellant that P.W.1 and P.W.2 are not the eyewitnesses as they have not signed the inquest report or other police papers falls flat.**

71. The learned counsel for the appellant-convict had also argued that the statement of PW-2 was recorded late by the Investigating Officer and, therefore, it loses significance. However, PW-5 in his deposition, has clearly stated that the statement of Shri Om PW-2 was recorded on 11.04.1998, i.e. on the very next day of the incident. Thus, there is no such delay, which caused any doubt on the deposition of PW-2 merely on the ground that his statement was recorded on the next day of the incident. Moreover, law on this issue is also well settled that delay in recording witness statement is not fatal per se.

72. The Honble Apex Court in **Firoz Khan Akbar Khan Vs. State of Maharashtra, 2025 SCC OnLine SC 627** has clearly held that delay in recording the statement of witness would not draw an adverse inference against the prosecution case if the delay is adequately explained.

73. In the present case, the Investigating Officer conducted a number of proceedings on 10.04.1998 and even recorded the statement of informant and Chik Writer, prepared site plan, prepared recovery memos and got prepared inquest report and thereafter on the very next day has recorded the statement of Shri Om and, therefore, there is no delay in recording the statement of PW-2. Thus, the arguments of learned counsel for the appellant convict on this point is devoid of any merit.

74. The defense has examined Nathi Singh DW-1, Manvir DW-2, Arjun Singh DW-3, Ravi DW-4 and Omvir DW-5 as defense witnesses before the learned trial Court. All of these witnesses were not eye witnesses of the incident, therefore, their depositions as far as presence of accused on the spot, more particularly the present appellant- convict is concerned, is of no significance.

75. DW-1 has deposed that the accused Leela was falsely implicated because he took the disputed land on sharing basis whereas a case regarding this disputed land was going on between Jagpal and Pravesh etc. DW-2 is a witness of alibi of accused Leela and DW-4 is a witness of plea of alibi of accused Mukesh. Both DW-1 and DW-4 were not present on the spot at the time of incident. Village Parpa is not far away from the place of incident, therefore, deposition of DW-1 as far as plea of alibi of accused Leela is concerned, was not helpful to the defense. However, deposition of DW-4 as far as plea of alibi of accused Mukesh is concerned, does not inspire any confidence as inspite of arrest of accused Mukesh he never informed higher authorities in writing regarding this plea of alibi.

76. Learned counsel for the appellant- convict had argued that the depositions of DW-3 and DW-5 belies the prosecution story as well as presence of PW-1 on the spot.

77. DW-3 in is deposition has stated that he arrived on the spot at 7:00 am on 10.4.1998 and remained there from 7:00 am till the Police took the body away for post mortem at 9:00 am. This witness has fairly conceded that he did not know father of the deceased, therefore, he cannot say whether he was present on the spot or not. This witness has deposed that two girls Beena and Jamuna were to first to arrive on the spot. He further stated that the family members of the deceased arrived on the spot around 3-4 pm and police arrived around 4-5 pm, whereas DW-5 has stated that the deceased Jagpal was murdered at 8:00 am and on receiving this information he reached on the spot at 9:00 am and saw Jagpal lying dead. Thereafter, he sent village Chaukidar to inform Police Post Sapnawat whereupon Police Force arrived at 5:00 pm. However, this witness admitted that recovery memos i.e. Ex.Ka-5, Ex.Ka-6 and Ex.Ka-7 were prepared in his presence and all these recovery memos bears his signature. Both of these witnesses are not eye witnesses. DW-3 arrived on the spot at 7:00 am and he also stated that incident had also occurred at 7:00 am, whereas DW-5 has stated the time of incident to be 8:00 am. DW-5 sent village Chaukidar for informing the Police after seeing the deceased Jagpal lying dead on the spot, however, as per DW-3, Police arrived at 5:00 pm.

78. The aforesaid village Chaukidar, Kishori, has not been examined by the defense. As per oral as well as documentary evidence available on record, it was informant Mahipal PW-1 who has lodged the FIR, upon which, Police arrived on the spot. In-spite of sending village Chaukidar, Kishori, to police post Sapnawat, the Police Force arrived only at 5:00 pm, is not believable at all.

79. The FIR (Ex.Ka-1) has been registered at 10:30 am and as per the inquest report (Ex.Ka-8), the information was received in the Police Station at 10:30 am and Head Constable Mulchand, who conducted the inquest proceedings, started the inquest proceedings at 11:00 am and the inquest proceedings were concluded at 12:15 pm/noon. In this background, the deposition of Manvir Singh DW-2 is important as he was the witness of inquest report and has confirmed in his cross examination that the inquest report was prepared in his presence and he had signed the same. He also fairly conceded that he took his tractor for post mortem.

80. DW-2 nowhere in his deposition has stated that the inquest proceedings were not conducted from 11:00 am to 12:15 pm/noon. Therefore, it is Manvir DW-2 who has also affirmed the inquest proceedings and therefore, the depositions of DW-5 and DW-3 are found to be unreliable. Moreover, it is not possible for DW-3 and DW-5 to remain present from 7:00 am to 9:00 am on the spot on the date of incident. DW-5 in his deposition has also stated in examination in chief that inquest was prepared in his presence and he has signed the same, however, a perusal of inquest report (Ex.Ka-8) reveals that Manvir DW-5 is neither Panch witness nor it carries his signature.

81. We have carefully perused the depositions of DW-3 and DW-5 and are of the opinion that both of these witnesses are not reliable. Therefore, we are not in agreement with the argument of learned counsel for the appellant- convict that deposition of all defense witnesses more particularly

DW-3 and DW-5 either belies the prosecution story or makes the presence of PW-1 doubtful on spot.

82. The learned counsel for the appellant has relied upon certain case laws in support of his contention.

83. In **Mahendra Singh and Others Vs. State of Madhya Pradesh, (2022) 7 Supreme Court Cases 157,** the Honble Supreme Court has observed that when sole witness is found wholly unreliable, then no conviction could be based on his testimony. In this case, the Honble Supreme Court has also observed that same treatment is required to be given to the defence witness (es) as is to be given to prosecution witness (es).

84. The Honble Supreme Court **in Deny Bora Vs. State of Assam, (2014) 14 Supreme Court Cases 22** has observed that where statement of sole witness is recorded after 2 years and 6 months of the incident and the incident of firing at the deceased by the appellant accused has occurred in the presence of sole witness and he kept such an incident without disclosing to anyone, defies prudence and baffles commonsense. The Honble Supreme Court has also observed that such a sole witness is wholly unreliable and other material witnesses were withheld in an appeal against acquittal.

85. The Honble Supreme Court in **Joginder Singh Vs. State of Haryana, (2014) 11 Supreme Court Cases 335** has observed that failure to examine material witness is not a mathematical formula for discarding the weight of testimony howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the Court levelled against the prosecution should be examined in the background of the facts and circumstances of each case. This was again an appeal against acquittal and the Honble Supreme Court extended benefit of doubt to the co-accused while recording his acquittal.

86. In **Harvinder Singh alias Bachhu Vs. State of Himachal Pradesh, 2023 SCC OnLine SC 1347,** the Honble Supreme Court has observed that in the case of a sole eyewitness, the witness has to be reliable, trustworthy, his testimony worthy of credence and the case proven beyond reasonable doubt. This was a case based on circumstantial evidence in which the trial Court acquitted the accused, however, High Court reversed the acquittal and Honble Supreme Court reversed the conviction of the High Court and affirmed the acquittal of trial Court.

87. We have carefully perused the above case laws and in the light of detailed analysis done by us of the evidence available on record, the above case laws are not of any help to the appellantconvict for the reasons that the present case is a case based on direct evidence and it is an appeal against conviction. The facts of all above case laws are entirely different than the present case in hand.

88. Learned counsel for the appellant-convict has argued that the prosecution witnesses have improved the prosecution story as put forward in the first information report by assigning knife to appellant-convict whereas, no such knife has been attributed in the FIR. It is settled law that FIR is not encyclopedia and if the necessary details are there, on its basis, detailed narrations by the

witnesses cannot be doubted. It is also not expected that FIR shall contain all details of the prosecution case. It may be sufficient, if broad facts of the prosecution case about the occurrence appears in the FIR.

89. Honble Supreme Court in **M.G. Eshwarappa and others vs. State of Karnataka, (2017) 4 SCC 55**8, in paragraph 20, has clearly held that if necessary details are in FIR, then on its basis, detailed narration by the witnesses cannot be doubted. In this case, defence argued that there was no details of assault of the FIR and the story narrated by the PW-1 Rajeshwari was nothing but an improvement. Honble Supreme Court after going through the record found that all the necessary facts were narrated in the FIR and only the details like from which side particular accused came were not stated.

90. In the present case, the FIR contains broad facts of the prosecution story all the name of accused have been mentioned, specific weapons have been assigned to them. However, accused Pravesh was stated to be armed with stick in his hand and it is specifically stated that Pravesh hit Jagpal with stick, which caused Jagpal to fall of his bicycle, even causing of injuries by knives has been clearly stated in the FIR, which is promptly lodged by the informant Mahipal PW-1. We have carefully gone through the FIR, (Ex.Ka-1) as well as depositions of PW-1 and PW-2 and found that accused Pravesh was not only present on the spot but actively participated in the crime. It was the blow of sticks by Pravesh which caused the fall of the deceased from his bicycle and thereafter assault was started on the deceased Jagpal. PW-1 and PW-2 both have been cross-examined extensively regarding accused Pravesh having a knife in his one hand and he also attacked Jagpal with his knife, causing incised injuries, but nothing contradictory came in their depositions. Therefore, we do not find any improvement as alleged by the learned counsel for the appellant-convict in the light of the necessary details being clearly disclosed in the FIR, both PW-1 and PW-2 have narrated in detail the incident and therefore, their depositions as far as use of knife by accused Pravesh in the assault is concerned, cannot be doubted.

91. The learned counsel for the appellant-convict also argued that PW-1 and PW-2 are the chance witnesses, therefore, not reliable. A chance witness is the one who happens to be at the place of occurrence of an offence by chance, and therefore, not as a matter of course. In other words, he is not expected to be at the said place. A person walking on a street witnessing the commission of an offence can be a chance witness. Merely because a witness happens to see an occurrence by chance, his testimony cannot be eschewed though a little more scrutiny may be required at times. This again is an aspect which is to be looked into in a given case by the court. The evidence of a chance witness therefore, requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence. Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded

92. Let us examine the evidence of PW-1 and PW-2 with caution and close scrutiny in order to ascertain whether their presence on the spot is properly explained and whether they fall under the category of wholly reliable witnesses, in order to base conviction of accused on their testimonies. At the same, time it will have to be kept in mind that merely because the eye witnesses are the family members of the deceased, their evidence cannot per se be discarded. Relationship is not a factor to affect credibility of a witness. Ordinarily a close relation would be the last to screen the

real culprit and falsely implicate an innocent person. At the same time it needs to be kept in mind while appreciating evidence of such witness that when feelings run high and there is personal cause for enmity, there is a tendency to drag in an innocent person against whom a witness has a grudge, along with the guilty. In the case of **Balraje @ Trimbak Vs. State of Maharashtra, reported in (2010) 6 SCC 673,** the Apex Court has held that when the eye witnesses are stated to be interested and inimically deposed against the accused, it would not be proper to conclude that they would shield the real culprit and rope in an innocent person. If after careful analysis and scrutiny of their evidence, the reason given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same.

93. The evidence of chance witness can be accepted provided statement of such witness adequately explains the presence of such witness and such evidence stands the test of caution and close scrutiny.

94. In the light of above well settled position of law we have again carefully perused the depositions of PW-1 and PW-2. Admittedly PW-1 is father of deceased and PW-2 is his brother-in-law (Sadhu) of the deceased. It has consistently come in their evidence that PW-2 was accompanying the deceased on the fateful day on bicycle whereas PW-1 was going with Rohtash to hire labourers. Both PW-1 and Rohtash were going together on their feets and deceased Jagpal and Shri Om PW-2 crossed them on the way. Both these witnesses have been extensively cross-examined but defense miserably failed to make any dent in their depositions as far as their presence on the spot is concerned. Both of these witnesses have also been grilled extensively that why they were present on the spot on the date of incident and in-spite of their extensive grilling, their depositions remained consistent. Therefore, we are of the opinion that neither their presence on the scene is doubtful nor their evidence is suspicious. There is no reason that why PW-1 and PW-2 would shield actual culprits and falsely implicate the appellant convict. Therefore, evidence of PW-1 and PW-2 cannot be discarded on the ground that they are the chance witnesses and they are related to the deceased in the light of their trustworthy depositions.

95. In-spite of in-depth cross examination of PW-1 and PW-2 spanning over months that too on several dates, nothing suspicious has come in their evidence regarding any doubt over their presence on the date, time and place of incident. Both PW-1 and PW-2 were present on the spot at the time of incident. PW-1 has proved the site plan (Ex.Ka-1) both in his examination-in-chief as well as in his extensive cross-examination. PW-2 in his deposition is also consistent about the place of incident.

96. PW-1 and PW-2 in their respective cross-examination have consistently stated that after the incident, head of the deceased was in northern direction and his (deceased) legs were in southern direction. Therefore, when these witnesses have been cross-examined so extensively and they remained consistent regarding even the position of the dead body, therefore, their depositions are trustworthy. The depositions of both these witnesses as far as manner of incident is concerned, are also not only consistent but are corroborating each others deposition. The manner of incident as narrated by these witnesses is also corroborated by the ante mortem injuries found on the body of the deceased by the Autopsy Surgeon, which have been duly recorded in post mortem report of the deceased. Therefore, we are of the opinion that the prosecution has been able to prove the presence

of PW-1 and PW-2 on the spot at the time of incident and both these witnesses saw the incident and had narrated the same consistently. Therefore, their depositions are reliable.

97. In the present case, Investigating Officer had recovered country made pistol, empty cartridges and blood stained knife on the pointing out of the accused but these weapons were not sent to forensic science laboratory for examination. However, this is merely a lapse on the part of Investigating Officer and in the light of reliable evidence given by PW-1 and PW-2, which found full corroboration from the oral as well as documentary medical evidence available on record. The present appellant-convict cannot claim any benefit of lapse of Investigating Officer. The prosecution has also successfully proved the recovery of knife on the pointing out of the appellant-convict Pravesh. Thus, from the above analysis, it is crystal clear that prosecution has successfully prove its case against the appellant-convict beyond reasonable doubt. **Question No. IV is accordingly answered in Affirmative.**

(V) Whether multiple fracture on head can be caused by a knife or repeated blows of knife.

98. It has come in the depositions of P.W.1 and P.W.2 that present appellant-convict and his other co-accused/associates stabbed the deceased at the time of incident with knives. The learned counsel for the appellant argued that no multiple fractures can be caused by stabbing from knife below injury no. 1. The prosecution has proved the post-mortem report (Ex.Ka.-3) of the deceased and has also examined the autopsy surgeon Dr. Shyam Khandelwal as P.W.4. The Autopsy Surgeon (PW-4) found seven incised wounds and one injury of multiple abrasion as ante-mortem injuries on the body of the deceased at the time of post-mortem. There is no injury of multiple fracture in one particular incised wound. However, underline bone below injury no.1 and 4 were found fractured and both of these injuries were of incised wound. Therefore, these injuries have been caused by a sharp edged weapon with such a hard blow that underline bone below these injuries got fractured. As per reliable depositions of PW-1 and PW-2, knives were used in the incident, therefore, these injuries have been caused by the blows of knife and thus the injuries so found on the body of the deceased and the oral testimony of PW-1 and PW-2 are fully corroborated by oral as well as documentary medical evidence. The defence has not cross-examined this Autopsy Surgeon and, therefore, his deposition, remained uncontroverted. **Question No. V is thus decided accordingly.**

99. In the light of foregoing discussions and considering the entire aspects of the matter and looking to the circumstances, under which the present offence has been committed, we are of the view that the impugned judgment and order passed by the trial Court is well thought and well discussed and the trial Court has rightly held that the prosecution has succeeded to prove the guilt of the surviving appellant-accused beyond reasonable doubt. The conviction in the case in hand is a right ending and sentence as imposed is proper. As such, the impugned judgment and order passed by the trial Court is liable to be upheld and the Appeal having no force is liable to be dismissed.

100. No good ground to interfere in the well reasoned judgment of the trial court is made out. Thus there is no merit in the present criminal appeals. Consequently, the judgment and sentence dated 27.01.2003 passed by Additional and Sessions Judge, Ghaziabad in Sessions Trial No.

148/1998, arising out of Case Crime No. 47/1998, (State vs. Mukesh and others), under Section 302/34 IPC and in Sessions Trial No. 149/1998, (State vs. Mukesh and others) under Sections 25 & 4/25 Arms Act, Police Station Dhaulana, District Ghaziabad, qua surviving appellant-convict Pravesh, is hereby **Affirmed**.

101. The appellant Pravesh is in jail. He shall serve out remaining part of sentence imposed upon him by the trial Court.

102. Let a copy of the judgment be provided immediately to the appellant Pravesh through concerned Superintendent Jail, free of cost.

103. The record of the Trial Court be sent back immediately with a copy of this judgment for necessary information and compliance.

104. The Appeal fails and is hereby **Dismissed**, qua surviving appellant Pravesh.

105. Pending applications including bail applications, if any, stand disposed of accordingly.

(2026) 5 ILRA 813
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.05.2026

BEFORE

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

Criminal Appeal No. 804 of 1987

Karam Veer & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

Matter pertains to legality of conviction order if material contradictions in prosecution version of manner and place of firing.

Headnotes

Appreciation of evidence-Indian Penal Code, 1860 - Ss. 302, 307, 147, 148 and 149 - Evidence Act, 1872 -S. 3- Ocular and medical evidence- material contradictions-prosecution version regarding the manner and place of firing -suffered from fundamental inconsistencies-stood contradicted by the medical and objective evidence-the prosecution failed to establish its case beyond reasonable doubt-accused entitled to the benefit of doubt-impugned order set aside-**Appeal allowed.**

Case Law Cited

1. Sunil Kundu and another v. State of Jharkhand, (2013) 4 SCC 422

2. Khatri Hemraj Amulakh v. State of Gujarat, (1972) 3 SCC 671
3. Joginder Singh v. State of Haryana, (2014) 11 SCC 335
4. Harbeer Singh v. Sheeshpal and others, (2016) 16 SCC 418

List of Acts

1. The Indian Penal Code, 1860
2. The Code of Criminal Procedure, 1973

List of Keywords

Testimony of eye-witnesses, medico-legal evidence, non-examination of the eye-witnesses.

Appearances of parties

Counsel for the Appellants : Birendra Kaushik, Sikandar B. Kochar, Amar Saran, G.s. Chaturvedi, Prabhat Agarwal, R.l. Bhargava, R.n. Sharma, Sikandar B. Kochar Counsel for the Respondent : A.G.A.

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

1. The four appellants, who have preferred this Criminal Appeal, to wit, Karam Veer, Vikram Singh, Bahadur Singh and Balbir Singh, along with Sheodan and Sonpal, stood their trial before Mr. Jaswant Singh, the then II Additional Sessions Judge, Mathura in Sessions Trial No.236 of 1985, under Sections 147, 148, 149, 452, 307, 302 of the Indian Penal Code, 1860 (for short, IPC) and Sessions Trial No. 243 of 1985, under Section 25 of the Arms Act, 1959, both relating to Police Station Naujheel, District Mathura. Whereas Sheodan and Sonpal were acquitted by the learned Additional Sessions Judge by his judgment and order dated 10.03.1987, the appellants were convicted on varying charges and received different sentences accordingly, which shall be shortly detailed hereinafter.

2. Criminal Revision No.830 of 1987 has been preferred by Chandra Pal, the first informant of Crime No.97 of 1985, under Sections 147, 148, 149, 452, 307, 302 IPC, Police Station Naujheel, District Mathura against the impugned judgment and order dated 10.03.1987 passed by the learned II Additional Sessions Judge, Mathura, to the extent he has acquitted Sheodan and Sonpal and acquitted respondent Nos.1 to 4 of certain charges, a more-full description of which would also be shortly given in this judgment.

3. A first information report was lodged by Chandra Pal, a son of Bodha and a resident of Village Hasanpur, Police Station Naujheel, District Mathura on 19.08.1984 at 5.30 p.m. regarding an incident that happened earlier in the day at 2.30 p.m. at Village Hasanpur. According to the first informant, Vikram Singh son of Harchand was at issue with Basanti widow of Surajmal, who lived with the informant, in connection with her property, that was continuing for a considerable period of time.

4. About eight days antedating the occurrence, Basanti left the keys of her house with the informant and left for Agra to stay with her relatives, who lived there. It is reported in the written information that in the afternoon hours of the day, the informant, his brother Bachchu and father Bodha Singh, his cousin Raj Kumari daughter of Bhudar, Jagvir son of Lakhmi and Ravendra son

of Lakhmi, besides Churaman, all relatives of the informant, had congregated on the rooftop of Basantis house, which abuts that of the informant. They were sitting in a hut built on the rooftop of Basantis house and were talking amongst themselves, when Vikram and Vikrams son Balbir armed with lathi, besides Karam Veer son of Vikram, Bahadur son of Virendra, Bahadur son of Ram Singh, Sheodan son of Biri, all residents of Hasanpur, and Dr. Sonpal, resident of Meerpur (Pisava) along with four men, whose name the informant did not know, alighted there, brandishing country-made pistols and a gun, hurling abuses. Dr. Sonpal suddenly opened fire with his country-made pistol and exhorted others to surround the victims and kill them. Thereupon, the informants brother Bachchu and all the victims stood up. At that moment, the man, who was wielding a gun and whose identity was not known to the informant, opened fire with the intention to kill. The shot hit the informants brother Bachchu in his feet. Bachchu winced and rushed towards the hut. At that moment, Karam Veer opened fire with his country-made pistol from the western wall of Basantis house, which hit the informants brother. He collapsed. The remainder of the appellants entered the house and, employing country-made pistols that they wielded, opened fire at the victims with an intent to kill. The informant, Raj Kumari, Jagveer and Ravendra sustained gunshot injuries in consequence. The informants father called alarm and rushed downwards, when Vikram and Balbir assaulted him, employing their lathi. He collapsed there. However, the alarm, that was raised, caused Bhudar son of Bhimsen, Javar son of Gopi, Lakhmi son of Bhimsen, besides other residents of the village to reach the place of occurrence and rescue the first informant and the other victims. These witnesses had seen the assailants carry out the assault. The informants brother died on the spot. It is this case that the first informant reported to the Police on 19.08.1984 at 5.30 p.m. The distance of the police station from the place of occurrence is said to be 15 kilometers to the north-east. The written information was transcribed by Churaman son of Rajan Singh Jat, a resident of Village Chhinparai, P.S. Naujheel. It is on record and marked as Ex. Ka-5.

5. On the basis of the written information, a case, being Crime No.97 of 1985, was registered at 5.30 p.m. and the check First Information Report ('FIR' in short) drawn up. The check FIR is marked as Ex. Ka-12. The case was registered at the police station vide G.D. No. 14 dated 19.08.1984 at 17.30 hours. After registration of the case, the injured were referred to the Primary Health Centre, Naujheel for the purpose of medico-legal examination. They were examined at the P.H.C. by Dr. Ghanshyam Singh, the then Medical Officer, In-charge of P.H.C., Naujheel. He drew up the injury reports of Raj Kumari, Jaggo, Bodha, Ravendra Singh and Chandra Pal. The four, who sustained firearm injury, were referred to the District Hospital, Mathura for their X-ray examination. They underwent the necessary X-ray examination and the reports with regard to their X-ray examination were drawn up by Dr. A.K. Gautam, Medical Officer, District Hospital, Mathura, all on 21.08.1984. Investigation into the crime was commenced by R.K. Singh, the then Station Officer, P.S. Naujheel. He took down the statement of the Head Moharrir, who had recorded the check FIR in the case and took into his possession all necessary papers relating to the crime. He then set about the task of investigation, leaving for the place of occurrence. At the place of occurrence, the Investigating Officer (the I.O., for short) held inquest and an inquest report was drawn up, which is marked as Ex. Ka-18. The I.O. removed trousers from the deceaseds dead body and prepared a recovery memo. He took a photo lash and along with the photo lash, a challan lash and a letter addressed to the Chief Medical Officer, Mathura to undertake an autopsy on the deceaseds cadaver were sent forth. He sealed the dead body and handed over the same, along with the documents last mentioned, to Constables Gajraj Singh and Kailash Kumar with instructions to

convey the dead body to the mortuary of Mathura. On the following day, i.e. 20.08.1984, the autopsy on the deceased Bachchu's body was conducted by Dr. Nepal Singh, who drew up a postmortem report, Ex. Ka-6.

6. The I.O. investigated the matter going to the village. While the I.O. was about his task of investigation, he received a message, apparently from a secret informer, that two of the accused, Karam Veer and Balbir, were headed towards Village Meerpur, near Khairati Wali Dharamshala. Acting on this information, the I.O. took along witnesses with him and rushed to the place of the reported movement. He arrested Karam Veer and Balbir. Post arrest, Karam Veer was searched and a country-made pistol of 0.12 bore and two live cartridges were found in his possession. A memo of his arrest and recovery was drawn up, bearing Ex. Ka-23. The arrested men were brought to Village Hasanpur. The I.O. carried on his investigation. He took samples of the bloodstained earth as well as the unstained one, keeping these away in separate bundles after drawing up a memo for the purpose. The I.O. also discovered empties of 0.12 bore, besides wads on the spot. These were kept in a separate sealed bundle after preparing a recovery memo for the purpose. The I.O. prepared a site-plan the same day, marked Ex. Ka-26.

7. The country-made pistol, along with the empties, which were recovered from possession of Karam Veer at the time of arrest, were sent to the Director, Forensic Science Laboratory, Lucknow for opinion. The Forensic Science Laboratory tendered their opinion dated 09.06.1986, marked Ex. Ka-33. According to the F.S.L. Report, the used cartridges were fired employing the country-made pistol, which was recovered by the I.O. from Karam Veer's possession.

8. The other accused remained untraceable in the village and its vicinity. The Investigating Officer, therefore, took out processes under Section 82/ 83 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' in short) and properties of the absconding accused were attached. The I.O. also took down statements of witnesses under Section 161 Cr.P.C., and after completion of investigation, he submitted a charge-sheet against all the accused, except Sonpal, on 08.09.1984. The charge-sheet is marked as Ex. Ka-27. The investigation was continued against Sonpal and a charge-sheet filed against him on 20.09.1984, which is marked as Ex. Ka-28.

9. On the basis of the recovery of the country-made pistol made from Karam Veer, besides two live cartridges, on 19.08.1984, a separate crime, being Crime No. 98 of 1984, under Section 25-A of the Arms Act, 1959 (for short, 'the Arms Act'), P.S. Naujheel, District Mathura, was registered on 19.08.1984 at 11.35 p.m. The check FIR relating to the aforesaid crime is marked as Ex. Ka-16. The investigation of the crime registered under Section 25 of the Arms Act was entrusted for investigation to Sub-Inspector Gamleshwar Biltoria. Biltoria took down statements of witnesses under Section 161 Cr.P.C. and prepared a site-plan relating to the place, wherefrom Karam Veer was arrested. He obtained necessary sanction from Rajendra Singh, the then District Magistrate, Mathura on 20.11.1984 to prosecute Karam Veer under Section 25 of the Arms Act. After completion of investigation of this case, the I.O. submitted a charge-sheet against the appellant Karam Veer alone under Section 25 of the Arms Act on 26.08.1984. This charge-sheet is marked as Ex. Ka-37.

10. The learned Magistrate, before whom the proceedings arising out of Crime No.97 of 1984, under Sections 147, 148, 149, 452, 307, 302 IPC came up, finding the case to be exclusively triable by Sessions, committed the case vide order dated 28.08.1985. The case arising out of Crime No.98 of 1984, under Section 25 of the Arms Act, being one related to the same incident, was also committed to the Sessions by the learned Magistrate vide order dated 29.08.1985. In both the cases, the accused were furnished with copies of the relevant prosecution papers as provided under Section 207 Cr.P.C.

11. The case under Sections 307, 302 IPC etc. was registered before the Court of the Sessions Judge as S.T. No.236 of 1985, whereas the connected case under Section 25 of the Arms Act was registered as S.T. No.243 of 1985.

12. The trials were assigned to the II Additional Sessions Judge, Mathura. The Additional Sessions Judge framed charges, numbering four, vide order dated 08.11.1985, against Karam Veer, Bahadur, Sheodan and Sonpal under Sections 148, 302/149, 307/149 and 323/149 IPC. The same way, charges were separately framed vide order dated 08.11.1985 against Vikram and Balbir, also four in number, under Sections 147, 302/149, 307/149 and 323/149 IPC. A separate charge under Section 25(1)(a) of the Arms Act was also framed against Karam Veer alone on 08.11.1985. The accused pleaded not guilty and claimed to be tried.

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

1. PW-1 Dr. A.K. Gautam, Radiologist District Hospital, Mathura, in whose guidance X-rays of the victims were conducted,

2. PW-2 Chandra Pal, the informant and brother of the deceased Bachchu, who witnessed the incident,

3. PW-3 Bhudhar, a relative of the deceased and eye-witness,

4. PW-4 Ravendra, also an eye-witness,

5. PW-5 Dr. Nepal Singh, Civil Hospital, Agra, who was posted as a Medical Officer, Civil Hospital, Mathura at the time of incident and conducted postmortem of the deceased,

6. PW-6 Dr. Ghanshyam Singh, Medical Officer, PHC Jalali, District Aligarh, who at the time of the incident was posted as the Medical Offier, PHC, Naujheel and examined the injuries of the injured Rajkumari,

7. PW-7 H.C. Kehari Singh, P.S. Koshi Kalan, Mathura, the then Head Moharrir posted at P.S. Naujheel, Mathura, who scribed the check FIR and made other G.D. Entries,

8. PW-8 Hamvir Singh No. 481, who was then posted as Constable Clerk at P.S. Naujheel, Mathura and scribed the check FIR and other entries with regard to country-made pistol,

9. PW-9 Constable Gajraj Singh, P.S. Naujheel, who carried the dead body for postmortem,

10. PW-10 Smt. Basanti, a witness who was not present at the time of incident,

11. PW-11 R.K. Singh, S.I. Police Lines, Mathura, who was then posted as S.O., P.S. Naujheel, Mathura and conducted investigation of the case,

12. PW-12 Khichchu, in whose presence recovery of the country-made pistol was made,

13. PW-13 S.I. Gamleshwar Singh, who submitted the charge-sheet under the Arms Act.

14. The prosecution produced the following documentary evidence:

Sr. No.	Exhibit No.	Exhibited documents with brief particulars
1	Ex. Ka-1	X-ray report of the injured Rajkumari dated 21.08.1984, proved PW-1 Dr. A.K. Gautam
2	Ex. Ka-2	X-ray report of the injured Jaggo dated 21.08.1984, proved PW-1 Dr. A.K. Gautam
3	Ex. Ka-3	X-ray report of the injured Chandra Pal dated 21.08.1984, proved PW-1 Dr. A.K. Gautam
4	Ex. Ka-4	X-ray report of the injured Ravendra Singh dated 21.08.1984, proved PW-1 Dr. A.K. Gautam
5	Ex. Ka-5	Written report dated 19.08.1984 lodged with Police Station Naujheel, District Mathura, proved by PW-2 Chandra Pal
6	Ex. Ka-6	Postmortem Report of the deceased Bachchu dated 20.08.1984, proved by PW-5 Dr. Nepal Singh
7	Ex. Ka-7	Injury report of the injured Rajkumari dated 19.08.1984, proved PW-6 Dr. Ghanshyam Singh
8	Ex. Ka-8	Injury report of the injured Jaggo dated 19.08.1984, proved PW-6 Dr. Ghanshyam Singh
9	Ex. Ka-9	Injury report of the injured Bodha (Godha) dated 19.08.1984, proved PW-6 Dr. Ghanshyam Singh
10	Ex. Ka-10	Injury report of the injured Ravendra Singh dated 19.08.1984, proved PW-6 Dr. Ghanshyam Singh
11	Ex. Ka-11	Injury report of the injured Chandra Pal dated 19.08.1984, proved PW-6 Dr. Ghanshyam Singh
12	Ex. Ka-12	Check FIR dated 19.08.1984 registered under Sections 302, 307 IPC etc., proved by PW-7 HC Kehari Singh
13	Ex. Ka-13	Copy of GD Entry No.14 Time 17.30 hours dated 19.08.1984, proved by PW-7 HC Kehari Singh
14	Ex. Ka-14	S.R. Rapat No.18 Time 19.05 hours dated 19.08.1984, proved by PW-7 HC Kehari Singh
15	Ex. Ka-15	S.R. Rapat No.17 Time 18.30 hours dated 20.08.1984, proved by PW-7 HC Kehari Singh
16	Ex. Ka-16	Check FIR dated 19.08.1984 registered under the Arms Act, proved by PW-8 HC Hamvir Singh
17	Ex. Ka-17	Copy of GD Entry No.22 Time 23.35 Hours dated 19.08.1984, proved by PW-8 HC Hamvir Singh
18	Ex. Ka-18	Inquest report dated 19.08.1984, proved by PW-11 S.I. R.K. Singh
19	Ex. Ka-19	Challan Nash dated 19.08.1984, proved by PW-11 S.I. R.K. Singh
20	Ex. Ka-20	Photo Lash dated 19.08.1984, proved by PW-11 S.I. R.K. Singh
21	Ex. Ka-21	Letter to the C.M.O. dated 19.08.1984, proved by PW-11 S.I. R.K. Singh
21	Ex. Ka-21	Letter to the R.I. dated 19.08.1984, proved by PW-11 S.I. R.K. Singh
22	Ex. Ka-22	Memo taking possession of the clothes of the deceased dated 19.08.1984, proved by PW-11 S.I. R.K. Singh
23	Ex. Ka-23	Memo taking possession of the country-made pistol and cartridges dated 19.08.1984, proved by PW-11 S.I. R.K. Singh

24	Ex. Ka-24	Memo taking possession of the bloodstained earth and unstained earth dated 19.08.1984, proved by PW-11 S.I. R.K. Singh
25	Ex. Ka-25	Memo taking possession of the empties, wads etc. from the place of incident dated 19.08.1984, proved by PW-11 S.I. R.K. Singh
26	Ex. Ka-26	Site-plan of the place of occurrence dated 19.08.1984, proved by PW-11 S.I. R.K. Singh
27	Ex. Ka-27	Charge sheet dated 08.09.1984 submitted against the accused Vikram Singh, Karam Veer, Balbir and Bahadur, proved by PW-11 S.I. R.K. Singh
28	Ex. Ka-28	Charge sheet dated 20.09.1984 submitted against the accused Chandra Pal, proved by PW-11 S.I. R.K. Singh
29	Ex. Ka-29	Attachment Memo of the properties of Bahadur son of Ram Singh dated 30.08.1984, proved by PW-11 S.I. R.K. Singh
30	Ex. Ka-30	Attachment Memo of the properties of Vikram dated 30.08.1984, proved by PW-11 S.I. R.K. Singh
31	Ex. Ka-31	Attachment and Custody Memo of the properties of Bahadur son of Virendra Singh, proved by PW-11 S.I. R.K. Singh
32	Ex. Ka-32	Attachment Memo of the properties of the accused Sheodan dated 30.08.1984, proved by PW-11 S.I. R.K. Singh
33	Ex. Ka-33	F.S.L. Report dated 09.06.1986
34	Ex. Ka-34	Complaint moved by the accused Vikram Singh dated 03.07.1984
35	Ex. Ka-35	Site-plan of the place from where country-made pistol and cartridges were recovered dated 22.08.1984, proved by PW-13 S.I. Gamleshwar
36	Ex. Ka-36	Copy of the order granting sanction to prosecute the case under the Arms Act dated 22.11.1984, proved by PW-13 S.I. Gamleshwar
37	Ex. Ka-37	Charge sheet dated 28.08.1984 submitted against the accused Karam Veer under the Arms Act, proved by PW-13, S.I. Gamleshwar
38	Material Ex. 1	Country-made pistol
39	Material Ex. 2	Cartridge
40	Material Ex. 3	Cartridge
41	Material Ex. 4 to 9	Empties numbering six
42	Material Ex. 10 to 17	Wads numbering seven

15. After conclusion of evidence, the statements of the accused, now the convicted appellants, were recorded under Section 313 Cr.P.C. on 17.01.1987. After the statements of the accused were recorded under Section 313 Cr.P.C., they did not enter defence or led defence evidence, oral or documentary.

16. After hearing the learned Counsel for the prosecution and the defence, the learned Trial Judge by judgment and order impugned dated 10.03.1987 convicted Karam Veer for offences punishable under Section 302/149 IPC and sentenced him to life. He was also convicted for offences punishable under Section 148 IPC and Section 25 of the Arms Act, and sentenced to a year's rigorous imprisonment on each count. All the sentences were directed to run concurrently. Bahadur was convicted under Sections 307/ 149 IPC and 148 IPC. He was sentenced to three years and one years rigorous imprisonment on respective counts. Vikram Singh and Balbir Singh were convicted under Section 147 and 323/149 IPC and sentenced to one year's rigorous imprisonment

and six months' rigorous imprisonment on the respective counts. Sheodan and Sonpal were granted the benefit of doubt and acquitted.

17. Aggrieved by the judgment and order of conviction, Karam Veer, Vikram Singh, Bahadur Singh and Balbir Singh have preferred the instant appeal, seeking reversal and acquittal. The first informant, Chandra Pal, has filed Criminal Revision No.830 of 1987 from the selfsame judgment and order dated 10.03.1987, seeking to set it aside to the extent it acquits Sheodan and Sonpal; against Karam Veer to the extent of his acquittal on the charges under Sections 307/149 and 323/149 IPC; Bahadur to the extent of his acquittal of charges under Sections 302/149, 323/149 IPC; and, against Vikram Singh and Balbir to the extent of their acquittal under Sections 302/149 and 307/149 IPC. The revision is being decided by a separate order of date.

18. Heard Mr. Sikandar B. Kochar, learned Counsel for the appellants in support of this appeal and Mr. Ghanshyam Kumar, learned AGA-I on behalf of the State.

19. It must be remarked that this is a case which is founded on direct evidence with an eye-witness account. There is testimony of injured witnesses also. Though, the testimony of injured witnesses carries much weight as it comes with an inherent guarantee of truth to it, but it does not mean that the prosecution is in any measure relieved of the burden to prove their case by the criminal standard, or so to speak, beyond all reasonable doubt. It, thus, has to be tested even where injured witnesses testify if their account is after all truthful and not one which is hedged in by such contradiction which brings the prosecution case under a shadow of doubt. Of course, doubts that are remote, fanciful and hairsplitting, cannot serve as basis to discard the prosecution case. A doubt of substantial character, nevertheless, cannot be ignored, and it is after all, the prosecutions duty to remove all such doubts, bringing home a clear case of guilt. The benefit of doubt would always go to the accused.

The date, time, place and manner of occurrence

20. The venue of crime was the rooftop of a hosue that belonged to Smt. Basanti. Her husband Bhagwan Singh had passed away about two decades ago prior to the occurrence. After his demise, she had a marriage of sorts or a customary marriage, described as karab, with Surajmal. Surajmal was a rich man. Smt. Basanti has described him as her second husband, whom she married according to the customs and traditions. Surajmal had a sister by the name Imirti Devi. Surajmal and Smt. Basanti were blessed with children, but none of them survived.

21. Shorn of the dispute, that is raised somewhere, it appears that Surajmal, out of his large agricultural holding, gifted 50 bigha to Imirti Devi and left 11 bigha to Smt. Basanti. Surajmal, in course of time passed away. Since the time of Surajmal, Bodha would till and work on his fields. After his demise, Bodha would still work on the fields, raise and harvest crops. Bodha would stay in the same house as Smt. Basanti since the time of her husband, and there was a boundary wall raised to demarcate the part in which Bodha would stay. This house was constructed by her husband. The house had five rooms on the ground floor and on the rooftop it had a hut. There was a solitary staircase leading to the rooftop. Smt. Basanti, eight days prior to the occurrence, had left the village and gone to Agra to stay with two of her sons, who lived there. These two sons were

begotten of her first husband, Bhagwan Singh. Before leaving for Agra, Smt. Basanti had handed over the keys of her house to Bodha.

22. On the fateful day, Bodha, his sons Bachchu and Chandra Pal, besides Bodhas niece Rajkumari, Jagveer and Ravendra, both sons of Lakhmi, and Churaman moved to the rooftop of Basantis house at about half past two in the afternoon. They were sitting in the hut on the roof top of Basantis house when Vikram, his son Balbir armed with sticks (lathi), Karam Veer son of Vikram, Bahadur son of Virendra, Bahadur Singh son of Ram Singh, Sheodan son of Biri, Dr. Sonpal and four unknown men, one of whom had a gun, and all others armed with country-made pistols, arrived. The assault commenced with Sonpal opening fire by his country-made pistol and exhorting others to kill. The details of the assault would be dealt with later in this judgment, also testing the veracity of the prosecution case on that score. The assault, mostly employing gunfire, left Bachchu dead, besides Chandra Pal, the first informant and PW-2, Ravendra, PW-4, Rajkumari and Jagveer @ Jaggo, injured, all of whom sustained gunshot injuries. In addition, Bodha sustained injuries due to lathi blows.

23. According to the prosecution, the date of incident is 19.08.1984, the time 2.30 p.m. and the place of occurrence is largely the rooftop of Smt. Basanti Devis house, where all the deceased and the injured sustained gunshot injuries with the exception of Bodha, who could manage to come down the stairs and was received with lathi blows from Vikram and his son Balbir.

24. Out of the three eye-witnesses examined, PW-2, the first informant, and PW-4 Ravendra are injured witnesses, whereas Bhudar, who is a brother of Bodha and has his house adjoining that of Basanti, is an eye-witness. It is the prosecutions burden to establish by the testimony of their witnesses dependent upon their consistency and plausibility, if the eye-witness account about the manner of occurrence, is a truthful account. It would still have to be seen if the date, time and place of occurrence as propounded by the prosecution are proved by their evidence. The eye-witness account, apart from its consistency of version with reference to the surroundings and circumstances, must show that the date, time, place and manner of occurrence the way these have been given by the prosecution witnesses, are established. In short, the inherent truthfulness of the eye-witness account has to be corroborated by reference to independent circumstances.

25. According to the first information version, the witness Chandra Pal, along with his brother Bachchu, father Bodha Singh, cousin Rajkumari, Jagveer @ Jaggo, Ravendra and Churaman, were sitting in the hut at the top of Smt. Basanti Devis house, talking amongst themselves when Vikram, his son Balbir, wielding lathi alighted. Also accompanying them were Karam Veer son of Vikram, Bahadur son of Virendra, Bahadur Singh son of Ram Singh, Sheodan, Dr. Sonpal, besides four unknown men. All these men, known and unknown, except for Vikram and Balbir, had firearms on them. One of the men had a gun whereas all others had country-made pistols. They arrived abusing the victims. Dr. Sonpal fired his country-made pistol more by way of exhortation and did exhort others to surround the victims and do them to death. Upon hearing this, the deceased Bachchu stood up as did the others. The unknown man, who was armed with a gun, opened fire at the victims with an intent to kill. It led to Bachchu sustaining injuries to his legs. Bachchu winced on account of pain and ran out of the hut when Karam Veer shot him from the western wall of Basanti Devis house. Bachchu collapsed in consequence of the gunshot injury. Thereupon, the rest of the

assailants entered the house, and employing the country-made pistols they wielded, shot the victims with an intent to kill, resulting in gunshot injuries to Rajkumari, Jagveer, Ravendra and Chandra Pal. The informant/ PW-2s father Bodha cried out and raced down the staircase, whereupon Vikram and Balbir thrashed him with the lathi they wielded. Hearing all the noise generated by this assault, Bhudar, Javar Singh, Lakhani and various other residents of the village came over, who saved the victims and saw the assailants attack the victims. Bachchu died on the spot.

26. This account of the occurrence, or so to speak, the manner of occurrence shows that the assailants came to the rooftop, where the victims were sitting in the hut and shot them. Those, who remained down below, were Vikram and Balbir, who were armed with lathi and they assaulted Bodha as he descended downstairs, escaping from the roof in panic on account of the gunfire. PW-2 Chandra Pal in his examination-in-chief has supported the first information version, which makes out a clear case that as the victims were sitting in the rooftop hut of Smt. Basantis house, the assailants, seven known and four unknown, arrived there. One unknown man had a gun whereas all others, that is to say, the unknown ones, had country-made pistols. As soon as they arrived, Dr. Sonpal fired a shot exhorting others to surround the victims and kill them. The witneses said that this shot was fired outside the hut. It was followed by a shot from the gun, which hit Bachchu in his legs. The injury made Bachchu panic and run into the hut, whereupon Karam Veer shot him in the head. The others too opened fire with an intent to kill the rest of the victims. The gunshots caused injuries to the informant (PW-2), Ravendra, Rajkumari and Jagveer @ Jaggo. The informants father cried out and rushed down the stairs into the chowk, whereupon Vikram and his son Balbir beat him up with lathi blows. The call for rescue made by the victims led the informants uncles Lakhmi, Bhudar, besides Javar singh and many others of the village to reach the place of occurrence. They saved the victims and also saw the occurrence.

27. This account of PW-2 is more or less consistent with the FIR version. Apart from locating the place of occurrence for all the victims on the rooftop of Basantis house, the prosecution so far is about a case where they saw that the assailants, including the appellants, come up to the rooftop, where the hut, that the victims were occupying, stands.

28. In sharp contrast to the aforesaid version is PW-2s stand in his cross-examination, where he says that though his father was beaten after he got down the roof, all others were shot on the rooftop, but the assailants fired from the ground. The place where they were sitting on the roof was at a height of 8 feet from the ground, according to this witness in his cross-examination. It is then again said, in a somewhat contradictory stand, by this witness that Sonpal had fired at a distance of 15-16 paces from the hut, whereas Karam Veer had shot from a distance of 8-10 paces. Still more in the same vein, it is said by this witness that the assailants had entered the hut where the victims were sitting. It is further said by the witness that the victims received gunshot injury caused by those assailants, who were inside the house. We consider it appropriate to notice this contradictory stand in the essential manner of assault by referring to the testimony of PW-2, where it speaks in conflict. The relevant PW-2s testimony is as follows:

करीबन डेढ़ साल हो गया ढाई बजें दिन का समय था। मैं, मेंरा भाई बच्चू मृतक, मेरे पिता गोदा, राजकुमारी, रिवेन्द्र, जगवीर, उर्फ जग्गा व चूरामन बसन्ती की छत पर हमारे मकान से मिली झोपडी में बैठें

बातचीत कर रहे थे। मेरा भाई बच्चू ट्रैक्टर से खेत जोत कर लौटा था और थोडी देर पहलें लौटा था। उस समय विक्रम व बलवीर लाठी लेकर, कर्मवीर व सौदान, बहादुर, व सोहनपाल, व दूसरा बहादुर मृतक, सौदान व चार अन्य बाहर के आदमी जो कि मैं पहलें से नही जानता था। वहॉ पर आये।

आतें ही डाक्टर सोहनपाल ने फायर किया कहा कि घेर लो सालों को मारो। यह फायर झोपड़ी के बाहर हुआ था। फिर अनजान बन्दूक वालें ने फायर किया और उस फायर से चोटें मेरे भाई बच्चू के आई। जब मेंरा भाई घबड़ा कर झोपड़ी में भागा तो कर्मवीर ने उस पर फायर किया जो उसके सर पर लगा। और लोगों ने भी हम पर भी जान से मारने की नीयत से कर दिये। इस फायरिंग में मुझे, रविन्द्र, राजकुमारी, जयवीर उर्फ जग्गों को चोटें आयी।"

(emphasis by Court)]

29. In his cross-examination, PW-2 has stated thus:

"हम सब चुटैल छत पर थें। मेरे पिता के साथ नीचें मारपीट हुई बाकी हम सब लोगो को ही ऊपर ही छत पर गोली लगी फायर सब नीचे से हुये थें।

जब सोहन पाल झौपडी से 15-16 कदम दूर था तब उसने गोली चलायी। कर्मवीर ने गोली झौपडी से 8-10 कदम से चलायी। दोनो ने गोली झौपडी के पश्चिम से चलायी थी।

और मुलजिमान जिस झौपडी में हम बैठें थे उसमें भी घुसें थें। नीचें झौपडी के अनजान लोग नही घुसें थें। यह लोग चौक में रहे थें। यह लोग चौक में मुश्किल से 3-2 मिनट रहें थे। इन लोगो ने फायर चौक से भी किये थें। हमें फायरों से चोटें केवल उन लोगों के द्वारा फायर करने से आयी जो मकान के भीतर थें।"

(emphasis by Court)]

30. Thus, the testimony of this witness, which will be noticed for other contradictions as well, juxtaposed with the testimony of the other eye-witnesses, on its own terms, is self-contradictory, where the consistent stand of assault by gun fire by the assailants after reaching the rooftop is contradicted by PW-2 in his cross-examination saying that though gunshot injuries were sustained by the victims at the rooftop, the assailants had fired from the ground. This is a fundamental contradiction in the manner of assault, that is to say, if the assault was by the assailants after reaching the rooftop or was it from down below, whether outside the house or from inside the premises, but using ground level to shoot. These are two different manners of assault, so essentially different that the two cannot co-exist. We would presently see if this is just one out-of-place inconsistency, or there is a general pattern of inconsistency about the manner of assault, described by the witnesses.

31. The same witness, PW-2, has said further in his cross-examination:

मकान से बाहर से जिन लोगों ने फायर किये थें उनमें से केवल कर्मवीर एक अनजान की बन्दूक वालें की गोली मेरे भाई को लगी थी।

मैं नही कह सकता कि हमें फायर की चोटें अनजानों द्वारा गोली चलाने से आयी या मुलजिमान द्वारा गोली चलाने से आयी कर्मवीर गोली चलातें समय झौपड़ी के पश्चिम में था।

यह ठीक है कि रिपोर्ट में यह लिखा है कि शेष व्यक्तियों ने भी घर में घुस कर फायर किया।

जब गवाह से पूछा गया कि उपरोक्त रिपोर्ट एक्जी क-5 वाली बात सही है तथा आज वाली बात सही है तो गवाह ने कहा कि आज वाली बात सही है और घबराहट में शेष व्यक्तियों का घर में घुस कर फायर करना लिखा गया था।"

(emphasis by Court)]

32. A reading of the aforesaid stand of this witness indicates that the inconsistency whether all the assailants fired from the ground or they climbed to the rooftop and shot, persists in the same manner very distinctively. In one part of his testimony, PW-2 says that Karam Veer and the other unknown man, who wielded the gun and shot the deceased in his feet, fired from outside the house, whereas elsewhere in his testimony he says that Karam Veer was on the roof, shooting from the western wall, or west of the hut. There is also much inconsistency about the fact whether some men stayed outside, as the dock evidence of this witness says and others entered the house to shot, quite irrespective of the fact whether they climbed on to the roof or not; but, in the FIR it is said that all the assailants had trooped into the house. When this apparent contradiction was put to PW-2 with reference to his stand in the FIR, he said that whatever he is saying in the dock is correct and facts mentioned in the FIR were said out of panic.

33. Again PW-3 Bhudar, a witness of fact, has said in his examination-in-chief:

"करीबन ढेड साल की बात है। दिन के ढाई बजें का समय था। मैं अपने मकान में नीचें बैठा हुआ था। गोदा चन्द्रपाल, बच्चू, रवेन्द्र, जगदीश, राजकुमारी ऊपर छत जो कि बसन्ती की मकान की है। झौपडी में खाट पर बैठें हुये थें। इतने में वहॉ पर विक्रम के सहित 6 मुलजिमान हाजिर अदालत व मृतक बहादुर व चार अनजान लोग आये।"

(emphasis by Court)]

34. In his cross-examination, the witness has said:

"मुलजिमान में से व अनजान आदमियों में से कुछ ने ऑगन से फायर किये व कुछ ने बाहर से फायर किये थें। ऑगन में तीन तो अनजान आदमी गये थें और मुलजिमान में से बहादुर हाजिर अदालत व बहादुर मृतक थें। एक अनजान आदमी और बाकी पॉचों मुलजिमान ऑगन के बाहर थें। ऑगन से केवल दोनो बहादुर व एक अनजान आदमी को फायर करतें देखा था और बाहर से सब वह लोग जिनके पास तमंचें थें थें फायर कर रहे थें। बलवीर व विक्रम भी जब फायरिंग हो रही थी चौक में थें। फायर बन्दूक की नाल को ऊपर उठा कर व टेडी करके किये थें। मेरे सामने दो तीन फायर करने वालों ने कट्टें व बन्दूके भरी थी कौन कौन ने भरी नही कह सकता इन फायर करने वालों ने पहलें भी फायर कियें दुबारा भरने के बाद भी किये। मुलजिमान में से या अनजान आदमियों में से कोई छत पर नही आया।

मैं कोई कारण नही बता सकता कि बच्चू के दो गोली लगने के बाद भी हम भागें क्यों नही थें। ऑगन से चलाने वालें किसी व्यक्ति की गोली मृतक या चुटैल को नही लगी बल्कि जो लोग बाहर से गोलिया चला रहे थें उनकी गोलिया मृतक या चुटैल के लगी थी।"

(emphasis by Court)]

35. PW-4 in his examination-in-chief has testified:

"करीबन डेढ़ साल की बात है। दिन के ढाई बजें का समय था बसन्ती के मकान की झौपडी में जो छत पर है में मैं, बच्चू, मृतक चन्द्रपाल, जग्गों, राजकुमारी, चूरामन, व गोदा, बैठें थे। व बातचीत कर रहे थें। तभी सोहनपाल, विक्रम, बलवीर, कर्मवीर, सौदान, बहादुर, दूसरा बहादुर जो मर गया है। और चार आदमी अनजान नीचें आतें हुये देखें। मुलजिमान 6 हाजिर अदालत है। आतें ही सोहनपाल ने फायर किया और गाली दी सालो को देख लो मार डालो। फिर हम बाहर झौपडी से बाहर आ गये।"

(emphasis by Court)]

36. PW-4 in his cross-examination has testified:

"कर्मवीर ने भी जमीन पर खड़े होकर फायर किया। सब चुटैलों व मृतक को खड़े खड़े के चोटें लगी थी उस समय कोई बैठा या गिरा नही था। मैं नही कह सकता कि जब मेरे को चोट आयी उससे पहलें कुल कितने फायर हो चुके थें। मैंने सभी मुलजिमान व अनजान आदमी को अपने अपने हथियारो को भरतें व चलातें देखा। मुझसे गोली लगे के पहलें भी मुलजिमान ने अपने अपने हथियार में भरे थें। बच्चू के अलावा बाकी चुटैलों के चोटें करीबन साथ साथ आयी थी जब मेरे ताऊ गोेदा नीचें उतरे तब भी फायर हो रहे थें। लेकिन गोदा के नीचें उतरने के बाद किसी के कोई छर्रा आदि नही लगा। मकान के अन्दर दोनो बहादुर श्यामदान (sic) विक्रम व बलवीर आये थें और चारों अनजान मकान के बाहर रहे। इन पांचों आदमियों ने जो अन्दर आ आ गये थें और जिनके पास तमंचें थें मकान के बाहर व अन्दर से भी फायर किये। मकान के अन्दर से जो फायर हम पर हुये थें उनसे हममे से किसी को चोट नही आयी बाहर वालो ने जो फायर किये थें उन्ही फायरों से हमें चोटें आयी।"

37. Upon a reading of the testimony of these three eye-witnesses, what we find is that while they are consistent about the date, time and place of occurrence, there is much inconsistency about the manner thereof. The foremost inconsistency is about the fact, if the assailants, including the appellants Karam Veer, Bahadur Singh son of Ram Singh, reached the rooftop of Basanti's house, where the hut in which the victims were sitting is located, and assaulted them there, or they remained firmly footed on the ground and carried out an assault from the ground, targeting the victims on the rooftop. We have already pointed out this inconsistency in the testimony of PW-2, who somewhere says that the assailants came to the rooftop and carried out the assault, whereas elsewhere he says that they shot from the ground.

38. PW-3 has said in his examination-in-chief that when the victims were sitting on a cot inside the hut, located on the rooftop of Basanti's house, at about 2.30 p.m., Vikram along with the

six named assailants, which includes the appellants, besides four unknown men came over there. The purport of the testimony of this witness in the examination-in-chief, read as a whole, is clear that the assailants came to the hut, located on the rooftop, and carried out the assault there. However, in his cross-examination, this witness says that one unknown man and five of the accused, that is to say, the named ones, were outside the courtyard (angan). In the courtyard, there were the two Bahadurs and one unknown assailant. He has specifically said that neither the accused nor the unknown offenders came to the rooftop. PW-4, however, maintains that the appellant Karam Veer and the others fired from the ground, some from outside the house and others from the courtyard. He has also said that those who fired from the courtyard did not cause injury to anyone. It was those, who were firing from outside the house, caused the injury.

39. If one looks to the testimony of PW-2, he has said that the appellant Karam Veer had shot from a distance of 8-10 paces. He has also said that the assailants, which would include the appellants, entered the hut that the victims were sitting in. Elsewhere, he says, like the other witnesses, that the shooting was from the ground. PW-3 also says in his examination-in-chief that the accused arrived at the hut and in his cross-examination says that injuries were caused by those, who were shooting from the ground outside the house. Further down in his cross-examination, he has said that injuries were caused by those, who shot from inside the house, whereas PW-3 and 4 both say that injuries were caused by those alone who were shooting from outside the house and not those, who were shooting from inside, that is to say, from the courtyard.

40. The entire account of the occurrence given by the witnesses is riddled with contradictions about the essential nature of the assault. The FIR and some part of the testimony of PW-2 and PW-3 indicates that the assailants, including the appellants, came up to the rooftop just outside the hut, and, may be inside too as well, at some point of time, and the assault happened there. Elsewhere, and it must be acknowledged for the better part of the evidence, it is testified that the assault was by shooting from the ground, hitting the victims who were on the rooftop and had moved out of the hut. There is a further contradictions about the fact whether the appellants, who actually shot the deceased to death or injured the others, fired from within the house, that is to say, the courtyard, or those who were standing outside the house and shooting the victims standing on the rooftop. This casts a serious shadow of doubt about the prosecution case relating to the manner of assault. In order to better understand, if these contradictions are but the result of frailties of human expression or understanding, we think we ought refer to some more evidence of a material kind that would shed light on those features of the case that are mystifying indeed.

41. PW-2 in his evidence has clearly said that on the rooftop, there was no bullet, pellet or wad found. The Investigating Officer, PW-11, has said in his cross-examination that upon inspecting the scene of crime, he found that the roof is about 10 feet from the ground. The place between Points B and C in the site-plan, which is apparently on the ground, where 'X' 'X' are marked, he found empties, six in number, that were sealed. This witness has said that when he went to the place where the dead body was lying on the rooftop, he did not find any wad, pellet or empty. He has further said that he did not come across any pellet or bullet marks on the roof. This material evidence while it may lean more towards showing that the shooters were on the grounds, does leave to mystery the fact, why no wad or pellet mark was found on the rooftop, where one man had been shot dead and four others injured, assuming that the shooters were positioned on the ground and

shooting victims on the rooftop located at a height of 10 feet. Except for the blood, where the dead body lay, there was no telltale sign of shooting found, which further makes the prosecution case doubtful. It does suggest that the assault was carried out in some other manner and possibly by someone else under very different circumstances than those alleged by the prosecution. The dead body lying on the roof with blood splattered in situ is only indicative of the fact that the deceased was done to death there. But, in the absence of other cogent evidence, it does not establish the manner of assault. We, therefore, hold that the manner of assault is not established by cogent evidence.

If the ocular evidence is in conflict with the medico-legal evidence to the extent of affecting the former's reliability

42. There are five injured victims in the case, four of whom have received gunshot wounds. Those who have received gunshot wounds are Rajkumari aged 17 years daughter of Bhudar, Jaggo aged 14 years son of Lakhmi Singh, Ravendra Singh son of Lakhmi Singh and Chandra Pal son of Bodha. The following injuries were found in case of each of these victims:

Kumari Rajkumari aged about 17 years

1. Firearm wound .4 cm x .4 cm x scalp deep on right side head 7cm above base of nose. Burning of the edge of the wound was present. Pallet was not palpable. Injury kept under observation. Advised x-ray-

Jaggo aged about 14 years

1. Firearm wound .5 cm x .5 cm x scalp deep on right side head 7 cm above right external ear. Burning of the edge of the wound present. Pallet is not palpable. Injury kept under observation, advised x-ray.

Bodha aged about 56 years

1. Lacerated wound 2 cm x 0.5 cm x scalp deep on right side head 12 cm above right external ear. Bleeding is present. There was complaint of pain over left forearm outer side upper third but no mark of external injury was seen over the spot. Injuries is simple in nature and caused by blunt object, like lathi.

Ravendra Singh aged about 18 years

1. Firearm wound .5 cm x .5 cm x muscle deep on left elbow joint outer side. Bleeding present. Pallet is palpable underneath skin surface. No tattooing or burning at the wound present. Injury kept under observation and advised x-ray.

2. Traumatic swelling 10 cm x 9 cm on back and outer side of left elbow joint. Kept under observation adv. x-ray. Surgical emphysema present.

Chandralal aged about 23 years

1. Firearm wound 0.5 cm x 0.5 cm x muscle deep on left upper arm outer side 10 cm below top of shoulder joint. Pallet is palpable underneath. Burning of the edge of wound is present. Injury kept under observation.

2. Firearm wound .4 on x .4cm x muscle deep on right side chest 8 cm above the nipple and 5 cm away from sternum wound. Pallet is palpable. Burning of the edge of the wound present. Injury kept under observation.

3. Firearm wound .3 cm x .3 cm x muscle deep on inner side of the left index finger on first phalanx. Burning of the edge of the wound present. Pallet is palpable. Injury kept under observation. Advised x-ray of the left upper arm, chest and left hand.

(emphasis by Court)

43. Dr. Ghanshyam Singh, Medical Officer, PHC Jalali, District Aligarh, who examined the victims, proved the injury reports of all the victims, including the one who did not receive gunshot wounds, but lathi blows, to wit, Bodha, and these are on record as Ex. Ka-7 to Ka-11. The examination-in-chief of this witness, to whom a leading question was put by Mr. K.C. Bhargava, the learned Counsel assisting the Public Prosecutor, perhaps privately appearing for the informant, with leave of the Court, which was granted. We, therefore, proceed to reproduce the relevant part of this witness's examination-in-chief:

".....Injured Bodha and Chandrapal are present in Court. It is correct that no blackening scorching were found in any of the firearm wounds. Injury no.1 of Rajkumari and Injury no.1 of Jaggo and injury no.1 of Chandrapal had burning of edge of the wound.

Bad Issue: The counsel assisting PP namely Sri KC Bhargava wants to put a leading question to the witness to clarify the burning of the edges around the wounds of above injured persons. Allowed to do so.

Question:- If the led discharged from the fire was heated and if the same entered the body would the same cause the burning of the edges as found the body of the injured persons?

Ans:- I found charring of the wound of the injured. If the shots were fired within a distance of 4 feet from the body of the injured only then this charring is possible and not otherwise. In my view if the injured was fired at a distance beyond 4 feet then this charring is not possible.

It would be incorrect to suggest that I wrongly or intentionally wrote burning in the injury reports against facts."

(emphasis by Court)

44. In his cross-examination, which also has some material bearing on the worth of the testimony of eye-witnesses in one part, this witness has said:

"I did not know either the injured or the accused who were now facing the trial. Since no direction of the injuries has been mentioned by me in my injury report it shows that the seat of injury and the height of the mussel of the firing weapon were in line with each other i.e. they were at the same line."

(emphasis by Court)

45. The injuries of three of the witnesses, who have received gunshot wounds, that is to say, Rajkumari, Jaggo and Chandra Pal, show that the wounds of entry, one each in case of Rajkumari and Jaggo, and three in case of Chandra Pal, reveal burning of the edge of the wounds noticed by the doctor. A leading question was asked of the doctor by Mr. K.C. Bhargava, Advocate assisting the learned Public Prosecutor, with permission of the Court, all of which has been extracted hereinabove. The question was about the fact that a heated bullet discharged from a gun, if enters the body, would cause burning of the edges, as found here. The doctor in his answer has said that he found charring of the wounds of the injured. He has gone on to say that if shots were fired

within a distance of 4 feet from the body of the injured, only then this charring is possible, and not otherwise. He has further said that beyond a distance of 4 feet, charring is not possible. The inference, therefore, is that all the three, out of the four victims, who received gunshot injuries, were shot from a distance of 4 feet or less. If the part of the evidence, which has ascribed all the shooting to the assailants with their feet on the ground, where the victims were on the rooftop, the roof being 10 feet high, it is not possible that the charring or burning noticed by the doctor would be there on the wounds of three of the four victims.

46. It has come in evidence that all the four victims received gunshot injuries, almost at the same time while they were on the rooftop. Either the assailants had shot them from close range on the rooftop, or they were shot under different circumstances than those that emerge from the part of the testimony, which says that the assailants mostly shot from outside the house with their feet on the ground and the victims atop the roof. The vacillating testimony of the injured witnesses, where in some part they say that the assailants had come to the rooftop, and the other, where they say mostly that they never came to the rooftop, but shot from the ground, for the latter part of it, is not consistent with the medico-legal evidence at all.

47. Further, the testimony of the doctor in his cross-examination that he thought that the muzzle of the gun and the victims were at the same level, is not at all consistent with the case of victims being shot by assailants standing on the ground. Therefore, the ocular testimony of witnesses, where they lean more towards saying, again though vacillating, that the assailants shot from the ground, is not consistent with the medico-legal evidence. It could be consistent if the assailants had come on to the roof and done the evil deed. But about that, the victims have spoken on a vacillating note so vacillating that it is difficult to accept either of it as the truthful version. The medico-legal evidence, together with the vacillating ocular testimony, introduces a great degree of uncertainty in the prosecution case to the extent, where the prosecution case appears to stand on shaky ground.

48. We must add that if the case of the prosecution that the deceased was shot by the assailants, including the appellants, from the ground, is taken to be the correct version, the medico-legal evidence is so incompatible with it that the two cannot stand together. The ocular version would have to be disbelieved. What kind of medico-legal evidence would displace an ocular version, was considered by the Supreme Court in **Sunil Kundu and another v. State of Jharkhand, (2013) 4 SCC 422,** where it was held:

"23. As we have already stated the major lacuna in this case is that use of firearms by the accused is not proved. There are no firearm injuries on the deceased. It is true that when there is cogent eyewitness account, the medical evidence recedes in the background. However, when the eyewitness account is totally inconsistent with the medical evidence and there is reason to believe that improvements are made in the court to bring the prosecution case in conformity with the post-mortem notes, it is a cause for concern. In such a situation, it is difficult to say that one must believe the tainted eyewitness' account and keep the medical evidence aside. In this connection, we may usefully refer to the judgment in Sahebrao [(2011) 4 SCC 249: (2011) 2 SCC (Cri) 201] where this Court observed that when the doctor's experience has not been questioned, he is the only competent person to opine on the nature of injuries and cause of death. We may also refer to the

judgment of this Court in Anjani Chaudhary [(2011) 2 SCC 747: (2011) 1 SCC (Cri) 887] , where the medical evidence did not support the appellant's presence as there was no injury on the deceased which could be caused by a lathi and the appellant was stated to be carrying a lathi. Since the eyewitnesses therein were not found to be reliable, this Court acquitted the appellant therein.

24. In Kapildeo Mandal [(2008) 16 SCC 99: (2010) 4 SCC (Cri) 203] all the eyewitnesses had categorically stated that the deceased was injured by the use of firearm, whereas the medical evidence specifically indicated that no firearm injury was found on the deceased. This Court held that while appreciating variance between medical evidence and ocular evidence, oral evidence of eyewitnesses has to get priority as medical evidence is basically opinionative. But, when the evidence of the eyewitnesses is totally inconsistent with the evidence given by the medical experts then evidence is appreciated in a different perspective by the courts. It was observed that when medical evidence specifically rules out the injury claimed to have been inflicted as per the eyewitnesses' version, then the court can draw adverse inference that the prosecution version is not trustworthy. This judgment is clearly attracted to the present case.

25. In Mani Ram [1994 Supp (2) SCC 289: 1994 SCC (Cri) 1242] PW 2, the only sole eyewitness therein stated that the two appellants therein chased deceased Basdeo and both of them fired at him from the kattas while he was running. However, according to the post-mortem report, Injury 7, which was caused by a firearm, was situated on the right shoulder and front of upper arm and outer part. There was no injury either on the back or anywhere behind the shoulder. Since the prosecution case was that the deceased was fired at while he was running, firearm injuries should have been there on his back. In view of this discrepancy, this Court observed that where the direct evidence is not supported by the expert evidence then the evidence is wanting in the most material part of the prosecution case and, therefore, it would be difficult to convict the accused on the basis of such evidence. We feel that the accused can draw support from this case also. Tainted eyewitness account which is glaringly inconsistent with the medical evidence as regards firearm injury has shaken the credibility of the prosecution case."

49. As already remarked, the only other possibility of this kind of an injury being sustained was, if the assailants were on the rooftop while shooting. There is one side of the ocular evidence, which says that the assailants reached the rooftop, but there is no firm description of that version of assault in the ocular evidence, so consistent with the medico-legal evidence, that a case of shooting at a range of 4 feet or less can be said to be testified by the witnesses. We, therefore, refused to believe the prosecution version on this score.

If the presence of PW-3 is doubtful

50. This was a point mooted before us to show that tailor made evidence was introduced in the case by selectively producing witnesses, who would support the prosecution case while keeping back others, whose evidence would have thrown much light on the case. This is particularly so as there is substantial incongruity in the accounts of PW-2 and PW-4 about the manner of assault and also in the account of PW-2 on its own terms. All these we have already noticed. PW-3 is a brother of one of the injured victim, Bodha, who was assaulted with a lathi by two of the assailants, according to the prosecution case, when he descended the stairs. According to the prosecution, Bhudars house adjoins that of Basanti and there is a wall between the two roofs. He was sitting in

his house on the ground floor, whereas the victims were sitting on the rooftop in Basantis house in the hut located there. He saw these assailants arrive and then heard a shot ring out, the one that was fired by Sonpal. Upon hearing the shot and the next following fire from the gun, he went up his roof, using a ladder because there is no staircase. He reached the same roof, where the deceased and the injured were beleaguered by the assailants. According to his testimony in the cross-examination, he did not go into the hut, which the victims had occupied before the commencement of assault, but stayed on the roof at a distance of 5-6 paces from the victims and saw it all happen from that short distance. Upon being cross-examined, he has stated that he saw 10-12 rounds being fired in his presence and he says that he went to the roof out of fear. He says that he had not seen the accused earlier, but saw them once he had reached the roof. It is this witness, who has categorically said that none of the assailants made it to the roof, but fired either from the courtyard or mostly from outside the house, all on the ground.

51. We are of opinion that the presence of this witness is highly doubtful. His reaction to climb his roof using an open make-shift ladder of his house and then reach the adjoining roof, where the victims were being assaulted, is a very unnatural reaction for any man of ordinary prudence so unnatural that it is hard to believe the truth of it. The explanation that he gave is that he went to the roof out of fear. A man, circumstanced as PW-3, could well have been under great fear, but that could not have made him land in the midst of flying led. He would have sought the safety of his own house, or elsewhere to escape assault, rather than land in the midst of it. There is no earthly explanation for this utterly irrational conduct. The other is that once he was just 5-6 paces away, from where the victims received gunshot injuries, there is no plausible reason how he could escape unscathed by the assailants, who were apparently either shooting from the ground or were there on the roof. This witness has not received any injury. We find this witness's presence to be utterly doubtful. The only reason that he was introduced by the prosecution, can be gathered from a clue in the opening words of his cross-examination, where he says Javar Singh, also an eye-witness, was spoken to on 16th of January or there about, but he refused to testify. May be for reason that PW-3, being the brother of one of the injured witnesses, the father of two of the injured witnesses and uncle of the deceased, he chose the course of volunteering before the Police to testify and gave a false statement to them about his presence.

The effect of non-examination of material witnesses on the prosecution case

52. Though, there is no rule by which the prosecution can be obliged to produce all witnesses, who might have seen or known the occurrence first hand, it is yet to be seen if the evidence produced by the prosecution is insufficient or unsatisfactory, and there remain one or more witnesses, who could but have not been produced, what effect the non-production would have on the prosecution. This is a matter, which has to be judged on the facts of each case. If there is sterling evidence of one or two witnesses, the prosecution cannot be blamed for not producing three more, whose evidence may be as sterling as those chosen by the prosecution to appear in the dock. The defence nor the Court can compel the prosecution to multiply witnesses, where those already there, can testify to their case sufficiently. However, if the prosecution evidence is shaky or deficient and there still remain one or more witnesses, who could shed light on the case, non-production of such a witness, may well lead to an adverse inference against the prosecution to the effect that if produced, he would not have supported the prosecution. In this connection, the

following remarks of the Supreme Court in **Khatri Hemraj Amulakh v. State of Gujarat, (1972) 3 SCC 671** are relevant, where it has been observed:

"10. According to the statement of Dharamshi recorded in Gujrati, his tailoring shop is near the house of the accused. On the day of occurrence at about 10 a.m. Dharamshi saw the accused sitting on a stone opposite his (Dharamshi's) shop. The accused appeared to be in a state of excitement. He was looking to the ground and was not speaking with any one. After sitting like that for about an hour, the accused met Shiv Lal whose shop is also nearby. Thereafter, the accused went inside his house. Dharamshi later on that day learnt of the murder of Thakari deceased. Accordingly however, to the English record of the statement of Dharamshi, the accused after sitting on the stone for about an hour in a state of excitement met Shiv Lal. The accused and Shiv Lal then went together to the house of the accused. The learned judges of the High Court relied upon the Gujrati version of the statement of Dharamshi and accepting that to be correct, came to the conclusion that the accused was alone with Thakari deceased at the time of the present occurrence. In this connection, we find that though Dharamshi has deposed in court that the accused was in a state of excitement, Dharamshi made no mention of the accused being in the state of excitement in his statement recorded by the police. It would thus appear that Dharamshi has tried to improve upon his police statement. Shiv Lal, with whom the accused was closetted, according to the Gujrati version of Dharamshi's statement, and who also went along with the accused inside the house, according to the English version, has not been examined as a witness in the case and there is nothing on the material before us to indicate as to why Shiv Lal was not examined by the prosecution. The non-examination of Shiv Lal who was a very material witness would give rise, in our opinion, to an inference that, if examined, he would not have supported the prosecution evidence. We thus find that a very important piece of evidence which could have shown as to whether the accused went inside his house shortly before the occurrence is missing in this case. In any case we do not find it safe to act upon the uncorroborated statement of Dharamshi.

(emphasis by Court)

53. Stating the wider principle regarding such cases is the authority of the Supreme Court in **Joginder Singh v. State of Haryana, (2014) 11 SCC 335**. In Joginder Singh (supra), it was held:

"37. At this juncture, we may note with profit another aspect that has been highlighted by the learned counsel for the respondent. The prosecution has not examined Chander, husband of the deceased, a relevant eyewitness, Bala, Murti and Bimla, three other injured witnesses. No explanation has been given by the prosecution. Though there have been certain suggestions to PW 16 in the cross-examination, but his answer is evasive. It is well settled in law that non-examination of the material witness is not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court levelled against the prosecution should be examined in the background of the facts and circumstances of each case so as to find whether the witnesses are available for being examined in the court and were yet withheld by the prosecution. (See State of H.P. v. Gian Chand [(2001) 6 SCC 71: 2001 SCC (Cri) 980].)

38. In this context, we may also note with profit a passage from Takhaji Hiraji v. Thakore Kubersing Chamansing [(2001) 6 SCC 145: 2001 SCC (Cri) 1070]: (SCC p. 155, para 19)

19. It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itselfwhether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses.

39. Recently in Manjit Singh v. State of Punjab [(2013) 12 SCC 746: (2014) 4 SCC (Cri) 531], this Court, after referring to earlier decisions, has opined thus: (SCC p. 757, para 24)

24. it is quite clear that it is not the number and quantity but the quality that is material. It is the duty of the Court to consider the trustworthiness of evidence on record which inspires confidence and the same has to be accepted and acted upon and in such a situation no adverse inference should be drawn from the fact of non-examination of other witnesses. That apart, it is also to be seen whether such non-examination of a witness would carry the matter further so as to affect the evidence of other witnesses and if the evidence of a witness is really not essential to the unfolding of the prosecution case, it cannot be considered a material witness (see State of U.P. v. Iftikhar Khan [(1973) 1 SCC 512: 1973 SCC (Cri) 384]).

40. In the case at hand, non-examination of the material witnesses is of significance. It is so because PW 11 is really an interested witness though the High Court has not agreed with the same. It appears from the material brought on record that he had an axe to grind against the appellant. That apart, Chander, who was present from the beginning, would have been in a position to disclose more clearly about the genesis of the occurrence. He is the husband of the deceased and we find no reason why the prosecution had withheld the said witness. Similarly, the other three witnesses who are said to be injured witnesses when available should have come and deposed. Therefore, in the obtaining factual matrix that their non-examination gains significance."

54. Here, we have already noticed that the two injured witnesses, PW-2 and PW-4 have taken contradictory stands regarding the fact, if the assailants did come up to the rooftop in order to commit assault and PW-2 is vacillating on the issue, the medico-legal evidence places in doubt the otherwise firm stand of PW-4 that all the accused had their feet on the ground and shot the deceased and the injured at the rooftop. All this has led to a shaky prosecution case, as already remarked. In this case, there are three injured witnesses, that is to say, Bodha, Rajkumari and Jaggo, none of whom have been examined. PW-3, whose presence is very doubtful on the spot, has been introduced for the mere fact that one of the other eye-witnesses, not an injured witness, Javar Singh, refused to testify. In such circumstances, these three eye-witnesses, who are injured witnesses, ought have been examined, may be one or two, to firm up the prosecution case,

whichever way it was. No reason has been assigned for the non-prosecution of these eye-witnesses given the shaky background of the prosecution evidence. In such circumstances, non-examination of the three eye-witnesses, or at least one or more of them, leads us to draw an adverse inference against the prosecution that if produced, these eye-witnesses would not have supported the prosecution, leading to further doubt about the veracity of the prosecution case.

Is there a culpable delay by the Police in recording the statements of witnesses under Section 161 Cr.P.C. and its effect on the prosecution case

55. Three witnesses of fact have been examined, that is to say, PW-2, PW-3 and PW-4. There is one more witness of fact, who has not been considered by us, and, that is, PW-10, Basanti. Her testimony, in our opinion, is not relevant because she is neither a witness of fact nor of res gestae. She has testified to the background of the property dispute between her deceased husband and the assailants. Since motive has not been considered to be a relevant fact in this case, the case being one founded on direct evidence, the testimony of the said witness is not of any relevance. Of the witnesses of fact mentioned hereinabove, two are injured witnesses and the third a non-injured eye-witness. We have doubted the presence of the non-injured eye-witness and found the testimony of the injured witnesses to be rather shaky on the essential parameter of the manner of assault. Though not a thumb rule in every case that a delay in recording the statement of a witness under Section 161 Cr.P.C. would be fatal to the prosecution, but in many cases it becomes relevant, particularly if there is no explanation for the delay by the Police in taking down the witness's statement under Section 161 Cr.P.C. Here, as appears from the evidence of PW-2, the first informant, we find that the testimony of the injured witnesses, including those who have been produced in evidence, and those not, was recorded after 5-6 days of the occurrence. The relevant part of PW-2's testimony reads:

"हम थाने करीबन साढ़े पॉच बजें पहुँचें थे और 6 बजें हस्पताल भेज दिये गये। करीबन सवा 6 बजें अस्पताल पहुँच गये तभी हमारे मुआयने कर लिये थें। मुआयने के बाद दूसरे रोज सुबह हम लोग गॉव पहुँचें थें। थाने पर दरोगा जी ने हमारे ब्यान नही लिये और ना मेरे सामने किसी से पूछताछ नही की। हमारे व्यानात दरोगा जी ने घटना के 5-6 दिन बाद लिये थें। और हम सब चारों चुटैलों के ब्यान एक ही दिन लिये थें। थाने हम पॉच चुटैल गये थें। मेरे पिता जी का ब्यान उस रोज नही लिया था जिस रोज हमारे ब्यान लिये थें। मेरे पिता जी का ब्यान मुझसे पहलें ही हो गया। कब हुआ मैं नही कह सकता। रात में हम चुटैल अस्पताल में ही रहे थें कोई दरोगा अस्पताल में उस रात नही आया था। सुबह हम अपने गॉव गये थाने नही गये। चूँकि भाई का क्रिया कर्म करना था इस कारण थाने ना जाकर घर गॉव चलें गये। सिपाही जो हमारे साथ अस्पताल गया था डाक्टरी के बाद वह वापिस चला गया। केवल एक सिपाही हमारे साथ अस्पताल गया था। हम स्वयं ही गॉव क्रिया कर्म कि के लिये गये थें किसी ने नही कहा था। हस्पताल में दाखिल होने के बाद या गॉव में दाखिल होने के बीच तक पुलिस वालें से मुलाकात नही हुई गॉव का कोई आदमी भी हमसे मिलने अस्पताल में नही आया था। हमें जब हम हस्पताल से चलें यह नही पता था कि लाश का क्रिया कर्म कब होगा। जब हम गॉव पहुँचे तो घर पर लाश नही मिली। जब हमको गॉव में पता चला कि भाई की लाश मथुरा चली गयी है तो हम ट्रेक्टर लेकर मथुरा आये। हमें लाश भाई की शाम को साढें 4 बजें के लगभग मिल गयी क्रिया कर्म गॉव में जाकर किया था मथुरा में नही किया

था। जब क्रिया कर्म हुआ दरोगा जी गॉव में आये थे लेकिन उस समय मेंरा ब्यान नही लिया बाद में लिया। क्रिया कर्म करीबन 8 साढें 8 बजें शुरु किया और 10 बजें फारिक हो गये। दाह क्रिया कर्म के बाद दरोगा जी गॉव से चलें गये थे कहॉ गये पता नही दरोगा जी गॉव से जाने से पहलें हमें थाने आ जाने के लिये कह कर नही गये थें। दरोगा जी ने इस कत्ल के सिलसिलें में मेरे सामने केवल चुटैलों के बयान लियें और कोई काम नही किया। हम सब चुटैल राजकुमारी को छोड़ कर लाश लेने मथुरा आये थें।"

(emphasis by Court)

56. The delay in recording the statements under Section 161 Cr.P.C. in a case, where the testimony of the witnesses is shaky, is all the more important. A confrontation with a previous statement, promptly recorded by the Police, could have cleared many a doubt. An additional factor for the necessity of a prompt recording of the statement under Section 161 Cr.P.C. is the fact that this case does present a doubt about the introduction of one of the eye-witnesses, PW-3, in order to bolster the prosecution case. We have held that he does not seem to have seen the occurrence and his presence is doubtful. A prompt recording of the statements of eye-witnesses under Section 161 Cr.P.C. could have cleared this doubt as well. The testimony of PW-2 shows that the Police were not doing the work of recording statements of witnesses for days together after the occurrence, and the statements of the injured were recorded at the police station 5-6 days after the occurrence. This laxity would have well given opportunity for the foisting of PW-3 as an eye-witness, though we must say that the precise date on which this witness's statement under Section 161 Cr.P.C. was recorded, has not been brought to our notice.

57. No explanation has been given for the delay in recording the statements under Section 161 Cr.P.C. either by the witnesses themselves or by the Investigating Officer, who has testified as PW-11. In **Harbeer Singh v. Sheeshpal and others, (2016) 16 SCC 418,** this question received the consideration of the Supreme Court. In **Harbeer Singh** (supra), it was held:

15. . Moreover, it has also come in evidence that there was a delay of 15-16 days from the date of the incident in recording the statements of PW 3 and PW 9 and the same was sought to be unconvincingly explained by reference to the fact that the family had to sit for condolence (शोक) meetings for 12 to 13 days. Needless to say, we are not impressed by this explanation and feel that the High Court was right in entertaining doubt in this regard.

16. As regards the incident of murder of the deceased, the prosecution has produced six eyewitnesses to the same. The argument raised against the reliance upon the testimony of these witnesses pertains to the delay in the recording of their statements by the police under Section 161 CrPC. In the present case, the date of occurrence was 21-12-1993 but the statements of PW 1 and PW 5 were recorded after two days of incident i.e. on 23-12-1993. The evidence of PW 6 was recorded on 26-12-1993 while the evidence of PW 11 was recorded after 10 days of incident i.e. on 31-12-1993. Further, it is well-settled law that delay in recording the statement of the witnesses does not necessarily discredit their

testimony. The court may rely on such testimony if they are cogent and credible and the delay is explained to the satisfaction of the court. [See Ganeshlal v. State of Maharashtra [Ganeshlal v. State of Maharashtra, (1992) 3 SCC 106: 1993 SCC (Cri) 435]; Mohd. Khalid v. State of W.B. [Mohd. Khalid v. State of W.B., (2002) 7 SCC 334: 2002 SCC (Cri) 1734]; Prithvi v. Mam Raj [Prithvi v. Mam Raj, (2004) 13 SCC 279: 2005 SCC (Cri) 198] and Manu Sharma v. State (NCT of Delhi) [Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1: (2010) 2 SCC (Cri) 1385].]

17. However, Ganesh Bhavan Patel v. State of Maharashtra [Ganesh Bhavan Patel v. State of Maharashtra, (1978) 4 SCC 371: 1979 SCC (Cri) 1] , is an authority for the proposition that delay in recording of statements of the prosecution witnesses under Section 161 CrPC, although those witnesses were or could be available for examination when the investigating officer visited the scene of occurrence or soon thereafter, would cast a doubt upon the prosecution case. (See also Balakrushna Swain v. State of Orissa [Balakrushna Swain v. State of Orissa, (1971) 3 SCC 192: 1971 SCC (Cri) 313]; Maruti Rama Naik v. State of Maharashtra [Maruti Rama Naik v. State of Maharashtra, (2003) 10 SCC 670: 2004 SCC (Cri) 958] and Jagjit Singh v. State of Punjab [Jagjit Singh v. State of Punjab, (2005) 3 SCC 689: 2005 SCC (Cri) 893].) Thus, we see no reason to interfere with the observations of the High Court on the point of delay and its corresponding impact on the prosecution case."

58. We are, therefore, of opinion that the already shaky evidence of injured witnesses, PW-2 and PW-4, the doubtful presence of PW-3, the conflict between one version of PW-2's evidence about the manner of assault and that of PW-4, on one hand, and the medico-legal evidence, on the other, makes the delayed recording of the statements of witnesses by the Police worse for the prosecution's veracity.

59. In the totality of circumstances, this Court is of opinion that the prosecution have failed to bring home the charge beyond all reasonable doubt and the benefit of doubt must be extended to the appellants in this case.

60. In the result, the appeal succeeds and is **allowed**. The impugned judgment and order passed by the learned Additional Sessions Judge is hereby **set aside** and the appellants **acquitted** of the charges. They are on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged.

61. The appellants, **Karam Veer and Bahadur Singh son of Ram Singh**, each shall execute a personal bond in the sum of Rs.25,000/- under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for their appearance, in the event of an appeal being preferred against his acquittal.

62. Let the lower court records be returned to the Trial Court forthwith.

(2026) 5 ILRA 837
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 05.05.2026

BEFORE

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

Criminal Appeal No. 818 of 1985

Hari Prasad Pandey & Ors. ...Appellants
Versus
State of U.P. ...Respondent

Issue for consideration

Matter pertains to vicarious liability of every member of unlawful assembly.

Headnotes

Unlawful assembly - Common object- Vicarious liability- Indian Penal Code, 1860 - Ss. 141, 149, 302/149, 307/149, 147 and 148 -for attracting constructive liability under S. 149 IPC-not necessary that every member of the unlawful assembly should himself inflict an injury or participate in the actual killing-where the evidence establishes -that the accused continued to be a member - and acted in furtherance of its common object -he incurs the same liability as the actual assailants notwithstanding that he wielded no weapon effectively or caused no injury himself- **Appeal dismissed.**

Case Law Cited

1. Pruthiviraj Jayantibhai Vanol v. Dinesh Dayabhai Vala and others, (2022) 18 SCC 683
2. Pratap Singh and others v. State of U.P., 2021 SCC OnLine All 686
3. Kaleem v. State of Madhya Pradesh, 2026 SCC OnLine MP 5990
4. State of Madhya Pradesh v. Badri Yadav, (2006) 9 SCC 549
5. Yakub Ismailbhai Patel v. State of Gujarat, (2004) 12 SCC 229
6. Nisar Khan v. State of Uttaranchal, (2006) 9 SCC 386
7. Mizaji and another v. State of U.P., AIR 1958 SC 572
8. Lalji and others v. State of U.P., (1989) 1 SCC 437
9. Gangadhar Behera and others v. State of Orissa, (2002) 8 SCC 381
10. Zainul v. State of Bihar, 2025 SCC OnLine SC 2152

List of Acts

Indian Penal Code, 1860

List of Keywords

Evidence aliunde; principal events in the crime; res gestae; particeps criminis.

Appearances of parties

Counsel for the Appellant : Arun Kumar Tiwari, Ramesh Chandra, Sheetala Prasad Pandey, Shiv Ram Dubey
Counsel for the Respondent : A.G.A.

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

1. This appeal, though preferred by the eight convicts, who were tried before the Sessions Judge of Basti in Sessions Trial No.159 of 1984, and all convicted under Sections 302 read with Section 149 of the Indian Penal Code, 1860 (for short, 'IPC'), one alone of them, that is to say, Ramakant, survives to pursue it. The other seven convicts have died pending appeal at different points of time. The appeal was ordered to abate on behalf of each of the seven deceased convicted appellants vide order dated 24.11.2025. The appeal was heard on the said day at the instance of Ramakant alone.

2. This appeal is directed against the judgment and order of Mr. K. Narayan, the then Sessions Judge, Basti dated 21.03.1985, convicting the appellant, along with others, for the offence punishable under Section 302 read with Section 149 IPC and sentencing him to imprisonment for life, besides other counts, in regard to which term sentences were variously awarded, some to the deceased-appellants and others to the appellant, as would hereinafter be detailed.

3. A First Information Report ('FIR' in short) was lodged by Ram Pragat Pandey son of Nirmal Pandey on 01.04.1984 at 6.30 a.m. regarding an incident, that happened earlier in the day at 6.30 a.m., giving rise to Crime No.49 of 1984, under Sections 147, 148, 149, 307, 324, 323 IPC, Police Station Rudhauli, District Basti. According to the first informant, elections to the office of Pradhan of the Village were held, wherein the then sitting Pradhan Hari Prasad Pandey faced contest from Rammurat Chaudhary. Shesh Bahadur Chauhan and the informant's family had openly supported Rammurat Chaudhary and assisted him, leading the then Village Pradhan Hari Prasad to harbour ill-will against Shesh Bahadur Chauhan and the informant's family. In the night intervening 27/28.03.1984, Hari Prasad, Swami Nath, Deena Nath and Patandeen, burgled in Shesh Bahadur's house, leading to the registration of an FIR against them on 28.03.1984. This infuriated the four men last mentioned, making them go after Shesh Bahadur Chauhan and the informant's family. Harbouring the aforesaid animosity, in the morning hours of 01.04.1984 at 6.30 a.m., according to the informant, when he and his father had gone to their chak, located on the northern side of the village, and were about their task of harvesting, and Shesh Bahadur and his mother were at their shop near the informant's chak, Hari Prasad Pandey, Mahipat Pandey, Swami Nath Pandey, Deena Nath Pandey, Ramakant Pandey, Tara Prasad Pandey, Patandeen Chauhan and Sadhu Saran arrived there variously armed. Hari Prasad Pandey was carrying a spear, Mahipat Pandey a Farsa, Sadhu Saran a country-made pistol, whereas all others were wielding sticks (lathi-danda). All these men, with a common object, alighted at Shesh Bahadur's shop, whereupon Hari Prasad Pandey exhorted others, saying it with an abuse and pointing to the deceased Shesh Bahadur, that he is the one, who had reported them to the Police, asking the others to do him to death. This led Shesh Bahadur to be struck by fear, and, in consequence, he called rescue. Shesh Bahadur then made a dash towards the informant and his companions. The informant and his companions asked Hari Prasad to desist from the course of violence, whereupon Hari Prasad assaulted the informant with the intention to kill.

4. The informant and Shesh Bahadur attempted to escape towards Mugraha, whereas amongst the informant's companions, his father and younger brother Ram Shankar Pandey attempted to run of towards Dasia. The first informant goes on to say that the informant and Shesh Bahadur were chased by Hari Prasad Pandey, Mahipat Pandey, Swami Nath Pandey and Patandeen Chauhan, whereas his father and brother were chased by Deena Nath Pandey, Ramakant Pandey, Tara Prasad Pandey and Sadhu Saran. Sadhu Saran was wielding the country-made pistol, who shot the informant's father in his left lower limb, but he somehow managed to run on and save his life. On the other hand, Shesh Bahadur was surrounded by Hari Prasad, Mahipat, Swami Nath and Patandeen, who assaulted and battered him mercilessly. On account of the injuries, he was thrown to the ground. The assailants then dragged the victim to the field of Patandeen. Shesh Bahadur's mother came over wailing and beseeched the assailants to spare her son, but the assailants did not yield and continued to assault Shesh Bahadur with sticks (lathi-danda) and the spear. Upon hearing the commotion that this incident created, Seeta Ram son of Mahadev and Badri son of Tittal arrived and saw the assailants. The assailants, holding out threats, made good their escape from the place of occurrence. It was reported that Shesh Bahadur, who had sustained severe injuries and his mother, who was also badly injured, were lying on the spot with the condition of Shesh Bahadur being reported as critical.

5. After registration of the FIR, the Police commenced investigation. The Investigating Officer proceeded to the site of crime, and in the presence of witnesses Parmanand and Udairaj, collected samples of bloodstained earth from Patandeen's field as well as an unstained sample, both of which were sealed in separate containers. A memo of collection of these samples was drawn up and duly signed by witnesses at the spot. The injured, Smt. Tikura, was sent for her medical examination by the Police through a memo dated 01.04.1984. She was examined the same day. The other injured Nirmal Pandey was also forwarded for his medical examination to the Medical Officer, In-charge, Primary Health Centre, Rudhauli, under a memo dated 01.04.1984 issued by the S.H.O., P.S. Rudhauli. He too was examined the same day. A supplementary medical report was done for him, as advised, on 03.04.1984. The injuries sustained by these two persons would be spoken of later, during the course of this judgment. Inquest for the purpose of ascertaining the cause of death, as regards the deceased Shesh Bahadur, was held on 01.04.1984 with proceedings commencing at 10:00 hours on the aforesaid date and ending at 12:30 hours. After the inquest, the dead body was sent for autopsy. The autopsy was done on 02.04.1984, opining the cause of death to be shock and haemorrhage, as a result of ante-mortem injuries. Some sixteen injuries were noticed on the dead body, details whereof shall be mentioned later in this judgment.

6. After investigation, the Police filed a charge-sheet against eight men, all of whom were the appellants here.

7. The learned Chief Judicial Magistrate vide his order dated 24.08.1984, finding that the case was exclusively triable by the Court of Sessions, committed it to the Sessions for trial and directed provision of copies of all police papers for the purpose of the appellants' defence.

8. Post committal, the case was numbered as Sessions Trial No. 159 of 1984 and came up for framing of charges before the learned Sessions Judge, Basti on 01.10.1984. The learned Sessions Judge framed a charge under Section 307 read with Section 149 IPC and another under Section 302

read with Section 149 IPC against all the eight appellants. A charge was separately framed against three appellants, to wit, Hari Prasad, Mahipat and Sadhu Saran, under Section 148 IPC. Still another charge was framed against the appellants, Swami Nath, Deena Nath, Ramakant, Tara Prasad and Patandeen, under Section 147 IPC. A separate charge was framed jointly against Hari Prasad, Mahipat, Swami Nath and Patandeen under Section 307 read with Section 34 IPC with regard to the injuries caused to Smt. Tikura. And, lastly, a charge was jointly framed against Sadhu Saran, Deena Nath, Ramakant and Tara Prasad under Section 307 read with Section 34 IPC for the causing of injuries to Nirmal Pandey. All the charges were read over to the respective appellants, against whom these were framed. Each of them denied the charges and claimed trial.

9. The prosecution produced the following witnesses to prove their case:

1. PW-1 Nirmal Pandey, an injured eye witness,
2. PW-2 Smt. Tikura, an injured eye witness and mother of the deceased,
3. PW-3 Ram Pragat Pandey, an eye witness,
4. PW-4 H.C. Tila Mohd. Khan, Reader to C.O., Bansi, District Basti, who was posted as Head Moharrir, P.S. Rudhauli at the time of incident and scribed the check FIR,
5. PW-5 Dr. A.P. Singh, Medical Officer, Sadar Hospital, Basti, who at that time was posted as an E.M.O., Sadar Hospital, Basti and examined the injuries of Smt. Tikura,
6. PW-6 S.I. Jai Shankar Tripathi, P.S. Dudhara, District Basti, who commenced investigation of the case on 03.04.1984,
7. PW-7 Dr. O.P. Pathak, P.H.C. Rudhauli, District Basti, the then Medical Officer, P.H.C. Rudhauli, District Basti and examined the injured Nirmal Pandey,
8. PW-8 S.O. Prem Kumar Rai, S.O. Mahane, District Basti, the then S.O. Rudhauli, who started investigation and done other proceedings,
9. PW-9 S.O. Uma Shankar Dwivedi, S.O. Gambhirpur, District Azamgarh, the then S.O. P.S. Rudhauli, who completed investigation and submitted the charge-sheet, and,
10. PW-10 Dr. G.N. Prasad, M.O. Sadar Hospital, Basti, who conducted postmortem of the deceased Shesh Bahadur.

10. The following documentary evidence and materials were produced by the prosecution to establish their case:

Sr. No.	Exhibit No.	Exhibited documents with brief particulars
1	Ex. Ka-1	Written report dated 01.04.1984 lodged with the Police Station Rudhauli, District Basti, proved by PW-3, Ram Pragat Pandey
2	Ex. Ka-2	Check FIR dated 01.04.1984, proved by PW-4, H.C. Tila Mohd. Khan
3	Ex. Ka-3	Carbon Copy of GD Entry No.12 Time 7.30 dated 01.04.1984, proved by PW-4, H.C. Tila Mohd. Khan
4	Ex. Ka-4	Copy of GD Entry No.14 Time 10.00 dated 01.04.1984, by which Section 302 IPC added upon death of Shesh Bahadur, proved by PW-4, H.C. Tila Mohd. Khan
5	Ex. Ka-5	Injury report of Smt. Tikura dated 01.04.1984, proved by

		PW-5, Dr. A.P. Singh
6	Ex. Ka-6	Injury report of Nirmal Pandey dated 01.04.1984, proved by PW-7, Dr. O.P. Pathak
7	Ex. Ka-7	Inquest report dated 01.04.1984, proved by PW-8, S.O. Prem Kumar Rai
8	Ex. Ka-8	Naksha Nash dated 01.04.1984, proved by PW-8, S.O. Prem Kumar Rai
9	Ex. Ka-9	Challan Nash dated 01.04.1984, proved by PW-8, S.O. Prem Kumar Rai
10	Ex. Ka-10	Letter to the C.M.O. dated 01.04.1984 to submit the report, proved by PW-8, S.O. Prem Kumar Rai
11	Ex. Ka-11	Letter to the C.M.O. dated 01.04.1984 for postmortem of the deceased Shesh Bahadur, proved by PW-8, S.O. Prem Kumar Rai
12	Ex. Ka-12	Letter to the Reserve Inspector dated 01.04.1984, proved by PW-8, S.O. Prem Kumar Rai
13	Ex. Ka-13	Letter to the C.M.O. dated 01.04.1984 forwarding belongings found on the deceased person, proved by PW-8, S.O. Prem Kumar Rai
14	Ex. Ka-14	Site Plan of the place of occurrence dated 01.04.1984, proved by PW-8, S.O. Prem Kumar Rai
15	Ex. Ka-15	Memo collecting bloodstained and unstained earth from the spot dated 01.04.1984, proved by PW-8, S.O. Prem Kumar Rai
16	Ex. Ka-16	Charge sheet dated 16.04.1984, proved by PW-9, S.O. Uma Shankar Dwivedi
17	Ex. Ka-17	Postmortem Report of the deceased Shesh Bahadur, dated 02.04.1984, proved by PW-10, Dr. G.N. Prasad
18	Ex. Ka-18	Copy of the X-ray report of Nirmal Pandey dated 03.04.1984, proved by PW-10, Dr. G.N. Prasad
19	Material Ex. 1 and 2	Containers containing bloodstained and unstained earth, proved by PW-8, S.O. Prem Kumar Rai
20	Material Ex. 2	X-ray plate of Nirmal Pandey, proved by PW-10, Dr. G.N. Prasad

11. Upon conclusion of the prosecution evidence, statements of the appellants were recorded under Section 313 Cr.P.C.

12. The Trial Court vide judgment and order dated 21.03.1985 has convicted and sentenced the appellants in the following manner:

Sr. No.	Accused	Section	Sentence
1	All accused	302 read with 149 IPC	Life Imprisonment

2	All accused	323 read with 149 IPC	One year rigorous imprisonment
3	Sadhu Saran	324 IPC	One year rigorous imprisonment
4	Hari Prasad, Mahipat, Swami Nath, Rama Kant, Tara Prasad, Patan Den and Dina Nath	324 read with 149 IPC	One year rigorous imprisonment
5	Hari Prasad, Mahipat and Sadhu Saran	148 IPC	Two years rigorous imprisonment
6	Swami Nath, Rama Kant, Tara Prasad, Patan Deen and Deena Nath	147 IPC	One year rigorous imprisonment

13. Aggrieved, the present criminal appeal has been preferred by the appellants.

14. Heard Mr. Arun Kumar Tiwari, learned Counsel appearing on behalf of the sole surviving appellant, Ramakant, Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate appearing on behalf of the State and perused the record.

The date, time and place of occurrence

15. The date and time of occurrence, according to the FIR lodged by Ram Pragat Pandey, PW-3, is 1st April, 1984 at 6.30 a.m. It all began at the tea-shop of the deceased and his mother, located close to the field of the first informants father, where there was a pulse crop (arhar) standing that the first informant and his father Nirmal Pandey, PW-1 had just commenced harvesting. The deceased appellants, including the appellant Ramakant Pandey, arrived at the deceased's tea-shop on the date and time already said, armed with weapons some deadly and the others not so deadly. Those, who alighted at the deceaseds tea-shop, were Mahipat, Hari Prasad, Sadhu Saran, Swami Nath, Deena Nath, Patandeen, Ramakant (the appellant) and Tara Prasad. According to the first informant, the assailants had come over with a premeditated intention to kill, and, the FIR discloses a brief background of the motive.

16. Upon arrival at the deceaseds tea-shop, Hari Prasad Pandey, one of the deceased appellants, is reported to have said, referring to the deceased Shesh Bahaduri, that he is the one who reports them (to the Police), let us finish him off. Shesh Bahadur was terrified and ran towards the field of the informants father. The informant, his father and brother, intervened to save the situation, but that turned Hari Prasad and his companions belligerent and they charged at the informant, his father and brother too with an intent to kill. At this stage, Shesh Bahadur is said to have taken to his heels in the direction of Village Mugraha together with the informant, whereas the informants father and his younger brother Ram Shankar Pandey sprinted towards Village Dasia. The informant and Shesh Bahadur were given a chase by Mahipat, Hari Prasad, Patandeen and Swami Nath, whereas the informants father and brother were chased by Sadhu Saran, Deena Nath, Ramakant and Tara Prasad. Sadhu Saran is said to have been armed with a country-made pistol, which he employed to shoot the informants father in his left lower limb. The informants father, however, made a dash to save his life. Shesh Bahadur was surrounded by Hari Prasad, Mahipat,

Swami Nath and Patandeen, who severely assaulted him. In consequence of the injuries, he fell down. He was picked up and carried to the field of Patandeen. At this point of time, Shesh Bahadurs mother, Tikura, PW-2, reached there and beseeched the appellants to spare her sons life. She too was severely assaulted, employing sticks (lathi-danda) and spear.

17. It would, thus, be seen that the earliest account of the occurrence shows the assailants alight at the deceaseds tea-shop at 6.30 a.m., an unlawful assembly of eight men, all armed. The respective arms, that the assailants wielded, have already been mentioned in this judgment. Hari Prasad Pandey exhorted others to kill Shesh Bahadur, whereupon he called rescue. Whatever intervention, the first informant, his father and brother made, led the assailants to attack them too. At this juncture, Shesh Bahadur and the informant went in one direction, whereas the informants father and younger brother went in another direction, both groups of two running to save their lives. The assailants too split into two assailant groups. Thus, the occurrence took place slightly after 6.30 a.m. at two different places, away from the deceaseds tea-shop. This is the earliest description of the occurrence that figures in the FIR, that was lodged on 01.04.1984 at 7.30 a.m., that is to say, within an hour of all of it happening. The distance of the police station is nine kilometers. The FIR is quite prompt.

18. In his testimony, PW-1 has given out the time and place of occurrence as 1st April, 1984 at 6.30 a.m. According to him, it was a Sunday. This witness says that he and his son Ram Pragat had just begun harvesting their pulse crop (arhar), when the eight members of the unlawful assembly, to wit, Mahipat, Hari Prasad, Sadhu Saran, Swami Nath, Deena Nath, Patandeen, Ramakant and Tara Prasad, well armed, alighted at Shesh Bahadurs tea-shop, which this witness says is located at a distance of 100 paces from his field at the north-west corner. The assailants surrounded the victims shop. There was commotion and he and his son Ram Pragat moved in to rescue Shesh Bahadur. When they reached there, the assailants were threatening him with death. The witness says that he and his son dissuaded the appellants from their violent course of action, but they would not relent. At that point of time, the witnesss other son Ram Shankar also arrived. They were engaging with the assailants to talk them out of it, when Shesh Bahadur took to his heels in the direction of Village Mugraha. The witnesss son Ram Pragat also sprinted with him. At that point of time, this witness and his other son Ram Shankar also ran in the eastern direction. The deceased Shesh Bahadur and the witnesss son Ram Pragat were chased by the four assailants, Mahipat, Hari Prasad, Patandeen and Swami Nath, whereas Sadhu Saran, Ramakant, Deena Nath and Tara Prasad went after this witness and his son Ram Shankar. This witness says that Sadhu Saran ambushed him by appearing suddenly in front of him from behind a hut and shot him in his left leg. This witness, however, continued to run for his life. His son made off to the south. At this point, the witness says that he turned around to see his pursuers, but the assailants had returned. The witness, however, saw that Shesh Bahadur was being assaulted by Hari Prasad, employing a spear, Mahipat a farsa, whereas Swami Nath and Patandeen were assaulting the deceased with their sticks (lathi). The witness says that the deceaseds mother had also reached by his side. The witness, however, continued his journey and reached Dasia Padao Motor Stand. From there, he proceeded to the police station.

19. Smt. Tikura, PW-2, is an injured witness and mother of the deceased Shesh Bahadur. She has said in her dock evidence that on the fateful day, the time was about sunrise. She and her son

Shesh Bahadur were present at their tea-shop. Hari Prasad, Mahipat, Sadhu Saran, Swami Nath, Deena Nath, Ramakant, Tara Prasad and Patandeen arrived there. According to this witness, these men were variously armed, which she has described with precision. Hari Prasad is said to have accosted Shesh Bahadur with words that Shesh Bahadur had moved an application against them and exhorted his companions to catch hold off Shesh Bahadur and do him to death. In the meantime, Nirmal, Ram Pragat and Ram Pragat's brother arrived. At this point of time, Hari Prasad, Mahipat, Swami Nath and Patandeen, chased Shesh Bahadur, whereas Sadhu Saran, Deena Nath, Rama Kant and Tara Prasad went after Nirmal Pandey. The witness says that she was going after Shesh Bahadur, when she heard a 'thud'. The faction of the appellants, who had gone after Shesh Bahadur, caught hold off him in Hanif's chak, and battering him, brought him to Patandeen's chak. She begged for her son's life, whereupon Hari Prasad struck her with his spear in the left lower limb whereas Mahipat struck her on the head with his farsa using the blunt end. Patandeen and Swami Nath assaulted her with lathi, also delivering blows to her feet. She was then moved to a trench to the south of the road and pushed inside it. She lost consciousness only to regain it the following day in the hospital. There is a pointed question put to this witness in her cross-examination that when she reached Patandeen's field, Shesh Bahadur was lying there beaten up. To this, she answered in the negative and added that when she saw it all, the appellants were assaulting Shesh Bahadur and battering him in Hanif's field. They were moving towards Patandeen's field.

20. The third eye-witness is PW-3, Ram Pragat Pandey. He has said in his examination-in-chief that at 6 o'clock in the morning of the fateful day, his father Nirmal was harvesting his pulse crop. At that time, he heard a call for rescue from Shesh Bahadur's shop. He and his father rushed towards the shop. When they reached there, Hari Prasad was pointing to Shesh Bahadur and telling his companions, after uttering an abuse, that this man has accused us of theft. Let us kill him. Hari Prasad is said to have been armed with a spear and Sadhu Saran with a country-made pistol. The other appellants were carrying lathi. The witness says that he and his father intervened saying that this was all wrong and while they were talking, Shesh Bahadur took to his heels in the direction of Village Mugraha. Thereupon, the appellants exhorted each other to attack. The witness also took to his heels. He says that he trailed Shesh Bahadur through some distance and then overtook him. He has specifically said that Hari Prasad, Mahipat, Swami Nath and Patandeen were chasing Shesh Bahadur. His father had simultaneously ran towards Village Dasia. He was chased by Deena Nath, Tara Prasad, Sadhu Saran and Ramakant. PW-3 says that when he reached close to the pond, he heard a shot ring. He turned around to see and found his father holding his leg. All the four appellants, who had chased his father, were behind him. The witness also says that when he was at a distance of about 25 meters west of Hanif's field, he turned around to look and saw that Hari Prasad, Mahipat, Patandeen and Swami Nath were battering Shesh Bahadur in Hanif's field. The appellants threw Shesh Bahadur to the ground and carried him to Patandeen's field and beat him there too. At that point, Smt. Tikura reached there and beseeched the appellants to spare her son's life. Thereupon, these appellants assaulted Tikura as well.

21. Upon an appraisal of the testimony of these three witnesses, PW-1, PW-2 and PW-3, who are said to be eye-witnesses of the occurrence, there is a broad consensus between them on the date, time and place of occurrence. All the three witnesses say that the occurrence took place at about sunrise with PW-1 and PW-3 mentioning the time as 6.30 a.m. PW-1 has very specifically disclosed the date as 1st April, 1984. PW-2, Smt. Tikura, who is an illiterate woman, has

mentioned the time as that of sunrise. She has not spoken about the time of the clock, which presumably she was not familiar with. She is apparently a rustic woman, who way back in 1984, might not have been very familiar with the hours and minutes of the clock. Broadly, all the witnesses are ad idem about the time of occurrence. There is hardly any issue about the date.

22. The place of occurrence in this case is not a single point. It apparently started with the arrival of the eight appellants at the deceased's tea-shop at sunrise. The appellants were all variously armed. All the appellants are again broadly consistent that upon arrival of the appellants, they disclosed their evil intention to kill Shesh Bahadur. There was a pause in the event with the arrival of PW-1 and PW-3 and the other son of PW-1, Ram Shankar Pandey. These men attempted to intervene and pacify, but this turned the appellants' hostility against the interveners too. At this point of time, realizing the peril, Shesh Bahadur ran towards Village Mugraha in the north to save his life. He was joined in the run for safety by Ram Pragat, PW-3. At the same time, PW-1, Nirmal Pandey, sprinted towards Village Dasia, located in the east. He was joined by his other son Ram Shankar.

23. The eight men, who had arrived at Shesh Bahadur's tea-shop, were Hari Prasad Pandey, Mahipat Pandey, Swami Nath Pandey, Deena Nath Pandey, Ramakant Pandey, Tara Prasad Pandey, Patandeen Chauhan and Sadhu Saran. When Shesh Bahadur and Ram Pragat ran for safety towards Village Mugraha, they were pursued by Mahipat, Hari Prasad, Patandeen and Swami Nath whereas Nirmal Pandey and Ram Shankar, who made their flight to the east heading for Dasia, were pursued by Sadhu Saran, Ramakant, Deena Nath and Tara Prasad. Thus, the eight appellants were the unlawful assembly of the eight assailants, who spontaneously divided themselves into two groups to pursue their victims. The pursuit with division of the assailants into two groups or factions is the second part of the event. The third part is the assault to whatever consequence. Again broadly in consensus, all the three witnesses say that the pursuers caught up with Shesh Bahadur in Hanif's field and assaulted him there. The assault began in Hanif's field and the victim was moved to the adjoining field of Patandeen. There the assault reached its final blows, doing Shesh Bahadur to death. Here, the deceased's mother, PW-2, Tikura, had reached and begged for her son's life. She too was assaulted and pushed into a trench or ditch. The other party of assailants, who had chased Nirmal Pandey and his other son Ram Shankar, shot Nirmal Pandey in his left foot below the knee, as it now appears, with a country-made pistol and did nothing more.

24. Thus, the assailants did two separate assaults on two separate groups of victims, comprising two each. Whereas the party, that went after Shesh Bahadur, killed him, the other that chased Nirmal Pandey, PW-1, left him with a nominal gunshot injury in the left foot, below his knee. There is certainly a broad consensus amongst all the three witnesses about the date, time and place of occurrence. The variations, to which our attention was drawn, are not so much about the date, time and place of occurrence, but about other things, to which we would make allusion later in this judgment.

The presence of eye-witnesses on the date, time and place of occurrence

25. It is submitted by Mr. Arun Kumar Tiwari, learned Counsel for the appellant, that the three eye-witnesses, whose testimony has been believed by the Trial Judge, never saw anything and have

falsely implicated the appellant, including the deceased appellants in this crime. The false implication has mostly been credited to PW-1 Nirmal Pandey and PW-3 Ram Pragat, as admittedly there was animosity between these witnesses, on one hand, and the appellant, on the other. It is urged that these witnesses prevailed upon the deceased's mother, PW-2, to falsely testify, on account of which, later on, on the call of her conscience, she gave an affidavit before the Court, disowning her earlier testimony. She was recalled by the Court and she testified again, demolishing the prosecution case. It is urged with much vehemence that PW-2 has confessed to the fact that she sustained the injuries under completely different circumstances, at a different point of time, and at the hands of unknown assailants. Learned Counsel for the appellant says that, likewise, PW-1 too has sustained the nominal injury under completely different circumstances, time and place, which he has misused to falsely implicate the appellant.

26. Mr. Shashi Shekhar Tiwari, learned A.G.A., on the other hand, has refuted the above submissions. He has urged with much emphasis that the presence of the prosecution witnesses cannot be doubted. They are natural witnesses, being bhumidhar of the field, at one corner of which stands the tea-shop, where the occurrence began. He submits that two of three witnesses, that is to say, PW-1 and PW-2, have sustained injury in the incident, which is by no means trivial. Their presence at the spot, therefore, cannot be doubted. To attribute the injuries sustained by PW-1 and PW-2 to some occurrence, that happened at a different point of time and elsewhere, is pure conjecture, not supported by any evidence. It is difficult to objectively accept the fact that PW-1 and PW-2, who are by no means part of a family, or otherwise staying together, would both sustain serious injury at the same time in unrelated incidents, which they would use to offer false testimony against the appellants. They have obviously been injured, according to Mr. Shashi Shekhar Tiwari, in one incident and that is the one involving the appellant.

27. We have considered the rival submissions on the point and carefully scrutinized the evidence.

28. It is true that there is a background of animosity between PW-1 and PW-3, on one hand, and the appellant, on the other, including those convicts who are no more, but the fact of animosity alone would not entitle the appellant to have the presence of these two witnesses, to wit, PW-1 and PW-2, doubted. It is true that their testimony is to be viewed with some circumspection, including that about their presence on the spot, but if their presence is otherwise well established, corroborated by other evidence and believable, there is no reason to disregard their presence or doubt it merely because there was animosity between the two witnesses and the appellant. A sworn enemy of another could witness a damning fact or event and truthfully speak about it against that other. His testimony cannot be disbelieved on ground of the hostile relationship between the witness and the accused alone. All that has to be seen is the dependability of evidence, that would assure the Court of the witnesses' presence at the spot and the fact of the witnesses having seen the occurrence.

29. Here, what we find is that what is not disputed on behalf of the appellant is the fact that the tea-shop owned by the deceased and his mother, Tikura, stood on one corner of the field, of which PW-1 Nirmal Pandey was the bhumidhar. It is also not disputed by anyone that the field had a pulse crop (arhar) ready to harvest. PW-1 and PW-3 are consistent in their version about the fact that on

the fateful day, at the time of sunrise, when the events unfolded, they had arrived on their arhar field and just commenced harvesting. The location of the arhar field, owned by PW-1, makes this witness and his son PW-3 natural witnesses, given the fact that the tea-shop owned by the deceased, stood at a corner of this field. The hour of the day, when the occurrence happened, also lends credibility to the witnesses' presence because judicial notice may be taken of the fact that fruits of toil in agriculture are harvested by farmers with the beginning of the day at dawn. In fact, all important work in fields is done by farmers or their labourers in the early morning hours. This lends strength to the inference that PW-1 and PW-3, given the hour of the day, were present at their field, which stands close to the deceased's tea-shop, making them natural witnesses.

30. To add to all this is the fact that PW-1, Nirmal Pandey, sustained a gunshot injury albeit in the lower part of his left foot, below the knee. The injury, no doubt, is not very serious and the learned Counsel for the appellant has suggested that it was sustained under different circumstances, one of which was that PW-1 was riding along with his son on a bicycle to the police station to lodge the FIR Ram Pragat was paddling the bicycle, carrying a country-made pistol. It suddenly went off, injuring PW-1. A suggestion in this regard was given to this witness in the concluding part of his testimony during his cross-examination, which he denied. There is no basis by way of evidence aliunde, even slight, to infer that PW-1 received the injury sustained by him under a different set of circumstances.

31. Going by the apparent and logical tenor of the testimony of PW-1 and those of the other two eye-witnesses, PW-1 sustained the gunshot wound to his left lower limb in an assault that was part of the same transaction, which led the deceased to sustain fatal injuries. If the injury was such that it could have been received going by the manner of assault, is a matter that we would soon consider in greater detail. But, broadly speaking, there is no reason to doubt that the witness (PW-1) did not sustain the injury, upon which he has relied, in the assault mounted by the appellant, including the deceased co-appellants.

32. Likewise, is the case of the deceased's mother, PW-2. She too is an eye-witness, who saw the happenings at the tea-shop and the fatal event at the field of Patandeen. She also witnessed the assault that began in the adjoining field of Hanif. This witness too is a natural witness. There is consistent testimony to the effect that the deceased's tea-shop would open at dawn and his mother (PW-2) would stay in the shop. There is no reason to disregard PW-2 as a natural witness, right from the inception or the unfolding of events. This witness saw the appellant and the seven others, who are now deceased, arrive at his son's tea-shop, variously armed. It is but logical that she would have been there at the shop, when events leading to the fatal consequence began to unfold. This witness has graphically described the occurrence in her testimony, which is corroborated by that of the other two witnesses substantially. There is no reason, therefore, to disbelieve the presence of this witness at the date, time and place of occurrence. Also, in the final moments of assault upon her son, the witness beseeched the appellant and his companions to spare his life, which led them to severely assault her and cast her away in a nearby ditch. She lost consciousness, which she regained the following day in the hospital. The fact that this witness has received grievous injuries lends credence to the fact that she was a witness of the final moments of the fatal events, leading to her sons death. The presence of this witness, therefore, can hardly be doubted.

33. This takes us to the third witness, PW-3. His presence at the shop of the deceased, where the assailants had arrived, is testified to by the other two witnesses, PW-1 and PW-2. Both PW-1 and PW-2 are injured witnesses and we have believed their presence all through the events. Since both these witnesses have vouchsafed the presence of PW-3 at the deceased's shop and then spoken about this witness, racing along with the deceased towards Village Mugraha to save himself, the presence of PW-3, in our opinion, is well established.

34. In view of all these findings, based on the evidence on record, there is little reason to disbelieve or doubt the presence of the three eye-witnesses, PW-1, PW-2 and PW-3, at the scene of crime in all its stretch.

35. The place of occurrence, as already noticed by us, is rather a spread out of events. It all started at the deceased's shop, where his mother, PW-2, was also present at dawn on the 1st April, 1984. The foremost event was the arrival of the assailants in a party of eight, variously armed. There was exhortation by one of them, asking others to do Shesh Bahadur to death, for reason that he had reported them to the Police in connection with a theft at his house. Before the assailants could act, PW-1 and PW-3 arrived from the nearby field and attempted to intervene and save the situation. This turned the assailants against them as well with as much belligerence as that harboured against the deceased or almost approximating to it. The result was that the deceased, realizing the imminent fatal consequences, took to his heels in the direction of Village Mugraha. He was joined in the run for dear life by PW-3, Ram Pragat. Contemporaneously, PW-1, Nirmal Pandey, Ram Pragat's father, too realized the imminent danger to his life as did his other son, Ram Shankar, who had also arrived on the scene. Both these men sprinted in the direction of Village Dasia, also to save their life. This led the assailants to split into two groups or factions, one comprising Mahipat, Hari Prasad, Patandeen and Swami Nath, and other, Sadhu Saran, Ramakant, Deena Nath and Tara Prasad.

36. Mahipat and his three companions chased Shesh Bahadur and Ram Pragat, whereas Sadhu Saran and three of his companions, which includes the appellant, went after Nirmal Pandey and his other son, Ram Shankar. Ram Pragat made good his escape, whereas Shesh Bahadur was caught by the assailants in the field of Hanif. The assault commenced there, whereafter he was moved to Patandeen's own field, where he received blows from the four assailants, employing the respective weapons that they wielded, until life ebbed out. It was just before the fatal blows were delivered, or about time that the assault was continuing, that the deceased's mother arrived at the scene and begged for her son's life. She too was assaulted and cast away in a ditch nearby, making her loose consciousness. The other faction of assailants, that went after Nirmal Pandey and his other son Ram Shankar, assaulted in the manner that Sadhu Saran shot Nirmal Pandey in his left foot, below the knee. After inflicting this injury, which did not make PW-1 stop, the assailants abandoned the chase and the assault abated.

37. In the site-plan, the deceased's tea-shop is denoted by the letter 'A'. The site-plan also shows by identifiable symbols the route taken by Shesh Bahadur and PW-3 Ram Pragat to run for their lives in the direction of Village Mugraha. They ran together until the point denoted by letter 'C' in the site-plan. The letter 'D' in the site-plan denotes the field of Hanif, where the assailants Hari Prasad, Mahipat, Swami Nath and Patandeen caught up with Shesh Bahadur and commenced

the assault. By the letter 'E' is denoted the place where the assailants dragged Shesh Bahadur and made the final and fatal assault. The letter 'F' in the site-plan denotes the place where the deceased was lying in a pool of blood. It was here that PW-2 Tikura was also assaulted and thrown in the ditch shown by letter 'G'. There is a different symbol to show the route that Nirmal Pandey and Ram Shankar took in their race to save their lives. The place where Nirmal Pandey was shot by Sadhu Saran in his lower limb is shown by letter 'H'. The letter 'J' shows the place where Sadhu Saran was standing, when he shot Nirmal Pandey with a country-made pistol. The Investigating Officer has noted the distance between the points denoted by letters 'H' and 'J' as six paces. The distance between the deceased's shop and 'H', where Nirmal Pandey was shot, is noted to be 25 paces. Apparently, PW-1 did not suffer a long chase before he suffered the assault.

38. The entire spread of the place of assault is apparently not very large somewhere, it is a few paces in double digits, and, at others, a few hundred paces. The place of occurrence, with all its three important sites, are well established by the consistent testimony of the three eye-witnesses, PW-1, PW-2 and PW-3, all of whom are proven to be present at the place of occurrence, beyond doubt.

The manner of assault

39. The manner of assault has been broadly described. All, that is required to be now considered about this very relevant fact, are the details of it and testing it in the face of the appellant's criticism that the assault happened in a completely different way at the hands of someone else.

40. As already noticed hereinbefore, on the basis of the eye-witness account, the assault happened at two different places in the vicinity of each other, both away from the place where the assailants first made their reach to the victim. The incident, taken as a whole, can be traced to the arrival of the assailants, eight in number, at the deceased's tea-shop at 6.30 a.m. on the 1st of April, 1984. All the witnesses are consistent in their account that the assailants were armed in the manner that Hari Prasad had on him a spear (ballam), Mahipat a farsa (battle-axe), Sadhu Saran a country-made pistol (katta) whereas the remainder five, including the appellant Ramakant, were armed with sticks (lathi). We have already noticed earlier how the assault commenced with the deceased and Ram Pragat, PW-3, making a run for their lives in the direction of Village Mugraha, whereas Nirmal Pandey and his other son Ram Shankar doing the same for themselves by sprinting in the direction of Village Dasia. The site-plan would show that the route of escape for these two pair of men was a diverging course, one to the east, and the other the north-east. The places of assault have been identified already with the pictorial description of it in the site-plan, all that we have found trustworthy.

41. Now, this takes us to the finer issues of the manner of assault. The foremost is the assault on the deceased, the weapons employed and the injuries sustained. We have to examine these relevant facts because it is urged on behalf of the appellant and also suggested to the witnesses during their cross-examination that the deceased suffered an assault by unknown men much earlier in the morning, along with his mother, while it was still dark. Though, all the three prosecution witnesses, during the course of their testimony originally given, have not faltered about the details

of the manner of occurrence much, except may be in some insignificant and inconsequential details, but PW-2, the deceaseds mother, threw up a doubt when she gave an affidavit disowning her dock evidence and had to be recalled by the Trial Court, describing her rather strangely as DW-1/ PW-2. We would refer to the value of Tikuras testimony later on given, once recalled by the Court, separately. For the moment, we are concerned about the consistent version of the prosecution witnesses, including PW-2 as she testified in the first instance and withstood a searching cross-examination.

42. PW-2 has described the assault in her examination-in-chief as follows:

"सवेरे दिन निकलने का समय था । मैं और शेष बहादुर चाय की दुकान पर थे। मेरे दुकान पर हरिप्रसाद, महीपत, साधूसरन, स्वामीनाथ, दीनानाथ, रमाकान्त, ताराप्रसाद और पाटनदीन आ गए। हरि प्रसाद के हाथ में बल्लम व महीपत के हाथ में फरसा व साधूसरन के हाथ में कटटा व बाकी लोगों के हाथ में लाठियाँ थी। हरिप्रसाद ने शेषबहादुर को कहा कि इन्होंने हमारे खिलाफ दरख्वास्त दिया है इन्हें पकड कर मार दो। इसी बीच में निरमल और रामप्रगट व रामप्रगट का भाई भी वहा आ गए। इस पर हरि प्रसाद-महीपत-स्वामीनाथ और पाटनदीन ने शेषबहादुर को खदेडा और शेषबहादुर भागे और साधू - दीनानाथ, रमाकान्त और तारा प्रसाद ने निर्मल को खदेड़ लिया। मैं उस समय शेष बहादुर की तरफ भाग रही थी। कुछ 'भड' की आवाज सुनी।

शेष बहादुर के पीछे जाने वाले मुलजिमान शेष बहादुर को हनीफ के चक मे पकड़ लिया और वहाँ से मारते पीटते पाटनदीन के चक में लाये। वही मैं ने कहा कि मेरे बच्चे को मत मारो। हरि प्रसाद मेरे बाये पैर में बल्लम मारा। महीपत ने मेरे सर मे फरसा उलट कर मारा। और जब मै हाथ जोड़ रही थी तब पाटनदीन और स्वामी नाथ ने लाठियों से मारा और पैर पर भी मारा। फिर मुझे सड़क के दखिन गडडे में डाल दिया । उसके बाद मुझे चेत नही रहा कि क्या हुआ। मुझे दुसरे दिन अस्पताल में होंश आया । और अस्पताल में ही सुना कि मेरा लड़का शेष बहादुर मर गया है।"

43. In her cross-examination, she describes the assault thus:

"शेष बहादुर को दुकान पर मारा पीटा नही। मुलजिमान ने आकर कहा कि इसने दरखास्त दी है इसे मारो। शेष बहादुर ने कोई जवाब नही दिया गोहार लगाता हुआ भागा। चार मुलजिमान ने शेष बहादुर को दौड़ा लिया। मै पहले चाय की दुकान पर रूकी रही। गोहार पर निरमल और परगट चाय की दुकान पर आए थे तब मैं चाय की दुकान पर ही थी । इन दोनों ने कहा कि यह क्या होता है तो हरिप्रसाद, महीपत वगैरह ने कहा कि इन बहनxxx को भी मार डालो।

सवाल:- जब तुमने देखा तब शेष बहादुर पाटनदीन के खेत में मार खाये पड़े थे?

जवाब:- नही। मैंने जब देखा तो मुलजिमान शेष बहादुर को मारते पीटते हनीफ के खेत से पाटनदीन के खेत की तरफ ला रहे थे।

शेष बहादुर जमीन पर गिरे हुए घसीट नही रहे थे। मुलजिमान घिर्राते हुए जा रहे थे। कभी हाथ पकड़ कर घसीटते थे कभी मारते थे कभी कन्धे से धक्का देते थे। चारों मुलजिमान शेष बहादुर को मारते

हुए ला रहे थे। जिस जिस मुलजिमान के पास जो जो हथियार था उसी से मार रहे थे। मुलजिमान ने पाटनदीन के खेत व हनीफ के खेत के बीच भी अपने हथियारों से मारा था। शेष बहादुर कही गिरे नही थे। मुलजिमान मारते हुए पकड़ कर लाये थे। पाटनदीन के खेत मे ही ज्यादा मारा था। पाटनदीन के खेत में उन दिन गन्ना नही था। कोई फसल नही थी।"

(emphasis by Court)

44. Further, in her cross-examination, PW-2 has said:

"शेष बहादुर पाटनदीन के खेत के दखिनी मेड़ से 2 कट्ठा दखिन तरफ मारे गए। जब मुलजिमान शेष बहादुर को मार रहे थे तभी मैने चिरौरी की थी और मुझे भी मारा था। मुझे चारों मुलजिमान ने मारा था। शेष बहादुर के बदन से खून काफी जमीन पर गिरा था जिसे चौकीदार ने बाद में बटोरा था। पाटनदीन के चक से हनीफ के खेत के बीच में खून गिरा था या नही मैंने नही देखा था।

मैं मार खा कर गिर गई थी मुझे थोड़ा थोड़ा होश था । जब मुलजिमान मेरा हाथ पकड़ कर मुझे खीच कर गढ़े तक ले गए और ढकेल दिया।"

45. PW-3, Ram Pragat, who had taken the same escape route as the deceased Shesh Bahadur, has described the manner of assault in his examination-in-chief thus:

"कतल के दिन सुबह करीब साढ़े 6 बजे मै व मेरे पिता निरमल खेत में अरहर काट रहे थे। तभी मुझे शेष बहादुर के दुकान से गोहार सुनाई दी। मैं और पिताजी दुकान की तरफ दौड़े। जब हम पहुंचे तब हरिप्रसाद शेष बहादुर को बताकर कह रहे थे कि यही साला हमारे उपर चोरी का रिपोर्ट किया है इसे जान से मार दो। हरि प्रसाद उस समय बल्लम लिए थे। साधूसरन कट्टा लिए थे। और बाकिया मुलजिमान स्वामीनाथ, दीनानाथ, रमाकान्त, ताराप्रसाद तथा पाटनदीन लाठियां लिए थे। हम लोगों ने टोका कि यह क्या गलत कर रहे हो। हम लोग बात ही कर रहे थे कि शेष बहादुर उत्तर तरफ मुँगरहा की तरफ भागे।

मुलजिमान ने हम लोगो को भी मारने के लिए ललकारा। तब मैं भी भागा। कुछ दूर शेष बहादुर के पीछे रहा फिर उसके आगे हो गया।

हरिप्रसाद, महीपत, स्वामीनाथ और पाटनदीन ने शेष बहादुर का पीछा किया।

जब मैं हनीफ के खेत के करीब 25 मीटर पछिम पहुँचा तो मैं पलट कर खड़ा हो गया। तब मैंने देखा कि हरिप्रसाद, महीपत, पाटनदीन व स्वामीनाथ हनीफ के खेत में शेष बहादुर को मार रहे थे। वहा गिरा कर शेष बहादुर को मुलजिमान पाटनदीन के खेत में उठा लाये और वहाँ भी मारा। तभी श्रीमती टिकरा भी वहाँ आ गई और हाथ पैर जोड़ने लगी। तब इन चारों मुलजिमान ने टिकरा को भी मारा।"

46. In his cross-examination, PW-3 has spoken thus about the manner of assault:

"मुलजिमान जब हम लोगों के पीछे दौड़ना शुरू किए तो मेरे और मुलजिमान के बीच करीब 10 कदम का फासला था। रास्ते मैं मुझे किसी मुलजिमान ने मारा पीटा नही। शेष बहादुर को हनीफ के खेत पर मारा पीटा था।

टंकी से 4-6 कदम बाद ही मैं शेष बहादुर से आगे हो गया था। शेष बहादुर को पकड़ने के बाद मेरे पीछे कोई मुलजिम नही भागा।

हनीफ के खेत में शेष बहादुर मारे भी गए थे और गिरे भी थे। मैने नही देखा कि हनीफ के खेत में खून गिरा या नही। मैं 20, 25 मीटर की दूरी पर था। नही देख पाया कि शेष बहादुर के शरीर से हनीफ के खेत में खून निकला या नही। माला, फरसा, लाठी लगते देखा था। उठाने और घसीटने के फर्क मैं जानता हूँ। यह मै नही कह सकता कि किस वक्त उठाना कहा जायगा और किस वक्त घसीटना कहा जायेगा। मैं B. A. तक पढ़ा हूँ।"

47. About the assault on the deceased, PW-1 Nirmal Pandey, who had taken his escape route to Village Dasia, has described it in the following words:

"मैने भागते हुए पीछे मुड़ कर देखा तो मुलजिमान लौट गए और तभी मैने यह भी देखा कि शेष बहादुर को हरिप्रसाद बल्लम से, महीपत फरसा से, स्वामीनाथ व पाटनदीन लाठियों से मार रहे थे।"

(emphasis by Court)

48. PW-1 has said during his cross-examination about witnessing the assault upon the deceased:

"जिस जगह शेष बहादुर मारे गए और सड़क के पास से जहां से मुड़ कर मैंने देखा, का फासला करीब 35 कट्ठा होगा।

मैने शेष बहादुर को हनीफ के चरनी तक भागते हुए नही देखा मगर हनीफ के चक से मुलजिमान को उनको मारते हुए पाटनदीन के खेत तक ले जाते हुए देखा।

पाटनदीन के चक से हनीफ का चक लगभग 4-5 कदम है। मैने शेष बहादुर को हनीफ के चक में पहले मार खाते नही देखा। जब मैने देखा तब मुलजिमान शेष बहादुर को मारते हुए हनीफ के चक से पाटनदीन के चक में ला रहे थे।

मुलजिमान शेष बहादुर को मारते थे। गिर जाने पर उठाते थे ओर ढकेलते थे इसी तरह से पाटनदीन के चक में ला रहे थे। 3-4 बार शेष बहादुर गिरें और उठाये गए।.....

पाटनदीन के चक में भी मुलजिमान ने शेष बहादुर को मारा। मैं नही कह सकता कि पाटनदीन के चक में किस कोने पर शेष बहादुर मारे गए थे। पाटन दीन के चक में शेष बहादुर के मॉ को भी मारा पीटा था। चारों मुलजिम हरिप्रसाद, महीपत, पाटनदीन और स्वामीनाथ जो शेष बहादुर को खदेड़ रहे थे, ने शेष बहादुर के मॉ को भी मारा था। पाटनदीन का चक कुल कितना बड़ा है मै नही जानता। जहां, शेष बहादुर को मार रहे थे वही उसके मॉ को भी मार रहे थे, चक का कौन सा कोना था मै नही जानता।"

49. The testimonies of PW-1 and PW-2, where the manner of assault upon the deceased has been noticed in the words of the witnesses, also describe how and where the injured witness Tikura (PW-2) was assaulted. We need not, therefore, dilate upon the evidence, describing how she was assaulted separately. This leaves for consideration the assault upon the other injured eye-witness,

PW-1 Nirmal Pandey. The best description of the assault that PW-1 sustained comes from himself. He describes the genesis and the actual assault upon him thus:

"हम लोगो से बातचीत के दौरान शेष बहादुर उत्तर की तरफ मुगरहा गाँव की तरफ भागे। राम प्रगट भी उनके साथ भाग गया। मुलजिमान ने आवाज दी कि भाग रहे है खदेड कर मारो। मैं और मेरा लड़का रामशंकर पूरब की तरफ भागे । मुलजिमान महीपत, हरिप्रसाद, पाटनदीन, स्वामीनाथ ने शेष बहादुर का पीछा किया। साधू-सरन मडई के पीछे से आकर मुझे आगे से घेर लिए और मेरे बाये पैर के नरहर पर कट्टे से फायर किया। साधुसरन, रमाकान्त, दीनानाथ और तारा प्रसाद ने हम लोगों का पीछा किया। मैं भागता रहा। इसी बीच मेरा लड़का उत्तर तरफ भाग गया।"

50. In his cross-examination, Nirmal Pandey has testified:

"मुझे जब गोली लगी तब चाय का दुकान मुझसे 20-25 कदम पर थी। मुझे खदेड़ने वाले मुलजिमान मेरे भागने के पहले से दुकान पर मौजूद थे।

सवाल:- तुम को उन मुलजिमान ने खदेड़ा या नही?

जवाबः खदेड़ा।

इन लोगों ने मुझे 25-30 कदम खदेड़ा था। मुझे किसी ने लाठी से नही मारा। खदेड़ते में साधूसरन ने मेरे उपर फायर किया था, लेकिन आगे आकर साधूसरन मड़ई के पीछे से आकर मेरे आगे आ गए थे और वाकिया तीन आदमी मेरे पीछे रहे। वाकिया तीन मुलजिमान सीधे दौड़े थे, साधूसरन मड़ई के पीछे से आए थे।

मेरा लड़का रामशंकर मुझ से आगे भाग रहा था । रामशंकर को मेरी जानकारी में किसी ने न घेरा न मारा। 38- जिस वक्त साधूसरन ने मुझे कटटा से मारा है उस समय मेरे व उनके बीच करीब एक कटठे का फासला था । साधूसरन मेरे सामने से आए और मैं पूरब की तरफ भाग रहा था जब हम दोनो आमने सामने हुए तथा साधूसरन ने गोली चलाई।

सवाल:- जब आप को चोट लगी तब दोनो आदमी दौड़ रहे थे या खड़े थे।

जवाब:- मैं दौड़ रहा था। नही कह सकता हूं साधू सरन खड़े हो गए थे या दौड रहे थे, दौड़ कर आए थे।

साधू सरन के गोली चलाने के वक्त नाल नीचे की थी । कट्टे की चोट लगने के बाद मैं गिरा नही। मैं भागता ही रहा। भागते मे मैने मुडकर देखा था और भागते ही दसिया पहुँचा था।"

51. PW-2 Tikura in her cross-examination has spoken about the assault upon Nirmal Pandey, PW-1, thus:

"जब निरमल व परगट आए तब शेष बहादुर भाग रहे थे। परगट पीछे थे और शेष बहादुर पीछे थे निरमल पूरब तरफ दसिया की तरफ भागा जब निरमल भागे और उन्हें गोली लग गई तब मै भी अपने लड़के की तरफ भागी।....

52. PW-3, Ram Pragat, has described in his examination-in-chief the assault upon his father Nirmal Pandey, PW-1, as follows:

"मेरे पिता दसिया की तरफ भागे। उनका पीछा दीनानाथ, ताराप्रसाद, साधूसरन और रमाकान्त ने किया। जब मैं पोखरे के पास पहुँचा तब मुझे गोली चलने की आवाज सुनाई दी। पलट कर देखा तो पिता जी अपना पैर पकड़े थे। चारो मुलजिमान जो उनके पीछे दौड़े थे पिता जी के पीछे थे।"

53. In his cross-examination, PW-3 has said about the assault on PW-1:

"मैंने अपने पिता को पैर पकड़े देखा भी था और उन्होंने मुझे दसिया में बताया था कि, साधू सरन ने मारा है। मैने साधूसरन को अपने पिता पर गोली चलाते नही देखा।"

54. A combined reading of the testimony of all the three eye-witnesses leads us to the inevitable conclusion that the manner, including the weapons of assault, ascribed to each of the eight assailants, including the sole surviving appellant, is broadly consistent about essential facts and how it all happened. There are some discrepancies, but those are largely due to the vantage, which each of the three witnesses had, when they saw the fateful events. A few of the minor discrepancies can be attributed to the individual accomplishments of the witnesses, such as PW-2 Tikura, who is rather rustic, and, therefore, has her own way of describing things. The testimony of all the three witnesses, however, is natural and one that is assuring of the genuineness of the principal events in the crime and the manner it all happened. There is no reason, therefore, in the slightest measure to doubt or disbelieve the three eye-witnesses about the manner of assault.

55. Here, we must notice that the most badly assaulted was the deceased Shesh Bahadur and apparently he was attacked by Hari Prasad, Mahipat, Swami Nath and Patandeen. Out of these men, Hari Prasad had employed a spear, Mahipat a battle-axe, Swami Nath and Patandeen had delivered lathi blows. These weapons are ascribed to the respective assailants from the commencement of the account, whereas PW-1, who saw the happenings from a distance, has graphically described each of the four assailants use a particular weapon to assault the deceased. PW-2, who is the deceased's mother and was also assaulted by the same assailants as the ones, who battered her son to death, has also affirmed the employment of weapons by each of the appellants that they were carrying. She is affirming, but not that graphic in her account of the weapons of assault employed by each assailant. It is now to be seen whether the ocular testimony about the assault by the four assailants, as far as the deceased goes, is corroborated by the medico-legal evidence.

56. A perusal of the autopsy report relating to the deceased, Ex. Ka-17, shows the following sixteen ante-mortem injuries:

(1) Incised wound 8 x 2cm x bone cut partially Rt. side head 10 cm above Rt. ear;
(2) Lacerated wound 4cm x 1.5cm x bone deep 2.0 cm medial to Inj. No. (1);
(3) Abraded contusion 30cm x 10 cm of Rt. upper arm posterior just below Rt. shoulder Jt.;

(4) Abraded contusion 30cm x 8cm back of Rt. forearm just below Rt. elbow Jt. underneath ulna fracture;

(5) Abraded contusion 8 x 4cm back of Rt. hand just below wrist Jt.;

(6) Abraded contusion 20cm x 10cm back of Lt. Upper arm just above Lt. Elbow Jt.;

(7) Punctured wound 2cm x 1cm x bone deep back of Lt. Upper arm 7cm above Lt. Elbow Jt.;

(8) Abraded contusion 32 x 8 cm back of Lt. Forearm 5cm below Lt. Elbow Jt. underneath ulna fracture;

(9) Punctured wound 2cm x 1cm x muscle deep back of Lt. Forearm 4cm below Lt. Elbow Jt.;

(10) Incised wound 2cm x 1cm x bone deep on tip of Lt. Little finger underneath distal phalanx fracture;

(11) Abraded contusion 10cm x 8cm back of Lt. hand just below wrist Jt.;

(12) Abrasion 3cm x 1cm outer aspect of Rt. thigh 10cm below iliac crest;

(13) Multiple abrasion in an area of 15 x 10 cm front of Rt. knee & upper part of leg Rt. Anteriorly;

(14) Abraded contusion 15x 8cm front of Rt. leg 3cm above Rt. Ankle Jt.;

(15) Punctured wound 3 x 1cm x muscle deep front of Lt. leg 15 cm below Lt. knee Jt.;

(16) Multiple contusion in an area of 45cm x 30cm whole of back of chest & abdomen, largest measuring 15 x 3cm & smallest measuring 5 x 2cm.

57. A perusal of these injuries show that there are two incised wounds, one on the head with bone cut partially, and the other bone deep on the tip of the left little finger, underneath the distal phalanx with a fracture. There are three punctured woulds, one of which is on the left upper arm, bone deep, 7cm above the elbow, the other a muscle deep wound on the back of the left forearm, 4cm below the left elbow, and, a third punctured wound on the front of the left leg 15cm below the left knee. These two sets of wounds, that is to say, the incised and the punctured wounds, have apparently come from the battle-axe, a sharp edged weapon, and the spear, a piercing weapon, wielded by Mahipat and Hari Prasad, respectively. The other wounds are abraded contusions, besides one lacerated wound and a multiple abrasions. The abraded contusions have led to fractures as well. The abraded contusions have apparently come from the lathi blows, inflicted by Swami Nath and Patandeen. The cause of death is shock and haemorrhage as a result of ante-mortem injuries. The 5th, 6th and the 7th rib on the right side of the back are fractured. There is a blood clot present under the scalp of the right parietal bone under Injury No.1. There is a linear fracture, 15cm long on the right parietal bone under Injury No.2. The membrane of the brain showed them to be congested and a blood clot present under the surface of membrane. The brain was found congested with blood clot present on the brain.

58. The autopsy report has been proved by Dr. G.N. Prasad, who had carried out the postmortem examination on the deceased's cadaver on 02.04.1984. He has opined the death to have occurred about a day and a quarter before the time of autopsy on 02.04.1984, which was done at 4.45 p.m. He has given a detailed account of all the sixteen injuries in his examination-in-chief and also explained the damage to the internal organs. The fractures have been testified to with reference to the X-ray plates, that was apparently done by the Radiologist on 03.04.1984. The X-ray plates and the report based on the X-ray have been proved by PW-10. The doctor has opined that Shesh

Bahadur could have died on 01.04.1984 at 6.30 a.m., though upon his cross-examination on behalf of the accused by Mr. S.N. Srivastava, Advocate, he has also acknowledged the fact that death could have happened on 01.04.1984 between 4-5 a.m.

59. The injuries not only are affirmative of the manner of assault, but precisely correspond to the weapons of assault. The injury to the internal organs noticed also support the manner and weapons of assault. The testimony of the eye-witnesses, relating to the manner of assault, as far as the deceased goes, is therefore, free from blemish and truthful beyond reasonable doubt. The autopsy doctor's testimony is also affirmative of the ocular account, apart from proving the injuries sustained by the deceased in the assault and the damage caused, besides the cause of death.

60. The other victim, who was assaulted by the four assailants, Hari Prasad, Mahipat, Swami Nath and Patandeen, is PW-2 Tikura. As the account of the assault goes, she was apparently assaulted using the respective weapons held by the aforesaid four assailants, according to eye-witness account, including that of herself. The medico-legal evidence on record is her injury report, bearing Ex. Ka-5. It shows that the witness was brought by Constable 107 CP Muttur Singh and Constable Dhruva Kumar Chaubey of P.S. Rudhauli on 01.04.1984 at 9.20 a.m. The doctor has noticed upon her person the following eight injuries:

(1) Lacerated wound 5cm x 1cm x scalp deep on left side below, 5.5 cm above the left Ear;

(2) Multiple abrasion in an area of 3cm x 2cm on outer part of left elbow;

(3) Lacerated wound 1.5 cm x 1cm x skin deep at the base of finger between thumb & index finger of left hand;

(4) Contusion 4cm x 2cm on back of left hand 1cm above the base of left thumb. Advise X-ray;

(5) Abrasion 1cm x 0.75 cm tip of Rt. Index Finger above nail bed;

(6) Contusion swelling 18cm x 14cm on front & anterior part of left leg. Advise x-ray. 11cm below the left knee;

(7) Punctured would 1cm x 0.25 cm x bone deep outer & lower part of left leg; 3cm above the lateral malleolus left leg;

(8) Contused swelling whole of left foot. Advise x-ray.

61. Out of the aforesaid injuries, Injury Nos.4, 6 and 8 were directed to be kept under observation and X-ray advised. The rest of the injuries were opined to be simple in nature. Injury No.7 was opined to have been caused by a sharp edged weapon. The rest of the injuries were found to have been inflicted by a hard and blunt object. The duration of the injuries was found fresh. Injury No.7 is a punctured would, 1cm x .25cm x bone deep, 3cm above the left lateral malleolus. The injury report has been proved by Dr. A.P. Singh, Medical Officer, Sadar Hospital, Basti, who had examined the victim. He has said in his cross-examination that Injury Nos.4, 6 and 8 were kept under observation and X-ray advised. The rest of the injuries were simple. He has specifically opined that Injury No.7 had been caused by some pointed and sharp edged object. The rest of the injuries were caused by a hard and blunt object. The injuries were fresh when examined. The patient was admitted to hospital. He has proved the injury report Ex. Ka-5, about which he has said in his cross-examination that it was prepared at the time when the patient was examined. In his

cross-examination by the defence, he has said that Injury No.7 could have resulted from collision with a pointed object. He has also said that it is possible that Tikura had received the injuries at 4.00 a.m. The injuries sustained by this injured witness, as found by the doctor, go hand-in-hand with the ocular version. The opinion about the time of assault being possibly a few hours earlier, as is the case with the deceased, is opinion evidence, which has to be understood, consistent with the ocular testimony.

62. The mere fact that the injuries to this witness as well as the deceased could have been caused at 4 o'clock or 5 in the morning in the doctor's opinion, does not mean that the ocular version of the injuries being sustained at 6.30 a.m., or shortly thereafter, is to be disbelieved. It is only if the medico-legal evidence is wholesomely incompatible with the ocular version that the eye-witnesses' testimony may fall under suspicion. A mere possibility expressed in the opinion evidence does not derogate from the veracity of the eye-witness account, if the medico-legal evidence predicates the ocular version as one of the possibilities.

63. PW-1 in his testimony has said that he along with his son Ram Shankar, who had run for safety towards the east, were chased by Sadhu Saran, Ramakant, Deena Nath and Tara Prasad. Out of these four, Sadhu Saran overtook them and after overtaking the witness, using the cover of a hut on the left side, appeared in the witness's front suddenly and opened fire from his country-made pistol, injuring him in the left leg at a place that he has described in vernacular as 'narhar'. This would mean that the injury was sustained to the shin or speaking in medical terms the tibia, the weight bearing bone located in the lower leg between the knee and the ankle. The medico-legal evidence appears in the form of the medical report of Dr. O.P. Pathak, who examined Nirmal Pandey, brought by Constable 718 Kripa Ram Verma. The doctor noticed a solitary wound as follows:

Lacerated wound 2cm x 0.5cm x bone deep 22cm below the left knee joint. Margin contused. 3 rounded pellets found embedded superficially in blood clot between the gaping of wound. Pellets are sealed and bag sent to S.O. Rudhauli for necessary action. Advised X-ray.

Duration fresh.

Caused by firearm.

64. Since the X-ray of the solitary wound sustained by PW-1 was advised, he was subjected to an X-ray examination regarding the injury sustained in the left leg at the District Hospital, Basti. The Radiologist's report dated 03.04.1984, marked Ex. Ka-18, before whom the witness was brought by Constable 519 Hari Shankar Mishra, has opined as follows:

One small rounded metallic radiopaque shadow seen.

65. Dr. O.P. Pathak, who has examined Nirmal Pandey, has described in his examination-in-chief the solitary wound as a lacerated wound (phata hua ghav) 2cm x 0.5cm x bone deep with margins contused. Three pellets were found embedded superficially in the blood clot between the gaping of wound. The doctor has opined in his testimony that the wound was fresh at the time of examination and appeared to be caused by a firearm. X-ray was advised.

66. Dr. G.N. Prasad, who did the X-ray examination for PW-1, has testified in the dock as PW-10 and already introduced hereinbefore in connection with the deceased's autopsy, which he had done, has said that he was the Radiologist at the hospital on 03.04.1984 and did the X-ray examination of Nirmal Pandey regarding his injury in the left leg. The X-ray plate was before him, which he proved as Ex. 2. He has said in his testimony that he had written his report, Ex. Ka-18 on the basis of the X-ray report. It is said by this witness that the X-ray showed that there was a pellet like object seen in Nirmal Pandey's leg. The testimony of the doctors, who examined PW-1, essentially supports the ocular version.

67. The argument advanced by the learned Counsel for the appellant that Nirmal Pandey was injured when a country-made pistol held by his son, Ram Pragat, accidentally went off while they were riding a bicycle to the police station to lodge an FIR is based on pure conjecture. There is no evidence aliunde on record to support this version, nor can it be inferred from the testimonies of either the prosecution or the defence, who failed to examine any witnesses on this matter. It has also been argued by the learned Counsel for the appellant that Nirmal was shot, as he says, by Sadhu Saran from a distance of one kattha, which is about six paces, employing a country-made pistol. The pellet injuries sustained show that the contraption of a weapon, that was used, had a 0.12 bore ammunition. He submits that if a country-made pistol of 0.12 caliber is discharged at a distance of one kattha from PW-1, the nature of injury, which is a minimal of three superficial pellets and one deep embedded, is impossible. The injury would have been far more damaging. This is an aspect, which ought have been put to the doctor, who examined PW-1, or some other expert witness produced by the defence. Unfortunately, neither any question regarding the nature of injury that could be sustained from a country-made pistol of 0.12 bore was asked of the doctor nor an expert witness produced by the defence, who could have shed light on the issue. In the absence of any evidence to suggest that PW-1 sustained injuries under a different set of circumstances, it is difficult to accept the appellant's submission on the point under consideration. Even if there were some slight discrepancy in the medico-legal evidence and the ocular testimony, though it is not so in this case, a dependable and consistent eye-witness account would remain unscathed by minor contradictions between the medical expert's opinion and the eye-witness' testimony. The principle is well adumbrated in **Pruthiviraj Jayantibhai Vanol v. Dinesh Dayabhai Vala and others, (2022) 18 SCC 683.** In **Pruthiviraj Jayantibhai Vanol (supra),** it has been held by the Supreme Court:

"17. Ocular evidence is considered the best evidence unless there are reasons to doubt it. The evidence of PW 2 and PW 10 is unimpeachable. It is only in a case where there is a gross contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved. In the present case, we find no inconsistency between the ocular and medical evidence. The High Court grossly erred in appreciation of evidence by holding that Muddamal No. 5 was a simple iron rod without noticing the evidence that it had a sharp turn edge."

68. Thus, it can be safely inferred that the ocular version, about the manner of occurrence, is a dependable account and supported, as it is, by medical evidence, must be believed the way the prosecution have put it.

Motive for the crime, if at all a relevant inquiry

69. Learned Counsel for the appellant, cognizant of the fact that this is a case of direct evidence, has impressed upon us that we must bestow our consideration to the background of witnesses because PW-1 and PW-3 are highly inimical to Hari Prasad and the other assailants, including the appellant. This is on account of the fact that there was an election rivalry between Hari Prasad, on one hand, and, Ram Murat, on the other, whom PW-1 and PW-2 had supported in the elections. It is particularly pointed out that the manifestation of this animosity is well reflected in the fact that 4-5 days, antedating the occurrence, there was a theft in Shesh Bahadur's house. Shesh Bahadur had nominated Hari Prasad, Swami Nath, Deena Nath and Patandeen in the FIR relating to the offence. This nomination had turned Hari Prasad and the other assailants, including the appellant, very inimical towards Shesh Bahadur. The FIR of the theft case was scribed by Ram Pragat, PW-3, and both Ram Pragat and another brother of his, Shiv Shankar Pandey, were prosecution witnesses against Hari Prasad etc.

70. The learned A.G.A. has submitted that motive has no relevance in a case of direct evidence.

71. We are of opinion that the principle is far too well settled to detain us much that in a case of direct evidence, motive is hardly relevant as a defence. It is another thing that if the prosecution are able to prove their case, the existence of motive may be an added buttress. A Division Bench of this Court had occasion to consider this otherwise well settled principle in **Pratap Singh and others v. State of U.P., 2021 SCC OnLine All 686**, to which one of us (J.J. Munir, J.) was party. In **Pratap Singh (supra),** it was held by this Court:

"17. To our outstanding, motive is not very relevant in a case of direct evidence, where a dependable ocular version is available. Once there is evidence forthcoming on the basis of an eye-witness account, that is consistently narrated by multiple witnesses, motive is hardly relevant. If an unimpeachable ocular testimony is there to establish the prosecution case, an investigation into the motive or the sufficiency of it to result in the crime and the manner in which it has been perpetrated, would not at all brook inquiry. The testimony of PW-2, PW-3 and PW-4, as would be analyzed in greater detail later in this judgment, is broadly consistent about the time, place and manner in which the deceased was done to death by the appellants. All the three witnesses have stood by their account of the occurrence in their cross-examination. There is a broad consistency of version amongst all the three eye-witnesses, that is to say, PW-2, PW-3 and PW-4. In a case that rests on ocular evidence motive for the accused to have acted in the manner they did, is besides the point. In this connection, there is authoritative statement of the law to be found in the decision of the Supreme Court in Bipin Kumar Mondal v. State of West Bengal. In Bipin Kumar Mondal, it has been held:

21. The issue of motive becomes totally irrelevant when there is direct evidence of a trustworthy witness regarding the commission of the crime. In such a case, particularly when a son and other closely related persons depose against the appellant, the proof of motive by direct evidence loses its relevance. In the instant case, the ocular evidence is supported by the medical evidence. There is nothing on record to show that the appellant had received any grave or sudden

provocation from the victims or that the appellant had lost his power of self-control from any action of either of the victims.

Motive

22. In fact, motive is a thing which is primarily known to the accused himself and it may not be possible for the prosecution to explain what actually prompted or excited him to commit a particular crime.

23. In Shivji Genu Mohite v. State of Maharashtra [(1973) 3 SCC 219 : 1973 SCC (Cri) 214 : AIR 1973 SC 55] this Court held that in case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eyewitness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eyewitnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eyewitness is rendered untrustworthy.

24. It is settled legal proposition that even if the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance. (Vide Hari Shanker v. State of U.P. [(1996) 9 SCC 40 : 1996 SCC (Cri) 913], Bikau Pandey v. State of Bihar [(2003) 12 SCC 616 : 2004 Supp SCC (Cri) 535] and Abu Thakir v. State of T.N. [(2010) 5 SCC 91 : (2010) 2 SCC (Cri) 1258])"

72. Considering what we have held in **Pratap Singh**, as remarked earlier, the point need not detain us any more and we hold that the motive attributed to two of the eye-witnesses, PW-1 and PW-3, is hardly of much relevance. In any case, there is another very dependable eye-witness account, the deceased's mother, PW-2 Tikura, where no criticism founded on motive, can be pleaded to discredit her testimony.

The retracted stand of Tikura, PW-2, and its effect on the credibility of the prosecution case

73. In this case, there is a rather unusual feature, though not something unheard of. After close of the prosecution evidence, PW-2 Tikura, one of the most dependable and star witnesses for the prosecution, filed an affidavit before the learned Sessions Judge dated 16.01.1985, saying that her testimony in Court was wrong and she had given that evidence out of fear of Nirmal Pandey and Ram Pragat, besides threats from the Police. She said further in her affidavit that after testifying in Court, her conscience revolted and her soul cursed her. She thought that what ill-deed had she done that her son was killed, and, now by falsely testifying in the murder case leading to implication of men, who were not involved, she wondered what punishment God would give her. She stated in the affidavit that considering these matters, she thought that she should speak truthfully before the Court. She then set out a different version of the occurrence to the effect that it was still dark and

she and her son had gone to harvest her crop. It was said in the affidavit that when she reached Patandeen's field, some men assaulted her son and she could not recognize the assailants. They were not men, whom she knew or recognized. Her son died immediately in consequence of the assault. She too was assaulted by those men and upon seeing her son dead, and in consequence of injuries, she fainted. There are other things said in the affidavit in derogation of her dock evidence given during trial.

74. Taking cognizance of the affidavit dated 16.01.1985, the learned Sessions Judge, after hearing learned Counsel and taking into consideration PW-2s affidavit, paper No. 49-Kha, passed an order on 16.01.1985, directing the trial to adjourn to 17.01.1985 for the purpose of recording the statement of the accused, apparently under Section 313 Cr.P.C. It was further directed that the accused, if they so wished, could produce PW-2 in their defence. On 17.01.1985, the statements of the accused were recorded. At the end of the statements of the accused/ appellants under Section 313 Cr.P.C., they were asked to lead evidence in defence. The trial was adjourned to 18.01.1985 for the purpose of leading defence evidence. On 18.01.1985, quaintly the testimony of Tikura was again heard styling her as DW-1/ PW-2. In addition, documentary evidence on behalf of the accused, numbering twelve documents, was taken on record through a list, paper No. 60-Kha. The documents produced on behalf of the defence were marked as Ex. Kha-1 to Kha-12. It is recorded in the order dated 18.01.1985 that defence evidence on behalf of the accused has concluded and the trial was adjourned for the purpose of hearing arguments to 22.01.1985. We are of opinion that it would be relevant to quote the orders dated 16.01.1985, 17.01.1985 and 18.01.1985 passed by the learned Sessions Judge, verbatim:

"16-1-85

आज पेश हुआ। पुकार कराई गई। मुलजिमान मय वकील हाजिर हो। वकील सरकार श्री NB Singh हाजिर है। वकला फरीकैन की बहस 48ख पर सुनी गई। गवाह टिकुरा PW 2 ने शपथ पत्र 49ख दाखिल किया।

आदेश हुआ कि दि० 17-1-85 को वास्ते बयान मुलजिमान पेश हो। मुलजिमान PW 2 को अगर चाहे तो सफाई मे पेश कर सकते है।

ह० अप०
SJ

17-1-85

आज पेश हुआ। पुकार कराई गई। मुलजिमान मय वकील हाजिर हो। वकील सरकार श्री NB Singh हाजिर है। बयान मुलजिमान लिखा गया। वकला फरीकैन की बहस सुनी गई। बयान मुलजिमान फिर लिया गया। मुलजिमान ने सफाई देने के लिए कहा।

आदेश हुआ कि दि० 18-1-85 को वास्ते सफाई पेश हो।

ह० अप०
SJ

18-1-85

आज पेश हुआ। पुकार कराई गई। मुलजिमान मय वकील हाजिर हो। DW 1/PW 1 टिकुरा का बयान लिखा गया। मुल्जिमान के ओर से 12 किता सबूत द्वारा सूची 60 ख दाखिल हुआ। जिस पर क्रमशः Ex ख 1 ता ख 12 डाला गया। मुलजिमान ने सफाई समाप्त किया।

आदेश हुआ कि दि० 22-1-85 को वास्ते बहस पेश हो।

ह० अप०
SJ"

75. The learned Sessions Judge recorded the testimony of Tikura on 18.01.1985, recording on the top of the papers DW-1/ PW-2. It is next written Recalled. After a short examination-in-chief, the witness has been cross-examined by the learned District Government Counsel. We propose to examine not only the worth of Tikuras evidence recorded by the learned Sessions Judge, but also the legality and character thereof, that is, if at all she could be examined as a defence witness or given her anomalous description as PW-1/ DW-1, as done by the learned Sessions Judge, could she just be regarded as the prosecution witness that she was, who had simply been recalled by the learned Sessions in view of her affidavit in the exercise of powers by the Judge under Section 311 Cr.P.C.

76. We think, it would be profitable to notice for a first what Tikura had to say, when she re-appeared in the dock. She has said in her examination-in-chief, which the learned Trial Judge heard on 18.01.1985, as follows:

"शेष बहादुर मेरा लड़का था।

मैने पिछली बार इसी अदालत में बयान दिया था। वह बयान मैंने प्रगट, निरमल व थाने वालों के डर से दिया था। सही बात यह है कि मै और शेष बहादुर गेहू काटने जा रहे थे दो घरी रात बाकी थी। जब पाटनदीन के खेत के पास पहुँचे तो 4-5-6 आदमियों ने हम लोगों को मारा। मैं उनमें से किसी को पहचान नहीं पाई। मैं उन में से किसी को जानती पहचानती नही थी।

चोट खाकर मेरा लड़का वही मर गया।

मैं चोट खाकर बेहोश हो गई थी। जब होश आया तब दिन चढ आया था, तभी निरमल और प्रगट मेरे पास आए और कहा कि मैं वही बैठूं, वह थाने जा रहे है।

इस वाकया में मेरे देखने में निरमल को कोई चोट नही आई थी।

फिर प्रगट थानेदार के साथ लौट कर आए थे।

मुझे सुध नही थी इसलिए मैने दरोगा जी को नही बताया कि मैने मारने वालों को नही पहचाना था।"

77. In her cross-examination by the learned District Government Counsel, Tikura testified as follows:

"हरिप्रसाद मेरे गाँव के प्रधान है। मेरे पास कोई खेत नहीं है। शेष बहादुर के पास एक बीघा खेत है। मैं मजदूरी करके खाती हूँ। प्रधान ने मुझे कोई खेत नही दिया।

यह कहना गलत है कि मुझे हरिप्रसाद ने 2000 दिया है और दो बीघा खेत पट्टा पर देने के लिए वायदा किया है।

अब मुझे निरमल और प्रगट से डर नही है। अब वह मुझे मारना चाहें तो मार डालें। प्रगट आज भी अदालत में मौजूद है।

मेरी पतोहू ने मुझे खाना नही दिया। शेष बहादुर के कियाकम के बाद से मेरी पतोहू बेवा शेष बहादुर मुझ से अलग रहती है। शेष बहादुर के नाम से जो खेत था प्रगट ने पतोहू के नाम करा दिया। खेत मैं नही चाहती थी मगर खाना पीना चाहती थी मगर पतोहू वह भी नही दे रही है। मैने प्रगट से कहा था कि वह पतोहू से खाना दिलवाये मगर पतोहू ने कुछ नही दिया।

मेरा बयान इस अदालत में हुआ था। मेरी पतोहू पिछले बयान के पहले भी खाना नही देती थी और अब भी नही देती है।

शेष बहादुर कि एक बीघा वाला खेत चाय टंकी के उत्तर है और मेरा घर टंकी के दखिन है। शेष बहादुर का खेत पाटनदीन के खेत के पास ही लगा हुआ है।

मैं दसिया से बस से आती हूँ। दसिया से बस्ती का किराया 2 रूपया आठ आना लगता है।

गवाह को उसका पिछला बयान Chief पढ़कर सुनाया गया। मैने यह बयान खुशी से नही दिया था। डर से दिया था। चूंकि परगट और निरमल बाँधकर लाये थे। मैने डर के मारे अदालत से भी नही कहा कि मुझे प्रगट और निरमल से डर है।

मेरे पिछले बयान के बाद से आज तक मैने प्रगट व निरमल के खिलाफ कोई दरख्वास्त नही दिया।

यह कहना गलत है कि मैं मुलजिमान से मिल गई हू और पैसा लेकर बयान बदल रही हू।"

78. We may now consider the legality and/ or regularity of hearing Tikura and also ascertain her character as a witness, when she re-appeared in the dock. A close look at the orders dated 16.01.1985, 17.01.1985 and 18.01.1985 passed by the learned Sessions Judge seem to suggest that the learned Judge, after recording the statements of the accused under Section 313 Cr.P.C., all on 17.01.1985, heard Tikura as a defence witness or intended to do so. This is apparent from the last of his directions in the order dated 16.01.1985, when Tikuras affidavit, paper No. 49-Kha, was first laid before the learned Sessions Judge for his consideration. He had directed on 16.01.1985 that, if the accused wish, they could produce PW-2 in their defence. Thereafter, on 17.01.1985, which was a date scheduled for recording of the accuseds statement under Section 313 Cr.P.C., all that was recorded were the statements of the accused as aforesaid.

79. Tikura was heard again as a witness on 18.01.1985, but the order of the day describes her as DW-1/ PW-2. At the top of the order-sheet, where her testimony is recorded, we have already noticed that she is described as DW-1/ PW-2. In addition, the word Recalled is written, also at the top of the order-sheet dated 18.01.1985. The difficulty that the learned Sessions Judge was confronted with stemmed from the basic principle that the orientation of a witness never changes. If a witness has testified as a prosecution witness or a defence witness, he or she retains that character all through the trial, notwithstanding whatever he/ she may say in her testimony.

80. Section 154 of the Indian Evidence Act, 1872 (for short, 'the Evidence Act') empowers the Court to permit the person, who called him as a witness to put any questions to him, that might be put in cross-examination by the adverse party. It is this provision, which is invoked when it is in practice said that the Court has declared a witness hostile, permitting cross-examination by the party, who called him/ her. The words hostile witness or declaration of hostility by the Court, are not used in the statute, but are parlance of practice. Sub-Section (2) of Section 154 postulates the principle that notwithstanding a witness called by a party being cross-examined, or so to speak, declared hostile and cross-examined, the testimony of the witness can still be relied upon by the party, calling him to the extent it supports his or her case. This principle is well regarded by consistent authority and the testimony of a witness, so to speak, declared hostile, need not be wholesomely rejected. In case of a prosecution witness, to the extent the testimony supports the prosecution, can well be relied upon by them.

81. Apparently, Tikura testified as a prosecution witness, called to the dock as PW-2. After her testimony was over and just before the statements of the accused under Section 313 Cr.P.C. were scheduled to be recorded, she had a change of mind, which she called, 'the call of her conscience to speak truthfully', leading her to lodge an affidavit with the Court that her earlier testimony during trial was all falsehood. It is no doubt true that the purpose of all trial and the endeavours of Court in the quest for justice is to seek the truth. If the Court found, as in the present case, that a prosecution witness had spoken something under pressure or otherwise, which was away from truth, the Court could always have exercised its powers under Section 311 Cr.P.C. and recalled PW-2 in the very same character for re-examination. PW-2 then could introduce facts what led her to depose contrary to what she had seen and the prosecution could have cross-examined her under Section 154 of the Evidence Act, but as a prosecution witness nevertheless.

82. As the orders dated 16.01.1985, 17.01.1985 and 18.01.1985 would show, the learned Sessions Judge initially decided to permit the accused, upon reading the affidavit of PW-2, paper No. 49-Kha, to examine her as a defence witness. It is for this reason that she was examined after the statements of the accused under Section 313 Cr.P.C. had been recorded. Examining a witness after the statements under Section 313 are over, is clearly suggestive of the fact that the Court intended the witness to be produced in defence by the accused as a defence witness. However, it appears that by 18.01.1985, when the turn came for Tikura to be recalled in the dock, the Trial Court was a bit perplexed as to how a prosecution witness could be called as a defence witness, and endeavour was, therefore, made by the learned Sessions Judge to overcome the apparent illegality of this procedure by describing Tikura as DW-1/ PW-2. Perhaps, the learned Sessions Judge realized the fallacy of the procedure and, therefore, at the top of the order-sheet, where the testimony of Tikura was recorded, after she re-appeared in the dock, the word 'Recalled' is superscribed. The learned Sessions Judge would have done well if he thought that Tikura should be heard again to have invoked his powers under Section 311 Cr.P.C. and recalled her in her character as a prosecution witness, to wit, PW-2, and permit her to be re-examined by the prosecution with a right to them to cross-examine, if they so desired. We must say that the procedure adopted by the learned Sessions Judge in examining Tikura, describing her anomalously as DW-1/ PW-2, was flawed and cannot be countenanced.

83. The question fell for consideration recently before a Division Bench of the Madhya Pradesh High Court in **Kaleem v. State of Madhya Pradesh, 2026 SCC OnLine MP 5990**, where the facts were that a woman, called Najma, was set ablaze on 06.11.2013, allegedly by a colleague of hers over a monetary dispute with her husband. The husband had lodged an FIR orally reporting the incident to the Police the same day, saying that he was informed by a boy from the village, Lokendra, that his wife Najma was burning near the Delgaon-Dhangaon Road. He rushed to the spot and extinguished the fire. Najma informed him that Kaleem had called her there, abused her over the dispute, poured kerosene and set her afire, before fleeing on a motorcycle. Saleem testified for the prosecution as PW-3 and supported the prosecution case. Later on, Saleem was produced as a defence witness, DW-3, where he testified contrary to what he had said in the dock earlier as a prosecution witness. In those circumstances, in **Kaleem (supra),** Ratnesh Chandra Singh Bisen, J. held:

"32. From the defence side, Saleem (DW 3) was again examined as Defence Witness No. 3, and he was made to give a statement contrary to what he had stated earlier in support of the prosecution. In such a situation, his statement recorded as a defence witness cannot be accepted. It is appropriate to mention here that once a witness has been examined by the prosecution, he should not be examined again as a defence witness; rather, if the court finds it necessary to re-examine the witness for the ends of justice, it may allow re-examination or cross-examination, but it cannot allow the witness to be examined as a defence witness. In this regard, the principle laid down in the Supreme Court in case of State of Madhya Pradesh v. Badri Yadav, (2006) 9 SCC 549 : (2006) 3 SCC (Cri) 337 is worth noting, which is as follows

11. In our view, the reasoning recorded by the High Court, itself would have been sufficient to reject the testimony of DW 1 and DW 2. However, having said so the High Court reversed the order of conviction and recorded the order of acquittal, which is perverse.

12. In this case the application under Section 311 CrPC for recalling PW 8 and PW 9 and re-examining them was rejected by the court on 2-9-1994. Therefore, the question with regard to recalling PW 8 and PW 9 and re-examining them stood closed. There is no provision in the Code of Criminal Procedure that by filing affidavit the witnesses examined as PWs (PW 8 and PW 9 in this case) could be juxtaposed as DW 1 and DW 2 and be examined as defence witnesses on behalf of the accused.

13. Mr A.T.M. Rangaramanujam, learned Senior Counsel for the respondent, however, contended that the accused is entitled to enter upon defence and adduce evidence in support of his case as provided under Section 233 CrPC particularly sub-section (3) of Section 233. Sub-section (3) of Section 233 reads:

233. (3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.

(emphasis supplied)

14. Section 233 itself deals with entering upon defence by the accused. The application for recalling and reexamining persons already examined, as provided under Section 311 CrPC, was already rejected. The power to summon any person as a witness or recall and reexamine any person already examined is the discretionary power of the court in case such evidence appears to it to be essential for a just decision of the case. Under Section 233 CrPC the accused can enter upon

defence and he can apply for the issue of any process for compelling the attendance of any witness in his defence. The provisions of sub-section (3) of Section 233 cannot be understood as compelling the attendance of any prosecution witness examined, crossexamined and discharged to be juxtaposed as a defence witness. In the present case PW 8 and PW 9 were juxtaposed as DW 1 and DW 2. This situation is not one what was contemplated by sub-section (3) of Section 233 CrPC

15. When such frivolous and vexatious petitions are filed, a judge is not powerless. He should have used his discretionary power and should have refused relief on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. In the present case, the witnesses were examined by the prosecution as eyewitnesses on 18-12-1990, cross-examined and discharged. Thereafter, an application under Section 311 CrPC was rejected. They were recalled purportedly in exercise of power under sub-section (3) of Section 233 CrPC and examined as DW 1 and DW 2 on behalf of the accused on 17-7-1995. This was clearly for the purpose of defeating the ends of justice, which is not permissible under the law.

(emphasis by Court)

84. In **Kaleem**, reliance has been placed on **State of Madhya Pradesh v. Badri Yadav, (2006) 9 SCC 549,** where the course of recalling prosecution witnesses and re-examining them as defence witnesses, has been held impermissible under the law. We too are bound by the principle in **Badri Yadav (supra)** and respectfully follow the holding of the Division Bench of the Madhya Pradesh High Court in **Kaleem**.

85. Now, we must turn attention to the fact that assuming that Tikura was indeed not called as a defence witness, but merely recalled as a prosecution witness and re-examined, can her testimony, subsequently given, be relied upon to infer a reasonable doubt about the prosecution case. We must remark here that Tikura's testimony in the dock as a prosecution witness was one, which, apart from sparing the minor lapses of human cognizance and limitations of vantage or the inaccuracies of description, was largely consistent with the prosecution case throughout and supported the first information version and the prosecution case as a whole on all its broad parameters. She was consistent in her examination-in-chief and withstood a reasonably lengthy cross-examination without faltering. She came up with an affidavit, disowning her testimony, citing the call of her conscience. The learned Sessions Judge, bearing in mind the highest traditions of the functions of a Judge, dispensing justice, would have naturally felt the weight on his conscience lest truth, remain hidden from the Court's eye and not prevail in a case as serious as one on a charge of murder. No doubt, the learned Judge faltered, as we have already remarked, in permitting the defence to examine Tikura as a defence witness, but he attempted a course correction and heard the witness, anomalously describing her as DW-1/ PW-2 and somewhere mentioning at the top that she was recalled. In all that we have spoken of earlier regarding the legality of the procedure, what is important is that the witness was heard again by the learned Sessions Judge in his anxiety to reach the truth and dispense as accurate as possible justice could be in human hands.

86. In the dock, as we have elaborately set forth the testimony of Tikura, she completely resiled from the prosecution case and blamed her earlier wrong testimony on the fear of Pragat, Nirmal and the Police. She narrated the same story, which was the suggestion of the defence when she appeared as a prosecution witnesses and one, which she categorically denied during her cross-examination, upon a complete and detailed suggestion given to her to the same effect. Now, she has

said that the truth was that she and her son Shesh Bahadur were harvesting their wheat crop and sometime of the night was still left. When they reached near Patandeen's field, 4-5-6 men assaulted them. She does not know any of the assailants. Her son died on the spot and she fell unconscious. When she regained consciousness, it was day and then Nirmal and Pragat came over to her, asking her to sit there, as they were proceeding to the police station. She then said that she never saw Nirmal receiving any injury. Next, Pragat came back along with the Station House Officer. She has further on said that she was not in her senses and for this reason did not tell the Police Inspector that she had not recognized the assailants.

87. During her cross-examination by the learned District Government Counsel, she came out with the fact that she had no field with her. Her son Shesh Bahadur had a field of one bigha. She works as a labourer to earn her livelihood. She denied the suggestion that the Pradhan had offered to give her a field. The Pradhan, we must note here, is a reference to Hari Prasad, one of the deceased appellants, who was convicted by the Trial Court and was in appeal alongside the surviving appellant. She denied the suggestion that Hari Prasad had given her a sum of Rs.2000/- or promised to give her a field of two bigha on lease. She has then said in her cross-examination that her daughter-in-law does not provide her food. After the demise of her son Shesh Bahadur, she had separated from her.

88. The field that stood in Shesh Bahadur's name, Pragat had made her give it to her daughter-in-law. She has said that she does not want the field, but needs a square meal, which her daughter-in-law is not prepared to provide her with. She also said that she had asked Pragat to ask her daughter-in-law to provide for her, but he did not do anything about it. The witness was confronted with her earlier testimony in the dock, and upon that, she said that she did not give that testimony voluntarily. She gave it out of fear. She said that she was brought to Court earlier by Pragat and Nirmal forcibly. She had testified on the earlier occasion out of fear of Pragat and Nirmal. She acknowledged the fact that she never made a complaint against Pragat and Nirmal in the matter.

89. A witness, like Tikura, who has testified with an account, seamlessly consistent with the prosecution story in the first instance, cannot be permitted to go back on her version at a later point of time, particularly when her circumstances show her to be vulnerable. Tikura is the helpless mother of a young man, who was killed before her eyes and both the mother and son did not come from an affluent background. The son had a field of one bigha only and a tea-shop. The field was given away by Tikura to her daughter-in-law, that is to say, Shesh Bahadur's wife, who refused to provide her a square meal. She would work as a labourer. One of the co-appellants of Ramakant, convicted alongside him, was Hari Prasad, in fact a member of his family. He was the Village Pradhan at the relevant time and a resourceful man. Given the socioeconomic differences between parties as well as Tikura's circumstances, it is not difficult to infer that she attempted to regain an entry in the witness-box, not to answer the call of her conscience, but in fact to abjure it and opt for falsehood at the instance of the accused, falling for the mundane necessity of keeping her body and soul together. We have not the slightest hesitation in our mind that Tikura was suborned by the appellant into changing her stance and laying the affidavit, paper No. 49-Kha, before the Court.

90. Even as a matter of practice, to permit a witness, who has remained consistent at the trial, to give an affidavit later on and resile from his testimony, has met with judicial disapproval as a

matter of principle. In **Yakub Ismailbhai Patel v. State of Gujarat, (2004) 12 SCC 229,** a decision that was followed in **Kaleem** by the Madhya Pradesh High Court, PW-1 Munna @ Gheti, the witness of res gestae against the appellants, who were tried for murder after testifying to the conduct of the two accused, consistent with the prosecution case in his dock evidence, later filed an affidavit, saying that he had testified at the instance of the Police. Rejecting the witnesses' endeavour to do a somersault, the Supreme Court in **Yakub Ismailbhai Patel (supra)** held:

"38. Significantly this witness, later on filed an affidavit, wherein he had sworn to the fact that whatever he had deposed before Court as PW 1 was not true and it was so done at the instance of the police.

39. The averments in the affidavit are rightly rejected by the High Court and also the Sessions Court. Once the witness is examined as a prosecution witness, he cannot be allowed to perjure himself by resiling from the testimony given in Court on oath. It is pertinent to note that during the intervening period between giving of evidence as PW 1 and filing of affidavit in court later, he was in jail in a narcotic case and that the accused persons were also fellow inmates there."

91. In a somewhat similar situation, the Supreme Court in **Nisar Khan v. State of Uttaranchal, (2006) 9 SCC 386** observed:

"9. The other contention of Mr Jaspal Singh is that all the eyewitnesses were turned hostile and the credibility of their testimonies are doubted. It is clearly apparent on the record that eyewitness PW 4 Naeem Babu had filed an application before the trial Magistrate (Ext. Kha-27) that he has been threatened and intimidated by the accused not to depose against them. So also PW 1 and PW 2 who were eyewitnesses and supported the prosecution case consistently, were turned hostile. PW 1 and PW 2, direct eyewitnesses of the occurrence were examined, cross-examined and discharged on 4-1-2001. They were recalled on 7-1-2002 and re-examined by the defence on which date all of them turned hostile and resiled from the previous statement. It clearly appears that the eyewitnesses were won over by threat or intimidation after more than one year of their examination and cross-examination and ultimately when the eyewitnesses were won over by the accused they were recalled and re-examined on 7-1-2002. Even on re-examination on 7-1-2002 the eyewitnesses consistently supported the prosecution story with regard to the date and place of incident, the car in which they came and the genesis of the incident. To that extent they supported the prosecution story. They resiled from the previous statement only with regard to the identity of the accused. It is in evidence on record that the accused and prosecution parties are at loggerheads because of business rivalry and known to each other from before. Naturally, by the time the eyewitnesses were recalled, they were won over either by money, by muscle power, by threats or intimidation. We are of the view that no reasonable person properly instructed in law would allow an application filed by the accused to recall the eyewitnesses after a lapse of more than one year that too after the witnesses were examined, cross-examined and discharged."

92. In the circumstances, we are of clear opinion that it is too perilous a course to attach any weight to the testimony of second thought offered by Tikura, when she came back to the witness-box as DW-1/ PW-2. We, therefore, refuse to act upon it or find for the appellant any case that may entitle him to the benefit of doubt.

The appellants vicarious liability for the offences punishable under Sections 302, 323, 324 IPC with the aid of Section 149 IPC, if established?

93. The facts here present to us a case where if at all we have to uphold the conviction for Ramakant on each of the charges that he has been held guilty by the learned Sessions Judge, we would be punishing him, as the learned Counsel for the appellant submits, for acts of others as he himself never committed an act or omission to kill or injure any of the victims. The submission is in itself mostly besides the point. The conviction of the appellant is on charges under Sections 302/149, 323/ 149, 324/ 149 IPC, besides one under Section 147 IPC. Apart from the charge under Section 149 IPC, of which the appellant has been held substantively guilty by the learned Trial Judge, his conviction on all other charges is by virtue of the fact that he was a member of the unlawful assembly, where the others particeps criminis with him, committed acts constituting the offences punishable under Sections 302, 323 and 324 IPC in prosecution of the common object of the unlawful assembly, of which the appellant Ramakant was a member.

94. Our attention is drawn to the fact that Ramakant was wielding a lathi from the beginning, which he never used. The unlawful assembly, that was formed with the assailants, arriving at the deceaseds tea-shop at 6.30 in the morning on the fateful day, according to the prosecution case, itself divided into two factions of four members each, one going after Shesh Bahadur and Ram Pragat, and the other, after Nirmal Pandey and Ram Shankar, causing the group of men, who actually carried out the assault to become two assemblies, each comprising less than five persons. A fortiori, the divided groups, which carried out the attacks, in the submission of the learned Counsel for the appellant, were not unlawful assemblies within the meaning of Section 141 IPC, so as to attract Section 149 IPC at all. We do not agree. The said submission was also advanced before the learned Sessions Judge, who repelled it with the following remark:

"44. There has been a rioting in the case beginning with eight persons. The assembly was unlawful as they had all mustored to do an illegal act and force was also shown as well as used. It is something different that in the details of occurrence the accused had to divide themselves into two groups, each group going below five in number. This to my mind, does not disturb the status of unlawful assembly and the liability of each accused by application of section 149 I.P.C...."

95. We agree with the reasoning of the learned Sessions Judge on this score. We are of opinion that the reasoning should be supplemented. As the evidence shows, the eight accused, including the surviving appellant, alighted at the deceased Shesh Bahadur's tea-shop at 6.30 a.m., three armed with deadly weapons, and the other five, with lathi. The evidence broadly shows that Hari Prasad exhorted others to kill Shesh Bahadur on account of the fact that he had reported them in the case of theft to the Police. The assembly was, therefore, decidedly unlawful because the evidence read as a whole, including the subsequent conduct of its members, show together with the exhortation made, that the accused had come over to the deceased's tea-shop, all armed and three with deadly weapons, to do him to death. They were, therefore, decidedly an unlawful assembly under the Third Clause of Section 141, because their numbers was more than five and the common object was to kill Shesh Bahadur, and it is for that purpose, that they had come over armed.

96. The opening words in the remark of the learned Sessions Judge that, *'There has been a rioting in the case beginning with eight persons',* are not acceptable to us because while they had arrived at the deceased's shop, and one of them exhorted the others to kill him, no force or violence was used by members of the assembly until that point of time within the meaning of Section 146 IPC. The evidence shows that this was the situation moments before the assault would commence in order to accomplish the object of the unlawful assembly. At that point time, Nirmal Pandey and his son Ram Pragat intervened, who were soon joined by Nirmal Pandey's other son Ram Shankar. There was a brief attempt to dissuade the assailants. Shesh Bahadur, sensing immediate danger to his life, ran for safety towards Village Mugraha. Ram Pragat, also sensing danger, took the same escape route as Shesh Bahadur. Nirmal Pandey and Ram Shankar made a run for their life in the direction of Village Dasia. The three other men reacted this way because when they intervened, the members of the unlawful assembly showed their immediate intention of assaulting them as well, with apparently fatal consequences for each.

97. It is only because the number of victims went up from one to four and they made off in two different directions that the assailants, who were an unlawful assembly, split into two factions in prosecution of their common object. The common object of the assembly was to murder the victim Shesh Bahadur. The others were perceived, as the evidence shows, as disrupters of the assailants' design to kill Shesh Bahadur, and, therefore, attacked alongside him. A complete unlawful assembly of eight men, three armed with deadly weapons and the other five with lathi, split into two groups or factions, ultimately in the prosecution of their common object, reacting that way because of the unexpected intervention of the three men, which includes PW-1 and PW-3. The unlawful assembly, therefore, never dissolved. It continued its task meeting the added challenge posed by the three men, who intervened by dividing themselves into two groups, each chasing two victims, including Shesh Bahadur.

98. What Section 149 IPC requires is if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or an act is committed by a member of that assembly, which the other members knew to be likely to be committed in prosecution of that object, every person, who at the time of commission of the offence is a member of the assembly, is guilty of that offence. The assembly that was formed here, as remarked more than once, had formed with the object of committing an offence, that is to say, the murder of Shesh Bahadur. Three members of the assembly were armed with deadly weapons, to wit, a country-made pistol, a spear and a battle-axe (farsa). The appellant, no doubt, was armed with a lathi, but the object was apparently known to each member, which was to do Shesh Bahadur to death. There is an added reason to think that the common object was well-known to the members of the assembly, including the appellant.

99. After all, the appellant and the other accused, who have appealed alongside him after conviction and passed away in course of time, are members of the same family. PW-1, in his examination-in-chief, has graphically described their blood relationship, a fact which has nowhere been denied. This is an added reason to presume that the common object of the assembly was well-known to each member of it. Of course, the fact that the common object was known, can as well be gathered from other circumstances, such as, the arrival of all the members together, the way they were armed and the fact that they got down to business as soon as they arrived, speaking out their

intentions through Hari Prasad, who exhorted others to kill Shesh Bahadur. The aberration in the profile of attack being divided into two sites of occurrence, with two different sets of victims, came about merely because three men intervened to save the situation. This would not result in dissolution of the unlawful assembly at the deceased's tea-shop, comprising the appellant and the seven other accused, who arrived there to murder Shesh Bahadur, well armed for the purpose.

100. The mere fact that the original eight split into two groups, does not make the unlawful assembly, loose its character, as the members divided in prosecution of the common object. The faction, which went after Nirmal Pandey and his other son Ram Shankar, too was acting in prosecution of the common object of the assembly, that is to murder Shesh Bahadur, because they were only abating the obstruction that Nirmal Pandey and his sons had placed before them, moments before they would assault the deceased at his shop. It is perhaps for this reason that the witness, PW-1, a victim too, was shot in his left lower limb and the faction chasing him abandoned the chase, after they were assured that he was no longer in a position to rescue the deceased. Thus, those members, who went after Nirmal Pandey and Ram Shankar, continued to be as much members of the unlawful assembly as the faction of the other four, which actually went after Shesh Bahadur and did the evil deed that the unlawful assembly had for its object.

101. In **Mizaji and another v. State of U.P., AIR 1958 SC 572**, the question before the Supreme Court was, *'what was the common object of the unlawful assembly and whether the offence of murder was committed in prosecution of the common object or was such an offence as the members of the unlawful assembly knew was likely to be committed in prosecution of the common object',* to borrow the words of their Lordships. In **Mizaji** (supra), it was observed:

"4..... It was argued on behalf of the appellants that the common object was to take forcible possession and that murder was committed neither in prosecution of the common object of the unlawful assembly nor was it such as the members of that assembly knew to be likely to be committed. That the common object of the unlawful assembly was to take forcible possession of the Sukhana field cannot be doubted. Can it be said in the circumstances of this case that in prosecution of the common object the members of the unlawful assembly were prepared to go to the extent of committing murder or they knew that it was likely to be committed? One of the members of the assembly Tej Singh was armed with a spear. His son Mizaji was armed with a pistol and others were carrying lathis. The extent to which the members of the unlawful assembly were prepared to go is indicated by the weapons carried by the appellants and by their conduct, their collecting where Tej Singh was and also the language they used at the time towards the complainant's party. The High Court has found that the appellants had gone prepared to commit murder if necessary in the prosecution of their common object of taking forcible possession of the land, which it based on the testimony of Matadin and Hansraj who deposed that when the complainant's party arrived and objected to what the appellants were doing they (the appellants) collected at once and asked Ram Sarup and his companions to go away otherwise they would finish all of them and when the latter refused to go away, the pistol was fired. That finding would indicate the extent to which the appellants were prepared to go in the prosecution of their common object which was to take forcible possession of the Sukhana field. The High Court also found that in any event the case fell under the second part of Section 149, Indian Penal Code in view of the weapons

with which the members of the unlawful assembly were armed and their conduct which showed the extent to which they were prepared to go to accomplish their common object.

5. Counsel for the appellants relied on Queen v. Sabid Ali [(1873) 20 WR 5 Cr] , and argued that Section 149 was inapplicable. There the learned Judges constituting the full bench gave differing opinions as to the interpretation to be put on Section 149, Indian Penal Code. That was a case where the members of an unlawful assembly went to take forcible possession of a piece of land. The view of the majority of the Judges was that, finding unexpected opposition by one member of the party of the complainants and also finding that they were being overpowered by him, one of the members of the unlawful assembly whose exact time of joining the unlawful assembly was not proved fired a gun killing one of the occupants of the land who were resisting forcible dispossession. It was also held that the act had not been done with a view to accomplish the common object of driving the complainants, out of the land, but it was in consequence of an unexpected counter-attack. Ainslie, J., was of the opinion that the common object of the assembly was not only to forcibly eject the occupants but to do so with show of force and that common object was compounded both of the use of the means and attainment of the end and that it extended to the committing of murder. Phear, J., said that the offence committed must be immediately connected with that common object by virtue of the nature of the object. The members of the unlawful assembly must be prepared and intend to accomplish that object at all costs. The test was, did they intend to attain the common object by means of murder if necessary? If events were of sudden origin, as the majority of the learned Judges held them to be in that case, then the responsibility was entirely personal. In regard to the second part he was of the opinion that for its application it was necessary that members of the assembly must have been aware that it was likely that one of the members of the assembly would do an act which was likely to cause death. Couch, C.J., was of the opinion that firing was not in prosecution of the common object of the assembly and that there was not much difference between the first and the second part of Section 149. He said:

"At first there does not seem to be much difference between the two parts of the section and I think the cases which would be within the first, offences committed in prosecution of the common object, would be, generally, if not always, within the second, namely, offences which the parties knew to be likely to be committed in the prosecution of the common object. But I think there may be cases which would come within the second part and not within the first."

Jackson, J., held in the circumstances of that case that assembly did not intend to commit nor knew it likely that murder would be committed. Pontifex, J., interpreted the section to mean that the offence committed must directly flow from the common object or it must so probably flow from the prosecution of the common object that each member might antecedently expect it to happen. In the second part know meant to know that some members of the assembly had previous knowledge that murder was likely to be committed.

6. This section has been the subject-matter of interpretation in the various High Courts of India, but every case has to be decided on its own facts. The first part of the section means that the offence committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. It is not necessary that there should be a preconcert in the sense of a meeting of the members of the unlawful assembly as to the common object; it is enough if it is adopted by all the members and is shared by all of them. In order that the case may fall under the first part the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 149 if it can

be held that the offence was such as the members knew was likely to be committed. The expression know does not mean a mere possibility, such as might or might not happen. For instance, it is a matter of common knowledge that when in a village a body of heavily armed men set out to take a woman by force, someone is likely to be killed and all the members of the unlawful assembly must be aware of that likelihood and would be guilty under the second part of Section 149. Similarly, if a body of persons go armed to take forcible possession of the land, it would be equally right to say that they have the knowledge that murder is likely to committed if the circumstances as to the weapons carried and other conduct of the members of the unlawful assembly clearly point to such knowledge on the part of them all. There is a great deal to be said for the opinion of Couch, C.J., in Sabid Ali case [(1873) 20 WR 5 Cr] that when an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part, but not within the first. The distinction between the two parts of Section 149, Indian Penal Code cannot be ignored or obliterated. In every case it would be an issue to be determined whether the offence committed falls within the first part of Section 149 as explained above or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part."

102. The principle, governing application of Section 149 IPC to an individual, part of an unlawful assembly, is always a matter of fact in each case to be gathered from the evidence on record. In this regard, reference may be made to **Lalji and others v. State of U.P., (1989) 1 SCC 437,** where the Supreme Court remarked:

"8. ..... The two essentials of the section are the commission of an offence by any member of an unlawful assembly and that such offence must have been committed in prosecution of the common object of that assembly or must be such as the members of that assembly knew to be likely to be committed. Not every person is necessarily guilty but only those who share in the common object. The common object of the assembly must be one of the five objects mentioned in Section 141 IPC. Common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case.

103. Also relevant to the point are the principles laid down in **Gangadhar Behera and others v. State of Orissa, (2002) 8 SCC 381,** where it was observed by the Supreme Court:

"23. Common object is different from a common intention as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The common object of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in

all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words it can develop during the course of incident on the spot eo instanti.

24. Section 149 IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was a member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 141, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard-and-fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be collected from the nature of the assembly, arms it carries and behaviour at or before or after the scene of incident. ....."

104. The same principles were approved by the Supreme Court in **Zainul v. State of Bihar, 2025 SCC OnLine SC 2152**. It was held in **Zainul (supra):**

"49. The expression in prosecution of the common object means that the offence committed must be directly connected with the common object of the assembly, or that the act, upon appraisal of the evidence, must appear to have been done with a view to accomplish that common object. In Charan Singh v. State of U.P., (2004) 4 SCC 205, this Court held that the test for determining the common object of an unlawful assembly must be assessed in light of the conduct of its members, as well as the surrounding circumstances. It can be deduced from the nature of the assembly, the weapons carried by its members, and their conduct before, during, or after the incident. .

50. To put it briefly, Section 149 of the IPC makes all the members of an unlawful assembly constructively liable when an offence is committed by any member of such assembly with a view to accomplish the common object of that assembly or the members of the assembly knew that such an offence was likely to be committed. However, such liability can be fastened only upon proof that the act was done in pursuance of a common object. .....

51. Undoubtedly, once the existence of a common object amongst the members of an unlawful assembly is established, it is not imperative to prove that each member committed an overt act. The liability under this provision is attracted once it is certain that an individual had knowledge that the offence committed was a probable consequence in furtherance of the common object, thereby rendering him a member of the unlawful assembly.

52. While ascertaining this fact, it is of utmost importance to consider whether the assembly consisted of some persons who were merely passive onlookers who had joined the assembly as a matter of idle curiosity, without the knowledge of the common object of the assembly, since such persons cannot be said to be members of the unlawful assembly. We say so because, the nucleus of Section 149 is common object."

105. Here, as the evidence shows, the members of the unlawful assembly were, by no means, passive or curious bystanders. They were one assembly, whose object was to do Shesh Bahadur to death. We have already remarked that the splitting up of the assembly into two groups was a modification of the modus of assault on account of the unexpected intervention by three men, to wit, Nirmal Pandey, Ram Pragat and Ram Shankar. The object of the unlawful assembly, that the assailants formed, was never abandoned. It is only that it separated into two groups to ensure that the object could be better fulfilled. Those, who went behind Nirmal Pandey and Ram Shankar, were acting in prosecution of the same common object to eliminate Shesh Bahadur, and all that they did was to obviate any interference by men, like Nirmal Pandey and his son Ram Shankar, who wished to dissuade the perpetrators.

106. If the action of the faction led by Sadhu Saran is to be seen and spoken of at the cost of some repetition, one cannot fail to notice that as soon as Sadhu Saran had shot Nirmal Pandey in a non-vital part of the body and was assured of the fact that he would not interfere in accomplishment of the object that the unlawful assembly had, and his son Ram Shankar too had continued his escape, this faction of the unlawful assembly returned with no further pursuit. Ultimately, the object of the unlawful assembly was not to murder Nirmal Pandey or Ram Shankar. It was to eliminate Shesh Bahadur, an object all the members of the assembly shared in common from the inception. It was never abandoned. All members of the assembly contributed to it in some measure.

107. As far the appellant Ramakant is concerned, much was said that he did no more than to wield a lathi, which he did not employ to deliver even a single blow. That, in our opinion, hardly matters. When he went along with Sadhu Saran and two others after Nirmal Pandey and Ram Shankar, he was acting in prosecution of the common object of the assembly to chase away men, who could dissuade members of the unlawful assembly in accomplishing their object of murdering Shesh Bahadur or interfere with the fulfillment of that object. Thus, he went with Sadhu Saran, who was armed with a country-made pistol, albeit holding a lathi, as his reserve force, to enable him to deal with the intruders, who had endeavoured to obstruct the unlawful assembly in the fulfillment of its common object.

108. In our considered view, therefore, the appellant Ramakant would be as much liable for the offence under Section 302/ 149 IPC as those who actually murdered Shesh Bahadur. The other offences, held proved against the appellant Ramakant, are beyond exception, and the evidence on record well establishes each of them. We are, therefore, not inclined to interfere with the impugned judgment and order passed by the learned Sessions Judge, convicting and sentencing the appellant.

109. In the result, this appeal fails and is **dismissed**. The appellant Ramakant is on bail. He would surrender to his bail bonds in order to serve out the sentence of law imposed upon him. His bail bonds stand cancelled and the sureties discharged. In the event, however, the appellant does

not surrender within a period of four weeks from date, the Chief Judicial Magistrate, Basti, shall ensure that he is caused to be arrested and committed to prison.

110. Let a copy of this judgment be forwarded to the Trial Court concerned along with the lower court record for information and necessary compliance.

(2026) 5 ILRA 876
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.05.2026

BEFORE

THE HON'BLE SANJIV KUMAR, J.

Criminal Appeal No. 902 of 1988

Harish Chandra & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

Matter pertains to legality of test Identification Parade conducted.

Headnotes

Kidnapping - Conviction - Identification - Test Identification Parade (TIP) -Indian Penal Code, 1860 - Ss. 364/149, 368 and 147- FIR lodged promptly-place of occurrence and prosecution version corroborated by site plan and recovery of two empty cartridges- Plea of absence of sufficient light rejected in view of lantern, torches and nearby electric bulb-victim recovered from custody of co-accused on following day-had sufficient time and opportunity to identify appellants-in TIP, victim (P.W.2) and independent witness (P.W.3) correctly identified all appellants (identifier percentage 100%) and reiterated identification in Court. Evidence of child witness, being consistent, trustworthy and corroborated by independent witness, held reliable. Plea of prior acquaintance and challenge to TIP rejected. In case resting on direct evidence, motive held not very material. Conviction of appellants under Ss. 364/149, 368 and 147 IPC affirmed. **Appeal dismissed.**

Case Law Cited

Nil

List of Acts

Indian Penal Code,1860

List of Keywords

Test Identification Parade.

Appearances of parties

Counsel for Appellant(s) : Utkarsh Garg (Amicus Curie), A.K. Roy, Sudhanshu Kumar Singh Counsel for Respondent(s) : A.G.A.

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

1. This criminal appeal under Section 374(2) of Code of Criminal Procedure,1973, (for brevity Cr.P.C.) by convicts Harish Chandra, Nazarul and Dulha is directed against the judgment and order dated 06.04.1988, of Sri S.B. Baishya, the then VII Additional District & Sessions Judge, Moradabad, passed in Sessions Trial No. 70 of 1985 (State Vs. Israr and others), under Sections 368, 364/149, 147 of Indian Penal Code,1860, (for brevity IPC), Police Station Didauli, District Moradabad.

2. By the impugned judgment and order, the Trial Court convicted appellants Harish Chandra and Nazarul under Section 364/149 IPC and sentenced them to undergo three years rigorous imprisonment. They were further convicted for offence punishable under Section 147 IPC and sentenced to undergo two years rigorous imprisonment. Fines too have been imposed with default stipulations. The appellant, Dulha, was convicted for offence punishable under Section 368 IPC and sentenced to undergo three years rigorous imprisonment and awarded a fine of Rs.1000/- with default stipulation. It was also directed that all the sentences shall run concurrently.

3. During the pendency of this appeal, appellant no.1, Harish Chandra, was not traceable and Mr. Utkarsh Garg, Advocate was appointed as an Amicus Curiae on his behalf to argue the appeal.

4. Heard Mr. Utkarsh Garg, Amicus Curiae for appellant no.1, Mr. Satendra Kumar, Advocate holding brief of Mr. Sudhanshu Kumar Singh, learned counsel for appellant nos.2 and 3 and Mr. Akhilesh Kumar Mishra, learned AGA on behalf of the State.

5. The brief fact of the case, as alleged by the prosecution, are that one Munawwar Hussain, son of Sabbir, lodged a written application (Tahrir) (Ext. Ka-1), before the In-charge, Police Station Didauli, stating therein that on the preceding night, informant, along with his son, Ashkar, was sleeping underneath a thatched shed, situated in front of eastern verandah of his house, where a lantern was lit as usual. At about 01:30 a.m., upon hearing barking of dogs, he was awaken and saw five-six miscreants had entered his house. It was alleged that one of them was carrying a gun, while the others were armed with lathi. All of them lifted his son, Ashkar, and attempted to forcibly take him away. Upon this, informant and his son, Ashkar, raised alarm, whereupon Shabbabul Hasan son of Mohd. Yusuf, Zaheer son of Abdul Aziz, Mussarraf son of Muzzaffar Hussain, Matloob @ Chuttan and other villagers arrived there shouting and flashing their torches. It was further alleged that all the miscreants kidnapped his son and fled towards the eastern jungle. The informant and others followed the miscreants, whereupon the miscreants fired two rounds of fire, due to which they could not apprehend the miscreants. It was further stated by the first informant that the miscreants were seen and identified in the flashlight of torches and in the light of a lantern illuminating there. The informant also stated that his son, Ashkar, was aged about ten years.

6. Upon this written information, FIR under Case Crime No. 218 of 1985, under Section 364 IPC was lodged against five-six unknown persons and the investigation commenced. During

investigation, the Investigating Officer, S.I. Ibrahim Khan (P.W.4), recorded the statements of the first informant and other witnesses, inspected the place of occurrence and prepared its site-plan. He also inspected the lantern lit at the place of occurrence and torches and prepared their recovery memo. During the course of investigation, the kidnapped son of the first informant, Ashkar, was recovered and the name of appellants surfaced. Thereafter, their test identification parade (TIP) was conducted in District Jail, Moradabad. On the basis of test identification and other evidence, charge-sheets under Sections 147, 148, 149, 364, 452 IPC were filed against the appellants and non-appellants Bholu and Israr.

7. The learned Magistrate took cognizance of the offence and summoned the accused persons. They appeared and relevant copies of prosecution papers were furnished to them under Section 207 Cr.P.C. Thereafter, the case was committed to the Court of Sessions for trial.

8. The appellants and non-appellants appeared before the Trial Court, where charge under Sections 147, 364 read with 149 IPC was framed against appellants, Nazarul, Harish Chandra and non-appellants Israr and Bholu, whereas charge under Section 368 IPC was framed against the appellant Dulha. The said charges were read over and explained to the appellants, who abjured the said charges, pleaded not guilty and claimed to be tried.

9. The prosecution, in order to prove its case, has examined eight witnesses namely, Munawwar (P.W.1), (first informant), Ashkar (P.W.2) (son of first informant), Zabir Hussain (P.W.3), A.S.I. Ibrahim Khan (P.W.4), S.S.I. Babu Ram (P.W.5), H.C. Prem Shankar Saxena (P.W.6), Constable Kunwar Pal Singh (P.W.7) and Constable Karan Singh (P.W.8). Their testimony, in brief, is enumerated as under.

10. P.W.1 Munawwar is the first informant and father of abducted Ashkar. He, in his examination-in-chief, has deposed that at the time of incident, his son Ashkar was aged about ten years. He along with his son, Ashkar, was sleeping under a thatched shed, where a lantern was lit. At about midnight, on the barking of dogs, he woke up and saw five-six persons near his cot. One of them was carrying a gun and others were armed with lathis. They forcibly attempted to abduct his son. P.W.1 further said that thereupon he and his son raised alarm. Matloob, Zabir, Mussarraf, Zahir and others arrived at the spot, whereupon the accused forcibly abducted his son and fled away. The informant and others chased the miscreants, but they fired two rounds from firearm and due to fear, the informant and others could not apprehend them. The witness further said that they identified the miscreants in the flashlight of torches and light of lantern. He got the written application scribed from Iftiqar, which he has proved as (Ext. Ka-1) and said that he had handed over this information to his brother, Matloob, for submission at the Police Station, as he himself could not go because his mother had died within an hour of the incident, due to the shock caused by the abduction of his son. He had gone to the jail for the purpose of identification of the accused, where he identified the appellant Harish Chand and said that he had seen him at the place of occurrence. He further deposed that prior to the test identification proceedings in jail, he had not seen him anywhere else in the meantime.

11. In his cross-examination, P.W.1 said that he neither knew appellant Harish Chandra previously nor was aware that he was resident of Tikiya Fatehpur, nor previously saw him in Tikia

Fatehpur. In the same village his niece was married. Tikita Fatehpur is about two miles away from his village. The miscreants had not covered their faces at the time of occurrence. He had gone to village Bhatua to attend the marriage ceremony of Matloob and since then he never went there. He further said that there is a market in Zoya, which is about one and a half miles away from his village and that he rarely visited the said market.

12. P.W.2 Ashkar, in his examination-in-chief, has deposed that his house is adjacent to Matloobs house, where appellant Dulha used to come and he was well acquainted with him since before the incident. He said that Dulha is his maternal uncle. The witness has said that at the time of incident, he along with his father was sleeping over a cot in front of their verandah under a thatched shed, where a lantern was lit. At about 01:00 or 01:30 a.m. in the night, he heard the barking of the dogs and in the light of lantern saw five-six persons standing there. One of them was carrying a gun, whereas others were having lathi and torches in their hands. They flashed their torches in his eyes as a result his eyes got dazzled. They tried to kidnap him forcibly, whereupon he and his father raised alarm. Upon hearing the alarm, Zabir, Zaheer, Mussarraf and other villagers reached there, who chased the miscreants, however, the miscreants fired at them, due to which, they retreated. After covering some distance, appellant Dulha joined them, whereafter they took him to Chaudahpur on foot. One of the miscreants was addressing another by the name Israr and other by the name of Bholu. The witness further testified that Israr and Bholu used to visit his village along with appellant Dulha. He did not know their names, but identified them from their faces.

13. P.W.2 further testified that Dulha instructed Israr to keep him for about three days with him and then they would meet thereafter at the tubewell. According to P.W.2, Dulha stayed in Chaudahpur and the rest of the accused took him to Moradabad and on the way they threatened him that if he uttered any word, he would be killed. From Moradabad, accused Israr took him in a mini bus to Sambhal. On the way, at Fatehpur roundabout, they alighted from the bus and Israr attempted to take him to the jungle, whereupon he said that he wanted to go to aunts (khalas) house in a village at Fatehpur. Thereupon, Israr slapped him, so he raised alarm. The accused Israr was apprehended there by an Inspector who was passing by riding his scooter alongwith a constable. The Inspector conducted personal search of Israr and recovered one country made pistol and three cartridges from his possession. Thereafter, they were taken to the Police Station. P.W.2 further testified that he had gone to the jail for test identification of the accused, where he identified four accused. In court during his examination, he identified Israr, Nazarul, Harish Chandra and Bholu and said that he had seen them at the time of incident and thereafter in jail and in the meantime, he did not see them anywhere else. He did not know their name, but identified Nazarul by his face.

14. In cross-examination, he has said that Israr and Dulha are residents of village Hattauwa. Israr did not use to come along with his maternal uncle. Israr was one of the accused, who had kidnapped him and he had identified all the kidnappers. He had not shouted in Moradabad. Dulha intended to kill him and wanted his father to leave the village, so that he could grab his fathers property. He further said that Dulha had not covered his face.

15. P.W.3 Zabir Hussain has deposed that at the time of incident at about 01:30 a.m., he heard some noises and, upon awakening, heard 'बचाओ बचाओ from the house of Munawwar. He reached

there having a torch and lathi in his hand. Many villagers had already reached there. He saw that one person was kidnapping Munnawar's son, Ashkar, by carrying him on shoulder and the other persons were following him, having torch in their hands. One of them was also having a gun. He further testified that he had identified their face in the light of lantern and flashlight of torches. They chased them, however, the miscreants shot two rounds from firearm and due to fear, they could not follow them any further and the miscreants fled kidnapping Ashkar. He had gone to jail for identification of the miscreants, where he identified four accused, namely, Bholu, Israr, Harish Chandra and Nazarul, who are present in Court. He had seen them at the time of incident and thereafter, in jail and in between, he had not seen them anywhere else.

16. In cross-examination, he said that his house is adjacent to Munnawar's house. When he reached at Munnawar's house, the accused suddenly came before him and shouted at him, thereafter, they fled towards the north. He did not see whether Munawwar had chased the accused or not. The accused were about five-six steps ahead of him while running. He did not notice that hand of any of the miscreants was cut off and had only seen their faces. He never went to village Hattauwa. He said that he had gone to the market in Zoya several times, where many persons usually visit.

17. P.W.4 A.S.I. Ibrahim Khan has said that Head Moharrir Hori Singh had written chik FIR on the basis of (Tahrir) (Ext. Ka-1) and he is well acquainted with hand writing and signature of Hori Singh. The same day Hori Singh had scribed G.D. No. 10. The witness has proved its carbon copy as Ext. Ka-2. He has said that the investigation was entrusted to him on 12.08.1983, whereupon he recorded statements of witnesses, reached the place of occurrence, prepared its site-plan, which he has proved as Ext. Ka-3. The witness further said that he inspected the lantern and gave it in the custody of the first informant after preparing its recovery memo (Ext. Ka-4). He also inspected torches and prepared recovery memo (Ext. Ka-5). He thereafter inspected the electric bulb at Zaheer's flour mill and gave it in the custody of Zaheer and thereafter prepared its recovery memo (Ext. Ka-6). He further testified that he had recovered two empty cartridges of 12 bore from near the place of occurrence and prepared it recovery memo as Ext. Ka-7. He reached at the place of occurrence on 13.08.1983 and prepared its site-plan (Ext. Ka-8). On 20.08.1983, he arrested Harish Chandra and took him in custody in the Police Station. He made G.D entry No. 44 at 23:50 (Ext. Ka-9). On 25.08.1983, he arrested appellant Nazarul, kept him masked (bapardah) and lodged him in jail at Police Station and prepared its G.D. No. 5 dated 25.08.1983, which he proved as Ext. Ka-10. On 13.08.1983, he handed over abducted, Ashkar Hussain, in his father's custody and prepared its recovery memo (Ext. Ka-11). On 23.08.1983, he conducted proceedings under Section 82 and 83 Cr.P.C. against accused Nazarul, Bholu and Ram Kumar. Accused Bholu and Dulha surrendered before the court and were sent to jail. The test identification of the accused was conducted and, after conclusion of investigation, charge-sheet against the accused Israr, Nazarul, Harish Chandra was filed on 04.09.1983, which he proved as Ext. Ka-12. On 23.09.1983, he submitted charge-sheet against the accused Dulha and Bholu, which he proved as Ex. Ka-13.

18. In cross-examination, P.W.4 said that accused Israr had disclosed him the name of Bholu and Harish Chandra. Ashkar did not tell him the names of Bholu, but told him the name of Harish Chandra. He had not stated about the body structure of the appellant Harish Chandra. He has also not stated that one of the accuseds hand was cut off. The lantern where it was lit, did not have any

blackening (Kalaunch), therefore, he has not shown blackening (Kalaunch) in the site-plan. About 50-60 steps away from the place of occurrence, he found two empty cartridges and a firearm. The witness Ashkar had told him that he had seen Bholu and Nazarul in village Bhatauwwa and they used to visit appellant Dulha, who is his maternal uncle.

19. P.W.5 S.S.I. Babu Ram has said that on 12.08.1983, he was posted in Police Station Mainawar and was going on a motorcycle towards village Lalpur and upon his return to the Police Station, when he reached near village Milakpur, Madhupuri at Fatehpur roundabout at about 13:40, he saw a minor boy shouting. Thereupon, he reached there and saw a person was dragging him to take away. When he asked him to stop, then he ran dragging the boy, thereupon with the help of others, he apprehended accused Israr with minor boy Ashkar. Upon his personal search, a country made pistol of 12 bore and three country made cartridges were recovered and its recovery memo was prepared at the spot. The witness has proved copy of recovery memo as Ext. Ka-14 and stated that the original recovery memo is kept in the record of the case under Section 25 Arms Act. He has proved G.D. Entry No. 30 of the same day as Ext. Ka-15 and has further testified that he had inquired from the kidnapped boy at the place of recovery. In cross-examination, P.W.5 said that he had proceeded from Police Station after making entry in departure G.D. at 09:00-09:15 a.m. He further said that he had taken the signature of persons, who were present at the spot.

20. P.W.6, retired Head Constable, Prem Shankar Saxena is a formal witness, who has scribed chik FIR under Section 25 of Arms Act, upon recovery memo prepared by S.S.I. Babu Ram and made its corresponding entry in G.D. entry No. 30, which he has proved as Ext. Ka-17 and Ka-18, respectively.

21. P.W.7 Kunwarpal Singh is also a formal witness. He has deposed that on 26.08.1983, he was posted at Police Station Didauli, where accused Nazarul was kept masked (bapardah) in custody and even from the custody of the police station to jail, he kept the accused masked (bapardah) and did not gave any chance to any person to recognize him. In cross-examination, he has said that except for Nazarul, no other person was kept in custody.

22. P.W.8 Constable Karan Singh is also a formal witness, who has said that on 21.08.1983, he was posted in Police Station Didauli, where Harish Chandra was brought masked (bapardah) by S.I. Ibrahim Khan and was kept in custody. On the next day, that was 22.08.1983, he had taken Harish Chandra in a masked (bapardah) condition to District Jail, Moradabad and during the intervening period, he did not provide any opportunity to any person to see or identify the accused. He has said that the accused was kept in a masked condition (bapardah) through out and was lodged in jail.

23. After closure of the prosecution evidence, statements of the appellants were recorded under Section 313 Cr.P.C., in which they denied the prosecution case and stated that all the witnesses have deposed against them due to enmity. They further said that the witnesses knew them prior to the incident and, after they were apprehended, they were shown to the witnesses. Appellant Dulha said that he works in Moradabad and he got the news of the incident after three days. The appellants have not adduced any evidence in their defence.

24. The Trial Court after carefully appreciating the evidence available on record found that the prosecution has been able to prove its case beyond reasonable doubt. Insofar as the present appellants are concerned, the Trial Court found the evidence against them reliable and cogent. However, the remaining accused persons were extended the benefit of doubt on account of improper identification and accordingly, the appellants were convicted and sentenced to the terms as indicated above.

25. Learned counsel for the appellants submits that there are major contradictions in the testimony of witnesses of fact, which raises serious doubt over the prosecution case. It is further submitted that there was no sufficient source of light at the place of occurrence, therefore, the identification of the appellants by the witnesses is highly improbable, doubtful and not worth credence.

26. Learned counsel for the appellants next submits that the appellants were already known to the prosecution witnesses prior to the incident and, therefore, the test identification proceedings were meaningless. It is next submitted that there is no motive for the appellants to commit the crime. It is contended that P.W.2, Ashkar, is a child witness and he has been tutored and has deposed before the court at the instance of his father, therefore, his testimony is unreliable and not worth credence. It is also submitted on behalf of the appellants that the test identification proceedings conducted in the District Jail show that some of the witnesses failed to identify all or several of the accused, therefore, the identification percentage is 50% or less and as such, the said identification cannot be relied upon and do not inspire confidence.

27. In view of the above, it is argued by learned counsel for the appellants that the prosecution case is not proved beyond reasonable doubt and the conviction and sentence of the appellants awarded by the Trial Court is liable to be set aside.

28. Per contra, learned AGA on behalf of the State has submitted that the prosecution case is proved beyond reasonable doubt. It is submitted that there was lantern illuminating at the place of occurrence and an electric bulb was also lit at the nearby place. The miscreants and witnesses were carrying torches, which they flashed and in this light, the miscreants were identified by the first informant, the victim and other witnesses, who reached at the place of occurrence upon alarm being raised. It is further submitted that the victim, Ashkar, was recovered the next day from the custody of co-accused Israr, therefore, Ashkar remained in the custody of the appellants for a considerable time, so he had ample time and opportunity to identify the accused.

29. It is next submitted by learned AGA that Ashkar had identified the appellants in District Jail during test identification parade and thereafter, in Court also. There are no major contradictions in the statement of the said witness, therefore, his testimony is consistent, trustworthy and reliable. It is contended that there was motive for the appellant Dulha to commit the crime, as he wanted to grab the property of the first informant and for this reasons, he attempted to kidnap the victim, so that first informant, along with his family, leaves the village. Furthermore, it is submitted that this is a case based on direct evidence, therefore, motive has no significance in it.

30. It is next submitted by learned AGA that the appellants were properly identified by the witnesses of fact and also by the victim during investigation in District jail and thereafter in Court, therefore, there was sufficient evidence against the appellants and they were rightly convicted and sentenced by the Trial Court.

31. In view of submissions of learned counsel for the both the parties and upon a perusal of evidence on record, it is clear that this case is based on direct evidence. In a criminal case, the burden of proof always lies upon the prosecution to prove its case beyond reasonable doubt. In the present case, the prosecution has examined the victim Ashkar, his father and other witnesses, who reached at the place of occurrence, to prove the fact.

32. In the present case, the alleged incident occurred on 11/12.08.1983 at about 01:30 in the night hours, when Munawwar Hussain and his son Ashkar, aged about 10 years, were sleeping under a thatched shed, over a cot. The FIR has been lodged on 12.08.1983 at about 07:10 a.m. The distance between the place of occurrence and the Police Station, as per chik FIR, is four miles. Therefore, within six hours, the FIR has been lodged. So the FIR was lodged promptly by the first informant.

33. So far as the place of occurrence is concerned, according to the prosecution, the place of occurrence was the thatched shed in front of first informants house in village Malikheda, under the jurisdiction of Police Station Didauli Amroha, Moradabad. The defence has not disputed the place of occurrence. P.W.1 Munawwar Hussain, P.W.2 Ashkar, P.W.3 Zabir Hussain have stated that the incident took place at the same place, as pointed out by the prosecution. The Investigating Officer has prepared site-plan of the place of occurrence, which corroborates the testimony of the witnesses of fact, examined by the prosecution. The Investigating Officer has recovered two empty cartridges from near the place of occurrence and it is the case of the prosecution, while retreating the miscreants shot two rounds of fire. The defence has not disputed the place of occurrence and has not suggested any other alternative place for the same, therefore, the place of occurrence in this case is fully established.

34. It has come in the testimony of P.W.1, Munawwar Hussain, as well as in the testimony of P.W.3, Zabir Hussain, who reached at the place of occurrence that five-six miscreants were present at the place of occurrence and one of them was carrying a gun, while rest of them were having lathi in their hands, and they kidnapped Ashkar. They picked up Ashkar and tried to forcibly take him away, when the alarm was raised. The miscreants were chased by the witnesses, who shot two round of fire from the firearm, which frightened the witnesses and, as a result, they could not chase and apprehend the miscreants and Ashkar was taken away. Ashkar has also stated the same version.

35. It is submitted on behalf of appellants that there was no source of light, so the witnesses were not in a position to identify the miscreants. According to the prosecution, when the incident took place, a lantern was lit there and the Investigating Officer inspected the lantern lit at the place stated by the prosecution witnesses, but found no blackness (kalaunch), where the lantern was kept, which raises doubt that it was lit at the time of the incident. But, it has also come in evidence that the witnesses had arrived there carrying torches, which they flashed and there was also light from the electric bulb lit near Zaheers flour mill. The Investigating Officer had inspected the torches and

gave it in their custody. The defence has not cross-examined the witnesses with regard to the source of light, therefore, Zabir Hussain alongwith Ashkar also had an opportunity to identify the appellants at the time of commission of crime.

36. The Investigating Officer has recovered two empty cartridges from near the place of occurrence, which corroborates the testimony of prosecution witnesses that, when they tried to chase the miscreants, two round of fires were shot towards them.

37. Now, the question is whether it were the appellants, who had committed the offence or not. The prosecution case is based upon identification of the appellants. In this regard, the evidence on record shows that after the arrest of accused Israr, Harish Chandra and Nazarul, they were lodged in District Jail, Moradabad and their test identification was conducted in jail on 01.09.1983, where witnesses Ashkar, Mussaraf, Zaheer, Shababul and Zabir identified them correctly. Non-appellant Bholu was also lodged in District Jail, Moradabad, where his test identification was conducted on 16.09.1983 and witnesses Munawwar, Shababul Hasan, Zaheer, Mussaraf, Zabir were produced to identify him and out of them only Zabir identified him correctly. The test identification was conducted during investigation. Its concerned documents are placed on record by the prosecution. The defence has admitted the genuineness of these documents, which are proved as Exts. Ka-20 and Ka-21. Therefore, these documents are admissible in evidence. The defence has not raised any question during trial or at the appellate stage that the test identification was not conducted properly and/or necessary compliance were not made.

38. It is submitted on behalf of the appellants that, in view of the above test identification, the identifier percentage is 50% or less, therefore, on this basis, the identity of the appellants cannot be said to have been confirmed and their presence at the place of incident cannot be established.

39. I do not agree with this submission of learned counsel for the appellants as from a perusal of the documents relating to test identification, (Exts. Ka-20 and Ka-21), it is clear that Israr, Harish Chandra, Nazarul were put for identification by abducted Ashkar, who identified all of them correctly, so his identifier percentage is 100%. Similarly Mussaraf, Zaheer, Shababul and Zabir have also identified all of them correctly and Zabir has been examined as P.W.3. Therefore, the identification percentage of these witnesses is also 100%. From a perusal of test identification memo relating to non-appellant Bholu, it is clear that he has not been correctly identified by Munawwar, Shababul, Zaheer and Mussaraf, and only Zabir has identified him correctly. Bholu has not been presented for identification before Ashkar. More importantly, Ashkar and Zabir have correctly identified all the appellants in court also, at the time of their examination.

40. Therefore, looking into the combined identification of all the three appellants, the test identification percentage of witness Ashkar and Zabir is 100%, because they have correctly identified them. The identifier percentage of Zabir has been 100% and he has been examined as P.W.3. So the prosecution has examined two witnesses of fact, namely, Ashkar and Zabir, whose test identification is 100%.

41. Here, it is relevant to mention that the kidnapped Ashkar was recovered from the custody of Israr the next day, so he remained with the all the accused for a considerable period of time and

thus, he had enough time and opportunity to identify them correctly. Here, it is also relevant to mention that within ten days, the test identification was carried out, where Zabir Hussain identified all the appellants correctly. It has come in the statement of P.W.7 and P.W.8 that appellants Harish Chandra and Nazarul were kept masked (bapardah) throughout and nobody was given any opportunity to see them before they were lodged in jail. Therefore, the above evidence proves that test identification by Zabir Hussain and Ashkar was proper, both in jail as well as in court.

42. So far as the testimony of P.W.1, Munawwar Hussain, is concerned, it supports the prosecution story to the extent that at the time of incident, Ashkar was kidnapped from outside his house, but as P.W.1, Munawwar Hussain, could identify only one accused i.e. Harish Chandra, and could not identify three other accused, who were putforth for test identification, therefore, his test identifier percentage is 25% and is thus not reliable.

43. There is no requirement in law that the prosecution has to examine all the witnesses to prove its case. As it has come in the statement of P.W.2, Ashkar, that he knew appellant Dulha prior to the incident and who used to come to his village and is his uncles brother-in-law, therefore, Dulhas identification was not required from Ashkar and he has identified appellant Dulha in Court, when he was produced for recording of statement.

44. It is submitted on behalf of the appellants that the evidence of P.W.2 Ashkar is not reliable, as he was a child witness, who is prone to be tutored by his father. I do not agree with this submission. No doubt, the evidence of child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus, he is an easy prey to tutoring. The evidence of a child witness must find adequate corroboration before it is relied upon. But, in the present case, it was Ashkar, who was kidnapped and next day he was recovered from the custody of Israr. Within 18 days from the incident, he was brought to District Jail Moradabad, where he correctly identified the appellants. Again in Court, he correctly identified them. His testimony is throughout consistent and reliable. He has been cross-examined at length, but no major contradiction has come out in his testimony to discredit him. His testimony is corroborated by P.W.3 Zabir, who is an independent witness and also to a certain extent by his father. There is no evidence that Zabir had any enmity against the appellants, which could prompt him to depose falsely against them. Therefore, the contention on behalf of appellants has no force and the testimony of P.W.2 Ashkar is reliable and trustworthy.

45. It is submitted on behalf of the appellants that the witnesses knew the appellants since before the incident, therefore their identification is meaningless. In considering such a plea, it has to be constantly borne in mind that unless a specific incident has occurred in which, the one has come to the notice of the other, it cannot be said that they knew each other, for it is universal experience that a casual glance at passersby hardly ever leaves an impression on the mind. If the accused hails from a distant place, it can be unhesitatingly assumed that he was, a total stranger. It might be stressed that in all such cases the Court is not required to satisfy itself positively that the witness knew the accused from before, but only that there is reasonable ground for the belief that this was so. No evidence of any kind is adduced on behalf of appellants to show that the witnesses knew them since before and not a single incident of any kind has been mentioned and proved on their behalf. Here, it is relevant to mention that if the appellants were known to the informant and

witnesses since before the incident, then there was no reason for the first informant to not name them in FIR.

46. The witnesses examined on behalf of the prosecution have denied it, except for P.W.2 Ashkar, who stated that Dulha was known to him since before the incident and whom he identified in Court. Here, it is relevant to mention that Dulha was not present at the place of incident and he met on the way to rest of the accused, after they kidnapped Ashkar. The defence has not adduced any evidence to prove that appellants were already known to the witnesses prior to the incident. All the appellants lived separately and are resident of different places, having no relationship with each other, therefore, there appears to be no reason for the first informant to falsely implicate all of them in the present case. There also exists no valid ground to suggest that the local police had any enmity against the appellants.

47. P.W.2 Ashkar has stated that Dulha intended to kidnap him so that his father would leave the village, enabling Dulha to grab his land. Here, it is relevant to mention that Dulha lives in the same village with his brother-in-law and he is brother-in-law of first informants real brother. So there could have been a reason for the appellant Dulha to commit this crime to capture first informants land, as he did not accompany the other accused at the scene of crime, but later met them, so that the first informant and other witnesses could not have any opportunity to identify him and as a result he has not been named in the FIR, then on this ground his involvement in the crime cannot be doubted.

48. As discussed above, the identifier percentage of Ashkar and Zabir is 100%, which supports the prosecution case. So far as the identifier percentage with regard to Ashkar is concerned, it is not very material also because Ashkar was kidnapped from outside his house and he was later recovered next day from co-accused Isrars custody, which fact is duly proved by P.W.5, S.S.I. Babu Ram, who was then posted as Sub-Inspector at another Police Station and captured him, when Ashkar cried and raised alarm. So Ashkar had sufficient time and opportunity to identify the miscreants. Ashkar has testified that Dulha met the accused persons on the way, who directed the other accused to keep him safely for three days, and thereafter, his work would be completed.

49. P.W.3, Zabir Hussain, is an independent witness, who reached at the place of incident upon alarm and he has also correctly identified all the appellants in jail and also in Court. There is no evidence to show that he had any enmity against the appellants. His testimony has been consistent throughout, therefore, there is no reason to disbelieve his testimony. There is no evidence that, Ashkar was kidnapped so that he may be murdered or may be so disposed of as to be put in danger of being murdered.

50. In view of the above discussion, I come to the conclusion that the prosecution evidence is trustworthy and reliable and it is proved that the appellants were identified properly by the witnesses Ashkar and Zabir Hussain. The motive to commit the crime is not very material, as this case is based on direct evidence. Therefore, the prosecution has been able to prove its case beyond reasonable doubt, so far as the appellants are concerned. Thus, the Trial Court has appreciated the evidence on record correctly and reached at the right conclusion towards the guilt of the appellants and, accordingly, rightly convicted and sentenced them to the terms as indicated above.

51. Thus, this Criminal Appeal preferred by the appellants, Harish Chandra, Nazarul and Dulha has no force and it is, hereby, **dismissed** and the conviction and sentence passed by the learned Trial Court stands **affirmed**.

52. Appellant No.2 is lodged in Jail. He is directed to serve out the remaining part of sentence imposed upon him by the Trial Court. During the course of hearing of this appeal, appellant nos.1 and 3 were not traceable. The Trial Court is directed to issue non-bailable warrants against them and lodge them in jail to serve out the remaining part of sentence.

53. A copy of this judgment along with the trial court record be sent to the court concerned for information and necessary compliance.

54. Mr. Utkarsh Garg, Advocate was appointed an Amicus Curiae in the instant case. He has rendered valuable assistance to the Court. The Court quantifies Rs.10,000/- to be paid to Mr. Utkarsh Garg, Advocate towards fee for the able assitance provided by him in hearing of the present criminal appeal. The said payment shall be made by the Legal Services Committee, High Court, Allahabad within one month from today.

(2026) 5 ILRA 887
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 22.05.2026

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Criminal Appeal No. 1789 of 2016

Mohammad Anees **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

Matter pertains to legality of dying declaration recorded by the Magistrate.

Headnotes

Dying declaration-Indian Penal Code, 1860-Section 302 -non-examination of the Investigating Officer-non-production of the Inquest report- failure to prove the place of occurrence-non-production of the alleged weapons-and questionable inadmissibility of the dying declaration -has left the case without corroborative support- place of occurrence and the manner is under doubt-trial conducted are vitiated by serious lapses and unexplained omissions-dismissal of the depositions of D.W.-1 and D.W.-2, on the ground of inconsistency with D.W.-3, -bad-Dying declaration-the Magistrate failed to give the basis for his satisfaction as to the mental fitness of the deceased-impugned order bad-**Appeal allowed.**

Case Law Cited

1. Paparambaka Rosamma v. State of A.P., reported in (1999) 7 SCC 695
2. Sujeet Vs State of Uttar Pradesh (Criminal Appeal No. 1633 of 2022)
3. State of Haryana Vs Harpal, reported in AIR 1978 SC 1530
4. Chacko v. State of Kerala, reported in (2003) 1 SCC 112
5. Lokesh and Ors. Vs. State of U.P. (Criminal Appeal No.1371 of 2015, decided on 28.01.2023), reported in 2023 (3) ADJ 47
6. Laxman Vs. State of Maharashtra reported in (2002) 6 SCC 710
7. Kanchy Komuramma Vs. State of A.P. reported in 1996 SCC (Cri) 31
8. Syed Ibrahim vs. State of A.P., reported in (2006) 10 SCC 601
9. Irfan @ Naka Vs. State of U.P. reported as 2023 INSC 758

List of Acts

1. The Indian Penal Code, 1860
2. Code of Criminal Procedure, 1973

List of Keywords

Dying declaration; 90% burn injuries; mentally fit; without corroborative support; defective investigation.

Appearances of parties

Counsel for Appellant(s) : Mohammad Mustafa Khan, Furkan Khan Counsel for Respondent(s) : Govt. Advocate

(Delivered by Hon'ble Abdhesh Kumar Chaudhary, J.)

1. The present Criminal Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (in short Cr.P.C.) has been filed by the appellant/accused- Mohammad Anees, against the judgment and order dated 06.10.2016, passed by the Learned Additional Sessions Judge (F.T.C.), Court No. 36, Barabanki in Sessions Trial No. 52 of 2013 (State Vs. Mohd. Anees and others), arising out of Crime No. 293 of 2012, relating to Police Station - Zaidpur, District Barabanki, wherein he has been convicted and sentenced for the substantive offence under Section 302 I.P.C. for life imprisonment, along with fine of Rs. 20,000/-, and, in default of payment of the fine, to undergo an additional six months rigorous imprisonment.

CASE OF THE PROSECUTION

2. The case of the prosecution, as delineated by the learned Trial Court in the impugned judgment, is briefly enumerated as herein under:

2.1 The complainant, Mohd. Arif, son of Peer Muhammad, resident of Tehsil and Police Station Fatehpur, District Barabanki, submitted a written tahrir dated 30.8.2012 (Exhibit Ka-3) to the Station House Officer, Police Station Zaidpur, District Barabanki, stating that his younger sister (Smt. Shanno) had been married to Mohd. Anees (Appellant), son of Mohd. Sadiq, resident of Zaidpur, Mohalla- Chhota Imambara, Police Station- Zaidpur, District Barabanki, in the year 2006.

2.2 Shortly after the marriage, the complainant's sister was subjected to persistent harassment and cruelty by her husband and in-laws on account of demands for dowry. Despite the

complainant's efforts to meet such demands to the extent possible and his attempts to mediate for marital harmony, the harassment progressively intensified. The complainant's sister, described as a simple and well-mannered woman nurtured in traditional values, steadfastly opposed the idea of divorce.

2.3 Ultimately, on 29.08.2012, the complainant's sister was allegedly confined within her matrimonial home and set ablaze by her in-laws, resulting in severe burn injuries. Neighbours, upon discovering her in a critical condition, arranged for her admission to the District Hospital, Barabanki, and informed the complainant telephonically. Upon the family's arrival at the hospital, no representatives from the in-laws' side were present. Given the deteriorating condition of the victim, she was referred to the Civil Hospital, Lucknow, where she remained in a precarious state.

2.4 The complainant, invoking these dire circumstances, implored the authorities to register a First Information Report forthwith and initiate stringent legal action against the entire family of the appellant viz., (1) Mohd. Anees, son of Mohd. Sadiq; (husband of the deceased) (2) Mohd. Raees, son of Mohd. Sadiq; (brother-in-law/devar) (3) Mohd. Latif, son of Mohd. Sadiq; (brother-in-law) (4) Mohd. Shamim (husband of the sister-in-law); (5) Smt. Husna, daughter of Mohd. Sadiq; (sister-in-law) and (6) Mohd. Sadiq (father-in-law).

2.5 On the basis of the aforesaid written tahrir (Exhibit Ka-3), a case was duly registered as Crime No. 293 of 2012 under Sections 498-A and 307 of the Indian Penal Code, 1860 read with Sections 3/4 of the Dowry Prohibition Act, 1961, at Police Station Zaidpur, District Barabanki, on 30.08.2012 at 09:30 hours. The First Information Report (Exhibit Ka-1) was accordingly prepared, and an entry thereof was made in the General Diary of the Police Station, a carbon copy whereof is marked as Exhibit Ka-2.

3. In the interregnum, on 29.08.2012, Dr. Sharoor Ali (P.W.-5), Emergency Medical Officer, Shyama Prasad Mukherjee (Civil) Hospital, Lucknow issued a certificate attesting that the injured, Majrooba Shanno, who had been admitted in a burnt condition, was mentally sound and fit to record her statement. Thereupon, her dying declaration (Exhibit Ka-4) was recorded by Shri Vinod Kumar (P.W.-6), Additional City Magistrate-I, Lucknow.

4. Upon receipt of information regarding the demise of the deceased, Shanno, on 13.09.2012, Shri Sanjay Yadav, Executive Magistrate/Naib Tehsildar - Sadar, Lucknow, proceeded to the mortuary of the Civil Hospital, Lucknow, where he conducted the inquest/Panchayatnama proceedings (Exhibit Ka-7) in respect of the deceased's body. He prepared the requisite challan lash and other forms for post-mortem examination, affixed seals on the body along with a sample seal, and entrusted the sealed body, along with necessary documents, to the attending Police personnel present on the spot.

5. On 13.09.2012, at 3.10 pm, Dr. Prabhunath, Medical Officer of Shyama Prasad Mukherjee (Civil) Hospital, Lucknow, along with his colleague, Dr. R.C. Gopal, examined the deceased and conducted and prepared the post-mortem report (Exhibit Ka-6). The following observations were recorded in the said post-mortem report:

*"**External Examination** - The deceased was approximately 30 years old, 154 cm tall, and of medium build. Her body showed signs of postmortem stiffness throughout. Her eyes were closed and her mouth was half-open.*

Ante-Mortem Injuries - *Superficial to deep burns (septic) encompassing the entire body except the soles of both feet. The burn wounds exhibited pus, slough, debris, and granulation tissue. Upon dissection, multiple pus foci were noted in both lungs, kidneys, spleen, and liver.*

Internal Examination - *The brain was congested; lungs congested; peritoneal membrane congested; left cardiac chamber full, right chamber empty; peritoneum and peritoneal cavity congested; liver and gall bladder congested; spleen congested; pancreas congested; both kidneys congested; and the uterus empty.*

The estimated time of death was 13.09.2012 at approximately 02:30 hours*, with the cause of death attributed to cardio-respiratory failure consequent upon septicaemia arising from the ante-mortem burn injuries, which were opined to be sufficient in the ordinary course of nature to cause death."*

6. The investigation was entrusted to Shri Narendra Kumar Singh, Deputy Superintendent of Police, Sadar, Barabanki, who recorded statements of material witnesses, prepared the Site plan of the incident (Exhibit Ka-5), and upon the culmination of the investigative process, submitted Charge-sheets (Exhibit Ka-8 and Exhibit Ka-9) against the accused persons.

PROCEEDINGS BEFORE THE TRIAL COURT

7. After filing of the charge-sheet by the Investigating Officer in Crime No. 293 of 2012, registered at Police Station Zaidpur, District Barabanki, against the accused persons, namely (i) Mohammad Anees son of Mohammad Sadiq, (ii) Latif son of Mohammad Sadiq, (iii) Mrs. Husna wife of Mohammad Shamim, (iv) Sadiq Ali son of Jafar Beg, and (v) Mohammad Raees son of Sadiq Ali, all residents of Mohalla Chhota Imambara, Village and Police Station Zaidpur, District Barabanki, alleging the commission of offences punishable under Sections 498-A and 304-B of the Indian Penal Code, 1860, and Sections 3/4 of the Dowry Prohibition Act, 1961, the learned Chief Judicial Magistrate, Court No. 18, Barabanki, took cognizance thereof and committed the case to the Court of Sessions for Trial.

8. Two Sessions Trials, i.e. Sessions Trial No. 52 of 2013 and Sessions Trial No. 378 of 2013, arising out of the same incident and involving similar evidence, were consolidated, with Sessions Trial No. 52 of 2013 treated as the leading case. During the pendency of the trial, accused Sadiq Ali, son of Jafar Beg (father of the appellant), resident of Mohalla Chhota Imambara, Town and Police Station Zaidpur, District Barabanki, expired, whereupon the proceedings against him stood abated under Section 394 of the Code of Criminal Procedure, 1973.

9. Consequently, the trial proceeded against the remaining accused, namely, (i) Mohammad Anees, son of Mohammad Sadiq, (ii) Latif, son of Mohammad Sadiq, (iii) Smt. Husna, wife of Mohammad Shamim, and (iv) Mohammad Raees son of Sadiq Ali, all residents of Mohalla Chhota Imambara, Village and Police Station Zaidpur, District Barabanki. On the basis of the prima facie evidence available on record, charges were framed against the aforesaid accused persons for offences punishable under Sections 498-A, 304-B, and, alternatively, Section 302 read with Section 34 of the Indian Penal Code, 1860, as well as Section 4 of the Dowry Prohibition Act, 1961. All the accused denied the aforesaid charges, and pleaded not guilty, and claimed Trial.

10. In order to substantiate its case, the prosecution examined the following witnesses, the details whereof are as under:

P.W.-1	**Jawahar Pal**	Head Constable
P.W.-2	**Mohd. Arif**	Brother of the deceased
P.W.-3	**Anisa**	Sister -in-law (Bhabhi) of the deceased
P.W.-4	**Mrs. Salma Bano**	Mother of the deceased
P.W.-5	**Dr. Sharoor Ali,**	Formal witness, who issued certification of fitness
P.W.-6	**Vinod Kumar**	Formal witness/Additional City Magistrate III Lucknow, who recorded the dying declaration

11. Apart from the oral testimonies tendered by the prosecution witnesses, a series of documentary exhibits, duly marked and proved as ***Exhibit Ka-1*** to ***Exhibit Ka-9***, were been placed on record to substantiate the case.

12. The statements of the accused persons were duly recorded under Section 313 of the Code of Criminal Procedure, 1973. In their statements, accused Mohammad Anees, Mohammad Latif, Smt. Husna Bano, and Mohammad Raees uniformly denied the prosecution allegations, asserting that the narrative presented was entirely false and that the First Information Report had been lodged on concocted facts. They further contended that the dying declaration was fabricated. Specifically, (i)Accused Mohammad Anees averred that he was not present in home at the time of the incident and that the deceased had secluded herself in a room before immolating herself; (ii) Accused Smt. Husna Bano stated that she resided separately with her family in a distinct locality and was not present in the house of accused Mohammad Anees during the incident; (iii) Accused Mohammad Latif averred that he lived in a separate household from that of accused Mohammad Anees, with an independent family unit and ration card, and was not at the scene of the occurrence; and lastly (iv) Accused Mohammad Raees claimed that he had been domiciled in Village Anwari, under Police Station Kursi, District Barabanki, prior to the marriage of accused Mohammad Anees and was not present on the date of the incident.

13. In defence, oral evidence was adduced on behalf of the accused by examining **Manohar Lal** as Defence Witness No.1 **(D.W.-1); Sunny Kumar** as **D.W.-2**; and **Reshma**, a ten-year-old daughter of the deceased Shanno and accused Mohammad Anees, as **D.W.-3.** With regard to documentary evidence in defence, photocopies of the ration card and identity card pertaining to accused Mohammad Latif, extracted from List A-112, along with photocopies of the ration card and electricity bill in the name of accused Smt. Husna Bano, were tendered and filed on record.

14. During the examination by the prosecution, the **P.W.-1,** Head Constable Jawahar Pal, a formal witness for the prosecution, deposed that he had prepared the First Information Report (Exhibit Ka-1) and the carbon copy of the General Diary entry (Exhibit Ka-2) in his own handwriting and with his signature, based on the complaint lodged by the informant, Mohammad Arif. In his cross-examination, no statement was elicited that contradicted or falsified his chief examination or the documents produced by him.

15. **P.W.-2** Mohammad Arif, the brother and informant of the deceased Shanno, and a material witness for the prosecution, stated in his examination-in-chief that his sister Shanno was married to the accused Mohammad Anees in 2006 and had been living happily at her matrimonial home without any issues. Two daughters were born out of the said wedlock. He denied that the deceased had ever informed him of any dowry demands or torture by her husband Anees, brother-in-law Latif, sister-in-law Husna, or brother-in-law Raees. He recounted receiving information via phone, about three and a half years prior, that his sister had sustained burn injuries and had been taken to the District Hospital, Barabanki, from where she was referred to the Civil Hospital, Lucknow, where she ultimately succumbed to her injuries. He admitted lodging the F.I.R. (Exhibit Ka-3) under a misunderstanding and asserted that none of the accused demanded dowry, tortured or burned the deceased.

16. Upon the prosecution's application, he was declared hostile and permitted to be cross-examined. In cross-examination by the prosecution, he reiterated his affection for his nieces and concern for their future but denied that this influenced his testimony. He firmly negated any dowry demands, torture, or involvement of the accused in the deceased's death, stating that the F.I.R. was filed at the behest of others and that he signed it without reading it on the second or third day after the deceased's admission. He clarified that accused Raees resided in Anwari village, accused Husna in Delhi with her husband, and accused Latif separately from Anees. No statement in cross-examination supported the prosecution case.

17. **P.W.-3** Anisa, the sister-in-law (Bhabhi) of the deceased and a material witness for the prosecution, deposed in her examination-in-chief that the deceased Shanno was married to Anees in 2006 and lived happily at her in-laws' house without complaints. She visited her parental home frequently but the deceased never mentioned any dowry demands or torture by her husband Mohammad Anees, brother-in-law Latif, sister-in-law Husna, or brother-in-law Raees. She recounted the burn incident, which occurred about three and a half years ago, after which her husband Mohammad Arif proceeded to the District Hospital, Barabanki, and the deceased was shifted to Lucknow, where she died during treatment. She denied any dowry demands, beatings, or burning by the accused. Consequently, P.W.-3 was declared hostile on the prosecution's request and subsequently cross-examined.

18. In cross-examination, she acknowledged her concern for the deceased's two daughters, Zeba and Sahnoor, who live with their aunt and visit her, but denied that this caused her to withhold the truth. She categorically rejected suggestions of dowry-related torture, burning by the accused, or any settlement influencing her testimony. No statement in cross-examination advanced the prosecution's narrative.

19. **P.W.-4** Smt. Salma Bano, the mother of the deceased and a material witness for the prosecution, stated in her examination-in-chief that her daughter Shanno was married to Anees about 9-10 years ago and had lived a happy married life at her in-laws', giving birth to two daughters without any complaints. She denied that the deceased ever informed her of dowry demands or harassment by her husband Anees, brother-in-law Raees, sister-in-law Husna, brother-in-law Latif, or the deceased father-in-law. About four years ago, she received information of her daughter's burn injuries and visited the hospitals in Barabanki and Lucknow, where she found her

daughter severely burned and unable to speak. Her daughter subsequently died during treatment. Consequently, she was declared hostile upon the prosecution's application and was subjected to cross-examination.

20. In cross-examination, she expressed fondness and concern for her granddaughters, who visit her frequently, but denied that this influenced her testimony. She refuted allegations of dowry-related beatings, torture, or burning by the accused, or any reconciliation prompting false evidence. She confirmed that, after marriage, Husna and Raees lived separately, as did Latif. While she admitting the deceased's burnt condition and death, no statement supported the prosecution case.

21. **P.W.-5** Dr. Sharoor Ali, Emergency Medical Officer at Shyama Prasad Mukherjee (Civil) Hospital, Lucknow, and a formal witness, deposed that on 29.08.2012, he examined the injured Shanno (admitted with burns) and certified her to be of sound mind and fit to give a statement. This certification enabled A.C.M. Lucknow, Shri Vinod Kumar (P.W.-6), to record her dying declaration (Exhibit Ka-4), which Dr. Ali proved through his testimony. In cross-examination, no statement contradicted his chief examination or the documents produced.

22. **P.W.-6** Vinod Kumar, Additional Municipal Commissioner (A.C.M.), Lucknow Municipal Corporation, and a formal witness, stated that he recorded the dying declaration (Exhibit Ka-4) of the deceased Shanno, who had been admitted in a burnt condition at Shyama Prasad Mukherjee (Civil) Hospital, Lucknow. He proved the document through his testimony. In cross-examination, no statement falsified his chief examination or the exhibit produced.

23. The dying declaration recorded the deceased, Shanno (aged about 30 years), resident of Nagar Panchayat Zaidpur, having two daughters and husband Anees, stated that on the morning of the incident, around 8:00 AM, her husband has beaten her severely, poured kerosene on her, and set her on fire, with the entire household present. She attributed the act solely to her husband, without alleging overt acts, instigation, or dowry-related harassment by other accused.

24. In their statements recorded under Section 313 of the Code of Criminal Procedure, 1973, the Appellant Mohd. Anees and the co-accused categorically denied the prosecution allegations during trial, asserting that the First Information Report was fabricated and the deceased Shanno had committed suicide by locking herself in a room and setting herself ablaze. The appellant specifically pleaded an alibi, stating he was not present at home during the incident. Similarly, co-accused Latif, Husna, and Raees claimed separate residences and absence from the scene, supported by documentary evidence.

25. These statements, though not substantive evidence, presented a consistent defense narrative of suicide rather than homicide, which was weighed against the prosecution's case, particularly in light of the presumption under Section 113B of the Indian Evidence Act, 1872 which arises only if dowry harassment is unequivocally established.

26. In support of the defence during trial, testimonies of three defence witnesses were adduced, namely, Manohar Lal (D.W.-1), Sunny Kumar (D.W.-2), and Reshma (D.W.-3), which

formed the bedrock of the appellant's case, portraying the incident as a tragic suicide rather than a deliberate act of murder.

27. **D.W.-1** Manohar Lal, a sanitation worker employed by the Nagar Panchayat, Zaidpur, deposed that on the day of the incident, approximately four years prior, he and D.W.-2 were cleaning a drain near the house of Mohd. Sadiq (father-in-law of the deceased) around 8:00 AM when they heard screams. Sadiq emerged, shouting that his daughter-in-law had locked herself in a room and set herself on fire. The appellant Anees was not present at home. Along with neighbours, they broke open the door and extracted the severely burned deceased, who was subsequently rushed to Barabanki Hospital.

28. In cross-examination, **D.W.-1** denied any inducement to give false testimony and affirmed his presence, though he admitted not being questioned by the police earlier. The trial Court discounted this testimony for lack of corroboration with D.W.-3's statement, which placed the appellant at home. However, this reasoning is flawed. D.W.-1 is an independent witness with no ace to grind against the prosecution or affinity to the accused. His account aligns with the defense theory of suicide, and the absence of police inquiry does not inherently impeach his credibility, as neighbourhood witnesses often come forward only during trial. Minor omission regarding the appellant's presence does not vitiate the core narrative, especially when weighed against the potential tutoring of the dying declaration.

29. Similarly, **D.W.-2** Sunny Kumar, also a sanitation worker since 2005, corroborated D.W.-1's testimony in toto. He reiterated the sequence of events, hearing noise from Sadiq's house, Sadiq's cry of suicide, breaking the door (locked from inside), and the appellant's absence until after the extraction. In cross-examination, he clarified that his duty assignment was oral, as is common in such roles, and vehemently denied fabricating evidence at the accused's behest.

30. The testimony of D.W.-3 Reshma, the then 10-year-old daughter of the deceased and the appellant (aged about 4 at the time of the incident), merits careful scrutiny under Section 118 of the Evidence Act, which deems child witnesses competent if capable of rational answers. In her examination-in-chief, she stated that her mother locked the door and set herself on fire while she and her grandfather, Sadiq were sitting outside; the appellant was absent, having gone to buy vegetables. Neighbours broke the door, and the appellant returned later to rush the deceased to hospital.

31. During cross-examination, she revealed a prior marital altercation in which the deceased had beaten the children, leading to the appellant's intervention with a slap on the deceased and his subsequent departure before the fire. The trial Court seized upon this as proof of the appellant's presence and assault, corroborating the dying declaration (Exhibit Ka-4). A child of tender age, testifying years after a traumatic event, may exhibit minor inconsistencies without undermining the substance. The cross-examination disclosed a domestic quarrel but not homicidal intent; the slap and verbal abuse do not inexorably lead to murder, and the deceased's act post-departure supports suicide amid emotional distress. Resultant, D.W.-3's overall narrative aligns with D.W.-1 and D.W.-2, casted doubt on the prosecution's murder theory.

32. The defense also tendered documentary evidence, including photocopies of ration cards, identity cards, and electricity bills (Paper Nos. A-112/2 to A-112/6), establishing that co-accused Latif and Husna resided separately from the appellant. This undisputed material bolsters the alibis of the relatives and negates any common intention under Section 34 I.P.C., further weakening the dowry harassment narrative against the appellant, as joint family dynamics were absent.

33. On the basis of the material produced during the trial, the Court of Sessions held that the prosecution had failed to prove beyond reasonable doubt the charges under Sections 498A, 304B, and 302 read with Section 34 of the Indian Penal Code, 1860, as well as Section 4 of the Dowry Prohibition Act against accused, namely, Latif s/o Mohd. Sadiq, Mrs. Husna w/o Mohd. Shamim, Sadiq Ali s/o Jafar Beg, and Mohd. Raees s/o Sadiq Ali. Therefore, all the above-named accused were acquitted of the said charges. However, the prosecution successfully proved its case beyond reasonable doubt against the accused, Mohd. Anees s/o Mohd. Sadiq, on the basis of the dying declaration (Exhibit Ka-4). Accordingly, he was convicted for life imprisonment, along with fine of Rs. 20,000/-, and, in default of payment of the fine, further six months rigorous imprisonment, under Section 302 of the Indian Penal Code, 1860, in Sessions Trial No. 52 of 2013 (State Vs. Mohd. Anees and others), arising out of Crime No. 293 of 2012.

PROCEEDINGS BEFORE THIS COURT

34. Challenging the aforesaid impugned Judgment and order of conviction and sentence dated 06.10.2016, the present appeal being Criminal Appeal No. 1789 of 2016, was filed by the appellant- Mohd. Anees. However, no State-appeal has been filed against the acquittal of the accused, namely, Mohd. Raees (brother-in-law/devar), Mohd. Latif (brother-in-law), Husna, (sister-in-law), and Mohd. Sadiq (father-in-law).

35. It is evident to note that the bail/suspension of sentence applications filed by the appellant were dismissed by this Court. Consequently, the Appellant has remained in jail and as per the Custody Certificate filed on record, the Appellant is incarcerated for a period exceeding 13 years and 3 months.

36. That the hinge of the argument of the learned counsel for the appellant-accused is that all the fact witnesses were declared hostile, and although the dying declaration relied upon by the Trial Court, is not reliable. The same has unnecessarily been given prominence by the Trial Court to convict the Appellant. According to him, the sole basis for conviction is the dying declaration, which, he contends, has not been corroborated by any other evidence and, as such, the same cannot be made a basis for conviction of the Appellant.

37. He further submitted that the dying declaration is not trustworthy, in as much as, no satisfaction has been recorded by the doctor with regard to the mental status of the victim; the doctor merely declared that the patient was well oriented, and as such, according to the counsel, in the absence of any specific certification by the doctor with regard to the fit mental state of the victim/deceased, the dying declaration cannot constitute the sole basis for conviction. He further submits that, since the deceased had sustained approximately 90% burn injuries, the mental status

gains significance, as technically a person with such severe burns could not be able to comprehend and give a coherent statement.

38. In support of this proposition of law, the learned Counsel for the appellant has relied upon the judgment of ***Paparambaka Rosamma v. State of A.P., reported in (1999) 7 SCC 695;*** and a judgment dated 09.02.2026 passed by the Co-ordinate Bench of this Court in ***Sujeet Vs State of Uttar Pradesh (Criminal Appeal No. 1633 of 2022).***

39. Learned A.G.A., on the other hand, submitted that the judgment and order of conviction are well reasoned, based on proper appreciation of evidence, and do not suffer from any illegality, perversity or material irregularity warranting interference by this Court. He further submits that the law is well-settled that a conviction can be based solely on a dying declaration if it is found to be voluntary, truthful and reliable, and no corroboration is required as a matter of rule.

40. In any case, the learned Trial Court has held that the dying declaration was corroborated by the testimony of D.W.-3, the minor daughter of the victim and the Appellant. The learned A.G.A. has also relied upon the judgment of ***Rajendra V/s State of Maharashtra, reported as 2024 INSC 422***; which according to him significantly holds that ordinarily a dying declaration can be the sole basis for conviction and as such there is no infirmity in the impugned judgment.

DISCUSSION AND FINDINGS

41. This Court has given its anxious thoughts to the facts and the submissions made by both the parties and perused the records.

42. Apparently, the prosecution had named six witnesses to prove the case against the accused/appellant, of which three are fact witnesses and the remaining three were formal witnesses, being (i) the Head Constable, who registered the F.I.R.; (ii) the Doctor, who certified the medical condition of the Victim/deceased; and (iii) Additional City Magistrate, who recorded the dying declaration. As far as the three fact witnesses are concerned, i.e. (i) P.W.-2 (Mohd. Arif), brother of the deceased and de-facto complainant, was declared Hostile; (ii) P.W.-3 (Anisa), sister-in-law (Bhabhi), has also been declared Hostile; and (iii) P.W.-4 (Salma Bano), mother of the deceased, has also been declared Hostile.

43. No doubt, it is well-settled by various precedents that the declaration of a witness as hostile does not ipso facto reject the evidence. However, there are also precedents which reflects that the portion of such evidence, which besides being advantageous to both the parties and helps the Court in arriving at a judgment, may be upheld and made admissible, although the same has to be subject to all scrutiny, and the Court must exercise extreme caution in its acceptance. The judgment of the Honble Supreme Court rendered in the case of ***State of U.P. v. Ramesh Prasad Misra, reported in (1996) 10 SCC 360:AIR 1996 SC 2766;***, throws some light on the said proposition which inter-alia holds as herein-under:

"it is equally settled law that the evidence of a hostile witness would not be totally rejected if spoken in favor of the prosecution or the accused but it can be subjected to closer

scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defense may be accepted."

44. Since, it is available from the records that the Trial Court has convicted the appellant/accused primarily on the basis of Dying Declaration, therefore, this Court in its endeavour to examine the veracity and validity of the said declaration, would also consider the corroborative nature of the evidence of these witnesses. Having said that, it would be profitable to extract the dying declaration, which appears as Exhibit Ka-4, in the impugned judgment. The Dying Declaration along with the certification etc. is being quoted herein below :-

"Pt. Sanno W/o MD Arif is fit for DD.

Sd/- Illegible
29-8-12
6.18 PM
EMO
Dr.S.P.M. (Civil)
Hospital,Lko.

प्रश्न - तुम्हारा नाम और उम्र

उत्तर - मेरा नाम शन्नो उम्र लगभग 30 वर्ष

प्रश्न - कहां की रहने वाली हो

उत्तर - नगर पंचायत जैदपुर (बड़ा इमामबाड़ा) थाना
जैदपुर, जनपद बाराबंकी की रहने वाली हूं।

प्रश्न - कितने बच्चे हैं।

उत्तर - दो लड़की हैं।

प्रश्न - तुम्हारे पति का नाम

उत्तर - अनीस

प्रश्न - घटना कैसे घटी

उत्तर - आज सुबह मेरे पति ने मुझे खूब पीटा और पीटने
के बाद मिट्टी का तेल डालकर आग लगा दी।

प्रश्न - कितने बजे।

उत्तर - लगभग 8.00 बजे सुबह

प्रश्न - उस समय घर पर कौन कौन लोग थे।

उत्तर - पूरा घर मौजूद था।

प्रश्न - तेल किसने डाला

उत्तर - मेरे पति ने।

Right thumb impression
of Shanno w/o Anis.

Sd/- Illegible
29-8-12
ACM-I

Pt. was well oriented during DD. LKO.

Sd/- Illegible
29-8-12
6.18 PM
EMO
Dr.S.P.M. (Civil)
Hospital, Lko.

45. Before, delving into the aspect of examining the context and veracity of the impugned judgment, in which the aforesaid dying declaration was held to be the sole basis for convicting the Appellant, it would be pertinent to understand the concept of the evidentiary value of a dying declaration. In common parlance, a dying declaration refer to statements relating to the cause or circumstances of the transaction leading to the death of the person making the declaration. The Indian Evidence Act, 1872 does not define the term dying declaration, but Section 32(1) of the said Act, states inter-alia:

"32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant -

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:

(1) When it relates to cause of death. When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that persons death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question…."

46. Apparently, the evidentiary value of a dying declaration is against the rule of hearsay evidence. However, the legal philosophy behind the value of such declaration is based on the Latin maxim Nemo moriturns praesumitur mentire, which means no person at the time of his death is presumed to lie and will not meet God with a lie in his mouth.

47. Although, a Dying Declaration is entitled to great weight, one must not forget that the accused could not have an opportunity to cross-examine the declarant to elicit the truth. Hence, the Courts have consistently held that, while examining a dying declaration, the Court should also be satisfied about the truthfulness of such a declaration and ensure the same has not been tutored in any manner.

48. Section 32(1) of the Evidence Act, 1872 does not prescribe any statutory guidelines for recording a dying declaration, nor the manner in which it should be considered while appreciating the evidence. But, the Honble Apex Court, in several leading decisions, while considering the facts of each case, has laid down broad guidelines and permutations for evaluation, which has to be seen while dealing with a case based on dying declaration of the victim/deceased. Broadly, the conditions for admissibility of a dying declaration depends on various factors, including that the maker of the statement must be mentally fit. In case the Court has any confusion or doubt regarding the medical condition of the declarant, then the statement would be inadmissible as held in ***State of Haryana Vs Harpal, reported in AIR 1978 SC 1530.*** Further, the Honble Supreme Court in the case of ***Chacko v. State of Kerala, reported in (2003) 1 SCC 112;*** delineated various factors which creates doubt over the authenticity of the dying declaration, including (i) high percentage of burn; (ii) age of the declarant; (iii) time gap between the burn injury and recording of the statement; (iv) non-availability of certificate of fitness etc.

49. This Court does not wish to burden this judgment by tracing the history of various precedents relating to the admissibility of dying declarations. Suffice it to say that a Co-ordinate Bench of this Court in the judgment of ***Lokesh and Ors. Vs. State of U.P. (Criminal Appeal No.1371 of 2015, decided on 28.01.2023), reported in 2023 (3) ADJ 47;*** contextually enumerated various factors which create doubt over the authenticity of a dying declaration in cases of victims succumbing to burn injuries. The observations of this Court provide a certain extent of guidance in that regard, and the relevant paragraphs of which are being quoted herein below:

"45. It has therefore to be seen as to whether the victim was in a position to make her dying declaration and whether necessary precaution had been taken by the prosecution to ensure that victim was in a proper mental shape to make a declaration.

46. The primary evidence that the victim was in a fit mental state to make a dying declaration is of the attending doctor who has been produced as P.W.-13. We have noticed that this witness in his statement has mentioned the critical situation of the victim. ***There is no satisfaction recorded by the doctor on the dying declaration that victim was in a fit mental state to give a voluntary statement****. P.W.1 has otherwise admitted that the victim was unconscious when she was brought to the S.N. Medical College at around 6:00 pm. He has also admitted that only after administering of first aid, the condition of the victim improved and she became conscious. It is not clear as to what kind of first aid was given to the injured victim but considering her serious condition, it is logical to expect that some short of pain killer may have been given to her.* ***In such circumstances, mere recording of satisfaction by the doctor that patient was conscious, was not sufficient. A specific satisfaction was warranted regarding fit metal state of the victim. No such satisfaction has been recorded by the doctor. Merely stating that the patient is clinically fit does not amount to a satisfaction with regard to fit mental state of the patient****. The ability of the victim to speak was severely compromised as per the prosecution evidence itself.*

47. We are therefore doubtful of the victim being in a proper mental shape to have given a conscious voluntarily statement which could qualify to be a dying declaration. The Magistrate/Deputy Collector who has recorded the dying declaration of the victim has also admitted that no questions were put to the victim regarding her fit mental state.

48. At this juncture, we would like to refer to the observation of the Supreme Court in ***Paparambaka Rosamma & Others Vs State of Andhra Pradesh reported in (1999) 7 SC 695;***

wherein the Court while referring to the dying declaration observed that mere statement that patient is conscious while recording the statement is not sufficient. In a case where injured had sustained 90% burn injuries, it was necessary to ascertain the fit mental state of the injured before accepting the dying declaration. *Paragraph- 9 of the judgment is reproduced hereunder:-*

"9. It is true that the medical officer Dr. K.Vishnupriya Devi (PW 10) ***at the end of the dying declaration had certified patient is conscious while recording the statement.*** *It has come on record that the injured Smt. Venkata Ramana had sustained extensive burn injuries on her person. Dr. P. Koteswara Rao (PW 9) who performed the post mortem* ***stated that injured had sustained 90% burn injuries. In this case as stated earlier, the prosecution case solely rested on the dying declaration. It was, therefore, necessary for the prosecution to prove the dying declaration being genuine, true and free from all doubts and it was recorded when the injured was in a fit state of mind****. In our opinion, the certificate appended to the dying declaration at the end by Dr. Smt. K.Vishnupriya Devi (PW 10) did not comply with the requirement inasmuch as she has failed to certify that the injured was in a fit state of mind at the time of recording the dying declaration.* ***The certificate of the said expert at the end only says that patient is conscious while recording the statement****. In view of these material omissions, it would not be safe to accept the dying declaration (Ex.P-14) as true and genuine and was made when the injured was in a fit state of mind. From the judgments of the courts below, it appears that this aspect was not kept in mind and resultantly erred in accepting the said dying declaration (Ex.P-14) as a true, genuine and was made when the injured was in a fit state of mind. In medical science two stages namely conscious and a fit state of mind are distinct and are not synonymous. One may be conscious but not necessarily in a fit state of mind. This distinction was overlooked by the courts below."*

(Emphasis supplied by us)

49. The observation made in the case of ***Paparambaka Rosamma (supra)*** *has been reiterated in a subsequent decision of the Supreme Court in the case of* ***Naresh Kumar Vs. Kalawati & Others reported in (2021) (16) SCC 158****, wherein the Supreme Court after referring to the above quoted paragraph no.9 observed as under in para-13:-*

"13. In the facts and circumstances of the present case, considering that the statements of the deceased have vacillated, there is no evidence about the fitness of mind of the deceased to make the dying declaration including the presence of the Doctor, the veracity and truthfulness of the dying declaration remains suspect. It would not be safe to simply reject the probable defence of suicide, to reverse the acquittal and convict the respondents."

50. The statement of the Magistrate/Deputy Collector is categorical that the contents of the dying declaration were not read out to the victim and no satisfaction in that regard is otherwise recorded in the dying declaration. In ***Suriender Kumar Vs. State of Haryana reported in (2011) 10 SCC 173,*** *the Supreme Court questioned the dying declaration also on the ground that such a satisfaction about the contents of the dying declaration having read out to the victim was missing. In paragraph no. 25 of the judgment, the Supreme Court observed as under:-*

"25. As per the prosecution, the incident took place at 2 a.m. on 26.06.1991 and as per her statement, the occurrence of burning was in the evening of 25.06.1991, that is, the previous day. ***The dying declaration did not carry a certificate by the Executive Magistrate to the effect that it was a voluntary statement made by the deceased and that he had read over the statement to her.*** *The dying declaration was not even attested by the doctor. As stated earlier, though the Magistrate had stated that the statement had been made in mixed dialect of Hindi and Punjabi and the statement was recorded only in Hindi. Another important aspect is that there was evidence that*

Kamlesh Rani was under the influence of Fortwin and Pethidine injections and was not supposed to be having normal alertness. In our view, the trial Court rightly rejected the dying declaration altogether shrouded by suspicious circumstances and contrary to the story of prosecution and acquitted the appellant."

(Emphasis supplied by us)

50. As far as the present case is concerned, the dying declaration has already been extracted herein above. A facial reading of the said dying declaration would lead us to the fact that the doctor has merely recorded an assertion, which read as follows: fit for DD. It does not record as to whether the patient was fully conscious, comprehensible, or as to what was the actual mental state of the victim. The law provides for a specific satisfaction, which was warranted regarding the fit mental state of the victim. No such satisfaction has been recorded by the doctor. Merely stating at the concluding part that the patient was well oriented during DD does not amount to a satisfaction with regard to fit mental state of the patient.

51. The doubt of this Court in asserting the significance of satisfaction relating to the fit mental state of the victim gains further prominence in wake of other compelling evidence. It has come on record that the ability of the victim to speak was severely compromised. P.W.-2 (brother of victim) specifically stated in his examination-in-chief as well as in his cross-examination that, when he reached the Hospital, the victim (his sister) was unconscious, which means she was not only unable to speak but was not even conscious for that matter. Further, P.W.-4 (mother of the victim) has also stated in her cross-examination, after being declared hostile, that the victim had sustained burn injuries to such an extent that she was unable to talk.

52. Since, the dying declaration has been recorded in a question-answer format, which presupposes that the victim was able to speak which was readily understandable to the person who has recorded the said statement, it was incumbent upon the prosecution to also prove, or at least get certified by the doctor concerned that the victim was able to talk and that her speech was coherent and understandable. Alas, no such evidence has been found on record, and naturally a dent has been created on the veracity and admissibility of the dying declaration.

53. Further, the Doctor (P.W.-5), in his cross-examination, admitted that the victim had sustained 90% burn injuries and also deposed that patients with such injuries are generally not conscious. No doubt, conscious is a stage prior to being fit and one can suppose that a person is fit and he or she would be necessarily conscious, but being fit does not always mean mentally fit for recording of statement, as according to this Court, being fit may also indicate being fit physically or being fit mentally but not fit for recording of statement. Fitness can be of various degree. The law provides that the victim should be mentally fit for statement and not merely fit, as both can indicate different meaning and context.

54. Further, the statement that the victim was well oriented during DD does not come to the rescue of the prosecution, for the simple reason that, admittedly in the present case, the victim had sustained 90% burn injuries. In such a physical state, the victim would have been traumatized, and doctors usually administer medications to relieve pain, etc., but the effect of such medication would have to be examined. Such medication, or the traumatized condition itself, could impair mental

clarity, may cause drowsiness, or even hallucinations, etc. Therefore, doubt would arise with regard to mental state of the victim and unless the doctor certifies the mental fitness of the victim and she being fully conscious and able to talk, the Court usually would be reluctant in relying upon such dying declaration. In this context, we find substance in the argument of learned Counsel for the appellant that, in the absence of any recording of satisfaction with regard to mental fitness of the victim, factually, at the time of making dying declaration, it does not appear to be entirely safe to rely upon such dying declaration to convict the appellant for murder.

55. In ***Paparambaka Rosamma (supra),*** which has been relied in the above noted judgment in ***Lokesh*** (supra), it has been categorically held that in medical science two stages namely conscious and a fit state of mind are distinct and are not synonymous. One may be conscious but not necessarily in a fit state of mind. According to this Court, fit does not mean a fit state of mind. Although a fit state of mind is a stage subsequent to consciousness, however, in the facts of the present case, at least two P.W.s have deposed that the victim was unconscious, and the Doctor himself have stated in his cross-examination that, generally, a patient sustaining 90% burn injuries is unconscious. In these circumstances, this Court finds that the responsibility and accuracy of recording of satisfaction of the Doctor relating to the mental health of the victim while recording of a dying declaration ought to be placed at a higher pedestal that the ordinary requirement of fitness of mental state of the deceased.

56. This Court finds that the certification of the dying declaration dated 29.08.2012 only records that the victim (deceased) was fit for DD and well oriented during DD, which, unfortunately does not meet the standard of an adequate medical certificate, keeping in view that the victim had sustained 90% burn injuries.

57. Further, this Court finds that the responsibility relating to the admissibility of a dying declaration is twofold. The first responsibility is that of the treating doctor, who certifies the mental fitness of the victim, and, the second is that of the Magistrate concerned, who records the dying declaration.

58. It is noteworthy that, while recording the dying declaration, the Magistrate has to satisfy himself, before recording the dying declaration, regarding the fit state of mind of the victim. Shri Vinod Kumar (P.W.-6), Additional City Magistrate-I, Lucknow, is the person who recorded the dying declaration in the present case. It is not clear from his deposition or otherwise from the records as to whether he put forth any questions to the victim to ascertain that she was in a fit state of mind, as held by Hon'ble Apex Court in the case of ***Laxman Vs. State of Maharashtra reported in (2002) 6 SCC 710***; while considering such a factual situation has observed that it is indeed a hyper technical view that the certification of the doctor was to the effect that the patient is fit for dying declaration and there was no certification that the patient was in a fit state of mind or conscious, especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind where-after he recorded the dying declaration. Thus, recording and satisfaction of fit state of mind is a sine-quo-non for admissibility of any dying declaration and it does not matter whether the same has been recorded by the Doctor or the Magistrate. In the case at hand, the doctor merely stated that the victim was fit for DD, and the Magistrate did not care to self-examine

the degree of fitness of the deceased which would have satisfied him that the deceased was mentally fit for recording of the dying declaration, by putting questions which could have helped him in arriving at a satisfaction. Unfortunately, the Magistrate failed to give the basis for his satisfaction as to the mental fitness of the deceased. He did not put any question to her to satisfy himself in this regard.

59. The Apex Court in the case of ***Kanchy Komuramma Vs. State of A.P. reported in 1996 SCC (Cri) 31***; devised certain safeguards that must be observed by a Magistrate when requested to record a dying declaration. According to the said judgment, the Magistrate, before recording the dying declaration, must satisfy himself that the deceased is in a proper mental state to make the statement. He must record this satisfaction before recording the dying declaration, and should also obtain the opinion of the doctor, if one is available, about the fitness of the patient to make a statement. The prosecution must then prove that opinion at trial in the manner known to law.

60. No such exercise was done by the Magistrate in this case, as is apparent from his deposition. Thus, this Court has no hesitation in holding that both the Doctor and the Magistrate failed to meet and satisfy the standard as is required of them for the admissibility of a dying declaration. Further, the law is settled that, any dying declaration in order to appeal to Judicial conscious, must be complete and made under circumstances that leave no doubt as to its voluntariness and truthfulness. Ordinarily, such satisfaction should be recorded by the medical expert, and the certificate of fitness must receive so as to affirm the dying declaration voluntarily. The recording authority must ensure that the dying declaration is complete and made voluntarily, i.e., it should not be the result of tutoring, prompting, or imagination. The statement must reflect the deceased's mental alertness and clarity. However, in the present facts and circumstances, a serious doubt is created on the dying declaration being relied by the prosecution.

61. Another aspect of the matter is that D.W.-1 and D.W.-2 have deposed that they are sanitation workers and, at the time of the incident i.e. 8 AM, were cleaning a drain near the house of the victim. The presence of these D.W.s cannot be doubted, owing to the kind of work and the timing of their work, which is generally conducted in the morning. These witnesses have deposed, and their testimony remained unchallenged in the cross-examination, to the effect, that on the date of incident they heard screams coming from the house of the victim, wherein the father-in-law was shouting for help, stating that his daughter-in-law (the victim) ha put herself on fire and locked herself inside a room. These witness in chorus stated that, they both with the help of other neighbours, broke open the door and found the victim inside. Interestingly, both these witness also deposed that the accused was not present at that point of time at his house.

62. The learned Trial Court has shrugged aside the deposition of D.W.-1 and D.W.-2 on the ground that the same is inconsistent with the deposition of D.W.-3, the four-year daughter of the accused. The Trial Court refused to give any benefit of doubt on the ground of alibi to the accused; however, it is noteworthy that, even from the statement of D.W.-3, it is apparent that the victim had set herself on fire and locked herself in a room, which came to be opened by the neighbour by breaking open of the door.

63. According to this Court, The Trial Court's dismissal of the depositions of D.W.-1 and D.W.-2, on the ground of inconsistency with D.W.-3, overlooks the harmonious accounts of D.W.-1 and D.W.-2, both of whom are disinterested parties whose presence at the scene is explained by their occupational duties. Such corroborative evidence from neutral sources tilts the balance towards reasonable doubt, particularly when the prosecution relies heavily on a dying declaration that lacks independent corroboration regarding the act of pouring kerosene.

64. Further, it is apparent from the records that the Trial Court has recorded a factually incorrect version of D.W.-3s deposition in the impugned order to conclude that the accused was present at the time of incident, whereas, it is clearly visible from a plain reading of the deposition of D.W.-3, at page 2 of her examination, that she had never told that her father was present at the time of incident, as stated at internal page 18 of the impugned order. This Court is rather amused as to how the Trial Court, in its pursuit to hold conviction against the accused, can record a factually erroneous statement, which, according to this Court, also indicates a non-application of mind on the part of the learned Trial Court in appreciating the evidence in its right perspective.

65. This Court finds that the investigation and the trial conducted in the present case are vitiated by serious lapses and unexplained omissions, which strike at the root of the prosecution case. The present case is of burn injuries, but neither the cause of the burn nor, in case, the Dying Declaration is believed, the canister (jerking), and/or matches, and/or the burnt cloths, or the other relevant articles were recovered from the crime site. The incident if allegedly is of 8 A.M. in the morning, which according to this Court, is a time when people are typically awake and active. There is no evidence, nor any witness produced by the police, who could have proved the cause of fire. In fact, it is the other way around, as D.W.-1 and D.W.-2 have deposed that the victim locked herself in and set herself on fire. D.W.-3, the daughter of the victim, has also stated that her mother set herself on fire.

66. Although, evidence on record has come to the effect that the doors were locked and was broken to retrieve the victim, however, there is no recovery of the door or any evidence as to whether it was locked from inside or outside. There is also no evidence as to any attempt was made by anyone to extinguish the fire, or that any neighbour saw the fire or heard the scream (even though it was 8 A.M. in the morning) and rushed to the crime spot. The investigation is absolutely shoddy and half-baked.

67. Neither the kind of investigation carried out, nor the materials that were collected or would have come on record, have been attempted to be brought on record by the prosecution. Further, this Court finds that the prosecution did not produce the Investigating Officer (I.O.) in the present case, nor offered any explanation for his non-production. The failure of non-production of the Investigating Officer reflects a casual and perfunctory approach to the trial. According to this Court, the Investigating Officer, in view of the facts and circumstances of this case, is a material witness whose testimony could have shed light on the fairness and thoroughness of the investigation relating to the incident of the victim sustaining burn injuries, and the place of its occurrence.

68. The Hon'ble Supreme Court in the case of ***Lahu Kamlakar Patil v. State of Maharashtra reported in (2013) 6 SCC 417;*** reiterated that while omission of I.O. as a witness does not automatically vitiate the prosecution per se. However, where the I.O.'s testimony is essential to prove the substratum of the case and no other evidence is forthcoming, such a defect may prove fatal, as observed in paragraph 18 of the judgment, which reads as under:

"18. Keeping in view the aforesaid position of law, the testimony of PW 1 has to be appreciated. He has admitted his signature in the FIR but has given the excuse that it was taken on a blank paper. The same could have been clarified by the investigating officer, but for some reason, the investigating officer has not been examined by the prosecution. It is an accepted principle that non-examination of the investigating officer is not fatal to the prosecution case.InBehari Prasad v. State of Bihar[(1996) 2 SCC 317 : 1996 SCC (Cri) 271] , this Court has stated that non-examination of the investigating officer is not fatal to the prosecution case, especially, when no prejudice Patna High Court CR. APP (DB) No.271 of 2025 dt.15-09-2025is likely to be suffered by the accused.InBahadur Naik v. State of Bihar[(2000) 9 SCC 153 : 2000 SCC (Cri) 1186] , it has been opined that when no material contradictions have been brought out, then non-examination of the investigating officer as a witness for the prosecution is of no consequence and under such circumstances, no prejudice is caused to the accused. It is worthy to note that neither the trial Judge nor the High Court has delved into the issue of non-examination of the investigating officer. On a perusal of the entire material brought on record, we find that no explanation has been offered. The present case is one where we are inclined to think so especially when the informant has stated that the signature was taken while he was in a drunken state, the panch witness had turned hostile and some of the evidence adduced in the court did not find place in the statement recorded underSection 161of the Code.Thus, this Court inArvind Singh v. State of Bihar[(2001) 6 SCC 407 : 2001 SCC (Cri) 1148] , Rattanlal v. State of J&K [(2007)13 SCC 18 : (2009) 2 SCC (Cri) 349] and Ravishwar Manjhi v. State of Jharkhand [(2008) 16 SCC 561 : (2010) 4 SCC (Cri) 50] , has explained certain circumstances where the examination of investigating officer becomes vital. We are disposed to think that the present case is one where the investigating officer should have been examined and his non-examination creates a lacuna in the case of theprosecution."

69. In the present case, the very place of occurrence and the manner in which the victim sustained burn injuries is under doubt. Only the Investigating Officer could have clarified whether the alleged spot was inspected, whether oil-canister/jar, matches, burnt clothes, or other incriminating material were seized, and whether the recovery was consistent with the prosecution story. His absence deprives the defence of the opportunity to test the fairness of the investigation and leaves the Court without reliable evidence on where and how the incident actually took place. The omission of this witnesses is not a minor irregularity but a substantive defect. The Investigating Officer is not just a formal witness, but a material one whose evidence could have either confirmed or contradicted the prosecution version.

70. It is further noticed that the inquest report was not exhibited. Though not substantive evidence, an inquest is a contemporaneous document recording the initial circumstances of discovery of the body. In ***Pedda Narayana v. State ofAndhra Pradesh, reported in (1975) 4 SCC 153;*** the Hon'ble Supreme Court explained that the purpose of an inquest underSection 174 of the Cr.P.C. is limited to ascertaining whether a person has died under suspicious circumstances and to

record the apparent cause of death, as observed in paragraph 10 of the judgment which reads as under:

"10...Furthermore, proceedings for inquest underSection 174of the CrPC have a very limited scope.Section 174of the Code as it then stood read as follows :

174. Police to enquire and report on suicide, etc.-

(1) The officer in charge of a police station or some other officer specially empowered by the State Government in that on receiving information that a person-

(a) has committed suicide; or

(b) has been killed by another, or by an animal, or by machinery, or by an accident; or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence; shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any) such marks appear to have been inflicted.

(2) * **

(3) When there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless."

71. A perusal of this provision clearly shows that the object of the proceedings underSection 174Cr.P.C. is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and, if so, what is the apparent cause of death.

72. Nevertheless, when such a record is withheld, the prosecutions case loses an important foundation.

73. Another serious infirmity is the failure to prove the place of occurrence. Ordinarily, this is established through the testimony of the Investigating Officer, supported by site plans and seizure memos.In the absence of such proof, the prosecution case remains uncertain. At this juncture, it is noteworthy that Hon'ble Supreme Court, while deciding the case of ***Syed Ibrahim vs. State of A.P.,reported in (2006) 10 SCC 601***; in paragraph 11 has observed as under:

"11....But there is another significant factor which completely destroys the prosecution version and the credibility of PW 1 as a witness. He has indicated four different places to be the place of occurrence. In his examination-in-chief he stated that the occurrence took place inhouse. In the cross-examination he stated that the incident took place at the house of his wife, the deceased's mother. This is a very important factor considering the undisputed position and in fact

the admission of PW 1 that he and his wife were separated nearly two decades ago, and that he was not on visiting terms with his wife. Then the question would automatically arise as to how in spite of strained relationship he could have seen the occurrence as alleged in the house of his wife. That is not the end of the matter. In his cross-examination he further stated that the incident happened in the small lane in front of the house of his wife. This is at clear variance with the statement that the occurrence took place inside the house where allegedly he, the deceased, his son, PW 2 and daughters, PWs 3 and 6 were present. That is not the final say of the witness. He accepted that in the FIR (Ext. P-1) he had stated the place of occurrence to be the house of the deceased. Though the FIR is not a substantive evidence yet, the same can be used to test the veracity of the witness. PW 1 accepted that what was stated in the FIR was correct. When the place of occurrence itself has not been established it would not be proper to accept the prosecution version."

74. Further, the alleged weapon of offence, i.e., Kerosene Jar, matches, etc., have neither been produced nor proved.

75. Thus, on cumulative appraisal, this Court finds that the prosecution has failed to establish its case beyond reasonable doubt. The combination of the non-examination of the Investigating Officer, non-production of the Inquest report, failure to prove the place of occurrence, non-production of the alleged weapons, and questionable inadmissibility of the dying declaration has left the case without corroborative support.

76. The settled principle of criminal law is that, where doubt arises from the evidence, it must accrue to the benefit of the accused. In this regard, learned Counsel for the accused-appellant has rightly placed reliance upon the judgment of the Honble Apex Court in the case of ***Irfan @ Naka Vs. State of U.P. reported as 2023 INSC 758;*** wherein the Honble Apex Court has made the following observations:-

"63. It is the duty of the prosecution to establish the charge against the accused beyond the reasonable doubt. The benefit of doubt must always go in favour of the accused. It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. It is just not enough for the court to say that the dying declaration is reliable as the accused is named in the dying declaration as the assailant.

64. It is unsafe to record the conviction on the basis of a dying declaration alone in the cases where suspicion, like the case on hand is raised, as regards the correctness of the dying declaration. In such cases, the Court may have to look for some corroborative evidence by treating the dying declaration only as a piece of evidence. The evidence and material available on record must be properly weighed in each case to arrive at an appropriate conclusion.

65. In ***Sujit Biswas v. State of Assam reported in (2013) 12 SCC 406****, this Court, while examining the distinction between proof beyond reasonable doubt and suspicion in para 13 has held as under:*

"13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that may be proved, and something that will be proved. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of

proof. This is for the reason that the mental distance between may be and must be is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between may be true and must be true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between may be true and must be true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense."

66. It may be true as observed by Honble the Supreme Court in the case of ***Dharm Das Wadhwani vs. State of Uttar Pradesh, reported in (1974) 4 SCC 267,*** *that the rule of benefit of reasonable doubt does not imply a frail willow bending to every whiff of hesitancy. Judges are made of sterner stuff and must take a practical view of the legitimate inferences flowing from the evidence, circumstantial or direct. Even applying this principle, we have a doubt as regards the complicity of the appellant-convict in the crime."*

77. In the present case, it is difficult to sustain the conviction solely based on the dying declaration. As discussed above, the evidence on the point of dying declaration does not inspire confidence and cannot be relied upon. It is also well settled that where an investigation is tainted, unfair, or conducted in a haphazard manner, and the prosecution evidence otherwise fails to establish the case beyond reasonable doubt, the accused is entitled to the benefit of doubt. The defective investigation, and the subsequent non-examination of the Investigating Officer during the trial, in the present facts and circumstances, further reinforces the conclusion that the appellant's conviction cannot be sustained. The prosecution has failed to prove the charge of murder against the appellant beyond reasonable doubt.

78. Learned Trial Court has erred in appreciating evidentiary value of the dying declaration, which was the only evidence relied upon for conviction of the appellant, and has not been kept in mind the settled law on the subject as discussed herein above. The impugned judgment is factually erroneous, as it has not taken into consideration other attending circumstances, relating to the non-production of crucial evidence, and has brushed aside the defence evidence without any plausible reason. The learned Trial Court has thus erred in convicting the appellant and sentencing him to life imprisonment for the charge of having committed an offence punishable under Section 302 of the I.P.C.

79. For all the aforesaid reasons, the Conviction order of the Trial Court and sentence imposed, cannot be sustained.

80. Accordingly, the appeal stands allowed.

81. The judgment and order of conviction dated 06.10.2016, passed by the Learned Additional Sessions Judge (F.T.C.), Court No. 36, Barabanki, in Sessions Trial No. 52 of 2013 (State Vs. Mohd. Anees and others), arising out of Crime No. 293 of 2012, relating to Police Station - Zaidpur, District Barabanki, is set-aside. The accused-appellant, Mohd. Anees, is acquitted of the offence punishable under Section 302 of the I.P.C. The amount of fine, if deposited, shall be refunded to the accused.

82. The accused-appellant, namely, Mohd. Anees, shall be released forthwith, unless he is wanted in any other case, subject to compliance of Section 437-A Cr.P.C. The Trial Court record, along with a copy of this judgment and order, shall be transmitted to the concerned Court forthwith.

83. There shall be no order as to cost(s).

84. All pending application(s) shall stand disposed of.

(2026) 5 ILRA 909
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 27.05.2026

BEFORE

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

Criminal Appeal No. 1981 of 2003

Khushi Ram **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

Matter pertains to legality of conviction order in case of minor discrepancies in evidences.

Headnotes

Murder-Indian Penal Code, 1860-S. 302-Appreciation of evidence-Conviction-Sustainability-Ocular testimony of prosecution witnesses found cogent, reliable and substantially corroborated by medical evidence-minor discrepancies- plea of ante-timing of FIR-omissions in inquest report not created any dent in prosecution case-mere existence of enmity not sufficient to discard otherwise reliable ocular testimony-guilt proved beyond reasonable doubt-Trial Court rightly appreciated evidence-no illegality or perversity found in impugned judgment-Conviction and sentence affirmed-**Appeal dismissed.**

Case Law Cited

1. Brahm Swaroop v. State of U.P., (2011) 6 SCC 288.
2. Ishwar Singh v. State of U.P., (1976) 4 SCC 355.
3. Mani Ram v. State of U.P., 1994 Supp (2) SCC 289.
4. Sudha Renukaiah v. State of A.P., (2017) 13 SCC 81.

5. Punjab Singh v. State of Haryana, 1984 Supp SCC 233.
6. Laxminath v. State of Chhattisgarh, (2019) 8 SCC 685.
7. State of Rajasthan v. Teja Ram, (1999) 3 SCC 507.
8. Jugendra Singh v. State of U.P., (2012) 6 SCC 297.
9. Jaisy @ Jayaseelan v. State, (2012) 1 SCC 529.
10. Hukam Singh v. State of Rajasthan, (2000) 7 SCC 490.
11. State of U.P. v. Anil Singh, 1988 Supp SCC 686.
12. Himanshu Mohan Rai v. State of U.P., (2017) 4 SCC 161.

List of Acts

Indian Penal Code,1860

List of Keywords

Minor omissions; beyond reasonable doubt; minor inconsistencies with medical evidence; insufficiency of motive.

Appearances of parties

Counsel for Appellant(s) : Khaleeq Ahmad Khan, M.K. Shukla, Rajesh Kumar Dwivedi (Ac) Counsel for Respondent(s) : Govt. Advocate

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

1. Heard Sri Rajesh Kumar Dwivedi, learned Amicus Curiae for the appellant and Sri Pawan Kumar Mishra, learned A.G.A for the State and perused the records.

2. The aforesaid criminal appeal arises out of judgment and order dated 30.10.2003 passed by learned Additional Sessions Judge/Fast Track Court No. 3, Sitapur in Session Trial No. 745 of 2002 (State v. Khushi Ram), arising out of Case Crime No. 215 of 2002, Police Station Manpur, District Sitapur, whereby the appellant has been convicted under Section 302 of Indian Penal Code,1860 (in short IPC) and sentenced to imprisonment for life along with a fine of Rs. 5,000/- and in default of payment of fine, to undergo an additional one year of simple imprisonment.

3. Before adverting to the merits of the case, it may be noted that this Court has been apprised, while dictating the present judgment, that the accused□appellant has already been released on remission on 26.01.2019. However, since the present appeal arises out of the judgment and order of conviction passed by the learned Trial Court, this Court proceeds to adjudicate upon the legality and correctness of the impugned judgment on merits.

Prosecution Story in Nutshell:

4. The prosecution story, in brief, is that Mohd. Sher Khan, lodged a written report on 28.02.2002 stating therein that his brother Mohd. Umar @ Munna, s/o Ismail Khan, after watering the paddy field, had gone to rest in the mango orchard of Ramprasad Badhai , situated towards the north of the village, where he fell asleep. At around 12:30 P.M., the accused Khusiram, s/o Manohar, who was working as a labourer in the field of Shaami, allegedly reached the said orchard

and, without any enmity, assaulted the deceased while he was sleeping and slit his throat with a spade (kudal), causing his death on the spot. It was further stated that the informant Mohd. Sher Khan, along with his brother Mohammad Saeed and other villagers, namely Ibrahim and Babu, who were present nearby, rushed to the place of occurrence and saw the accused fleeing from the spot carrying a blood-stained spade. They chased the accused, but he threw the weapon near the southern boundary of the field of Chandrabhal, situated to the north of the orchard, and escaped towards the northern side.

5. On the basis of the written report, an FIR was registered under Section 302 IPC against the accused, Khushiram. The investigation of the case was entrusted to S.O. Shashikant Yadav, who proceeded to the place of occurrence on the same day and conducted the inquest proceedings.

6. Upon completion of investigation, charge-sheet was submitted against the accused-appellant under Section 302 IPC Thereafter, the case was committed to the Court of Session, where charge under Section 302 IPC was framed against the accused. The accused denied the charge, pleaded not guilty, and claimed trial.

7. In order to prove its case, the prosecution examined Mohd. Sher Khan (PW-1), Ibrahim (PW-2), Zabbar Ahmad Khan (PW-3), S.O. Shashikant Yadav (PW-4), Khaleel Khan (PW-5), and Dr. Arvid Kumar Shakya (PW-6).

8. The defence, however, did not adduce any oral or documentary evidence in support of its case.

9. The following exhibits were produced and proved before the Trial Court:

Exhibit No	Particulars/Item
Ext. Ka -1	Written Report
Ext. Ka -2	Recovery Memo of spade (kudal)
Ext. Ka -3	Recovery Memo of bloodstained and plain earth
Ext. Ka-4	Panchayatnama
Ext. Ka-5	Letter to RI
Ext. Ka-6	Letter to CMO
Ext. Ka-7	Sketch of the dead body
Ext. Ka-8	Police Form no. 13
Ext. Ka-9	Sample Seal
Ext. Ka-10	Site Plan
Ext. Ka-11	Charge Sheet
Ext. Ka-12	Docket for sending the items collected to Forensic Laboratory
Ext. Ka-13	FIR
Ext. Ka-14	Copy of GD entry
Ext. Ka-15	Post Mortem report

10. The following material exhibits were produced and proved before the Trial Court:

Material Exhibit Number	Particulars/Item
Material Exhibit-1	Spade (Kudal)
Material Exhibit-2	Bloodstained Earth
Material Exhibit-3	Plain Earth

11. The statement of the accused-appellant was recorded under Section 313 Cr.P.C., wherein he denied the prosecution case in toto and stated that the FIR is false and fabricated. He further stated that the investigation has not been conducted properly and the charge-sheet has been prepared falsely.

12. He further stated that the complainant has given false evidence and that the written report was prepared in collusion with the police and the scribe due to election rivalry. He further stated that the witnesses have deposed against him due to enmity and party-bandi, and that PW-3 has also deposed under the influence of the complainant. He further stated that the recovery of the spade (kudal) has been falsely shown and it does not belong to him. He also stated that PW-5 is a relative of the complainant's family and is an interested witness. He further stated that all the witnesses belong to the same community and have falsely implicated him due to enmity. He further stated that the deceased and his family had enmity with several persons in the village and that no one had actually seen the incident. He further stated that upon discovery of the dead body, a false case has been foisted against him and the deceased was in fact killed by some unknown person. He lastly stated that Kunwar Bahadur Singh has falsely implicated him due to election enmity, that he has not committed the said offence, and he is innocent.

Submissions made by learned Amicus Curiae for the accused-appellant:-

13. Learned Amicus Curiae for the accused-appellant submitted that the prosecution case is wholly doubtful and unreliable. He further submitted that the F.I.R. is ante-timed and was not forwarded to the Magistrate forthwith, thereby casting serious doubt on its genuineness. He further submitted that the medical evidence does not support the ocular version and there exist material contradictions in the testimonies of PW-1, PW-2, PW-4 and PW-6. He further submitted that PW-2 is not a true eyewitness and that PW-1 and PW-2 are wholly unreliable witnesses. He further submitted that the alleged weapon of offence was not produced before the post-mortem doctor and, therefore, no medical corroboration is available; moreover, as per the post-mortem doctor, the injuries could have been caused by different weapons, suggesting involvement of more than one assailant. He further submitted that there is no credible eyewitness account and the real assailant remains unidentified, and that the accused has been falsely implicated due to prior enmity. He further submitted that the blood found on material numbered (in FSL report) 1, 2 and 4 was disintegrated and its origin could not be determined, while the blood on material number 3 was insufficient for serological examination. He further submitted that the deceased had enmity with several persons and the nature of injuries, including the severance of vital structures, has not been satisfactorily explained by the prosecution. He further submitted that the written report was scribed at the instance of the scribe, who himself had enmity with the accused, and in view of these infirmities, the prosecution has failed to prove its case beyond reasonable doubt and the accused has been falsely implicated.

Submissions made by learned A.G.A : -

14. Per contra, learned A.G.A. has opposed the submissions advanced on behalf of the accused-appellant and contended that the prosecution has successfully established the guilt of the accused beyond reasonable doubt. He further submitted that the FIR was promptly lodged and minor discrepancies, if any, with regard to its timing or dispatch do not affect the core of the prosecution case. He further submitted that the testimony of the prosecution witnesses, particularly PW-1, is natural and reliable and cannot be discarded merely on account of minor contradictions. He further submitted that the medical evidence substantially corroborates the ocular version and clearly establishes that the death was homicidal in nature caused by sharp-edged weapon. He further submitted that the recovery of the weapon of offence, though assailed, stands proved and the same lends support to the prosecution case. He further submitted that mere non-production of the weapon before the post-mortem doctor or minor lapses in investigation are not sufficient to discard an otherwise reliable prosecution case. He further submitted that the trial court has rightly appreciated the evidence on record and recorded a finding of conviction, which does not call for interference by this Court.

Oral Testimonies:

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

15. PW-1 Mohd. Sher Khan, deposed that the deceased Mohammad Umar @ Munna was his younger brother. He further deposed that on the date of the incident, his brother had gone to water the paddy field and thereafter went towards the mango orchard of Ramprasad Badhai situated to the north of the village for rest, where he (deceased) fell asleep.He further deposed that at about 12:30 P.M., the accused Khusiram, who was working nearby in the field, came and assaulted his brother with a spade (kudal) and slit his throat, causing his death on spot. He further deposed that he himself was present nearby and on witnessing the occurrence, he raised alarm. He further deposed that upon his alarm, Ibrahim, Babu and several villagers who were working in nearby fields came to the spot and they saw the accused fleeing from the place of occurrence carrying the blood-stained spade (kudal). He further deposed that they chased the accused, who ran towards the northern side and after going some distance threw the kudal near the boundary (मेड़) of the field of Chandrabhal and escaped. He further deposed that due to the incident, an atmosphere of fear and terror was created in the village and the villagers stopped their agricultural work. He further deposed that thereafter Kunwar Bahadur Singh came to the spot and on his (witness) instructions, written report was scribed by him (Kunwar Bahadur). He further deposed that the same was read over to him and it is proved as Ext. Ka-1. He further deposed that he took the written report to the police station and got the case registered. He further deposed that thereafter he returned to the place of occurrence along with the police personnel. He further deposed that the inquest proceedings were conducted and the dead body of the deceased was sealed and sent for post-mortem examination.

16. **During cross-examination**, he deposed that the mango orchard of Ramprasad Badhai is situated at some distance from the village and described the location of surrounding fields,

boundaries and pathways. He further deposed that the place where the deceased was lying was about 10 paces inside from the eastern boundary of the orchard. He further deposed that he reached the place of occurrence after hearing the alarm and at that time the accused was running away at a distance of about 20□25 steps. He further deposed that when the accused ran towards the field of Chandrabhal, they chased him for some distance but thereafter returned to the place of the incident. He further deposed that several villagers had gathered at the place of occurrence within a short time and he remained at the spot for about 10 minutes, thereafter proceeded to the police station. He further deposed that Kunwar Bahadur Singh, who was the Pradhan of the village, had arrived at the spot and got the report written. He further deposed that he went to the police station on a bicycle and handed over the report to the concerned officer. He further deposed that he reached the police station at about 1:00 P.M. and remained there for about half an hour. He further deposed that thereafter he returned to the village along with the police in a jeep. He further deposed that he had seen the accused inflicting the blow upon the deceased from a close distance. He further deposed that the blow was inflicted on the neck of the deceased and that the accused was at a distance of about two hands while assaulting. He further deposed that the deceased had gone to the field in the morning and that he did not know as to how long the deceased had been sleeping at the place of occurrence. He further deposed that if the deceased had not been sleeping, the accused would not have been able to assault him in such a manner. He further deposed that the kudal used in the offence had a handle of about two and a half hands in length and the blade was about eight fingers wide. He further deposed that two blows were inflicted by the accused. He further deposed that there was no enmity between the accused and the deceased to his knowledge. He further deposed that he could not assign any reason as to why the accused committed the murder of his brother. He further denied the suggestion that the deceased was killed by some unknown person or that the accused has been falsely implicated due to enmity or party faction. He further denied the suggestion that the report was lodged after deliberation or that it was prepared in collusion with the police.

17. **PW-2 Ibrahim**, deposed that about one year prior to his deposition, at around 11-12 noon, the incident took place. He further deposed that on the day of the incident he and one named Babu were sitting on the southern boundary (मेड़) of the orchard of Ramprasad, while the deceased Munna was lying asleep in the same orchard. He further deposed that accused Khushiram was also resting in the same orchard, along with his kudal. He further deposed that the Khusiram was working nearby in the field and was carrying a kudal. He further deposed that upon hearing the sound of assault, he saw that Khusiram struck Munna with the kudal and thereafter ran towards the northern side. He further deposed that the accused threw the kudal in the field of Lala of Chandpur and fled away. He further deposed that upon alarm, several villagers including Sher Khan, Shaid Khan and others reached the place of occurrence and chased the accused, however, he managed to escape.

18. **During cross-examination**, he deposed that he has been hard of hearing for the last 2-4 years and hears loudly, though he can see clearly. He further deposed that the deceased Munna was lying at a distance of about 10-15 steps from him towards the north direction. He further deposed that he had not talked with the deceased on that day and was not aware as to when he came to the orchard. He further deposed that upon hearing the sound, he raised alarm and within 2-3 minutes villagers gathered at the spot. He further deposed that when the accused was running away, people

chased him but could not apprehend him. He further deposed that the police arrived after about half an hour of the incident. He further deposed that he did not saw the accused working in the field of one named Sami. He further deposed that he did not see the deceased coming to the orchard or sitting there and had only seen him lying asleep. He further deposed that Sher Khan and Shahid Khan came from the southern side of the village. He further deposed that when villagers arrived, about 10-20 persons gathered and chased the accused. He further deposed that he did not chase the accused, as he was not well, and could not tell that upto where accused was chased. He further deposed that he did not see the accused throwing the kudal and where the same was thrown. He further deposed that there were previous incidents of murder in the village, in which the family of the accused was either charged or were witness for the case and there existed factionalism. He further deposed that he did not know whether there was any enmity between the accused and the deceased. He further deposed that at the time of the assault, head of the deceased was towards south and his feet were towards north. He further deposed that he did not saw the spade belonging to deceased and the spade (kudal) found was that of accused, he became aware of this fact as everyone was saying the same. He further deposed that he had informed the inspector that Khushiram (accused) has murdered Munna but has not told the reason/ motive behind such act. He further deposed that the he has not told inspector that there existed any enmity between the accused and deceased and that accused was having a doubt that deceased was having an illicit relation with wife of accused. He further deposed that it is incorrect to say that he had not seen the incident or that he is giving false evidence due to enmity or village faction.

19. **PW-3 Zabbar Ahmad Khan**, deposed that he knew the deceased Munna, who had died about one year prior to his deposition. He further deposed that he had heard that the deceased was murdered near the orchard of Ramprasad Badhai by cutting his throat with a kudal. He further deposed that he had not seen the incident of assault. He further deposed that when the Investigating Officer came, he was called to the spot, where kudal was found. He further deposed that recovery memo of kudal was prepared and his signature was obtained on the same. He identified his signature on the said paper, which was marked as Exhibit Ka-2. Further when kudal was taken out from a sealed bundle before the Trial Court, he identified it to be the same which was sealed in his presence, which was marked as Material Exhibit-1. He further deposed that the Investigating Officer had also collected samples of blood-stained and plain earth from the place of the occurrence, the recovery memo of the same was identified by him, which was marked as Exhibit Ka-3. Further, he identified the same, when these sealed containers were opened before the Trial Court, the sample of blood-stained earth was marked as Material Ext.-2 and that of plain earth was marked as Material Ext.-3.

20. **During cross-examination**, he deposed that he had not seen anyone assaulting the deceased. He further deposed that when he was called by the Investigating Officer, he went to orchard where the Investigating Officer was sitting on a cot and the kudal was lying below. He further deposed that kudal was not brought from the field in his presence and he could not see as to from where it had come. He further deposed that he did not know whether the kudal belonged to the accused or whether the accused used it for agricultural purposes.

21. He further deposed that the dead body of the deceased was lying on the place of the incident, when he reached there, and the neck of the deceased was cut. He further deposed that

when his signatures were obtained, the dead body was lying in the same condition and had not been sealed. He further deposed that he had signed the papers at around 2:00 P.M. and was not able to recall so as to who made other signatures on the said papers, apart from his own. He further deposed that he had not stated before the Investigating Officer that on 28.07.2002 the accused Khusiram had murdered the deceased by cutting his throat with kudal, and if such statement is recorded, he could not assign any reason for the same. He further deposed that he did not know from where kudal was brought and who had brought it near the place of occurrence.

22. **PW-4 Shashikant Yadav**, SO, Police Station Machhrehata, District Sitapur, deposed that on 28.07.2002 he was posted as SHO of Police Station Manpur, District Sitapur and on the same day, while he was present at the police station, a written report was received at around 13:30 hours regarding the murder of Mohammad Umar alias Munna by the accused Khusiram by cutting his throat with a kudal. He further deposed that on the basis of the said report, a case crime number 215/2002 under Section 302 IPC was registered and he took up the investigation. He further deposed that he immediately proceeded to the place of occurrence along with police force and reached the spot. He further deposed that he found the dead body of the deceased lying in the orchard of Ramprasad Badhai and prepared the inquest report and other relevant papers. He further deposed that he inspected the dead body and noticed that the neck of the deceased was cut. He further deposed that he sealed the dead body and sent it for post-mortem examination through constables. He further deposed that he recorded the statements of witnesses including Sher Khan and others at the spot. He further deposed that he prepared the site plan of the place of occurrence on the pointing out of the informant. He further deposed that he collected blood-stained earth and plain earth from the place of occurrence and sealed them in separate container. He further deposed that during the course of investigation, a kudal alleged to have been used in the commission of the offence was recovered, from Chandrabhal's field. He further deposed that recovery memo of the said kudal was prepared in the presence of witnesses. He further deposed that on various dates and occasions, efforts were made to apprehend the accused, Khusiram; however, he could be arrested only on 02.08.2002. He further deposed that all the recovered materials were sent to the Forensic Science Laboratory, Lucknow, on 09.09.2002. He further deposed that, on the basis of sufficient evidence collected during the course of investigation, the accused, Khusiram, was sent for trial in Case Crime No. 89 of 2002 under Section 302 IPC.

23. **During cross-examination**, he deposed that the length and width of the blade of the alleged weapon of offence were not recorded in the recovery memo, nor was the time of recovery mentioned therein. He further deposed that no corresponding entry in respect of the same was made in the General Diary. He further deposed that the recovery was effected first and thereafter the recovery memo was prepared. He also deposed that the recovery memo of the kudal was prepared at the place from where it was recovered, and not at the place where the dead body was lying. He further deposed that the recovery memo of the kudal was prepared while he was sitting on a cot placed near the place of recovery. He further deposed that at the time of recovery, the kudal was bloodstained; however, due to strong sunlight, the blood had dried up. He further deposed that he has not shown any house or habitation in the site plan, though the village Kahmara was situated at some distance. He further deposed that he has shown the route by which the informant reached up to point □C□ through the fields of Chandrabhal, but he has not shown the complete route from the village to the place of occurrence. He further deposed that he has not shown in the site plan the

exact position of the witnesses at the time of occurrence nor the place from where they allegedly witnessed the incident. He further deposed that the presence of a towel (gamcha), found near the dead body at the place of occurrence, was noted in the panchayatnama, and the same was sealed and sent along with the dead body for post-mortem examination. He further deposed that he could not assign any reason as to why the post-mortem doctor did not record the presence of the said towel in the post-mortem report. He further deposed that as per Ext. Ka-8 the distance between the place of occurrence and the police station has been shown as 7 kilometers and in the check FIR, the distance is mentioned as 8 kilometers. He further deposed that the variation in distance is due to non-mentioning of exact particulars and admitted that the time of occurrence is not mentioned. He further denied the suggestion that the FIR was not in existence at the time of preparation of panchayatnama and that the FIR was not lodged till that time. He further deposed that he proceeded to the spot at about 1:30 PM and returned on the next day at about 8:50 AM. He further deposed that he did not take the statement of the wife of the accused but he did ask her about the accused, however he had not recorded her statement. He further deposed that he did not find any clothes of the accused stained with blood at the time of arrest. He further deposed that the witness Ibrahim had stated before him that he was sitting near the orchard, however he (witness) had not mentioned in case diary that Ibrahim had actually seen the incident or that Ibrahim had chased the accused. He further deposed that Ibrahim had not told that the accused had any suspicion regarding his wife. He further deposed that he had not recorded in the case diary the exact position of witnesses. He further deposed that he had not mentioned in the site plan the position of witnesses. He further deposed that he had not mentioned in the case diary the route taken by the accused while fleeing. He further deposed that the deceased had enmity with several persons but he did not investigate that aspect. He further deposed that it is incorrect to say that he has falsely implicated the accused or that he conducted a biased investigation. He further deposed that it is incorrect to say that the accused did not commit the offence.

24. **PW-5 Khaleel Khan**, deposed that Munna, of his village, was murdered in Ramprasad's orchard, located on the north side of the village. He further deposed that on the day of incident, he was lying under neem tree at his house and was sleeping. He further deposed that after being informed through the boys of his family and villagers, he went to the orchard. He further verified and proved Ext. Ka-2 and Ext. Ka-3. He further verified the kudal, used in assault.

25. **During cross-examination**, he deposed that inspector had arrived before him and made signature before the inspector, at the place where kudal was recovered. He further denied the suggestion that his signature was taken on a blank paper.

26. **PW-6 Dr. Arvid Kumar Shakya**, CHC Hargaon, District Sitapur, deposed that on 29.07.2002 he was working on the said post and on the same day Constable Rambriksh of police station Manpur handed over sealed dead body and nine related documents to him and identified the body. He further deposed that he prepared the post-mortem report at around 3:00 PM and on external examination he found that the deceased was of normal height and build. He further deposed that rigor mortis had disappeared from both arms and legs and post-mortem staining was present on the back. He further deposed that following injuries were found on the body of the deceased.

 Injury No. 1: Incised wound measuring 12 cm X 2.5 cm X vertebra deep on left side of the neck at level 4 of cervical vertebra.

 Injury No. 2: Incised wound measuring 11 cm X 2.5 cm X vertebra deep on right side of the neck at level 3-4 of cervical vertebra, 7 cm below right ear.

 Injury No. 3: Incised wound measuring 2 cm X 0.5 cm X bone deep on left side of neck, 8 cm below the left ear.

 Injury No. 4: Incised wound measuring 2.5 cm X 0.5 cm X muscle deep on the front of left shoulder joint.

 Injury No. 5: Abraded contusion measuring 2.5 cm X 1.5 cm on the front of the right shoulder joint.

On internal examination carotid vessels on both sides of neck were found to be severed, both lungs were pale, heart was empty, esophagus from cervical vertebra were to be cut, small intestine was filled in places, large intestine was filled in the upper part, four ounces of brown liquid was found in the stomach and rectum was found to be empty. In opinion of the doctor death was due to shock and hemorrhage as a result of ante-mortem injuries. He further verified and proved the post-mortem report as Ext. Ka-15. He further deposed that injury no. 1 to 4 could have been caused by kudal (spade) and the same was sufficient to cause death. He further deposed that injury no. 5 could have been caused due to fall and the all the above stated injuries might have been caused on 28.07.2002 at around 12:30 PM.

27. **During cross-examination**, he deposed that injury no. 5 was not caused by sharp edged weapon and this injury could have also been caused by a blunt side of the knife or fall. He further deposed that injury no. 4 could have been caused by knife only if the same was not stabbed but the sharp side was used. He further deposed that this injury is generally not possible with a sickle, but it is possible that if a portion of the sickle falls on the body of the deceased with a less force. The margins of the injury no. 3 were not noted and he deposed that in cut wounds margins are usually regular. He further deposed that this injury could have been caused by sickle. He further deposed that injury no. 1 and 3 are unlikely to have been caused by a single blow, but if deceased defended himself, a second injury could have been caused. He further deposed that injury no. 1 is approximately five times the length and width of injury no. 3. He further deposed that it is possible that injury no. 1 was caused by different weapon and injury no. 3 by another weapon. He further deposed that these injuries could have been caused by different weapons. He further deposed that no undigested or digested food was found in the stomach of the deceased. He further deposed that a dhoti and undergarment were present on the body of deceased. He further deposed that no towel was found with the sealed body of deceased. He further deposed that the time of death as estimated by him could vary by 6 to 8 hours. He further deposed that it is possible that deceased died at around 7:00 PM on 28.07.2002. He further deposed that injury no. 3 and 4 could have been caused by a spade (kudal) only if it was struck with little force. He further deposed that injury no. 1 to 4 are likely to have occurred, while the deceased was standing or sitting.

Court Analysis:

FIR is Ante-timed and omission in Inquest Report:

28. Learned counsel for the accused□appellant has submitted that the First Information Report is ante-timed and was not forwarded to the Magistrate forthwith as contemplated under Section 157 Cr.P.C., and therefore the entire prosecution case stands vitiated.

29. The law relating to the evidentiary value of the First Information Report is well settled, that prompt lodging of the F.I.R. lends assurance to the prosecution case, however delay or irregularity in its lodging is not by itself fatal, unless it gives rise to a reasonable inference of fabrication or embellishment. The object of insisting upon promptness is to exclude the possibility of concoction; however, the Court must examine whether the delay stands satisfactorily explained.

30. In the present case, the prosecution has established that the occurrence took place at about 12:30 P.M. and the F.I.R. came to be registered at about 13:30 hours. The Trial Court has rightly taken into consideration the surrounding circumstances, namely that the informant was not well-versed with the exact reckoning of time, had to travel to the police station by bicycle, and that approximately 10□15 minutes were consumed in getting the written report scribed. The time taken in reaching the police station would necessarily depend upon the speed of the bicycle and other attending circumstances. Thus, the time gap between the occurrence and the lodging of the F.I.R. stands reasonably explained and cannot be said to be unnatural or suggestive of ante-timing.

31. Furthermore, no material has been brought on record to show that the police personnel had any prior enmity with the accused so as to fabricate a case in advance and prepare the F.I.R. beforehand. In absence of any such motive or circumstance, the allegation that the F.I.R. was ante-timed remains a mere bald assertion without evidentiary support. Minor variations regarding the distance of the police station, shown as 7 km in one document and 8 km in another, or absence of exact time of occurrence in certain papers are inconsequential discrepancies which do not go to the root of the matter.

32. As regards the requirement under Section 157 Cr.P.C., it is well settled that delay in forwarding the F.I.R. to the Magistrate would be of consequence only where it is shown that such delay has been utilized for introducing improvements or embellishments. No such prejudice has been demonstrated in the present case.

33. Further, learned counsel for the accused-appellant has drawn the attention of this Court to certain omissions in the inquest report (Ext. Ka-4) and submitted that the same create serious doubt regarding the prosecution version. He submitted that the inquest report does not contain the names of alleged eyewitnesses, does not record the presence of particular witnesses at the spot, nor does it contain any reference to the accused having been seen fleeing from the place of occurrence. According to the defence, these omissions assume significance as the inquest report was prepared at the earliest point of time and, therefore, ought to have reflected the true state of affairs.

34. On the other hand, learned A.G.A. has placed reliance upon **Brahm Swaroop v. State of U.P., (2011) 6 SCC 288,** and contended that the omissions pointed out in the inquest report are wholly inconsequential and do not in any manner affect the substratum of the prosecution case. It is submitted the inquest report is not a substantive piece of evidence and cannot be treated as an exhaustive account of the prosecution case. He has further submitted that non-mentioning of the

names of eyewitnesses, or the detailed manner of assault in the inquest report does not render the ocular testimony unreliable, and such omissions cannot be made a ground to discard otherwise credible evidence. It is, therefore, urged that the defence has placed undue emphasis on minor omissions which, in law, do not have any bearing on the prosecution case.

35. Having considered the rival submissions, this Court finds no substance in the contention raised on behalf of the accused□appellant. The scope of an inquest is limited and is aimed to ascertain the apparent cause of death, it is not a substantive piece of evidence and cannot be treated as a comprehensive document narrating the prosecution case. The reliance placed by learned A.G.A on ***Brahm Swaroop (supra)*** is apposite in this aspect.

36. In the present case, the inquest report was prepared promptly. The omissions pointed out by the defence, namely non-mentioning of the names of witnesses, absence of details regarding the manner of assault or non-mentioning of the alleged presence of witnesses at the spot, do not affect the core of the prosecution case, particularly when there is otherwise cogent and reliable ocular evidence available on record.

37. In view of the aforesaid discussion, this Court is of the considered opinion that neither the plea of ante-timing of the FIR nor the alleged omissions in the inquest report create any dent in the prosecution case.

Medical, Forensic and Ocular Evidence:

38. The next contention of counsel for the accused□appellant is that the medical and forensic evidence do not support the ocular testimony and, therefore, the prosecution has failed to establish its case beyond reasonable doubt. It has been contended that the alleged weapon of offence was not shown to the autopsy surgeon; that as per the doctor, the injuries could have been caused by different weapons; that the blood found on certain material exhibits had disintegrated and its origin could not be determined; and therefore the prosecution story becomes doubtful.

39. He has placed reliance upon ***Ishwar Singh v. State of U.P., (1976) 4 SCC 355 and Mani Ram v. State of U.P., 1994 Supp (2) SCC 289*** to contend that where ocular testimony is inconsistent with medical evidence, it would not be safe to sustain conviction. It has further been argued that since the alleged weapon was not shown to the doctor, the prosecution has failed to establish nexus between the injuries and the weapon allegedly used in the offence.

40. On the other hand, learned A.G.A. has placed reliance upon ***Sudha Renukaiah v. State of A.P., (2017) 13 SCC 81; Punjab Singh v. State of Haryana, 1984 Supp SCC 233; Laxminath v. State of Chhattisgarh, (2019) 8 SCC 685; and State of Rajasthan v. Teja Ram, (1999) 3 SCC 507,*** and submitted that mere non-showing of the weapon to the doctor is inconsequential where the medical evidence broadly supports the ocular version. It is further submitted that where medical evidence indicates two possible views, the same cannot be treated as a contradiction so as to discard otherwise reliable eyewitness testimony. He has further contended that failure of the serologist to determine the origin of blood due to disintegration does not demolish the prosecution case.

41. The law on the interplay between ocular and medical evidence is no longer res integra. It is well settled that where direct evidence of eyewitnesses is cogent, credible and trustworthy, minor inconsistencies with medical evidence do not override the prosecution case. Medical evidence is essentially corroborative in nature and assumes primacy only where it completely rules out the possibility of the occurrence as deposed by eyewitnesses.

42. In ***Punjab Singh (supra),*** the Hon'ble Supreme Court has held that where direct evidence is satisfactory and reliable, the same cannot be rejected on hypothetical medical evidence and where medical evidence discloses two possible views, the same does not amount to inconsistency. Similarly, in ***Sudha Renukaiah (supra),*** it has been held that mere non-showing of weapons to the doctor at the time of deposition is inconsequential where the injuries found by the doctor could have been caused by the weapons alleged by the prosecution.

43. In the present case, P.W.-5, the autopsy surgeon, has categorically deposed that injury nos. 1 to 4 could have been caused by a kudal (spade), which is the alleged weapon of offence. Though the doctor has also opined that such injuries could be caused by a sharp-edged weapon, the same merely indicates an alternative,not a conclusive one, medical possibility and not a contradiction to the prosecution case. The medical evidence nowhere rules out the possibility of injuries having been caused by the alleged weapon.

44. The reliance placed by learned counsel for the accused-appellant upon Is***hwar Singh (supra)*** and ***Mani Ram (supra)*** is misplaced. In those cases, the medical evidence completely contradicted the ocular version and created irreconcilable inconsistencies affecting the core prosecution case. In the present matter, however, the medical evidence substantially supports the prosecution story and no such irreconcilable inconsistency is made out.

45. So far as the forensic evidence is concerned, it has come on record that blood found on material numbered 1, 2 and 4 (sample of blood-stained and plain earth, kudal and undergarment) had disintegrated and therefore its origin could not be ascertained, while blood found on another exhibit was insufficient for serological examination. However, in ***Teja Ram (supra),*** the Hon'ble Supreme Court has categorically held that failure of the serologist to detect the origin of blood due to disintegration does not necessarily mean that the blood was not human blood, and such deficiency by itself cannot be treated as fatal to the prosecution case.

46. It is a matter of common forensic experience that due to lapse of time, climatic conditions, coagulation and disintegration, serological examination may not always yield definite results. Such deficiency in forensic analysis cannot eclipse otherwise reliable ocular and medical evidence. Criminal courts are required to assess evidence on the touchstone of reasonable probabilities and not on fanciful or imaginative doubts.

47. Furthermore, in ***Laxminath (supra),*** the Hon'ble Supreme Court has held that mere lapse on the part of the investigating agency in not properly sending the weapon for forensic examination would not by itself demolish the prosecution case where the ocular testimony remains trustworthy and the medical evidence supports the prosecution version.

48. Furthermore, the Trial Court has also rightly observed that the exact nature and dimension of injuries would depend upon several attending circumstances, namely the manner in which the assault was made, the relative position of the assailant and the victim at the time of occurrence, the attempt, if any, made by the deceased to save himself, and the manner in which the occurrence was witnessed by the eyewitnesses. It has correctly been noticed that during the course of assault, it is quite possible that the deceased may have moved her body or attempted to defend himself, due to which variation in the nature or placement of injuries may occur.

49. Further, the Trial Court has further rightly appreciated that injury nos. 1 to 4 were found by the doctor to be capable of being caused by a kudal (spade), whereas injury no. 5 could have been caused by abrasion or fall. It has also rightly been observed that while using a kudal, injury may not necessarily be caused only by its sharp edge and even the reverse side or blunt portion of the weapon may result in abrasion or blunt-force injury depending upon the manner of assault and resistance offered by the victim.

50. Thus, merely because one of the injuries could have been caused by abrasion or fall, it cannot be inferred that the ocular version stands contradicted. The medical evidence, read as a whole, substantially corroborates the prosecution case and does not create any irreconcilable inconsistency with the ocular testimony.

51. In the present case, the ocular evidence, medical evidence and surrounding circumstances form a coherent chain pointing towards the guilt of the accused. The alleged discrepancies pointed out by the defence neither demolish the prosecution case nor create such inconsistency which may render the prosecution story inherently improbable.

52. Accordingly, this Court is of the considered opinion that the alleged inconsistencies in medical and forensic evidence are not material in nature and do not affect the substratum of the prosecution case.

Alleged Contradictions in testimonies of the witnesses:

53. The learned counsel for the accused□appellant has vehemently contended that there exist material contradictions in the testimonies of PW-1, PW-2, PW-4 and PW-5 regarding the place where the kudal (spade) was allegedly thrown by the accused, the manner of its recovery and the exact spot from where the same was recovered, and therefore the recovery itself becomes doubtful.

54. Elaborating the submission, it has been argued that in the written report it has been stated that the accused fled away after throwing the bloodstained kudal near the ditch (मेड़), whereas in the recovery memo and site plan different locations have been indicated. It has further been pointed out that PW-1 deposed that the accused had thrown the kudal near the ditch situated between the fields of Chandrabhal, while PW-2 in one part of deposition stated that the accused had thrown the kudal in the field of Chandrabhal, and in another part stated that he had not actually seen the accused throwing the kudal. It has also been pointed out that PW-4 stated that the kudal was lying where it had been thrown, whereas the Investigating Officer indicated the place of recovery in the

site plan differently. On the bases of these discrepancies, it has been argued that the recovery is fabricated and the prosecution story becomes doubtful.

55. The issue which, therefore, arises for consideration is whether the aforesaid discrepancies are material contradictions going to the root of the prosecution case or are merely normal variations which naturally occur in truthful testimony.

56. It is a settled principle of criminal jurisprudence that while appreciating oral evidence, the Court is required to distinguish between □material contradictions□ affecting the core of the prosecution case and □minor discrepancies□ arising out of normal errors of observation, lapse of memory, difference in perception or passage of time. Every discrepancy is not fatal to the prosecution. Unless the contradiction is of such magnitude that it completely demolishes the substratum of the prosecution case or renders the witness wholly unreliable, the same cannot be made a ground to reject otherwise cogent evidence.

57. The doctrine that minor inconsistencies lend assurance to the truthfulness of witnesses is now deeply embedded in Indian criminal jurisprudence. Human faculties of observation, retention and narration differ from person to person. Witnesses observing a sudden and gruesome incident from different positions and under psychological stress cannot be expected to depose with photographic precision regarding every minute detail, particularly with respect to exact distances, topographical positions and sequence of movements.

58. The Court must also bear in mind that evidence is not to be appreciated in a hyper-technical manner. Criminal courts are concerned with the substance of the prosecution case and not with trivial variations which do not affect the core issue. If the broad prosecution story remains intact and inspires confidence, peripheral inconsistencies are liable to be ignored.

59. In the present case, the consistent prosecution version emerging from the evidence of the witnesses is that the accused assaulted the deceased with a kudal and thereafter the said weapon was found lying near the place of occurrence and was subsequently recovered by the police. The discrepancies pointed out by the defence relate only to the precise location where the kudal was thrown or lying, namely whether it was near the ditch, near the field boundary or inside the adjoining field.

60. Such discrepancies, in the considered opinion of this Court, are natural and inconsequential. The incident occurred suddenly and the witnesses were deposing after lapse of considerable time. Rustic villagers witnessing a violent incident cannot be expected to describe the exact geographical location of the weapon with mathematical accuracy. Slight variation regarding whether the weapon was lying near the ditch, field boundary or adjoining field does not alter the substance of the prosecution case. On the aspect of appreciation of testimony of rustic and related witnesses, learned A.G.A. has placed reliance upon ***Jugendra Singh v. State of U.P., (2012) 6 SCC 297,*** wherein the Hon'ble Supreme Court has observed that rustic and uneducated villagers cannot be expected to be precise with regard to the concept of time and, therefore, minor discrepancies regarding timing cannot be given undue importance.

61. Learned A.G.A. has further placed reliance upon ***Jaisy @ Jayaseelan v. State, (2012) 1 SCC 529,*** wherein the Hon'ble Supreme Court reiterated the settled principle that the testimony of an interested witness cannot be discarded merely on the ground of relationship. It has been held that evidence of a related witness does not suffer from any inherent infirmity and what is required is cautious scrutiny as a matter of prudence and not as a rule of law. Once the Court finds that such testimony has a ring of truth and inspires confidence, conviction can safely be based thereupon even without independent corroboration.

62. The aforesaid principles squarely apply to the facts of the present case. The prosecution witnesses are rustic villagers and minor discrepancies regarding timing, exact distances and precise location of the weapon are natural and inconsequential. Similarly, merely because the witnesses are related to the deceased, their testimony cannot be discarded when the same otherwise appears cogent, natural and trustworthy.

63. The testimony of PW-2 that he had not actually seen the accused throwing the kudal also does not create any fatal inconsistency. The witness merely stated that he had not seen the precise act of throwing the weapon, but the overall prosecution version regarding the accused being armed with the kudal and the weapon being found near the place of occurrence remains consistent throughout the prosecution evidence.

64. The law is equally settled that recovery under Section 27 of the Indian Evidence Act,1872 is merely a corroborative circumstance and not substantive evidence by itself. Even assuming that certain discrepancies exist regarding the exact place of recovery, the same would not by itself demolish the prosecution case where the ocular testimony regarding the assault is otherwise reliable and supported by medical evidence.

65. In the present matter, the recovery memo (Ext. Ka-2) and site plan (Ext. Ka-10) substantially support the prosecution case regarding recovery of the weapon from the vicinity of the place of occurrence. The defence has not been able to establish any circumstance showing that the weapon was planted or fabricated by the Investigating Officer.

66. It is also pertinent to note that criminal courts are required to adopt a common prudence while appreciating evidence. Trivial discrepancies arising out of normal human conduct cannot be elevated to the status of material contradictions so as to reject the entire prosecution case. To do so would amount to appreciating evidence in a wholly unrealistic and hyper-technical manner.

67. Moreover, in this regard the Trial Court has also rightly observed that different witnesses witnessing a sudden occurrence from different positions cannot be expected to describe the exact topographical location with mathematical precision. The broad prosecution version that the accused assaulted the deceased with the kudal and thereafter fled after throwing the same near the place of occurrence remains consistent throughout.

68. This Court, therefore, finds that the alleged contradictions highlighted by the defence are merely peripheral variations which neither affect the core prosecution case nor render the recovery

doubtful. The broad prosecution story regarding the use and recovery of the kudal remains intact and trustworthy.

69. Accordingly, the submissions advanced on behalf of the accused□appellant on this issue are liable to be rejected.

Non-Examination of Scribe of Written Report

70. Learned counsel for the accused-appellant has contended that the written report (Ext. Ka-1) was not scribed by the informant himself but by one Kunwar Bahadur Singh, who has not been examined before the Trial Court, and therefore the prosecution story becomes doubtful. It has further been argued that since the written report was allegedly drafted by the scribe according to his own understanding and language, possibility of false implication cannot be ruled out.

71. 7On the other hand, learned A.G.A. has placed reliance upon ***Hukam Singh v. State of Rajasthan, (2000) 7 SCC 490; State of U.P. v. Anil Singh, 1988 Supp SCC 686; and Himanshu Mohan Rai v. State of U.P., (2017) 4 SCC 161,*** and submitted that non-examination of the scribe of the written report is not fatal to the prosecution case when the FIR has otherwise been duly proved by the informant and the concerned police officials.

72. The contention advanced on behalf of the accused-appellant cannot be accepted. There is no requirement in law that the First Information Report must necessarily be written in the handwriting of the informant himself or that the scribe thereof must invariably be examined as a prosecution witness. In rural settings, it is a matter of common experience that written reports are often drafted by persons acquainted with writing work at the instance and dictation of the informant.

73. In the present case, the written report has been duly proved by PW-1, who clearly identified the same and supported the prosecution version contained therein. Merely because the report was written in the language or style of the scribe does not lead to an inference that the prosecution story was fabricated or concocted.

74. The Hon'ble Supreme Court in ***Himanshu Mohan Rai (supra)*** has specifically held that there is no requirement that the FIR must be in the handwriting of the informant and mere non-examination of the scribe is not sufficient to doubt the prosecution case where the FIR otherwise stands duly proved. Similarly, in ***Hukam Singh (supra),*** it has been held that the prosecution is not bound to examine each and every witness cited during investigation and the Public Prosecutor has the discretion to examine only such witnesses as are necessary for unfolding the prosecution case.

75. Furthermore, the defence has failed to establish any circumstance or provide any evidence indicating that the scribe had any animosity against the accused so as to falsely implicate him, except a bald allegation that the accused has enmity with scribe . The written report was lodged promptly and substantially corroborates the ocular version adduced before the Trial Court.

76. In view of the aforesaid discussion, this Court finds that non-examination of the scribe of the written report does not create any dent in the prosecution case and the submissions advanced on behalf of the accused-appellant on this issue are liable to be rejected.

Role of Motive in a Case Based on Direct Evidence:

77. Learned counsel for the accused-appellant has further submitted that the prosecution has failed to establish any convincing motive for the commission of the alleged offence and, therefore, the entire prosecution story becomes doubtful.

78. The aforesaid submission does not impress this Court. It is a settled principle of criminal jurisprudence that in a case resting upon direct ocular evidence, motive loses much of its significance. Motive assumes greater importance in cases based purely on circumstantial evidence, where the chain of circumstances is required to be completed by proving the reason which impelled the accused to commit the offence. However, where trustworthy eyewitness account is available and inspires confidence of the Court, absence or insufficiency of motive is not fatal to the prosecution case.

79. In the present case, the prosecution has produced ocular testimony of PW-1 and PW-2 regarding the manner of occurrence. Their presence at or near the place of occurrence stands established and their testimonies substantially corroborate the prosecution version. Merely because the prosecution could not establish a strong motive with mathematical precision, the same would not demolish the otherwise reliable direct evidence available on record.

80. Thus, in a case based on direct evidence, motive recedes into the background and assumes only secondary importance. Once the ocular testimony is found trustworthy and corroborated by medical and surrounding circumstances, failure to prove motive cannot be made a ground to discard the prosecution case.

Alleged Enmity and Plea of False Implication

81. Learned counsel for the accused-appellant has further submitted that the accused has been falsely implicated in the present case on account of previous enmity, election rivalry and village factionalism (party-bandi). It has also been argued that the deceased and his family had enmity with several persons in the village and therefore possibility of the actual assailants being someone else cannot be ruled out.

82. The law on the point is well settled that enmity is a double-edged weapon. While previous enmity may furnish a motive for false implication, at the same time it may equally provide a motive for commission of the offence. Therefore, mere existence of enmity by itself is not sufficient to discard the prosecution case unless the defence is able to establish circumstances showing that innocent persons were falsely implicated while the real culprits were deliberately shielded.

83. In the present case, except making bald allegations regarding village factionalism and election rivalry, the defence has not been able to place any cogent material on record to probabilize

the plea of false implication. No circumstance has been shown as to why the prosecution witnesses would spare the real assailant and falsely implicate the accused in a serious offence of this nature.

84. Furthermore, the prosecution witnesses are natural witnesses whose presence at or near the place of occurrence stands established from the evidence on record. Their testimonies have remained substantially consistent on the material particulars of the occurrence. Mere existence of prior enmity cannot be a ground to discard otherwise reliable ocular testimony.

85. It is also pertinent to note that false implication in a case involving brutal murder is not to be readily inferred merely on the basis of alleged village enmity, particularly when the prosecution evidence inspires confidence and finds corroboration from medical and surrounding circumstances.

86. This Court is, therefore, of the considered opinion that the plea of false implication raised by the accused□appellant is devoid of substance and does not create any reasonable doubt in the prosecution case.

Conclusion:

87. In the present case, the prosecution has successfully established the homicidal death of the deceased. The ocular testimony of the prosecution witnesses is cogent, reliable and substantially corroborated by the medical evidence on record.

88. The discrepancies pointed out by the defence are minor in nature and relate only to peripheral aspects of the prosecution case. The same do not affect the core prosecution story. The pleas relating to ante-timed FIR, false implication, doubtful recovery, non-examination of the scribe and inconsistencies in medical and forensic evidence have already been dealt with and rejected hereinabove.

89. Upon cumulative appreciation of the entire evidence on record, this Court finds that the prosecution has successfully proved the guilt of the accused-appellant beyond reasonable doubt. The learned Trial Court has rightly appreciated the evidence and no illegality or perversity is found in the impugned judgment.

90. Accordingly, the present appeal is hereby **dismissed**. The judgment and order of conviction and sentence passed by the learned Trial Court are hereby **affirmed**.

91. Since the accused-appellant, Khushi Ram, has already been released on remission on 26.01.2019, he is not required to surrender, unless wanted in any other case.

92. Pending applications, if any, shall stand disposed of.

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

94. Sri Rajesh Kumar Dwivedi, learned Amicus Curiae was appointed to represent the appellant-accused. We put on record the words of appreciation for able assistance rendered by him, therefore, we quantify the remuneration of Rs. 25,000/- for him. Let the same be paid by the concerned expeditiously.

(2026) 5 ILRA 928
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 22.05.2026

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE INDRAJEET SHUKLA, J.

Criminal Appeal No. 2275 of 2019

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

Issue for consideration

Matter pertains to whether doctrine of proportionality applicable?

Headnotes

Dying declaration- Indian Penal Code, 1860-sec. 304-B-Found voluntary, truthful and free from suspicion-Corroborated by medical and other evidence can form sole basis of conviction-conviction affirmed-life imprisonment- without assigning reasons-Doctrine of proportionality applicable- commute life imprisonment to fixed-term sentence-sentence modified to period already undergone while maintaining conviction and fine-**Appeal partly allowed**.

Case Law Cited

1. Laxman v. State of Maharashtra, (2002) 6 SCC 710.
2. Kushal Rao v. State of Bombay, AIR 1958 SC 22.
3. Khushal Rao v. State of Bombay, AIR 1958 SC 22.
4. Atbir v. Government (NCT of Delhi), (2010) 9 SCC 1.
5. Sham Shankar Kankaria v. State of Maharashtra, (2006) 13 SCC 165.
6. Ratan Lal v. State of Madhya Pradesh, (1970) 3 SCC 533.
7. Sumer Singh v. Surajbhan Singh, (2014) 7 SCC 323.
8. Manoj v. State of Madhya Pradesh, (2023) 2 SCC 353.
9. Union of India v. V. Sriharan, (2016) 7 SCC 1.
10. State of Punjab v. Prem Sagar, (2008) 7 SCC 550.
11. Ravada Sasikala v. State of Andhra Pradesh, (2017) 4 SCC 546.

List of Acts

Indian Penal Code, 1860

List of Keywords

Dying declaration; burden of proof; Corroborating evidence.

Appearances of parties

Counsel for Appellant(s) : Nand Lal Sharma, Dilip Kumar Singh, Jyoti Rajpoot, K.k.sharma, Kaustubh Singh, Manoj Kumar Yadav, Prem Shankar, Rajendra Prasad, Rakesh Kumar

Counsel for Respondent(s) : Govt. Advocate

(Delivered by Hon'ble Indrajeet Shukla, J.)

For the sake of convenience, instant judgment is divided into following parts:

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Serial No	Heading Page
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2	Case of prosecution
3	Scope of criminal appeal (Being first appeal against conviction)
4	Relevant statutory provisions and authoritative pronouncements
5	Analysis of evidence
6	Contentions raised on behalf of appellants
7	Submissions on behalf of the State
8	Conclusion
9	Proportionality of sentence

Introductory Facts

1. Embittered with the impugned judgment and order of conviction and sentence dated 05.08.2019 passed by the learned Additional District & Sessions Judge/Special Sessions Judge (Prevention of Corruption Act), Court No. 6, Lucknow, in Session Trial No. 440 of 2013 (State Vs. Sunil Kumar & others), arising out of Crime No. 119 of 2012, under Sections 498-A, 304-B of IPC and Section 3/4 of Dowry Prohibition Act, Police Station Mall, District Lucknow, instant appeal has been preferred before this Court.

2. Conviction and sentence awarded against the appellants under different penal provisions are tabulated as under:

Section 304-B IPC	Ramrati (mother in law)- Punishment for life, Sunil Kumar (husband) Babulal (father in law) -20 years rigorous imprisonment	
Section 498-A IPC	03 years rigorous imprisonment	Fine of Rs.2000/- each, in default one months additional imprisonment
Section 4 D.P.	Act 02 years rigorous	Fine of Rs.2000/- each, in

	imprisonment	default one months additional imprisonment
All the sentences, were directed to run concurrently		

Case of Prosecution

3. The prosecution story in nutshell as disclosed by first informant Santosh Kumar is, his daughter Sujata was married to one Sunil Kumar son of Babulal, native of village Kandhar Tala, Police Station Mall, District Lucknow as per Hindu rites and rituals about one and a half years prior to the occurrence. After the customary farewell for the first time, his daughter went to her in-laws house. When she came to her paternal home (maika) she told her parents that her mother-in-law Ramrati, father-in-law Babulal and her husband Sunil Kumar were asking for additional dowry in the shape of motorcycle and a fan. Owing to his poor financial condition, first informant could not fulfill the said demand. Due to social pressure, first informants daughter was again sent to her matrimonial home (sasural). A few days later, his daughter sent word to her parents with respect to harassment and demand of dowry. The first informant counselled her to stay at her in-laws home. On 13.05.2012, at approximately 10:00 AM, first informants brother-in-law (Shivdin), called him and informed that his daughter had caught fire. Her in-laws were taking first informants daughter to Civil Hospital, Lucknow. Upon receiving the information, the first informant rushed to the Civil Hospital. First informants daughter was admitted to the Civil Hospital for treatment. After admission, the in-laws fled from the hospital. The first informant and his family members were involved in treatment of their daughter. Based on information received from the Medical Superintendent, Civil Hospital, the Deputy District Magistrate/SDM, Malihabad, recorded the statement of first informants daughter (Sujata) in which, she said that on the previous day, her husband had beaten her and on the next day, her mother-in-law, father-in-law and husband poured kerosene oil upon her and set her ablaze.

4. The aforesaid information given in the shape of written complaint dated 20.05.2012 was translated into First Information Report dated 22.05.2012.

5. The injured Sujata succumbed to her injuries on 04.06.2012 at the Civil Hospital and the Inquest proceedings of the deceased were conducted on the next day i.e. on 05.06.2012. The inquest report (exhibit Ka-2) and other related documents were prepared. The dead body of the deceased was sealed and sent for the post-mortem examination.

6. The post-mortem examination on the person of deceased was conducted on 05.06.2012 at 04.30 PM by PW-4 Dr. A.K. Srivastava at Balrampur Hospital, Lucknow, exhibited as Ka-3. As per the post mortem report, the following ante mortem injuries were noticed/found on the person of deceased Sujata:-

(i) Antemortem Injury-superficial to deep septic burn present on all over the body except antsolateral aspect of R side abdomen, forehead, upper part of the face, top of the head and both soles, pus, slough, debris dead skin present in wounds. On opening and section cutting of both lungs, liver, spleen and kidney multiple pus foci seen.

7. The cause of death of the deceased as exhibited in the postmortem report has been opined as septicemia as a result of ante-mortem burn injuries.

8. The prosecution primarily relied upon the testimony of three witnesses of fact viz PW-1 Santosh Kumar (father of deceased) who is also the first informant, PW-2 Rakesh Kumar (uncle of deceased), PW-3 Sushila (mother of deceased) and also relied upon the dying declaration (exhibit Ka-12) which has been proved by PW-9 Suryanarayan Yadav (Executive Magistrate/SDM).

9. The investigation of the case was initially conducted by PW-7 Pradeep Kumar Maurya, who recorded the statements of witnesses and thereafter, the further investigation was conducted by PW-8 Rajesh Kumar Saxena, who has filed Charge-Sheet under Sections 498-A, 304-B of IPC and 3/4 of Dowry Prohibition Act against appellants-convicts vide exhibit Ka-6.

10. Learned trial Court framed charges under Sections 498-A, 304-B of IPC and 3/4 of Dowry Prohibition Act against the appellants and alternatively charge under Section 302 IPC was also framed. The accused persons pleaded not guilty and claimed trial.

11. In order to bring home the guilt of the accused persons, the prosecution has examined following witnesses:

PW 1	Santosh Kumar (first informant and father of the deceased)
PW 2	Rakesh Kumar (uncle of the deceased)
PW 3	Sushila (mother of the deceased)
PW 4	Dr. A.K. Srivastava has conducted post mortem of the deceased
PW 5	Rajesh Kumar Shukla (Nayab Tehsildar Mall Tehsil Malihabad in whose presence inquest proceedings were conducted).
PW 6	Head Constable Rajdev who is the scribe of chik FIR
PW 7	Pradeep Kumar Maurya, first Investigating Officer
PW 8	Rajesh Kumar Saxena Investigating Officer, who submitted the chargesheet
PW 9	Suryanarayan Yadav, the then SDM Malihabad, Lucknow (Executive Magistrate, who recorded dying declaration)

12. Apart from aforesaid witnesses, prosecution produced following documentary evidences, which were exhibited and proved by leading evidence as follows:

Exhibit Ka 1	Written report
Exhibit Ka 2	Inquest report
Exhibit Ka 3	Post mortem report no.1933/2012
Exhibit Ka 4	Police form challan dead body
Exhibit Ka 5	Photo of dead body
Exhibit Ka 6	Letter to C.M.O.
Exhibit Ka 7	Chik no. 98
Exhibit Ka 8	G.D. report no.33

Exhibit Ka 9	Site plan of the place of occurrence
Exhibit Ka 10	Arrest memo
Exhibit Ka 11	Chargesheet
Exhibit Ka 12	Statement of deceased/dying declaration

13. After closure of prosecution evidence, the accused persons were examined under Section 313 Cr.P.C. wherein they outrightly denied all the charges and incriminating evidence against them and claimed themselves to be innocent. Dying Declaration exhibited as Ka-12, was put as incriminating material against appellants at the stage of examination under Section 313 Cr.P.C. and upon the confrontation of the same, they again discarded it stating it to be incorrect. Appellants-convicts had filed a written statement wherein they denied any demand of dowry harassment. They stated that the deceased herself set to fire. They tried to extinguish the fire during which Babulal sustained injuries on his hand. They further stated that the FIR has been lodged against them only because they could not fulfill illegal demand of first informant.

Scope of Criminal Appeal (Being First Appeal against Conviction)

14. Before we thrash out the evidence adduced before trial Court, we would like to recollect and remind ourselves of the manner in which an appeal against conviction is required to be heard by this Court, considering the scope of jurisdiction conferred by Sections 374 and 386 Cr.P.C.

15. Further, we would like to refresh our memory by going through the observations made by the Apex Court in the case of ***Ishvarbhai Fuljibhai Patniv.State of Gujarat [1995 Supreme Court Cases (Crl) 222].*** Para-4 of the judgment reads as under:

.....On a plain requirement of justice, the High Court while dealing with a first appeal against conviction and sentence is expected to, howsoever briefly depending upon the facts of the case, consider and discuss the evidence and deal with the submissions raised at the bar. If it fails to do so, it apparently fails in the discharge of one of its essential jurisdiction under its appellate powers. In view of the infirmities pointed out by us, the judgment under appeal cannot be sustained.

16. It would also be beneficial to have a glance of judgment rendered by the Honble Supreme Court for understanding the scope and ambit of criminal appeal in the case of ***Lal Mandi, v. State of West Bengal, [1995 CRI.L.J. 2659 (Supreme Court), 2659],*** the Apex Court in para-5 of the report has given the caution to the High Court reminding its duty in the matter of hearing of appeal against conviction. It would be gainful to reproduce the observation made in para-5 of the report, extracted below:

"5. To say the least, the approach of the High Court is totally fallacious. In an appeal against conviction, the Appellate Court has the duty to itself appreciate the evidence on the record and if two views are possible on the appraisal of the evidence, the benefit of reasonable doubt has to be given to an accused. It is not correct to suggest that the Appellate Court cannot legally interfere with the order of conviction where the trial court has found the evidence as reliable and that it cannot substitute the findings of the Sessions Judge by its own, if it arrives at a different conclusion on reassessment of the evidence. The observation made inTota Singh's case,which was

an appeal against acquittal, have been misunderstood and mechanically applied. Though, the powers of an appellate court, while dealing with an appeal against acquittal and an appeal against conviction are equally wide but the considerations which weigh with it while dealing with an appeal against an order of acquittal and in an appeal against conviction are distinct and separate. The presumption of innocence of accused which gets strengthened on his acquittal is not available on his conviction. An appellate court may give every reasonable weight to the conclusions arrived at by the trial court but it must be remembered that an appellate court is duty bound, in the same way as the trial court, to test the evidence extrinsically as well as intrinsically and to consider as thoroughly as the trial court, all the circumstances available on the record so as to arrive at an independent finding regarding guilt or innocence of the convict. An Appellate Court fails in the discharge of one of its essential duties, if it fails to itself appreciate the evidence on the record and arrive at an independent finding based on the appraisal of such evidence."

17. The law mandates and casts a duty upon the appellate court for reassessment of entire evidence, so as to arrive at an independent finding regarding the guilt or innocence of a convict, thus, the testimony of witnesses of facts is reappreciated as under:

(emphasis added)

18. **PW-1 Santosh Kumar** happens to be first informant and father of deceased appeared in the witness box and deposed as under:

"I, Santosh Kumar, aged about 40 years, occupation labourer, son of Late Fakir, resident of Kushmaura, P.S. Kakori, Lucknow, do hereby state on oath as follows: My daughters name was Sujata, also known as Khushboo. I married her on 22.11.2010 to Sunil Kumar, son of Babulal, resident of Kandhar Tala, P.S. Mall, according to Hindu rites and customs. I gave dowry according to my financial capacity. After about four days of marriage, my daughter came to our house and told me, my wife, and my sons that her husband Sunil Kumar, father-in-law Babulal, and mother-in-law Ramrati were demanding a motorcycle and a fan as additional dowry. Thereafter, whenever she visited our house on different occasions such as Holi, Raksha Bandhan, and other family functions, she repeatedly informed us that her husband and in-laws were beating, abusing, and harassing her for not fulfilling the demand of a motorcycle and fan. On 18.04.2012, my daughter and her husband came to our house. On that night, my son-in-law again demanded a motorcycle and a fan from me and my wife. We told him that we had not yet repaid the loan taken for the marriage and were not in a position to fulfil the demand at that time. Thereafter, he forcibly took my daughter back with him. Later, my daughter sent information that her husband and in-laws were beating and torturing her. On 05.05.2012, I went to her matrimonial home and tried to counsel her husband and in-laws. On 13.05.2012, my brother-in-law Shivdin informed me that my daughter had been burnt and taken to the Civil Hospital. I immediately went there with my family and found her admitted in the hospital. Her in-laws had fled from the hospital. When we asked her, she told us that one day earlier her husband had beaten her, and on the next day her husband Sunil Kumar, mother-in-law Ramrati, and father-in-law Babulal poured kerosene on her and set her on fire. I got a report lodged through the village Pradhan on 20.05.2012. Later, the police also came to the hospital and recorded statements. My daughter succumbed to her burn injuries on 04.06.2012 at the Civil Hospital. The inquest proceedings were conducted there, and the post-mortem was conducted on 05.06.2012 at the Medical College. I performed her last rites. No one

from her in-laws side attended. The written report shown to me was dictated by me to the Pradhan and bears my signature after being read over to me. This statement is true and correct."

19. The testimony of PW-1 was subjected to lengthy cross examination and in his cross examination he stated as under:

"I have studied up to Class VIII. I can write Hindi and have limited knowledge of English. I work as a labourer and have no other source of income. I have two sons and one daughter, Sujata alias Khushboo, who is now deceased. I married my daughter to Sunil Kumar, son of Babu Lal, resident of Village Kandhartala, Police Station Mal, Lucknow. Before the marriage, I visited the house of Sunil Kumar and Babu Lal and found their family to be of similar financial status to mine. Accordingly, the marriage was arranged. All marriage ceremonies were completed peacefully and there was no dispute at the time of marriage or farewell. After marriage, my daughter went to her matrimonial home and stayed there for four days. Thereafter, she came to my house and stayed for about fifteen days. Later, her father-in-law Babu Lal came to take her back to her matrimonial home. At the time of marriage, Sunil Kumar and Babu Lal both worked as labourers. Sunil used to work in Lucknow and sometimes lived there with my daughter. Initially, Sunil Kumar and my daughter lived normally, though occasional quarrels took place."

20. The second witness of fact adduced by prosecution is **Rakesh Kumar** examined as **PW-2** who stated in his examination in chief that:

"My name is Rakesh Kumar, son of Late Fakire, resident of Village Kusmaur, Police Station Kakori, District Lucknow. The deceased Sujata was my niece. She was married to Sunil Kumar, son of Babu Lal, resident of Kandhar Kala, Police Station Mal. For a few days after the marriage, everything was normal. Thereafter, her husband Sunil Kumar, mother-in-law, and father-in-law started harassing her for dowry. Whenever Sujata came to her parental home, she informed us that they were demanding dowry and troubling her. We used to console her and send her back. On 13.05.2012, Sujata sustained burn injuries and was admitted to the Civil Hospital. We received information through Shivdin and immediately reached the hospital. Her in-laws were present there initially but fled shortly thereafter. On 04.06.2012, Sujata died at the Civil Hospital. The inquest proceedings (Panchayatnama) were conducted in my presence, and the document bears my signature. I identify and confirm the same."
"

21. PW-2 was cross examined by the defence which reads as under:

"Rakesh Kumar, son of Fakire, aged about 40 years, resident of Village Kushmaura, Police Station Kakori, District Lucknow, stated on oath as follows: The deceased Sujata was my niece. After the incident, I first saw Sujata at the Civil Hospital. My brother Santosh Kumar and my sister-in-law were already present there. Sujata was lying on a hospital bed and was conscious at that time. The information regarding the incident of burning was given to us over mobile phone by Shivdin. I spoke with Sunil Kumar during Sujatas treatment. A Magistrate also came to the hospital on the day of her admission. Sujata told me that her husband was demanding a car. No complaint had been filed by us earlier regarding this demand. I was not present at the time of lodging of the FIR. There was no dispute between Sunil Kumar and Sujata for about six months after the

marriage. Thereafter, I came to know that disputes had arisen between them. Sujata had informed me over the phone that Sunil Kumar had assaulted her. It is incorrect to say that Sujata consumed kerosene or committed suicide. It is also incorrect to say that this case was falsely lodged due to any conspiracy or that I am deposing for money."

22. Third witness of fact adduced by prosecution is mother of deceased namely **Sushila** examined as **PW-3** who stated before trial Court:

"Sushila Devi, wife of Santosh Kumar, aged about 35 years, resident of Village Kusmaura, Police Station Kakori, Lucknow, stated on oath as follows: My deceased daughters name was Sujata. About five years ago, I married her to Sunil Kumar, son of Babulal, according to Hindu rites and customs. Dowry was given according to our financial capacity. After the marriage, Sujata went to her matrimonial home. Thereafter, when she returned to our house, she told me that her husband Sunil Kumar, mother-in-law Ramrati, and father-in-law Babulal were demanding a motorcycle and a fan as dowry. She further told me that they used to abuse, harass, and torture her for the said demand. Whenever Sujata came to her parental home, she repeated the same complaints regarding cruelty and dowry demand. About 1015 days later, her father-in-law Babulal came to take her back. I told him about Sujatas complaints and informed him that we were not financially capable of giving a motorcycle and fan. Thereafter, after persuasion, Sujata was sent back with him. Later, in the month of Jyeshtha, at about 11:00 a.m., my brother-in-law informed me over phone that Sujata had been burnt. This incident took place about one and a half years after her marriage. My husband and I immediately proceeded there. On the way, we found that her in-laws were taking Sujata to the hospital. After getting her admitted, they fled. When I met my daughter in the hospital, she was in a serious condition."

23. The defence did not prefer to cross examine PW-3 despite opportunity was afforded, thus her statement in chief is to be read and is admissible as such.

24. In order to ascertain whether the deceased died otherwise than under normal circumstances, the consideration of testimony of **PW-4 Dr. A.K. Srivastava** who conducted the postmortem examination is expedient, who stated that after the post-mortem examination of the deceased Sujata Devi, by him, the police papers and post-mortem report were handed over to Police Constable Ramakant Pathak, Police Station Hazratganj, Lucknow. The postmortem report number of the deceased Sujata Devi is 1933/12. The deceased was approximately 20 years old. The deceased died on 4/6/2012 at 8:30 pm at Dr. Shyama Prasad Mukherjee Hospital. This is established by Exhibit Ka-3.

External Examination-

25. The body of the deceased was of normal nature, rigor mortis was present all over the body. It was difficult to ascertain the staining after death due to burns. The deceased was identified by CP 1710 Ramakant of Hazratganj police station. The eyes of the deceased were closed and the mouth was half open in the natural opening of the body. The rest was normal. The body had burn injuries. The wounds on the body were noted.

Internal Examination

26. The scalp, skull, head, neck, and breasts were normal. Body membranes including the brain coverings, pleura, pericardium, and abdominal cavity were congested. The base of skull, spine, and meninges were not opened. The esophagus and stomach were normal. The left side of the heart was empty and the right side contained blood. The teeth, tongue, and throat were intact. The Antemortem injuries included the deceased had approximately 90% burn injuries over the body. Areas spared from burns were the right lower anterior abdomen, forehead, crown of the head, and soles of both feet. Burn wounds showed peeling skin, sloughing tissue, pus formation, and septic changes extending deep into the skin. On internal dissection, the lungs, liver, spleen, and kidneys were congested, and pus was found at several places indicating infection. The stomach contained about 90 ml fluid. The small intestine contained digested food and gas, and the large intestine contained fecal matter and gas. The urinary bladder was empty. The uterus was empty and genital organs were normal.In my opinion, the cause of death was septicemia resulting from ante-mortem burn injuries. Despite the burn injuries, the deceased could have remained capable of speech before death. If the deceased had sustained kicks, fists, or stick blows, separate external injuries may not be visible due to the extensive 90% burn area. The post-mortem report of deceased Sujata Devi was prepared by me on 05.06.2012, jointly with Dr. Raghubir Srivastava, and bears our signatures.

27. PW-5 Rajesh Kumar Shukla, Naib Tehsildar Mal Tehsil, Malihabad, Lucknow was examined by the prosecution who proved inquest proceedings and after detailed cross examination nothing could elicit, which could doubt the veracity/genuineness of inquest proceedings. The said witness had stated before trial Court that Panchs were appointed and their opinion were taken, who stated that the deceased died due to burn injuries. Therefore, he concurred with the opinion of the inquest witnesses. For determination of real cause of death, the inquest witnesses including PW-5 were in favour of post mortem and for that purpose the body was sent. With respect to inquest proceedings, the said witness has stated that he and other witnesses signed the inquest report and they also signed police form, challan, photo of dead body, letter written to CMO. The said witness admitted his signatures on all forms/papers. Defence has not questioned either veracity of inquest proceedings or any police papers which were formally proved.

28. PW-6, Head Constable Rajdev, was examined by the prosecution. In his examination-in-chief, he stated that on 22.5.2012, he was posted as a Constable Clerk at the Police Station Mall, Lucknow. On that date, based on the complaint filed by the first informant-Santosh Kumar, the FIR registered vide Case Crime No. 119/2012 under Sections 498-A, 323, 307 of the Indian Penal Code, and sections 3/4 of the DP Act. As per his statement, he acknowledged and authenticated his signature on the FIR. He acknowledged the GD entry no.33 pertaining to the registration of FIR.

29. The defence cross examined the PW-6 but nothing material could come out impeaching the veracity of police papers.

30. On behalf of the prosecution, PW-7 Pradeep Kumar Maurya, the first Investigating Officer, was examined. The said witness after statement in his examination in chief, he stated that he has recorded the statement of the then injured Sujata (who later succumbed to her injuries), first

informant and other witnesses. He also proved the preparation of site plan and other police papers. In detailed cross examination, nothing could come out which may discredit the prosecution case.

31. PW-8 Rajesh Kumar Saxena, Investigating Officer, was examined on behalf of the prosecution. He stated in his examination-in-chief that on 14.7.2012, he was posted as Circle Officer, Malihabad. On that day, he received the investigation report of FIR No. 119/2012, under sections 498A, 304B of the Indian Penal Code, and sections 3/4 of the DP Act, at Malihabad police station. He proved the filing of charge sheet and the police papers filed therein. The said witness also faced lengthy cross examination but the defence utterly failed to impeach the authenticity police papers. Even before this Court nothing could be pointed out by appellant which may discredit the authenticity of police paper filed along with charge sheet.

32. On behalf of the prosecution, PW-9 Suryanarayan Yadav, Secretary, State Backward Classes Commission, Lucknow, was examined. In his examination-in-chief, he stated that on 13/05/2012, he was working as SDM, Malihabad, Lucknow. On that day, information was received from the Civil Hospital, Lucknow, through the police station, that Mrs. Sujata, wife of Sunil Kumar, was admitted to the hospital with serious burn injuries and her statement needed to be recorded. Following this information, he went to the Civil Hospital, Lucknow, and recorded the victims statement. As per testimony of said witness, the statement of victim was recorded in verbatim in her own words. His testimony further states that the victim stated that she had quarrelled with her mother-in-law and father-in-law, verbally abusing her, and that when her husband returned home, he also assaulted her and attempted to drive her out of the house. She also stated that my mother-in-law, Ramrati, poured kerosene upon her and set her ablaze, and they were demanding dowry. The victim had given this statement without any pressure. Upon looking at paper number A-7/4 in the file, the witness stated, I recorded the victims statement myself. It is in my own handwriting and bears my signature. Thus, he proved the Exhibit Ka-12 available as dying declaration.

33. The main thrust of prosecution to bring home the guilt of accused, is upon the dying declaration recorded by PW-9 Suryanarayan Yadav (Executive Magistrate/the then SDM, Malihabad). The said dying declaration has been exhibited as Exhibit Ka-12, which contains due certification by the Doctor Manoj Chaurasia, Emergency Medical Officer, Dr. S.P.M. (Civil Hospital, Lucknow).

34. The exhibit Ka-12 dying declaration of Smt. Sujata is extracted as under:

प्रदर्श क-12

Sujata 20/F W/o Sunil Kumar is Fully conscious & oriented to time place & person

Sd/-Dr. Manoj Chaurasiya

4.00 PM

13.5.12

श्रीमती सुजाता W/o सुनील कुमार निवासी ग्राम कन्धार ताला थाना माता जनपद लखनऊ ने बहलफ बयान किया कि मेरी उम्र लगभग 20 वर्ष है। घर में सास ससुर से मेरा झगड़ा

हुआ था और गाली गलौज व मार पीट किये थे। जब मेरे पति घर आये तो वे भी मारे पीटे तथा घर से निकलने लगे। मुझे मेरी सासु रामरती ने मुझे मिट्टी का तेल डालकर जलाया है ये लोग दहेज मे गाड़ी मांग रहे थे तथा आये दिन पैसे की मांग करते रहते थे। बयान मैं सत्य सत्य बिना किसी जोर दबाव के दे रहीहूँ।

बयान मेरे द्वारा लिखाया।

Sd/-Illegible
13.5.12
ह०अपठनीय
एस.डी.एम.
मलिहाबाद

Pt. was conscious & oriented during her dying declaration
Sd/-Illegible
Manoj Chaurasiya
13.5.12
EMO Dr. S.P.M. (Civil) Hospital, Lko.

35. In the present case, the defence adduced as many as three witnesses, namely Mrs. Rooprani as DW-1, Mr. Rajendra Kumar as DW-2 and Mrs. Kalawati as DW-3.

36. DW-1, Mrs. Rooprani, stated that shortly before the incident, Sunil had come to her shop. Thereafter, a child informed her that Sunils wife had set herself on fire. She rushed with Sunil to his house and saw Babulal and Ramrati trying to save Sujata. Sunil covered her with a blanket, while Babulal used a quilt to extinguish the flames, during which Babulal sustained burn injuries on his hands. She further stated that when Sujata was asked as to why she had done so, Sujata replied that she had set herself on fire and that neither her husband nor her in-laws were at fault. She also stated that Sunil, Babulal, Ramrati and other villagers took Sujata to the hospital. According to her, she had never heard of any quarrel or demand of dowry by Sunil, Ramrati or Babulal.

37. The defence examined DW-2, Rajendra Kumar, stated that Sunil was sitting at a grocery shop when a boy came and informed him that his wife had set herself on fire. Thereupon, he accompanied Sunil to the house, where they found Sujata in flames and all present persons attempted to extinguish the fire. He stated that Babulal sustained burns on his hand while saving her. Thereafter, Sujata was taken in a cart to Civil Hospital, Hazratganj, by Sunil along with his parents. He further deposed that Sujata was saying that she had set herself on fire and that none of them were at fault.

38. The defence examined the third witness, DW-3, Mrs. Kalawati, stated that Sunil and Sujata had been married about one and a half years prior to the incident. According to her, Sunil used to reside and work in Lucknow and kept Sujata with him there. She stated that she had never

heard of any dowry demand or quarrel between them. She further deposed that Sujata told her that she had set herself on fire and that no one else was responsible.

39. The undisputed factual position which emerges is, the unfortunate occurrence of ablaze took place on 13.05.2012, and the injured Sujata was hospitalized and on the same day, her dying declaration was recorded by Executive Magistrate/PW-9. The injured succumbed to her injuries on 04.06.2012 in the Hospital i.e. after about 22 days. The postmortem examination was conducted on 05.06.2012, in the meantime, FIR was registered on 22.05.2012 on the written report submitted by the first informant on 20.05.2012. The Investigating Officer filed charge sheet on 25.08.2012 under Sections 498-A, 304-B of IPC and Section 3/4 of Dowry Prohibition Act. The case was committed to the Court of Session on 27.05.2013 and thereafter, the charges were framed on 31.07.2013.

Relevant Statutory Provisions and Authoritative Pronouncements

40. The dowry death is grave social menace, Honble Supreme Court in introductory part of the judgment in the case of **Rajinder Singh Vs. State of Punjab, reported in AIR 2015 SC 1359,** has referred what made the parliament to amend the penal provisions to tackle the dowry death. Relevant introductory paragraphs reads as under:

"1. The facts of this case raises questions relating to one of the two great social evils practiced against the women of this country for centuries. In the facts presented before us, a young woman consumes pesticide having been driven to do so by repeated demands being made on her for money by the family into which she is supposed to merge her identity. Sati and dowry deaths have plagued this nation for centuries. Sati the practice of sending a widow to her husbands funeral pyre to burn in it -was first outlawed under British Rule in 1829 and 1830 ***under the Governor Generalship of Lord William Bentinck in the Bengal, Madras and Bombay Presidencies. General SirCharles Napier, the Commander-in-Chief of the British Forcesin India between 1859 and 1861, is supposed to have said tothe Hindu Priests who complained to him about the prohibition of Sati that the burning of widows is your custom but in mycountry, when a man burns a woman alive, we hang them andconfiscate all their property. Let us both, therefore, act in accordance with our national customs.***

(emphasis supplied by us)

2. It took free India many years before the Commission of Sati (Prevention) Act, 1987 was passed by Parliament setting down various offences relating to the commission of Sati and the trial of such offences by special courts. In this appeal, however, we are confronted with the other major problem, namely, dowry deaths. Parliament responded much earlier so far as the prohibition of dowry is concerned by enacting the Dowry Prohibition Act, 1961 under which minimum sentences were prescribed as penalty for the giving or taking of dowry. The specific menace of dowry deaths, however, was tackled by the introduction of a new provision in 1986 - Section 304B in he Penal Code together with another new provision Section 113B of the Evidence Act."

41. Before we test the evidence led by rival parties, it would be apposite to have brief glimpse of certain provision of substantive as well as procedural law, which would necessarily lead us to reach an appropriate conclusion.

42. In order to curb and tackle the social menace of dowry death, the legislature in its collective wisdom introduced a new provision under viz ***304 B IPC and 113-B of Indian Evidence Act.*** These two provisions read as follows:

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

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

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

***113-B. Presumption as to dowry death**. - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.*

Explanation.For the purposes of this section, dowry death shall have the same meaning as in Section 304-B of Indian Penal Code (45 of 1860)."

43. The primary ingredient to attract the offence under Section 304-B is that the death of a woman must amount to a "dowry death". Dowry has been defined under Section 2 of the ***Dowry Prohibition Act, 1961***, which reads as follows:

***"2. Definition of dowry**. - In this Act, dowry means any property or valuable security given or agreed to be given either directly or indirectly*

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation I. [***]

Explanation II.The expression valuable security has the same meaning as in Section 30 of the Indian Penal Code (45 of 1860)."

44. A perusal of the aforesaid provision shows that the definition can be broken into six distinct parts.

1) Dowry must first consist of any property or valuable security- the word any is a word of width and would, therefore, include within it property and valuable security of any kind whatsoever.

2) Such property or security can be given or even agreed to be given. The actual giving of such property or security is, therefore, not necessary.

3) Such property or security can be given or agreed to be given either directly or indirectly.

4) Such giving or agreeing to give can again be not only by one party to a marriage to the other but also by the parents of either party or by any other person to either party to the marriage or to any other person. It will be noticed that this clause again widens the reach of the Act insofar as those guilty of committing the offence of giving or receiving dowry is concerned.

5) Such giving or agreeing to give can be at any time. It can be at, before, or at any time after the marriage. Thus, it can be many years after a marriage is solemnised.

6) Such giving or receiving must be in connection with the marriage of the parties. Obviously, the expression in connection with would in the context of the social evil sought to be tackled by the Dowry Prohibition Act mean in relation with or relating to.

45. The ingredients of the offence under Section 304-B have been elaborately stated and restated in many judgments of Honble Supreme Court. There are four such ingredients and they are said to be:

(a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;

(b) such death must have occurred within seven years of her marriage;

(c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(d) such cruelty or harassment must be in connection with the demand for dowry.

46. In order to arrive at the true construction of the definition of dowry and consequently the ingredients of the offence under Section 304-B, we first need to determine how a statute of this kind needs to be interpreted. It is obvious that Section 304B is a stringent provision, enacted to combat a social evil of alarming proportions.

47. One of the essential ingredients for constitution of an offence under Section 304-B IPC is that *soon before her death the victim must have been subjected to cruelty or harassment by her husband or any relative of her husband*. This phrase soon before her death remained a matter of debate before by jurist but has been considered by the Hon'ble Supreme Court in the case of **Surinder Singh Vs. State of Haryana, reported in (2014) 4 SCC 129** had this to say:

"17. Thus, the words soon before appear in Section 113-B of the Evidence Act, 1872 and also in Section 304-B IPC. For the presumptions contemplated under these sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words soon before is, therefore, important. The question is how soon before? This would obviously depend on the facts and circumstances of each case. The cruelty or harassment differs from case to case. It relates to the mindset of people which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman. It can be giving threats of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be

actual beating or causing pain and harm to the person of a woman. Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may remain etched in her memory for a long time. Therefore, soon before is a relative term. In matters of emotions we cannot have fixed formulae. The time-lag may differ from case to case. This must be kept in mind while examining each case of dowry death.

18. In this connection we may refer to the judgment of this Court in Kans Raj v. State of Punjab [(2000) 5 SCC 207: 2000 SCC (Cri) 935] where this Court considered the term soon before. The relevant observations are as under: (SCC pp. 222-23, para 15)

"15. Soon before is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term soon before is not synonymous with the term immediately before and is opposite of the expression soon after as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a Page 22 particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be soon before death if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough."

Thus, there must be a nexus between the demand of dowry, cruelty or harassment, based upon such demand and the date of death. The test of proximity will have to be applied. But, it is not a rigid test. It depends on the facts and circumstances of each case and calls for a pragmatic and sensitive approach of the court within the confines of law."

48. In another judgment in the case of **Sher Singh v. State of Haryana, 2015 (1) SCALE 250,** Honble Supreme Court has held as under:

"We are aware that the word soon finds place in Section 304B; but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304B or the suicide under Section 306 of the IPC. Once the presence of these concomitants are established or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt. (at page 262)."

49. We respectfully endorse what has been laid down in the aforesaid decisions. Days or months are not what is to be seen. What is required to be borne in mind is that the word soon does not mean immediate before. A fair and pragmatic construction, keeping in mind the grave social evil that has led to the enactment of Section 304-B IPC would make it clear that the expression is a relative in nature. Time lag may differ from case to case. What is necessary is that the demand for dowry should not be stale, but should be the continuing cause linked with the death of the married woman under Section 304-B IPC.

50. At this stage, it is important to notice the judgment of the Honble Supreme Court in the case of **Dinesh v. State of Haryana, 2014 (5) SCALE 641** in which the law was stated thus:

"The expression soon before is a relative term as held by this Court, which is required to be considered under the specific circumstances of each case and no straight jacket formula can be laid down by fixing any time of allotment. It can be said that the term soon before is synonyms with the term immediately before. The determination of the period which can come within term soon before is left to be determined by courts depending upon the facts and circumstances of each case. (at page 646)"

51. Thus, position of law which emerges from a plain reading of judgments of Hon'ble Supreme Court is that the expression **soon before** is not synonymous with **immediately before**. This Court is conscious that the use of the word soon in Section 304-B I.P.C. ought not to be interpreted in terms of rigid periods such as days, months or years, but as necessarily should indicate that the demand of dowry should not be stale, but rather should be a continuing cause for the death. Once the presence of these concomitants is established or shown or proved by the prosecution even to their foundational effect by preponderance of possibility, the initial presumption of innocence is faded and replaced by an assumption of guilt by the deeming provision of law, thereby shifting the burden of proof upon the accused to dislodge his guilt beyond reasonable doubt as per Section 113-B of the Indian Evidence Act.

52. The learned trial court has also convicted the appellants under Section 498-A IPC, thus, before testing the veracity of evidence led before the learned trial Court, it would be germane to examine the ingredients referable to Section 498-A IPC, which deals with cruelty. The said provision reads as under:

"498A. Husband or relative of husband of a woman subjecting her to cruelty. - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation. - For the purposes of this section, "cruelty means

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

53. The ingredients of an offence to be made out under Section 498-A of IPC require that there must be cruelty inflicted upon the *woman which either drives her to commit suicide or causes grave injury to herself or lead to such conduct that would cause grave injury or danger to life, limb or health (whether mental or physical).* The second part of this provision refers to harassment with a view to satisfy an unlawful demand for property or valuable security raised by the husband or his relatives.

54. The prosecution has heavily relied upon dying declaration for bringing home the guilt of accused, thus, it is apt to extract Section 32(1) of Indian Evidence Act as under:

"(1) When it relates to cause of death.-- *When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that persons death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.*

55. The Dying Declaration Exhibited as Ka-12, has heavily been relied upon in the instant case, thus, this Court would like to be enlightened from certain authoritative pronouncements of the Honble Supreme Court governing the field of appreciation of dying declaration as an evidence.

56. We have had privilege of combing through various authorities on the subject i.e. Dying Declaration since pre independence era (time of privy council whose decision guided Indian Law pre 1950) and post independence era (after enforcement of constitution and the law declared by the Honble Apex Court) such as *Queen Empress v. Abdullah (1885 ILR 7 All 385), Pakala Narayana Swami v. Emperor (1939 PC 47), Dalip Singh & Others v. State of Punjab (AIR 1953 SC 364), Kushal Rao v. State of Bombay (AIR 1958 SC 22), K. Ramachandra Reddy & Another v. State of Andhra Pradesh (AIR 1976 SC 1994), Munnu Raja & Another v. State of M.P. (1976) 3 SCC 104 (AIR 1976 SC 2199), Sharad Birdhichand Sarda v. State of Maharashtra (AIR 1984 SC 1622), Smt. Paniben v. State of Gujarat (1992) 2 SCC 474 (AIR 1992 SC 1817), Kamla v. State of Punjab (AIR 1993 SC 374), Paparambaka Rosamma & Others v. State of Andhra Pradesh (1999) 7 SCC 695, Laxman v. State of Maharashtra (2002) 6 SCC 710 (AIR 2002 SC 2973), Atbir v. Government of NCT of Delhi (2010) 9 SCC 1, Bhajju alias Karan Singh v. State of M.P. ((2012) 4 SCC 327), Jayamma & Another v. State of Karnataka (AIR 2021 SC 2399), Irfan v. State of Uttar Pradesh (2023 SCC OnLine SC 1060), Naeem v. State of Uttar Pradesh (2024 SCC OnLine SC 237), Neeraj Kumar @ Neeraj Yadav Vs. Stateo f U.P. and others, 2025 SCC Online SC 2639, State of Himanchal Pradesh Vs. Chaman Lal, 2026 SCC Online SC 85.*

57. Thus, we are taking it an opportunity to comprehensively sum up the law on dying declarations taking into account aforesaid authoritative pronouncement as under:

(i) Dying Declaration having passed the muster of law are admissible by virtue of legal sanctity envisaged u/s 32 (1) Indian Evidence Act, such declarations being **exception to the hearsay rule** carry immense weight in criminal trials. Over the decades, the Supreme Court of

India has shaped the law on dying declarations, clarifying their admissibility, the need or absence of corroboration, and the safeguards required to ensure reliability.

(ii) The root of Dying Declaration lies in the latin maxim ***"nemo moriturus praesumitur mentire"*** (no one at the point of death is presumed to lie). Sanctity of a dying declaration comes from the grave position of the declarant. Essentially,unless there is some concrete reason to suspect the dying declaration, the court can safely rely on it alone. The declaration must be scrutinized to ensure it was not the result of tutoring, prompting or imagination, and that the victim had a clear opportunity to identify the perpetrator and was in a fit condition to speak. If a dying declaration appears suspicious or suffers from any infirmity, the court should look for corroboration and not rely on it exclusively. For example, if evidence suggests the deceased was unconscious or physically incapable of making the statement, that declaration must be discarded.

(iii) There cannot be an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The requirement of corroboration is merely **a rule of prudence**, not a mandatory legal rule. Insisting on corroboration in every case would defeat the very purpose of the statutory exception, further, lack of detail in the dying declaration is not a reason to discard it.

(iv) If a dying declaration has been recorded in a proper manner by a competent authority and the court is satisfied of its truthfulness, it is a substantive piece of evidence sufficient to sustain a conviction on its own and cannot be regarded as a weak piece of evidence.

(v) The dying declaration must pass the test of it being voluntary, coherent, and made with the declarants faculties intact. A dying declaration should be accepted if it inspires confidence after examining all the surrounding circumstances (who recorded it, when and how it was recorded, and the condition of the victim).

(vi) The omissions of detail do not invalidate a dying declaration, a statement cannot be rejected merely because it is brief or lacks particulars. In fact, brevity by itself is not a ground to doubt a statement; sometimes *"the shortness of the statement itself guarantees truth."*

(vii) The requirement of medical fitness/certificate is pitted against eye witness testimony, the consistent law is, if an eyewitness testifies that the deceased was in a fit and conscious state to make a declaration, that can override a doctors contrary opinion. The logic is that a person present at the scene may better observe the victims condition in real time than a belated medical inference.

(viii) In case of multiple dying declaration i.e. more than one dying declaration with material inconsistencies, those declarations cannot be accepted at face value without corroborative support. Specifically, if the declarationsdiffer on essential facts or implicate different individuals, the court must examine them in light of other evidence. Further the declarationsshould corroborate each other; if they do not, they must at least be consistent with the overall circumstantial and medical evidence of the case. In essence,where multiple dying declarations conflict, the benefit of doubt generally goes to the accused unless one of the versions is clearly proven true by independent evidence. This principle ensures that the prosecution cannot cherry-pick one dying statement out of several contradictory ones to secure a conviction without addressing the discrepancies.

(ix) The absence of a doctors certificate is not by itself a ground to discard a dying declaration if the circumstances otherwise indicate the victim was fit. The guiding principles emerges from Constitution Bench judgement rendered by Honble Supreme Court inthe case of ***Laxman (supra)*** which overruled the earlier dictum of Honble Supreme Court rendered in the case

of *Paparambaka Rosamma (supra).* Thus, merely not having a doctors signature or certificate at the foot of the statement will not render it inadmissible or untrustworthy.

(x) The impact of judgment rendered by five judges bench of Honble Supreme Court in the case ofLaxman(supra) on Indian jurisprudence was tosettle the law on recording procedure for dying declarations.It resolved the confusion by clarifying that adoctors certification of mental fitness is though ideal but is not a sine qua non for the acceptance of a dying declaration. What matters is that the person who recorded the statement or others present can verify the victims consciousness and clarity.

(xi) The law does not require the declarant to be under the shadow of death or expect imminent death at the time of making the statement. A statement is a valid dying declaration as long as it relates to the cause of death or circumstances leading to it regardless of whether a substantial period passed between the statement and the death.

(xii) There is no rule barring police from recording of dying declaration, however, note of caution must be observed while relying such declarations but they are not outright inadmissible.

58. Heard Ms. Jyoti Rajpoot, learned counsel for the appellants and Sri Bipul Kumar Singh, learned State Law Officer representing State.

Analysis of Evidence

59. The statement of PW-1, Santosh Kumar (father of the deceased Sujata), reflects that he stated in his examination-in-chief he stated that "I got Sujata married on 22.11.2010 to Sunil Kumar, son of Babu Lal, as per Hindu customs." His testimony is consistent with the First Information Report (Exhibit KA-1). On 13.5.2012, he received a call from his brother-in-law informing him that his daughter had suffered burn injuries and that her in-laws were taking her to Civil Hospital, Lucknow. After her admission, the appellants fled the hospital, and it was PW-1 who stayed throughout her treatment. The deceased was subjected to a post-mortem examination, which recorded that "The deceased was about 20 years of age. She died on 04.06.2012 at 8.30 p.m. in Dr. Shyama Prasad Hospital." The death occurred within two years of marriage otherwise then under normal circumstances. PW-1 Santosh Kumar made it unequivocal that his daughter had told him that her husband Sunil Kumar used to beat her and that her mother-in-law and father-in-law abused her with respect to the demand for a motorcycle and a fan.

60. The testimony of PW-1 further states that his daughter was subjected to ill-treatment at the hands of her in-laws. He then went to his daughter in-laws' house on 5.5.2012, where, he counselled his daughter Sujata's husband Sunil, and her mother-in-law and father-in-law, and advised Sujata to stay at her in-laws' house. He then returned home. On 13.5.2012, his brother-in-law Shivdin called and informed him that his daughter had caught fire and was being taken to the Civil Hospital, he stated that the deceased had stated that the three accused poured kerosene on her and set her on fire. Upon receiving this information, he arrived at the Civil Hospital with family and friends at 2:30 p.m. When he arrived at the hospital, he met the appellants at the hospital gate, after which they fled. The cross-examination further records that the deceased was lying on a stretcher at the hospital gate and that no treatment had been administered until he reached the hospital.

61. PW-2, Rakesh Kumar, stated before the trial court that "The deceased Sujata is my niece. Whenever Sujata returned home from her in-laws' house, she used to complain that the in-laws were demanding a motorcycle as dowry. They consoled Sujata and send her back, saying that everything would be fine after a few days. On 13.5.2012, all three accused together burnt Sujata." This witness is essentially a witness to the Panchnama, which has also been proved as Exhibit KA-2.

62. PW-3, Sushila, mother of the deceased Sujata, stated before the trial court that "My daughter's name is Sujata. When I met my daughter Sujata, she told me that her mother-in-law Ramrati, father-in-law Babulal, and husband Sunil were demanding a motorcycle as dowry. I counselled my daughter. My daughter also told me that her husband, father-in-law, and mother-in-law abused and harassed her with respect to the demand for a motorcycle and a fan. Whenever my daughter visited us she would tell us about the beatings and torture. Due to this very demand, my daughter's mother-in-law and father-in-law doused her with kerosene and set her on fire with the intention of killing her."

The defence did not cross-examine PW-3 Sushila, mother of the deceased Sujata on material particulars.

63. A close scrutiny of statements of all the witnesses of fact reveals that nothing material has been elicited in their cross examinationthat may impeach the credibility of the prosecution witnesses' statements. At the very least, the statements of the witnesses of fact are of corroborative value when read conjointly with the dying declaration exhibited as KA-12.

64. The post-mortem report was proved by PW-4, Dr. A.K. Srivastava, as Exhibit KA-3, who stated that "In my opinion, the cause of death was septicemia due to ante-mortem burn injuries. The extent of burn injuries in the post-mortem examination was approximately 90% burns." Despite lengthy cross-examination, his testimony cannot be impeached. He further affirmed the fitness certification appended to the dying declaration.

Contentions Raised on Behalf of Appellants

65. Learned counsel for the appellants assailed the finding of conviction returned by learned trial court raising following grounds:

66. The first and foremost submission advanced by learned counsel for appellants is that the FIR which is the foundation of prosecution case has been lodged at a belated stage as the first informant was engaged in bargaining by putting the appellant convicts to terms of paying money and since bargaining failed as such an occurrence of 13.05.2012 has been reported by means of first information report dated 22.05.2012 i.e. nearly after 9 days of delay without satisfactory explanation.

67. The contention raised by Ms. Rajpoot that the defence evidence has wrongly been discarded by learned trial court is perfunctory as on close scrutiny of all defence evidence it comes

out that none of them claimed themselves to be an eye witness account and no primacy can be attached to their testimony if pitted against dying declaration.

68. Ms. Rajpoot further submitted by impeaching the testimony of PW1 - Santosh kumar contradicting it from dying declaration that when he first visited the hospital, his daughter was unconscious and she re-gained her conscious at about 5:00 PM. However, prosecution claims that dying declaration of deceased was recorded between 4:40 PM to 4:55 PM. The record does not support the timing as alleged by Ms. Rajpoot. However, PW-1 being only literate who was under trauma having seen his daughter in injured condition cannot be expected to record the timing through his watch and any such contradiction is insignificant. Thus, the argument so raised by Ms. Rajpoot does not inspire confidence impeaching the entire prosecution story.

69. The further contention raised by learned counsel for the appellants is there are multiple dying declarations thus, no credence can be attached to exhibit Ka-12 relied as dying declaration by learned trial Court. Further, the error committed by learned trial Court is relying upon dying declaration despite the deceased was brought to the hospital with 90% burn injuries. The deceased was in state of shock and severe pain arising out of burn injuries. The deceased was administered with several sedatives and painkillers which could have compromised her state of mind by impairing her cognitive capacity.

70. Learned counsel for the appellants further submitted that there was no fitness certificate which could be proved by the examining Doctor and in addition to this, the deceased was unconscious until 5:00 PM as per the testimony of father of the deceased (PW-1). Thus, the dying declaration of the deceased cannot be relied upon and is highly doubtful reason being in absence of medical certificate.

71. Counsel for the appellants-accused pointed out that on dying declaration thumb impression has been affixed which is not possible as entire body was burnt except right side abdomen, forehead upper part of the face, top of the head and both soles, thus, the alleged dying declaration is concocted.

72. The counsel for the appellant further submitted that no material object incriminating the deceased was recovered from the crime scene.

73. The submission so raised by learned counsel for the appellants that septicemia is the cause of death which could only be said to be remote cause but there is no denial that plethora of evidence is available that septicemia has direct nexus with the burn injuries suffered by deceased as such the appellants are the author of the crime in question. It was the direct and immediate result of the death of the deceased which is not the consequence of alleged act of the accused. The deceased died after 21 days does not establish a clear plausible link between the alleged act and death being caused by the septicemia. In this respect, reliance has been placed in **Keshvalal Vs State of Madhya Pradesh**, reported in **(2002) 3 SCC 254,** it was held that where death occurs due to septicemia after days of treatment, prosecution must establish clear link.

74. The last submission raised by counsel for the appellant is with respect to quantum of sentence inter alia stating that the punishment for life awarded to mother-in-law and 20 years rigorous imprisonment to husband and father in law of the deceased by the trial Court is disproportionate and unsustainable in the eyes of law taking into the consideration that mother-in-law has already undergone more than 14 years of incarceration, while the husband and father-in-law have undergone 10 years of incarceration. Therefore, the Court must consider the mitigating factors and proportionality of the sentence awarded to the appellants.

75. No other points/grounds assailing the impugned judgment of conviction and sentence has been pressed by the counsel for the appellants.

Submissions Advanced on Behalf of the State

76. Refuting the contention of the learned counsel for the appellants, Mr. Bipul Kumar Singh, learned State Counsel submitted that the learned trial court has rightly convicted the appellants-accused in the present case after analysing evidence in detail particularly dying declaration.

77. It is submitted that PW-1 Santosh Kumar, PW-2 Rakesh Kumar and PW-3 Sushila have made clear and coherent statements that the deceased was being harassed by the appellants for dowry. The conviction of the appellants is based on evidence and the present appeal has no merit and is liable to be dismissed.

78. Learned Counsel for the State- Respondent further contends that all statutory ingredients for " Dowry Death" are fully satisfied in this case. The deceased died within seven years of her marriage other than normal circumstances. The testimonies of PW-1 (Santosh Kumar), PW-2 (Rakesh Kumar) and PW-3 (Sushila) establishes that she was subjected to cruelty and harassment in respect to the dowry demand for motorcycle and fan "soon before her death".

79. It is further contended that the deceased specifically attributed the role of pouring kerosene oil and setting her ablaze against her mother in law/appellant-Ram Rati and she was subjected to assault and cruelty accompanying demand of dowry by her husband (Sunil Kumar) and father in law (Babulal).

80. Counsel for the State further placed reliance on the dying declaration recorded on 13.05.2012. It is submitted that the statement was recorded by Executive Magistrate, it was emphasized that deceased was certified as "fully conscious and oriented" by Doctor both before and after recording of her statement. Thus, requirement of certification by medical jurist is duly satisfied.

81. Relying upon the judgment of **Naeem vs State of UP reported in (2024) 3 SCR 36,** wherein the Apex Court laid down the factors to be taken into consideration while relying on dying declaration and in the present case all statutory conditions with respect to dying declaration are fully satisfied.

82. The further submission advanced by learned counsel for the State is that the death of the deceased resulting from septicemia has direct nexus with the burn injuries which was 90% and what matters is that whether the injuries were sufficient in ordinary course of nature to cause death and if the original injury is of fatal nature it makes no difference that death is caused by the complications flowing from that injury since, casual connection is proximate as reaffirmed by the Hon'ble Supreme court in the judgment of Maniklal sahu vs state of Chhattisgarh reported in 2025 livelaw (SC) 905.

83. Having heard learned counsel for rival parties and perused the record, it comes out that the contention raised by learned counsel for the appellants that there is no explanation offered by prosecution qua delay in lodging FIR is examined in the face value of the statement of first informant, who unequivocally stated that he was involved in the treatment of his injured daughter in the Hospital, who later on succumbed to burn injuries. He has further stated that he submitted a written report on 20.05.2012 but same was not lodged by police taking sham shelter of absence of in-charge of police station and for aforesaid reasons, the police handed over the FIR to brother in law of first informant on 22.05.2012. The delay of seven days in submitting written report if examined and pitted against the mental trauma of father who was engaged in treatment of his daughter having suffered the burn injuries, the explanation of alleged delay owing to involvement in treatment appears to be plausible. The reliance placed by defence on the judgment of **Thulia Kali Vs. State of Tamil Nadu reported in (1972) 3 SCC 393** the Honble Apex Court wherein it was held that unexplained delay in lodging FIR is fatal and creates suspicion and fabrication is completely misplaced as Thulia Kalis dictum has been considered by Honble Supreme Court in the case of **Hariprasad @ Kishan Sahu Vs. State of Chhatisgarh reported in 2024 SCC Online SC 1764** and it has been held that delay in lodging FIR is not always fatal if cogent explanation is furnished by prosecution and the said authority is in the same line of Honble Supreme Courts judgment rendered in the case of **Ravinder Kumar Vs. State of Punjab reported in (2001) 7 SCC 690.** Having considered the judgments of Supreme Court qua delay in lodging FIR in the facts of present case, it comes out that there is sufficient explanation offered by none other than first informant stating that the delay was caused on first hand due to engagement in treatment and on the other hand the FIR was not lodged by police station assigning the reason of absence of In-charge Station House Officer, thus, the argument of defence that there is delay in registration of FIR cannot be applied in vacuum and the argument so raised is hereby rejected for aforementioned reasons.

84. The argument of Ms. Rajpoot that there were multiple dying declarations is an unfounded fact as prosecution has relied upon only one dying declaration i.e. exhibit Ka-12. Thus, there is neither multiple dying declaration nor any inconsistency from any other piece of evidence could successfully be pointed out by learned counsel for appellants at the same time, the certification appended on dying declaration by medical jurist which has been duly proved before learned trial Court by virtue of testimony of PW-4 cannot be doubted, thus, the fitness as certified by the Doctor for making dying declaration is to be believed by this Court and this Court cannot supplant its own wisdom by substituting the certificate of the Doctor in some other way.

85. Furthermore, for appreciation of dying declaration the statement of PW-9 the Executive Magistrate who recorded dying declaration is material evidence in which he has stated that the

deceased was in fit condition and he examined the voice whether patient was able to put thumb impression. There is no cross examination on the point with Doctor or with Magistrate that whether deceased was at the time recording of dying declaration was in condition to put a thumb impression or not and in absence of such cross examination the defence cannot derive any benefit. The counsel for the appellant submitted that no incriminating material pointing out deceased was set to ablaze was recovered.

86. The stress laid by appellantscounsel that nothing incriminating was recovered, this contention is if examined on its face value then even if it is assumed recovery of any incriminating material was not effect then such lapse can be attributed to Investigating Officer and defective investigation cannot be foundation for tendering any short of benefit leading acquittal to the appellants.

87. The counsel for the appellant has stressed and laid much emphasis that the victim was admitted to the hospital by in laws which rules out any possibility of culpability in the mind of accused rather their conduct is bona fide and same may be taken into account and their conduct of admission to hospital entitles them to have favour i.e. at least the benefit of doubt but such contention is tested on the overall evidence available on record which clearly suggest that if it is assumed that it was in laws they got the victim admitted for treatment even then they did not remain with the victim throughout her injured condition and there is no evidence that they have contributed towards expenses of treatment rather there is evidence in regard to their fleeing away from the hospital which belies the contention of appellant treating the accused appellants to be bona fide in their conduct. The attempt of admission of victim to hospital might be due to social pressure as the neighbours reached on the spot when victim was burning. The clear role assigned in the dying declaration waters down any attempt of admission to hospital in the backdrop when the appellants were impugned to have fled away from the hospital. Thus, the arguments so raised by appellants qua admission to hospital does not find favour of this Court.

88. The further contention raised by counsel for the appellant that the deceased died due to septicemia as a result of burn injuries thus, the cause of death could not directly be attributed to burn injuries rather the cause happened to be remote one. It is commonly noticed that death in case of burn injuries invariably is found due to septicemia thus, this contention is being examined in the light of judgment of Honble Supreme Court rendered in the case of Maniklal Sahu Vs. State of Chhatisgarh reported in 2025 SCC Online SC 1960, wherein the death was due to septicemia and Honble Supreme court tested ***Theory of Causation*** where death ensues after some delay.

89. The relevant paragraphs of aforementioned authority are extracted as under:

"58. Septicemia is described by the medical experts as the condition which results where the circulation becomes flooded with bacteria, either due to the failure of local defensive reactions at the site of infection or to delayed or inadequate treatment. According to the learned author, every penetrating wound except those inflicted by the surgeon is potentially infected, though a certain period elapsed before invading organisms actually establish themselves become embedded in the tissues to multiply and form toxins. [See: The Essentials of Modern Surgery by Handfield Jones and Pokitt, V Edn]

59. In one of the recent pronouncements of this Court in Prasad Pradhan v. State of Chhattisgarh, (2023) 11 SCC 320, this Court stated in paragraphs 30 and 31 respectively as under:

31. There can be no stereotypical assumption or formula that where death occurs after a lapse of some time, the injuries (which might have caused the death), the offence is one of culpable homicide. Every case has its unique fact situation. However, what is mportant is the nature of injury, and whether it is sufficient in the ordinary course to lead to death. The adequacy or otherwise of medical attention is not a relevant factor in this case, because the doctor who conducted the post-mortem clearly deposed that death was caused due to cardiorespiratory failures, as a result of the injuries inflicted upon the deceased. Thus, the injuries and the death were closely and directly linked.

(Emphasis supplied)

61. In Patel Hiralal Joitaram v. State of Gujarat, (2002) 1 SCC 22, the interval between the date of the incident when the deceased sustained burns and the date of her death was a fortnight. It was argued on behalf of the appellant therein that the death of the deceased had no direct nexus with the burn injuries as during the interregnum period some other complications cropped up as a result of which the victim succumbed. While negativizing such contention, this Court observed as under:

16. Harping on an answer given by PW 12 in cross-examination that death of the deceased had occurred due to septic learned Senior Counsel made out an argument that such septic condition could have developed on account of other causes. Mere possibility of other causes supervening during her hospitalisation is not a safe premise for deciding whether she would not have died due to the burns sustained on 21-10-1988. The cause of death can be determined on broad probabilities. In this context we may refer to a passage from Modi's Medical Jurisprudence and Toxicology, dealing with death by burns:

As already mentioned, death may occur within 24 to 48 hours, but usually the first week is the most fatal. In suppurative cases, death may occur after five or six weeks or even longer.

17. In Om Parkash v. State of Punjab [(1992) 4 SCC 212] the victim was set ablaze on 17-03-1979 and she sustained burns with which she died only 13 days thereafter. The assailant was convicted of murder and the conviction was confirmed by this Court.

18. It is preposterous to say that the deceased in this case would have been healed of the burn injuries and that she would have contracted infection through some other causes and developed septicemia and died of that on 15-11-1988. Court of law need not countenance mere academic possibilities when the prosecution case regarding death of the deceased was established on broad probabilities as a sequel to the burns sustained by her. Hence we repel the contention of the learned counsel on that score."

(Emphasis supplied)

90. The argument of learned counsel for the appellants with respect to burn injuries not being direct cause of death rather remote one, is examined by taking cue/light from judgment rendered by Honble Supreme Court in the case of Maniklal Sahu (supra) and is tested on the anvil of statement of doctor it comes out the medical jurist/doctor himself stated that the nexus between septicemia and the burn injuries cannot be ruled out. Furthermore the burn injuries of 90% were found to be sufficient for death in ordinary course of nature. Thus, the defence ought not to expect any leniency from this Court on the count of death being due to septicemia.

91. The deceased Sujata died at the age of about 20 years, within one and half years of her marriage, due to burn injuries at her in-laws' house, occurred otherwise than under normal circumstances. Thus, her statement before the Magistrate is a significant piece of evidence in connection with her death. A perusal of Exhibit KA-12 clearly shows that before recording the statement, the then Sub-Divisional Magistrate, Malihabad, Mr. Suryanarayan Yadav, had a doctor record a fitness report with respect to the victim's condition, and only after obtaining the certification of the medical jurist, he proceeded to record the victim Sujata's statement. The said dying declaration has been proved by its author, PW-9. The incident occurred on 13.05.2012, the statement was recorded on the same day, and the victim succumbed to her injuries on 04.06.2012. As such, the statement is relevant under Section 32(1) of the Indian Evidence Act. In this statement, the deceased Sujata stated that she was 20 years old and had a quarrel with her in-laws, who abused and assaulted her. When her husband returned home, he also beat her and tried to drive her out of the house. Regarding how she caught fire, she clearly stated in Exhibit KA-12: "My mother-in-law, Ramrati, poured kerosene upon me and set me ablaze. They were demanding a vehicle as dowry and were demanding money every day.

92. In the case at hand, the prosecution proved the dying declaration recorded by an Executive Magistrate having been examined as PW-9, Suryanarayan Yadav. He stated on oath before the trial court that "On that day, I received information from Civil Hospital, Lucknow, through the police station, that Mrs. Sujata, wife of Sunil Kumar, was admitted to the hospital with serious burns and her statement needed to be recorded. Following this information, I went to Civil Hospital, Lucknow, and recorded Mrs. Sujata's statement verbatim as she had narrated it. The victim stated that she had quarrelled with her mother-in-law and father-in-law, who abused her. Later, when her husband returned home, he also beat her and they tried to drive her out of the house. She further stated that her mother-in-law, Ramrati, had poured kerosene on her and set her ablaze, and that they were demanding a vehicle as dowry. The victim gave this statement without any pressure." Upon being shown Paper No. A-7/4 in the file, the witness confirmed that he had written the victim's statement in his own handwriting, which bore his signature. In this manner, Exhibit KA-12 was proved.

93. In nutshell we gathered since the foundational judgment of Honble Supreme Court qua dying declaration to be tested on the touchstone of statutory mandate contained under Section 32 (1) of Indian Evidence Act is **Kushal Rao Vs. State of Bombay reported in AIR 1958 SC 22,** wherein the contention so raised that an uncorroborated dying declaration would not be safe for conviction was repelled and it was observed that there is neither rule of law nor a prudence that dying declaration must be corroborated before it can found a conviction. The only caution is required that dying declaration should have been recorded in a proper manner by a competent authority and the court is satisfied of its truthfulness, it is a substantive piece of evidence sufficient to sustain a conviction on its own. In short, a truthful and voluntary dying declaration can suffice without independent confirmation, so long as the court is convinced of its veracity. The jurisprudence qua dying declaration since time of Kushal Raos judgment rendered in 1957 remained consistent and there is no deviation on the said legal principle.

94. We have an advantage to go through the judgment of Privy Council rendered in the case of **Pakala Narayana Swami Vs. Emperor reported in AIR 1939 PC 47** in which, the principles qua

reliability of dying declaration was summerized stating therein the statement must relates to chain of evidence having a direct connection to the actual cause of death and it has further held it is not a weak piece of evidence. If the Court is satisfied that the statement is true and voluntarily it can be the sole basis for conviction without any further corroboration, there is no absolute rule that it must be recorded by a Magistrate or in a specific format but going by the facts of case in hand the dying declaration in question exhibited as Ka-12 has been recorded by Executive Magistrate who proved its authenticity before the Court.

95. The great emphasis has been laid by defence that if there are multiple dying declarations then, it is not safe to record conviction founded on dying declarations but Honble Supreme Court has held in the case of **Puran Chand Vs. State of Haryana reported in (2010) 6 SCC 566** that if there are multiple dying declarations they must be consistent, major contradiction may lead the Court to reject them. In the case in hand prosecution has not relied upon multiple dying declaration as incriminating material but it is the brain child of defence that the statement given to the parents, to the Investigating Officer and to the Executive Magistrate are termed as multiple dying declarations but so far as any contradiction is concerned, nothing could be projected as such the argument of multiple dying declaration is absolutely of no consequence.

96. The Deceased survived for almost 22 days after the incident. Her dying declaration was recorded by PW-9 Suryanarayan yadav, the then SDM, Malihabad Lucknow, after obtaining the certificate of medical fitness from the doctor concerned. This dying declaration was proved by him. This witness is absolutely an independent witness and has no grudge or enmity against appellants to get them convicted. In the wake of aforesaid judgment of Laxman (supra), dying declaration cannot be disbelieved, if it inspires confidence.

97. On reliability of dying declaration and acting on it, without corroboration, Hon'ble Apex Court held in **Krishan vs. State of Haryana [(2013) 3 Supreme Court Cases 280]** that it is not an absolute principle of law that a dying declaration cannot form the sole basis of conviction of an accused. Where the dying declaration is true and correct, the attending circumstances show it to be reliable and it has been recorded in accordance with law, the deceased made the dying declaration of her own accord and upon due certification by the doctor with regard to the state of mind and body, then it may not be necessary for the court to look for corroboration. In such cases, the dying declaration alone can form the basis for the conviction of the accused. Hence, in order to pass the test of reliability, a dying declaration has to be subjected to a very close judicial scrutiny, keeping in view the fact that the statement has been made in the absence of the accused, who had no opportunity of testing the veracity of the statement by cross-examination. But once, the court comes to the conclusion that the dying declaration was the truthful version as to the circumstance of the death and the assailants of the victim, there is no question of further corroboration.

98. In **Ramilaben Hasmukhbhai Khristi vs. State of Gujarat, [(2002) 7 SCC 56],** the Hon'ble Apex Court held that under the law, dying declaration can form the sole basis of conviction, if it is free from any kind of doubt and it has been recorded in the manner as provided under the law. It may not be necessary to look for corroboration of the dying declaration. As envisaged, a dying declaration is generally to be recorded by an Executive Magistrate with the certificate of a medical doctor about the mental fitness of the declarant to make the statement. It

may be in the form of question and answer and the answers be written in the words of the person making the declaration. But the court cannot be too technical and in substance if it feels convinced about the trustworthiness of the statement which may inspire confidence such a dying declaration can be acted upon without any corroboration.

99. Thus, we find ourselves in complete agreement that dying declaration can be the sole piece of evidence if it is trustworthy for bringing home the guilt of accused and following principles can culled out for appreciation of dying declaration as an evidence. The corroboration of dying declaration often sought as a matter of prudence is not an absolute legal requirement. While examining the dying declaration the courts must ensure that dying declaration so relied upon must pass the following tests:

(i) It must be free from tutoring, prompting or imagination;
(ii)It must have been given voluntarily, coherent and made with declarants faculties intact
(iii) The declarant should have had a clear opportunity to observe and identify the assailants
(iv) It must have been given in fit mental state and,
(v) It ought to have been recorded properly meeting the touchstone of section 32(1) of Indian Evidence Act.

100. The rigorous judicial scrutiny of dying declaration in question, satisfactory passes the muster of all the aforementioned tests.

101. The dying declaration in the instant case is briefly but clearly worded and describes the quarrels, abuse, and assault by her in-laws. It further records that when her husband arrived, he also assaulted her, and that her mother-in-law, Ramrati, poured kerosene on her and set her ablaze. Thus, the dying declaration clearly details how the incident occurred. PW-1 Santosh Kumar, (the deceased Sujata's father), and PW-3 Sushila (the deceased Sujata's mother), also stated that Sujata had told them about the cruelty, harassment and maltreatment meted out to her in connection with demand of dowry at the hospital. Thus, the dying declaration having medical certification stands corroborated by the testimonies of witnesses of fact.

102. It is now well-settled law, since the time of foundational judgment rendered by Honble Supreme Court in the case of **Kushal Rao (supra)** and ever since the judgment rendered by privy council in the case of **Pakala Narayana Swami (supra)** till today, that where a dying declaration inspires confidence, no further corroboration is needed. In the case at hand, there is a certification by the medical jurist regarding the condition of the injured Sujata, who later succumbed to her injuries. The credibility of the Executive Magistrate, i.e., PW-9, could not be doubted by the defence. Thus, the dying declaration in this case has been sufficiently proved to bring home the guilt of the accused.

103. In the present case, the deceased died in a hospital due to burn injuries within one and a half year of her marriage. In her dying declaration, she unequivocally mentioned the cruelty and torture she had suffered in connection with a demand for dowry. The dying declaration further

shows that the abuse and torture took place shortly before her death. Corroborating evidence of all these facts is available in the testimony of PW-1 and PW-3.

104. It is needless to mention that Section 113-B of the Indian Evidence Act, 1872 mandates the court to presume dowry death in cases where there is evidence of dowry demand and harassment, attracting Sections 304-B and 498-A of the Indian Penal Code. The presumption envisaged under Section 113B of Indian Evidence Act is rebuttable one but appellants utterly failed to discharge the reverse burden cast upon them by aforesaid statutory prescription as in the present case statement under Section 313 Cr.P.C. , accused Ramrati stated, "We were not in the house when Sujata set herself to fire. We came in after hearing the noise. I was outside applying mud to the wall." Accused Babulal stated, "Sujata set the fire herself. We saved her. In the process, my left hand was burned. The case arose only because her family's inability to pay the money." Accused Sunil, in his statement under Section 313 of the CrPC, said, "Ramavatar's house is near my house. On the day of the incident, there was an argument between Ramavatar's wife and Sujata, and in a fit of rage, Sujata set herself on fire. My in-laws were demanding Rs. 1.5 lakh for not filing a case. I did not pay, hence the case was filed." In the present case, the evidence presented by the defence does not appear natural or sufficient to rebut the statutory presumption beyond reasonable doubt.

105. The legislative intent behind the enactment of Section 113-B of the Indian Evidence Act represents a profound shift in our criminal jurisprudence. Generally, this departure from the traditional maxim of the burden of proof rests upon him who affirms is deeply rooted in the doctrine of special knowledge and the compelling socio-legal necessity to pierce the veil of domestic privacy.

106. It is a grim reality that dowry deaths typically occur within the "four corners of the house," a domain characterized as a private sanctuary where the husband and his relatives exercise near-total dominion. In such a setting, the State recognizes a systemic evidentiary vacuum. In these private,hidden crimes, the victim is often dead, leaving behind no external witnesses other than the perpetrators themselves.

107. Consequently, the law justifies the imposition of a reverse burden of proof on the premise that the circumstances surrounding the death are uniquely within the exclusive knowledge of the accused. It is, therefore, both logically sound and morally imperative that the onus shifts to the occupants of the household to offer a cogent explanation.

108. Another important aspect of the defence case is that the statements of the defence witnesses do not match the statements of the accused recorded under Section 313 of the CrPC. Accused Sunil alleged that there was dispute between his neighbour Ramavatar's wife and Sujata, and stated that it was for this reason that Sujata set herself on fire. However, this fact is not mentioned in the statements of the other two accused or in the defence evidence at all. Thus, the defence's attempt to explain the circumstances of Sujata's death is entirely contradictory to the deceased's dying declaration.

109. The Hon'ble Supreme Court has also expressed its view in **Ramakant Mishra alias Lalu & Others v. State of Uttar Pradesh, (2015) 3 SCC (Crl.) 503**, that under Section 113-B of the

Indian Evidence Act, in such cases, the burden of proof falls on the accused to prove their innocence.

110. The accused persons have examined three witnesses in their defence. DW-1 Smt. Roop Rani is neighbour of the appellants who in her statement has stated that at the time of incident accused-appellants were trying to extinguish the fire and accused appellant Babulal's hands got burnt while extinguishing the fire. DW-2 Rajendra Kumar is also neighbour of the appellants and has reiterated the version of DW-1. He further stated that appellants with the help of his 'Dala'(cart) have admitted the deceased at Civil Hospital, Hazaratganj, Lucknow and also stated that wife of Sunil was saying that she set herself on fire. It is not their (appellants) fault. DW-3-Smt. Kalawati is also the resident of same village. She stated that she never heard about the demand of dowry or any harassment by the deceased. She further stated that Sujata herself said that she set herself on fire and there is no fault of anyone else.

111. The defence version that appellant convict Babulal endeavoured to save the deceased by extinguishing the fire does not inspire confidence in absence of any medical examination as he had ample opportunity to get himself medically examined as appellant no.3 Babulal accompanied the deceased while reaching to Civil Hospital, thus, absence of medical examination of Babulal establishing burning of his hand in the incident goes against the defence version.

112. When the dying declaration is weighed against the tetsimonies of the three defence witnesses, it emerges that none of them witnessed the manner and mode in which the deceased sustained the burn injuries. They are not eyewitnesses to the incident, though they have attempted to establish an alibi in favour of Sunil Kumar (the husband) by showing his presence at the grocery shop of one Sitaram. The statements of these defence witnesses are not of unimpeachable character, and when pitted against the dying declaration proved by the concerned Magistrate, their testimonies cannot be given any primacy, particularly in the backdrop of this case, where none of the defence witnesses claims to be an eyewitness. It is noteworthy that DW-2 himself stated that the deceased was in a condition to speak, which finds corroboration to the fitness certificate appended on the dying declaration by the medical jurist giving all the reason for the Court to believe upon the dying declaration and the learned trial Court has considered the dying declaration in correct perspective.

Conclusion

113. Having marshalled the evidence led by the parties before learned trial Court and having taken an overall view of the matter, including statutory prescriptions envisaged in the penal provisions and the legal requirements necessary to establish offences falling under Sections 304-B and 498-A of the I.P.C. with the aid of Section 113B of the Indian Evidence Act to be conclusively proved against the appellants, **Accordingly the conviction as recorded by learned trial Court do not call for any interference and same is maintained. Thus, is hereby affirmed.**

Proportionality of Sentence

114. The custody certificates of appellants dated 02.02.2026 having been produced before this Court reflect that appellant no.1-Ramrati has served total incarceration of 15 years 03 months and

18 days, appellant no.2 Sunil Kumar has served total incarceration of 10 years 5 months and 10 days whereas appellant no.3 Babulal has suffered incarceration of 09 years 03 months and 14 days.

115. This Court now proceeds to consider and examine the proportionality of sentence awarded to the appellants commensurate to the offence, in view of evidence led by parties and the prayer of leniency qua sentence is again examined in the light of certain authorities of Honble Supreme Court which governs the field, with respect to sentence particularly life imprisonment in relation to Section 304-B IPC (major penal provision). The penal provision under Section 304-B provides, Courts could award sentence in exercise of its discretion between seven years to life imprisonment, depending upon the facts and circumstances of each case, thus, the minimum sentence provided is not less than 7 years and the extreme punishment is life imprisonment. The extreme penalty of life imprisonment in cases of section 304-B is not imposed as a matter of course, but only in rarest of rare cases.

116. The question of sentence in penal provision such as under Section 304-B IPC came for consideration of Honble Supreme Court in the case of **Hem Chand Vs State of Haryana, reported in (1994) 6 SCC 727,** wherein the Trial Court had awarded life imprisonment to the accused under Sections 304-B read with 498A I.P.C., however, the Honble Supreme court reduced the sentence to 10 years and held as under:

"7. Now coming to the question of sentence, it can be seen that Section 304-B IPC lays down that:

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

117. This Court is faced with the question whether the extreme punishment of imprisonment for life is warranted in the circumstances of instant case.

118. The culpability/guilt under Section 304-B IPC is primarily dependent upon presumption under Section 113-B of the Evidence Act. Unlike section 302 IPC, the convection under Section 304-B IPC do not require direct or circumstantial evidence but almost in every case the presumption as casts by virtue of 113-B of Indian Evidence Act is the foundation, though such presumption remains rebuttable one, but again the million dollar question is can a person be convicted for throughout life based on presumption cast by law and for this reason the sentence of life imprisonment as envisaged under Section 304-B IPC is for rarest of rare cases and not in every case. The phrase rarest of rare case used for section 302 IPC, cannot be compared to be or given same meaning when offence under Section 304-B IPC is tried with. It is profitable to have glimpse of ratio laid down in the case of **Hariom Vs. State of Haryana reported in (2014) 10 SCC 577**, wherein the Honble Supreme Court examined the possibility of alteration of sentence in proportion to the gravity of crime. The relevant paragraphs of aforementioned judgment with respect to award of sentence are extracted as under:

"16. Now, the question arises as to whether we should reduce the appellant's sentence and if so, to what extent, as urged by the learned Senior Counsel for the appellant.

17. This issue has been the subject-matter of debate before this Court in several cases, which arose out of Section 304-B read with Section 498-A and wherein this Court while interpreting the expression may occurring in Section 304-B IPC held that it is not mandatory for the Court in every case to award life imprisonment to the accused once he is found guilty of the offence under Section 304-B. It was held that the Court could award sentence in exercise of its discretion between seven years to life imprisonment depending upon the facts of each case. It was held that in no case it could be less than seven years and that extreme punishment of life term should be awarded in rare cases but not in every case.

18. In Hem Chand v. State of Haryana [(1994) 6 SCC 727 : 1995 SCC (Cri) 36 : AIR 1995 SC 120] , the courts below had awarded life term to the accused under Section 304-B read with Section 498-A but this Court reduced it to 10 years. This was also a case where the accused was a police officer who had suffered life imprisonment. This Court held as under: (SCC p. 731, paras 7-8)

7. the appellant-accused was a police employee and instead of checking the crime, he himself indulged therein and precipitated in it and that bride-killing cases are on the increase and therefore a serious view has to be taken. As mentioned above, Section 304-B IPC only raises presumption and lays down that minimum sentence should be seven years but it may extend to imprisonment for life. Therefore awarding extreme punishment of imprisonment for life should be in rare cases and not in every case.

8. Hence, we are of the view that a sentence of 10 years' RI would meet the ends of justice. We, accordingly while confirming the conviction of the appellant under Section 304-B IPC, reduce the sentence of imprisonment for life to 10 years' RI.

19. Similarly, this Court in State of Karnataka v. M.V. Manjunathegowda [(2003) 2 SCC 188 : 2003 SCC (Cri) 467] , while convicting the accused under Section 304-B awarded 10 years' imprisonment in somewhat similar facts.

20. Recently, in G.V. Siddaramesh v. State of Karnataka [(2010) 3 SCC 152 : (2010) 2 SCC (Cri) 19] , this Court while allowing the appeal filed by the accused only on the question of sentence altered the sentence from life term to 10 years on more or less similar facts. Hon'ble H.L. Dattu, J. (as His Lordship then was) speaking for the Bench held as under: (SCC p. 160, para 31)

31. In conclusion, we are satisfied that in the facts and circumstances of the case, the appellant was rightly convicted under Section 304-B IPC. However, his sentence of life imprisonment imposed by the courts below appears to us to be excessive. The appellant is a young man and has already undergone 6 years of imprisonment after being convicted by the Additional Sessions Judge and the High Court. We are of the view, in the facts and circumstances of the case, that a sentence of 10 years' rigorous imprisonment would meet the ends of justice. We, accordingly while confirming the conviction of the appellant under Section 304-B IPC, reduce the sentence of imprisonment for life to 10 years' rigorous imprisonment. The other conviction and sentence passed against the appellant are confirmed.

21. Applying the principle of law laid down in the aforementioned cases and having regard to the totality of facts and circumstances of this case, we are of the considered opinion that the ends of justice would meet, if we reduce the sentence of the appellant from life imprisonment to that of 10 years. In our view, this case does not fall in the category of a rare case as envisaged by this Court so as to award to the appellant the life imprisonment. That apart, we also notice that while awarding life imprisonment, the courts below did not assign any reasons.

22. The learned counsel for the State and the complainant were not able to cite any authority in support of their submission except to oppose the prayer made by the appellant. Therefore, we are not impressed by their submission.

23. In the light of the foregoing discussion, the appeal succeeds and is allowed in part. The conviction of the appellant Hari Om (A-1) under Section 304-B read with Section 498-A IPC is upheld. However, the sentence (life imprisonment) awarded to the appellant is altered and accordingly, is reduced to 10 years' rigorous imprisonment. To this extent, the impugned judgment [Hari Om v. State of Haryana, Criminal Appeal No. 190 of 2004, decided on 14-5-2010 (P&H)] stands modified."

119. The proposition of law qua awarding life sentence under Section 304-B IPC was also examined by the Honble Supreme Court in case of **State of Karnataka Vs M.V Manjunathe gowda & Anr. reported in (2003) 2 SCC 183**; and **G.V. Siddaramesh vs State of Karnataka, reported in (2010) 3 SCC 152;** wherein in both the cases the life term was reduced to 10 years.

120. The question whether the sentence of imprisonment for life can be converted into a fixed term sentence and in this regard we would like to go through the ratio of law laid down by Constitutional Bench of the Honble Supreme Court, rendered in the case of **Union of India v. V. Sriharan, reported in (2016) 7 SCC 1** where Honble Supreme Court dealt with issue as to whether imprisonment for life in terms of Section 53 read with Section 45 of the I.P.C. means imprisonment for the rest of the life of the convict or the same can be reduced. The Constitutional Bench after referring to the various precedents, including **Swamy Shraddananda (2) v. State of Karnataka, reported in (2008) 13 SCC 767;** has answered the same in paragraph nos. 104 and 105 of the said judgment i.e. V. Sriharan (Supra), in the following words:

"104.That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed."

"105.We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court."

121. The Honble Supreme Court reiterated the said principle in the case of **Shiva Kumar v. State of Karnataka, reported in (2023) 9 SCC 817;** after considering both of the aforementioned judgments of V. Sriharan (Supra) and Swamy Shraddananda (Supra); wherein it has held that Constitutional Courts may, even under capital punishments is not in issue, impose a fixed term sentence of more than fourteen years in place of an ordinary life sentence, subject to the mandate of Section 433-A CrPC.

122. In the present case, this Court does not find any plausible reasons recorded by the learned Trial Court as to why the maximum punishment of life imprisonment had been awarded to the appellants. There can be no dispute that the crime committed is one of the most heinous and grave crime and does not call for any leniency. At the same time, sentencing must remain guided by judicial principles of proportionality and individual culpability.

123. Sentence awarded under Section 498-A of IPC and Section 4 of Dowry Prohibition Act having been suffered by appellants calls for no interference.

124. Thus, taking cue from Constitutional Bench judgment of Honble Supreme Court rendered in the case of **V. Sriharan (Supra),** as later clarified in the case of **Shiva Kumar (Supra),** this Court being a Constitutional Court derives authority to commute the sentence of life imprisonment to a fixed term sentence.

125. In view of ratio laid down by Honble Supreme Court in the case of **M.V. Manjunathe Gowda (supra)** and **Hariom (supra)** and keeping the complicity of Ramrati into account, the sentence of imprisonment for life is commuted to the sentence she had already undergone. Similarly, the sentence awarded to other two appellants namely Sunil Kumar and Babu lal are also modified from 20 years rigorous imprisonment to the period they have already undergone.

126. The appellant no.1 shall be released forthwith if not wanted in any other case. The appellant no.2 and 3, who are on bail, need not to surrender and their bail bonds are discharged.

127. However, entire amount of fine awarded by trial Court shall be deposited by appellants within two months from today. Otherwise default sentence shall remain intact and be served by appellants-convicts.

128. **Consequently, the present appeal is allowed to the aforesaid extent only.**

129. The appellants shall comply with provisions enshrined under Section 437A Cr.P.C.

130. Record and proceedings along with copy of this judgment be sent back to the trial Court forthwith for compliance.

(2026) 5 ILRA 962
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 19.05.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE PRASHANT MISHRA-I, J.

Criminal Appeal No. 5319 of 2021
Along with
Criminal Appeal No. 5365 of 2021 and 5307 of 2021

Yogesh **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

Matter pertains to legality of conviction order in case of faulty investigation and when prosecution fails to prove its case beyond reasonable doubt.

Headnotes

Murder-motive and presence not proved-Indian Penal Code, 1860 -Ss. 302/34 - firing done inside the college campus arising out of some enmity owing to some land dispute - presence of PW-1 father and PW-2 nephew, claiming to be eye-witnesses, at the site doubtful- contradiction in the statements of PW-1, PW-2 and DW-1 -other two eye-witnesses Vimal and Jugendra never produced in the witness box - distance given in the first information report and the inquest report differed- first information report ante timed -no test identification parade done and accused never identified in the court by PW-1 or PW-2 - deceased not proved to be a student- motive of dispute not proved- no document shown to the accused under Section 313 Cr.P.C. - prosecution utterly failed to prove its case beyond all reasonable doubt- conviction set aside. **Appeals allowed.**

Case Law Cited

1. Tukesh Singh v. State of Chhattisgarh, 2025 AIR SC 2666
2. Jagdeo Singh v. State, (1979) Cri LJ 236
3. Shyama Charan v. State of U.P., 1984 All LJ 1303
4. Amrik Singh v. State of Punjab, (2022) 9 SCC 402
5. Bollacaram Pedda Narsi Reddi v. State of Andhra Pradesh, (1991) 3 SCC 434
6. Gireesan Nair v. State of Kerala, (2023) 1 SCC 180
7. Brahm Swaroop v. State of U.P., 2011 Cri LJ 306
8. Rana Partap v. State of Haryana, AIR 1983 SC 680
9. Amit v. State of Uttar Pradesh, 2012 Cri LJ 1791
10. Dayal Singh v. State of Uttaranchal, 2012 Cri LJ 4323
11. Jai Narain v. State of U.P., 2000 Cri LJ 3808
12. Dhanaj Singh v. State of Punjab, (2004) 3 SCC 654

List of Acts

1. The Indian Penal Code, 1860
2. The Code of Criminal Procedure, 1973

List of Keywords

Firing ;country made pistol; presence at site doubtful; test identification parade; hearsay evidence; name of father not in F.I.R. ; documents not exhibited and proved; sloppy investigation.

Appearances of parties

Counsel for Appellant(s) : Arya Suman Pandey, Ashutosh Singh, Ayush Mishra, Rajiv Lochan Shukla, Saurabh Pandey, Sunil Kumar Misra, Suresh Chandra Pandey Counsel for Respondent(s) : G.A.

(Delivered by Hon'ble Siddhartha Varma, J.
&
Hon'ble Prashant Mishra-I, J.)

1. Heard Sri V.P. Srivastava, learned Senior Advocate assisted by Ms. Neeja Srivastava, learned counsel for the appellant in Criminal Appeal No. 5307 of 2021; Sri Sagheer Ahmad, learned Senior Advocate assisted by Sri Tripurari Pal, learned counsel for the appellant in Criminal Appeal No. 5365 of 2021 and Sri Suresh Chand Pandey along with Sri Saurabh Pandey, learned counsel for the appellant in Criminal Appeal No. 5319 of 2021; Sri Naseeruzzaman, learned counsel appearing for the informant and Sri C.B. Dhar Dubey, learned A.G.A. for the State were extensively heard.

2. These three Criminal Appeals have been filed by the three convicted accused persons namely Roby @ Sanjeev Kumar, Raghvendra @ Kaalu and Yogesh against the judgment and order dated 24.09.2021 passed by the Sessions Judge, Aligarh in Session Trial No. 109 of 2003 arising out of Case Crime No. 307 of 2002, under Section 302/34 of I.P.C., Police Station ' Gandhi Park, District ' Aligarh. A fine of Rs. 20,000/- had also been imposed and they had to go additional rigorous imprisonment for six months in default of the payment of fine.

3. Upon an incident that had occurred on 27.04.2002 at around 07:00 AM, a first information report was lodged at 07:45 AM by one Balveer Singh, Advocate R/o Press Colony, Police Station Civil Lines, District Aligarh alleging that on 27.04.2002 in the morning, he had gone to drop his son Sanjeev Chaudhari at Dharm Samaj Mahavidyalaya (hereinafter called the D.S. Mahavidyalaya) on his Maruti car (UP 81 D 7155). He had stated that it was the last paper of the B.A. final year and that along with him his nephew, Ramesh, Vimal and Jugendra, had also accompanied him. He had stated in the first information report that when at 07:00 AM they had reached the D.S. Mahavidyalaya gate then his son got out of the car and went inside the college. At that moment Roby @ Sanjeev Kumar son of Bhupendra Singh, Kaalu son of Shailendra and Yogesh son of not known to the complainant, were waiting inside the college and they, from their country made pistols with an intention to kill the son of the applicant Sanjeev Chaudhari, fired upon him. It has been stated that because of the firing done on the son of the complainant, he died on the spot. This incident, he had stated, he had himself seen and was also witnessed by the persons who were accompanying him in the car. He had also given the motive for the firing that the three

assailants because of some enmity owing to some land dispute etc. had committed the murder. He had stated that the dead-body of his son was lying at the spot and he had prayed for action.

4. Upon having lodged the report, police had got into action and from the spot in question recovered one live cartridge of 315 bore and one country made pistol of 315 bore from the pocket of the pant (jeans) worn by the deceased, Sanjeev Chaudhari. A description of the pistol was also given. From the right pocket of the pant, three cartridges of 315 bore were also recovered. The 315 bore pistol alongwith the four cartridges were recovered and sealed and also a recovery memo of them was prepared as Exhibit Ka-9. From the spot, where the dead-body was lying, the plain soil and the soil which had blood stains was collected and recovery memo of it was prepared as Exhibit Ka-3. From the possession of the deceased, one pen of Renault (white colour) was also recovered. An empty cartridge of 315 bore which was found at the site was also recovered and the recovery memo of the pen and the cartridge was prepared as Exhibit Ka-4. The inquest report (panchayatnama) was also prepared. The proceeding of the panchayatnama commenced at 08:55 AM and was completed at 10:45 AM. The witnesses of the panchayatnama were Narendra Singh, Satish Singh, Ram Bhool, Karan Pal Singh and Ravindra Pal Singh. Upon the preparation of the panchayatnama, the dead-body along with all the required documents was sent for post-mortem immediately at 10:45 AM. For the post-mortem, it is evident, that the body reached the Office of the Reserve Inspector at 03:40 PM. Thereafter, it reached the hospital where the post-mortem had to be conducted at 04:10 PM. Upon the conclusion of the investigation, charge-sheet was submitted by the police on 28.05.2002 and thereafter the court framed charges against the accused persons namely Roby @ Sanjeev Kumar, Raghvendra @ Kaalu and Yogesh. Charges were read out to the accused persons and when they denied the same, trial commenced.

5. From the side of the prosecution, as many as five witnesses were produced. PW-1 and PW-2 were the witnesses of fact.

6. The PW-1, Balveer Singh, was the father of the deceased. He, in his statement-in-chief, had submitted that he practiced in Aligarh Civil Court as a lawyer and that at the time of the incident his son, Sanjeev Chaudhari, was appearing as a student in the D.S. Mahavidyalaya for the final year exam. On 27.04.2002, he had stated that he had taken his son, Sanjeev Chaudhari, in his Maruti car (UP 81 D 7155) from his house at Press Colony to the college in the morning. Accompanying the father and the son was the real nephew of Balveer Singh, Ramesh. Other family members namely Vimal and Jugendra also accompanied the PW-1. He had stated that when he had reached the College D.S. Mahavidyalaya at 07:00 AM, his son got out from the car and went inside the gate of the college. He had further stated that he, alongwith the three persons who had accompanied him, was watching the son of the applicant, Sanjeev Chaudhari, going inside the college. He further stated that at the moment when his son Sanjeev Chaudhari had entered the gate and had walked a little distance inside the college, Roby @ Sanjeev Kumar, Raghvendra @ Kallu and Yogesh were waiting for his son, Sanjeev Chaudhari. They fired upon his son with their country made pistols and because of the injuries sustained by Sanjeev Chaudhari by the firing, he fell down and died on the spot. He had stated that the entire incident had been seen by him and the accompanying persons. He thereafter shouted for help and all the accused persons ran away. He had very categorically stated that the accused had enmity with his son because of some plot of land and therefore they had killed him. Continuing with his statement, he told in detail about the first information report lodged at the

Police Station Gandhi Park. Also the details of the dates was given by him. He looked at the tehrir and stated that it was that very document which he had written and had signed upon. He had thereafter stated that the accused persons were criminals who had earlier also committed various crimes and cases against them were going on. In his cross-examination, he had stated that he had been practicing since 1980 and that he was satisfied with his profession. He had thereafter stated that he could not with certainty say that all his clients were satisfied with him. However, he prepared all his cases earnestly. He had stated that on the preceding two occasions when the examination of his son was going on, he had gone to drop him. He had stated that his son had told him about the enmity with the accused persons and that was the reason he accompanied him to the college. He had stated that whenever he used to go to the college, he was always accompanied by some acquaintance or by his family members. On that day also he was accompanied by the relatives. Before the last paper, his son had already appeared in all the papers on the scheduled dates from 07:00 AM to 10:00 AM. He had stated that at the relevant point of time his son did not have any license to carry firearm. None of the family members also had any license to carry firearms. The nephews who had accompanied him did not stay with him at Aligarh. As and when they were required they were called by phone. Prior to the date of incident, he had called them and they had reached at 06:00 PM in the previous evening. Jugendra was the son of his real brother-in-law (sala). He had also reached the house one day prior to the incident. At the time of the incident, PW-1 was staying in mohalla Press Colony, Police Station Civil Lines, District Aligarh. He had stated that even though the accommodations in the Press Colony were given to government employees, because of some acquaintance he was staying there. The house in which he was staying had only two small rooms. At the time of the incident, he along with his wife and three sons was staying there. On the night preceding the day when the incident had occurred, in the quarter there were eight members. He had very categorically stated that Sanjeev Chaudhari did not have any country made pistol or cartridges and that on the date of incident also he did not have any firearm or cartridges and that only after the panchayatnama, he came to know that from the possession of his deceased son a country made pistol and cartridges were recovered. Apart from the country made pistol and cartridges, one mobile phone, one pen, one gold chain and one purse were the articles which were recovered. He had stated that he had no knowledge of the fact that as to whether any identity card or admit card was recovered from the possession of his son. He had stated that it was not correct that before the examination commenced, the answer books were given to the students 15 minutes prior to the commencement of the exams. When he had reached the college only 2 to 3 motorcycles were parked outside the gate of the college. He had further stated that the entire gate was open on the date of incident. There was a Post Office on one side of the gate and on the other side there was a branch of the State Bank. At the time of the incident, there was no college staff or police personnel present. He had stated that he had parked his car absolutely at the gate of the college. All the motorcycles and scooters which were parked at the gate were so parked on the Eastern side. He had stated that he had reached the college from the Western side. The road running in front of the college was the G.T. Road and it was running from East to West direction. He had stated that upon reaching the college he had parked his car in the North-South direction and that the car was facing the gate. He had stated that he along with his companions had got out of the car and they were all standing against the car. This they had done for only 2 to 3 minutes. He had very categorically denied the suggestion that it was difficult to see the place of incident from the place where they had parked their car and at that relevant point of time many students were entering and exiting the college. He had stated that he had seen the accused from

around 35 to 36 paces. Before the incident had occurred, he had not raised any hue and cry. However after the firing was done, he had raised a lot of hue and cry along with the companions who had accompanied him. Because of the shouting which was done by him and his companions, one or two persons had stopped on the road. At the time of the firing, no police personnel had reached the college. He had stated that the accused persons had run away from the same gate where he along with his companions had arrived. He along with his companions had tried to apprehend the accused persons. However, they could not do so as they were in possession of country made pistols. He had further stated that the accused had not fired upon him or his companions. The fact that he along with his companions had tried to apprehend the accused and that they had run away by flaunting their country made pistols was not mentioned in the first information report. He had stated that the Investigating Officer had taken his statement after the first information report was lodged.

7. The cross-examination continued on 27.08.2010. He had stated upon a question being put to him as to whether the accused were at the gate when he had reached, he had replied that none of the accused was at the gate. He had further stated that his statement under Section 161 of Cr.P.C. which was got recorded that the accused persons were sitting inside the college and were waiting for his son to come, was correct. He had stated that when his son (deceased) after coming out of the car had started going towards the college and when the accused had fired upon him then, he had seen the accused persons for the first time. He had stated that he along with his companions had seen the incident while standing beside the car. He had stated that he had not given any statement to the effect that he along with his companions who were sitting inside the car had seen the accused properly and had recognized them. How that statement was recorded by the investigating officer was not known to him.

8. In the further cross-examination, he had stated that he originally belonged to Village Usrah Rasoolpur, Police Station Tappal. He had stated that Roby @ Sanjeev Kumar belonged to Village Kalai, Police Station Harduaganj and resided 60 kilometers away from his village. Village Kalai where the accused Roby @ Sanjeev Kumar lived, was at a distance of around 15 kilometers from Press Colony. He had further stated that he had come to know about the enmity between his son and Roby @ Sanjeev Kumar, one of the accused, 15-20 days prior to the date when the incident had occurred. He, however, stated that he had never thought that the enmity between the children would result in the death of his son and he had never reported the matter anywhere. While continuing with his statement, he testified, he used to accompany his son simply because he was afraid that children might not fight on the way. He had further stated that against his son, there were few cases pending and that in them some compromises had been arrived at. He however stated that he had no knowledge that any criminal case was pending in any court of law. Further upon a question being asked that he had got his son bailed out then he had answered that in one or two cases he had got him bailed out. He then had stated that he had no knowledge of the fact that against his son in the year 2001 in Police Station Civil Lines, three cases under Section 307 of I.P.C. were registered. He had also stated that he had no knowledge that in the year 2000 a case under Sections 147/342/323/506 of I.P.C. had been got registered at Police Station Civil Lines. He had thereafter stated that he had also no knowledge that in the year 2002 a case under Section 307/504/506 had been got registered against his son. About the other case which was pending at the Police Station Quarsi under Section 307 of I.P.C., he had stated that the same was not known to him.

9. He had thereafter continued to face the cross-examination and he had stated that he had no knowledge of the fact that in Harduaganj his son had any partnership with regard to some liquor establishment. At the Ramghat road there was some land of a farmer belonging to the village Quarsi. His son had taken some land there and that on a few plots of that land the accused always wanted to take possession and because of this desire of the accused persons to take possession over that land, they had enmity with his son. He further had stated that he had no knowledge as to when that particular land was purchased by his son which was around 14 bighas and it belonged to a farmer by the name Raushan Singh. He again stated that the plot number, etc. he did not remember. He also stated that there was no registered agreement between the farmer and his son. With regard to one Meena Devi, he had stated that there was some registered agreement vis-a-vis his son. He however had no knowledge if there was any agreement even with Meena Devi. In a nutshell, what he had stated in the cross-examination was that he had no document etc. with regard to the various lands which could be the cause of enmity. He had very categorically stated that the age of his son was 22 years at the time of incident. He had no knowledge of any enmity of anyone with his son. He had stated that at the time of firing they (he alongwith his companions) had rushed towards the place of incident but since the accused had flaunted their country made pistols, they did not go anywhere near the place of incident. At that point of time, 3 to 4 firing had been done. However, he did not remember as to how many fire shots had been fired before he had rushed to save his son. He had then stated that he could not enter the college. However, when the accused persons had run away then he reached near the dead-body of his son. He had tried to move the body of his son but he had seen that the son had died on the spot and he was convinced that his son had died. He had stated that on his hand and on his clothes there was no blood. There was lot of blood oozing out from the head and shoulder of his son and that he was in a great shock but he had not lost his mind. After having remained for 4 to 5 minutes near the dead-body of his son, he had gone to the Police Station Gandhi Park to get the report lodged. However, before reaching the police station he had informed his acquaintances and his family about the incident. The information was given by the telephone which was at the bus stand. He had stated that he, along with the persons who had accompanied him to the college had gone to the police station on a rickshaw. After the incident, they were also in a panic and they did not know as to who had the car key. He had then stated that he had driven the car from his house to the college. About half an hour after the incident, when he found the key of the car in his pocket then he had given the key to Jugendra for bringing the car. When the incident had occurred none of the persons who had gone to the place of incident had waited near the dead-body. He had stated that till such time he was there, the police had not reached. He was not aware that as to whether the college authorities had informed the police. He, upon a question being put to him as to whether he had got the information about the death of his son from the police, had answered that it was wrong to say that he got the information from the police. He had stated that his companions had gone to the police station on two rickshaws. To begin with all the four had reached the bus stand and had tried to make phone calls and thereafter all the four had gone to the police station. He had stated that he had scribed the first information report at the bus stand itself while sitting at a shop near the bus stand. The paper on which the first information report was written was brought for by him from the house of one advocate friend of his. Other advocates known to him were not living at his Press Colony. Rather they were living at Saroj Bye Pass which was 2 kilometres away from the bus stand. By the time when the advocate friend reached the bus stand, the PW-1 had waited for him at the bus stand. He had stated that he had not taken the advice from anyone to get the first information report lodged.

10. Continuing with the cross-examination, the PW-1 had further answered that the paper which was brought was so brought by one Subhash Chandra Chauhan. From the bus stand, he had called 5 to 6 persons but those who reached were Satendra Chauhan, Advocate, Satish Kumar Singh and Ravendra Pal Singh. Apart from ringing up the lawyer, he had also informed his people at the village. At that point of time, there was a phone in his house. He had stated that he did not remember whether the office of proctor in the college was near the place of incident. However, he had stated that the office of the proctor was around 50-60 steps away. He had thereafter stated that at the place of incident, he had a danger to his life and therefore he did not call from the office of proctor. He had stated that the accused had run away in the eastern direction after coming out from the gate. Beside the gate there was the G.T. Road and the accused had run towards the direction of the district Etah. He had stated that it was wrong to say that he had introduced a story of reaching the bus stand as there was some delay in the lodging of the first information report. From the place of incident, the bus stand was nearer as compared to the distance between the place of incident and Police Station Gandhi Nagar. From the bus stand to Police Station Gandhi Nagar, the distance was around 100 meters. He had thereafter explained the topography of area and had stated that from the place of incident, the bus stand and the Gandhi Park could be reached after crossing the chauraha. The chauraha was on the left side of the bus stand. At the relevant point of time at the bus stand, there were Subhash Chandra Chauhan, Satendra Chauhan and two more persons. The nephews after having stopped at the bus stand for sometime went to the complainant's house to give the information. From the bus stand, complainant had gone to the police station to get the first information report lodged. He had then categorically stated that he had not gone to the place of incident along with the police. The nephews had stayed at the bus stand for 10-15 minutes and thereafter they had taken the car and had gone to the house at Aligarh. The car was brought back about 15 minutes later by his nephew Jugendra. Immediately after the incident, nobody had stopped near the dead-body of his son. He had however stated that the others had reached the place of incident around half an hour or 45 minutes later. He had stated that his nephews had for the second time reached the place of incident around after half an hour. He however categorically stated that he had never gone back to the place of incident. He had stated that it was wrong to say that he had not gone to the place of incident because he had known that the dead-body of his son had proceeded towards the mortuary after the completion of the panchayatnama. He had however stated that he had reached the mortuary straight from the police station and there he had met his nephew and the son of his brother-in-law. He had stated that he had reached the mortuary at around 11:00 to 11:15 AM. He had stated that from Aligarh his village was around 45 kilometers away and therefore it was wrong to say that upon getting the information, his nephew and the son of his brother-in-law had straight away gone to the mortuary. In the cross-examination, he had stated that on many occasions earlier also he had accompanied his son to the college. He had further stated that he had not remembered as to when it was the last time that he had gone before the date of incident to the college. However, he had stated that it might have been around 8-10 days prior to the date of incident that he had gone to the college along with his son. He had then stated that before the incident had occurred, he had gone to the college for some work around one or two months back. He had stated that it was wrong to say that one day prior to the date of incident, he was at Allahabad. He had then stated that he was not aware that there was a police chauki near the D.S. Mahavidyalaya. He had stated that he did not remember as to what time he had reached the Police Station Gandhi Park. He had stated that he did not remember as to who had accompanied him to the police station. He had stated that he had reached the police station on the vehicle of

someone. To whom the vehicle belonged he did not remember. He had stated that after reaching the mortuary, he had again visited the police station, where his statement was already recorded by the investigating officer. He further stated that it was correct to say that he had not mentioned the name of the father of Yogesh in the first information report. However, he had given the name of the father of Yogesh in the statement recorded under Section 161 of Cr.P.C. as he by that time had enquired about the name of the father of Yogesh from his village. He then specifically had stated that from the village Kalai, one Manveer Chaudhari had given the name of the father of Yogesh.

11. In the cross-examination vis-a-vis Raghvendra @ Kaalu, he had stated that he had not known him. Even his son Sanjeev Chaudhari never used to visit him. The accused Raghvendra @ Kaalu had never visited his house also. He had then stated that he had never recognized Raghvendra @ Kaalu either during the investigation or in the jail. He had also stated that he was not aware as to in what direction Raghvendra @ Kaalu had fired. He had stated that he had come to know the name of Raghvendra @ Kaalu as a few students told about the name and therefore he had mentioned the name of Raghvendra @ Kaalu in the first information report. The names of the students who had told the name of Raghvendra @ Kaalu, of course he did not know.

12. PW-2 was the nephew, Ramesh, who also claimed to be an eye-witness of the incident. In his examination-in-chief, he had stated that on 27.04.2002 he himself, his uncle Balveer Singh and the other two relatives (Vimal and Jugendra) along with Sanjeev Chaudhari had gone in a Maruti car to the D.S. Mahavidyalay to drop Sanjeev Chaudhari for the examination in which he was to appear. When all of them reached the college at around 07:00 AM, Sanjeev Chaudhari went out of the car and went inside the college. He, however, had stated that they stood outside the college as they were waiting for one Dr. Gajendra Singh who was a Lecturer in the college and that around 07:00 to 07:15 AM they heard the sound of firing. Upon hearing the sound, they went inside the college and found that Roby @ Sanjeev Kumar, Yogesh and one more unknown person, who were all having country made pistols had fired upon Sanjeev Chaudhari, who had fallen on the ground because of the firing. They all shouted for help and went inside the college. The accused persons ran away flaunting their country made pistols. He had stated that these accused persons were dreaded criminals and against them there were various other cases of murder etc. He had stated that he had seen the entire incident himself along with all the accompanying persons. He had thereafter stated that he had known Roby @ Sanjeev Kumar and Yogesh from before because he had himself stayed in the Press Colony while he was studying and the accused used to visit him at the Press Colony.

13. In the cross-examination by the defence vis-a-vis Roby @ Sanjeev Kumar, he had stated that he was a farmer and was living in village Usra Rasoolpur and that he was doing agriculture work.

14. Balveer Singh was his real uncle who was in the Court standing beside him and that he had stated that he had been brought to the Court by his uncle. However, he was not tutored. He also stated that he did not have any license of any firearm but his uncle had one. He had thereafter stated that Balveer Singh was older to him by 25 years and he called him chacha ji. The deceased was around 15 years younger to him. He had stated that 14 to 15 years prior to the date of incident when he was living in the Quarter No. 27 of the Press Colony and was studying, in the other block one

Gulab Singh used to stay and probably Sanjeev @ Roby used to visit him there and that the age of Sanjeev Chaudhari at the time when the PW-2 stayed at the Press Colony was around 10 to 12 years. He had thereafter stated that Sanjeev Chaudhari at the relevant point of time when he was staying at the Press Colony, was around 09 to 10 years of age. He had stated that one day prior to the date of incident, he was called by his uncle as the deceased was having some enmity and therefore he along with the other relatives had reached Aligarh. He had stated that a day prior to the incident, he had got the information at about 02:00 to 03:00 PM that he had to reach Aligarh. He had no telephone in his village but Vimal had a telephone and therefore he had got the information on it. He then had stated that on an earlier occasion when he had stated that he had informed Vimal that they had to go to Aligarh then it was a wrong statement and that in fact it was Vimal who had told him to go to Aligarh. He had stated that Vimal who had accompanied them to the college was studying in D.S. Mahavidyalaya, Aligarh and in the evening prior to the date when the incident had occurred, he also had a paper and that he used to come from his village to appear in the paper. The previous day, he had stated that he i.e. PW-2 and Vimal had reached Aligarh at around 06:00 PM and that he was staying at Balveer Singh's house. He had also stated that the deceased Sanjeev Chaudhari had no country made pistol or any cartridges etc. Later on, of course he had stated that he came to know that the deceased was having a country made pistol and was also having live cartridges. On the date of incident, there was no police personnel on the gate of the college. He had stated that whenever a student entered the college, he had to produce the identity card and the admit card and without those documents no one was allowed to go inside the college. On the date of incident, they could not meet Professor Dr. Gajendra Singh. He thereafter had denied the suggestion that he had come up with the story of meeting Professor Dr. Gajendra Singh because he had to give a reason to wait after the deceased had gone inside the college. He had stated that the incident had occurred at around 07:15 AM. The examination started at 07:00 AM and that the students had to reach the centre 15 minutes prior to the exam. He had then stated that he had parked his car outside the gate and that all persons coming in and going out of the college were getting their ingress and egress through the wicket gate i.e. the small gate which was carved out in the bigger gate. He had stated that he had seen the accused from 35-36 steps away. The moment the firing was done, the PW-2 had stated that he had rushed to save his brother but because the accused threatened them with their country made pistols, he could not reach near the deceased. He had also tried to apprehend the accused persons unsuccessfully. He had gone near the dead-body of the deceased but did not touch him. He had stayed there for 3-4 minutes but had thereafter proceeded for the bus stand. From the college, the police station was around half a kilometer away and that the bus stand was around 10-15 steps before the police station. No one stayed back with the deceased. The four persons had reached the bus stand after the firing was over. The car was also left at the gate and they had gone to the bus stand on a rickshaw. From the bus stand he himself, Vimal and Jugendra had proceeded for Press Colony and thereafter they had gone to the college again at around 10:45 AM. At that point of time, panchayatnama was being filled up. The police had questioned him around five days after the incident. He had also stated that he was not aware of the fact that there were other criminal cases pending against the deceased. He was also not knowing that the deceased was earlier jailed. He however had stated that he was aware of the fact that he was dealing in land. He also did not know if there was any dispute with regard to any land. On the date of incident, Vimal had returned to the village along with him. He did not appear in the examination which Vimal was required to appear at Aligarh. The PW-2 was also cross-examined on behalf of the accused Yogesh and had stated that on the date when the incident had occurred, he

had reached the D.S. Mahavidyalay when the panchayatnama preceedings were going on. Professor Dr. Gajendra Singh was of course not there. In all there were 80-90 persons. No one known to him was present. There were only Vimal and Jugendra who were known to him. Thereafter they had stayed there for 4-5 minutes only. On behalf of Raghuvendra, no one cross-examined the PW-2.

15. PW-3, S.I.Y. Bhardwaj, was the doctor who had conducted the post-mortem. He had stated that he had conducted the post-mortem at around 04:15 PM. The dead-body was sent by the Police of the Police Station Gandhi Park alongwith constables No. 03 Ashok Verma and C.P. 120 Ramveer Singh and thereafter he had proved the injuries and the post mortem report. One bullet was recovered from the stomach. With regard to the injury no. 5, he had stated that it could have been inflicted by some blunt object and then had stated that the cause of death could not have been the injury no. 5. He had stated that the injury no. 1 was chiefly responsible for the death of the deceased.

16. PW-4 was the Investigating Officer, R.K. Sharma. He had described the method in which the investigation was done and what was recovered and how the recovery memos were prepared. He had narrated the method in which the accused persons were arrested. He had also narrated the method in which the statements were recorded. The panchayatnama was also proved by him. On 20.10.2014, PW-4 had stated that he could not prove the recovery which was made from the deceased as the same had got lost and with regard to that a report had already been lodged and was on record as paper no. 345. He had stated very categorically that at 07:45 AM after the first information report was lodged, the copy of the same was given to the first informant and thereafter his statement was recorded and that took around 20 minutes and he thereafter proceeded for the place of incident by his jeep and the complainant/informant had reached the place of incident by his car. The panchayatnama, he had stated, was prepared on his direction by Sub-Inspector R.P. Singh. The panchayatnama did not contain the signatures of the PW-4. The recovery memos of the articles recovered from the deceased were prepared by him. He had stated that the case diary of that particular date was not recorded by him but was so recorded on his dictation as his hand was aching. The investigation was done by him in between 27.04.2002 and 28.05.2002. Thereafter, the charge-sheet was submitted. He had stated that the recovery memo of the articles recovered from the deceased was signed by the witness, Ram Bhool, who was the chaprasi (peon) of the college. This very chaprasi was also signatory in the panchayatnama. He had stated that even though Ram Bhool was a signatory in the panchayatnama and also in the recovery memo, however, his name was not included in the list of witnesses in the charge-sheet. He had stated that he had not made any effort to get the accused identified as it was stated in the first information report that the dispute was there with regard to some land and therefore he had presumed that the complainant was knowing the accused persons. He had further stated that he had not made any effort to get the country made pistol, by which the firing was done in which the deceased had died, recovered. No efforts were made to send the recovered bullet etc. to the Forensic Science Laboratory. He had thereafter stated that he had not made any effort to find out as to which was the land because of which there was enmity between the deceased and the accused persons. He had thereafter stated that when he had reached the place of incident, he had not found the informant or the other eye-witnesses. He had very categorically stated that the distance between the place of incident and the police station which was given in the panchayatnama was different from the one which was given in the first information report. However, he denied the suggestion that the proceedings of

panchayatnama were done prior to the lodging of the first information report. He had stated that the accused persons had stationed themselves as per the site plan near the Geography Department and that this place was around 38 steps inside the college from the gate. The entire spot map was got prepared on the pointing of the complainant/informant. On 21.07.2016, the PW-4 was once again called for the recording of his statement-in-chief. He had stated after his statement-in-chief, the charge-sheet which he had submitted in the Court was in his hand writing and that he had missed out to give the names of Ram Bhool and Satendra Kaushik in the list of witnesses in the charge-sheet inadvertently. He again reiterated that the entire site plan was got prepared in the presence of the first informant.

17. PW-5, Keshav Dev, was the Head Moharrir on the relevant date and he had proved the chik. He had also stated that on the relevant date, along with the complainant two other persons, one of whom was Subhash Chauhan, Advocate had come. Subhash Chauhan was known to him from before.

18. Thereafter, the statements of the accused persons under Section 313 of Cr.P.C. were got recorded, wherein they denied having committed the crime and pleaded innocence and also the accused Raghvendra had stated that because of there being enmity between two groups of D.S. Mahavidyalaya, the case had wrongly been registered against them. Yogesh and Sanjeev Kumar @ Roby had stated that they were implicated on account of some enmity.

19. Thereafter, the statement of one DW-1, Karan Pal Singh, was got recorded. Karan Pal Singh was also a witness of the panchayatnama but he was not made a witness by the investigating officer in the charge-sheet. He had stated in his examination-in-chief that he was a chaukidar in the D.S. Mahavidyalaya on the relevant date i.e. on 27.04.2002. On that date he had reached the college at 06:00 AM as the examinations were going on. In between 07:15 to 07:30 AM, the main gate of the college was closed and only a small wicket gate was kept open. Thereafter, he had gone to open the other class rooms of the college. When he was opening the rooms for the practical examination then he heard some sound of firing and when he reached the Geography Department then he saw a student laden with blood and therefore he ran towards the examination office where he informed the proctor and the proctor rang up the police. The police thereafter reached within 15 to 30 minutes and the police itself informed the family members of the deceased and they thereafter reached the place of incident in half an hour time and in the meantime, panchayatnama proceedings were undergone. The panchayatnama had taken place in his presence i.e. in the presence of DW-1. When the dead-body was frisked/inspected then a loaded country made pistol with three live cartridges and Rs. 300/- were recovered. Along with these articles, a mobile phone was also recovered. Ram Bhool the other employee of the college was also a witness of the panchayatnama. He had stated very categorically that the father of the deceased reached the spot after the panchayatnama was drawn.

20. Upon a question being asked by the court as to whether the PW-1 had witnessed the incident, he had clearly given an answer in the negative. While answering the question he had very categorically stated that he had not seen the incident and he had also stated that he had never seen the accused persons who were present in the Court. The informant thereafter cross-examined the DW-1, wherein he had stated that he was working in the college since 1992. He had further stated

that before he reached the place of incident the accused had run away from the place of incident. When the Court asked him as to whether the deceased was alive at the time when he had reached the place of incident, he had categorically replied that when he had reached the place of incident, the deceased was dead. He did not touch the dead-body. He had also stated that he had never seen the deceased or known his name. He had also stated that he did not know the names of the family members or of the father of the deceased. He only knew the name of Ram Bhool who was a witness in the panchayatnama. He had also stated that the police had recorded his statement on the date of the incident and that he had categorically informed the investigating officer that when he was opening the class rooms for the practical examination then he had heard the sound of firing and he therefore reached the spot. He also reiterated the same story as was narrated how the police was informed. He had again reiterated that after the incident, the family members of the deceased including his father had reached the spot. Thereafter, upon conclusion of the trial when the judgment and order dated 24.09.2021 was passed, the instant Appeal was filed.

21. Sri V.P. Srivastava, learned Senior Advocate assisted by Ms. Neeja Srivastava, learned counsel for the appellant in Criminal Appeal No. 5307 of 2021; Sri Sagheer Ahmad, learned Senior Advocate assisted by Sri Tripurari Pal, learned counsel for the appellant in Criminal Appeal No. 5365 of 2021 and Sri Suresh Chand Pandey along with Sri Saurabh Pandey, learned counsel for the appellant in Criminal Appeal No. 5319 of 2021 had appeared. Sri V.P. Srivastava, learned Senior Advocate made the following submissions:

(i) Learned counsel for the appellant in the very beginning submitted that if the documents namely the Chik F.I.R. and the panchayatnama are seen then it becomes evident that there was ante timing done while reporting the first information report. The Chik F.I.R. shows that the distance between the place of incident i.e. D.S. Mahavidyalaya and the Police Station was one and half kilometre. The police station was on the Eastern side. Whereas if the panchayatnama is seen, he submitted that the distance given between the place of incident and the police station was one kilometre. Learned counsel for the appellant further submitted that if the first information report is perused then we find that the names of Roby @ Sanjeev Kumar son of Bhoopendra Singh, Raghvendra @ Kaalu son of Sheelendra Singh and Yogesh son of not known to the first informant were given out as names of the accused in the first information report. In the cross-examination, at page 22 of the paper book the PW-1, first informant, had stated that *'जब मै गेट के पास पहुँचा तो उसके थोड़ी देर बाद जब मेरा लड़का संजीव कालिज की तरफ अन्दर जाने लगा और जब मुलजिमों ने उसके उपर फायर किए तब पहली बार गेट के अन्दर ही मुलाजिमों को मैंने देखा था।'* Learned counsel for the appellant therefore states that the PW-1 had seen the appellants for the first time inside the college gate. Learned counsel for the appellant submits that the PW-1 at the time of getting his statement recorded under Section 161 of Cr.P.C. had stated at page no. 22 of the paper book *'इस घटना को मैने व मेरे साथ कार में बैठे व्यक्तियो ने गोली मारने वाले बदमाशों को अच्छी तरह देखा व पहचाना।'.* However, he changed his statement in the court and had stated "*मै व मेरे साथ के लोगो ने कार के सहारे खड़े होकर घटना देखी।'.* However, he changed his statement in the court and had stated 'मै व मेरे साथ के लोगो ने कार के सहारे खड़े होकर घटना देखी।'. In the cross-examination done by the defence counsel of Yogesh, the PW-1 had stated that the name of the father of Yogesh was not

written in the first information report. However, in the statement recorded under Section 161 of Cr.P.C. he had given the name of his father as he had talked to certain people of Village Kalai and from there he had got the name of the father of Yogesh. So far as the Raghvendra @ Kaalu was concerned, learned counsel for the appellant states that the PW-1 had not known the name of the accused Raghvendra @ Kaalu and he says so in his cross-examination at page no. 31-32 of the paper book *'मुलजिम राघवेन्द्र उर्फ कालू से घटना से पहले से मेरा कोई व्यवसाय अथवा आना जाना नही था मेरे बेटे संजीव चौधरी (मृतक) का भी आना जाना उसके साथ नही था। राघवेन्द्र उर्फ कालू घटना से पहले मेरे घर कभी नही आया। यह बात सही है कि मैं घटना से पहले राघवेन्द्र को नही जानता था। यह कहना भी सही है कि मैने राघवेन्द्र उरफ कालू की शिनाख्त न तो विवेचना के दौरान की और न जेल में की है। मैं यह नही देख पाया कि अभियुक्त राघवेन्द्र ने किस दिशा से फायर किया अभियुक्त राघवेन्द्र का नाम मुझे घटना स्थल पर कालिज के कुछ छात्रो ने बताया था इस लिए मैने इसका नाम प्रथम सूचना रिपोर्ट मे लिखा दिया। जिन छात्रो ने अभियुक्त राघवेन्द्र का नाम बताया मै उनके नाम नही जानता। यह बात सही है कि मैने राघवेन्द्र उर्फ कालू को रिपोर्ट में नामित किया था इस लिए मैंने उसके द्वारा गोली चलाने वाली बात अपने ब्यान में कही थी।'.* Learned counsel for the appellant further states that if we perused the statement of PW-1 throughout then it was indicative of the fact that the entire gate of the college was open and that he could see what was happening 35 to 36 paces inside the gate, whereas the PW-2 in his statement had stated in the following manner *'घटना मेरे द्वारा सुबह सवा सात बजे की बताई गयी है। परीक्षा सात बजे से प्रारम्भ होनी थी। परीक्षार्थी को परीक्षा होने से करीब 15 मिनट पहले कक्ष में पहुचना होता है। मैने डी० एस० कालिज देखा है। कालिज के गेट के एक तरफ डाकघर है और गेट के पास दूसरी तरफ स्टेट बैंक थी। कार हमने गेट के सामने खडी थी। कालिज क गेट के सामने गाडी खडी करने को मौजूद स्टाफ ने मना नही किया हमलोग कार के बाहर खड़े होकर इंतजार कर रहे थे। ये आने-जाने वाले कालिज के छोटे गेट से आ जा रहे थे।'*. He therefore in effect had stated that the main gate was closed and people were going in and coming out from the wicket gate i.e. the small gate which was opened for the egress and the ingress of the students. Learned counsel for the appellant further has stated that even the DW-1 who was a witness of the panchayatnama but was not named in the list of witnesses in the charge-sheet submitted by the police had appeared in the Court as DW-1 and he had also stated in his examination-in-chief at page no. 77 of the paper book *'मैं घटना वाले दिन प्रातः छः बजे महाविद्यालय में अपनी ड्यूटी पर आ गया था। उस समय महाविद्यालय में परिक्षायें/प्रक्टीकल चल रहे थे। करीब 7.15 व 7.30 के बीच में कोलेज का मैन गेट बन्द करके छोटा गेट खोल कर कालेज के अन्दर प्रक्टीकल के लिए दूसरे कमरे खोलने चला गया।'.*

(ii) Learned counsel for the appellant has therefore stated that the PW-1 who had lodged the first information report had in fact not known the names of the accused persons and there was contradiction in their statements that the PW-1 had seen the incident while the main gate was opened, while the PW-2 had stated that the main gate was closed and the wicket gate was being used. This definitely would have meant that an incident which happened 35 to 36 paces inside the main gate could not have been seen by the PW-1. He thereafter had submitted that the PW-1 in the first information report had stated that he had gone to the college in his Maruti car (UP 81 D 7155). However, when the incident had occurred he had gone to the police station on a rickshaw from the place of incident. At page no. 25 of the paper book he had stated that he had left the car but had

gone along with all his companions on a rickshaw *'कालिज से बस अड्डे तक मैं व मेरे साथी रिक्शे से गए थे।'*. Learned counsel for the appellant has still further, relying upon Form-13, submitted that the dead body, after the panchayatnama, had proceeded towards the mortuary at 10:45 AM and as per this Form-13 had reached the Reserve Inspector's Office at 15:40 PM on 27.04.2002. Thereafter, as per the doctor's signature on this Form-13, the body was received at 04:15 PM in the mortuary. The Form-13 had clearly stated that the dead-body when was sent for the post-mortem, it was accompanied by Constable No. 03 Ashok Verma and Constable No. 162 Ramveer Singh. Learned counsel for the appellant states that why the dead-body reached the Office of the Reserve Inspector at 03:40 PM on 27.04.2002 was a mystery and to solve this mystery the only way out was that the two constables who had accompanied the dead-body ought to have been brought in the witness box. They would have testified as to why the dead-body reached late. Learned counsel for the appellant therefore states that the time which the dead-body took to reach the Reserve Inspector's Office and thereafter to the mortuary shows that the police and the other prosecution witnesses, chiefly PW-1 was waiting to get the names of the accused and therefore it could safely be said that the first information report was ante timed.

(iii) He further submits that even the Investigating Officer had stated at page no. 57 of the paper book *'यह भी सही है कि पंचनामे में थाने से घटना स्थल की दूरी जो दर्शाई गई है व चिक FIR में दिखाई गई दूरी से भिन्न है।'*.

Learned counsel for the appellant therefore relying upon the judgment of this Court in **(1979) Criminal Law Journal 236; (Jagdeo Singh and others versus State)** has submitted that a difference in the distance given in the first information report and the inquest report was indicative of the fact that there was ante timing done. He further relied upon a judgment again of this Court reported in **1984 All LJ 1303; Shyama Charan versus State of U.P.** and he relied upon specifically paragraph 8 of this judgment and therefore the same is being reproduced here as under:

"8. The first-information-report in this case is said to have been lodged at 12.30 p.m., the distance of police station as mentioned in the F.I.R. is two miles. The incident is said to have taken place at 10.30 a.m. and prima facie this report appears to be quite prompt. The defence in this case has suggested that the first-informant Ram Kumar P.W. 1 is a clerk to a lawyer practising at Jalalabad and did not witness any incident and was called later on and this report came into existence much later and had been ante-timed. The argument advanced appears to have some force when we examine the inquest report. In the inquest report in the column of the person who informed about the death, the name of Ram Kumar is mentioned. Then in the column of distance of the village from the police station, entry made is 3 miles to the south. If this F.I.R. had come into existence at 12.30 p.m. the distance given in that report namely two miles would have also been found in the inquest report and not three miles. The distance given in the F.I.R. does not tally with the First-Information-Report. Further the inquest report examined as a whole goes to show that on the third page where the Holia Lash has been described, there is a column for the opinion of the Panches and in this column writing has been given in a different pen with a different thickness which suggests that impressions of Panches must have been obtained earlier and the writing done later on. Not only that after this opinion of the Panches, there is final opinion of the Sub-Inspector and in that opinion after the word 'DHARA' figures 147, 148, 149, 302 I.P.C. have been added subsequently. This is apparent from an examination of the inquest report. The Sub-inspector when asked whether he made this addition of the sections, he stoutly maintained that he did not add these subsequently. As we have observed earlier the addition is absolutely apparent on occular

examination. From this we can infer that by the time the inquest report was prepared namely the evening of 11-5-1976, the F.I.R. had not come into existence and in the inquest report space for the crime No, and the sections was left to be filled later on and was actually filled later on. In the case of Jagdeo Singh v. State reported in 1979 Cri LJ 236 a Division Bench of this Court in similar circumstances held at page 241 para 25 that the discrepancy in the distance given in two documents namely F.I.R. and inquest report gives rise to an inference that the F.I.R. came into existence later on."

(iv) Learned counsel for the appellant further submitted that the conduct of the PW-1 also showed that there was every effort being made to hunt out the names of the accused persons namely Roby @ Sanjeev Kumar, Raghvendra @ Kaalu and Yogesh. When he had lodged the first information report at 07:45 AM then it does not stand to reason that when the body had not reached the mortuary why he had gone from the police station to the mortuary. Also what makes his behaviour slightly doubtful is that after he reached the mortuary what exactly was he doing there. This all goes to show that he was hunting out the names which he had specifically got reported in the first information report.

(v) Learned counsel for the appellant further states that when the son of the appellant had got shot dead and as per the first information report he was shot dead in front of PW-1 then it seems strange that when he had gone to the college to drop his son along with three of his relatives namely Ramesh the PW-2 (real nephew), Vimal and Jugendra Singh (relatives) then all four would leave the dead-body at the place where the deceased had been shot at and they would go to the police station. At least one person should have stayed back. Learned counsel for the appellant therefore submits that this goes very strongly to show that the appellants were never there at the spot but had tried to show that they were all there at the spot. He further submits, to bolster the case of the appellants, that the PW-1, the PW-2, Vimal and Jugendra Singh (the other relatives) had in fact never been at the spot. He submits that as per the first information report, they had all gone to the place of incident on a Maruti car but after the incident they went to the police station via a bus stand on a rickshaw. He submits that this does not appeal to reason at all. The further statement of the PW-1 that there was no blood either on his hands or on his clothes shows that he had not even cared to find out if the deceased had actually died and this had happened because he was actually not there on the spot. At page no. 24 of the paper book he had stated that *'मैंने इधर उधर हिलाकर लड़के को देखा था किन्तु वह मौके पर ही खत्म हो गया था। मुझे मौके पर ही उसकी मृत्यु की तसल्ली (का०फटा) हो गयी थी। मेरे हाथो पर व कपडो पर कोई खून नहीं लगा था। मेरे बेटे के सिर (का०फटा) आंख व कन्धे से काफी खून निकल रहा था।'*. Learned counsel for the appellants submits that if the PW-1 had touched the dead-body then definitely there would have been some blood on his body or on his clothes.

(vi) To further bolster the case of the appellant that the prosecution witnesses no. 1 and 2, who had actually claimed themselves as eye-witnesses and had also appeared before the court as witnesses of fact, had actually not been on the spot, learned counsel for the appellant pointed out to certain contradictions:

(a) He submits that the PW-1 in his statement at page no. 22 of the paper book had stated that he and his companions had seen the incident standing against their car. He had virtually stated that he had seen the incident while the gate was wide open. However, the PW-2 at page no. 40 of the paper book had stated that all going in and coming out of the college were using the small gate.

The actual sentence which he uttered was at page no. 40 of the paper book *'आने- जाने वाले कालिज के छोटे गेट से आ जा रहे थे।'*

(b) The PW-1 had in his statement at page no. 28 of the paper book stated *'घटना के तुरन्त बाद बेटे की लाश के पास कोई नही रूका था बल्कि बाद में करीब आधा पौन घण्टा बाद पहुँचे थे। मेरे साथ जो मेरे भतीजे थे वे सभी घटना स्थल पर घटना के आधा पौन घण्टा बाद दोबारा पहुँच गए थे। मैं घटना स्थल पर दोबारा नही गया था।'*. However, the Investigating Officer, PW-4, at page 57 of the paper book had stated that *'यह सही है कि नक्शा नजरी में मेरे द्वारा अभियुक्त गण के पूर्व से खड़े होने का स्थान भूगोल विभाग के सामने दर्शाया है तथा कौलिज के गेट से यह दूरी 38 कदम दूर दर्शाई गई है। नक्शा नजरी मेरे द्वारा वादी की निशान देही पर बनाया गया था।'*. Thus the statements of PW-1 and PW-4 were contradictory to each other vis-a-vis the presence of PW-1 at the site after lodging the F.I.R.

(c) Further learned counsel for the appellant relied upon page no. 43 of the paper book and has submitted that even the PW-2 had stated in his cross-examination that he had reached the place of incident when the panchayatnama was going on. The actual sentence which PW-2 uttered at page no. 43 of the paper book was *'जब मैं घटना वाले दिन डी० एस० कालिज पहुंचा उस समय पंचनामा की कार्यवाही चल रही थी।'* Learned counsel for the appellant states that in fact the PW-2 was confused as he did not know what exactly he had to state. The first information report had stated that even the PW-2 was there at the relevant point of time but in the cross-examination the truth came out and he had stated that he had reached the place of incident when the panchayatnama proceedings were going on. Learned counsel for the appellant further states that even this statement of the PW-2 regarding his reaching the site at the time of panchayatnama appears to be unbelievable as the name of the PW-2 does not find place in the panchayatnama and had he been there, his name would definitely have figured in the panchayatnama. Learned counsel for the appellant further states that the PW-2 in his examination-in-chief despite the fact that he was aware of the first information report which had been lodged in the year 2002 had stated in his statement-in-chief that he had seen at the place of incident Roby @ Sanjeev Kumar, Yogesh and one more unknown person. Learned counsel for the appellant therefore states that in fact the PW-2 was not there at the spot and fortunately or unfortunately he did not remember the name of the third appellant i.e. Raghvendra @ Kaalu at all and therefore in his examination-in-chief he states that one 'unknown person' was there.

(d) The PW-1 had stated that they had waited outside the gate to see that the deceased went inside and that no harm was done to him. However, the PW-2 had stated that after the deceased had gone inside the college they were waiting to meet one Professor Dr. Gajendra. He submits that this was a major contradiction which cannot be ignored as PW-2 was trying to carve out a fresh reason for the PW-1 and the PW-2 to remain outside the gate even after the deceased had gone inside the college.

(vii) Learned counsel for the appellant had argued much with regard to ante timing of the first information report. He had also elaborated as to why the dead-body had reached the mortuary very late. He submitted that in the year 2002 when everything was fairly modernized and vehicles etc. were available then it did not stand to reason that a 7 kilometre distance was travelled in such a long time. He submits that the body, after the panchayatnama, started for the mortuary at 10:45

AM, reached the office of the Reserve Inspector at 15:40 PM and thereafter was handed to the mortuary at 04:10 PM. He submits that there might have been a backlog of dead-bodies for post-mortem etc. and therefore the hospital might have received the dead-body at 04:10 PM. However, why the dead-body had reached the Office of the Reserve Inspector after almost five hours remained a mystery. He therefore submits that the entire prosecution story becomes false. It all the more becomes unbelievable when the two constables namely Constables No. 03 Ashok Verma and C.P. 120 Ramveer Singh, who had proceeded with the dead-body after the panchayatnama, were not brought into the witness box to explain the case of the prosecution with regard to the delay in bringing the dead-body to the Reserve Inspector and thereafter for the post-mortem.

(viii) Learned counsel for the appellant further took the Court through the entire order-sheet of the trial and submitted that the prosecution never recognised/identified the accused persons either in the court or in the jail during investigation. The recording of the statement of prosecution witnesses commenced on 26.08.2010 and concluded on 27.06.2017.

(ix) The charges were framed on 15.10.2004 and on that date the accused had appeared and thereafter they had appeared only on 08.08.2014, 20.10.2014, 24.11.2014, 02.12.2014, 05.12.2014, 02.01.2015, 16.03.2015, 24.03.2015, 02.04.2015 and 05.05.2015. However, on those dates as is clear from page nos. 51, 52 and 77 of the paper-book neither the PW-1 nor the PW-2 who were the witnesses of fact gave their statements-in-chief nor were they cross-examined. Learned counsel for the appellant, Sri Sageer Ahmad, submitted that as per the judgment of the Supreme Court in the case of **Tukesh Singh and others versus State of Chhatisgarh** reported in **2025 AIR SC 2666**, the entire trial becomes vitiated if the accused are not identified in the court. Since, learned counsel for the appellant Sri Sageer Ahmad took the Court through the paragraph nos. 21, 22, 23 and 24 of the judgment and the same are being reproduced here as under:

'21. In a case where there are eyewitnesses, one situation can be that the eyewitness knew the accused before the incident. The eyewitnesses must identify the accused sitting in the dock as the same accused whom they had seen committing the crime. Another situation can be that the eyewitness did not know the accused before the incident. In the normal course, in case of the second situation, it is necessary to hold a Test Identification Parade. If it is not held and if the evidence of the eyewitness is recorded after a few years, the identification of such an accused by the eyewitness in the Court becomes vulnerable. Identification of the accused sitting in the Court by the eyewitness is of utmost importance. For example, if an eyewitness states in his deposition that "he had seen A, B and C killing X and he knew A, B and C". Such a statement in the examination-in-chief is not sufficient to link the same to the accused. The eyewitness must identify the accused A, B and C in the Court. Unless this is done, the prosecution cannot establish that the accused are the same persons who are named by the eyewitness in his deposition. If an eyewitness states that "he had seen one accused assaulting the deceased with a sword, another accused assaulting the deceased with a stick and another accused holding the deceased to enable other accused to assault the deceased." In such a case, the eyewitness must identify the accused in the open Court who, according to him, had assaulted the accused with a stick, who had assaulted the deceased with a sword and who was holding the deceased. Unless the eyewitnesses identify the accused present in the Court, it cannot be said that, based on the testimony of the eyewitnesses, the guilt of the accused has been proved.

22. In the present case, in case of two eyewitnesses, in the cross-examination, it is brought on record that the accused persons named by them were sitting in the Court. However,

they did not identify a particular accused by ascribing him a role. None of the eyewitnesses has specifically identified any of the accused in the Court.

23. In this case, the failure of the eyewitnesses to identify the accused in the court as the accused they had seen committing the crime is fatal to the prosecution's case. There are material omissions brought on record in the cross-examination of the eyewitnesses. They are so relevant that the same constitute contradictions in view of the explanation to Section 162 of the Code of Criminal Procedure, 1973. The appellants/accused, before they were enlarged on bail, had undergone a minimum of nine to ten years of actual sentence. They have been on bail for about twelve years.

24. Considering the discussion made above, it is not possible to come to a conclusion that the guilt of the appellants/accused is proved beyond a reasonable doubt. As stated earlier, the versions of the eyewitnesses differ.'

(x) Learned counsel for the appellant further submitted that even though from the reading of the first information report, it appeared that PW-1 was recognizing the accused persons and had tried to give their names but upon going through the statements of the PW-1 and PW-2 it could with some certainty be said that the accused persons were not known to the PW-1 and PW-2. The name of the father of one of the accused, namely Yogesh was not given in the first information report. The PW-2 had in fact, while mentioning about Raghvendra @ Kaalu, had stated that he was an unknown person. Learned counsel, therefore, submits that in fact even before the dock identification was attempted at, the test identification parade ought to have been undergone. Learned counsel for the appellant relied upon the judgments of Supreme Court in **Amrik Singh vs. State of Punjab reported in (2022) 9 SCC 402, Bollacaram Pedda Narsi Reddi & Ors. vs. State of Andhra Pradesh reported in (1991) 3 SCC 434 and in Gireesan Nair and Ors. vs. State of Kerala reported in (2023) 1 SCC 180** to submit that when the accused were not known to the prosecution witnesses then before they were chargesheeted, test identification was a must.

(xi) Still further learned counsel for the appellant has submitted that the deceased, it was given out, was a student of the D.S. Mahavidyalaya. However, when the incident had occurred, from the possession of the deceased a country made pistol of 315 bore along with four cartridges, certain visiting cards and a pen were recovered. However, no identity card or admit card was recovered from either the clothes of the deceased or from his bag etc. Learned counsel for the appellant has submitted that the trial court in a very strange manner had accepted a certain admit card, a scheme of examination and a bona fide student certificate and had got it numbered as Paper Nos. 636A/2, 636A/3 and 636A/4 and had given a finding of fact to the effect that the deceased Sanjeev Chaudhari was a B.A.-IIIrd year student and on the date of incident i.e. on 27.04.2002 he had to appear for the examination of Military Studies-Paper I (a) or (b). The relevant paragraph of the judgment of the sessions trial with regard to this issue is at page no. 95-96 of the paper book and the same is being reproduced here as under :

"In this respect, as regards this contention of the defence it is primarily important to note that PW1 in his cross-examination has stated that his son informed him about his danger from accused persons that was why PW1 along with PW2 used to drop the deceased to his college in support of his statement Exam Admit Card with Roll No. A9917553 Sr. No. 706652, Bonafide Students Certificate dated 10.05.2003 and Scheme of Examination has been filled on record as paper no. 636A/2, 636A/3 and 636A/4 respectively which clearly shows that deceased Sanjeev Chaudhary was a BA IIIrd year student and on the day of incident i.e., 27.04.2002 he has examination of Military Studies-Paper I (a) or (b). Examination timing was also mentioned as

07am to 10am. So, from the totality of evidence filed on behalf of prosecution, it is clear that PW1 & PW2 were available on the site of occurrence. As far as the eye witnesses of the PW1 & PW2 is concerned, it is necessary to note that it is fundamental psychology of a father that when a father used to drop his child to school/college he monitor his movement till he reach the class. In that case the same psychology is applied on PW1 & PW2. Even if the above points are ignored the narration of the story by PW1 & PW2 is almost matches from the narration of the story by DW1. All of the above facts shows that there is no doubt on PW1 & PW2 being eye witnesses."

(xii) Learned counsel for the appellant states that when an effort was made by the defence to bring those papers on record by an application dated 09.08.2019 numbered as 635(kha) then that application was strongly opposed and an endorsement was made by the counsel that the document could not be kept on record outrightly without being proved. No effort was made by the trial court to get the documents proved. It had only considered those documents as proved and had proceeded with the matter. Learned counsel for the appellant therefore states that the entire case becomes doubtful inasmuch as the deceased was at the time of his death in possession of a country made pistol along with three live cartridges and was not possessing either an admit card or an identity card. Learned counsel for the appellant further states that even the DW-1 who was a chaukidar of the college had stated that the possession of those documents was essential to enter the college. Learned counsel for the appellant therefore states that in fact the deceased was a criminal and some unidentified persons had killed him inside the college and therefore while he was trying to hide in the college the murder had taken place. A strong suspicion arises as to whether the appellant was at all a student in the college and whether the PW-1 along with his nephew and two other acquaintances had at all gone to drop the deceased at the college.

(xiii) Learned counsel for the appellants submitted that the prosecution had to stand on its own legs to prove the case that the accused and the accused alone had committed the crime. He submits that when the PW-1 and the PW-2 had not identified the accused persons either by the method of test identification or by dock identification then it could safely be said that the accused were not known to the witnesses of fact and also no effort was made either by the prosecution or even by the court to get them identified. The fact that the accused were not known becomes established when in the first information report itself the name of one of the accused namely Yogesh was mentioned but his father's name was not mentioned and the PW-1 in his cross-examination had stated that he had come to know of the name of the father subsequently. Also, it became essential that the identification was done and that the prosecution stood on its own legs when the name of the accused Raghvendra @ Kaalu was not known to the PW-1 and his name was only made known to him by certain students, again whose names were not disclosed by the PW-1. He submits that the conviction could not be done on the basis of hearsay evidence and when the name of Raghvendra @ Kaalu was known to the PW-1 in the manner he had narrated i.e. from various students, who were again never produced in the court, then it becomes evident that hearsay evidence was being relied upon to identify the accused. What is more, he submits that even the PW-2 while giving his statement-in-chief in the court had stated that Raghvendra @ Kaalu was not known to him. How the name of the father of the accused Raghvendra was known to the informant also remains a mystery.

(xiv) Learned counsel for the appellants submits that the aspect of motive became important when it was being argued that in fact the eye-witnesses were not present at the spot at all and that everything was being proved by circumstances. He submits that even though some land dispute was mentioned about but no sale deed; number of any civil case pending in any court or

any document relating the dispute of any nature was brought on record. Not only that the accused when they were being questioned under Section 313 of Cr.P.C., they were also not confronted by any document. Learned counsel for the appellant therefore states that even the motive aspect was not taken care of either by the prosecution or by the trial court and wrongly it was presumed that the accused had a motive to do away with the deceased.

(xv) Learned counsel for the appellants also submitted that the two very close relatives namely Vimal and Jugendra were never produced in the witness box. If they had accompanied the PW-1 and PW-2 then it was imperative that they too should have been produced to corroborate the evidence of PW-1 and PW-2. It was, he submits, all the more important because the presence of PW-1 and PW-2 was doubtful.

(xvi) Learned counsel for the appellant has further relied upon the statement of the PW-1 at page no. 30 of the paper book and has submitted that in between the time when he reached the mortuary and had left the same, he had on two occasions also gone to the police station. Visit of this could have been used to retrieve the names of the accused persons from the police records. The statement is being reproduced here as under :

'मैं करीब शाम के पाँच बजे तक पोस्टमार्टम होने तक चीरघर पर रुका था इस दौरान बीच में एक-दो बार थाना गांधी पार्क भी आया था। गाँधी पार्क थानाध्यक्ष की खबर मिलने पर मैं वहाँ गया था।'

22. Sri Naseeruzzaman, learned counsel appearing for the informant has made the following submissions:

(i) A day light murder had taken place in which there were direct eye-witnesses and therefore it could not by any stretch of imagination be said that the appellants were not involved in the case. He has submitted that the incident of murder on 27.04.2002 had taken place at 07:00 AM inside the college campus of D.S. Mahavidyalaya, Aligarh. Thereafter a prompt first information report was lodged by the father of the deceased at 07:45 AM. The first information report was very graphic vis-a-vis how the witnesses had reached the spot.

(ii) Learned counsel for the informant next submitted that after the PW-1 and PW-2 had found that the son of the PW-1 had died then the PW-1 along with the four companions had straight away started off for the bus stand from which place the PW-1 made certain calls and asked his colleagues Subhash Chandra Chauhan, Satendra Chauhan, Satish Kumar Singh and Ravendra Pal to reach the bus stand. At the bus stand, the first information report was scribed and thereafter they all went to the police station to lodge the same. He submits that the cross-examination of PW-1 on 17.09.2010 (page 27) clearly illustrated as to how the PW-1 came from the place of incident and thereafter went to the bus stand where he called his acquaintances Subhash Chandra Chauhan, Satendra Chauhan, Satish Kumar Singh and Ravendra Pal and there he scribed the first information report and subsequently lodged the same at the police station. At the police station, Rapat No. 9 dated 27.04.2009 which finds place in the record of the case was got prepared and in the Rapat No. 9, the names of the persons present along with the PW-1 were mentioned.

(iii) Learned counsel for the informant submitted that the first information report was a prompt one and no question of any ante timing was involved. The informant had reached the police station as was mentioned in the G.D. Rapat No. 9 and had lodged the first information report promptly at 07:45 AM. They had travelled the distance of one and half kilometre very promptly on a rickshaw and if there were differences in the distance given in the first information report, chik

F.I.R. and the panchayatnama then it was of no avail as such mistakes are common and no importance ought to be given to them. He submits that the PW-5, Keshav Dev, Head Moharrir in his statement at page no. 62 of the paper book had clearly mentioned about the arrival of the PW-1 and his companions. Learned counsel for the informant submitted that if there was a prompt first information report then as per the judgment of **Brahm Swaroop and Anr. versus State of U.P. reported in 2011 Criminal Law Journal 306,** the case had to be considered as a believable one and he relied upon paragraph 18 of that judgment. The relevant portion of the judgment is being reproduced here as under :

"18. In the instant case, the defence did not put any question in this regard to the investigating officer, Raj Guru (PW 10), thus, no explanation was required to be furnished by him on this issue. Thus, the prosecution had not been asked to explain the delay in sending the special report. More so, the submission made by Shri Tulsi that the FIR was ante-timed cannot be accepted in view of the evidence available on record which goes to show that the FIR had been lodged promptly within 20 minutes of the incident as the police station was only 1 km away from the place of occurrence and names of all the accused had been mentioned in the FIR. Dr. Nar Singh Bahadur (PW 4) examined Virendra Singh (D-3) on 31-5-2000 itself at 5.40 p.m. and had noted firearm injures on his body and opined that the injuries were fresh in nature. Dr. Anshu Kumar Agrawal (PW 6) had examined Atar Singh (PW 1) on 31-5-2000 itself at 3.50 p.m. and had noted multiple pellet wounds with surrounding charring over anterior surface of left thigh middle part and a single pellet wound over the anterior surface at right arm lower part. Dr. K.K. Saxena (PW 5), Radiologist conducted an x-ray examination of Atar Singh (PW 1) on 31-5-2000 and found three small rounded radio opaque with metallic density and FB shadow on middle of left thigh and right arm.

The prompt lodging of the FIR is proved from the chik report and the statement of the complainant under Section 161 CrPC, which was recorded immediately after lodging the FIR. Any defect in the preparation of the inquest report by the investigating officer cannot lead to an inference that the FIR was not registered at the alleged time. The FIR contains all the essential features of the prosecution's case including names of eyewitnesses, time and place of incident, names of the victim, motive, name of the accused persons, weapons in their hands and manner of assault. Thus, all these things lend a seal of assurance not only to the presence of eyewitnesses at the place of the incident, but also to the participation of the appellants in the crime. Courts attach great importance to the prompt lodging of FIR and prompt interrogation of a witness under Section 161 CrPC as the same substantially eliminates the chances of embellishment and concoction creeping into the account contained therein."

(iv) So far as the doubting of the eye-witnesses was concerned, learned counsel for the informant submitted as follows:

(a) The leaving of the Maruti car and going by a rickshaw to the bus stand was of no importance at all. There was a possibility that the PW-1 had got so much disturbed that he could not find the ignition key and therefore he had taken the rickshaw to the bus stand and thereafter to the police station. How a person reacts at a certain point of time is always very difficult to predict. To bolster his arguments, learned counsel for the informant relied upon **Rana Partap and others versus State of Haryana reported in AIR 1983 Supreme Court 680.** Since he heavily relied upon the paragraph no. 6 of the judgment and the same is being reproduced here as under:

"6. Yet another reason given by the learned Sessions Judge to doubt the presence of the witnesses was that their conduct in not going to the rescue of the deceased when he was in the

clutches of the assailants was unnatural. We must say that the comment is most unreal. Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counterattacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of witnesses on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."

(b) He further submits that the presence of the first informant at the police station along with Subhash and Satendra Singh Chauhan (whose presence is evident from Rapat No. 9) definitely went to show that every effort was made to lodge the first information report promptly and the first information report therefore could not be doubted. He submits that even the PW-2 Ramesh was shown to be present at the site of the incident in the first information report and his statement also could not be in any manner be disbelieved.

(c) So far as the identification of the accused persons was concerned, he submitted that the informant had known about the accused persons from before as they used to come to the court in different cases and the PW-1 being a practitioner in the same court had known the accused persons by their names. He submits that the appellants had criminal history which was a heinous one and therefore when they used to attend the court then definitely they could be recognised by the PW-1. He has submitted that Roby @ Sanjeev Kumar had a criminal history of six cases, Yogesh had a criminal history of three cases. He has also submitted that from the first information report itself it could be gathered that the accused persons were known from before. There was no point in getting any identification done. He has submitted that even no dock identification was necessary. He has submitted that if the accused persons were known to the witnesses and were named in the first information report then there was no need for any further identification either in the jail by means of test identification parade or in the court by means of dock identification. Learned counsel for the informant relied upon a judgment of **Amit versus State of Uttar Pradesh reported in 2012 Cr. LJ 1791** and has relied upon paragraph 7 of that judgment. The paragraph 7 is being reproduced here as under:

"We may now deal with the contention of the learned counsel for the appellant that no test identification parade was conducted during investigation for the witness to identify the appellant as the person who had taken away the child from her lap. Test identification parade would have been necessary if the appellant was unknown to PW 3 but as the appellant was the neighbour of PW 3 and known to her, no test identification parade was necessary for PW 3 to identify the appellant. In fact when PW 1 returned home, he was told by PW 3 that the appellant had taken away Monika on the pretext of giving her biscuits because PW 3 knew the appellant. Moreover, on such information received from PW 3, PW 1 lodged the FIR naming the appellant as the person who had taken away Monika on the pretext of giving her biscuits. Hence, the argument of the learned counsel for the appellant that no test identification parade was conducted for PW 3 to identify the appellant is misconceived in the facts of this case."

(v) So far as the question of the reaching of the dead-body very late to the Reserve Inspector's Office at 03:20 PM was concerned, learned counsel for the informant has submitted that it should be presumed that there was a huge crowd outside the college and the crowd had not allowed the dead-body to move. Further he has submitted that the constables who accompanied the

dead-body had known that the mortuary would open only after 02:00 to 03:00 PM so they had, in a very casual manner gone slowly.

(vi) Even if the dead-body reached late, learned counsel for the informant submitted that it mattered little when the post-mortem had been done and a report had been submitted. Learned counsel for the informant had also submitted that during the time the PW-1 had waited at the mortuary after having reached there at 11:00 to 11:15 AM he was waiting for the body to arrive. Still further learned counsel for the informant submitted that no question was ever asked during the trial by the defence as to why the dead-body reached so late and he therefore relying upon **Dayal Singh and others versus State of Uttaranchal reported in 2012 Cri. LJ 4323,** submitted that minor defects in the investigation were ignorable. He also for this argument of his, relied upon **Jai Narain and others versus State of U.P. reported in 2000 Criminal Law Journal 3808, Dhanaj Singh and others versus State of Punjab reported in (2004) 3 SCC 654 (2004 Cr.L.J. 1807 SC).** Still further he has submitted that the incident had occurred in the year 2002 and the trial though had commenced in the year 2002 was concluded only in the year 2021 and this was because of the high handedness of the appellants. They used to delay the proceedings by moving transfer applications on different occasions. Learned counsel for the informant further had submitted that the question of motive was evident from the statement of the accused recorded under Section 313 of Cr.P.C. wherein they had admitted enmity. Non production of Vimal and Jugendar would not be of any consequence as two very reliable eye-witnesses were already present.

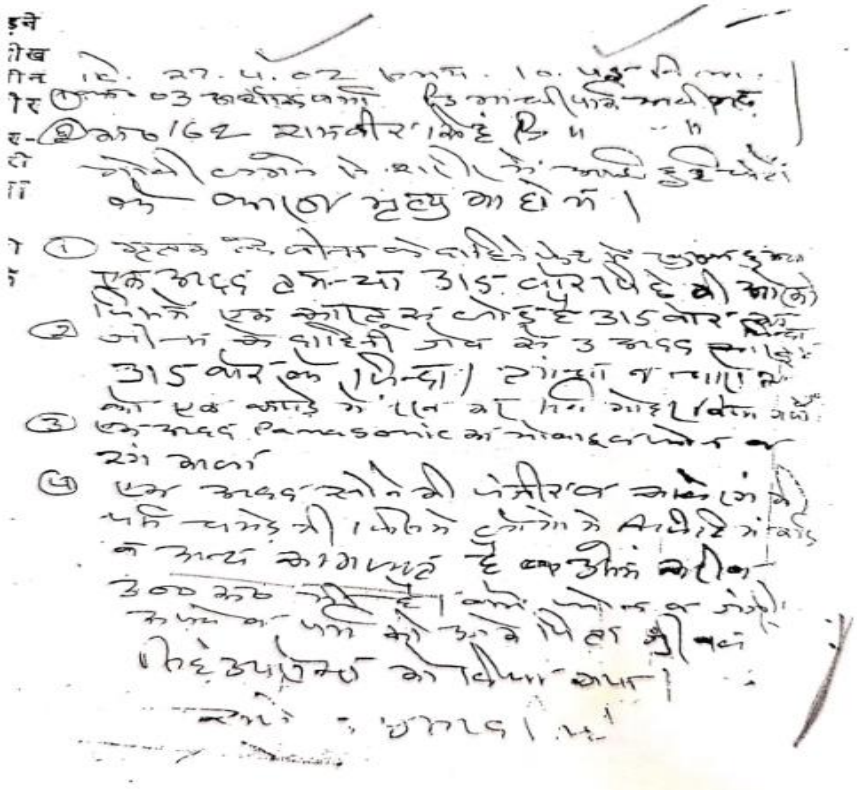
(vii) Learned counsel for the informant further submitted that if exhibits were not given to paper nos. 636A/2, 363A/3 and 636A/4 it would be of no consequence as Karan Pal Singh the DW-1 himself had stated at page no. 77 of the paper book that the person who had died was a student of the college.

(viii) Learned counsel for the informant has submitted that the submission made by the appellants that the deceased was himself a criminal having been found with a country made pistol and ammunition would not be of much consequence as he might have kept the same for self defence. Also, he has submitted that if there were any lapses on the part of the Investigating Officer, then no reliance could be placed on that and in this aspect he relied upon D**ayal Singh and others versus State of Uttaranchal reported in 2012 Cri. LJ 4323.** Still further relying upon the judgment of **Jai Narain and others versus State of U.P. reported in 2000 Criminal Law Journal 3808,** learned counsel for the informant has submitted that even if one particular evidence points towards the involvement of the accused then conviction could be done. He similarly relied upon **Dhanaj Singh and others versus State of Punjab reported in (2004) 3 SCC 654 (2004 Cr.L.J. 1807 SC).**

(ix) Learned counsel for the informant has submitted that if the PW-1 had visited the police station after lodging the first information report then that could have been for the purpose of getting the site plan etc. prepared. Learned counsel for the informant Sri Naseeruzaman thereafter submitted that when it was a clear day light murder with eye-witness accounts there then minor discrepancies could have to be ignored and no interference was required to be done in a case of conviction.

23. Sri C.B. Dhar Dubey, learned A.G.A. has however submitted that if the inquest report is seen then it becomes clear that the father of the deceased was there at the spot as the gold chain which the deceased was wearing was handed over to the father by the police personnel present at the time of the inquest. Since, learned A.G.A. relied upon point 4 of the inquest report wherein it

was provided as to how the recovered articles were dispensed with, the same is being reproduced here as under:



24. Learned A.G.A. further submitted that throughout the case it was evident that there was enmity with regard to some property etc. and therefore motive with regard to the killing by the accused was evident. Still further learned A.G.A. has submitted that at page no. 54 of the paper book, the investigating officer PW-4 had stated that the motive with regard to the crime was evident from the first information report and also it was evident that the PW-1 the first informant was knowing the accused persons and he has therefore submitted that it was not necessary to get the accused identified. The relevant portion of the statement of the PW-4 at page no. 54 of the paper book is being reproduced here as under:

'प्रथम सूचना रिपोर्ट में ये तथ्य आया था कि एक जमीन की रंजिश को लेकर विवाद चल रहा था इस कारण मैं समझ गया था कि वादी मुकदमा मुल्जिमान को पहले से जानता होगा इसीलिए मेरे द्वारा मुल्जिमान की कोई कार्यवाही शिनाख्त नहीं की गई।'

In this regard learned A.G.A. also took the Court through the cross-examination of the PW-2 wherein he had categorically stated that he had known the accused persons.

25. Having heard Sri V.P. Srivastava, learned Senior Advocate assisted by Ms. Neeja Srivastava, learned counsel for the appellant in Criminal Appeal No. 5307 of 2021; Sri Sagheer Ahmad, learned Senior Advocate assisted by Sri Tripurari Pal, learned counsel for the appellant in Criminal Appeal No. 5365 of 2021 and Sri Suresh Chand Pandey along with Sri Saurabh Pandey in Criminal Appeal No. 5319 of 2021, learned counsel for the appellant; Sri Naseeruzzaman, learned counsel appearing for the informant and Sri C.B. Dhar Dubey, learned A.G.A. for the State, we analyze the arguments as follows:

(a) So far as the question of ante timing of the first information report is concerned, we find that the PW-1 had reached the place of incident as per the allegation made in the first information report at around 07:00 AM, when the incident occurred thereafter. There is contradiction in the statements of the PW-1, the PW-2 and the DW-1 with regard to how the incident was seen from outside. The perusal of the statement of the PW-1 gives a definite indication of the fact that the entire gate of the college was opened and there was unhindered view and therefore the PW-1 along with his four companions could see the entire incident which happened 35 paces inside the gate of the college obliquely in between the Geography Department and the place where the car was parked. However if the statement of the DW-1 and PW-2 are perused then it becomes apparent that the main gate was closed but the egress and ingress was allowed through a small wicket gate and if that was the case then definitely the vision from the place where the PW-1 and his companions were standing definitely would have been hindered and they could not have seen the incident which had taken place.

(b) We are of the view that the incident when had occurred, the PW-1 along with four companions had gone to the bus stand where the PW-1 scribed the first information report in the presence of three persons and the PW-2 and the other two relatives were asked to go home. This also appears very strange to the Court. If PW-1 had a car then the natural thing to happen was that they all ought to have gone back in the car. There is a possibility that the PW-1 and his companions reacted in a manner where upon having seen the incident they had forgotten about the car. However it appears extremely surprising that none of them checked their pockets to find the ignition key. If there was a fear to the PW-1 of being spotted by the assailants if he and his companions went by the car then we have no hesitation in saying that if they travelled in a rickshaw, they could have been spotted out even better.

(c) We find that the body of the deceased started from the place of incident at 10:45 AM after the inquest was over and it reached the Reserve Inspector's Office at 03:40 PM. This is getting late by almost five hours. Travelling a distance of 7 kilometres in these modern days in five hours seems to be a strange thing to happen. Also the two constables namely Constables No. 03 Ashok Verma and C.P. 120 Ramveer Singh were not produced in the witness box to give a convincing answer as to why such a delay had occurred. Still further, we find that the Investigating Officer had throughout stated that he had got the site plan prepared with the help of the PW-1 but the PW-1 had stated that he had never gone to the site after lodging the first information report. Not only that, we find that after the PW-1 had gone from the police station at around 11:15 AM and had stayed at mortuary till 05:00 PM then in between twice he had gone to the police station as per his own statement. There was absolutely no requirement for him to go to the police station. The only inference that the court can now draw is that the police and also the complainant were in search of certain names who could be nominated for having committed the murder. This becomes more

evident when the distance given in the first information report, chik F.I.R. and the inquest report differed. We thus have no hesitation in saying that the first information report was ante timed.

(i) The question arises as to whether the PW-1 and the PW-2 along with the other nominated eye-witnesses namely Vimal and Jugendar Singh were at all there at the site. From the entire narration, it is clear that the PW-1 had stated that the entire gate of the college was open, so much so that he could see the place of incident which was around 35 paces inside the college from the car where he was standing outside the gate. This was in absolute contradiction to the case taken by the PW-2 and DW-1 that the main gate was closed and that all ingress and egress was allowed through a wicket gate. Also the presence of the PW-1 and other eye-witnesses become doubtful, if we see that the car by which the eye-witnesses had gone along with the deceased to college was not taken by them go to the police station and they had gone on a rickshaw. Also, howsoever much the PW-1 and his other companions might have been shocked by the incident they would definitely have had the sagacity to search for the key and drive down to the police station in a car. This also creates doubt whether the PW-1, PW-2 and his other companions were at all there at the site. From the record we find that the proctor himself had rung up the police and there was every possibility that the police had reached first and thereafter the prosecution witnesses 1, 2 and their companions had reached. At a particular juncture in the cross-examination of PW-2, he had stated that he had reached the place of incident at the time when the panchayatnama was being conducted. In the first blush the argument of the learned counsel for the respondent appears to be correct that by stating so the PW-2 had meant to say that he went again after having come back from the police station and that he had reached the place of incident again when the panchayatnama was going on but when composite reading of the entire evidence is done then the argument of the learned counsel for the appellants appears to be convincing that in fact the PW-2 had reached at the time when the panchayatnama was underway. Still further the very fact that the other two eye-witnesses namely Vimal and Jugendra whom, the PW-1 had claimed, were eye-witnesses were never produced in the witness box, confirms our view that the PW-1, the PW-2 and their companions were not there at the time of incident. So far as the argument of the learned A.G.A. that in the panchayatnama, it had been mentioned that the gold chain and other belonging had been handed over to the father is concerned, suffice to say that it definitely did not mention that the father was at the place where the panchayatnama was being undergone. It is just possible that the belongings were handed over to the father later on when he had reached on the phone call of the police who was informed by the proctor. Also had the father been present at the site he would have definitely been a witness to the panchayatnama. All this convinces us to believe that PW-1 alongwith PW-2 was definitely not there at the site when the incident had occurred.

(ii) Next comes the question of fact as to whether the PW-1 and the PW-2 along with other witnesses namely Vimal and Jogindar Singh were at all there at the spot. The contradiction as have been pointed out earlier coupled with the fact that ante timing had to be done, we are convinced that the PW-1 along with PW-2 were not there on the spot at the time of the occurrence of the incident.

(iii) So far as the identification of the accused is concerned, we find that vis-a-vis the appellant Yogesh, name of his father was not given in the F.I.R. The PW-1 in his statement has clearly mentioned that even Raghvendra @ Kaalu was not known to him and only on the basis of hearsay evidence i.e. from the students present in the college, who were also never produced in the witness box, the name of Raghvendra @ kaalu was known to the complainant. How the name of the father of the Raghvendra @ Kaalu was known to the complainant still remains a mystery.

Definitely the students must not have known the name of the father of Raghvendra @ Kaalu. The prosecution has to stand on its own legs and when it did not convincingly prove that how the name of Shailendra, father of Raghvendra @ Kaalu, was known to the first informant on the date of the lodging of the first information report, then the case so far as recognising of Yogesh and Raghvendra was concerned becomes absolutely suspicious. What the Court here intends to further elaborate is that throughout during investigation despite the fact that it was not certain that the accused were known to the first informant, no test identification parade was done. Not only that, the accused were not even recognised ever in the court either by the PW-1 or PW-2 who were the witnesses of fact. All three accused for the first time appeared in the Court at the time of framing of the charges and thereafter if the entire order-sheet of the trial court is seen then it appears that all the three of them appeared together only on 08.08.2014, 20.10.2014, 24.11.2014, 02.12.2014, 05.12.2014, 02.01.2015, 16.03.2015, 24.03.2015, 02.04.2015 and 05.05.2015 and on these dates the PW-1 and the PW-2 were not getting their statements recorded or were even being cross-examined. Thus we are convinced that the appellants were never identified in the court and if that is the case then definitely the prosecution has failed to prove its case beyond all reasonable doubt as it has been held by Apex Court in the case of **Tukesh Singh versus State of Chhattisgarh reported in 2025 AIR SC 2666.**

(vi) Also, no convincing evidence was brought on record evidencing that the deceased was a student of the college. Definitely the admit card, a scheme of examination and a bona fide student certificate were brought on record as Paper Nos. 636A/2, 636A/3 and 636A/4. However, the court had not cared to get these documents exhibited and proved. Simply bringing on record of the documents as Paper Nos. 636A/2, 636A/3 and 636A/4, could not make one conclude that the deceased was a B.A. IIIrd year student and that on the date of incident he had the examination of Military Studies-Paper I (a) or (b). The trial court had ignored all law to consider the three documents and had proceeded to consider those documents as evidence.

Be that as it may, we find that from the dead-body definitely these documents were not recovered. Had these documents been recovered from the dead-body and had not been exhibited even then the court would have considered that those papers were inadvertently not proved and the deceased was a student. Here we find that from the possession of the deceased, a country made pistol, live cartridges and some cash alongwith a gold chain were recovered. These definitely do not indicate that he was a student of the college. If the DW-1 merely said that he was a student of the college it did not mean that his statement would be taken as a gospel truth to believe that the deceased was a student. He might have looked the age of a student and therefore there was possibility that the DW-1 had addressed him as a student during his evidence. Further being a student could have been proved by the prosecution by the production of Admission/ Attendance Register. This was also not done.

(v) We are also convinced that with the passage of time the prosecution witnesses must have seen the accused on many an occasion. A retrial for the purpose of identification by even dock identification would thus be a futile exercise. However, relying upon Tukesh Singh versus State of Chhattisgarh reported in 2025 AIR SC 2666 we are of the definite view that the trial where the accused were never recognised or even identified even in the

court would result in complete acquittal as it goes to show that the prosecution utterly failed to prove its case beyond all reasonable doubt.

(vi) So far as the motive aspect is concerned, we are definitely of the view that it had to be established to the hilt, especially when the eye-witness accounts had been disbelieved. The motive as had been brought forth that there was some dispute with regard to the landed property, also was not proved as neither any sale deed nor any document relating to any case having been filed between the parties in any court was brought on record. Also, when the statement of the accused were being recorded under Section 313 Cr.P.C., no document which could have been replied to by the accused was shown to them.

25. In the ultimate analysis, we feel that this is an extreme case where the trial court proceedings were conducted in absolute ignorance of law. In the first place, the trial court never cared for a proper identification of the accused. The entire testimony showed that at no point of time the accused were identified in the court. We also dare to say that even the investigation was done in the most sloppy manner. When the father of the deceased along with all his companions had left the dead-body (as per the F.I.R. version) and had gone to the police station on a rickshaw then the investigating agency i.e. the police ought to have seen to it as to whether the father had come back again to the site. The PW-1 had said he never had gone to the site where as the I.O., PW-4, had said that he had prepared the site plan with the help of the father. The investigating agency i.e. the police, upon reading of the F.I.R. should have concluded that definitely when Yogendra whose father's name was not there in the F.I.R. and Raghvendra about whom the father of the deceased was not knowing then a test identification parade should have been got done. Further we find that the trial court had depended while giving its judgment on documents i.e. the Paper Nos. 636A/2, 636A/3 and 636A/4 which were never proved and had not got exhibited. This shows the extreme immaturity of the trial court. When an accused is being tried for murder, trial should be conducted with utmost care. Had this case been a very old one, we would not have ventured to comment on the manner in which the trial had taken place. This is a case which was tried in the year 2021 finally and, therefore, we have ventured to comment on the manner in which the trial was undergone. The courts undertaking sessions trial should be very careful in dealing with the evidence. They should always remember that it is trite law and a settled principle of criminal jurisprudence that 99 guilty persons might escape the clutches of law but one innocent should not be punished wrongly.

26. For all the reasons which have been stated above, we are thus of the view that the judgment and order of the trial court dated 24.09.2021 deserves to be set aside.

27. The Appeals thus stand **allowed**.

28. The appellants, in all the Appeals namely Criminal Appeal No. 5319 of 2021, Criminal Appeal No. 5365 of 2021 and Criminal Appeal No. 5307 of 2021, are honourably acquitted of the charges as were levelled against them in the instant case. If the appellants are in jail, they be released forthwith.

(2026) 5 ILRA 990
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.05.2026

BEFORE

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

Crl. Misc. Writ Petition No. 3807 of 2023

Matambar Mishra **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

Matter pertains to whether petitioner's illegal detention in police custody for about twenty-four hours, without authority of law and on the basis of a domestic violence complaint, constituted a violation of his fundamental right to personal liberty guaranteed under Article 21, and whether the Court, in exercise of its writ jurisdiction, could mould the relief by awarding monetary compensation despite the absence of a specific prayer for such relief.

Headnotes

Code of Criminal Procedure, 1973 - ss. 107, 116, 111 - Constitution of India, 1950 - Article 21 - Illegal detention by police - Compensation - Scope - The petitioner instituted the writ petition alleging that he was forcibly taken from his residence by the In-charge of Police on 26.11.2022 in connection with a domestic dispute, without registration of any criminal case or lawful authority, and was illegally confined in police custody until 27.11.2022 - He further alleged that his release was secured only after payment of an illegal demand of bribe and that the subsequent inquiry conducted by the Assistant Commissioner of Police was perfunctory and failed to consider material evidence - The petitioner also challenged the initiation of proceedings u/ss. 107/116 Cr.P.C., contending that they were instituted subsequently only to create a semblance of legality for his unlawful detention.

Held*:* The petitioner was illegally deprived of his liberty by a police officer, in the colour of exercise of authority of State, and for this act, the petitioner must be given monetary recompense - The ends of justice would be met, if the State are ordered to pay the petitioner for his illegal detention in police custody from 26.11.2022 to 27.11.2022, a total sum of Rs.25,000/- together with costs in the sum of Rs.10,000/- - Accordingly, writ petition succeeds and allowed with costs - Respondent Nos.1, 2 and 3 are ordered by a mandamus to pay the petitioner ad hoc compensation in the sum of Rs.25,000/- within a period of thirty days of the order with liberty to recover the sum of this compensation, together with costs, after these have been paid to petitioner, from Dubey in whatever manner respondent Nos.1, 2 and 3 find it appropriate, including recovery from Dubey's remuneration and other funds in the hands of respondents - It will be open to the petitioner to bring a regular suit for damages and establish his claim before a Court of competent jurisdiction in regard to his illegal detention, where any compensation, if awarded, shall take into account the ad hoc compensation that have granted. [Paras 22, 23] (E-13)

Case Law Cited

Fayyaz Shamshoddin Attar v. State of Maharashtra and others, **2015 SCC OnLine Bom 9012;** *Pankaj Kumar Sharma v. Govt. of NCT of Delhi and others,* **2023 SCC OnLine Del 6215;** *M. Sudakar v. V. Manoharan and others,* **(2011) 1 SCC 484;** *Berhampur University and another v. Ganesh Chandra Behera and others,* **2021**

SCC OnLine Ori 2399; *Shiv Kumar Verma and another v. State of U.P. and another,* **2021(5) ADJ 493 (DB); referred to**

List of Acts

Code of Criminal Procedure, 1973; Constitution of India, 1950

List of Keywords

Illegal detention; Police custody; Police lockup; Personal liberty; Commissioner of Police; Sub-Inspector; Compromise letter; Article 21; Writ Petition; Mandamus; Bribe; Inquiry report; Private dispute; Compensation; Domestic violence; Public tranquility; Breach of Peace; Ordinary Original Civil Jurisdiction; Pecuniary Jurisdiction; Fundamental Right; Police Officer; Authority of Law; Disciplinary inquiry; Remuneration; Petition allowed with cost.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ Petition No. - 3807 of 2023

From the inquiry report dated 28.12.2022 submitted by the Assistant Commissioner of Police, Handia, Prayagraj to the Commissioner of Police, Prayagraj, discarding the petitioner's case of illegal detention.

Appearances for Parties

Advs. for the Petitioner(s):
Mata Achal Mishra, Vinay Mishra

Advs. for the Respondent(s):
G.A.

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

1. This is a writ petition, which discloses a very substantial cause of action, but seeks a non-substantial relief.

2. The case of the petitioner is one about illegal detention in police custody for 24 hours from 26.11.2022 to 27.11.2022, but the relief that the petitioner seeks is a mandamus commanding the State of Uttar Pradesh through the Additional Chief Secretary (Home), Government of U.P., Lucknow, to ensure an inquiry into the matter by any other superior police officer. In order to understand the prayer for a direction to get an inquiry done by 'any other superior officer', one has to look into the deleted prayer No.1, where the petitioner had sought quashing of the inquiry report dated 28.12.2022 submitted by the Assistant Commissioner of Police, Handia, Prayagraj to the Commissioner of Police, Prayagraj, discarding the petitioner's case of illegal detention. The first relief was deleted under orders of the Division Bench dated 14.03.2023 and notice issued with regard to Relief Nos.2, 3 and 4. Relief Clause No.3 is the residual clause, where the Court is entrusted with the discretion to issue any other suitable writ, order or direction that may be deemed fit and proper, and the fourth is about costs. In our opinion, this is one of the very exceptional cases, where we have to consider granting just relief to the petitioner under Residual Clause No.3.

3. The case of the petitioner is that he was living at Mehmoorganj in the district of Varanasi and had come over to his native village Sidhwar, Tehsil and P.S. Handia, District Prayagraj, to look after his agricultural property located there. On the 26th of November, 2022, the petitioner had gone to his fields to take care of his paddy crop and returned home in Village Sidhwar at about 3.00

p.m., when one Surya Prakash Dubey, the then In-charge Police Outpost Baraut, P.S. Handia, District Prayagraj, entered the petitioner's house. Without intimating anyone of anything or the petitioner himself, he dragged the petitioner out of his house, dressed in just a lungi and kurta and carried him off to the Police Outpost Baraut. Thereafter, the petitioner was conveyed to P.S. Handia. On way to P.S. Handia via Police Outpost Baraut, the petitioner repeatedly asked Dubey the reason why he was being taken to the police station. Dubey abused the petitioner and did not disclose any reason. The petitioner was put in the Lockup of P.S. Handia for about 24 hours from 26.11.2022 to 27.11.2022.

4. There are specific allegations in paragraph Nos.11 to 17 of the writ petition to the effect that during those 24 hours of illegal detention, the petitioner asked to be set at liberty, but Dubey demanded a bribe of Rs.20,000/- as price for the petitioner's liberty. The petitioner's younger brother endeavoured hard to secure the petitioner's release and for the purpose requested Mr. Rahul Mishra, an Advocate of District Court, Allahabad, but all efforts proved in vain and each time, the petitioner faced a demand of Rs.20,000/- in bribe by Dubey for his release from illegal custody. It is also averred that on 27.11.2022, the petitioner's younger brother repeatedly attempted to contact Dubey over his cellphone, but Dubey remained elusive. It is averred specifically in paragraph No.17 that the petitioner was released from illegal custody on 27.11.2022 at 4.00 p.m., but not before he was forced to pay a bribe of Rs.20,000/- to Dubey.

5. Complaints in the matter were addressed by the petitioner's son Mr. Ashish Kumar Mishra, Advocate of Delhi, to Hon'ble the Chief Minister of U.P., the Director General of Police, U.P. and the Commissioner of Police, Prayagraj, all sent by registered post, but all in vain. In vain in the sense that respondent No.3, the Assistant Commissioner of Police, Handia, Prayagraj was directed to inquire into the matter by the Commissioner of Police, Prayagraj, but he submitted a report rejecting the petitioner's complaint on specious grounds and without hearing the petitioner. The most serious objection to the inquiry undertaken by the A.C.P., Handia is that the inquiry report was submitted by the A.C.P. and an opinion formed about the petitioner's complaint without recording the statement of the petitioner, his son and persons, who visited the petitioner in the Lockup of P.S. Handia, Prayagraj during time that he was in illegal detention. About the last part of the allegation, it is averred in paragraph Nos.12 and 13 that one Devi Shankar Mishra, a resident of the petitioner's village, came to meet him in the Lockup of P.S. Handia on 26.11.2022 and also brought him food cooked at the petitioner's home. The petitioner ate that food on 26.11.2022 at 9.00 p.m. in the Police Lockup. Devi Shankar Mishra was also an important witness about the fact of illegal detention, whose statement was not taken down by the A.C.P. while writing his inquiry report.

6. There is another objection taken by the petitioner in proceedings drawn against him on 29.11.2022 under Section 107/116 Cr.P.C. The case is that proceedings under Section 107/116 were a cover up to justify the petitioner's illegal detention in the Police Lockup from 26.11.2022 to 27.11.2022. These proceedings were taken on 29.11.2022 and it is argued that for a private dispute between the petitioner and his brother's daughter-in-law, no security proceedings for keeping peace could have been initiated, inasmuch as those proceedings relate to instances of breach of peace or disturbance of public tranquility, or any wrongful act that may probably occasion a breach of peace

or disturbance of public tranquility. A case of domestic violence is far away from the Chapter proceedings under the Cr.P.C.

7. About the last part of the matter, upon notice being issued, a counter affidavit has been filed by the Additional District Magistrate (Judicial), Etah. The respondent's folly in initiating proceedings under Section 107/116 concerning a case of domestic violence has been admitted by the 5th respondent. It is averred in paragraph Nos.8 and 9 of the counter affidavit filed on behalf of respondent No.5 thus:

"8. That in reply to the contents of paragraph No. 28 & 29 of the writ petition it is humbly submitted that the notice under Section 111 Cr.P.C. was issued by the respondent solely on the basis of a challani report submitted by Police Station Handia. The respondent had no independent knowledge of any domestic dispute between the petitioner and other parties. The respondent was not informed of the alleged incidents dated 26.11.2022 and 27.11.2022, nor was any detail of such domestic violence dispute brought to his attention at the time of issuing the notice. No further proceedings or consequential action were taken against the petitioner pursuant to the notice issued under Section 111 Cr.P.C. It is also humbly submitted that while issuing the notice, the aspect of domestic violence was not considered, which was an inadvertent omission. For this oversight, the respondent tenders an unconditional apology to the Hon'ble Court.

9. That it is respectfully submitted that the notice issued under Section 111 Cr.P.C. and the challani report forwarded by Police Station Handia were neither served upon the petitioner nor executed in any manner. With the passage of time, the said notice has lapsed and, therefore, carries no present effect or operation in law."

8. Heard Mr. Mata Achal Mishra, learned Counsel for the petitioner and Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate on behalf of the State.

9. So far as the issue of proceedings under Section 107/116 Cr.P.C. is concerned, we must remark that what was reported to the Police, in whatever form, was at best a case of domestic violence, or may be a domestic squabble. There was nothing which was an offence, on the basis of which an FIR or even an NCR could be registered. If that could not be done, the scope of security proceedings under Section 107/116 Cr.P.C. and all the other relevant provisions of Chapter VIII of Cr.P.C. would not be attracted. Those proceedings are essentially designed to preserve peace and public tranquility. Such proceedings are about public peace and tranquility and not domestic peace or tranquility. These should never have been taken and the affidavit on behalf of respondent No.5 admits that the fact was not brought to his notice that at the bottom of the proceedings, was a case of domestic violence. Reference in this connection may be made to a Bench decision of the Bombay High Court in **Fayyaz Shamshoddin Attar v. State of Maharashtra and others, 2015 SCC OnLine Bom 9012,** where it has been held:

"20. The record and circumstances already mentioned show that it was purely matrimonial dispute. From the wording of section 107 of Cr. P.C., this Court has no hesitation to observe that it was not possible to take the matter under section 107 of Cr. P.C. No crime was registered either of cognizable nature or non-cognizable nature by police on the basis of application dated 22.7.2012. No crime was registered against the present petitioner in the past

also. No attempt was made to see that settlement can be arrived between the parties as it was dispute of matrimonial nature and wife had approached police for first time."

10. There are definite allegations in paragraph Nos.8, 9 and 10 of the writ petition about the petitioner being dragged to the police station by Dubey, a Sub-Inspector, In-charge of Police Outpost Baraut, P.S. Handia and illegally confined him in the Police Lockup from 26.11.2022 to 27.11.2022. In paragraph Nos.11 and 14 of the writ petition, there is a specific allegation that upon the petitioner's demand to be released from illegal police custody, Dubey demanded a bribe of Rs.20,000/-. In paragraph Nos.12 and 13 of the writ petition, there is a case about Devi Shankar Mishra, a resident of the petitioner's village, visiting him in the Police Lockup and bringing him food cooked at the petitioner's home for his evening meal.

11. The most relevant of the counter affidavits, though others are also relevant, is Dubey's personal affidavit dated 03.12.2025. While answering the case of the petitioner in paragraph Nos.8, 9 and 10 of the writ petition about being illegally dragged out of his house by Dubey and confined in the Police Lockup from 26.11.2022 to 27.11.2022, there is no specific denial of the fact in paragraph No.4 of Dubey's counter affidavit. In the absence of a specific denial of the petitioner□s case of illegal detention in the police lockup by Dubey from 26.11.2022 to 27.11.2022, the fact of illegal detention would be deemed to have been admitted. What is said there, is that as per G.D. No.23 dated 27.11.2022, Dubey came to his office and a compromise letter was prepared regarding a domestic violence complaint between the first party Ritika and the second party Matambar Mishra, that is to say, the petitioner. The compromise was made mutually without any pressure. Both parties came to the Police Outpost Baraut, Handia and agreed that there would be no dispute. Their Advocate, Mr. Rahul Mishra, prepared the compromise letter. Both parties agreed to the compromise letter. They did not criticize behaviour of the Police. In paragraph No.5 of the rejoinder affidavit, the petitioner has reiterated his case of being dragged out of his home by Dubey, dressed in just a lungi and kurta and forcibly taken first to Police Outpost Baraut and thence to P.S. Handia, where he was illegally detained in the Police Lockup from 26.11.2022 to 27.11.2022, in order to insult him and lower his status and dignity in the society.

12. What we notice is, as already remarked, that there is no outright denial of the fact that Dubey did not bring the petitioner to the police station. What is attempted is a tacit denial, which, in reality, is no denial in the face of such specific allegations of rough handling and illegal confinement by a police officer. The fact of illegal detention would, therefore, be deemed to have been admitted. What is acknowledged by Dubey is the fact that there was a complaint against the petitioner by Ritika, his daughter-in-law, who in fact is the petitioner's brother's daughter-in-law, about domestic violence. It is then said that the petitioner and Ritika, both came to the police station and mutually compromised the matter without any pressure. The foremost thing to be seen is that if it was a case of domestic violence and nothing more. The Police had little business in the matter unless there was a definitive cognizable offence committed. Admittedly, that was not. If it was only a case of domestic violence, Ritika's remedy lay in moving the learned Magistrate for appropriate relief under the Protection of Women from Domestic Violence Act, 2005.

13. Apparently, Ritika went to the police station with a complaint against the petitioner and it was Dubey, who swung into action. It is beyond all possible standards of behaviour of a man,

circumstanced as the petitioner, that he would walk in to the police outpost or the station upon his daughter-in-law lodging a complaint of domestic violence, and without hassle amicably write out a compromise in Dubey's presence. Dubey after all was not a spiritual Guru, a Panch Parmeshwar or a community leader, to whom the petitioner and his daughter-in-law would head out voluntarily to submit their dispute for guidance and amicable settlement. He is a police officer, who is feared because he possesses the coercive authority of the State. There is a gaping flaw in Dubey's account between Ritika's complaint about domestic violence made to him and the petitioner coming over to the police outpost or the station voluntarily, as if it were, and writing out a compromise. It is impossible that the petitioner would have walked in to the police outpost or the station to compromise.

14. In these circumstances, there is little cavil that entertaining a complaint of mere domestic violence, Dubey dragged the petitioner to the police outpost and then locked him up at the police station, as the petitioner says, for 24 hours. The petitioner has not given an exaggerated account and it inspires confidence with us. The allegations about Dubey demanding a bribe, we are not inclined to go into. In so far as the last mentioned allegation is concerned it truly goes to the remit of the disciplinary authority or the Police themselves, or may the Vigilance Establishment or the Anti-Corruption Bureau, to examine and determine.

15. Here all that we are concerned with is a question of the petitioner's right to liberty guaranteed under Article 21 of the Constitution in its most nascent form. We are convinced that Dubey has recklessly violated the most fundamental essence of this most valuable fundamental right by dragging the petitioner out of his home on the basis of a complaint, he was not authorized to act upon, and, then, carrying the petitioner away in custody, first to the police outpost, Baraut and then confining him in the police lockup at Police Station Handia from 26.11-2022 to 27.11.2022 without the authority of law.. The proceedings under Section 107/116 Cr.P.C., that were drawn up against the petitioner by Dubey, which could never have been taken in regard to a case of domestic violence, were also a cover up to somehow obliterate Dubey's misdeed in illegally confining the petitioner in the Police Lockup at P.S. Handia for 24 hours without authority of law. Though, proceedings were taken on the 29th and the petitioner was liberated from Dubey's illegal custody on 27.11.2022, these proceedings were a measure taken out of panic to raise a semblance of defence for all that Dubey had done to the petitioner. It is for this reason that respondent No.5 has acknowledged the fact that the proceedings, though instituted, did not lead to service of processes upon the petitioner and he was not asked to furnish any bonds etc. during the relevant period of time of six months.

16. In **Pankaj Kumar Sharma v. Govt. of NCT of Delhi and others, 2023 SCC OnLine Del 6215,** confronted with a similar question, the Delhi High Court held:

"7. It is stated that the Petitioner herein called the police. However, when the police reached the spot, they picked up the Petitioner and placed him in the lock-up. The fact that the Petitioner was picked up from the spot without an FIR against him, subsequently brought to the Police Station and placed in the lock-up has not been disputed by the State authorities.

8. The facts of the case reveal that, even though it was for a short period of time, the Petitioner was deprived of his personal liberty, a right protected under Article 21 of the

Constitution of India. It is evident that the authorities acted in a high-handed manner without respecting the Petitioner's liberty placed him in the lock-up without following due procedure of law or the principles that have been laid down when an arrest is made.

xxxxx

10. This Court is deeply troubled by the fact that the Petitioner was not even arrested. He was simply picked up from the spot, brought to the Police Station and placed inside the lock-up for no rhyme or reason. The high-handed way in which the Police authorities have acted, throwing to winds the constitutional and fundamental rights of a citizen, is appalling. This Court is troubled at the way the citizens are being treated by the Police authorities who behave as if they are above the law. A punishment of censure alone is not sufficient in the facts and circumstances of this case.

11. The Apex Court in D.K. Basu (supra) also observed as under:-

"44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

x x x x

46. In Nilabati Behera case [(1993) 2 SCC 746: 1993 SCC (Cri) 527: 1993 Cri LJ 2899], It was held: (SCC pp. 767-68, para 32)

"Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or Invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve 'new tools' to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title 'Freedom under the Law' Lord Denning in his own style warned:

'No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to-date

machinery, by declarations, Injunctions and actions for negligence.... This is not the task of Parliament the courts must do this. of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this country.""

12. Similarly, In Nilabati Behera v. State of Orisa, (1993) 2 SCC 746, while dealing with the power of a constitutional court to award compensation rather than relegating such person to file a suit for recovery of damages, the Apex Court observed as under: -

"22. The above discussion indicates the principle on which the court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in Rudul Sah [(1983) 4 SCC 141 1983 SCC (Cri) 798: (1983) 3 SCR 508] and certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in Rudul Sah [(1983) 4 SCC 141: 1983 SCC (Crl) 798: (1983) 3 SCR 508] in that line have to be understood and Kasturilal ((1965) 1 SCR 375 AIR 1965 SC 1039 (1965) 2 Cri LJ 144] distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son."

13. The said principle is now well established that in cases where there can be no dispute of facts, the constitutional courts have the power to award compensation in case person has been deprived of his life and liberty without following the procedure established by law.

14. The time spent in the lock-up by the Petitioner, even for a short while, cannot absolve the police officers who have deprived the Petitioners of his liberty without following the due procedure established by law. A punishment of censure which is not likely to have any effect on the career of the police officers will not be a sufficient deterrent to the officer. The censure should be of such nature that other officers too must not emulate such actions in future. This Court is of the opinion that a meaningful message must be sent to the authorities that police officers cannot be law unto themselves. In the facts of this case, even though the illegal detention of the Petitioner was only for about half an hour, this Court is inclined to grant compensation of Rs. 50,000/to the Petitioner, which shall be recovered from the salaries of Respondents No. 4 and 5."

17. This Court must remark at this stage that ideally cases of such kind of illegal detention should go to the Courts of ordinary original civil jurisdiction. In this State, ordinary original civil jurisdiction vests depending upon the valuation, either with the Civil Judge (Jr. Div.) or the Civil Judge (Sr. Div.), the latter holding unlimited pecuniary jurisdiction. Whatever the causes might be, including a large number of statutes that exclude the jurisdiction of the Civil Court in all matters, wherever action of administrative authorities is the subject matter of issue, even in cases where a statute is not in the field and it is a tort pure and simple done by administrative functionaries under the colour of authority, or may be the brazen violation of a fundamental right, as precious as liberty, by constant course of social frown and at times the supervising Courts' discouragement, the Civil Judges in the State for decades have lost the working authority, if not the jurisdiction, to try such suits and award compensation. It is for this reason that whenever the few and far between cases of the award of compensation for brazen acts of torts committed by functionaries of the Electricity Corporation or the Municipal Corporation or deprivation of liberty etc. at the hands of

Police come to pass, it is in the exercise of the writ jurisdiction of the High Court. Such compensation or damage awarded albeit has to be ad hoc in nature.

18. We must take note of the fact that though the cause of action here is one essentially complaining of illegal deprivation of the petitioner's liberty in its most basic form by illegal confinement in a Police Lockup at the hands of a police officer, acting under the colour of authority, the petitioner's Relief Clause No. 2 is limited to seeking an inquiry into Dubey's conduct by any other superior police officer. The holding of a disciplinary inquiry into the conduct of a police officer is essentially an administrative function of the Government or the superior officers of the police. Even if that relief is granted and Dubey punished in departmental proceedings, it would not remedy the wrong which the petitioner has suffered on account of illegal deprivation of his liberty. It is not a matter with which the Court is primarily concerned or would recognize as relief for violation of the petitioner's liberty guaranteed by Article 21 of the Constitution. When the fact was pointed out to the learned Counsel for the petitioner that there was no relief claimed on the foot of which a violation of his right under Article 21 the Constitution, if found in his favour, could be remedied, he came up with an oral prayer that grant of some monetary compensation may be considered by this Court. No doubt that relief has not been claimed but the mere absence of a formal relief in a matter which is as fundamental as the most brazen violation of the petitioner's fundamental right to life and liberty in its most nascent form would not deprive this Court of its jurisdiction to grant necessary relief to remedy the violation of that fundamental right. In the view that we take we are fortified by the guidance of the Supreme Court on principle in **M. Sudakar v. V. Manoharan and others, (2011) 1 SCC 484.** In **M**. **Sudakar** (supra), it was held:

"14. The power to mould relief is always available to the court possessed with the power to issue high prerogative writs. In order to do complete justice 9 it can mould the relief, depending upon the facts and circumstances of the case. In the facts of a given case a writ petitioner may not be entitled to the specific relief claimed by him but this itself will not preclude the writ court to grant such other relief which he is otherwise entitled……"

19. Reference for the principle may be made to a Bench decision of the Orissa High Court in **Berhampur University and another v. Ganesh Chandra Behera and others, 2021 SCC OnLine Ori 2399.** In Ganesh Chandra Behera (supra), it has been held:

"29. Therefore, in view of pronouncements of the Apex Court, so far as "moulding of relief" is concerned, this Court is of the considered view that even if there is no such specific prayer has been made in the writ petitions, this Court can and ought to grant such relief The principle of "moulding of relief" has been rightly invoked by the learned. Single Judge because allowing the writ petitions in its original form would have been antithetical to the relief sought in the original form of the writ petitions. Therefore, the learned Single Judge after due consideration of the fact that it was the second round of litigation and in order to thwart any possibility of future litigation arising out of the same issue did well to cut through the clutter and get to the root of the issue in order to do complete and substantial justice between the parties by moulding the relief."

20. This Court, in **Shiv Kumar Verma and another v. State of U.P. and another, 2021(5) ADJ 493 (DB),** was confronted with a claim by the petitioners seeking compensation for illegal

detention from 12.10.2020 to 21.10.2020 in connection with Case No. 624 of 2020 under Sections 151, 107 and 116 CPC, Police Station Rohania, District Varanasi. After extensively considering the question of abuse of authority by Public Authorities, the Court took note of the State Government's policy dated 23.03.2021 providing for the payment of compensation of Rs. 25,000/- for illegal detention of any citizen by any officer of the State and initiation of disciplinary proceedings against such officer. This Court disposed of the aforesaid writ petition in terms of the following order:

"23. We record our appreciation for the State Government to take the aforequoted policy decision dated 23.3.2021 for payment of compensation of Rs. 25,000/- for illegal detention of any citizen by any Officer of the State Government and initiation of disciplinary proceedings against such officer. Since the State Government itself has taken a policy decision and has paid compensation to the petitioners herein, therefore, no further direction for payment of compensation is required to be issued in the present writ petition.

24. In view of the aforesaid, this writ petition is disposed of with the following directions :

(i) The State Government shall ensure that the provisions of the Cr.P.C. as referred in the policy decision dated 23.3.2021 are strictly followed/observed by all the concerned officers.

(ii) The State Government shall further ensure that paragraph 12 of the policy decision dated 23.3.2021 is strictly implemented, which at the cost of repetition is reproduced below:

(1) भारत के संविधान के अनुच्छेद-21 का उल्लंघन करते हुये किसी व्यक्ति की अवैध हिरासत किये जाने के लिए अनुशासनिक प्राधिकारी द्वारा जांच में दोशी पाये जाने पर उत्तरदायी अधिकारी के विरूद्ध उ0प्र0 सरकारी सेवक (अनुशासन एवं अपील) नियमावली, 1999, दि आल इंडिया सर्विसेज (डिसिप्लीन एंड अपील) रूल्स, 1969 एवं उ0प्र0 अधीनस्थ श्रेणी के पुलिस अधिकारियों की (दण्ड और अपील) नियमावली, 1991 (यथा संशोधित) में संगत नियमों के अंतर्गत दण्डात्मक कार्यवाही की जायेगी।

(2) अनुशासनिक प्राधिकारी द्वारा अपनी जांच रिपोर्ट 03 माह में अथवा संगत नियमावली में यथा उल्लिखित समयानुसार प्रस्तुत की जायेगी।

(3) यदि किसी नागरिक की अवैध रूप से हिरासत प्रमाणित पायी जाती है तो पीड़ित व्यक्ति को रू0-25,000/ की धनराशि का भुगतान मुआवजे के रूप में किया जायेगा।

(iii) The State Government shall publish Para 12 of its Policy decision dated 23.3.2021 in all largely circulated National Level Newspaper having circulation in the State of Uttar Pradesh and shall also display it on display board at prominent places within public view, in all blocks, Tehsil Headquarters, Police Stations and in campus of District Collectorate in the whole of the State of Uttar Pradesh.

(iv) Copy of this order shall be sent by the State Government to all District level and Tehsil level Bar Associations in the whole of the State of Uttar Pradesh."

21. Declaration of the law by this Court and the laying down of good policies by the Government, more often than not, has little effect upon the sundry officers who have to implement the policy of the Government or the laws laid down by this Court. They are persistent by habit in

their old ways and seem to have faith more in the statistics that out of a case of one thousand violations or may be much more hardly, one citizen would go forward to enforce his right and bring accountability to them. It is for this reason that in cases where a citizen gets up to enforce his right and comes forward to this Court, it becomes our duty to enforce what is already a declared right of his under the Constitution, the laws, the State Government policy and our interpretation thereof. After all, there are officers all around who believe that the violation would go unnoticed, more often than not.

22. In the totality of circumstances, we hold that the petitioner was illegally deprived of his liberty by Dubey, a police officer, in the colour of exercise of authority of the State, and for the aforesaid act, the petitioner must be given monetary recompense. We think that ends of justice would be met, if the State are ordered to pay the petitioner for his illegal detention in police custody from 26.11.2022 to 27.11.2022, a total sum of Rs.25,000/- together with costs in the sum of Rs.10,000/-. We are also of opinion that the State ought be granted liberty, upon payment of the compensation and costs awarded to the petitioner, to recover it from Dubey in whatever manner they deem appropriate, including deducting it from his remuneration.

23. In the result, this writ petition succeeds and is **allowed with costs,** which we quantify in the sum of Rs.10,000/-. Respondent Nos.1, 2 and 3 are ordered by a mandamus to pay the petitioner ad hoc compensation in the sum of Rs.25,000/- within a period of thirty days of the communication of this order with liberty to recover the sum of this compensation, together with costs, after these have been paid to the petitioner, from Dubey in whatever manner respondent Nos.1, 2 and 3 find it appropriate, including recovery from Dubey's remuneration and other funds in the hands of the respondents. Needless to say that it will be open to the petitioner to bring a regular suit for damages and establish his claim before a Court of competent jurisdiction in regard to his illegal detention, where any compensation, if awarded, shall take into account the ad hoc compensation that we have granted here.

24. Let this judgment be communicated to the Additional Chief Secretary (Home) Government of U.P., Lucknow, the Commissioner of Police, Prayagraj, the Assistant Commission of Police, Handia, Prayagraj and Surya Prakash Dubey, the then In-charge, Police Outpost Baraut, P.S. Handia, District Prayagraj by the Registrar (Compliance).

(2026) 5 ILRA 1000
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 20.05.2026

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE AMITABH KUMAR RAI, J.

Writ A No. 2999 of 2026

Dr. Gyanendra Pratap Singh **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue(s) for consideration

(a) Whether the petition was maintainable despite the petitioner sending representations/emails to the Chancellor to recall the cancellation order?
(b) Whether demanding a candidate to join within 11 days of receiving the appointment letter—and refusing an extension request of ~1.5 months—was arbitrary, unreasonable, and violative of Article 14 of the Constitution?
(c) Whether the cancellation violated the principles of legitimate expectation and administrative consistency, especially when other appointed VCs had been granted joining periods of up to four months?

Headnotes

A. Service Law - The petitioner—a scientist (Vigyan Shri awardee, 2025) and former Director of ICAR-NBPGR—applied for the post of Vice-Chancellor at Acharya Narendra Deva University of Agriculture and Technology, Kumarganj, Ayodhya. Following a recommendation by the Search and Selection Committee, an appointment letter was issued to him on 10.02.2026 (received on 18.02.2026). To assume the new post, the petitioner needed to be relieved from his deputation post and report to his parent cadre before superannuating on 31.03.2026. On 19.02.2026, and 26.02.2026, the petitioner requested an extension of the joining period until 31.03.2026.

On 25.02.2026, the respondents abruptly issued a directive ordering the petitioner to join by 01.03.2026 (within 11 days of receiving the appointment letter), failing which his appointment would be canceled. On 03.03.2026, the respondents canceled his appointment due to non-joining. Notably, on 18.02.2026, the tenure of the outgoing Vice-Chancellor (Dr.Vijendra Singh) had been extended by six months or until the new Vice-Chancellor assumed charge. The petitioner challenged both the order imposing the arbitrary deadline (25.02.2026) and the cancellation of appointment (03.03.2026).

B. Arbitrariness is antithetical to equality and that every State action must be fair, just, and non-discriminatory. The impugned action is ex facie arbitrary, unreasonable, and violative of Article 14 of the Constitution of India. Once the competent authority had granted time to the appointed Vice Chancellor to assume charge owing to his inability to obtain immediate relieving from his previous institution, the appointee acquired a legitimate expectation that the appointment would continue to remain operative during the permitted period. (Para 24)

There was no stipulation or date by which the petitioner was directed to join and it is only by letter dated 25.02.2026 that the deadline of 01.03.2026 was given. No reasons had been given as to how the date of 01.03.2026 has been given for joining of the petitioner in the backdrop of the fact that he had clearly indicated that he will be superannuating on 31.03.2026. Further, the appointment letter was received by the petitioner only on 18.02.2026 and there was no reason for a deadline to be given within 15 days of the issuance of appointment letter, especially considering the fact that the existing incumbent by that time had already been directed to continue till the petitioner join on the said post. (Para 21, 22)

C. The respondents, having adopted a consistent past practice, could not deviate therefrom in the present case without any rational basis or cogent justification, failing which the action becomes vitiated by hostile discrimination, non-application of mind, and violation of the settled principles of fairness and administrative consistency. The action becomes further arbitrary and discriminatory in view of the fact that the tenure of the incumbent Vice Chancellor was extended for a substantially longer duration and that, in earlier instances, similarly situated Vice Chancellors had been granted joining periods extending up to four months. (Para 24)

The order dated 25.02.2026 is clearly arbitrary and the date directing him to join by 01.03.2026 has been unreasonable and arbitrarily fixed. Period of one and half months, requested by the petitioner to get himself relieved from the services of a Central Government Institution where he was already working, is

certainly not excessive or unreasonable and respondents themselves could have considered the request and granted him adequate time for joining on the new place of posting. The request was not unreasonable inasmuch as in similar circumstances, similar requests from other people, were accepted and much longer length of time was given to them for joining on the post of Vice-Chancellor. It took a lengthy and extensive exercise by the Search and Selection Committee to finalize list of 03 persons, which led to the final selection of the petitioner. Such process cannot be done away with by the arbitrary action of the respondents, by merely denying extension of a reasonable period sought by him. (Para 25, 23)

Both the impugned orders dated 03.03.2026 and 25.02.2026 are illegal and arbitrary and accordingly quashed and respondents are directed to permit the petitioner to join on the post of Vice-Chancellor. (Para 26)
Writ petition allowed. (E-4)

Case Law Cited

1. E.P. Royappa Vs. State of Tamil Nadu, 1974 (4) SCC 3 (Para 24)
2. Maneka Gandhi Vs. Union of India, AIR 1978 SC 597 (Para 24)
3. Food Corporation of India Vs. Kamdhenu Cattle Feed Industries, 1993 1 SCC 71 (Para 24)
4. Council of Civil Service Unions Vs. Minister for the Civil Service (Para 24)

List of Keywords

legitimate expectation, arbitrary, discriminatory, appointment, cancellation, article 14, constitution, fairness, administrative consistency.

Appearances for Parties

For Petitioner(s): Avinash Singh, Abhinav Nath Tripathi
For Respondent(s): C.S.C., Ashok Kumar Srivastava, Dr. Pooja Singh, Prashant Kumar Singh, Satyanshu Ojha, Sridhar Awasthi

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

1. Heard Sri Amrendra Nath Tripathi, learned Senior Counsel assisted by Mr. Sanjeet Kumar Mishra and Mr. Avinash Singh, Sri Kuldeep Pati Tripathi, Additional Advocate General for respondent No. 1, Sri Sudeep Seth, learned Senior Counsel assisted by Sri Sridhar Awasthi, learned counsel for respondent No. 2, Sri Satyanshu Ojha, learned counsel for the respondent No. 3 and Sri Ashok Kumar Srivastava, learned counsel for the respondent No. 4.

2. It has been submitted by learned counsel for petitioner that petitioner is renowned scientist of international repute, a Vigyan Shri Conferred by the Hon'ble President of India in 2025 and stand a Director of two premier Indian Council of Agricultural Research Institutes, namely ICAR National Bureau of Plant Genetic Resources, New Delhi and ICAR ? Indian Institute of Wheat & Barley Research, Karnal, and currently serving as Principal Scientist at the ICAR-Indian Agricultural Research Institute, New Delhi.

3. The petitioner had applied for the post of Vice-Chancellor, Acharya Narendra Deva University of Agriculture and Technology, Kumarganj, Ayodhya. The advertisement was issued on 26.08.2025 and the petitioner has submitted his application on 01.09.2025 and further his name was short-listed for selection on the said post and was also called for interview by the Search and

Selection Committee on 10.02.2026. Subsequent to the interview his name was duly recommended in the panel of three persons for appointment on the post of Vice-Chancellor, Acharya Narendra Deva University of Agriculture and Technology, Kumarganj, Ayodhya. Subsequently, he was selected and an appointment letter was issued to him on 10.02.2026 which was communicated to the petitioner on 18.02.2026 by a registered post. Apart from the aforesaid communication, the concerned Secretary had also intimated the petitioner about his appointment and the petitioner in turn had given his in principle acceptance through WhatsApp.

4. The dispute in the present case has arisen on account of the fact that the petitioner did not join the said post despite a direction issued by the respondents on 25.02.2026 wherein he was directed to take charge of the post of Vice-Chancellor, Acharya Narendra Deva University of Agriculture and Technology, Kumarganj, Ayodhya by 1stMarch, 2026, failing which his appointment would be cancelled.

5. It has been submitted by learned counsel for petitioner that on receipt of the appointment letter, he has sought relieving from his deputation post of Director, ICAR-National Bureau of Plant Genetic Resources(NBPGR) and in pursuance of the application of the petitioner, an order for his reliving was passed on 18.02.2026 directing him to report to his parent cadre and join on the post of Principal Scientist, ICAR-Indian Agricultural Research Institute, New Delhi.

6. The petitioner after complying his all the formalities, joined his parent department on 02.03.2026 and immediately after joining, he moved an appropriate application to his parent department for being relieving so that he could join on the post of Vice-Chancellor, Acharya Narendra Deva University of Agriculture and Technology, Kumarganj, Ayodhya.. It has further been stated that on receipt of the letter of appointment, the petitioner had moved an application for granting time for joining on the post of Vice-Chancellor, Acharya Narendra Deva University of Agriculture and Technology, Kumarganj, Ayodhya on 19.02.2026 written to the Additional Chief Secretary and OSD to the Hon’ble Governor, Lucknow.

7. In the said letter, he had clearly indicated that he had already intimated the Indian Council for Agriculture Research , Ministry of Agriculture, Government of India for getting relieved from the post of Director, NBPGR so that he could join as Vice-Chancellor, Acharya Narendra Deva University of Agriculture and Technology, Kumarganj, Ayodhya. He had further intimated that he would be superannuating on 31st March, 2026 and further stated that in the aforesaid circumstances, some further time may be consumed for being relieved and prayed that he may be granted extended joining period.

8. It is only after the letter dated 19.02.2026 was received by the respondents, they had proceeded to pass the impugned order dated 25.02.2026. Even thereafter, the petitioner wrote a letter on 26.02.2026 to the Additional Chief Secretary and OSD to the Hon’ble Governor intimating them of the fact that he would be superannuating on 31.03.2026 and even if he applies for the voluntary retirement, some time will be consumed and again prayed for extending the joining period till 31.03.2026.

9. It is in the aforesaid circumstances that by means of the impugned order dated 03.03.2026, the appointment of the petitioner was cancelled. It is in the aforesaid circumstances, the present writ petition has been filed by the petitioner assailing the validity of the order dated 03.03.2026 as well as the order dated 25.02.2026.

10. It is the contention of the petitioner, firstly that in the order of appointment dated 10.02.2026, there is no prescription of the time period by which the petitioner was to join on the post of Vice-Chancellor, Acharya Narendra Deva University of Agriculture and Technology, Kumarganj, Ayodhya. He further submits that the respondents were fully aware about the previous posting of the petitioner and the need for him to get relieved from his posting before he could offer his services and join as the Vice-Chancellor, Acharya Narendra Deva University of Agriculture and Technology, Kumarganj, Ayodhya was well within the knowledge of the respondents. Accordingly, it has been contended that in such a situation, reasonable period is always granted to the selected candidates to get themselves relieved from the previous place of posting and offer their services to join as per the subsequent appointment letter.

11. The question which squarely falls for consideration before this Court is as to whether one and half month's period sought by the petitioner was a reasonable period of time sought by him for joining on the post of Vice-Chancellor, Acharya Narendra Deva University of Agriculture and Technology, Kumarganj, Ayodhya or that the respondents in the peculiar circumstances of the case had correctly canceled his selection and appointment letter.

12. The backdrop of the aforesaid facts, it is noticed that appointment letter of the petitioner was issued on 10.02.2026 which was received by him on 18.02.2026. He had written a letter dated 19.02.2026 and 26.02.2026 seeking further time to join. In both the letters, we find that there is a mention that petitioner would be superannuating from services on 31.03.2026.

13. In any view of the matter, there are obstacles with regard to being relieved from his parent place of posting would no longer exists, the moment the petitioner is superannuated from his previous place of posting inasmuch as the superannuation severs the relationship of a master and a servant leaving it open for the petitioner to join on the selected post of Vice-Chancellor, Acharya Narendra Deva University of Agriculture and Technology, Kumarganj, Ayodhya. We further find that the respondents themselves in the case of Dr. Abhijeet Mitra who was appointed as the Vice-Chancellor of Uttar Pradesh Pt. Din Dayal Upadhya Pashu Chikitsay Vigyan Vishvyavidhyalay Evam Gou Anushandhan Sansthan, Mathura was appointed by means of letter on 11.05.2025 and in fact joined on 04.09.2025 after a period of nearly 4 months.

14. It has been therefore contended that it is a routine matter with regard to grant of reasonable time to the selected candidate to join on the new post. It has further been contended that the incumbent on the post of Vice-Chancellor, Acharya Narendra Deva University of Agriculture and Technology, Kumarganj, Ayodhya, namely, Dr. Vijendra Singh who had completed his tenure was given extension for a period of 6 months by means of order dated 18.02.2026. In the said letter of extension, a clear reference was made with regard to appointment of the petitioner and it was very well within the knowledge of the respondents that some time would be consumed for the petitioner to take over the post of Vice-Chancellor, Acharya Narendra Deva University of Agriculture and

Technology, Kumarganj, Ayodhya and to meet the said contingency, the existing incumbent was asked to continue till joining of the petitioner. This fact clearly establishes that firstly it was very well known to the respondents that sometime would be required for the petitioner to join on the post of Vice-Chancellor, Acharya Narendra Deva University of Agriculture and Technology, Kumarganj, Ayodhya and secondly to met the said contingency they had taken adequate steps and giving extension to the previous Vice-Chancellor.

15. Sri Sudeep Seth, has vehemently opposed the writ petition. He has submitted that during the pendency of the writ petition, the petitioner himself has submitted an e-mail and a letter to the Chancellor seeking her indulgence to recall the order dated 03.03.2026 and he submits that when the petitioner himself has approached the Chancellor of the universities then he should be relegated to his remedy and the present writ petition should be dismissed on the ground of alternative remedy.

16. Learned counsel for the petitioner on the other hand has submitted that the petitioner in his anxiety has been writing letter against cancellation of his appointment but fairly submits that there is no statutory prescription provided for recall of the order of cancellation of appointment once the same has been passed and the only remedy the petitioner has is under the writ jurisdiction before this Court under Article 226 of Constitution of India.

17. Accordingly, we agree with the contention of the petitioner and accordingly the arguments of the petitioner on ground of the alternative remedy are rejected considering the fact that there is no prescription providing for recall or review of the order of the Chancellor.

18. The second ground raised by Sri Sudeep Seth, is that no definite date was given by the petitioner by which he would be joining on the selected post and therefore in absence of any such material there is no infirmity by the respondents in canceling his appointment.

19. In this regard, it has been submitted by learned counsel for the petitioner that he has clearly that indicate in both of the his letter dated 09.02.2026 as well as 26.02.2026 that he shall join on the post after being relieved from previous place of posting and in any view order of the matter, he would be superannuating on 31.03.2026. Accordingly, we find that in very clearly and unequivocal terms, the petitioner has clearly indicated the time period within which he would be joining on the selected post.

20. In view of the aforesaid, we do not find any ground for accepting the objections raised by learned counsel for the respondents.

21. A perusal of the order dated 18.02.2026 would clearly indicate that the respondents were fully aware that some time may be consumed before the selected candidate (petitioner) would join on the post of Vice-Chancellor, Acharya Narendra Deva University of Agriculture and Technology, Kumarganj, Ayodhya and therefore to maintain continuity in education and for the benefit of the students, the incumbent to the said post was directed to continue for a maximum period of 6 further months or till the new incumbent join on the said post. In the said letter, it was clearly indicated that the petitioner has been appointed as a new Vice-Chancellor and some time is likely to be consumed before he takes over charge. Accordingly, there is no doubt that the respondents were

fully aware of the fact that after issuance of the appointment letter, sometime has to be granted to the new candidate to join on the said post and they had taken care of this issue at that time and they had extended the tenure of the existing incumbent.

22. From the aforesaid, this Court is of the considered view that there was no stipulation or date by which the petitioner was directed to join and it is only by letter dated 25.02.2026 that the deadline of 1st March, 2026 was given. It is noticed that no reasons have been given as to how the date of 1st March, 2026 has been given for joining of the petitioner in the backdrop of the fact that he had clearly indicated that he will be superannuating on 31st march, 2026. Further, we find that the appointment letter was received by the petitioner only on 18.02.2026 and we see no reason why as a deadline was given on 1st March,, 2026 within 15 days of issuance of the appointment letter. Specially considering the fact that the existing incumbent by that time had already been directed to continue till the petitioner join on the said post.

23. We further find that granting time for the appointee to take over the charge of Vice-Chancellor is a routine matter and we take note of the fact that in similar circumstances when Dr. Abhijeet Mitra was appointed as the Vice-Chancellor of Uttar Pradesh Pt. Din Dayal Upadhya Pashu Chikitsay Vigyan Vishvyavidhyalay Evam Gou Anushandhan Sansthan, Mathura was given four months time then we see no reason as to how one and half month time can be said to be unreasonable so as to the extra-ordinary power of cancellation of appointment.

24. In the present case, the impugned action is ex facie arbitrary, unreasonable, and violative of Article 14 of the Constitution of India, as elucidated in **E.P. Royappa v State of Tamil Nadu, 1974 (4) SCC 3 and Maneka Gandhi v Union of India, AIR 1978 SC 597** wherein it has been settled that arbitrariness is antithetical to equality and that every State action must be fair, just, and non-discriminatory. Once the competent authority had granted time to the appointed Vice Chancellor to assume charge owing to his inability to obtain immediate relieving from his previous institution, the appointee acquired a legitimate expectation that the appointment would continue to remain operative during the permitted period, in terms of the principles recognised in **Food Corporation of India v Kamdhenu Cattle Feed Industries, 1993 1 SCC 71** and **Council of Civil Service Unions v Minister for the Civil Service.** The action becomes further arbitrary and discriminatory in view of the admitted fact that the tenure of the incumbent Vice Chancellor was extended for a substantially longer duration and that, in earlier instances, similarly situated Vice Chancellors had been granted joining periods extending up to four months. The respondents, having adopted a consistent past practice, could not deviate therefrom in the present case without any rational basis or cogent justification, failing which the action becomes vitiated by hostile discrimination, non-application of mind, and violation of the settled principles of fairness and administrative consistency.

25. Accordingly, we find that the order dated 25.02.2026 is clearly arbitrary and the date directing him to join by 01st March, 2026 has been unreasonable and arbitrarily fixed. We further find that requesting for one and half months in peculiar circumstances of present case where the petitioner was already working in a Central Government Institution where he had to get himself relieved before he could join at the present place of posting, period of one and half months is certainly not excessive or unreasonable and in the aforesaid facts the respondents themselves could

have considered the request of the petitioner and granted him adequate time for joining on the new place of posting. We further find that the request of the petitioner was not unreasonable inasmuch as in similar circumstances, other persons who had made similar request, were accepted and much longer length of time was given to them for joining on the post of Vice-Chancellor. We are further conscious of the fact that a lengthy and extensive process takes place by the Search Committee and subsequently by finalilsing the list of 03 persons and such an extensive exercise has been carried out when the petitioner has been finally selected. Such process cannot be brought to the knowledge by the arbitrary action of the respondents by merely denying extension of a reasonable period sought by him.

26. For the aforesaid circumstances, we find that both the impugned orders dated 03.03.2026 and 25.02.2026 are illegal and arbitrary and accordingly quashed and respondents are directed to permit the petitioner to join on the post of Vice-Chancellor, Acharya Narendra Deva University of Agriculture and Technology, Kumarganj, Ayodhya forthwith.

27. Let the petitioner submit a copy of this order to the Chancellor and on receipt of the same necessary orders shall be issued for joining of the petitioner within ten days thereafter.

28. With the aforesaid directions, the writ petition stand **allowed**.

(2026) 5 ILRA 1007
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.05.2026

BEFORE

THE HON'BLE ARINDAM SINHA, J.
THE HON'BLE SATYA VEER SINGH, J.

Writ C No. 10755 of 2026
Along with
Other Connected Cases

M/s Kant Construction Company ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

Matter pertains to the rejection of the petitioners' bids in an e-auction for grant of mining leases on the ground of failure to submit the original 'No Dues Certificate'/affidavit, demand draft and other original documents as required under sub-clause 'ट' read with Clause 4 of the auction notice; and whether submission of the original documents was an essential tender condition justifying rejection of the bids, or whether uploading of the prescribed documents constituted the essential requirement and non-submission of the original documents was merely a curable irregularity not warranting rejection of the bids.

Headnotes

U.P. Minor Minerals (Concession) Rules, 2021 – rr. 26 & 27 – E-auction for grant of mining lease – Auction notice – Clauses 2 to 4 – Tender conditions – Rejection of bids on technical grounds – Petitioners' bids rejected for alleged non-submission of original 'No Dues' affidavit, demand draft/challan and other original documents though scanned copies had been uploaded – LoIs issued in favour of lower bidders – – Justification:

Held : The tendering authority is to interpret its own terms with consistency and to ensure that such interpretation advances, not defeats, the object of the tender. The object is mainly to maximize the revenue to the State when it deals with a natural resource. There is lawful presumption that all the bids were opened on the prior appointed date, since petitioners were informed of rejection only after the time for opening of bids had passed. Rules 26 and 27 do not provide procedure for the bids to be in two parts, technical and financial. On interpretation of Clause (4) of the auction notice, the essential requirement is to upload the prescribed documents. Even assuming there was omission on the part of the petitioners to submit the original 'No Dues Certificate', affidavit, demand draft or challan showing deposit of the value to obtain the demand draft, it amounts to a mere irregularity. To contend that such omission is fatal for consideration of a bid, when all the bids had already been opened, gives rise to suspicion of doubtful action. Petitioners had specifically stated submission of their original documents, not specifically denied by the authority. Held, there had been misconstruction of Clause (4) of the tender notice dated 12.01.2026. Consequently, the LoIs issued in respect of Serial Nos. 7, 8 and 9 were set aside and quashed. Petitioners were directed to deposit re-issued demand drafts of ₹15,000/- along with a certified copy of the order, whereupon the concerned mining authority was directed to issue the LoIs in their favour. (Paras 15 to 18.) (E-5)

Case Law Cited

Shanti Construction Pvt. Ltd. v. State of Odisha, 2025 SCC OnLine SC 2368;
Jai Hanuman Construction Jagdish Saran v. State of U.P., 2023 SCC OnLine All 2033;
A.S. Traders, through Executive Partner Sri Rahul Singh v. State of U.P., through Principal Secretary, Department of Public Works, Lucknow, 2025 SCC OnLine All 7194;
Energo Constructions Private Limited v. Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd., AIR 2024 All 83

List of Acts

Constitution of India;
Uttar Pradesh Minor Minerals (Concession) Rules, 2021

List of Keywords

E-auction, Mining Lease, Tender Conditions, U.P. Minor Minerals (Concession) Rules, 2021, Rules 26 & 27, Auction Notice, Clause (4), Technical Rejection of Bid, Upload of Documents, Original Documents, Verification of Documents, Essential Requirement, Curable Irregularity, Misconstruction of Tender Condition, Interpretation of Tender Terms, Technical Bid and Financial Bid, No Dues Certificate, Affidavit, Demand Draft, Challan, Higher Bidder, Letter of Intent (LoI), Quashing of LoI, Maximisation of State Revenue, Natural Resources, Judicial Review of Tender, Public Interest, Competitive Bidding, Shanti Construction Pvt. Ltd. v. State of Odisha.

Case Arising From

Rejection of petitioners' e-bids on technical grounds; issuance of LoIs in favour of private respondents.

Appearances for Parties

Advs. for the Appellant: Devbrat Mukherjee, Siddharth Mukherjee

Advs. for the Respondents: C.S.C., Harshit Kumar Srivastava, Himanshu Srivastava, Madan Lal Srivastava

(Delivered by Hon'ble Arindam Sinha, J.)

1. The writ petitions, lead case Writ-C no. 10755 of 2026 (M/S Kant Construction Company vs. State Of U.P. And 3 Others) are being heard together.

2. There was auction notice dated 12th January, 2026 inviting bids for obtaining mining lease in respect of several areas, duly declared. Chapter IV in U.P. Minor Minerals (Concession) Rules, 2021 provides the procedure. There is no challenge to the auction notice. Petitioners are participants in the e-auction, whose bids were rejected on technicalities.

3. The controversy is in respect of clauses 2 to 4 in aforesaid auction notice. It is necessary for adjudication of the writ petitions, to reproduce below relevant requirements under the auction notice.

" 2. कोई व्यक्ति/फर्म/निकाय जो भारतीय नागरिक हो, जिलाधिकारी, सोनभद्र की सम्बोधित ई-निविदा संलग्न प्रारूप-2 पर प्रस्तुत कर सकता है, जिसमें निम्नलिखित बातें होंगीः-

क. विज्ञप्ति संख्या व दिनांकः जिसके द्वारा क्षेत्र विज्ञापित किया गया हो।

ख. विज्ञप्ति में क्षेत्र का क्रमांक।

ग. निविदाकार का नाम, पिता का नाम, पता (स्थायी और वर्तमान) ई-मेल एवं मोबाइल नं० (पता के प्रमाण स्वरूप व्यक्ति के लिये आधार कार्ड या अन्य पहचान पत्र तथा फर्म / कम्पनी/ निकाय के लिये उनका पंजीकरण का विवरण)

घ. क्या आवेदक भूस्वामी है। (हॉ/ नहीं)

ड. उस क्षेत्र और खनिज का विवरण जिसके लिये उसने निविदा प्रस्तुत की है, जिसमें निम्न हो:-

भूस्वामी का नाम :-

उपखनिज का नाम :-

तहसील का नाम :-

खनन क्षेत्र का नाम / ग्राम :-

गाटा संख्या/खण्ड संख्या:-

क्षेत्रफल (हेक्टयर में)

विज्ञप्ति में दी गयी खनन योग्य अनुमानित खनिज की मात्रा:-

च. ई-निविदा की प्रक्रिया में भाग लेने हेतु अप्रतिदेय आवेदन शुल्क रु० 15,000/- के जमा का चालान ।

छ. प्री बिड अर्नेस्ट मनी का ड्राफ्ट (जिसकी गणना क्षेत्र में आंकलित खनन योग्य मात्रा एवं उप खनिज की रायल्टी दर से गुणा कर प्राप्त धनराशि का 25 प्रतिशत होगा)

ज. खनिज के लिये प्रति घनमीटर के लिये दी जाने वाली ई-निविदा की दर:-

(ई-निविदा की दर उस खनिज के लिये नियमावली, 2021 के प्रथम अनुसूची में विनिर्दिष्ट रायल्टी की दर से कम नहीं होगी।)

झ. प्रदेश में इमारती पत्थर सैण्ड स्टोन, जिसमें पटिया/गिट्टी/बोल्डर आदि मिश्रित रूप में पाये जाते है, के लिए बोल्डर एवं गिट्टी में से अधिक रायल्टी दर वाले उपखनिज मिट्टी की रायल्टी की दर को आधार मूल्य मानकर ई निविदा की कार्यवाही की जायेगी तथा सैण्ड स्टोन डायमेंशनल (पटिया, चौका, ब्लॉक आदि) की ई-निविदा में स्वीकृत अधिकतम रायल्टी दर कम होने की स्थिति में नियमावली, 2021 की अनुसूची -1 में निर्धारित रायल्टी दर देयता हेतु प्रभावी होगा।

ट. जिलाधिकारी, या ऐसे अधिकारी द्वारा जो जिलाधिकारी द्वारा तदर्थ प्राधिकृत किया जाय, द्वारा जारी खनन अदेयता का प्रमाण पत्र परन्तु जहां आवेदक प्रदेश में पट्टाधारक / परिहारधारक न रहा हो, वहाँ इस आशय का शपथ पत्र।

ठ. भू-स्वामी को छोड़कर अन्य व्यक्ति/फर्म को उस जिले के जिलाधिकारी जहाँ वह स्थायी रूप से निवास करता है, से जारी चरित्र प्रमाण पत्र।

ड. भू-स्वामी को छोड़कर अन्य व्यक्ति/फर्म को ऋण शोधन क्षमता प्रमाण पत्र या ऋण शोधन क्षमता प्रमाण पत्र के साथ बैक प्रत्याभूति, जो ई-निविदा की धनराशि के 25 प्रतिशत से कम न हो।

3. बिन्दु संख्या-2 में उल्लिखित वांछित अभिलेखों तथा ड्राफ्ट की स्कैन प्रति ई-टेण्डर के साथ अपलोड किया जाना होगा।

4. यदि निविदाकार द्वारा बिन्दु संख्या-2 में वांछित अभिलेख / बैंक ड्राफ्ट की प्रति ई-निविदा के साथ अपलोड नहीं की जाती है तो उसकी ई-निविदा अस्वीकार कर दी जायेगी। अपलोड किये जाने वाले अभिलेखों की मूल प्रति/प्रमाणित प्रति तथा ड्राफ्ट की मूल प्रति निविदा खोले जाने से पूर्व निर्धारित अवधि के अन्तर्गत जमा करना अनिवार्य होगा।"

4. Petitioners have demonstrated, by disclosures in their respective writ petitions, the required documents were uploaded along with their bids. It is only in case of petitioner in Writ-C no. 12100 of 2026 (M/s Rudra Enterprises vs. State of U.P. and 5 others) there has been contention raised on behalf of the successful bidder that petitioner did not upload the challan showing deposit of money to obtain demand draft of Rs. 15,000/-, liable to be forfeited on the contingency provided. The demand draft was uploaded.

5. Mr. Devbrat Mukherjee, learned advocate appears on behalf of petitioner in the lead case and submits, rules 26 and 27 do not admit of interpretation to sustain conduct of respondent authorities, of rejecting his client's bid on allegation that physical copy of the affidavit had not been submitted. He relies on judgment of the Supreme Court in **Shanti Construction Pvt. Ltd. vs. State of Odisha,** available at **2025 SCC OnLine SC 2368**. Paragraph 10 of said judgment is reproduced below.

"10. A public tender is not a private bargain. It is instrument of governance, a mechanism through which the State discharges its solemn duty as trustee of public wealth. Its purpose is not merely procedural compliance, but maximisation of public value through a process i.e. fair, transparent and competitive. The obligation of the Tendering Authority is therefore twofold, namely, to interpret its own terms with consistency and to ensure that such interpretation advances, not defeats, the object of tender. ***The court must intervene in a case of demonstrable misconstruction of a tender condition or irrationality which affects the public interest. When an interpretation of a tender condition narrows competition and excludes the highest bidder on a ground unsupported by law, the decision making process is vitiated****. The interpretation of the terms of tender must, therefore, serve the object and purpose of the tender mainly to maximise the revenue to the State, when it deals with a natural resource."*

(emphasis supplied)

6. Mr. H.N. Singh learned senior advocate appears on behalf of petitioners in Writ-C no. 11154 of 2026 (Kant Construction Company vs. State of U.P. and Others) and Writ-C no. 12260 of 2026 (Kant Construction Company vs. State of U.P. and Others). He adopts submissions made by Mr. Mukherjee and submits further, there are preceding rules in respect of physical auction. The provisions allow for subsequent physical submission of original documents. Respondent authorities have manipulated the auction process and for the purpose are seeking to rely on the rules under Chapter IV. Interpretation of the rules in the Chapter, in particular rules 26 and 27, do not provide for opening of the bids on technicality, for any of them to be rejected. He demonstrates from material disclosed that opening of the bids was to be at 11:30 A.M. on 24th February, 2026. Referring to the checklist carrying information, inter alia, on rejection of bids he points out, digital signature was put as on 25th February, 2026. It is clear evidence of the bids having had earlier been opened, scrutinized and segregated for rejection, to favour the successful bidders, private respondents in the several writ petitions.

7. He submits further with reference to clause (4) in the auction notice, it is in two parts. The first part is mandatory. Omission will lead to rejection. The second part is for verification. It cannot be said that any omission, for purpose of verification, can invite rejection. He demonstrates from disclosures in the writ petition, his client's affidavit was uploaded along with all other required documents. He explains, in case of existing holders of mining lease, they had to upload 'no dues certificate' and submit the original for verification. Those bidders, who do not hold mining lease in the State were to furnish affidavit to that effect. He reiterates, his client's affidavits stood uploaded. He also draws attention to paragraph 5 in his client's writ petition (Writ-C no.11154 of 2026), for specific averment that the original was also submitted. Paragraph 5 is reproduced below.

"5. That with the hard copy of the tender the petitioner has filed original notarized affidavit dated 21.02.2026 clearly stating in paragraph no. 3 that no amount of any dues of mining department is against him apart from other required documents or registration of GST and character certificate etc."

He submits, on behalf of State, presently posted Senior Mines Officer, District Sonbhadra has affirmed the counter affidavit. Paragraph 4 from it is reproduced below.

"4. That the contents of Paragraph Nos. 4 and 5 of the writ petition are not admitted in the manner, as stated, hence denied. In reply, thereof, it is submitted that petitioner has not

submitted original hard copy of the affidavit regarding no mining dues before prescribed period for opening of tender bid, hence, the petitioner was found non fulfilling the conditions mentioned in the tender notice."

Mr. Singh seeks interference.

8. Mr. Akhilesh Kumar Chaubey, learned advocate appears on behalf of petitioner in Writ-C no. 12100 of 2026 (M/s Rudra Enterprises vs State of U.P. and 5 others). He submits, the check list carries allegation that his client had not submitted the original draft. The allegation is untrue. The averment is in paragraph 12. A passage from the paragraph is reproduced below.

"12.....That it is pertinent to mention here that petitioner participated for vacant mining area no.7 i.e. Araji No.4798 Kha, 4799 Kha, 4800 Kha, 4801, 4802, 4804 Ka, 4804 Ga, 4805 and 4866 Kha in area 1.820 Hectare situated at Village Billi Markundi, Tehsil Obra, District Sonbhadra submitting a bid of Rs.415/m3 significantly higher than the base price of 165/m3 and further successfully uploaded all the mandatory documents on the E-Portal (etender.up.nic.in) on 22.02.2026 ***and also physically deposited the same in the Tender Box under departmental videography*** *but surprisingly 24.02.2026 during the opening the physical Tender Box the respondents in collusion with a local syndicate, allegedly removed the petitioner's physical copies of the application fees annexed with the E-Tender Form and subsequently despite the digital record proving the existence of all documents the respondents prepared a technical check list on 25.02.2026 marking the petitioner invalid due to missing physical documents and further LOI (Letter of Intent) dated 28.02.2026 has been issued in the favour of respondent no.6 (Maa Durga Mining Works)."*

(emphasis supplied)

He then draws attention to paragraph 11 in the counter affidavit affirmed by aforesaid presently Senior Mines Officer saying that an inquiry has been constituted. Paragraph 11 from the counter is reproduced below.

"11. That the contents of Paragraph No. 12 of the writ petition are not admitted in the manner, as stated, hence denied. In reply, thereof, it is submitted that in pursuance to the representation dated 06.03.2026 submitted by the petitioner, three (3) Members enquiry committee was constituted by the District Magistrate, directing it to submit its report. It is further submitted that the enquiry committee is conducting enquiry, and after receiving report from enquiry committee appropriate action will be taken."

He too seeks interference.

9. Mr. Manish Goyal, learned senior advocate Additional Advocate General appears on behalf of State. He submits, there is no challenge to the e-auction notice dated 12th January, 2026. It was duly issued and carried the essential requirements for bids being considered. He too relies on clause 4 in the notice to submit, petitioners omitted to tender their respective original affidavits/demand drafts. He refers to our earlier orders dated 24th April and 4th May, 2026. Paragraph 2 from our order dated 24th April, 2026 is reproduced below.

"2. We have also perused the rejoinder filed. It transpires that date of physical submission of the documents was not specifically stated by petitioner. In the circumstances, since there is allegation that the documents were deposited prior to scheduled date and time of opening the bids, we require State to produce the file. This is because State relies, inter alia, rule-26 (b) for contention that the bids were not opened as found to be technically deficient. Petitioners in the other writ petitions are represented as are State and private respondents."

The file was produced and on request made by us on order dated 4th May, 2026, inspection of it was allowed to the learned advocates appearing for the several petitioners. Their inspection did not show submission of the original documents. On basis of the omission the bids were rejected. In the circumstances there is no scope for interference.

10. Referring to **Shanti Construction** (supra) Mr. Goyal draws attention to paragraphs 14 and 15. Paragraph 14 is reproduced below.

"14. The unsuccessful bidder is a company. It is axiomatic from the stand taken by the State in its counter, that the unsuccessful bidder had filed the Income Tax Return for the Financial Year 2020-2021. The auction notice was issued in the midst of the year i.e. on 11.07.2022. The proper construction of the phrase 'previous Financial Year' therefore, assumes critical importance. Rule 27(4)(iv) of the Rules requires the bidder to produce an Income Tax Return of the "previous Financial Year". The said Rule has to be read in harmony with the provisions of the Income Tax Act, 1961. Under Section 139(1) of the aforesaid Act, a company may file the Income Tax Return for the Financial Year 2021-2022 up to 31st of October, 2022. As per auction notice, the bids were required to be submitted on 18.07.2022. The period for filing the Income Tax Return for Financial Year 2021-2022 (relevant to Assessment Year 2022-2023) was yet to expire. Therefore, on the said date the bidder could not have been expected to file an Income Tax Return for Financial Year 2021- 2022 along with its bid documents, as the statutory period for filing the same had not expired."

He elaborates, the Supreme Court interpreted on the requirement for submission of income tax return for financial year 2020-21 required by therein auction notice dated 11th July, 2022. Appellant before the Supreme Court was participant in the auction process and it being a company, had disclosed its balance sheet for the period since, the return could not be prepared as was to be prepared at a later date in terms of then prevailing provisions in Income Tax Act, 1961. Thus, the Supreme Court interfered on finding that there was compliance. He reiterates, in this case there has been omission to comply with the essential requirement. Rejection of the bids of petitioners thus should not be interfered with. He lays emphasis that facts in this case do not demonstrate misconstruction of a tender condition or irrationality, which affect the public interest.

11. Mr. Goyal submits, the procedure stands provided in Chapter IV of the Rules. Drawing attention to clause (d) under rule 23(2) he submits, the owner is to be given right of first refusal. This procedure had been complied with in issuance of the LoIs. Any interference will undo actions duly taken for issuance of the LoIs. Referring to rules 26 and 27 he submits, there is no specific provision for either virtual or physical documents to be submitted/accepted. Rule 27 empowers the District Officer or Committee as the case may be to fix date, time and web portal as determined by the State Government for, inter alia, conducting e-auction. In the circumstances it cannot be said that the procedure provided by auction notice dated 12th January, 2026 are requirements, omission

on any of them to be interpreted as an irregularity. It would amount to reading down the requirements in rule 26. He relies on views taken by Division Benches of this Court.

(i) **Jai Hanuman Construction Jagdish Saran vs. State of U.P.** available at **2023 SCC OnLine All 2033,** paragraphs 25-27

(ii) **A.S. Traders, Thru Executive Partner Sri Rahul Singh vs. State of U.P., Thru. Prin. Secy. Deptt. of Public Works Lko.** available at **2025 SCC OnLine All 7194,** paragraphs 21-25

(iii) **Energo Constructions Private Limited vs. Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd.** available at **AIR 2024 All 83**, paragraphs 23, 24, 28 and 29

He submits, the writ petitions be dismissed.

12. Mr. Shashi Nandan, learned senior advocate appears for private respondent M/s Maa Durga Mining Works. His client has been issued LoI. He adopts submissions made by Mr. Goyal. He adds on drawing attention to sub-clause '?' in the e-auction notice, the requirement to submit 'no dues certificate'/affidavit is an essential condition. With reference to clause (4) in the notice he lays emphasis on the requirement being essential, as the clause says, omission to upload will invite rejection. It goes on to further say that submission of physical documents, prior to opening of the bids, is compulsory. Thus it is no matter that the sentence on compulsion follows the sentence providing for rejection. Petitioners did not submit original documents as was compulsory. They obtained inspection of the file. The facts are thus demonstrated. The writ petitions be dismissed.

13. Mr. Sinha, learned senior advocate appears on behalf of M/s RSS Mining Works, another who has also been issued LoI. He adopts submissions made by Mr. Goyal and Mr. Nandan to submit further, petitioner in Writ-C no. 12100 of 2026 has not uploaded the challan, required by sub-clause '?' in clause (2) of the notice. The sub-clause is again reproduced below.

"च. ई-निविदा की प्रक्रिया में भाग लेने हेतु अप्रतिदेय आवेदन शुल्क रु० 15,000/- के जमा का चालान।"

Hence, there has been omission attracting the mandate of rejection. There be not interference in this writ petition, to deny his client moving forward under the LoI issued.

14. Mr. Singh in reply submits, views taken by this Court in the judgments relied upon are on facts, where there were procedure for initial evaluation of technical bids, removal of discrepancies, if any on objections and thereafter opening of the financial bids. The views are distinguishable on facts, as not applicable to present case in the writ petitions, where the tendering authority has manipulated the process. He reiterates, original documents were filed but removed. This was done after evaluation of the bids, where there was no procedure for putting in technical or financial bids, separately. There is clear pleading of submission of original documents and no denial in the counters. The original documents removed naturally could not be found in the file. He seeks interference. Mr. Mukherjee in reply submits likewise.

15. There have been several decisions of the Supreme Court declaring the law on scope of judicial review in respect of tender and distribution of public largesse/wealth. Relied upon paragraph 10 in **Shanti Construction** (supra) is reiteration of the declaration. Two fold obligation has also been said to exist. Firstly, the tendering authority is to interpret its own terms with consistency and to ensure that such interpretation advances, not defeats object of the tender. The object, said by the Supreme, is to serve purpose of the tender, which is mainly to maximize the revenue to the State, when it deals with the natural resource. Above is the context, in which we must see the facts.

16. We have had demonstration that petitioners' bids were informed to them as rejected, after the time for opening bids had passed. They were informed the following day. There thus can be lawful presumption that all the bids were opened on prior appointed date. This presumption is strengthened on our acceptance of submission made by Mr. Singh that rules 26 and 27 do not provide procedure for the bids to be in two parts, technical and financial. Moving on to the next contention regarding interpretation of clause (4) in the notice, it can only be that the essential requirement is to upload. Even assuming there was omission on part of petitioners to submit the original documents, be it a 'no dues certificate' or affidavit or demand draft or challan showing deposit of the value to obtain the demand draft, it amounts to a mere irregularity. To contend that such omission is fatal for consideration of a bid, when we have already presumed that all the bids had been opened, gives rise to suspicion of doubtful action. In case of a missing affidavit, the person swearing it can be called upon to swear another affidavit and on tangible information with the authority, there can be inquiry for purpose of the declaration to be found as false. Rule 26(b) provides that a person shall not be allowed to bid or take part in, inter alia, e-tender against whom mining dues are outstanding. Petitioners, whose bids were cancelled on omission to file the affidavit contend there is no question of them having outstanding dues because they have not undertaken mining operation in the State prior to making of their bids. In any event the rule requires verification. The authority interpreting the clause in the rule has, by the auction notice, required submission of affidavit. Hence, we reiterate, on tangible information had, there can be inquiry on an affidavit, original of which if not submitted/produced as can be called, for purpose of the inquiry. So far as the demand drafts are concerned, they are instruments purchased on the issuing bank receiving value thereof. The bids lead to payment by the bidders of huge amount of revenue, if declared successful. For us to sustain an objection regarding verification, on omission to deposit the original demand drafts for respective tender of amount Rs. 15,000/- would be a perverse finding. In event the demand drafts have been misplaced, they can be re-issued. Regarding contention of requirement to upload challan in respect of obtaining issuance of the demand draft (Writ-C no. 12100 of 2026) we see that there appears to be a mistake in the requirement made. All petitioners have uploaded their respective demand drafts. As aforesaid, a demand draft is issued by the bank on value received therefor. To ask for a challan showing deposit of the money, in compliance with which requirement petitioners have uploaded scanned copy their respective demand drafts is, in our view, good compliance of the requirement.

17. We must reiterate, our above presumption is fortified by analysis of the pleadings. Respective petitioners had specifically stated submission of their original documents, not specifically denied by the authority. In one case there has been contention of inquiry launched. We are sure, the authority can require all petitioners to subject themselves for verification of their

respective documents uploaded but fact remains their respective bids for the notified areas are higher than the bidders, in whose favour the LoIs have been issued.

18. We accept submission that views taken earlier in **Jai Hanuman Construction** (supra), **A.S. Traders** (supra) and **Energo Constructions Private Limited** (supra) do not come to aid of respondents inasmuch as they are distinguishable on facts. Shanti Construction (supra) is applicable declaration of law for the tendering authority to consistently interpret the terms in the auction notice, to fulfill object of maximizing the revenue. We do have demonstration that there has been misconstruction of clause (4) in tender notice dated 12th January, 2026. It follows, there must be and we direct, the LoIs issued in respect of serial nos. 7, 8 and 9 of said tender notice dated 12th January, 2026 are set aside and quashed. Petitioners will each deposit re-issued demand drafts for Rs.15,000/- along with certified copy of this order, to respondent no.1. Thereupon said respondent/concerned mining authority is directed to issue the LoIs in favour of the petitioners, within three weeks. We direct dispensation of notice for first refusal by the land owners since, they had not exercised their option in respect of lower bids, against which the set aside LoIs were issued. We make it clear, within time prescribed by the LoIs to be issued, the petitioners are to comply with all requisitions, particularly in respect of deposit of, inter alia, the royalty. On omission to so deposit, concerned mining authority will forthwith cancel the LoI, to automatically revive the LoI earlier issued.

19. On above directions, the writ petitions are disposed of. The original documents file earlier handed back, be returned to the office.

(2026) 5 ILRA 1016
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 20.05.2026

BEFORE

THE HON'BLE SAURABH SRIVASTAVA, J.

Application U/S 528 BNSS No. 12713 of 2026

Vinod Kumar & Anr. **...Applicants**
Versus
State of U.P. & Anr. **...Opposite Parties**

Issue for Consideration

Issue pertains to whether the order dated 26.2.2026 passed by learned Chief Judicial Magistrate, rejecting the Final Report submitted by Investigating Officer and taking cognizance of offence under relevant sections of IPC without specifically invoking and disclosing the applicable clause of s. 190 Cr.P.C. was legally sustainable, and, ancillary thereto, whether the criminal proceedings initiated against the applicants, in the backdrop of a pending civil suit challenging the very same family settlement/arbitral award, amounted to an abuse of process of law warranting quashing u/s 528 BNSS.

Headnotes

Indian Penal Code, 1860 - ss. 420, 467, 468 and 471 - Code of Criminal Procedure, 1973 - ss. 190, 200, 202 - Code of Civil Procedure, 1908 - s. 47 - Final Report - Rejected - Cognizance of offence - Summoning order - Quashing of - Maintainability - Cheating - Forged documents - Forged signatures on family settlement/arbitral award - Allegation of - Objection to - Validity of - The applicants invoked the inherent jurisdiction of High Court u/s 528 BNSS seeking quashing of order dated 26.2.2026 passed by learned Chief Judicial Magistrate, Farrukhabad in Misc. Case No. 89 of 2026, arising out of Case Crime No. 423 of 2023 registered under relevant sections of IPC at P.S. Kotwali, District Farrukhabad, whereby the trial court had rejected the Final Report submitted in favour of applicants and, taking cognizance of offence on the strength of material collected during investigation and appended to Case Diary, had summoned the applicants - The prosecution stemmed from allegations by opposite party no. 2 that a family settlement/arbitral award bore forged signatures of himself and his wife, a claim purportedly corroborated by a FSL report, notwithstanding that the same settlement was independently under challenge in a pending Original Suit and had earlier been objected to u/s 47 CPC as far back as 14.12.2016, and notwithstanding that the concerned Investigating Officer, after detailed inquiry, had already submitted a Final Report dated 5.12.2025 exonerating the applicants.

Held: In the instant matter order dated 26.2.2026 falls under the category of s. 190(1)(c) of Cr.P.C. where the learned court concerned rejected the report in shape of Final Report submitted by concerned Investigating Officer and on the basis of materials collected during course of investigation appended along with Case Diary, cognizance of offence has been taken up that is purely on the basis of his own knowledge since the knowledge applied by concerned Investigating Officer in shape of submitting Final Report has been rejected and as such learned court concerned duly authorized to take cognizance u/s 190 Cr.P.C. must come up with specific provisions contained u/s 190 Cr.P.C. but the same is missing in the order dated 26.2.2026 which impugned the instant application - Although, it is the hypothetical propositions, that if learned court concerned could have mentioned s. 190(1)(c) the matter has to be proceeded in shape of Criminal Complaint wherein the materials have been submitted by concerned Investigating Officer and as such the procedure defined u/s 200 Cr.P.C. may not be exercised and only the documents submitted by concerned authorities and person has to record their statements u/s 202 Cr.P.C. - Accordingly, impugned order set aside, matter remitted back, application partly allowed. [Paras 17 to 20] (E-13)

Case Law Cited

Pratibha Manchanda & another v. State of Haryana & another **decided on 7.7.2023 in Criminal Appeal no. 1793 of 2023 arising out of Special Leave Petition (Crl.) no. 8146 of 2023;** *C.S.Prasad v. C Satyakumar and others* **decided on 8.1.2026 in Criminal Appeal no. 140 of 2026 arising out of SLP (Crl.) no. 397 of 2025 - distinguished**

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Code of Civil Procedure, 1908

List of Keywords

Application u/s 528 BNSS; First Information Report; Final Report; Investigating Officer; Quashing of summoning order; Malicious prosecution; Misuse of process of law; Civil proceedings; Original suit; Family settlement; Arbitral Award; Forensic Science Laboratory; Fictitious signature; Case diary; Forged documents; Impersonation; Police Report; Complaint; Crpc; IPC; CPC; Application partly allowed.

Case Arising From

ORIGINAL JURISDICTION: Application U/S 528 BNSS No. - 12713 of 2026

From the Judgment and Order dated 26.2.2026 passed by learned Chief Judicial Magistrate, Farrukhabad in Misc. Case No. 89 of 2026 arising out of Case Crime No. 423 of 2023, PS- Kotwali, District Farrukhabad.

Appearances for Parties

Adv. for the Applicant(s):
Manu Khare

Advs. for the Opposite Party(s):
Arvind Agrawal, G.A., Shashank Tripathi

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

1. Heard Sri Manu Khare, learned counsel appearing on behalf of applicants, Sri Arvind Agrawal, learned counsel appearing on behalf of opposite party no. 2 and learned AGA for State.

2. The instant matter has been preferred for challenging order dated 26.2.2026 passed by learned Chief Judicial Magistrate, Farrukhabad in Misc. Case no. 89 of 2026 arising out of Case Crime no. 423 of 2023 in pursuance to sections 420, 467, 468 and 471 IPC, PS- Kotwali, District Farrukhabad.

3. Learned counsel appearing for applicants submitted that the entire story whatsoever has been submitted through narration of the FIR has already been inquired in detail by concerned Investigating Officer which culminated into preferring Final Report in favour of the applicant wherein it has been found that no such offence has ever been carried out at the behest of applicants as narrated through FIR at the behest of opposite party no. 2.

4. While challenging order dated 26.2.2026 whereby learned trial court rejected Final Report and after taking cognizance of offence summoned the applicants, it is submitted that the same is not maintainable since the learned court concerned once rejected the entire Final Report, no other material is available before learned court concerned for taking cognizance of offence.

5. It is the ground taken up by learned counsel for the applicants that a civil proceedings has already been initiated at the behest of opposite party no. 2 wherein family settlement/award dated 12.12.2004 has been put under challenge, although challenge in shape of Original Suit no. 283 of 2017 (Vivek Kumar and others Vs. Vinod Kumar and others) is also highly belated which is still pending to be adjudicated by learned court concerned since 2017 and the objection to the award has already been preferred at the behest of opposite party no. 2 under Section 47 CPC on dated 14.12.2016.

6. The attention of this Court has been sought by learned counsel for applicants over the objection which has already been preferred at the behest of opposite party no. 2 way back in the year 2016 itself and the same are indicating in respect of genuineness and questioning the existence of document which he never signed rather if signed, the same blank papers in shape of stamp papers have already been obtained by the applicants. In view of aforementioned facts and circumstances, learned counsel for the applicants demonstrated the fact that entire settlement/award came into the knowledge of the opposite party no. 2 way back in the year 2016 itself and even after preferring Original Suit for cancellation of the family settlement which has been registered as Original Suit no. 283 of 2017 (Vivek Kumar and others Vs. Vinod Kumar and others) implication of the applicants have been made through FIR which has been registered at Case Crime no. 423 of 2023 in pursuance to sections 420, 467, 468 and 471 IPC which is nothing but trying to give

criminal colour to the controversy which is pending to be adjudicated in civil proceedings, although matter has been inquired by concerned Investigating Officer and after conducting detailed investigation it has been found that no such offence has been carried out by the applicants and a Final Report has been submitted by concerned Investigating officer by way of submitting explicit narration that no offence has been made out as indicated through narration of the Final Report dated 5.12.2025 and as such proceedings initiated against the applicants is in shape of malicious prosecution and misuse of the process of law which has to be taken into consideration by this Court by way of quashing entire proceeding arising out of Case Crime no. 423 of 2023.

7. Sri Arvind Agrawal, learned counsel appearing on behalf of opposite party no. 2 vehemently opposed the prayer as made through instant application and rebutted the stand taken up by learned counsel for the applicants on the ground that the mismatch of the signatures were examined by Forensic Science Laboratory and vide a report it has been clarified that the signature whatsoever has been made by the applicants is not matched with the signature of opposite party no. 2 as well as Sarita Gangwar wife of opposite party no. 2 and as such the essence and ingredients for attraction of sections 420, 467, 468 as well as 471 IPC are made out which compelled the learned court concerned for taking cognizance of offence on the basis of the documents available with the Case Diary through which applicants have been summoned in pursuance to the above mentioned sections vide order dated 26.02.2026 passed by learned court concerned.

8. For substantiating his arguments, Sri Arvind Agrawal relied upon judgment rendered by Hon'ble Apex Court in case of Pratibha Manchanda & another Vs. State of Haryana & another decided on 7.7.2023 in Criminal Appeal no. 1793 of 2023 arising out of Special Leave Petition (Crl.) no. 8146 of 2023 and judgment passed by same court in case of C.S.Prasad Vs. C Satyakumar and others decided on 8.1.2026 in Criminal Appeal no. 140 of 2026 arising out of SLP (Crl.) no. 397 of 2025.

9. For elaborating the offence committed by the applicants which insisted learned court concerned for taking cognizance of offence and directing the applicants to put their appearance by way of issuing summoning orders, a detailed chart has also been provided by learned counsel for opposite party no. 2 during course of argument which is reproduced as under:

F.S.L. BRIEF

VIVEK KUMAR- INFORMANT
SARITA GANGWAR - WIFE OF INFORMANT
S1-S6, SAMPLE SIGN OF **VIVEK KUMAR**
S7-S12, SAMPLE SIGN OF **SARITA GANGWAR**

SIGN	PERSON NAME	DOCUMENT	DATED	MATCHED/NOT MATCHED	WITH SAMPLE/NAME	ANNEXED/NOT ANNEXED
Q1	VIVEK	PANCH NYUKTI	27.11.2024	**NOT MATCHED**	**S1-S6 (VIVEK)**	
Q2	VIVEK	ARBITRAL AWARD	12.12.2004	**NOT MATCHED**	**S1-S6 (VIVEK)**	

Q3	VIVEK	AFFIDAVIT/ NOC	24.02.2005	**MATCHED**	**S1-S6 (VIVEK)**	
Q4	VIVEK	AFFIDAVIT/ NOC	24.02.2005	**MATCHED**	**S1-S6 (VIVEK)**	
Q5	VIVEK	PERMISSION FOR RECONSTITU TUIN OF FIRM	12.08.2004 /1904 (USE OF OLD LETTER HEAD)	**MATCHED** (EXECUTED PRIOR TO PANCH NYUKTI)	**S1-S6 (VIVEK)**	NOT ANNEXED (EXECUTED PRIOR TO PANCH NYUKTI)
Q6	VIVEK	PERMISSION FOR RETIRING FROM FIRM	28.12.2004	**NOT CONFIRMED**	**S1-S6 (VIVEK)**	NOT ANNEXED
Q7	SARITA GANGW AR	NOC/AFFIDA VIT	24.02.2005	**NOT MATCHED**	**S7-S12 (SARITA)**	
Q8	SARITA GANGW AR	NOC/AFFIDA VIT	24.02.2005	**NOT MATCHED**	**S7-S12 (SARITA)**	

*** Q3, Q4, Q7, Q8 IS THE SAME DOCUMENT**

DOCUMENT NOT ANNEXED

1. DEED OF SEPARATION- 01.10.2024 (NOT SENT FOR FSL)
(EXECUTED PRIOR TO PANCH NYUKTI)

10. Sri Arvind Agrawal, learned counsel for opposite party no. 2 submitted that it is not the matter of civil dispute rather, it is a crystal clear case of criminality showed by applicants by way of putting forged and fictitious signatures by way of impersonating themselves as opposite party no. 2 and his wife and the same is apparent from the report submitted by Forensic Science Laboratory and as such matter needs to be tried before learned court concerned and there is hardly any discrepancy available in the order through which applicants have been summoned and as such instant application is liable to be dismissed.

11. Learned AGA seconded the arguments raised by learned counsel for opposite party no. 2 and supported the order through which cognizance of offence has been taken up by learned court concerned since the same is based upon strict proof of evidence which is available in the material appended along with Case Diary.

12. After hearing the rival submissions extended by learned counsels for the parties, the law as defined by Hon'ble Apex Court, relied by learned counsel appearing on behalf of opposite party no. 2 is crystal clearly mentioned under paragraph no. 25, 26, 27 and 28 in the case of **C.S.Prasad (supra)** which is quoted hereinbelow:

"25. Testing on the aforesaid parameters, we find that the complaint dated 08.01.2020 made by the appellant contains categorical allegations that respondent Nos. 1 to 3, by abusing the advanced age and medical vulnerability of the executants, caused the execution and registration of

the three settlement deeds to their unlawful advantage, and thereafter used such documents as genuine for the purpose of deriving proprietary benefits. The allegations in the complaint also disclose dishonest intention at the inception of the transaction as well as fabrication and wrongful use of documents. At this stage, we must note that the High Court in its jurisdiction under Section 482 of the Cr.PC is bound to take the allegations on its face value. Whether these allegations can ultimately be proved is a matter strictly within the province of the Trial Court.

26. In the impugned order, the High Court has quashed the proceedings primarily on the ground that the validity of the settlement deeds has been upheld in the proceedings before the Civil Court. We are of the view that this approach adopted by the High Court is not correct. It is a settled principle of criminal jurisprudence that civil liability and criminal liability may arise from the same set of facts and that the pendency or conclusion of civil proceedings does not bar prosecution where the ingredients of a criminal offence are disclosed. In Kathyayini vs. Sidharth P.S. Reddy and Others, this Court had made it crystal clear that "pendency of civil proceedings on the same subject matter, involving the same parties is no justification to quash the criminal proceedings if a prima facie case exists against the accused persons."

27. Adjudication in civil matters and criminal prosecution proceed on different principles. The decree passed by the Civil Court neither records findings on criminal intent nor on the existence of offences such as forgery, cheating, or use of forged documents. Therefore, civil adjudication cannot always be treated as determinative of criminal culpability at the stage of quashment. Moreover, in the case at hand, the civil proceedings have not attained finality.

28. Adjudication of forgery, cheating or use of forged documents in relation to a settlement deed will always carry a civil element. Therefore, there cannot be any general proposition that whenever dispute involves a civil element, a criminal proceeding cannot go on. Criminal liability must be examined independently. Respondent Nos. 1 to 3 were entitled to acquittal only upon failure of proof in the trial and not at the threshold jurisdiction under Section 482 of the Cr.PC. To permit quashing on the sole ground of a civil suit would encourage unscrupulous litigants to defeat criminal prosecution by instituting civil proceedings. "

13. And the same foundation of argument are based upon paragraph no. 28 of case of **Pratibha Manchanda (supra)** which is reproduced hereinbelow:

"28. It is immaterial that the genuineness of the 1996 GPA is already subjudice before the Civil Court in the civil suits pending between the parties. The appellants, owing to their age and residential status, cannot be expected to await indefinitely for the outcome of these civil proceedings. Regardless, the pendency of these cases does not estop the issues of forgery and fabrication being considered in the course of criminal investigation. The facts of the case speak for themselves and an element of criminality cannot be ruled out at this stage. Whether or not the alleged offences were committed by Respondent No. 2 and his coaccused in active collusion with each other can be effectively determined by a free, fair, unhampered and dispassionate investigation. In the peculiar facts and circumstances of this case, custodial interrogation of not only Respondent No. 2 but all other suspects is, therefore, imperative to unearth the truth. Joining the investigation with a protective umbrella provided by prearrest bail will render the exercise of eliciting the truth ineffective in such like case. We are, as mentioned, also skeptical, suspicious and incredulous about the verification process of the 1996 GPA carried out by the Sub Registrar,

Kalkaji, New Delhi. Hence, the conduct of the officials of SubRegistrar Office, Kalkaji, New Delhi is also required to be examined to take the investigation to its logical conclusion. "

14. The above mentioned dictum of law has to be given credence to the facts and circumstances which are same, if applicable over the instant matter. So far as the knowledge of offence as alleged by opposite party no. 2 while preferring FIR on dated 29.11.2023 is concerned which has been registered at Case Crime no. 423 of 2023 at P.S. Kotwali, District Farrukhabad, the allegations were in the knowledge of opposite party no. 2 from the date when the award/settlement has been objected under Section 47 CPC on dated 14.12.2016, even thereafter the same has been put under challenge while preferring Original Suit no. 283 of 2017 (Vivek Kumar and others Vs. Vinod Kumar and others) and during pendency of the same, that too for near about 7 years and without having any favourable order from learned civil court, all of a sudden having knowledge of committing offence, FIR has been registered at Case Crime no. 423 of 2023. The applicability of rights as well as option for availing opportunity to exercise the rights conferred by Constitution of India by citizen of this country which ensures for registration of Criminal Complaint in shape of First Information Report but the same has to be information registered as first not as information available with so many persons for a long period of time and thereafter balancing the orders warranted to be obtained by either of the parties, failing which exercise for registration of the matter as a criminal proceedings in shape of FIR has to be considered in all parameters and corners of law. The straight line available in the judgments relied upon by learned counsel for opposite party no. 2 in case of Pratibha Manchanda and **C.S.Prasad (supra)** cannot be extended in favour of opposite party no. 2 once there is a self-admission on every stage preferred at the behest of opposite party no. 2 before every proceedings that certain documents have already been signed as blank in good faith of the applicants and the same might be misused by them, the misuse in shape of award/settlement once put under challenge and the same is still pending to be adjudicated finally by concerned civil court, there was no occasion available before the opposite party no. 2 to prefer proceedings registered as Case Crime no. 423 of 2023.

15. So far as the conclusion drawn by concerned Investigating Officer by way of preferring Final Report is concerned which has been discarded by way of rejecting Final Report and taking cognizance of offence on the basis of materials so available and appended along with Case Diary collected during course of investigation, there is a crystal clear provision contained under Section 190 of Cr.P.C. wherein under Chapter XIV conditions requisite for initiation of proceedings when the cognizance of offence has to be taken up by the Magistrate are well defined which is as under :

"190. Cognizance of offences by Magistrates.

(1)Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence –

(a)upon receiving a complaint of facts which constitute such offence;

(b)upon a police report of such facts;

(c)upon information received from any person other than a police officer or upon his own knowledge, that such offence has been committed.

(2)The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try. "

16. The usual course of taking cognizance of offence under Section 190(1)(b) Cr.P.C. is upon a police report in shape of charge sheet submitted by concerned Investigating Officer which usually in practical need not to elaborate while taking cognizance of offence and summoning the concerned accused but when the police report in shape of Final Report wherein it is submitted that no offence has been carried out by accused implicated in specific Case Crime number is being rejected and thereafter cognizance of offence has been taken up by learned concerned court and issued summoning order against the person who have been implicated in the FIR, the specific provision under Section 190 Cr.P.C. is mandatory to be disclosed while taking cognizance of offence and issuing summoning orders for ensuring presence of the persons implicated at the stage of preferring FIR.

17. In the instant matter order dated 26.2.2026 falls under the category of Section 190(1)(c) of Cr.P.C. where the learned court concerned rejected the report in shape of Final Report submitted by concerned Investigating Officer and on the basis of materials collected during course of investigation appended along with Case Diary, cognizance of offence has been taken up that is purely on the basis of his own knowledge since the knowledge applied by concerned Investigating Officer in shape of submitting Final Report has been rejected and as such learned court concerned duly authorized to take cognizance under Section 190 Cr.P.C. must come up with specific provisions contained under Section 190 Cr.P.C. but the same is missing in the order dated 26.2.2026 which impugned the instant application.

18. Although, it is the hypothetical propositions, that if learned court concerned could have mentioned Section 190(1)(c) the matter has to be proceeded in shape of Criminal Complaint wherein the materials have been submitted by concerned Investigating Officer and as such the procedure defined under Section 200 Cr.P.C. may not be exercised and only the documents submitted by concerned authorities and person has to record their statements under Section 202 Cr.P.C. The mode of the prosecution could have been little different with the present one and as such the clarity of the procedure must be ensured by learned court concerned while passing orders which is an opening gate of the procedure for putting any person to try in pursuance to the offence carried out specifically in shape of sections 420, 467, 468 and 471 IPC.

19. In view of aforementioned facts and circumstances, impugned order dated 26.2.2026 passed by learned Chief Judicial Magistrate, Farrukhabad in Misc. Case no. 89 of 2026 arising out of Case Crime no. 423 of 2023 in pursuance to sections 420, 467, 468 and 471 IPC, PS- Kotwali, District Farrukhabad is hereby **set aside only in respect of applicants herein**. Matter is remitted back to learned court of Chief Judicial Magistrate, Farrukhabad/learned concerned court to take fresh cognizance of offence, if required, by way of specific disclosure of the procedure provided under Section 190 Cr.P.C.

20. The instant application u/s 528 BNSS stands **partly allowed**.

(2026) 5 ILRA 1024
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.05.2026

BEFORE

THE HON'BLE SANJIV KUMAR, J.

Application U/S 528 BNSS No. 31196 of 2025

Anuraj Ratna & Ors. ...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

Issue for Consideration

Issue pertains to whether on a conjoint reading of FIR, the charge-sheet and material on record, the dispute between the parties is essentially civil/commercial in nature arising out of non-payment of dues for goods supplied so as to be devoid of requisite criminal ingredients under relevant sections of IPC, thereby rendering the impugned charge-sheet, cognizance/summoning order and consequential proceedings liable to be quashed in exercise of jurisdiction u/s 528 BNSS.

Headnotes

Indian Penal Code, 1860 - ss. 323, 406, 409, 420, 504, 506 - Code of Criminal Procedure, 1973 - s. 221 - Civil / Commercial - Charge-sheet - Cognizance - Criminal breach of trust - Cheating - Dishonest intention - Summoning order - Quashing of - Res judicata - The instant application u/s 528 BNSS was preferred by applicants seeking quashing of charge-sheet dated 14.03.2022, summoning order dated 23.03.2022, and entire proceedings arising out of Case Crime No. 86 of 2022 under relevant sections of IPC, on the allegation that the applicants, being director and employees of Keleone Trading Company Pvt. Ltd., had represented themselves as authorised representatives of a French buyer company, M/s Leon and Harper, induced the first informant's company, Kashvi Designs Pvt. Ltd., to supply garments on that basis, received part payment while withholding the balance amount despite repeated demands, and on one occasion allegedly abused, threatened and demanded an unwarranted discount from the informant's director - Applicant contended that they were mere intermediaries/service-providers entitled to commission, that the actual contract for sale and payment subsisted directly between Kashvi Designs Pvt. Ltd. and French buyer, that the dispute was purely commercial in nature concerning delayed delivery, penalty and commission, that a civil suit for recovery of commission was already pending between the parties, and that the police closure report had itself found the matter to be non-criminal, following which the High Court examined the contentions along with settled legal position on quashing of criminal proceedings arising from essentially civil/commercial disputes.

Held: The dispute is essentially civil/commercial in nature, and the allegations made and as they appear from the record and documents, predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' is involved and it does not satisfy the basic ingredients of criminal offence, therefore, in view of *Amit Kapoor (infra)*, the pendency of criminal proceedings would amount to an abuse of process of law - From a perusal of impugned cognizance and summoning order, it appears that the learned Magistrate has taken cognizance in both sections i.e. ss. 406 and 420 IPC, together, without disclosing in clear words, the reasons, why he is taking cognizance in both these sections together when they are distinct from each other and cannot exist together on same facts - Therefore, it appears that the learned Magistrate has not applied his judicial mind while taking cognizance and summoning the applicants and thus, the impugned order is

mechanical and cryptic in nature, and is not sustainable - The application is not barred by principle of res judicata, as after the earlier application was withdrawn, supplementary charge-sheet was filed and also that the earlier application was not decided on merits - Application allowed, thus entire proceedings quashed. [Paras 31, 34, 39, 40] (E-13)

Case Law Cited

Arshad Niyaz Khan v. State of Jharkhand and Another, **2025 INSC 1151;** *Delhi Race Club (1940) Ltd. and others v. State of Uttar Pradesh and another,* **2024 10 SCC 690;** *Mukesh and others v. The State of Uttar Pradesh and others,* **in Criminal Appeal No. Nil of 2024 (Arising out of Special Leave Petition (Crl.) No. 12354 of 2024;** *The Superintendent and Remembrancer of Legal Affairs, West Bengal v. S.K. Roy,* **(1974) 4 SCC 230;** *Rajesh Bajaj v. State NCT of Delhi and others,* **(1999) 3 SCC 259;** *Ajeet Singh v. State of Uttar Pradesh and others,* **2006 (5) ADJ 280;** *Indian Oil Corporation v. NEPC India Ltd and others,* **(2006) 6 SCC 736;** *State of Maharashtra v. Syed Mohammed Massod and another*, **2009 (8) SCC 787;** *Ghanshyam v. State of Rajasthan,* **(2014) 2 SCC 683;** *Indo Asian Ltd. v. State of Uttarakhand and another,* **(2014) 3 SCC 191;** *Bhaskar Lal Sharma and another v. Monica and others,* **(2014) 3 SCC 383;** *Somjeet Mallick v. Sate of Jharkhand and others,* **(2024) 10 SCC 527;** *Ghanshyam Sharma v. Surendra kumar Sharma and others,* **(2014) 13 SCC 401;** *Priti Saraf and another v. State (NCT of Delhi) and another,* **(2021) 16 SCC 142;** *State of Uttar Pradesh and another v. Akhil Sharda and others,* **(2023) 11 SCC 626;** *Kathyayini v. Sidharth P.S. Reddy & ors.*, **Criminal Appeal No. Nil of 2025, arising out of SLP (CRL) No. 1105 of 2024 dated 14.07.2025;** *Kamladevi Agarwal v. State of W.B. and others* **(2002) 1 SCC 555;** *K. Jagadish v. Udaya Kumar G.S. and another,* **(2020) 14 SCC 552;** *Kamal Shivaji Pokarnekar v. State of Maharashtra and others,* **(2019) 14 SCC 350;** *Amit Kapoor v. Ramesh Chander and another,* **(2012) 9 SCC 460;** *Bhim Sain Arora & ors. v. State*, **2025:DHC:7379;** *Joseph Salvaraj A v State of Gujarat and others,* **2011 (15) SCC 449;** *Inder Mohan Goswami and Another v. State of Uttaranchal and Others,* **AIR 2008 SC 251;** *Mohammad Wajid v. State of U.P.,* **reported as 2023 SCC OnLine SC 951 - referred to**

List of Acts

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

List of Keywords

Application u/s 528 BNSS; IPC; Charge-sheet; Summoning order; Cognizance; Civil dispute; Commercial transaction; Criminal breach of trust; Cheating; Misappropriation; Dishonest intention; Entrustment; Inducement; Res judicata; Gautam Budh Nagar; Delivery of goods; Service providers; Final settlement of readymade garments; Discharge; Breach of contract; Criminal proceedings; Investigation; First information report; Mechanical order; Letter of credit; Purchase order; Service provider; Intermediary; Application allowed.

Case Arising From

ORIGINAL JURISDICTION: Application U/S 528 BNSS No. - 31196 of 2025

From the Charge-sheet dated 14.03.2022, Summoning order dated 23.03.2022 and entire proceedings of Criminal Case No. 582 of 2022 arising out of Case Crime No. 86 of 2022, Police Station Phase-III, Noida, Commissionerate, District Gautam Budh Nagar, pending in the court of learned Civil Judge (Sr. Div.)/ Fast Track Court, Gautam Budh Nagar.

Appearances for Parties

Advs. for the Applicant(s):
Rajan Upadhyay, Sr. Advocate

Advs. for the Opposite Party(s):
Anil Kumar Pandey, G.A.

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

1. Heard Mr. Ramesh Upadhyay, learned Senior Advocate assisted by Mr. Rajan Upadhyay, learned counsel for the applicants, learned AGA for the State, Mr. Arvind Srivastava, learned Senior Advocate assisted by Mr. Anil Kumar Pandey, learned counsel for opposite party no.2 and perused the record.

2. This application under Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023 (in short 'BNSS') has been filed to quash charge-sheet dated 14.03.2022, summoning order dated 23.03.2022 as well as entire proceedings of Criminal Case No. 582 of 2022 (Anuraj Ratna and others Vs. State of U.P. and another), arising out of Case Crime No. 86 of 2022, under Sections 323, 406, 409, 420, 504, 506 IPC, Police Station Phase-III, Noida, Commissionerate, District Gautam Budh Nagar, pending in the court of learned Civil Judge (Sr. Div.)/ Fast Track Court, Gautam Budh Nagar.

3. Brief facts of the case are that opposite party no.2, Alok Kumar Singh, lodged an FIR against the applicants and others, stating that the first informant is share holder of Kashvi Designs Pvt. Ltd. (herein after referred to as 'Kashvi Ltd.'), based in C-35, 65 NOIDA, Gautam Budh Nagar. The above company was established in 2011, and is engaged in manufacture and export of garments. In January/February 2021, applicants Anuraj Ratna (Director) and Boris Morgan Denoual (Director) of Keleone Trading Company Pvt. Ltd. (herein after referred to as 'Kaleone Co.') approached and proposed to work with him together for a French Brand Leon and Harper (for brevity 'L&H'), of which they are authorized representatives in India. Thereafter, the first informant started receiving orders. It is alleged that on 09.04.2021, Narendra Sharma, the Production Manager of Keleone Co., surveyed his factory and presented technical specifications. On 16.04.2021, Narendra Sharma submitted an amended purchase order through e-mail and assured that letter of credit would be established shortly. Pursuant thereto, orders worth 80,349.40 (Rs.69,15,000/-) were placed and goods were supplied through Keleon Company. It is further alleged that despite repeated requests for payment, the same was avoided on one pretext or another. On 06.10.2021, Director Naresh Kumar, personally went to the office of applicants, where they started blackmailing him and asked for a discount of €10,000 to make payment and in the evening they started misbehaving, hurled abuses and thrown him out of the office and also threatened him of dire consequences. It is alleged in the FIR that the applicants with a pre-planned conspiracy, have caused first informant's company a financial loss of €80,349 (Rs.69,15,000/-). After repeated requests, they paid an amount of €47,870, whereas payment of €32,478.60 (Rs.27,50,000/-) is still due upon the applicants. They are asking for discount and commission, to make payments, whereas the informant had written, through e-mail, that commission would be paid after full payment.

4. Upon this information, FIR under Sections 420, 406, 323, 504, 506 Indian Penal Code,1860, (in short 'IPC'), was lodged and after investigation, charge-sheet was filed against Anuraj Ratna, Boris Morgan Denoual, Narendra Sharma and Abhilash. The matter was investigated and after evidence charge sheet has been filed against the applicants under 420, 406, 323, 504, 506 IPC. The concerned Magistrate took cognizance of the offence and summoned the applicants.

5. Learned counsel for the applicants submits that the applicants are employees of Keleone Co. and are engaged in business development activities, facilitating and connecting Indian export

factories and clients with foreign retail buyers for ready-made garments. It is further submitted that the applicants are engaged in this industry since 2010 and hold very reputed position in the market and that no complaint of fraud has ever been made against them except the present case.

6. It is next submitted by learned counsel for the applicants that Keleone Co. is a service provider of Kashvi Ltd., whose director is Meenakshi Singh, first informant's wife. Firstly, in the year 2019 and again in February/March, 2021, Kashvi Ltd. approached Keleone Co. to find foreign customers. It was mutually agreed between the parties that Keleone Co. would be paid 8% commission on the sales procured by it for Kashvi. Pursuant to this agreement, Keleone Co. introduced Kashvi Ltd. to a French buyer company namely, L&H, based in Paris, France. Thereafter, Kashvi Ltd. and L&H agreed to enter into an agreement, where ready-made clothes were to be purchased by L&H directly from Kashvi Ltd.

7. It is contended by learned counsel for the applicants that the main dispute of payment, for the goods supplied, is directly between Kashvi Ltd. and its French buyer L&H, arising out of breach of the terms of purchase order and letter of credit between the two parties and that the applicants' company i.e. Keleone, is not a party to these contracts and that its role was confined only to mediate between the L&H and Kashvi Ltd. It is also submitted that the French buyer L&H directly issued a purchase order to Kashvi Designs, which contained terms and conditions of purchase, including penalty for late delivery. Kashvi Ltd. accepted the aforesaid order and sent a proforma invoice on 15.04.2021 to L&H amounting to €70,912 and confirmed that all the delivery of goods to L&H would be on or before 17.07.2021. Pursuant to Kashvi's acceptance of purchase order as well as issuance of proforma invoice to L&H, the bank of L&H at Paris, France issued a letter of credit directly in Kashvi's name.

8. It is next submitted by learned counsel for the applicants that Keleone Co. does not place any purchase order to Kashvi Ltd. and that all purchases are made directly between Kashvi Ltd. and L&H. The informant's company i.e. Kashvi Ltd. exported the product only from 07.08.2021 that was almost one month after the agreed delivery due date and they shipped orders in installments in seven separate shipments with the final shipment being delivered on 14.09.2021. It is also submitted that on account of delay of delivery on the part of Kashvi Ltd. in dispatch of shipment, penalty was imposed by the French buyer L&H, after invoking penalty clause. Kashvi Ltd. did not accept the said penalty and wanted full payment for the goods delivered to L&H. This led to payment dispute between Kashvi Ltd. and L&H.

9. Learned counsel for the applicants next submits that Keleone was only a mediator which tried to mediate the payments issue between the two companies. After certain e-mails of Keleon Co., Kashvi's Director Naresh Kumar came to Keleone's office at Okhla, New Delhi and demanded that Keleone Co. made L&H agree to the penalty amount of 10,000 Euro and release all payments. The Keleone's employees said that just as they cannot force Kashvi to decide, so they cannot force L&H to decide whether to accept penalty amount and make all payments. This angered Naresh Kumar and he abused and threatened Keleone's employees. It is further submitted that L&H paid €47,870/- Euro directly to Kashvi. Neither goods nor money was received by Keleone in the whole transaction. Keleone was not a customer, but a service provider to whom Kashvi owed its sales commission.

10. Learned counsel for the applicants next submits that despite the incident, Keleone Co. continued to do their job and negotiated with L&H and as a result whereof, L&H paid in full, five out of seven invoices and Keleone also successfully got lower penalty for Kashvi. It is contended that the NOIDA Police closed their investigation stating that the matter was not criminal in nature and that it was a civil dispute. The applicants′ firm is an intermediary between Kashvi and L&H. It is submitted that the applicants′ company followed production process and checked their quality of orders, but in doing so they did not act as an agent, rather it was only to facilitate smooth functioning of business between L&H and the suppliers.

11. It is further submitted on behalf of the applicants that earlier Criminal Misc. Application u/s 482 Cr.P.C. No. 10800 of 2022 was withdrawn by the applicants on 09.07.2025 with a liberty to file a fresh application. It is also submitted that after filing of the aforesaid application, the learned Civil Judge (Senior Division)/FTC, Gautam Budh Nagar passed order dated 02.06.2022, pursuant to a supplementary charge-sheet submitted on 02.02.2023. It is next contended that order dated 02.06.2022 and supplementary charge-sheet dated 02.02.2023 were also required to be challenged, therefore, the earlier application was withdrawn with the aforesaid liberty. Thus, this application is not barred by the principle of res judicata.

12. Learned counsel for the applicants has submitted that the Hon′ble Supreme Court in a latest judgment passed in the case of **Arshad Niyaz Khan Vs. State of Jharkhand and Another, 2025 INSC 1151**, has held that offences punishable under Sections 406 and 420 IPC cannot run simultaneously on the same facts. It is also submitted that there is no evidence that the applicants deliberately committed cheating or misappropriation or caused damage to the applicants or portrayed themselves as L&H inasmuch as L&H, vide mail dated 18.02.2022, had made it clear that the applicants′ firm is nothing, but an intermediately. It is incorrect to state that all the activities, including technical specifications, negotiations of price, determination of quantities etc. was done under false pretext of being officials of L&H. It is argued that it is incorrect to state that imposition of 5% penalty per week was only a contingency clause. As far as the request of Kashvi Ltd. regarding extension of production delivery is concerned, the same was intimated by applicant no.2 to L&H and the response from L&H was duly communicated to Kashvi Ltd. vide e-mail dated 25.06.2021.

13. It is submitted on behalf of the applicants that they have filed a commercial suit being Suit No. SC (Comm) No. 3975 of 2024 (M/s. Keleone Trading Company Pvt. Ltd. Vs. M/s. Kashvi Designs Pvt. Ltd.) claiming legitimate commission amount of Rs.5,60,658/- along with interest. The statement on behalf of Kashvi Ltd that they never authorized Keleone Co. to negotiate on its behalf after the coercive act of 06.01.2021, itself draws an inference that the applicants′ firm was functioning as an intermediary between L&H and Kashvi Ltd. The delay was caused by Kashvi Ltd in delivering the products, yet the applicants continuously negotiated with L&H, since their commission was dependent on the amount paid by L&H to Kashvi Designs Pvt. Ltd. It is also submitted that closure report was filed by the Police stating that the dispute is essentially civil in nature and there is no medical evidence regarding the alleged assault to the director of Kashvi Ltd. The FIR has been lodged with the ulterior motive of evading the liability to make payment to the applicants to which they are legally entitled.

14. Learned counsel for the applicants has next submitted that the Hon′ble Supreme Court, while referring the matter to Mediation Centre, vide order dated 20.03.2024, has recorded that the proceedings essentially arise from a civil dispute. It is argued that the applicants neither made any threats nor committed any act of extortion, and there is no evidence to support these baseless allegations.

15. It is submitted on behalf of the applicants that the dispute is essentially civil in nature and that too between Kashvi Ltd. and L&H, therefore, the Trial Court proceedings are liable to be quashed.

16. Learned counsel for the applicants has relied upon a decision of Hon′ble Supreme Court in **Arshad Neyaz Khan** (supra), where the FIR was lodged after a delay of nearly eight years and the complainant failed to explain the reason for delay. In view of delay in lodging of the complaint and FIR, coupled with the vague allegations did not inspire any confidence of the Court to allow the criminal proceedings to continue against the appellant. It was further held that complainant had an alternative remedy of filing a civil suit claiming damages for the alleged violation of his contractual rights, which was not availed, and a route through criminal proceedings, when no ingredient of offence of cheating was made out, cannot be permitted. In para 26, the Hon′ble Supreme Court has held as under:

"26. At this juncture, we find it apposite to mention the observations of this Court in ***Vishal Noble Singh vs. State of Uttar Pradesh, 2024 SCC OnLine SC 1680*** *wherein it was observed that in recent years the machinery of criminal justice is being misused by certain persons for their vested interests and for achieving their oblique motives and agenda. Courts have therefore to be vigilant against such tendencies and ensure that acts of omission and commission having an adverse impact on the fabric of our society must be nipped in the bud. We say so for the reason that while the complainant/respondent No.2 has made grave allegations against the appellant herein, he has failed to justify the same before this Court. Such actions would create significant divisions and distrust among people, while also placing an unnecessary strain on the judicial system, particularly criminal courts.″*

17. Learned counsel for the applicants has further relied upon the decision of Hon′ble Supreme Court in **Delhi Race Club (1940) Ltd. and others vs. State of Uttar Pradesh and another, 2024 10 SCC 690**, in which the Hon′ble Supreme Court has held that offence of cheating and criminal breach of trust are independent and distinct from each other and the two offences cannot co-exist simultaneously on same set of facts. The relevant paragraph nos. 41, 42 and 43 of **Delhi Race Club** (supra) are as under:

"41. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence.

42. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership ′of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept.

43. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.″

18. Learned counsel for the applicants has also relied upon a decision of Hon′ble Supreme Court in **Mukesh and others Vs. The State of Uttar Pradesh and others, in Criminal Appeal No. Nil of 2024 (Arising out of Special Leave Petition (Crl.) No. 12354 of 2024**. In paragraph no.8 of the above decision, it is held as under:

"8. It is true that the appellants can apply for discharge. However, the scope of application for discharge is completely different from the scope of a petition for quashing the criminal proceedings. While arguing a case for discharge, the appellants will not be in a position to rely upon any document which is not the part of charge sheet. The ground of abuse of process of law will not be available while arguing discharge application. However, in a petition for quashing either under Section 482 of the Code of Criminal Procedure, 1973 or under Article 226 of the Constitution of India, a wider challenge is available including a challenge on the ground of abuse of process of law. In such proceedings, the accused can rely upon documents which are not the part of the charge-sheet. Therefore, we reject the submission made by learned counsel appearing for the State. Though the submissions made on behalf of the State have no basis, we have dealt with the same elaborately to ensure that the same are not urged in a similar case.″

19. Per contra, learned counsel for opposite party No.2 has submitted that the applicants had already filed an Application u/s 482 Cr.P.C. earlier, which was withdrawn with liberty and this application is nothing but a repetition of the same relief, which is barred by principle of res judicata. It is also contended that the earlier Application u/s 482 Cr.P.C. No. 10800 of 2022 was withdrawn on 09.07.2025 at the stage of final argument and applicants were granted liberty to file a fresh petition only on new grounds or after change of circumstances. The entire criminal case arises from deliberate cheating, deceiving, inducement, misappropriation and damage by the applicants. The dispute is not essentially civil in nature and the applicants intentionally induced the informant′s company with dishonest intention to part with the property under the pretext of facilitating export deals and then misappropriated funds. The criminal intent was present ab initio. It is also submitted that the applicants disguised themselves from L&H and informed opposite party no.2′s company, Kashvi Ltd. that they have established an office in Delhi for the purpose of managing the operations of L&H in India and are taking 8% commission to manage local expenses.

20. Learned counsel for opposite party no.2 next submits that informant's company Kashvi was falsely represented by applicants as from L&H. The applicants acted under false pretense and conducted all transactions, as if they were officials of L&H from the very mail dated 04.02.2021. It is also submitted that the applicants were directly responsible for withholding amounts received from the foreign bank. The dispute is not limited to contractual breach, but involves deliberate criminal conduct, inducement with dishonest intentions and conversion of funds. It is also submitted that it is incorrect that the delivery was strictly scheduled for 17.07.2021. The applicants' allegation of imposing penalty of 5% per week is misleading. It was only a contingency clause and was later invoked due to the applicant's admitted delay. The dispatches were made in a phased manner, as per the supply of tags, inspections and shipping instructions given by the applicants and there was no penalty agreement between Kashvi Ltd. and L&H.

21. Learned counsel for opposite party no.2 next submits that Kashvi was deceitfully led to believe that the applicants were directly associated with L&H and therefore, at no point did Kashvi Ltd. have any direct correspondence or communication with any official or authorized signatory of L&H, based in France. Dishonest intention and misappropriation on the part of the applicants clearly attracts offences punishable under Sections 406, 420, and 409 IPC. The plea of the applicants that goods were sent directly to L&H France is contrary to the record. Therefore, this application has no force and it liable to be dismissed.

22. Learned counsel for opposite party no.2 has relied upon the following decisions Hon'ble Supreme Court as well as various High Courts in support of his contention, which are enumerated hereinbelow:

(i) In the case of ***The Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. S.K. Roy, (1974) 4 SCC 230***, the Hon'ble Supreme Court has held that to constitute an offence under Section 409 IPC, it is not required that misappropriation must necessarily take place after the creation of legally correct entrustment of dominion over property. The entrustment may arise in "any manner whatsoever". That manner may or may not involve fraudulent conduct of the accused. Section 409 IPC, covers dishonest misappropriation in both types of cases; that is to say, those where the receipt of property is itself fraudulent or improper and those where the public servant misappropriates what may have been quite properly and innocently received.

(ii) In the case of **Rajesh Bajaj Vs. State NCT of Delhi and others, (1999) 3 SCC 259**, the Hon'ble Supreme Court has held that if factual foundation for the offence has been laid in the complaint, the Court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction.

(iii) In **Ajeet Singh Vs. State of Uttar Pradesh and others, 2006 (5) ADJ 280**, the Hon'ble Supreme Court has held that merely because civil claim is maintainable, it does not mean that the criminal complaint cannot be maintained. The relevant paragraph nos. 51, 52 and 55 are quoted below:

"*51. In Lalmuni Devi (Smt.) v. State of Bihar and others, (2001) 2 SCC 17, the Hon'ble Supreme Court held that peculiar facts of a case may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable, it does not mean that the criminal complaint cannot be maintained, therefore, held that no law of universal application can be laid down in such matters. The facts and circumstances of each case have to be examined, appreciating the terms and conditions incorporated in the agreement.*

52. In M. Krishnan v. Vijay Singh and another, (2001) 8 SCC 645, after considering several authorities on the point it was pointed out that mere filing of a civil suit with respect to the documents gives no ground for quashing criminal proceedings, as the allegations in the complaint need to be independently established. The Court held as under :

"Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents. In a criminal Court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil Court. Had the complainant failed to prove the allegations made by him the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in a criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of.....Where factual foundations for the offence have been laid down in the complaint, the High Court should not hasten to quash criminal proceedings merely on the premise that one or two ingredients have not been stated with the details or that the facts narrated reveal the existence of commercial or money transaction between the parties." (Emphasis added)

55. Thus, in view of the above, it becomes clear that in a given case, there may be civil as well as criminal liability and the Court has to examine the facts and circumstances of each case. Nature of the agreement reached between the parties and terms and conditions incorporated therein would be determining factor. However, such a course is permissible where the matter is of such a nature that it can be decided only by a Civil Court and no element of criminal law is involved."

(iv) In **Indian Oil Corporation Vs. NEPC India Ltd and others, (2006) 6 SCC 736**, the Hon'ble Supreme Court has held that with regard to offence of cheating all that is to be seen is whether the necessary allegations exist in the complaint to bring the case within Section 415 IPC. The relevant paragraph no.36 of the judgment is as follows:

"36. In this case, the complaints clearly allege that the accused with fraudulent intention to cheat and defraud the IOC, had induced IOC to resume supply of aircraft fuel on cash and carry basis, by entering into a further agreement dated 20.9.1997 and undertaking to clear the

outstanding amount of Rs.18 crores approximately within the time stipulated in the Hypothecation Agreements. The sum and substance of the said allegation read with other averments extracted above, is that NEPC India, having committed default in paying the sum of Rs.18 crores, entered into a fresh agreement dated 20.9.1997 agreeing to clear the outstanding as per a fresh schedule, with the dishonest and fraudulent intention of pre-empting and avoiding any action by IOC in terms of the hypothecation deeds to take possession of the aircrafts. Though the supplies after 20.9.1997 were on cash and carry basis, the fraudulent intention is alleged to emanate from the promise under the said agreement to make payment, thereby preventing immediate seizure (taking possession) of the aircrafts by IOC. This allegation made in addition to the allegation relating to removal of engines, has been lost sight of by the High Court. All that is to be seen is whether the necessary allegations exist in the complaint to bring the case within section 415. We are clearly of the view that the allegations in the complaint constitute such an offence. We are not concerned with the proof of such allegations or ultimate outcome of trial at this stage.″

(v) In **State of Maharashtra Vs. Syed Mohammed Massod and another, 2009 (8) SCC 787**, the Hon′ble Supreme Court has held that there cannot be any doubt or dispute whatsoever that a simple breach of contract or a case involving pure civil dispute would not attract the penal provisions contained in the Penal Code either under Section 406 or Section 420 thereof. The Court observed that the allegation made in the FIR and the materials collected during investigation should be allowed to be taken to its logical end.

(vi) In **Ghanshyam Vs. State of Rajasthan, (2014) 2 SCC 683**, the Hon′ble Supreme Court, while dealing with the matter involving offence regarding criminal breach of trust has relied upon earlier decisions of Supreme Court in **Onkar Nath Mishra Vs. State (NCT of Delhi) (2008) 2 SCC 561** and **Jaikrishnadas Manohardas Desai Vs. State of Bombay, AIR 1960 SC 889**. The relevant paragraph nos. 9 and 10 are as follows:

"9. It has been held in the case of Onkar Nath Mishra and Ors. v. State (NCT of Delhi) and Anr. that in the commission of the offence of criminal breach of trust, two distinct parts are involved. The first consists of the creation of an obligation in relation to the property over which dominion or control is acquired by the accused. The second is a misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created.

10. Further, it has been held in the case of Jaikrishnadas Manohardas Desai and Anr. v. State of Bombay that:

"To establish a charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure, in breach of an obligation, to account for the property entrusted, if proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion. Conviction of a person for the offence of criminal breach of trust may not, in all cases, be founded merely on his failure to account for the property entrusted to him, or over which he has dominion, even when a duty to account is imposed upon him but where he is unable to account which is untrue, an inference of misappropriation with dishonest intent may readily be made., the prosecution is not obliged to prove the precise mode of

conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure, in breach of an obligation, to account for the property entrusted, if proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion. Conviction of a person for the offence of criminal breach of trust may not, in all cases, be founded merely on his failure to account for the property entrusted to him, or over which he has dominion, even when a duty to account is imposed upon him but where he is unable to account which is untrue, an inference of misappropriation with dishonest intent may readily be made., the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure, in breach of an obligation, to account for the property entrusted, if proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion. Conviction of a person for the offence of criminal breach of trust may not, in all cases, be founded merely on his failure to account for the property entrusted to him, or over which he has dominion, even when a duty to account is imposed upon him but where he is unable to account which is untrue, an inference of misappropriation with dishonest intent may readily be made.″ ***(emphasis laid by this Court)***.

(vii) In the case of **Indo Asian Ltd. Vs. State of Uttarakhand and another, (2014) 3 SCC 191**, the Supreme Court set aside the order of the High Court by which the High Court had quashed the criminal proceedings against accused under Section 306 Cr.P.C., and held that the High Court should not have quashed the complaint and should have left it to the criminal court to proceed with the case in accordance with law.

(viii) In **Bhaskar Lal Sharma and another Vs. Monica and others, (2014) 3 SCC 383**, a three Judge Bench of Hon′ble Supreme Court observed that the facts as alleged will have to be proved during the course of regular trial. The appreciation, even in a summary manner, of the averments made in a compliant petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it. This is the core test that has to be applied before summoning the accused.

(ix) In **Somjeet Mallick Vs. Sate of Jharkhand and others, (2024) 10 SCC 527**, in paragraph nos. 16, 17 and 18, the Supreme Court has held as under:

"16. To commit an offence, unless the penal statute provides otherwise, mens rea is one of the essential ingredients. Existence of mens rea is a question of fact which may be inferred from the act in question as well as the surrounding circumstances and conduct of the accused. As a sequitur, when a party alleges that the accused, despite taking possession of the Truck on hire, has failed to pay hire charges for months together, while making false promises for its payment, a prima facie case, reflective of dishonest intention on the part of the accused, is made out which may require investigation. In such circumstances, if the FIR is quashed at the very inception, it would be nothing short of an act which thwarts a legitimate investigation.

17. It is trite law that FIR is not an encyclopedia of all imputations. Therefore, to test whether an FIR discloses commission of a cognizable offence what is to be looked at is not any omission in the accusations but the gravamen of the accusations contained therein to find out whether, prima facie, some cognizable offence has been committed or not. At this stage, the Court is not required to ascertain as to which specific offence has been committed.

17. It is only after investigation, at the time of framing charge, when materials collected during investigation are before the Court, the Court has to draw an opinion as to for commission of which offence the accused should be tried. Prior to that, if satisfied, the Court may even discharge the accused. Thus, when the FIR alleges a dishonest conduct on the part of the accused which, if supported by materials, would disclose commission of a cognizable offence, investigation should not be thwarted by quashing the FIR.″

(x) In **Ghanshyam Sharma Vs. Surendra kumar Sharma and others, (2014) 13 SCC 401**, while dealing with quashing of proceedings, it is held at paragraph no.8:

"8. Whether the respondents are guilty under Section 379 IPC or not is a matter of evidence. The fact that the police chose to file a chargesheet under Section 406 and 420 IPC is not conclusive regarding the offences for which the respondents-accused are to be tried. The trial Court can always frame an appropriate charge if there is sufficient material from the report of the police available before it. In case where the material is insufficient to frame a charge, the trial Court may either discharge the accused or may direct further investigation in the matter. Before deciding as to which one of the three courses of action mentioned above is to be resorted to, the trial Court must examine the content of the complaint, the evidence gathered by the investigating agency and also scrutinize whether the investigating agency proceeded in the right direction.″

(xi) In **Priti Saraf and another Vs. State (NCT of Delhi) and another, (2021) 16 SCC 142**, the Hon'ble Supreme Court in paragraph nos. 29, 31 and 35 has held as under:

"29. In the instant case, the complaint/FIR/charge-sheet as noticed above, does, however, lend credence to the questions posed. It is settled that one is not supposed to dilate on this score, or intend to present that the allegations in the complaint will have to be accepted on the face of it and the truth or falsity of which would not be gone into by the Court at this stage, as noticed above, whether the allegations in the complaint were true is to be decided on the basis of the evidence led at the stage of trial and the observations on this score in the case of Nagpur Steel & Alloys Pvt. Ltd. Vs. P. Radhakrishna SCC (Cri) p. 1074 ought to be noticed. In para 3, this Court observed:

"3. We have perused the complaint carefully. In our opinion it cannot be said that the complaint did not disclose the commission of an offence. Merely because the offence was committed during the course of a commercial transaction, would not be sufficient to hold that the complaint did not warrant a trial. Whether or not the allegations in the complaint were true was to be decided on the basis of evidence to be led at the trial in the complaint case. It certainly was not a case in which the criminal trial should have been cut short. The quashing of the complaint has resulted in grave miscarriage of justice. We, therefore, without expressing any opinion on the merits of the case, allow this appeal and set aside the impugned order of the High Court and

restore the complaint. The learned trial Magistrate shall proceed with the complaint and dispose of it in accordance with law expeditiously.″

…….

31. In the instant case, on a careful reading of the complaint/FIR/charge-sheet, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Section 406 and 420 IPC cannot be said to be absent on the basis of the allegations in the complaint/FIR/charge-sheet. We would like to add that whether the allegations in the complaint are otherwise correct or not, has to be decided on the basis of the evidence to be led during the course of trial. Simply because there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the appellants, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court for exercising inherent powers of the High Court under Section 482 CrPC for quashing such proceedings.

35. The submission made by Mr. P. Chidambaram, learned senior counsel for 2nd respondent showing bonafides and taking us through the documentary evidence annexed to the counter affidavit on record to show that it was a simple case of termination because of breach of terms of the contract giving rise to a purely civil dispute or initiation of the arbitral proceedings would not attract the provisions under Section 406, 420, 34 IPC may not hold good at this stage for the reason what is being suggested by the learned counsel for the 2nd respondent can be his defence during the course of trial but was not open to be examined by the High Court to take a judicial notice and for quashing of the criminal proceedings in exercise of its inherent powers under Section 482 CrPC.″

(xii) In the case of **State of Uttar Pradesh and another Vs. Akhil Sharda and others, (2023) 11 SCC 626**, the matter came up before the Hon'ble Supreme Court was that the High Court had quashed the criminal proceedings under Section 482 Cr.P.C. Then, in view of the facts of the case, the Court observed that it appears that the High Court has virtually conducted a mini trial, which is not permissible at this stage while deciding the Application under Section 482 Cr.P.C. The relevant paragraph no. 18 of the said judgment is as under:

"18. Having gone through the impugned judgment and order passed by the High Court by which the High Court has set aside the criminal proceedings in exercise of powers under Section 482 Cr.P.C., it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482 Cr.P.C. As observed and held by this Court in a catena of decisions no mini trial can be conducted by the High Court in exercise of powers under Section 482 Cr.P.C. jurisdiction and at the stage of deciding the application under Section 482 Cr.P.C., the High Court cannot get into appreciation of evidence of the particular case being considered.″

(xiii) In **Kathyayini Vs. Sidharth P.S. Reddy & ors., Criminal Appeal No. Nil of 2025**, arising out of **SLP (CRL) No. 1105 of 2024** dated 14.07.2025, the Hon'ble Supreme Court relying upon earlier decisions in **Kamladevi Agarwal v. State of W.B. and others (2002) 1 SCC 555** and **K. Jagadish Vs. Udaya Kumar G.S. and another, (2020) 14 SCC 552** held that pendency of civil

proceedings on the same subject matter, involving the same parties is no justification to quash the criminal proceedings, if prima facie case exists against the accused persons.

(xiv) In **Kamal Shivaji Pokarnekar Vs. State of Maharashtra and others, (2019) 14 SCC 350**, the Hon'ble Supreme Court held that if a complaint discloses prima facie offences, that are alleged against the respondent, then the correctness or otherwise of the said allegations has to be decided only in the trial. At the initial stage of issuance of process, it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceedings shall not be interdicted.

(xv) In **Amit Kapoor Vs. Ramesh Chander and another, (2012) 9 SCC 460**, the Hon'ble Supreme Court has summarized the principles to be considered for proper exercise of the jurisdiction, particularly with regard to quashing of a charge either in exercise of jurisdiction under Section 397 or Section 482 Cr.P.C. or together. It is held:

"25. Having examined the inter-relationship of these two very significant provisions of the Code, let us now examine the scope of interference under any of these provisions in relation to quashing the charge. We have already indicated above that framing of charge is the first major step in a criminal trial where the Court is expected to apply its mind to the entire record and documents placed therewith before the Court. Taking cognizance of an offence has been stated to necessitate an application of mind by the Court but framing of charge is a major event where the Court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the Court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the Court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of the Code or any other law for the time being in force and there is a bar and there exists no ground to proceed against the accused, the Court may discharge the accused. There can be cases where such record reveals the matter to be so predominantly of a civil nature that it neither leaves any scope for an element of criminality nor does it satisfy the ingredients of a criminal offence with which the accused is charged. In such cases, the Court may discharge him or quash the proceedings in exercise of its powers under these two provisions.

26. This further raises a question as to the wrongs which become actionable in accordance with law. It may be purely a civil wrong or purely a criminal offence or a civil wrong as also a criminal offence constituting both on the same set of facts. But if the records disclose commission of a criminal offence and the ingredients of the offence are satisfied, then such criminal proceedings cannot be quashed merely because a civil wrong has also been committed. The power cannot be invoked to stifle or scuttle a legitimate prosecution. The factual foundation and ingredients of an offence being satisfied, the Court will not either dismiss a complaint or quash such proceedings in exercise of its inherent or original jurisdiction. In the case of Indian Oil Corporation v. NEPC India Ltd and ors., (2006) 6 SCC 736, this Court took the similar view and

upheld the order of the High Court declining to quash the criminal proceedings because a civil contract between the parties was pending.

27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be :

27.1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

` 27.3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5) Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8) Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.

27.9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10) It is neither necessary nor is the court called upon to hold a full- fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11) Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12) In exercise of its jurisdiction under Section 228 and/or under Section 482 Cr.P.C., the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

27.13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14) Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15) Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist.

{Ref. State of West Bengal & Ors. v. Swapan Kumar Guha & Ors. [AIR 1982 SC 949]; Madhavrao Jiwaji Rao Scindia & Anr. v. Sambhajirao Chandrojirao Angre & Ors. [AIR 1988 SC 709]; Janata Dal v. H.S. Chowdhary & Ors. [AIR 1993 SC 892]; Mrs. Rupan Deol Bajaj & Anr. v. Kanwar Pal Singh Gill & Ors. [AIR 1996 SC 309; G. Sagar Suri & Anr. v. State of U.P. & Ors. [AIR 2000 SC 754]; Ajay Mitra v. State of M.P. [AIR 2003 SC 1069]; M/s. Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors. [AIR 1988 SC 128]; State of U.P. v. O.P. Sharma [(1996) 7 SCC 705]; Ganesh Narayan Hegde v. s. Bangarappa & Ors. [(1995) 4 SCC 41]; Zundu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque & Ors. [AIR 2005 SC 9]; M/s. Medchl Chemicals & Pharma (P) Ltd. v. M/s. Biological E. Ltd. & Ors. [AIR 2000 SC 1869]; Shakson Belthissor v. State of Kerala & Anr. [(2009) 14 SCC 466]; V.V.S. Rama Sharma & Ors. v. State of U.P. & Ors. [(2009) 7 SCC 234]; Chunduru Siva Ram Krishna & Anr. v. Peddi Ravindra Babu & Anr. [(2009) 11 SCC 203]; Sheo Nandan Paswan v. State of Bihar & Ors. [AIR 1987 SC 877]; State of Bihar & Anr. v. P.P. Sharma & Anr. [AIR 1991 SC 1260]; Lalmuni Devi (Smt.) v. State of Bihar & Ors. [(2001) 2 SCC 17]; M. Krishnan v. Vijay Singh & Anr. [(2001) 8 SCC 645]; Savita v. State of Rajasthan [(2005) 12 SCC 338]; and S.M. Datta v. State of Gujarat & Anr. [(2001) 7 SCC 659]}.

27.16) These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance to the requirements of the offence."

(xvi) In **Bhim Sain Arora & ors. Vs. State, 2025:DHC:7379**, the Trial Court had issued summons against the accused for offence punishable under Section 406 IPC and the decision of the Hon′ble Supreme Court in **Delhi Race Club** (supra) was placed before the High Court on the point that a person cannot be convicted for offence punishable under Sections 409 and 420 IPC simultaneously. The Court held that there is no doubt that the legal position is that a person cannot be convicted for offence punishable under Section 409/420 IPC simultaneously. However, at the time of consideration on point of charge, in view of the provisions of Section 221 of Cr.P.C., the learned Trial Court can proceed to frame the charge under both the offences.

23. Learned AGA has supported the submission of charge-sheet, summoning order as well as entire proceedings.

24. In view of the submissions of both the parties, upon a perusal of material on record and the legal position, as mentioned above, the allegation against the applicants is that, being director and employees of Keleon Trading Company Pvt. Ltd., they projected themselves as authorized representatives of a French Company L&H in India. Applicant no.3, Narendra Sharma, surveyed the first informant′s factory, presented technical specifications and also submitted amended purchase orders through e-mail and assured that a letter of credit would be established shortly and thus, the business commenced. According to the first informant, they believed that they are doing business with L&H and pursuant to the orders placed, the goods were delivered and when the request for payment was made, it was avoided. It is also alleged in the FIR that when Naresh Kumar, Director of Kashvi Ltd. personally went to their office, he was blackmailed, asked for discount, abused and misbehaved. Therefore, in furtherance of the conspiracy, financial loss was caused to first informant′s company and full and final payment is still due upon the applicants.

25. According to the first informant, the applicants are demanding a discount for full and final payment. On the other hand, the applicants have denied the allegations and said that they are employees of Keleon Co., which is engaged in the business of connecting Indian suppliers to foreign retail buyers for ready-made garments. The applicants are merely service providers to Kashvi Ltd and had agreed to receive 8% commission on the sales procured by it to Kashvi Ltd. It is their case that they introduced Kashvi Ltd. to L&H based in Paris, France and that the entire contract for purchase of garments was executed directly between Kashvi Ltd. and L&H. They say that the dispute pertains to the payment for goods supplied by Kashvi Ltd. to L&H directly, which amounts to a breach of terms of purchase order and letter of credit between the parties. It is also their case that the applicants′ company, Keleone, is not a party to these contracts and its role was confined only to mediate between L&H and Kashvi Ltd. It is also said that a commercial suit being Suit No. SC (Comm) No. 3975 of 2024 (M/s. Keleone Trading Company Pvt. Ltd. Vs. M/s. Kashvi Designs Pvt. Ltd.), claiming legitimate commission amount of Rs.5,60,658/- along with interest, was filed.

26. Looking into the contents of the FIR, the submissions of both the parties and the perusal of material on record, it prima facie appears that the dispute is between three firms, namely Kashvi Ltd., Keleon Co. and L&H, which pertains to delivery of goods and its full and final payment. Keleon Co. say that they are only service providers, who works on payment of commission and the contract with regard to delivery of goods and its payment was entered into between Kashvi Ltd. and

L&H, directly. Be that as it may, due to certain reasons, dispute arose with regard to full and final payment of ready-made garments to Kashvi Ltd. As per the FIR, some payment was made and for full and final payment, discount and commission was demanded. Therefore, the main dispute between the parties is that of breach of contract with regard to full and final payment of goods. The above dispute is essentially commercial in nature.

27. There is no doubt with regard to the legal position, that if a dispute has both civil and criminal elements in it, then merely because a civil claim is maintainable, it does not mean that criminal case cannot be maintained, but so far as the present case is concerned, the dispute does not contain any criminal element in it and it is merely a breach of contract and that too for for full and final payment for goods supplied.

28. The Hon'ble Supreme Court in **2011 (15) SCC 449 Joseph Salvaraj A v State of Gujarat and others** has held that if a purely civil dispute is given a criminal colour, then no person should be permitted to be harassed for that. The relevant paragraph nos. 25 and 26 of the decision are reproduced here below:

"25. In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the Appellant. The present FIR is an abuse of process of law. The purely civil dispute, is sought to be given a colour of a criminal offence to wreak vengeance against the Appellant. It does not meet the strict standard of proof required to sustain a criminal accusation.

26. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong as has been succinctly held by this Court in Devendra Vs. State of U.P., 2009 (7) SCC 495, relevant part thereof is reproduced hereinbelow:

"A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out."

29. Similarly in **Inder Mohan Goswami and Another v State of Uttaranchal and Others, AIR 2008 SC 251**, the Hon'ble Supreme Court has held that:

"the powers possessed by the High Court under Section 482 of the Code of Criminal Procedure, are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

This court in State of Karnataka v. L. Muniswamy & Others (1977) 2 SCC 699 observed that the wholesome power under section 482 Cr.P.C. entitles the High Court to quash a proceeding

when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature."

30. The Hon'ble Supreme Court in another case of **Indian Oil Corporation v. NEPC India Ltd. & Others (2006) 6 SCC 736**, has cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The Court noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution, should be deprecated and discouraged.

31. In view of the above, and after considering the facts and circumstances of the case, it prima facie appears that the dispute is essentially civil/commercial in nature, and the allegations made and as they appear from the record and documents annexed therewith, predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' is involved and it does not satisfy the basic ingredients of a criminal offence, therefore, in view of **Amit Kapoor** (supra), the pendency of this criminal proceedings would amount to an abuse of process of law.

32. It is also submitted on behalf of applicants that the charge-sheet has been filed under Sections 406, 420 IPC beside other Sections of IPC and as held by Hon'ble Supreme Court in Delhi Race Club (supra) both the offences under Section 406 and 420 IPC cannot run simultaneously on same facts. Therefore the impugned cognizance and summoning order is bad in the eye of law. On the other hand learned counsel for opposite party no.2 has relied upon the decision of Delhi High Court in Bhim Sain Arora (supra), where the Court held that there is no doubt that the legal position is that a person cannot be convicted for offence punishable under Sections 409, 420 IPC simultaneously. However, at the time of consideration on point of charge, in view of the provisions of Section 221 of Cr.P.C., the learned Trial Court can proceed to frame the charge under both the offences.

33. Though in view of Section 221 Cr.P.C. (corresponding to Section 244 of BNSS), charge can be framed under section 406 and 420 IPC together, if it is doubtful what offence has been committed, but that does not absolve the Magistrate of his duty to apply his judicial mind while taking cognizance of the offence under both these Sections, together. It is settled law that taking cognizance and summoning of an accused is a very important stage, which sets the criminal law in motion. Therefore, the Magistrate has to apply his judicial mind while taking cognizance of an offence.

34. From a perusal of impugned cognizance and summoning order, it appears that the learned Magistrate has taken cognizance in both Sections i.e. Sections 406 and 420 IPC, together, without disclosing in clear words, the reasons, why he is taking cognizance in both these Sections together

when they are distinct from each other and cannot exist together on same facts. Therefore, it appears that the learned Magistrate has not applied his judicial mind while taking cognizance and summoning the applicants and thus, the impugned order is mechanical and cryptic in nature, and as such is not sustainable.

35. It is submitted on behalf of opposite party no.2 that charges against applicant no. 3 and 4 have been framed, so this application on their behalf has become infructuous. The learned counsel for applicants has opposed by submitting that framing of charge does not render this application infructuous because in the present application the entire criminal proceeding has been challenged. He has relied upon decision of Hon'ble Supreme Court in **Mukesh (supra)**. The Supreme Court, in this decision, has held that the scope of discharge is entirely different from that of quashing the proceeding under Section 482 Cr.P.C. (Now 528 BNSS), because while arguing on discharge, the applicant cannot rely on a document, which is not the part of charge-sheet and also cannot raise ground of abuse of process of law. I do agree with the submission of the applicants that framing of charge does not render this proceeding infructuous, with regard to applicants no. 3 and 4.

36. With regard to alleged assault to Naresh Kumar there are only general allegations without any medical or other evidence. In this regard a decision of the Supreme Court in **Mohammad Wajid v. State of U.P., reported as 2023 SCC OnLine SC 951**, is worth mentioning, where the Supreme Court observed as follows:

"34. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIR's assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."

(Emphasis supplied)

37. In view of the above, it cannot be ruled out that the FIR is so well grafted so that it discloses the necessary ingredients to constitute the alleged offence. The other issues raised relate to disputed question of facts which are primarily of civil/commercial in nature.

38. It is also submitted by learned counsel for opposite party no.2 that this application is barred by the principle of res judicata. The applicants had earlier filed an Application u/s 482 Cr.P.C., which was withdrawn with the liberty to file fresh application, but no fresh ground exist in this application, therefore, this application is barred by principle of res judicata. On the other hand, learned counsel for the applicants submitted that after the earlier application under Section 482 Cr.P.C. was withdrawn, the concerned court passed order and thereafter, a supplementary charge-sheet was filed, therefore, there was change of circumstance, as such, this application is not barred by the principle of res judicata.

39. In view of the facts and circumstances of the present case, I agree with the submissions advanced by learned counsel for the applicants and hold that this application is not barred by principle of res judicata, as after the earlier application was withdrawn, supplementary charge-sheet was filed and also that the earlier application was not decided on merits.

40. In view of the above discussion, this application is **allowed** and charge-sheet dated 14.03.2022, summoning order dated 23.03.2022 as well as entire proceedings of Criminal Case No. 582 of 2022 (Anuraj Ratna and others Vs. State of U.P. and another), arising out of Case Crime No. 86 of 2022, under Sections 323, 406, 409, 420, 504, 506 IPC, Police Station Phase-III, Noida, Commissionerate, District Gautam Budh Nagar, pending in the court of learned Civil Judge (Sr. Div.), Fast Track Court, Gautam Budh Nagar., are, hereby, **quashed**.

(2026) 5 ILRA 1044
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.05.2026

BEFORE

THE HON'BLE MS. NAND PRABHA SHUKLA, J.

Application U/S 528 BNSS No. 48526 of 2025

Nishant Singh & Ors. **...Applicants**
Versus
State of U.P. & Anr. **...Opposite Parties**

Issue for Consideration

Issue pertains to whether proceedings culminating in the cognizance/summoning order dated 22.08.2025 ought to have been governed by procedure prescribed under the Bharatiya Nagarik Suraksha Sanhita, 2023, particularly the proviso to s. 223(1) mandating an opportunity of hearing to the accused before cognizance or whether, by virtue of repeal and savings clause u/s 531(2)(a) of BNSS, the proceedings continued to be validly governed by Cr.P.C, 1973, since the criminal proceedings had originated from an application u/s 156(3) Cr.P.C. filed prior to commencement of BNSS.

Headnotes

Indian Penal Code, 1860 - ss. 376, 506 - Code of Criminal Procedure, 1973 - ss. 156(3), 200, 202 - Bharatiya Nagarik Suraksha Sanhita, 2023 - ss. 223, 531(2)(a) - Repeal and Savings - Prospective application - Pending investigation - Protest petition - Complaint Case - Cognizance - Summoning order - The applicants sought quashing of entire proceedings of Complaint Case No. 1328 of 2024, arising out of FIR No. 0071 of 2024 and also consequential summoning order dated 22.08.2025, on the ground that the impugned proceedings, having culminated after the commencement of BNSS on 01.07.2024, ought to have been conducted in conformity with s. 223 of BNSS, which mandates an opportunity of hearing to the accused prior to taking cognizance - The factual matrix reveals that the opposite party no. 2 had filed an application u/s 156(3) Cr.P.C. on 06.01.2024, pursuant to which the FIR was registered on 03.03.2024, investigation (including further investigation by the Crime Branch) was conducted resulting in a Final Report dated 07.08.2024, which, upon rejection by learned Magistrate on a Protest Petition filed on 03.04.2025, was treated as a Complaint Case, followed by examination of complainant and witnesses u/ss. 200 and 202 Cr.P.C., culminating in the cognizance/summoning order dated 22.08.2025 as impugned herein.

Held: Looking to the Repeal and Savings provision, the further investigation was pending at that point of time i.e. on 01.07.2024 - In view of saving provision, the proceedings will be deemed to have been continued under the provisions of Criminal Procedure Code - After completion of further investigation, the Final Report was submitted and notice was issued to first informant on 09.12.2024 - Thus, from chronology of events, it emerges that the "inquiry" was made by Magistrate under the Criminal Procedure Code which culminated in the submission of Police Report - The first informant had filed Protest Petition which was ordered to be treated as a complaint case and after examination of complainant and witnesses on oath the cognizance/summoning order passed - Since in the instant matter, the criminal proceedings emanate from the application moved u/s 156(3) Cr.P.C. dated 06.01.2024 before commencement of BNSS, there exists no justification for Court concerned to proceed under the provision of B.N.S.S, especially, in view of Savings provision incorporated in s. 531(2)(a) of BNSS thereof - Thus, no illegality in impugned order, accordingly, application u/s 528 BNSS dismissed. [Paras 15, 16, 19, 20] (E-13)

Case Law Cited

H.S. Bains v. State (Union Territory of Chandigarh) **(1980) 4 SCC 631;** *Parvinder Singh v. Enforcement Directorate*, **2026 SCC OnLine SC 903 - referred to**

List of Acts

Indian Penal Code, 1860; Bhartiaya Nagarik Suraksha Sanhita, 2023; Code of Criminal Procedure, 1973

List of Keywords

Application u/s 528 BNSS; Cognizance and Summoning Order; Complaint Case; Protest Petition; Final Report; Crime Branch Commissionerate Varanasi; First Information Report; Further Investigation; Repeal and Savings Provision; Prospective Application; Inquiry; Vitiated; Illegality; Acquiesced; Opportunity of hearing; Commencement and Enforcement of BNSS, 2023; Police Report; Notice; Examination on oath; Peace-meal application; Application dismissed.

Case Arising From

ORIGINAL JURISDICTION: Application U/S 528 BNSS No. - 48526 of 2025

From the Summoning Order dated 22.08.2025 in Criminal Complaint Case No. 1328 of 2024, Police Station Shivpur, District Varanasi, pending before the learned Additional Chief Judicial Magistrate, Court Room No.07, District Varanasi.

Appearances for Parties

Advs. for the Applicant(s):
Anand Tiwari, Sr. Advocate

Advs. for the Opposite Party(s):
Ashok Kumar Singh, G.A., Hemendra Pratap Singh

(Delivered by Hon'ble Ms. Nand Prabha Shukla, J.)

1. Heard learned Senior Advocate Sri Vinay Saran, assisted by Sri Anand Tiwari, appearing for the applicants, Sri Hemendra Pratap Singh and Sri Ashok Kumar Singh, learned Counsel appearing for the Opposite Party No. 2, Sri Ratan Singh, learned AGA-I for the State and perused the record.

2. The present application under section 528 B.N.S.S. has been filed with a prayer to allow this application and to quash the entire proceedings of Criminal Complaint Case No. 1328 of 2024 under sections 376, 506 IPC, Police Station Shivpur, District Varanasi, pending before the learned Additional Chief Judicial Magistrate, Court Room No.07, District Varanasi as well as quashing of order dated 22.08.2025 through which the Applicant Nos.1 and 2 have been summoned under section 376 IPC whereas Applicant Nos. 3 and 4 have been summoned under section 506 IPC.

3. In the present case, the incident is alleged to have occurred on 27.05.2021. Almost after three years, on 06.01.2024, the Opposite Party No.2, Alisha Vishwakarma moved an application under section 156(3) Cr.P.C. for lodging of an FIR. On the same day, the learned A.C.J.M-VII, Varanasi sought the report from the concerned Police Station and, on the basis of the said police report, the application was allowed on 09.02.2024 with a direction to the Police Officer concerned to lodge an FIR and investigate the matter against the applicants.

4. On 03.03.2024, the First Information Report bearing FIR No. 0071 of 2024 under sections 376, 506 IPC was registered at P.S. Shivpur, District Varuna (Commissionerate of Varanasi) against the applicants, namely, Nishant Singh, Sitanshu Singh, Babita Singh and Sanjay Singh.

5. After the completion of the investigation by the local police, the Final Report dated 19.04.2024 was prepared and forwarded to the Superior Police Official, whereby, the further investigation was ordered on 17.05.2024, to be conducted by the Crime Branch, Commissionerate, Varanasi. In furtherance of the entrustment, the Crime Branch prepared the Final Report dated 07.08.2024 and was submitted on 09.12.2024 in the Court of learned A.C.J.M.-VII, Varanasi.

6. After receipt of the Final Report dated 07.08.2024, the learned Magistrate issued notice on 09.12.2024 to the first informant/opposite party no.2/Alisha Vishwakarma.

7. As the Final Report submitted disclosed that no offence appears to have been committed, the first informant/Opposite Party No.2, Alisha Vishwakarma being prejudiced filed a Protest Petition on 03.04.2025. The learned A.C.J.M.-VII, Varanasi after hearing the counsel for the first informant/opposite party no.2 on the Protest Petition rejected the Final Report dated 07.08.2024 and ordered to treat the Protest Petition as a Complaint Case. Thus, the Complaint Case No. 1328 of 2024 was registered and the complainant and the witnesses were examined on oath under

sections 200 and 202 Cr.P.C. on 03.04.2025 and 09.04.2025 respectively and thereafter the cognizance/summoning order was issued against the applicants on 22.08.2025 i.e. the order impugned.

8. The learned Senior Advocate, Mr. Saran has raised the contention that the order taking cognizance/summoning order dated 22.08.2025 is bad in law as the Protest Petition was filed by the opposite party no.2/first informant on 03.04.2025 i.e. after the commencement of Bhartiaya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS') therefore, the provision of section 223 of BNSS will be applicable in the present case. It has further been submitted that the proviso to sub-section (1) of section 223 puts an embargo on the power of the Court to take cognizance by providing that "*No cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard*" and, therefore, the entire proceedings along with the impugned order dated 22.08.2025 is vitiated and needs to be set aside.

9. In his written submission, the learned Senior Advocate has raised the following arguments:

(i) That the complaint case and the order taking cognizance/summoning order dated 22.8.2025 is bad in law and is in gross violation of the mandate of law as it has been lodged after the enactment/enforcement of new procedural law i.e. B.N.S.S. It has been argued that the learned Magistrate committed gross illegality by following the procedure under the repealed procedural law i.e. Criminal Procedure Code, 1973 instead of following the procedure of B.N.S.S. The alleged incident took place on 27.05.2021 and, after a delay of about 3 years, the FIR was lodged by moving an application under section 156(3) Cr.P.C. on 03.03.2024 which has been registered as Case Crime No. 71 of 2024 at Police Station Shivpur, District Varanasi. It has been contended that the learned Magistrate proceeded with the Complaint Case No. 1328 of 2024 under the old and repealed Act (Cr.P.C.) instead of following the procedure of B.N.S.S. The statement of the complainant and the witnesses were recorded under sections 200 and 202 Cr.P.C. on 09.04.2025 and the cognizance of the offence took place on 22.8.2025 wherein the applicants have been summoned to face the trial.

(ii) The main submission of learned counsel for the applicants is that the Complaint Case was registered on 03.04.2025 i.e. after the commencement/enactment of B.N.S.S. (01.07.2024) and the procedure under BNSS has not been followed and the learned Magistrate has committed gross illegality by adopting the procedure under the Cr.P.C. therefore, it should be governed by BNSS and not by Cr.P.C. which is nothing but an abuse of the process of the Court and the applicants have been deprived of their valuable legal right as provided under section 223 B.N.S.S. for opportunity of hearing before taking cognizance and summoning the accused.

10. Per contra, learned counsel for the opposite party no. 2 and learned AGA for the State have vehemently opposed the aforesaid submission on the ground that by invoking section 531(2)(a) of B.N.S.S. the pending proceedings on the date of enforcement of BNSS shall continue under the Criminal Procedure Code and has been saved under the Repeal and Saving Provision, therefore, there is no illegality in the order impugned.

11. Upon hearing learned counsel for the parties and from perusal of records, the chronology of events is briefly stated as follows:

SL No.	PARTICULARS	DATE
1	Incident	27.5.2021
2	Application under section 156(3) Cr.P.C. moved on	06.01.2024
3	Application under section 156(3) Cr.P.C. was allowed on	09.02.2024
4	First Information Report was registered under section 154 Cr.P.C. on	03.03.2024
5	Final Report by the local police under section 173(2) Cr.P.C. was prepared on	19.04.2024
6	Further investigation by Crime Branch under section 173(8) Cr.P.C. as ordered by ACP Cantt. Varanasi	17.5.2024
7	**BNSS, 2023 came into force on**	**01.07.2024**
8	Final Report was prepared by Crime Branch under section 173(2) Cr.P.C. on	07.08.2024
9	Final Report dated 07.08.2024 was submitted before the ACJM-VII, Varanasi on	09.12.2024
10	Notice issued to the first informant/opposite party no.2 on	09.12.2024
11	Protest Petition was filed by the first informant/opposite party No.2 on	03.04.2025
12	The learned Magistrate ordered for the Protest Petition to be treated as a Complaint Case on	03.04.2025
13	Examination on oath of Complainant under section 200 Cr.P.C.	09.04.2025
14	Examination on oath of Witnesses under section 202 Cr.P.C.	24.7.2025
15	Cognizance under section 190(1)(a)/summoning order	22.8.2025

12. From the chronology of events as discussed above, it transpires that the opposite party no.2/Alisha Vishwakarma launched the criminal proceedings by invoking section 156(3) Cr.P.C. on 06.01.2024. The said proceedings were initiated prior to 01.07.2024, the commencement of the B.N.S.S. On the date of enforcement of the B.N.S.S. i.e. 01.07.2024, the further investigation was in progress and after the completion of the further investigation, the Final Report was prepared by the Crime Branch on 07.08.2024. The learned Magistrate issued notice to opposite party no.2/first informant on 09.12.2024 and in exercise of the power as mandated by the Hon'ble Apex Court in **H.S. Bains vs. State (Union Territory of Chandigarh) (1980) 4 SCC 631** had exercised the third option discussed in the said judgement wherein it has been held that *"the mere fact that the Magistrate had earlier ordered an investigation under section 156(3) and received a report under Section 173 will not have the effect of total of effacement of the complaint and, therefore, the Magistrate will not be barred from proceeding under sections 200, 203 and 204. The Magistrate is not bound by the conclusions arrived at by the police even as he is not bound by the conclusions arrived at by the complainant in a complaint. A Magistrate who on receipt of a complaint, orders an investigation under section 156(3) and receives a police report under section 173(2), may, thereafter, do one of three things : (i) he may decide that there is no sufficient ground for proceeding further and drop action; (ii) he may take cognizance of the offence under Section 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (iii)* ***he may take***

cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under section 200."

13. The Magistrate had thus rejected the Final Report and treated the Protest Petition as a Complaint Case on 03.04.2025. It is to be noted that the Protest Petition and its consequential proceedings have not been challenged as without jurisdiction by the applicants till date and the applicants have in such view of the matter clearly acquiesced to the proceedings under the Criminal Procedure Code.

14. At this juncture, it is also relevant to refer section 531(2)(a) of Bharatiya Nagarik Suraksha Sanhita, 2023 which reads as under:

531. Repeal and savings - (1) The Code of Criminal Procedure, 1973 (2 of 1974) is hereby repealed.

(2) Notwithstanding such repeal –

"(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;"

15. Looking to the Repeal and Savings provision above, the further investigation was pending at that point of time i.e. on 01.07.2024. In view of the saving provision, the proceedings will be deemed to have been continued under the provisions of Criminal Procedure Code. After completion of the further investigation, the Final Report was submitted and notice was issued to the first informant/Alisha Vishwakarma on 09.12.2024. Thus, from chronology of events, it emerges that the "inquiry" was made by the Magistrate under the Criminal Procedure Code which culminated in the submission of Police Report. The first informant had filed the Protest Petition which was ordered to be treated as a complaint case and after examination of the complainant and the witnesses on oath the cognizance/summoning order has been passed.

16. Since in the instant matter, the criminal proceedings emanate from the application moved under section 156(3) Cr.P.C. dated 06.01.2024 before commencement of BNSS, there exists no justification for the Court concerned to proceed under the provision of B.N.S.S, especially, in view of the Savings provision incorporated in Section 531(2)(a) of the BNSS thereof.

17. Moreover, the Hon'ble Apex Court in **Parvinder Singh vs. Enforcement Directorate, 2026 SCC OnLine SC 903** has observed in Para 28 ***"Section 531(2)(a) of the BNSS has a laudable objective behind it which saves the proceedings initiated under the Cr.P.C., prior to the commencement of the BNSS. It is meant to give a prospective application to the provisions of the BNSS. In other words, once a proceeding such as an appeal, application, investigation, inquiry***

or trial is initiated under the Cr.P.C., then the same must meet its logical conclusion under the Cr.P.C. itself.

(emphasis supplied)

18. The object of the said provision is to avoid peace-meal application of the Cr.P.C. vis-a-vis the BNSS.

19. There is no illegality in the order impugned. No interference is required.

20. Accordingly, the application under section 528 BNSS is hereby dismissed.

21. It is hereby clarified that the Court has not expressed any opinion on the merits of the case.

(2026) 5 ILRA 1050
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 07.05.2026

BEFORE

THE HON'BLE ARUN KUMAR SINGH DESHWAL, J.

Criminal Misc. Bail Application No. 11476 of 2026

Mevalal Prajapati **...Applicant**
Versus
State of U.P. **...Opposite Party**

Issue for Consideration

Issue pertains to whether the applicant, accused of offences under various sections of of Bharatiya Nyay Sanhita, 2023, was entitled to be enlarged on bail pending trial in light of circumstantial evidence, including the Call Detail Record (CDR), recovery of deceased's e-rickshaw and a blood-stained screw driver allegedly used in commission of offence, and whether the deficiencies in forensic investigation, particularly the failure of Investigating Officer to obtain DNA matching of blood found on recovered weapon, warranted judicial intervention by issuing systemic directions concerning forensic investigation, execution of court processes and implementation of BNSS and Electronic Processes (Issuance, Service and Execution) Rules, 2026.

Headnotes

Bharatiya Nyaya Sanhita, 2023 - ss. 103(1), 238, 309(6) and 317(2) - Bharatiya Nagarik Suraksha Sanhita, 2023 - ss. 105, 180, 193(3)(1), 210(1)(b), 64(1), 351(1) - U.P. Electronic Processes (Issuance, Service and Execution) Rules 2026 - Rules 3, 4, 8, 9, 17 - U.P. Bharatiya Nagarik Suraksha Sanhita Rules, 2024 - Rules 31(1), 21 - Bail - Forensic investigation - Delay in criminal trials - Pendency of criminal cases - Insufficient ministerial staff - Non execution of court's process - Insufficient FSL report - Directions issued - The applicant, has filed the bail application seeking release on bail during the pendency of trial in Case Crime No. 290 of 2025, registered under various sections of BNS arising out of disappearance of deceased since 16.10.2025 and a missing report lodged by deceased's brother on 17.05.2025, pursuant to investigation based on CDR location, the applicant was arrested on 19.10.2025, whereafter, on his pointing out, the e-rickshaw belonging to deceased was recovered, followed by recovery of a

blood-stained screwdriver on 20.10.2025, which, upon FSL examination, was found to contain human blood - Applicant, contending the absence of any eye-witness, absence of criminal antecedents, filing of charge-sheet, and consequent redundancy of custodial interrogation, sought bail, which was opposed by State on the strength of CDR location placing the applicant near the scene of occurrence and videographed recoveries effected under provisions of BNSS.

Held: Considering the submissions of learned counsel for the parties and taking into account the last location of applicant as per CDR as well as recovery of a blood-stained screw driver, which substantiates the injury found on the post mortem report of deceased and recovery of e-rickshaw on the pointing out of applicant, the Court declined to grant bail to applicant - Accordingly, bail application rejected, with a directions for circulation of order to Principal Secretary (Law), D.G.P., Additional Chief Secretary (Home), and Director, JTRI for consideration. [Paras 29 to 33] (E-13)

Case Law Cited

Nil

List of Acts

Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023; U.P. Electronic Processes (Issuance, Service and Execution) Rules, 2026; U.P. Bharatiya Nagarik Suraksha Sanhita Rules, 2024

List of Keywords

Bail; Investigation; Deceased; Blood stained screw driver; Delay in FSL/DNA report; Forensic evidence; Statement of witnesses; U.P. BNSS Rules, 2024; E-Process Rules, 2026; Non appearance of police witnesses; Speech-to-Text AI module; Non-execution of court process by police; Personal security of Judicial Officers; Blood sample; Call Detail Record; Electronic communication; CCTNS; Monthly monitoring cell meeting; Pendency of criminal cases in district courts; U.P. FSL an autonomous department; Additional staff; Infrastructure; E-summons; E-warrants; Training to police officers for collection of forensic evidence; PSO's to all District Judges alike in Punjab and Haryana; e-FIR; e- charge sheet; Application rejected; Directions issued.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Bail Application No. - 11476 of 2026

From the First Information Report in Case Crime No. 290 of 2025, Police Station Husenganj, District Fatehhpur.

Appearances for Parties

Adv. for the Applicant(s):
Dinesh Mishra

Adv. for the Opposite Party(s):
G.A.

(Delivered by Hon'ble Arun Kumar Singh Deshwal, J.)

1. Heard Sri Dinesh Mishra, learned counsel for the applicant, Sri Roshan Kumar Singh, learned A.G.A. for the State and perused the record.

2. Instant bail application has been filed with a prayer to release the applicant on bail during the trial in Case Crime no. 290/2025, under Sections 103(1), 238, 309(6), 317(2), Bhartiya Nyay Sanhita (B.N.S.), Police Station- Husenganj, District Fatehpur.

3. This matter was heard on 07.04.2026, 15.04.2026 and 24.04.206. On that date, the Court found that though a blood-stained screw driver was sent to FSL examination, no query was made by the I.O. whether the blood found on the screw driver belonged to the deceased. Therefore, this Court directed the Director, FSL, to appear before it to assist the Court vide order dated 24.04.2026, and the matter was posted for 29.04.2026. In pursuance of the order dated 24.04.2026, the Director, FSL U.P., Lko, was present on 29.04.2026. On that date, the Director FSL informed the Court that though the DNA profile can be generated within 3 to 4 days if blood sample is fresh and even DNA profile can also be generated from disintegrated blood sample, if the same was collected carefully and high-end instruments are available in the lab and at present FSLs in UP are facing problem not only the shortage of staff but also of latest machines required for forensic and ballistic test. It was also informed by the Director, FSL, that though 12 FSLs have been functioning in the State of U.P., only 8 FSLs have the facility to generate a DNA profile. It was also informed by the Director, FSL, U.P., that, as of date, U.P. FSL is not an autonomous body under the Home Department but is part of the police department; for that reason, it is not administratively free to procure instruments or appoint staff. It was further informed that, though the Ministry of Home Affairs, Govt. of India, has sent several letters to the State Government to make the FSL in U.P. an autonomous body under the Home Department, the process is still ongoing. Therefore, this Court again directed the Director General of Police as well as Additional Chief Secretary (Home), U.P., to appear before this Court through V.C. to assist the Court along with the Director, FSL, U.P. vide order dated 29.04.2026.

4. Today, in pursuance of the order dated 29.04.2026, Sri Rajeev Krishna, the Director General of Police, U.P., as well as Sri Mohit Gupta, Secretary Home, U.P., as well as Sri Adarsh Kumar, Director, U.P., FSL are present before this Court through V.C.

5. When the Court asked the DGP, why I.Os. are not seeking query from FSL while sending the blood sample regarding matching of DNA of the blood found on the blood stained weapon as well as accused or deceased then, he apprised to the Court that it is negligence on the part of I.Os. and he will issue appropriate directions regarding seeking DNA match of blood found on the cloth or weapon with the accused as well as deceased.

6. The DGP further informed the Court that in pursuance of the Rule 8 of Electronic Processes (Issuance, Service and Execution) Rules 2026, he will direct all the police officers to record the verified email, messaging application and mobile number of the accused during the investigation and the same would also be available to the Court through CCTNS and also same would be mentioned in the charge sheet. It is further apprised by the DGP that the police are also planning to use the Speech-to-Text AI module to record the statements of witnesses under Section 180 of the BNSS, thereby reducing the time required for manual recording.

7. The DGP also apprises the Court that as on date the e-summons received on CCTNS have been executed to the extent of 84% but when the Court confronted with the data available with the Court that it is less than 50% then he assures the Court that he will take steps and issue necessary directions for ensuring all the e-summons or other process sent by the Court on CCTNS will have to be executed, failing which appropriate action would be taken against the concerned police personnel as required under Rule 31 (1) of BNSS Rules, 2024. The DGP also informed that District

court judges are still hesitant to issue e-summons or e-warrants, though the chances of their execution are higher than in the physical mode.

8. The DGP further informed that the process has been initiated to fill the vacancies in FSL so that FSL reports could be provided to the Court at the earliest. The DGP also apprised the Court that, in pursuance of Rule 21 of the BNSS Rules, 2024, whenever information is received regarding any offence punishable for 7 years or more, police officers trained in forensic science are sent to collect forensic evidence until the regular team of forensic experts joins the police department. He also apprised the Court that a batch of 350 police officers has been trained by UPSIFS, and as of date, the 2nd batch is undergoing training. As soon as these persons are trained, blood samples and other forensic samples will be collected more scientifically.

9. Sri Mohit Gupta, Secretary, Home, has also apprised the Court that in pursuance of several letters of the Ministry of Home Affairs, Government of India, the DGP has recommended to make the FSL a separate department under the Home Ministry, and that is pending before the State Government for final approval.

10. The Director, FSL, on the suggestion of this Court, that as Forensic Science University has limited capacity, then the police officers can also be trained, at least providing basic training for the collection of a blood sample by the local FSL. He assures the Court that he, as well as DGP, will try to implement this suggestion so that more and more police officers can be equipped with basic training in blood sample collection and the collection of forensic evidence. The Court appreciates the above suggestions and the undertaking of the above-mentioned officers.

11. On the basis of a comprehensive study from several district courts on the basis of feedback of District Judges and other judicial officers of districts Sambhal, Shamli, Moradabad, Hapur, Ghaziabad, Mathura, Maharajganj, Agra, and Bulandshahar, this Court found the following reasons regarding heavy pendency, which are being mentioned as follows;

Comprehensive Summary: Causes of Pendency of Cases

The pendency of criminal cases in District Courts is a multi-dimensional issue arising from structural, procedural, administrative, and stakeholder-related deficiencies. The major causes are summarised as follows:

1. Pendency at Preliminary Stages due to non-appearance of the accused
2. Shortage of Human Resources
Acute shortage of ministerial staff (clerks, stenographers, readers, deposition writers).
In some courts, a single clerk handles thousands of files.
Lack of trained and computer-proficient staff.
Shortage of Prosecuting Officers/ADGC's affecting the recording of evidence.
Shortage of Process Servers.
3. Non-Execution of Court Processes
Delay or non-compliance in execution of summons, warrants, and other processes by police.

Evasive and incomplete reports submitted by police authorities.

Lack of accountability and monitoring mechanisms.

Inefficient process transmission system (dependence on limited staff, like pairvi personnel).

Difficulties in inter-district and inter-state service of court processes.

Limited use of electronic modes for service of court processes.

4. Witness and Accused-Related Issues

Non-appearance of witnesses, particularly doctors and police witnesses, due to transfer or lack of permission.

Witnesses becoming disinterested due to repeated adjournments.

Accused persons absconding or remaining untraceable.

Delay in securing the presence of parties due to outdated or unavailable contact details.

5. Inadequate Judicial Infrastructure

Insufficient number of functional courts compared to sanctioned strength.

Large number of vacancies in judicial posts.

Excessive daily cause lists (often 100?150 cases per day), limiting effective hearings.

Inadequate digital infrastructure and case-tracking systems.

6. Investigation and Evidence-Related Delays

Delay in police investigation and filing of charge-sheets.

Late receipt of forensic (F.S.L.) reports.

Non-production of case property (muddamal).

Delay in submission of case diaries and records.

Inadequate compliance with legal requirements for electronic evidence (e.g., Section 65B certification).

Limited use of technology (speech-to-text AI module) in recording and presenting evidence.

7. Frequent Adjournments and Bar-Related Issues

Repeated adjournments sought by advocates on personal or professional grounds.

Clash of dates and non-appearance of counsel.

Prolonged and irrelevant cross-examinations and arguments.

Incomplete documentation leading to repeated adjournments.

Dilatory tactics and lack of preparedness.

Apprehension of complaints against judicial officers affecting expeditious disposal.

8. Docket Explosion and Rising Caseload

Continuous high institution of cases exceeding disposal rates.

Even disposed matters generate miscellaneous and appellate proceedings, increasing the overall burden.

9. Underutilisation of Alternative Dispute Resolution (ADR)

Insufficient use of mediation, Lok-Adalats, and arbitration mechanisms.

Failure to divert appropriate cases from regular court processes.

10. Procedural Delays and Complexities

Delay in committal proceedings, especially in multi-accused cases.

Complex and time-consuming procedural stages (evidence, cross-examination, arguments).

Absence of strict timelines for completion of stages.

Frequent filing of interlocutory and miscellaneous applications.

Restoration applications and repeated re-litigation cause duplication of proceedings.

11. Administrative and File Management Issues

Poor file management, indexing, and tracking due to staff shortage.

Missing or incomplete records, especially in transferred cases.

Delay in issuance of orders, notices, and communications.

12. Institutional and Coordination Gaps

Lack of effective coordination between the judiciary, police, and prosecution.

Non-availability or delayed participation of prosecution officers.

Inefficient response from monitoring committees and administrative authorities.

Non-participation of DM, Police-Commissioner/SSP/SP in monitoring cell meetings, instead they send their representatives despite repeated G.O.'s mandating their personal presence in the meetings.

13. Pendency of Old Cases

Cases pending for long durations (5+ years) are not receiving consistent priority.

Repeated adjournments and restoration applications prolong old matters.

14. External and Practical Constraints

Parties and witnesses relocating or becoming untraceable over time.

Heavy workload of police authorities cited for non-compliance.

Influence of parties affecting enforcement in some cases.

Lack of dedicated infrastructure (e.g., counselling spaces, storage facilities like malkhana).

12. The above study shows that apart from other reasons, the main reasons for pendency of criminal cases in the district court is insufficient ministerial staff, stenographers, deposition writers and also non-execution of the court's process by the police, as well as delay in receiving the forensic report.

13. The above comprehensive study also shows that there is no effective monitoring system for the execution of the courts' processes by the police department and also non-participation of the District Police Chiefs themself personally in the monthly monitoring cell meeting under the Chairmanship of concerned District Judge, especially the Commissioners of Police, because they send their representatives. This is not only against several government orders and High Court's circulars, but also a disrespect to the District Judge, who is equivalent to the State Government's Principal Secretary. The Commissioner of Police and the Divisional Commissioner are much lower in rank and protocol than a District Judge. It is also surprising that the State Government has issued an incorrect notification dated 17th July 2013, showing the District Magistrate above the District Judge in protocol, and this must be corrected immediately. Therefore, all District Police Chiefs, including the Commissioner of Police should personally attend the monitoring cell meeting under the Chairmanship of the concerned District Judge, so that issues regarding the non-execution of court processes and faulty police investigations can be discussed and brought to the attention of the District Police Chiefs.

14. From the above mentioned comprehensive study, it is clear that the primary reasons for pendency of criminal cases in district courts are non-execution of process of court as well as non

appearance of police witnesses, the DGP, U.P. has apprised the Court that he has directed all the sub-ordinate police officers that process of court, received through electronically on CCTNS, should be executed immediately without fail and he has also assured the Court that he will issue proper directions for ensuring the presence of police witnesses before the court concerned.

15. Though the High Court on the administrative and judicial sides has requested the State Government to sanction more ministerial staff, which includes deposition clerks, the State has not taken any steps. Therefore, main reason for pendency of cases in district courts is not the capability of the judicial officers but because of shortage of staff, non-execution of court's process by the police and delay as well as incomplete FSL Report, Therefore, it is the State Government as well as Police who are mainly responsible for pendency of criminal cases in district courts even then district judiciary is blamed by the social media and other common persons for non disposal of their cases.

16. Because of taking advantage of the pendency of criminal cases, many criminals kept on repeating the offences again and again without any fear, and even many of them also became MLAs, MPs, and even Ministers. As per the Association for Democratic Reform's report, as of the date, 49% of Ministers in the U.P. Government are involved in criminal cases, of which 44% are involved in serious criminal cases. Therefore, if sufficient staff and proper cooperation of police are provided to the district judiciary, then the disposal of criminal cases will become fast, and the persons who have been taking advantage of the pendency of criminal cases against them would be behind bars, and the innocent will get a clean chit and the person with clean antecedents will come forward for MLA, MP, or even for ministers.

17. An Independent, fair and transparent judicial system is the backbone of a mature democracy, and a judicial system that itself depends on the mercy of the State Government for sufficient staff and execution of court process will become like a government department struggling for basic needs and infrastructures. Many young judicial officers, who joined the judiciary though very honest and hardworking, having a motto to dispense justice after entering judicial service, found themselves unable to perform because of insufficient staff, non-cooperation by the police in the execution of court processes(summons ,warrants, etc.), and faulty investigation and improper FSL reports. Consequently, they became frustrated and looked to the High Court for remedial measures, but the High Court itself cannot do anything, as it is the State Government that must provide basic infrastructure, staff, the FSL report, and police cooperation.

18. In U.P., the personal security of judicial officers of district courts is also a major concern. On many occasions, criminals gave open threats to judicial officers even in courts during their convictions. Sometimes, when judicial officers visit the marketplace or the public place outside the court, they are indirectly intimidated though veiled threat or otherwise by the criminals, but judicial officers, in the absence of a personal security officer (P.S.O.), used to ignore it to avoid conflict and also to save themselves from being highlighted in the media. This also affects the Judicial function of district court judges, especially the issuance of conviction orders against hardcore criminals. In U.P., except for the District Judge, the first Additional District Judge, and the C.J.M., PSOs to other judicial officers are not provided. This is unlike Punjab and Haryana, where all judicial officers are provided PSOs.

19. A filmy dialogue from the film "Damini" released in the year 1993 that "Tarikh pe Tarikh, Tarikh pe Tarikh Milti Rahi hai..... lekin Insaf Nahi Mila My Lord, Insaf Nahi Mila ! Mili Hai to Sirf Tarikh". This dialogue became very popular because it was the perception of a common man, but the reason for it, of course, is not the judicial officer alone, but the State and its police, as a judicial officer can't decide the cases without sufficient staff and the cooperation of police to ensure the presence of the accused, witnesses and a proper FSL report, etc.

20. In the Bharatiya Nagarik Surakksha Sanhita, 2023, several provisions were incorporated to expedite the court proceedings through digitalisation and the use of electronic communication. Now, after completion of the investigation, the police report can be sent to the concerned Magistrate electronically under Section 193(3)(1) BNSS. The Magistrate is also authorised to take cognizance upon a charge sheet received electronically as per Section 210(1) (b) of BNSS. For reference Section 193(3)(1) and 210(1)(b) BNSS are being quoted as under;

Section 193. Report of police officer on completion of investigation

(3) (i) As soon as the investigation is completed, the officer in charge of the police station shall forward, including through electronic communication to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form as the State Government may, by rules provide, stating-

(a) the names of the parties;

(b) the nature of the information;

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

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

(e) whether the accused has been arrested;

(f) whether the accused has been released on his bond or bail bond;

(g) whether the accused has been forwarded in custody under section 190;

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 64, 65, 66, 67, 68, 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023;

(i) the sequence of custody in case of electronic device;

(ii) the police officer shall, within a period of ninety days, inform the progress of the investigation by any means including through electronic communication to the informant or the victim;

(iii) the officer shall also communicate, in such manner as the State Government may, by rules, provide, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

Section 210. Cognizance of offences by Magistrate.

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section

(2), may take cognizance of any offence-

(b) upon a police report (submitted in any mode including electronic mode) of such facts;

21. The U.P. Bharatiya Nagarik Suraksha Rules, 2024 (hereinafter referred to as the BNSS Rules, 2024) was also framed in exercise of powers under various sections of the BNSS, 2023. Rule 31 of the BNSS Rules, 2024 also provides for service of summons through email, N-STEP (National Service and Tracking of Electronic Processes), and other electronic means; therefore, Rule 31 authorises the concerned court to send the summons through electronic process to the accused as well as witnesses. Rule 31 of BNSS Rules, 2024 is being quoted as under:

31. Manner of service of summons- *(1) The service of summons may be done physically, or by electronic means as follows: -*

(a) directly on the witness or accused by the police, public servant or a person nominated by the State Government, as the case may be;

(b) through e-mail, if the e-mail address is available;

(c) through publication in newspapers;

(d) by placing it at naturally visible parts of various public places in the concerned district.

(2) Apart from the above, the service of summons may also be done by way of electronic communication.

(3) The service of summons may be done through any electronic or digital application-based system such as ICJS, National Service and Tracking of Electronic Processes (N-STEP) or any other similar system as decided by the Government of India or the State Government, as the case may be.

(4) The service of summons shall be done by a police officer or by any other public servant or person as may be specified by the State Government.

(5) The following guidelines shall also be followed in respect of service of summons:

(a) a summons register shall be maintained at every police station in such format, either physically or electronically, as may be specified by the Director General of Police or the State Government by general or special order from time to time, in which the Head Clerk shall enter the information relating date wise summons/warrant so that there is no laxity in sending the summons/warrant received at the police station to the Court for non/post serving of the summons before/after the date of appearance. In the said summons register, the date of issuance of the process, the date of receipt of the process from the Court, the date of service of the process, along with the details of the recipient, the reason for the process being returned without being served, and the date of sending the served and unserved processes to the Court shall be recorded.

(b) If the process server returns the summons/warrant without serving it, he shall clearly mention that the wanted person has gone out of his residence temporarily or if he has gone out permanently for some time, then by when will he return and also find out the full address of the place from where he went and shall also mention it.

(c) If the warrant could not be served, then considering the accused to be absconding, relevant action shall be taken and the list of the accused's property shall be presented to the Court so that the property can be confiscated by completing the proceedings under sections 84 and 85 of the Sanhita.

(d) Zonal Additional Director General of Police/Regional Inspector General of Police/Police Commissioner, Senior Superintendent of Police/Superintendent of Police, Additional Superintendent of Police and Deputy Superintendent of Police level officers will necessarily review the level of service of summons/warrants during their visit/inspection of police stations and ensure

necessary administrative departmental action against the concerned if the work is not found satisfactory.

(e) Where the current address of a witness transferred policeman is not known by the Public Prosecutor, the summons of such policeman will be sent to the Establishment Branch officer of Police at Police Headquarters Lucknow and served to him, in addition to the local Superintendent of Police.

(f) On receiving summons/warrants of retired police or other government services, if their complete address of residence is not known, it will be ascertained from the Pension Department. If the address given by the Pension Department is wrong, the address will be ascertained through the bank by obtaining the bank account number.

(g) When a request is made to the Court to summon a Gazetted officer as a witness, while fixing the date for his appearance, it will be kept in mind that he should have the opportunity to make proper arrangements for discharging his duties during his absence.

(h) Senior police officers and all District Magistrates will ensure that police witnesses and other public servants summoned in all session trials are present in the Court on the appointed date and time in every case either physically or through video conferencing. If a policeman disobeys the order of the Court, departmental action will be taken against him.

(i) Summons shall be sent to the heads of their offices of locally posted Government employees not only through the police but also through other local means and in case of disobedience, summons should be sent to the head of the department so that timely service can be ensured.

(j) When the deployment or residence status of a police or medical witness is not known in any way for the presence of the witness, then in such a situation the summons shall be sent to the Director General of Police, Uttar Pradesh and Director General, Medical and Health, Uttar Pradesh, as the case may be.

(k) The status of service of summons shall necessarily be considered in the meeting of the District Monitoring cell constituted under the chairmanship of the District and Sessions Judge.

22. The Governor of U.P. also made U.P. Electronic Processes (Issuance, Service and Execution) Rules, 2026 (hereinafter referred to as the E-Processes Rules, 2026) in exercise of powers conferred by Sections 64(1) and Section 351(1) of BNSS, 2023. The E-Processes Rules, 2026 mandate the court to generate and issue process, summons, warrants, and other coercive processes, and to serve them through an officer of the court. E-Processes Rules, 2026 also provide that all e-summons can be directly sent to the accused or witnesses if the court has their electronic address/contact;; otherwise, they will be sent to the police through CCTNS, which shall be further served by the police itself. E-Processes Rules, 2026 also provides for verifying the details regarding electronic email, address, phone number, messaging applications (WhatsApp, Telegram, Facebook, etc.) of the accused or witnesses during investigation or inquiry so that the same can be used by the court for sending the summons directly to the accused or witnesses after taking cognizance on charge sheet. For reference Rules 3, 4, 8 of E-Processes Rules, 2026 are being quoted as under:

Rule 3. Preparation process electronic mode: The Courts shall generate and issue process in electronic mode through CIS in such forms as set forth in the Second Schedule of the Sanhita, with such variations as the circumstances of each case may require. The same shall be served by an officer of the Court issuing it.

Rule 4. Service by police officer or other public servant: When the Court does not possess required electronic address/contact details of the person to whom such process is intended to be served or when the process issued as per rule 3 is not served, it may direct the same to be served by a police officer or other public servant

Rule 8. Entry of verified details: The officer in charge of the Police Station shall ensure that the verified details relating to address, disclosed electronic mail address, phone number and messaging application used by the accused or witnesses, as the case may be, are recorded during arrest, investigation or inquiry and entered in CCTNS. Such details shall also be entered in the Register maintained at the Police Station in compliance with sub-section (1) of section 64 of the Sanhita. If any of such details is not available, the Officer-in-charge of the Police Station shall make an endorsement to that effect in the Register:

Provided that any such details may be amended on the basis of further verification or on the basis of an application by such person.

23. Rule 17 of the E-Processes Rules, 2026 further provides that for execution of warrants and other coercive measures, the court will send electronically (NSTEP etc) on the police portal (CCTNS), then the police will execute the same. Rule 17of the E-Processes Rules, 2026 is being quoted as under;

Rule 17. Procedure in case of warrant: In case of warrant or any other process required to be served In person Is Issued in electronic mode, the officer in charge of the police station or any police officer deputed by him shall take a printout of the warrant or process and execute the same in accordance with the Sanhita and rules made therein.

24. Rule 9 of the E-Processes Rules, 2026 also provides that in case of a private complaint, the complainant shall provide the electronic mail address, phone numbers and messaging applications (WhatsApp, Telegram, Facebook, etc.) of the accused and witnesses along with the complaint and thereafter all processes shall be sent electronically to any of these electronic addresses or contacts. Rule 9 of the E-Processes Rules, 2026, is being quoted below;

"Rule 9. Details of address, email address, phone number etc. of the accused and witnesses provided by the complainant : Where a case is filed on the basis of a private complaint, the complainant shall provide the details relating to address, disclosed electronic mail address, phone number and messaging application of the accused and witnesses along with the complaint. If any of such information is not available, the complainant shall make an endorsement to that effect.

25. The above-quoted BNSS Rules, 2024 and E-Processes Rules, 2026, aim to decrease the dependency of criminal courts on the police for the execution of court process on the one hand and also increase chances of execution even by the police. Therefore, the District Courts have to follow BNSS Rules, 2024, as well as the E-Processes Rules, 2026, to expedite the court's proceedings so that criminal trials can be concluded at the earliest. However, even for the generation and electronic transmission of court processes, the State Government has to provide additional staff with computer knowledge to the District Courts.

26. After considering the suggestions of the Director General of Police, the Secretary (Home) and the Director FSL, this Court summarises its directions as follows;

i. The State Government shall consider the issue of providing additional staff and infrastructure to the District Courts, considering the heavy workload of cases.

ii. The State Government shall consider making U.P. FSL an autonomous department under its Home Ministry as requested by the Ministry of Home Affairs, Government of India, through different communications.

iii. The State Government shall make its endeavours to fill up vacancies in Forensic Science Laboratories of U.P., along with providing high-end instruments within one year.

iv. The State Government/Police Department will ensure training to police officers for the collection of forensic evidence.

v. The State Government shall also consider the feasibility of providing PSOs to all District Court Judges alike in Punjab and Haryana

vi. DGP, UP, shall issue directions to all District Police Chiefs, including the Commissioner of Police, to attend the monthly Monitoring Cell Meeting under the chairmanship of the concerned District Judge personally.

vii DGP shall issue directions to all investigating officers to make a query from FSLs regarding the matching of the DNA of blood found on the blood-stained weapon and cloth with the DNA of the accused and deceased, while sending the blood samples to FSLs.

viii. DGP shall issue necessary directions to all the police officers involved in the investigation to record the verified email, messaging applications (WhatsApp, Telegram and Facebook Messenger, etc.) and the mobile number of the accused and witnesses during the investigation and shall mention these verified details in the chargesheet apart from entering in CCTNS as per Rule 8 of E-Processes Rules, 2026.

ix. Police shall implement as soon as possible, using the Speech-to-Text AI module to record the statement of witnesses under Section 180 BNSS.

x. DGP shall also consider issuing DGP circular to all police officers, mentioning therein that negligence in execution of court processes may attract disciplinary proceedings as required by Rule 31 (1) of BNSS Rules, 2024.

xi. Judicial officers are also directed to send e-summons, e-warrants and other court processes as per BNSS Rules, 2024 as well as E-Processes Rules, 2026 and also consume e-FIR and e-chargesheet as per mandates of BNSS, 2023.

27. Coming back to the merits of the case, learned counsel for the applicant submitted that, as per the prosecution's story, the deceased was missing since 16.10.2025, and a missing report was also lodged by the brother of the deceased on 17.05.2025 in the form of an FIR. Thereafter, on the basis of CDR location, he was arrested on 19.10.2025, and on his pointing out, the e-rickshaw of the deceased was recovered. Thereafter, on pointing out the applicant, a blood-stained screw driver was also recovered on 20.10.2025, which was sent for FSL examination and as per the FSL report, human blood was found thereon. Learned counsel for the applicant submitted that there is no eye witness of the incident, and he has been falsely implicated merely because of the recovery of the e-rickshaw of the deceased, as well as a blood-stained screw driver. Therefore, the applicant is entitled to be enlarged on bail during trial, as the applicant has no criminal history. A charge sheet has been filed by the police; therefore, there is no requirement for custodial interrogation. The applicant has been languishing in jail since 19.10.2025. If he is granted bail, he will not misuse his liberty and will cooperate in the trial proceedings.

28. On the other hand, learned A.G.A. for the State vehemently opposed the prayer for bail and submitted that CDR of the mobile phone of the applicant shows that he was near the place of incident on 16.10.2025 and on his pointing out e-rickshaw of the deceased was recovered on 20.10.2025 and subsequently a blood stained screw driver was also recovered on 29.10.2026 on the pointing out of the applicant and aforesaid recovery was duly videographed as per Section 105 of BNSS, therefore, the applicant is not entitled to be released on bail.

29. Considering the submissions of learned counsel for the parties and taking into account the last location of the applicant as per CDR as well as recovery of a blood-stained screw driver, which substantiates the injury found on the post mortem report of the deceased and recovery of e-rickshaw on the pointing out of the applicant, this Court is not inclined to grant bail to the applicant, at this stage.

30. Accordingly, the present bail application is **rejected**.

31. **Registrar (Compliance)** is directed to send a copy of this order to the Principal Secretary (Law)/L.R, U.P., D.G.P. U.P., Additional Chief Secretary (Home) U.P. and the Director JTRI, Lucknow.

32. The Principal Secretary (Law) is further directed to place this order before the Hon'ble Chief Minister, U.P., along with its summary for his perusal.

33. Director, JTRI is also directed to sensitise the Judicial Officers about relevant Rules of BNSS Rules, 2024 as well as E-Processes Rules, 2026 regarding generation and electronic transmission of E-summons, E-warrants and other court's processes.

(2026) 5 ILRA 1063
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 21.05.2026

BEFORE

THE HON'BLE ABDUL MOIN, J.
THE HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

Criminal Misc. Writ Petition No. 4156 of 2026

Deena Nath Yadav **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

Matter pertains to whether a First Information Report u/ss. 13(1)(b) and 13(2) of Prevention of Corruption Act, 1988 alleging possession of disproportionate assets can be validly registered against a public servant without first calling for his explanation regarding the alleged disproportionate assets or conducting a mandatory preliminary enquiry, particularly in light of Explanation 1 to s. 13(1)(b) of Act and the earlier interim order restraining the authorities from seeking details of petitioner's assets.

Headnotes

Prevention of Corruption Act, 1988 - s. 13(1)(b) r/w s. 13(2) - Explanation 1 of s. 13(1)(b) - Scope - Disproportionate assets - Quashing of FIR - The petitioner challenged the First Information Report dated 17.12.2025 alleging possession of disproportionate assets - The FIR was founded upon an open inquiry/source report, which concluded that during the relevant period the petitioner had earned approximately Rs. 1.95 crore from known lawful sources but had incurred expenditure of about Rs. 2.51 crore, resulting in alleged disproportionate expenditure of nearly Rs. 55 lakh - The petitioner contended that the FIR was illegal since no opportunity was afforded to him to explain the alleged disproportionate assets before its registration, particularly when an earlier interim order of High Court had restrained the authorities from seeking details of his assets and the inquiry report itself acknowledged that no explanation had been obtained from him - The State opposed the petition by relying upon Supreme Court precedents holding that a public servant has no vested right to furnish an explanation before registration of an FIR in disproportionate assets cases.

Held: In the instant case, though the writ Court vide order dated 09.10.2021 restrained the respondents from requiring the petitioner to furnish any information pertaining to assets and likewise, the inquiry report dated 19.09.2024 sent along with confidential letter dated 09.10.2024 has also categorically recorded that the explanation of petitioner has not been taken with regard to disproportionate assets, however, the same will not and cannot resile from the settled proposition of law as laid down by the Apex court in the *Thommandru Hannah Vijaylakshmi (infra), Sri Channakeshava. H.D (infra), K. Veeraswami (infra)* judgments that the accused public servant does not have any right to explain the disproportionate assets prior to lodging of First Information Report - Thus even if the explanation of the petitioner has not been taken, the same would not vitiate the impugned First Information Report - Perusal of impugned First Information Report indicates that the impugned First Information Report has been lodged on the basis of findings in the open inquiry which has been conducted by the department in which it has been found that the petitioner has spent an amount of Rs. 55,00,000/- over and above his known source of income - The inquiry report dated 19.09.2024 is part of confidential letter dated 09.10.2024 - It is this open inquiry which forms "source" on the basis of which the

department has found that the petitioner is possessed of disproportionate assets - The said 'source report' is in fact a kind of preliminary inquiry in which the petitioner has been found to be having disproportionate assets - Thus, once the respondents were in fact having 'source report', consequently, the First Information Report having been lodged on the basis of 'source report', it cannot be said that the statement or version of petitioner should have been taken prior to lodging of impugned First Information Report - Thus, petition dismissed. [Paras 31 to 33] (E-13)

Case Law Cited

K. Veeeraswami v. Union of India - **(1991) 3 SCC 655;** *State of Karnataka v. Sri Channakeshava. H.D and anr* **- (2025) 4 S.C.R. 608;** *Central Bureau of Investigation v. Thommandru Hannah Vijaylakshmi* **- (2021) 13 SCR 364; followed**

List of Acts

Prevention of Corruption Act, 1988

List of Keywords

First Information Report; Prevention of Corruption Act; Disproportionate assets; Quashing of FIR; Public Servant; Criminal misconduct; Open inquiry; Source report; Vigilance inquiry; Preliminary enquiry; Explanation 1 of s. (1)(b); Investigation; Pecuniary resources; Known sources of income; Criminal proceedings; Confidential memo; Inquiry report; Assets; Expenditure; Income; Commission of cognizable offence; Source information; Writ Petition dismissed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ Petition No. - 4156 of 2026

From the First Information Report dated 17.12.2025 registered as Case Crime No. 0028 of 2025 at Police Station- Lucknow Sector (Vigilance Commission), Lucknow.

Appearances for Parties

Adv. for the Petitioner(s):
Indu Prakash Singh

Adv. for the Respondent(s):
G.A.

(Delivered by Hon'ble Abdul Moin, J.
&
Hon'ble Pramod Kumar Srivastava, J.)

1. Heard learned counsel for the petitioner and Sri Anurag Verma, learned AGA-I appearing on behalf of the respondents no. 1 to 3.

2. Under challenge is the First Information Report dated 17.12.2025 registered as Case Crime No. 0028 of 2025 under Sections 13 (1) (b) and 13 (2) of Prevention of Corruption Act, 1988 (In short "Act, 1988") at Police Station- Lucknow Sector (Vigilance Commission), Lucknow, a copy of which is annexure 1 to the writ petition.

3. Contention of learned counsel for the petitioner is that a perusal of the allegations as levelled in the impugned First Information Report which has been lodged under the provisions of Sections 13 (1) (b) and 13 (2) of the Act, 1988 would indicate that in an open inquiry, it has

emerged that the petitioner has been found to have spent an amount of Rs. 2.51 Crores & odd instead of his earning from all legal and valid sources which amounted to Rs. 1.95 Crores & odd i.e the petitioner has been found to have spent Rs. 55,00,000/- and odd in excess which conduct of his falls within the ambit of Section 13 (1) (b) read with Section 13 (2) of the Act, 1988. This has emerged on the basis of open inquiry report no. ANU-2-KHULI-86/2020 which inquiry was conducted on the basis of the confidential Demi Official letter dated 12.06.2020. It has also been indicated that by means of letter dated 04.12.2025, the case of the petitioner has been forwarded to Uttar Pradesh Vigilance Department for the purpose of investigation.

4. Contention is that the aforesaid allegations as levelled in the impugned First Information Report are patently false.

5. Elaborating the same, contention of learned counsel for the petitioner is that the petitioner along with others had filed a Writ Petition No. 20001 (SS) of 2020 Inre; Jaikar Singh and ors Vs. State of U.P and Ors in which the petitioner was petitioner no. 6. In the said petition, the petitioners had challenged the orders dated 12.06.2020 and 22.07.2020 whereby directions had been issued to initiate vigilance inquiry against the petitioners. Before the writ Court, learned counsel appearing on behalf of the State had submitted that the petitioners are challenging the regular open vigilance inquiry. However, the writ Court was of the view that prima facie it is apparent that only a fact finding inquiry has been initiated as has also been submitted by the learned State counsel against the petitioner and regular vigilance inquiry as contemplated under the Rules of 1977 has not yet commenced.

6. Considering the aforesaid the writ Court was of the view that as the inquiry is only a fact finding inquiry, the respondents in the meantime were restrained from requiring the petitioners to furnish any information pertaining to their assets . It was also indicated that the fact finding inquiry against the petitioners may continue. Copy of the interim order dated 20.12.2021 has been filed as annexure 13 to the writ petition. Learned counsel for the petitioner also states at bar that the aforesaid order passed by the writ Court dated 20.12.2021 is still continuing as of date although the respondents have filed an application for vacation of the interim order.

7. Placing reliance on the compliance affidavit dated 09.07.2025 and the inquiry report dated 19.02.2024 which had been in the aforesaid petition and are being instant petition, contention is that the respondents in the said inquiry have categorically recorded that while holding the open inquiry against the petitioner, no explanation pertaining to the details of his income and expenditure have been taken (Page 244 of the writ petition).

8. Further placing reliance on Explanation 1 to Section 13 (1) (b) of the Act, 1988, argument is that the said explanation categorically provides that a person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf is in possession of or has at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant **cannot satisfactorily account for**.

9. Contention is that once Explanation 1 to Section 13 (1) (b) of the Act, 1988 itself provides that an offence under Section 13 of the Act, 1988 can only be said to have been committed by a person in case he cannot satisfactorily account for of the property disproportionate to his assets, consequently, lodging of the impugned First Information Report under the provisions of the Act, 1988 more particularly Section 13 of the Act, 1988 would be going beyond what is provided under the explanation i.e the respondents having proceeded to lodge the impugned First Information Report without calling for the explanation of the petitioner requiring him to satisfactorily account for the alleged disproportionate assets as is explicitly admitted by them while submitting the inquiry report.

10. Further, reliance has been placed on the confidential memo dated 09.10.2024, a copy of which has been filed as annexure 2 to the writ petition per which it has also been indicated that the open inquiry has been concluded without calling for the explanation/documents from the charged employees.

11. It is also argued that even otherwise, there does not appear to be any occasion for any explanation to have been called for from the petitioner more particularly keeping in view the order of the writ Court dated 20.12.2021 which had specifically restrained the respondents from requiring the petitioner to furnish information pertaining to the assets.

12. In this regard, learned counsel for the petitioner has placed reliance on various interim orders that have been passed by this Court pertaining to similar First Information Report i.e the First Information Report having been lodged without giving an opportunity to the said employee to explain the charge of disproportionate assets. The said interim orders have been passed in **Criminal Misc. Writ Petition No. 6320 of 2025 Inre; Sushil Kumar Vs. State of U.P and ors, Criminal Misc. Writ Petition No. 610 of 2025 Inre; Raghvendra Kumar Gupta Vs. State of U.P and Ors, Criminal Misc. Writ Petition No. 1114 of 2025 Inre; Kamlesh Kumar Keshari Vs. State of U.P and Ors, Criminal Misc. Writ Petition No. 8031 of 2024 Inre; Ram Nathgoel Vs. State of U.P and Ors, Criminal Misc. Writ Petition No. 1515 of 2025 Inre; Ajaya Rastogi Vs. State of U.P and Ors & Criminal Misc. Writ Petition No. 6244 of 2025 Inre; Pradeep Kumar Khandelwal Vs. State of U.P and Ors.**

13. Placing reliance on the interim orders and the arguments as aforesaid, it is prayed that the impugned First Information Report itself merits to be set aside.

14. On the other hand, learned AGA has placed reliance on the judgment of the Apex Court in the case of **State of Karnataka Vs. Sri Channakeshava. H.D and anr- (2025) 4 S.C.R. 608** to contend that the Apex Court in the said judgment after placing reliance on its earlier judgment in the case of **Central Bureau of Investigation Vs. Thommandru Hannah Vijaylakshmi- (2021) 13 SCR 364** has been of the view that an accused public servant does not have any right to explain the alleged disproportionate assets before filing of First Information Report. Thus, it is prayed that the writ petition be dismissed.

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

16. From a perusal of records it emerges that the petitioner has challenged the First Information Report dated 17.12.2025 lodged under Sections 13 (1) (b) and 13 (2) of the Act, 1988. A perusal of the impugned First Information Report indicates that upon an open inquiry conducted by the vigilance department it has been found that while the petitioner has worked as a Public Servant, his income from all known sources was approximately Rs. 1.95 Crores but he has spent an amount of Rs. 2.51 Crores & odd and consequently, has spent an amount of Rs. 55,00,000/- and odd in excess of his known sources of income. This has emerged in the open inquiry conducted by the department. Thus, the First Information Report has been lodged under the provisions of the Act, 1988.

17. The sheet anchor of argument of the learned counsel for the petitioner is the interim order dated 20.12.2021 passed by the writ Court per which, upon a challenge being raised by the petitioner along with others to the orders dated 12.06.2020 & 22.07.2020 for initiating vigilance inquiry, it had been indicated by the State-respondents that information pertaining to the petitioner(s) was furnished by the vigilance department and the proceedings against the petitioner(s) have been initiated in pursuance to letter dated 08.01.2019 issued by the Special Director, Vigilance Department and only a fact finding inquiry has been issued and a regular vigilance inquiry would only commence after lodging of First Information Report against the petitioner (s) in case there is some material. Considering this, the writ Court was of the view that as only a fact finding inquiry has been instituted against the petitioner(s) as such, the respondents-State were restrained from requiring the petitioner(s) to furnish any information pertaining to the assets. The inquiry report dated 19.09.2024 has also been submitted in which it has categorically been recorded that while holding the open inquiry against the petitioner, no explanation pertaining to the details of his income and expenditure has been taken. Further, as per confidential memo dated 09.10.2024 by which the open inquiry report dated 19.09.2024 has been sent, it has also been recorded that the open inquiry has been concluded without calling for the explanation/documents from the charged employee.

18. Argument of the learned counsel for the petitioner is that as the open inquiry has been conducted against the him, as stands recorded in the impugned First Information Report, in which no explanation of the petitioner has been sought, as such, the First Information Report itself merits to be quashed as the respondents have lodged the impugned First Information Report without considering the explanation (1) to Section 13 (1) of the Act, 1988 i.e the respondents have pre-judged the issue while lodging the impugned First Information Report without having required to petitioner to satisfactorily account for his disproportionate assets.

19. On the other hand, learned AGA has placed reliance on the judgment of the Apex Court the cases of Sri Channakeshava. H.D (supra) & Thommandru Hannah Vijaylakshmi (supra) to contend that an accused public servant does not have any right to explain the disproportionate assets before filing of the First Information Report.

20. Considering the aforesaid we are now required to consider as to whether prior to lodging of the First Information Report by the authorities under the provisions of the Act, 1988, the explanation on the public servant with regard to disproportionate assets is required to be called for or for that matter any preliminary inquiry is required to be conducted.

21. In this regard, it would be apt to refer to the judgment of the Apex Court in the case of **Sri Channakeshava. H.D (supra)** wherein the Apex Court after placing reliance on its earlier judgment of **Thommandru Hannah Vijaylakshmi (supra)** has held has under:-

"14. Mr. Devadatt Kamat, senior counsel, has relied upon a recent Three-Judge Bench decision of this Court in ***Central Bureau of Investigation Vs. Thommandru Hannah Vijaylakshmi- (2021) 18 SCC 135*** *where it was specifically stated that an accused public servant does not have any right to explain the alleged disproportionate assets before filing of an FIR. We are also of the opinion that this is the correct legal position as there is no inherent right of a public servant to be heard at this stage."*

22. Likewise, the Apex Court in the case of **Thommandru Hannah Vijaylakshmi (supra)** has held as under:-

"6. The FIR was registered against the respondents by CBI's Anti-Corruption Branch ("ACB") in Chennai on 20-9-2017. The FIR noted that the "check period" was between 1-4-2010 and 29-2-2016. The FIR records that it was registered on the basis of "source information" received by CBI ACB Chennai on the same date, at about 4 p.m. There are four tabulated statements in the FIR. Statement A provides that the respondents' assets at the beginning of the check period (1-4-2010) were in the amount of Rs 1,35,26,066 while Statement B indicates that their assets at the end of the check period (29-2-2016) were Rs 6,90,51,066. Hence, their assets earned during the check period (i.e. between 1-4-2010 to 29-2-2016) were alleged to be to the tune of Rs 5,55,25,000. According to Statement C, the respondents' income during the check period was Rs 4,84,76,630 while according to Statement D their expenditure during the check period was Rs 40,33,322. Hence, the respondents are alleged to have acquired assets/pecuniary advantage to the extent of Rs 5,95,58,322 (adding the assets, Rs 5,55,25,000 and expenditure, Rs 40,33,322) against an income of Rs 4,84,76,630 earned during the check period. Therefore, their disproportionate assets [Calculated by adding the assets and expenditure during the check period, and subtracting the income from it.] during the check period were computed at Rs 1,10,81,692, which is 22.86% of the total income earned by them.

14. The rival submissions now fall for our consideration. Based on the submissions, this Court is called upon to decide two questions:

14.1. (i) Whether CBI is mandatorily required to conduct a preliminary enquiry before the registration of an FIR in every case involving claims of alleged corruption against public servants; and

14.2. (ii) Independent of the first question, whether the judgment of the High Court to quash the FIR can be sustained in the present case.

D. Whether a preliminary inquiry is mandatory before registering an FIR

D.1. Precedents of this Court

15. Before proceeding with our analysis of the issue, it is important to understand what previous judgments of this Court have stated on the issue of whether CBI is required to conduct a

preliminary enquiry before the registration of an FIR, especially in cases of alleged corruption against public servants.

16. The first of these is a judgment of a two-Judge Bench in P. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] , in which it was observed that before a public servant is charged with acts of dishonesty amounting to serious misdemeanour, some suitable preliminary enquiry must be conducted in order to obviate incalculable harm to the reputation of that person. G.K. Mitter, J. held that : (SCC p. 601, para 17)

"17. ? Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general."

(emphasis supplied)

17. The above decision was followed by another two-Judge Bench in Nirmal Singh Kahlon [Nirmal Singh Kahlon v. State of Punjab, (2009) 1 SCC 441 : (2009) 1 SCC (Cri) 523] , wherein it was observed that in accordance with the CBI Manual, CBI may only be held to have established a prima facie case upon the completion of a preliminary enquiry. S.B. Sinha, J. held thus : (SCC p. 456, para 30)

"30. Lodging of a first information report by CBI is governed by a manual. It may hold a preliminary inquiry; it has been given the said power in Chapter VI of the CBI Manual. A prima facie case may be held to have been established only on completion of a preliminary enquiry."

18. The most authoritative pronouncement of law emerges from the decision of a Constitution Bench in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] . The issue before the Court was whether

"a police officer is bound to register a first information report ("FIR") upon receiving any information relating to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure, 1973 ? or the police officer has the power to conduct a "preliminary inquiry" in order to test the veracity of such information before registering the same" (SCC p. 17, para 1).Answering this question on behalf of the Bench, P. Sathasivam, C.J. held that under Section 154 of the Code of Criminal Procedure, 1973 ("CrPC"), a police officer need not conduct a preliminary enquiry and must register an FIR when the information received discloses the commission of a cognizable offence.

19. Specifically with reference to the provisions of the CBI Manual, the decision noted : (Lalita Kumari case [Lalita Kumari v. State of U.P., (2014) 2 SCC 1, paras 31-35, 37-39, 83-86, 89-92, 93-96, 101-105, 106-107, 111-112, 114-119 and 120 : (2014) 1 SCC (Cri) 524] , SCC pp. 50-51, para 89)

"89. Besides, the learned Senior Counsel relied on the special procedures prescribed under the CBI Manual to be read into Section 154. It is true that the concept of "preliminary inquiry" is contained in Chapter IX of the Crime Manual of CBI. However, this Crime Manual is not a statute and has not been enacted by the legislature. It is a set of administrative orders issued for internal guidance of CBI officers. It cannot supersede the Code. Moreover, in the absence of

any indication to the contrary in the Code itself, the provisions of the CBI Crime Manual cannot be relied upon to import the concept of holding of preliminary inquiry in the scheme of the Code of Criminal Procedure. At this juncture, it is also pertinent to submit that CBI is constituted under a special Act, namely, the Delhi Special Police Establishment Act, 1946 and it derives its power to investigate from this Act."

(emphasis supplied)

20. However, the Court was also cognizant of the possible misuse of the powers under criminal law resulting in the registration of frivolous FIRs. Hence, it formulated "exceptions" to the general rule that an FIR must be registered immediately upon the receipt of information disclosing the commission of a cognizable offence. The Constitution Bench held : (Lalita Kumari case [Lalita Kumari v. State of U.P., (2014) 2 SCC 1, paras 31-35, 37-39, 83-86, 89-92, 93-96, 101-105, 106-107, 111-112, 114-119 and 120 : (2014) 1 SCC (Cri) 524] , SCC pp. 59-60, paras 115, 117 & 119)

"115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. ?

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117. In the context of offences relating to corruption, this Court inP. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] expressed the need for a preliminary inquiry before proceeding against public servants.

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119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

(emphasis supplied)

21. The judgment provides the following conclusions : (Lalita Kumari case [Lalita Kumari v. State of U.P., (2014) 2 SCC 1, paras 31-35, 37-39, 83-86, 89-92, 93-96, 101-105, 106-107, 111-112, 114-119 and 120 : (2014) 1 SCC (Cri) 524] , SCC p. 61, para 120)

"120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

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120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

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(d) Corruption cases

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The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry."

(emphasis supplied)

22. The Constitution Bench in Lalita Kumari case [Lalita Kumari v. State of U.P., (2014) 2 SCC 1, paras 31-35, 37-39, 83-86, 89-92, 93-96, 101-105, 106-107, 111-112, 114-119 and 120 : (2014) 1 SCC (Cri) 524] thus held that a preliminary enquiry is not mandatory when the information received discloses the commission of a cognizable offence. Even when it is conducted, the scope of a preliminary enquiry is not to ascertain the veracity of the information, but only whether it reveals the commission of a cognizable offence. The need for a preliminary enquiry will depend on the facts and circumstances of each case. As an illustration, "corruption cases" fall in that category of cases where a preliminary enquiry "may be made". The use of the expression "may be made" goes to emphasise that holding a preliminary enquiry is not mandatory. Dwelling on the CBI Manual, the Constitution Bench held that : (i) it is not a statute enacted by the legislature; and (ii) it is a compendium of administrative orders for the internal guidance of CBI.

23. The judgment in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] was analysed by a three-Judge Bench of this Court in Yashwant Sinha [Yashwant Sinha v. CBI, (2020) 2 SCC 338] where the Court refused to grant the relief of registration of an FIR based on information submitted by the appellant-informant. In his concurring opinion, K.M. Joseph, J. described that a barrier to granting the relief of registration of

an FIR against a public figure would be the observations of this Court in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] noting that a preliminary enquiry may be desirable before doing so. Joseph, J. observed : (Yashwant Sinha case [Yashwant Sinha v. CBI, (2020) 2 SCC 338, paras 114-115 and 117] , SCC pp. 385 & 387-89, paras 108, 110, 112 & 114)

"108. Para 120.6 [of Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524]] deals with the type of cases in which preliminary inquiry may be made. Corruption cases are one of the categories of cases where a preliminary inquiry may be conducted. ?

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110. In para 117 of Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , this Court referred to the decision in P. Sirajuddin v. State of Madras [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] and took the view that in the context of offences related to corruption in the said decision, the Court has expressed a need for a preliminary inquiry before proceeding against public servants.

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112. In Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , one of the contentions which was pressed before the Court was that in certain situations, preliminary inquiry is necessary. In this regard, attention of the Court was drawn to CBI Crime Manual. ?

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114. The Constitution Bench inLalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , had before it, the CBI Crime Manual. It also considered the decision of this Court inP. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] which declared the necessity for preliminary inquiry in offences relating to corruption. Therefore, the petitioners may not be justified in approaching this Court seeking the relief of registration of an FIR and investigation on the same as such. This is for the reason that one of the exceptions where immediate registration of FIR may not be resorted to, would be a case pointing fingers at a public figure and raising the allegation of corruption. This Court also has permitted preliminary inquiry when there is delay, laches in initiating criminal prosecution, for example, over three months. A preliminary inquiry, it is to be noticed in para 120.7 of Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , is to be completed within seven days."

(emphasis supplied)

24. The decision of a two-Judge Bench in Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] thereafter has noted that while the decision in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] held that a

preliminary enquiry was desirable in cases of alleged corruption, that does not vest a right in the accused to demand a preliminary enquiry. Whether a preliminary enquiry is required or not will depend on the facts and circumstances of each case, and it cannot be said to be mandatory requirement without which a case cannot be registered against the accused in corruption cases. Hemant Gupta, J. held thus : (Managipet case [State of Telangana v. Managipet, (2019) 19 SCC 87, paras 33-34 : (2020) 3 SCC (Cri) 702] , SCC pp. 103-105, paras 28-30 & 32-34)

"28. InLalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] the Court has laid down the cases in which a preliminary inquiry is warranted, more so, to avoid an abuse of the process of law rather than vesting any right in favour of an accused. Herein, the argument made was that if a police officer is doubtful about the veracity of an accusation, he has to conduct a preliminary inquiry and that in certain appropriate cases, it would be proper for such officer, on the receipt of a complaint of a cognizable offence, to satisfy himself that prima facie, the allegations levelled against the accused in the complaint are credible. ?

29. The Court concluded that the registration of an FIR is mandatory under Section 154 of the Code if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. ?

30. It must be pointed out that this Court has not held that a preliminary inquiry is a must in all cases. A preliminary enquiry may be conducted pertaining to matrimonial disputes/family disputes, commercial offences, medical negligence cases, corruption cases, etc. The judgment of this Court inLalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] does not state that proceedings cannot be initiated against an accused without conducting a preliminary inquiry.

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32. ... The scope and ambit of a preliminary inquiry being necessary before lodging an FIR would depend upon the facts of each case. There is no set format or manner in which a preliminary inquiry is to be conducted. The objective of the same is only to ensure that a criminal investigation process is not initiated on a frivolous and untenable complaint. That is the test laid down inLalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] .

33. In the present case, the FIR itself shows that the information collected is in respect of disproportionate assets of the accused officer. The purpose of a preliminary inquiry is to screen wholly frivolous and motivated complaints, in furtherance of acting fairly and objectively. Herein, relevant information was available with the informant in respect of prima facie allegations disclosing a cognizable offence. Therefore, once the officer recording the FIR is satisfied with such disclosure, he can proceed against the accused even without conducting any inquiry or by any other manner on the basis of the credible information received by him. It cannot be said that the FIR is liable to be quashed for the reason that the preliminary inquiry was not conducted. The same can only be done if upon a reading of the entirety of an FIR, no offence is disclosed. Reference in this regard, is made to a judgment of this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] wherein, this Court held inter alia that where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused and also where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for

wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

34. Therefore, we hold that the preliminary inquiry warranted inLalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] is not required to be mandatorily conducted in all corruption cases. It has been reiterated by this Court in multiple instances that the type of preliminary inquiry to be conducted will depend on the facts and circumstances of each case. There are no fixed parameters on which such inquiry can be said to be conducted. Therefore, any formal and informal collection of information disclosing a cognizable offence to the satisfaction of the person recording the FIR is sufficient."

(emphasis supplied)

25. In Charansingh [Charansingh v. State of Maharashtra, (2021) 5 SCC 469 : (2021) 2 SCC (Cri) 617 : (2021) 2 SCC (L&S) 52] , the two-Judge Bench was confronted with a challenge to a decision to hold a preliminary enquiry. The Court adverted to the ACB Manual in Maharashtra and held that a statement provided by an individual in an "open inquiry" in the nature of a preliminary enquiry would not be confessional in nature and hence, the individual cannot refuse to appear in such an inquiry on that basis. M.R. Shah, J. writing for the two-Judge Bench consisting also of one of us (D.Y. Chandrachud, J.) held : (SCC pp. 479-82, paras 11, 14 & 15)

"11. However, whether in a case of a complaint against a public servant regarding accumulating the assets disproportionate to his known sources of income, which can be said to be an offence under Section 13(1)(e) of the Prevention of Corruption Act, 1988, an enquiry at pre-FIR stage is permissible or not and/or it is desirable or not, if any decision is required, the same is governed by the decision of this Court in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] .

11.1. While considering the larger question, whether police is duty-bound to register an FIR and/or it is mandatory for registration of FIR on receipt of information disclosing a cognizable offence and whether it is mandatory or the police officer has option, discretion or latitude of conducting preliminary enquiry before registering FIR, this Court in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] has observed that it is mandatory to register an FIR on receipt of information disclosing a cognizable offence and it is the general rule. However, while holding so, this Court has also considered the situations/cases in which preliminary enquiry is permissible/desirable. While holding that the registration of FIR is mandatory under Section 154, if the information discloses commission of a cognizable offence and no preliminary enquiry is permissible in such a situation and the same is the general rule and must be strictly complied with, this Court has carved out certain situations/cases in which the preliminary enquiry is held to be permissible/desirable before registering/lodging of an FIR. It is further observed that if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary enquiry may be conducted to ascertain whether cognizable offence is disclosed or not. It is observed that as to what type and in which cases the preliminary enquiry is to be conducted will depend upon the facts and circumstances of each case.

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14. In the context of offences relating to corruption, in para 117 in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , this Court also took note of the decision of this Court in P. Sirajuddin v. State of Madras [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] in which case this Court expressed the need for a preliminary enquiry before proceeding against public servants.

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15.1. Thus, an enquiry at pre-FIR stage is held to be permissible and not only permissible but desirable, more particularly in cases where the allegations are of misconduct of corrupt practice acquiring the assets/properties disproportionate to his known sources of income. After the enquiry/enquiry at pre-registration of FIR stage/preliminary enquiry, if, on the basis of the material collected during such enquiry, it is found that the complaint is vexatious and/or there is no substance at all in the complaint, the FIR shall not be lodged. However, if the material discloses prima facie a commission of the offence alleged, the FIR will be lodged and the criminal proceedings will be put in motion and the further investigation will be carried out in terms of the Code of Criminal Procedure. Therefore, such a preliminary enquiry would be permissible only to ascertain whether cognizable offence is disclosed or not and only thereafter FIR would be registered. Therefore, such a preliminary enquiry would be in the interest of the alleged accused also against whom the complaint is made.

15.2. Even as held by this Court in CBI v. Tapan Kumar Singh [CBI v. Tapan Kumar Singh, (2003) 6 SCC 175 : 2003 SCC (Cri) 1305] , a GD entry recording the information by the informant disclosing the commission of a cognizable offence can be treated as FIR in a given case and the police has the power and jurisdiction to investigate the same. However, in an appropriate case, such as allegations of misconduct of corrupt practice by a public servant, before lodging the first information report and further conducting the investigation, if the preliminary enquiry is conducted to ascertain whether a cognizable offence is disclosed or not, no fault can be found. Even at the stage of registering the FIR, what is required to be considered is whether the information given discloses the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage, it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. Despite the proposition of law laid down by this Court in a catena of decisions that at the stage of lodging the first information report, the police officer need not be satisfied or convinced that a cognizable offence has been committed, considering the observations made by this Court inP. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] and considering the observations by this Court inLalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] before lodging the FIR, an enquiry is held and/or conducted after following the procedure as per Maharashtra State Anti-Corruption & Prohibition Intelligence Bureau Manual, it cannot be said that the same is illegal and/or the police officer, Anti-Corruption Bureau has no jurisdiction and/or authority and/or power at all to conduct such an enquiry at pre-registration of FIR stage."

(emphasis supplied)

26. Hence, all these decisions do not mandate that a preliminary enquiry must be conducted before the registration of an FIR in corruption cases. An FIR will not stand vitiated because a preliminary enquiry has not been conducted. *The decision in Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] dealt specifically with a case of disproportionate assets. In that context, the judgment holds that where relevant information regarding prima facie allegations disclosing a cognizable offence is available, the officer recording the FIR can proceed against the accused on the basis of the information without conducting a preliminary enquiry.*

27. This conclusion is also supported by the judgment of another Constitution Bench in K. Veeraswami [K. Veeraswami v. Union of India, (1991) 3 SCC 655 : 1991 SCC (Cri) 734] . The judgment was in context of Section 5(1)(e) of the old Prevention of Corruption Act, 1947, which is similar to Section 13(1)(e) of the PC Act. It was argued that : (i) a public servant must be afforded an opportunity to explain the alleged disproportionate assets before an investigating officer; (ii) this must then be included and explained by the investigating officer while filing the charge-sheet; and (iii) the failure to do so would render the charge-sheet invalid. Rejecting this submission, the Constitution Bench held that doing so would elevate the investigating officer to the role of an enquiry officer or a Judge and that their role was limited only to collect material in order to ascertain whether the alleged offence has been committed by the public servant.

28. In his opinion for himself and Venkatachaliah, J., K. Jagannatha Shetty, J. held thus : (K. Veeraswami [K. Veeraswami v. Union of India, (1991) 3 SCC 655, para 75 : 1991 SCC (Cri) 734] , SCC p. 715, para 75)

"75. ... since the legality of the charge-sheet has been impeached, we will deal with that contention also. The counsel laid great emphasis on the expression "for which he cannot satisfactorily account" used in clause (e) of Section 5(1) of the Act. He argued that that term means that the public servant is entitled to an opportunity before the investigating officer to explain the alleged disproportionality between assets and the known sources of income. The investigating officer is required to consider his explanation and the charge-sheet filed by him must contain such averment. The failure to mention that requirement would vitiate the charge-sheet and renders it invalid. This submission, if we may say so, completely overlooks the powers of the investigating officer. The investigating officer is only required to collect material to find out whether the offence alleged appears to have been committed. In the course of the investigation, he may examine the accused. He may seek his clarification and if necessary he may cross check with him about his known sources of income and assets possessed by him. Indeed, fair investigation requires as rightly stated by Mr A.D. Giri, learned Solicitor General, that the accused should not be kept in darkness. He should be taken into confidence if he is willing to cooperate. But to state that after collection of all material the investigating officer must give an opportunity to the accused and call upon him to account for the excess of the assets over the known sources of income and then decide whether the accounting is satisfactory or not, would be elevating the investigating officer to the position of an enquiry officer or a Judge. The investigating officer is not holding an enquiry against the conduct of the public servant or determining the disputed issues regarding the disproportionality between the assets and the income of the accused. He just collects material from all sides and prepares a report which he files in the court as charge-sheet."

(emphasis supplied)

29. Therefore, since an accused public servant does not have a right to be afforded a chance to explain the alleged disproportionate assets to the investigating officer before the filing of a charge-sheet, a similar right cannot be granted to the accused before the filing of an FIR by making a preliminary enquiry mandatory.

.....

39. The precedents of this Court and the provisions of the CBI Manual make it abundantly clear that a preliminary enquiry is not mandatory in all cases which involve allegations of corruption. The decision of the Constitution Bench in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] holds that if the information received discloses the commission of a cognizable offence at the outset, no preliminary enquiry would be required. It also clarified that the scope of a preliminary enquiry is not to check the veracity of the information received, but only to scrutinise whether it discloses the commission of a cognizable offence. Similarly, Para 9.1 of the CBI Manual notes that a preliminary enquiry is required only if the information (whether verified or unverified) does not disclose the commission of a cognizable offence. Even when a preliminary enquiry is initiated, it has to stop as soon as the officer ascertains that enough material has been collected which discloses the commission of a cognizable offence. A similar conclusion has been reached by a two-Judge Bench in Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] as well. Hence, the proposition that a preliminary enquiry is mandatory is plainly contrary to law, for it is not only contrary to the decision of the Constitution Bench in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] but would also tear apart the framework created by the CBI Manual.

40. This view is also supported by the decision of a three-Judge Bench of this Court in Union of India v. State of Maharashtra [Union of India v. State of Maharashtra, (2020) 4 SCC 761 : (2020) 2 SCC (Cri) 686] , which reversed the decision of a two-Judge Bench in Subhash Kashinath Mahajan v. Stateof Maharashtra [Subhash Kashinath Mahajan v. State of Maharashtra, (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124] which had, inter alia, held that "a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the [Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("the Atrocities Act")] and that the allegations are not frivolous or motivated". However, in the three-Judge Bench decision, it was held that such a direction was impermissible since neither CrPC nor the Atrocities Act mandate a preliminary inquiry. Arun Mishra, J. held : (Union of India case [Union of India v. State of Maharashtra, (2020) 4 SCC 761 : (2020) 2 SCC (Cri) 686] , SCC p. 801, para 68)

"68. The direction has also been issued that the DSP should conduct a preliminary inquiry to find out whether the allegations make out a case under the Atrocities Act, and that the allegations are not frivolous or motivated. In case a cognizable offence is made out, the FIR has to be outrightly registered, and no preliminary inquiry has to be made as held inLalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] by a Constitution Bench. There is no such provision in the Code of Criminal Procedure for preliminary inquiry or under the SC/ST Act, as such direction is impermissible. Moreover, it is ordered to be conducted by the person of the rank of DSP. The number of DSP as per stand of the Union of India required for such an exercise of preliminary inquiry is not available. The direction would mean that even if a complaint made out a cognizable offence, an FIR would not be registered until the preliminary inquiry is held. In case a preliminary inquiry concludes that allegations are false or motivated, FIR is not to

be registered, in such a case how a final report has to be filed in the Court. Direction 79.4 cannot survive for the other reasons as it puts the members of the Scheduled Castes and Scheduled Tribes in a disadvantageous position in the matter of procedure vis-a-vis to the complaints lodged by members of upper caste, for latter no such preliminary investigation is necessary. In that view of the matter it should not be necessary to hold preliminary inquiry for registering an offence under the Atrocities Act, 1989."

(emphasis supplied)

41. In a recent decision of a two-Judge Bench in Vinod Dua v. Union of India [Vinod Dua v. Union of India, (2023) 14 SCC 286 : 2021 SCC OnLine SC 414] , a direction of the Court was sought for requiring "that henceforth FIRs against persons belonging to the media with at least 10 years standing be not registered unless cleared by a committee?". In refusing such a prayer, the Court observed that doing so would be akin to instituting a preliminary inquiry which was not mandated by the statutory framework. U.U. Lalit, J. speaking for the Bench held : (Vinod Dua case [Vinod Dua v. Union of India, (2023) 14 SCC 286 : 2021 SCC OnLine SC 414] , SCC para 86)

"86. ... the directions issued in Subhash Kashinath Mahajan [Subhash Kashinath Mahajan v. State of Maharashtra, (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124] regarding holding of a preliminary inquiry were not found consistent with the statutory framework. The second prayer made in the writ petition is asking for the constitution of the Committee completely outside the scope of the statutory framework. Similar such exercise of directing constitution of a Committee was found inconsistent with the statutory framework in the decisions discussed above. ? Any relief granted in terms of second prayer would certainly, in our view, amount to encroachment upon the field reserved for the legislature. We have, therefore, no hesitation in rejecting the prayer and dismissing the writ petition to that extent."

42. In view of the above discussion, we hold that since the institution of a preliminary enquiry in cases of corruption is not made mandatory before the registration of an FIR under CrPC, the PC Act or even the CBI Manual, for this Court to issue a direction to that effect will be tantamount to stepping into the legislative domain. Hence, we hold that in case the information received by CBI, through a complaint or a "source information" under Chapter 8, discloses the commission of a cognizable offence, it can directly register a regular case instead of conducting a preliminary enquiry, where the officer is satisfied that the information discloses the commission of a cognizable offence."

23. So far as the argument of the learned counsel for the petitioner while placing reliance on the Explanation 1 of Section 13 (1) (b) of the Act, 1988 is concerned that the First Information Report can only be lodged under the provisions of the Act, 1988 where a public servant cannot satisfactorily account for the possession of pecuniary resources or disproportionate assets to his known sources of income, it would be apt to refer to Section 13 of the Act, 1988. For the sake of convenience, Section 13 of the Act, 1988 is reproduced as under:-

"13. Criminal misconduct by a public servant.

(1) A public servant is said to commit the offence of criminal misconduct,-

(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or

(b) if he intentionally enriches himself illicitly during the period of his office.

Explanation 1. - A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

Explanation 2. - The expression "known sources of income" means income received from any lawful sources.]

24. From a perusal of Section 13 of the Act, 1988 it emerges that the a public servant is said to commit an offence of criminal conduct if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control or allows any other person to do so **or he intentionally enriches himself illicitly during the period of his office.**

25. A perusal of Explanation 1 to Section 13 (1) (b) of the Act, 1988 indicates that a person shall be presumed to have intentionally enriched himself illicitly if he is in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for..

26. Argument of the learned counsel for the petitioner that as Explanation 1 to Section 13 (1) (b) of the Act, 1988 categorically provides that a person can only be presumed to have enriched himself or to be in possession of pecuniary resources in case he cannot satisfactorily account for the same and as such, an explanation of the public servant has to be taken prior to lodging of the First Information Report under Section 13 of the Act, 1988 is patently misconcieved. The reason is that apart from the fact that Explanation 1 does not indicate anywhere about a prior explanation and thus no words can be read in the statue when the same do not form part of statue. The other aspect is that the Apex Court in the case of **K. Veeeraswami Vs. Union of India- (1991) 3 SCC 655** which judgment though was in the context of Section 5 (1) (e) of the Prevention of Corruption Act, 1947 yet the Apex Court was seized of a matter regarding the legality of the charge sheet which had been submitted without calling for the explanation or giving an opportunity to the public servant to explain the alleged disproportionality between the assets and known source of income. It was argued that the Investigating Officer was required to consider the explanation of the public servant and the charge sheet filed must contain such averment. The failure to mention the requirement would vitiate the charge sheet. The Apex Court negated the same by holding that the said submission completely overlooks the powers of Investigating Officer. The Apex Court held that the Investigating Officer is only required to collect the material to find out whether offence alleged appears to have been committed but to state that after collection of material, the Investigating Officer must given opportunity to the accused and call upon him to account for the excess of the assets over the known sources of income and then decide whether the accounting is satisfactory or not, would be elevating the Investigating Officer to the position of an inquiry officer or a judge.

27. For the sake of convenience, the relevant observations of the Apex Court in the case of **K. Veeraswami (supra)** are reproduced below:-

"75. .... since the legality of the charge-sheet has been impeached, we will deal with that contention also. The counsel laid great emphasis on the expression "for which he cannot satisfactorily account" used in clause (e) of Section 5(1) of the Act. He argued that that term means that the public servant is entitled to an opportunity before the investigating officer to explain the alleged disproportionality between assets and the known sources of income. The investigating officer is required to consider his explanation and the charge-sheet filed by him must contain such averment. The failure to mention that requirement would vitiate the charge-sheet and renders it invalid. This submission, if we may say so, completely overlooks the powers of the investigating officer. The investigating officer is only required to collect material to find out whether the offence alleged appears to have been committed. In the course of the investigation, he may examine the accused. He may seek his clarification and if necessary he may cross check with him about his known sources of income and assets possessed by him. Indeed, fair investigation requires as rightly stated by Mr A.D. Giri, learned Solicitor General, that the accused should not be kept in darkness. He should be taken into confidence if he is willing to cooperate. But to state that after collection of all material the investigating officer must give an opportunity to the accused and call upon him to account for the excess of the assets over the known sources of income and then decide whether the accounting is satisfactory or not, would be elevating the investigating officer to the position of an enquiry officer or a Judge. The investigating officer is not holding an enquiry against the conduct of the public servant or determining the disputed issues regarding the disproportionality between the assets and the income of the accused. He just collects material from all sides and prepares a report which he files in the court as charge-sheet."

28. The Apex Court in the case of **Thommandru Hannah Vijaylakshmi (supra)** after considering the judgment of the Apex Court in the case of K. Veeraswami (supra) categorically held that as an accused public servant does not have a right to be afforded a chance to explain the alleged disproportionate assets to the Investigating Officer before filing of a charge sheet, **the similar right cannot be granted to the accused before filing of the First Information Report by making a preliminary inquiry mandatory.**

29. From a perusal of the judgments of the Apex Court in the case of **Thommandru Hannah Vijaylakshmi (supra), Sri Channakeshava. H.D (supra) & K. Veeraswami (supra)** and the discussion made above it emerges that the Apex Court after considering the provisions of the Act, 1988 has categorically held that an accused public servant does not have any right to explain the alleged disproportionate assets before filing of the First Information Report.

30. In the instant case also though the writ Court vide order dated 09.10.2021 restrained the respondents from requiring the petitioner to furnish any information pertaining to assets and likewise, the inquiry report dated 19.09.2024 sent along with confidential letter dated 09.10.2024 has also categorically recorded that the explanation of the petitioner has not been taken with regard to disproportionate assets, however, the same will not and cannot resile from the settled proposition of law as laid down by the Apex court in the aforesaid judgments that the accused public servant does not have any right to explain the disproportionate assets prior to lodging of First Information Report. Thus even if the explanation of the petitioner has not been taken, the same would not vitiate the impugned First Information Report.

31. There is another aspect of the matter which has neither been argued by the learned counsel for the petitioner nor by the learned AGA.

32. Perusal of the impugned First Information Report indicates that the impugned First Information Report has been lodged on the basis of findings in the open inquiry which has been conducted by the department in which it has been found that the petitioner has spent an amount of Rs. 55,00,000/- over and above his known source of income. The inquiry report dated 19.09.2024 is part of confidential letter dated 09.10.2024. It is this open inquiry which forms "source" on the basis of which the department has found that the petitioner is possessed of disproportionate assets. The said 'source report' is in fact a kind of preliminary inquiry in which the petitioner has been found to be having disproportionate assets. Thus, once the respondents were in fact having 'source report', as referred to above, consequently, the First Information Report having been lodged on the basis of 'source report', it cannot be said that the statement or version of the petitioner should have been taken prior to lodging of the impugned First Information Report. This aspect of the matter has been considered by the Apex Court in the case of Sri Channakeshava. H.D (supra) wherein the Apex Court has held as under:-

"15. In view of the above, it is clear that preliminary enquiry was not mandated in the present case, considering that detailed information was already there before the SP in the form of the source report referred above. We have also gone through the order passed by the SP, directing registration of FIR against respondent no.1, which reflects that the SP had passed that order on the basis of material placed before him in the form of the source report."

33. As regard the various interim orders that have been passed by this Court as indicated in detail above, suffice it to say that apart from the said orders being only interim orders, careful perusal of the said interim orders would indicate that none of the interim orders have considered the settled proposition of law as laid down by the Apex Court in the cases of **Thommandru Hannah Vijaylakshmi (supra), Sri Channakeshava. H.D (supra) & K. Veeraswami (supra)** and as such, the said interim orders will not have applicability in the facts of the instant case.

34. Keeping in view the aforesaid discussion, no case for interference is made out. Accordingly, the writ petition stands dismissed.

(2026) 5 ILRA 1081
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 12.05.2026

BEFORE

THE HON'BLE ABDUL MOIN, J.
THE HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

Criminal Appeal U/S 372 CR.P.C. No. 63 of 2026

Ram Saran Tripathi **...Appellant**
Versus
State of U.P. & Anr. **...Respondents**

Issue for consideration

Matter pertains to false pretext of marriage.

Headnotes

False pretext of marriage-Indian Penal Code, 1860 - S. 376 - accused committed rape on victim on several occasions under the false pretext of marriage-victim found major- at the time of alleged -victim herself went to the places- but during travel and after arriving at the spot-she did not make hue and cry- rooms in hotel were booked by the victim herself and money received in her account sent by the accused- physical relations established on different occasions were not based on force or under fear-were consensual – complainant (father) is not the eye witness - his evidence is hearsay evidence - no external injury found - no definite opinion with regard to commission of rape - injury is not sine qua non for deciding whether rape has been committed -testimony of the victim not of sterling quality- total variation in her version -view taken by the court below -logical view -**Appeal dismissed.**

Case Law Cited

1. Radhu v. State of M.P., (2007) 12 SCC 57
2. Raju v. State of M.P., (2008) 15 SCC 133
3. State of Punjab v. Gurmit Singh, (1996) 2 SCC 384
4. Kaini Rajan v. State of Kerala, (2013) 9 SCC 113
5. Deepak Gulati v. State of Haryana, (2013) 7 SCC 675
6. Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21

List of Acts

The Indian Penal Code, 1860

List of Keywords

False pretext of marriage- consensual - did not make hue and cry - opportunity to escape - hearsay evidence - injury not sine qua non - false implication.

Appearances of parties

Counsel for Appellant(s) : Shamshad Ahmad Khan
Counsel for Respondent(s) : G.A.,

(Delivered by Hon'ble Pramod Kumar Srivastava, J.)

1. Heard Sri Shamshad Ahmad Khan, learned counsel for the appellant and learned Additional Government Advocate for the State as well as perused the record.

2. The present appeal under Section 372 of Criminal Procedure Code, 1973 (herein-after referred to as "Cr.P.C.")/413 of Bhartiya Nagarik Suraksha Sanhita, 2023 (herein-after referred to as BNSS,2023) has been filed against the judgment and order dated 17.03.2026 passed by the court of Additional Session Judge, F.T.C. Court-I, Lucknow, in Sessions Trial No. 1184 of 2022, State of U.P. Vs. Aryan Mishra, arising out of Case Crime No. 241 of 2022, under Sections 376, 506 IPC, Police Station Madiyaon, District Lucknow, thereby acquitting the opposite party No.2 from the charges under Sections 376, 506 of IPC.

3. The factual matrix of the case is that the complainant's daughter was befriended by a fellow student, namely, Aryan Mishra, who committed rape on her on several occasions under the false pretext of marriage. In September 2018, the accused invited the victim on the birthday party at a rented house of Aryan's friend, namely, Saurabh, where Aryan Mishra forcibly established physical relations with her and recorded obscene photographs and videos of the victim, which he later on used to blackmail and threaten her to viral the same via social media. These sexual assaults continued by the accused-Aryan Mishra at various locations between the year 2020 to 2022, in Risova Club on 7th of January, 2020, a hotel in Hazratganj on 16th of January, 2021, the Silver Hotel near Medanta Hospital in October and November of 2021 and the R. K. Grand Hotel on 10th of February, 2022. Throughout this period, the accused repeatedly established physical relations with the victim and in the FIR it is mentioned that the victim could not disclose the incident to any one due to chastity and social stigma, but thereafter after she eventually informed the incident to complainant who had filed a written Teharir at Police Station Madiyaon, District Lucknow. On the basis of written Teharir, a First Information Report (hereinafter referred as 'FIR' in short) against the accused-Aryan Mishra was lodged under Sections 376 and 506 of IPC

4. During the course of investigation, the Investigating Officer, visited the places of occurrence, prepared a site plan and recorded the statements of the witnesses. Following the investigation, a chargesheet against the accused-Aryan Mishra was submitted under Sections 506 and 376 of the IPC.

5. After taking cognizance, in compliance of the provisions under Section 207 of the Cr.P.C., the case was committed to the Court of Session from where it is made over to the Court of Additional District and Sessions Judge (FTC-I), Lucknow for disposal according to law.

6. The trial Court framed the charges against the accused under Sections 506, 376 of IPC and read over and explained to him, the accused denied them and claimed to be tried.

7. In order to prove its case, the prosecution has adduced the ocular evidences of victim PW-1, Ram Saran Tripathi PW-2, the complainant, Dr. Smita Rai PW-3, Shiv Prakash Soni PW-4, Ramakant PW-5, SI Anil Kumar Singh PW-6 and SI Safatullah PW-7.

8. The prosecution has adduced the documentary evidences which are statement of the victim recorded under Section 164 of Cr.P.C. Exhibit Ka-1, teharir Exhibit Ka-2, medico legal and supplementary report Exhibit Ka-3, photocopy of hotel entry register Exhibit Ka-4, chargesheet Exhibit Ka-5, Chik FIR Exhibit Ka-6, copy of GD entry Exhibit Ka-7 and site plan Exhibit ka-8.

9. After closure of the prosecution evidence, statement of accused-Aryan Mishra under section 313 of the Cr.P.C. was recorded, in which accused denied all the evidences and attending circumstances emerged out in the testimony of the prosecution witnesses.

10. At the stage of defence evidence, the acccused-Aryan Mishra himself was examined as DW-1, Amit Mishra as DW-2, Komal Mishra as DW-3, Shraddha Prakash as DW-4, Constable Pawan Kumar Verma as DW-5 and Dharmendra Singh as DW-6.

11. After having heard learned counsel for both the parties, learned trial court found that prosecution has miserably failed to prove the charge leveled against the accused person. Consequently, the accused person, Aryan Mishra has been acquitted for the charges leveled against him.

12. Being aggrieved and dissatisfied with the impugned judgment and order of the acquittal dated 17.03.2026, this criminal appeal has been preferred on the ground that the learned trial court had not considered the facts, evidence and circumstances in correct perspective and passed the impugned judgment and order in arbitrary and mechanical manner. The statement given by the victim to Investigating Officer as well as before the learned Magistrate are unblemished and there is no material contradictions in the victim's testimony before the court. Defence plea raised by the defence with regard to the false implication was not substantiated by any cogent and reliable evidence. The Hotel entry register also supports the presence of the accused with the victim. He asserts that the accused repeatedly established physical relations under fear and threat and contends that there is a manifest error in the finding of the trial court which are perverse and not in consonance with law. He contends that there is ample evidence to prove guilt of the accused for the charges levelled against him. Despite the above, the learned trial court ignored these facts and passed the judgment in a hyper-technical manner, resulting in a grave miscarriage of justice. Consequently, he concludes that the judgment of acquittal is liable to be quashed, the appeal is liable to be allowed and the accused-respondent is liable to be convicted.

13. We have heard learned counsel for the appellant and learned AGA for the State.

14. The question for determination before us is whether the trial court erred in acquitting the accused person under the above mentioned sections.

15. Before delving into facts of the present case we may delve into the law laid down in this regard. The Hon'ble Apex Court in the case of **Radhu v. State of M.P., (2007) 12 SCC 57** has observed that:-

"6. It is now well settled that a finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix. The very nature of offence makes it difficult to get direct corroborating evidence. The evidence of the prosecutrix should not be rejected on the basis of minor discrepancies and contradictions. If the victim of rape states on oath that she was forcibly subjected to sexual intercourse, her statement will normally be accepted, even if it is uncorroborated, unless the material on record requires drawing of an inference that there was consent or that the entire incident was improbable or imaginary. Even if there is consent, the act will still be a "rape", if the girl is under 16 years of age. It is also well settled that absence of injuries on the private parts of the victim will not by itself falsify the case of rape, nor construed as evidence of consent. Similarly, the opinion of a doctor that there was no evidence of any sexual intercourse or rape, may not be sufficient to disbelieve the accusation of rape by the victim. Bruises, abrasions and scratches on the victim especially on the forearms, wrists, face, breast, thighs and back are indicative of struggle and will support the allegation of sexual assault. The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make

a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case."

16. The prosecution has examined three witnesses to establish the facts of the case, one is complainant, Ram Saran Tripathi PW-2 who deposed that first incident had taken place in the wake of year, 2018 with his daughter, who is aged about 23 years. The Accused-Aryan Mishra was living in a rented house and nearby his frined Saurabh was also staying in a rented house, where the victim was called in a birthday party of accused Aryan Mishra and there the accused Aryan Mishra forcibly established physical relation with the victim and recorded her obscene videos and photographs. He further deposed that on the pointing of photographs and video clips, the accused blackmailed the victim and under this fear in different places and different dates i.e. on 07.01.2020 at Risova Club, on 16.01.2021 in a hotel at Hazaratganj, in October and November, 2021 in Hotel Silver and on 10.02.20222 at Hotel R.K. Grand, the accused called the victim, established physical relations with her forcibly. But in respect of the alleged incident occurred in previous several dates and several places, the victim did not disclose to the complainant earlier. Lastly, when the victim told the incident to the complainant, he lodged the FIR against the accused on 21.04.2021. Thus, from the testimony of the complainant, it reflects that he is not the eye witness of alleged incident and whatever he has disclosed in the FIR is based on the information given by the victim. Thus his evidence is hearsay evidence which has no significance in the eye of law.

17. Another witness of fact, namely, Shiv Prakash Soni, PW-4 has stated that he has brought the guest entry register of Hotel Risova Club, on which at Serial No. 10 on 07.01.2020, entry of the victim alongwith the accused Aryan Mishra was made. Thereafter, they checked out on the same day at 02:30 p.m.

18. Another witness of fact, namely, Ramakant PW-5, who was manager of the R.K. Grand Hotel, IIM Road, Bhitauli, Lucknow, on the basis of guest entry register, had stated that on 10.02.2022 accused-Aryan Mishra and the victim checked in his hotel at 12:15 p.m. and room no. 203 was allotted to them and on the same day at 05:30 p.m. they checked out.

19. From the above evidence, it reflects that the victim alongwith the accused-Aryan Mishra stayed in those hotels in a room but the testimony of the said witness does not reflect that the victim was forcibly accompanied with the accused, otherwise at the time of checking entry into the room, she definitely would have made resistance. Here it is also more surprising that the victim had received the money in her account, sent by the accused and it is also established that rooms in hotel were booked by the victim herself. Now the question arises that when the victim herself booked the room in hotel where she stayed with the accused and physical relations were established between them, then how it can be said that it was without her willingness and consent.

20. Now the testimony of the victim remains, who is the star witness of the case and her testimony is on higher pedestal other than prosecution witnesses because she is the suffer of the case.

21. In this regard the Hon'ble Supreme in the case of **Raju v. State of M.P., (2008) 15 SCC 133** has observed as under:

"10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

12. Reference has been made in Gurmit Singh case [(1996) 2 SCC 384 : 1996 SCC (Cri) 316] to the amendments in 1983 to Sections 375 and 376 of the Penal Code making the penal provisions relating to rape more stringent, and also to Section 114-A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113-A and 113-B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualised as the presumption under Section 114-A is extremely restricted in its applicability. This clearly shows that insofar as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined."

22. The whole testimony of the prosecution witnesses rests on the testimony of a star witness i.e. the victim PW-1, who deposed that her date of birth is 29.08.1998, thus she was found major at the time of alleged incident. She further deposed that in the wake of year, 2018 in September, the accued-Aryan called her and committed rape on her, at the instance of getting video clip viral. She has stated that the accused forcibly established physical relation with her but there is no evidence to the effect that she ever made any struggle to get rid of his control or she raised any alarm to attract the attention of public. Similarly, she has stated that on 7th of January, 2020, the accused called her to the Hotel Risova situated at Sitapur Road, Lucknow and therein he committed rape on her but no iota of evidence that she made any resistance. She also stated that in the wake of January 16, 2021, again the accused called her to Hazratganj and thereafter on 10th of February, 2022, again accused called her at the Hotel R.K. Grand, wherein he committed rape on her.

23. Here it is to be notable that at all the occasions, the victim herself went to the places as she stated, but during travel and after arriving at the spot, she did not make hue and cry. It is also very surprising that she had admitted that she had received the money in her account which was sent by the accused and she also admitted that in the hotel, she herself booked the room. This is not a statement of the victim that at the time of booking of a room in the hotel, the accused compelled her to book the room in the hotel in her name.

24. In this regard, PW-4 Shiv Prakash Soni has stated that the victim and the accused, Aryan, came to his hotel and the victim had booked the room in the hotel and as per the guest entry register of the hotel, the victim was the main guest who had booked the room. It is also notable that in the Hotel R. K. Grand, the victim and the accused both stayed on 10.02.2022 from 12:15 p.m. to 05:30 p.m. All these above circumstances indicate that if the accused forcefully had established physical relations with the victim on different occasions, then there was ample opportunity for her to escape from the spot and to seek the help from others, but she did not take any recourse which might be available to her.

25. In the case of **Kaini Rajan Vs. State of Kerala reported in [(2013)9 SCC 113]**, Hon'ble Supreme Court has held as under:

"Section 375 IPC defines the expression "rape", which indicates that the first clause operates, where the woman is in possession of her senses, and therefore, capable of consenting but the act is done against her will. The expression "against her will" means that the act must have been done in spite of the opposition of the woman. "Consent", for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised of choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances. An interference as to consent can be drawn if only based on evidence or probabilities of the case."

26. Keeping in view the law propounded by Hon'ble Apex Court and perusal of the material available on record, it reveals that the prosecutrix had previously acquaintance with the accused. The place of the alleged incident and time is also relevant. If she had made any semblance of resistance or made any hue and cry, it would have attracted a large number of people from the way and locality of the hotels.

27. It is true that the version of the victim of rape commands great respect and acceptability but, if there are some circumstances which cast some doubt in the mind of the court of the veracity of the victim's evidence, then, it is not safe to rely on the uncorroborated version of the victim of rape.

28. In the case of **Deepak Gulati Vs. State of Haryana reported in [(2013) 7 SCC 675]**, Hon'ble Apex Court held that:

There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or

had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. There must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term misconception of fact, the fact must have an immediate relevance". Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.″

29. Prosecution has adduced the evidence of medical expert Dr. Smita Rai as PW-3, who deposed that in the medico legal examination, no external injury was found on the person of the victim. In internal examination of the victim, the hymen was found raptured and old. No spermatozoa or gonococci were found and on that basis no definite opinion with regard to commission of rape could not be given.

30. Thus, the statement of the victim is not substantiated with the medical evidence also.

31. It is true that the injury is not sine qua non for deciding whether rape has been committed, but it has to be decided on the factual matrix of each case. As Hon′ble Apex Court has observed in many of the cases that if there is a sole testimony of the prosecutrix, then it should be of a sterling quality.

32. While considering the evidentiary value of the testimony of the prosecutrix, Hon′ble Apex Court in the case of Rai Sandeep Vs. State (NCT of Delhi) reported in [(2012) 8 SCC 21] has observed that:

"In our considered opinion, the ″sterling witness″ should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should

give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

33. On the anvil of the above principles, when we test the version of the victim, PW-1, we find that unfortunately, the said witness has failed to pass any of the tests mentioned above. There is a total variation in her version from what was stated in the FIR and what was deposed before the court. There are material contradictions with regard to the complicity of the accused person. When we consider the testimony of the prosecutrix on its face value, we find the evidence to be defective, as from the circumstances revealed from her testimony, it indicate that physical relationship which were established on different occasions, were not based on force or under fear, but that were consensual.

34. The accused Aryan Mishra examined as DW-1, who had given the evidence with regard to arresting, whereas another defence witness, Amit Mishra, DW-2 has also given the evidence with regard to arresting of the accused-Aryan Mishra, wherein he has stated that accused-Aryan was taken by the police personnel on 20.04.2022, while his arrest was demonstrated from some other place and time.

35. Another defence witness, namely, Komal Singh was examined as DW-3 who has stated that accused-Aryan Mishra was her common friend who was given in police custody by the victim's father after beating him. Thus, from the prosecution version and testimony of the prosecutrix as well as other witnesses of fact, they did not inspire the confidence.

36. In any case, as we have already stated that the testimony of prosecutrix does not inspire confidence, under these circumstances, we are not inclined to interfere with the well considered judgment of the trial court.

37. Further, learned counsel for the appellant could not point out any illegality or infirmity in the judgment and order of acquittal passed in favour of respondent which is before this Court.

38. Keeping in view the aforesaid weakness of the prosecution case, as noted by the court below, we are of the view that the view taken by the court below was a probable and logical view,

which is based on valid reasons. The judgment of the trial court cannot be said to be illegal, illogical and improbable and not based on material on record or is based on erroneous views and is against the settled position of law. So, this Court is satisfied that there is absolutely no hope of success in this appeal and accordingly, no interference is called for.

39. Accordingly, the appeal is **dismissed**.

40. No order as to costs.

(2026) 5 ILRA 1090
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 21.05.2026

BEFORE

THE HON'BLE ABDUL MOIN, J.
THE HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

Criminal Appeal U/S 372 CR.P.C. No. 64 of 2026

Informant/Complainant (Vicitim X) ...Appellant
Versus
State of U.P & Anr. ...Respondents

Issue for Consideration

Matter pertains to whether the trial court erred in acquitting the accused of the offences under Ss. 342, 366, 376 and 506 IPC and whether the prosecution proved its case beyond reasonable doubt based on the testimony of the prosecutrix, warranting interference with the judgment of acquittal. (Paras 11, 12, 20-26).

Headnotes

Criminal Law - Appeal against Acquittal - Scope of interference - Criminal Procedure Code, 1973 - S. 372 - Bhartiya Nagarik Suraksha Sanhita, 2023 - S. 413 - Whether the judgment of acquittal warranted interference - Appellate Court to examine whether the view taken by the trial court was illegal, illogical, improbable or based on erroneous appreciation of evidence - Trial court's view held to be a probable and logical view based on valid reasons and not suffering from any illegality or infirmity - Appeal dismissed. (Paras 11, 24-26).

Criminal Law - Rape - Appreciation of evidence of prosecutrix - Indian Penal Code - Ss. 342, 366, 376 and 506 - Conviction can be based on the sole testimony of the prosecutrix provided such testimony inspires confidence and is of sterling quality - Testimony of the prosecutrix must be carefully scrutinised where conviction rests solely upon it - In the present case, material contradictions, inconsistencies and variations rendered the testimony incapable of inspiring absolute confidence - Acquittal upheld. (Paras 12, 16, 17, 18, 20, 21).

Evidence - Sole testimony of prosecutrix - Evidentiary value - Indian Evidence Act, 1872 - Prosecutrix stands on the footing of an injured witness but her evidence cannot be mechanically accepted as the gospel truth - Court must examine whether the testimony remains natural, consistent and trustworthy throughout - On facts, the prosecutrix failed to satisfy the test of a sterling witness and her evidence was found defective - Conviction could not be founded solely thereon. (Paras 16, 20, 21).

Evidence - Contradictions and conduct of prosecutrix - Indian Penal Code - Ss. 366 and 376 - Material contradictions between the FIR, statement under S. 164 CrPC and deposition before the

Court coupled with failure to raise alarm during travel and prolonged stay with the accused materially affected the credibility of the prosecution version - Prosecution failed to establish guilt beyond reasonable doubt. (Paras 17-23).

Evidence - Medical evidence - Corroborative value - Indian Penal Code - S. 376 - Absence of injuries is not by itself decisive in a rape case but where the sole testimony of the prosecutrix does not inspire confidence and medical evidence does not corroborate the allegation, the prosecution case becomes doubtful - Benefit of doubt rightly extended. (Para 20).

Evidence - Hearsay evidence - Appreciation - Statement of witness based solely on information received from the prosecutrix - Such testimony has no testimonial value as an eye-witness account - Another witness having resiled from his previous statement also failed to support the prosecution - Prosecution case rested substantially on the testimony of the prosecutrix alone. (Paras 13-15).

Held: Though it is well settled that conviction in a case of rape can be based on the sole testimony of the prosecutrix and that her evidence, being in the nature of an injured witness, is attributed a very high value, the testimony must nevertheless inspire confidence and be of sterling quality - The testimony of the prosecutrix in the present case failed to inspire absolute confidence as there were material contradictions between the FIR, the statement under S. 164 CrPC and the deposition before the Court and there was total variation in her version regarding the manner in which the occurrence took place - Her conduct in not raising any alarm during the journey from the place of occurrence to the railway station and thereafter to Delhi and Chandigarh and in making no endeavour to escape or seek help materially affected the credibility of the prosecution case - The testimony of the other witnesses did not lend support to the prosecution as one witness was only a hearsay witness and another did not support the prosecution case - Medical evidence also did not corroborate the allegation of rape and on the anvil of the settled principles the prosecutrix failed to satisfy the test of a sterling witness - The view taken by the trial court was a probable and logical view based on valid reasons and the judgment of acquittal could not be said to be illegal illogical improbable or based on erroneous appreciation of evidence - No illegality or infirmity having been shown in the judgment of acquittal no interference was called for and the appeal was liable to be dismissed – appeal dismissed. (Paras 12-26). (E-7)

Case Law Cited

Radhu v. State of M.P., **(2007) 12 SCC 57***; Raju v. State of M.P.,* **(2008) 15 SCC 133***; Gurmit Singh case* **[(1996) 2 SCC 384: 1996 SCC (Cri) 316]***; Rai Sandeep v. State (NCT of Delhi),* **(2012) 8 SCC 21***.*

List of Acts

Criminal Procedure Code, 1973; Bhartiya Nagarik Suraksha Sanhita, 2023; Indian Penal Code,1860; Indian Evidence Act, 1872

List of Keywords

Appeal against acquittal; rape; prosecutrix; sole testimony of prosecutrix; sterling witness; appreciation of evidence; contradictions; material variations; hearsay evidence; medical evidence; burden of proof; benefit of doubt; acquittal; testimony not inspiring confidence; beyond reasonable doubt.

Case Arising From

APPELLATE JURISDICTION: Appeal arising from the judgment and order dated 26.03.2026 passed by the Court of Additional Session Judge, F.T.C. First, Ambedkar Nagar, in Sessions Trial No. 104 of 2023, arising out of FIR No./Case Crime No. 65 of 2023, acquitting the accused of the charges under Ss. 342, 366, 376 and 506 IPC.

Appearances for Parties

Advs. for the Appellant:
Sri Shiv Shankar Verma.
Advs. for the Respondents:
Learned A.G.A. for the State.

(Delivered by Hon'ble Pramod Kumar Srivastava, J.)

1. Heard Sri Shiv Shankar Verma, learned counsel for the appellant and learned A.G.A. for the State.

2. The present appeal under Section 372 of Criminal Procedure Code, 1973 (herein-after referred to as "CrPC")/413 of Bhartiya Nagarik Suraksha Sanhita, 2023 (herein-after referred to as BNSS,2023) has been filed against the judgment and order dated 26.03.2026 passed by the court of Additional Session Judge, F.T.C. First, Ambedkar Nagar, in Sessions Trial No. 104 of 2023, State Vs. Amit Shahani, arising out of FIR No./Case Crime No. 65 of 2023, under Sections 342, 364, 366, 376, 506 and 120-B of the Indian Penal Code (herein-after referred as IPC), Police Station Zalalpur, District Ambedkar Nagar and charge-sheet filed under Sections 342, 366, 376 and 506 IPC, Police Station Zalalpur, District Ambedkar Nagar acquitting the opposite party No.2 from the charges under Sections 342, 366, 376 and 506 I.P.C.

3. Brief facts of the case are that on 23.01.2023, in the afternoon, the younger son of In @ Indrawati, daughter of Rambali, who lives next door to the victim had come to call her. Upon reaching there, Suman, wife of Kantraj, resident of the same village and aunt of Amit Shahani(accused) was also sitting with Indrawati and talking. When the appellant approached them, they said, 'Let's go towards the forest because my stomach is upset'.

All three of them went towards the forest, about 300 meters east of Indrawati's house at approximately 3:00 PM. As they reached the path leading to the forest, Amit Shahani, son of Sant Ram and Sujeet Kumar, son of Ghanshu stepped out of a Bolero car. There were two other people sitting inside whom the appellant could not recognize. Indrawati and Suman said , 'See, we have brought her', after which they grabbed the victim and forced her into the car. When she tried to scream, Sujeet Kumar pressed the pistol against the victim's chest and threatened to kill her and her family. Out of fear for her and her family's life she remained silent.

The appellant was then taken to Akbarpur Railway Station where she was again threatened by Sujeet Kumar and Amit Shahani and forced to sit quietly in the train out of fear. At 8:00 PM the train arrived, and they boarded the train with her. In the morning, they took her to Delhi, and from there, on January 24, 2023, they took her to Kaithal, Chandigarh by bus. They arrived there at night and took her to a room where Vijay Kumar, also known as Havaldar (son of Purnmasi, resident of Sakalfiya, Police Station Katka, District Ambedkar Nagar), who is Amit's uncle, also arrived. After threatening her and asking her to stay in the room for the safety of her and her family, Sujeet Kumar and Vijay Kumar left. Amit Shahani stayed in the room with the victim that night and raped her.

On the morning of January 25, 2023, Sujeet Kumar threatened the victim by saying that he was going home and the appellant should not create any drama or the consequences will be very bad after which in the evening Amit again raped the victim. In this manner, Vijay Kumar would come every morning, and both Vijay and Amit would lock the victim in the room and go somewhere and in the evening Amit would forcibly make sexual relationship with her. On January 31, 2023, both of them told the victim to sign a paper that had something written in english. When

she refused, they beat her up and forced her to sign it and again threatened to kill her and her family.

Following this, on February 10, 2023, Vijay Kumar and Amit Shahani took the victim to another room in the same city. They called another person and, after beating her again, forcibly performed a 'marriage' with Amit. They did not allow her to read a paper written in Hindi and forced her to sign it. They took her photo and Amit forcibly put vermilion (sindoor) on her hair, making photos and videos of it. After this, they brought her back to the old room where they used to keep her locked and said that the work is solid now.

After this when the victim heard them talking to Indrawati and Sujeet Kumar over the phone, saying that the work is done, customers are looking at her and as soon as a customer is found, they will sell her and give Indrawati and Sujeet their share. When the victim found out they were going to sell her, then on February 14, 2023, while Amit was in the room and fell asleep in the afternoon, she took the opportunity at about 12:00 PM and left the room after taking his mobile and latched the door from outside.

After going some distance, she called her father′s mobile from that same phone. Later, her brother-in-law called. She also called the police from there, but did not receive a clear response. A ragpicker standing nearby heard her conversation and insisted on helping her. After this, the ragpicker spoke to her father and brother-in-law. Her father told the ragpicker to help the appellant/victim board on a tempo going toward Sector 22. The ragpicker helped her onto the tempo. Upon reaching there, her brother-in-law told her that a friend of her brother, Ketan Kumar, was arriving and that she should go with him. After that when she went her brother′s friend′s house, her brother Ketan Kumar, who lives in Bangalore, arrived in Chandigarh by plane at about 1:00 AM and left for home with her on the morning of February 15, 2023.

After reaching home, the victim′s health deteriorated significantly. Local doctors treated her, but when she didn't recover, her family took her to Atraulia Government Hospital for treatment. Upon recovering, she went to the police station to get the FIR lodged.

4. After lodging of the F.I.R. the Investigating Officer (hereinafter referred to as IO) conducted the investigation, visited the place of occurrence and prepared the site plan, recorded the statement of witnesses and got the victim medically examined and after concluding the investigation submitted a chargesheet against the accused, Amit Shahani, under Sections 342, 366, 376, and 506 of the IPC.

5. After furnishing the necessary documents under Section 207 of the CrPC, the case was committed to the Court of Session from where it was made over to Additional Session Judge, F.T.C. First, Ambedkar Nagar for trial. On 19.08.2023, charges were framed against the accused Amit Shahani under Sections 366, 342, 376, and 506 of the IPC which the accused denied and pleaded for a trial.

6. In order to prove its case, the prosecution adduced ocular evidence of Prosecution Witness (PW) 1 - Victim, PW 2 - Sikandar, PW 3 - Sati Prasad, PW 4 - Dr. Sarita Prasad, PW 5 - Vindresh

Kumar, PW 6 - Arvind Kumar Singh, PW 7 - Sant Kumar Singh, PW 8 - Ashok Kumar Singh, PW 9 - Dr. P.N. Yadav, and PW 10 - Surendra Bahadur and also proved documentary evidence: Complaint (Ex. Ka-1), Certificate issued by Smt. Kalpa Devi Adarsh Inter College (Ex. Ka-2), Statement of the victim under Section 164 CrPC (Ex. Ka-3), Affidavit paper no. 6A/46 to 6A/47 (Ex. Ka-3), Medical report of the victim (Ex. Ka-4), Affidavit paper no. 6A/53 (Ex. Ka-5), Check FIR (Ex. Ka-6), G.D. Entry (Ex. Ka-7), Charge sheet (Ex. Ka-8), Site map (Ex. Ka-9), X-ray report (Ex. Ka-10), and Age certificate (Ex. Ka-10).

7. After closing the evidence of prosecution, statement of accused person under Section 313 of the CrPC was recorded. Accused person denied all the evidence and attending circumstances, that arose during the testimony of witnesses. At the state of defence, a photocopy of the order dated 06.02.2023 from the High Court of Punjab and Haryana in CRWP-1139/2023 (Upasana & Ors. vs. State of Punjab & Ors.), and eight photographs were submitted. Since the marriage certificate and the High Court order were photocopies, they were considered inadmissible in evidence and the photographs had also not been proved as evidence.

8. After hearing and on perusal of the record, learned trial court observed that testimony of the victim is not of a sterling quality. There is material contradiction in the statement of the victim and other witnesses of fact, which is not in consonance with the medical evidence.

9. Prosecution miserably failed to establish it′s case beyond reasonable doubt, consequently, learned trial Court acquitted the accused-respondent No.2 for charges leveled against him, vide the impugned judgment dated 26.03.2026

10. Being aggrieved and dissatisfied with the impugned judgment and order, the petitioner-victim has preferred this criminal appeal on the ground that learned trial court did not consider the facts and circumstances and evidence of the victim in right perspective. There is no material contradictions and discrepancies in the prosecution witnesses despite of the fact, learned trial court failed to appreciate the testimony of the witnesses. The victim had lodged FIR on the basis of true facts and independent witnesses have been produced in support of the prosecution version. The case was registered against eight accused persons while the IO has filed charge-sheet against only one accused Amit Shahani. By way of adducing the evidence, prosecution has established the charge leveled against the accused/respondent thus the finding with regard to the acquittal is perverse, which is liable to be set aside and present appeal is liable to be allowed.

11. The question for determination before us is whether the trial court erred in acquitting the accused person under the above mentioned sections.

12. Before delving into facts of the present case we may delve into the law laid down in this regard. The Hon′ble Apex Court in the case of **Radhu v. State of M.P., (2007) 12 SCC 57** has observed that:-

"6. It is now well settled that a finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix. The very nature of offence makes it difficult to get direct corroborating evidence. The evidence of the prosecutrix should not be rejected on the basis

of minor discrepancies and contradictions. If the victim of rape states on oath that she was forcibly subjected to sexual intercourse, her statement will normally be accepted, even if it is uncorroborated, unless the material on record requires drawing of an inference that there was consent or that the entire incident was improbable or imaginary. Even if there is consent, the act will still be a 'rape', if the girl is under 16 years of age. It is also well settled that absence of injuries on the private parts of the victim will not by itself falsify the case of rape, nor construed as evidence of consent. Similarly, the opinion of a doctor that there was no evidence of any sexual intercourse or rape, may not be sufficient to disbelieve the accusation of rape by the victim. Bruises, abrasions and scratches on the victim especially on the forearms, wrists, face, breast, thighs and back are indicative of struggle and will support the allegation of sexual assault. The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case."

13. The prosecution has examined three witnesses with regard to establishing the facts of the case, one of them Sikandar who was examined as PW-2 and in his testimony he deposed that on 23.1.2023 when the incident happened, a missing report was lodged and endeavor to trace the victim continued. On 14.02.2023, the victim made a call on phone to someone telling him that accused Amit Shahani forcibly took her to Chandigarh Kaithal and then younger brother of the witness Sikander went there and brought her on 15.02.2023. Thereafter second set of incident had occurred and the victim was again taken away by the accused along with the co-accused forcibly, where accused respondent Amit Shahani committed rape on her.

14. On his cross-examination this witness specifically stated that at the time of incident he remained present at Puna and his father had told him the whole prosecution story. He also admitted that he did not see the incident through his naked eye, whatever he has deposed was based on the information given by his victim sister. Thus the testimony of this witness reveals that he is not an eye-witness. His statement is based on the information given by his victim sister, thus his testimony is heresay, which does not have testimonial value in the eyes of law.

15. Other witness of the fact who is Sati Prasad, examined as PW-3 also resiled from his statement given to the IO and has stated that he had heard that the victim had gone on her own accord. Thus this witness also did not support the prosecution case. Now the testimony of the victim remains, who is the star witness of the case and her testimony is on higher pedestal other than prosecution witnesses because she is the sufferer of the case.

16. In this regard the Hon'ble Supreme in the case of **Raju v. State of M.P., (2008) 15 SCC 133** has observed as under:

"10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we

respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

12. Reference has been made in Gurmit Singh case [(1996) 2 SCC 384 : 1996 SCC (Cri) 316] to the amendments in 1983 to Sections 375 and 376 of the Penal Code making the penal provisions relating to rape more stringent, and also to Section 114-A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113-A and 113-B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualised as the presumption under Section 114-A is extremely restricted in its applicability. This clearly shows that insofar as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined."

17. The whole prosecution case rests on the testimony of star witness, the victim, PW-1, who deposed that on 23.01.2023, she was sitting alone in her house, then her neighbour, Indravati, called her through her son, and when she reached there, then aunt of the accused, Amit Shahani, namely Suman, asked the victim to go to the forest with them because her stomach was upset. When they reached on the spot, then accused, Amit Shahani and Sujeet Kumar, along with two other miscreants, arrived there by a vehicle Bolero. Sujeet was having a pistol in his hand, who on the pointing of pistol, asked the victim to accompany him. Thereafter, Sujeet and Amit took her to Akbarpur railway station and thereafter they boarded the train for Delhi. On 24/01/2023, upon reaching at Delhi, they started for Chandigarh by bus. At Chandigarh, they stayed in one room. She further stated that, at night, the accused, Amit, committed rape with her. On a subsequent day he further committed rape on her and on 31/01/2023, Amit forcibly took the victim's signature on a paper which was reduced in English. She further stated that on 10.02.2023, Vijay Kumar, who was the Fufa (uncle) of Amit, forcibly solemnized her marriage with Amit. She further stated that the accused person used to detain her in a room. On 14.02.2023 when accused Amit was sleeping, then victim came out from the room and after bolting the door from outside, she made a call to her father. She also stated that on the behest of her father, she went to Sector 22 where her brother's friend met her, who brought her to his home and then the victim's brother came and took her home.

Thus from her testimony given in examination-in-chief, it is clearly demonstrated that she left her home on 23.01.2023 and till 14.02.2023, she resided with the accused Amit. During this period, she started her journey by Bolero Car from her home to Railway Station, thereafter by train she went to Delhi and then by bus to Chandigarh, where they resided for a considerable period, but at no point of time she raised any alarm to attract the attention of the public; she did not utter any single word. This was not a case of the prosecution that at the railway station no public was present. This is also not a case of the prosecution when the victim was brought to Chandigarh. It is also evident from her evidence that till 14.02.2023, she did not make any endeavor to escape or to inform anyone where she was detained or made any effort to attract the attention of any residents who were residing nearby.

18. It is also expedient to mention here that in her statement recorded under Section 164 of the CrPC, she did not disclose this fact that she raised any alarm to attract the attention of the public when she was being carried away by the accused. For the first time, during the course of cross-examination, she had stated that when she was being taken by the accused, and on the way, she was making hue and cry, but at the same time, she admitted that at the railway station, she did not raise any alarm, and she did not make an effort to seek help from the public. She also stated in her cross-examination that during the journey from Delhi to Chandigarh, they took halt at "a dhaba" where they refreshed, but she neither screamed nor made cry for help. She further stated that the accused, Amit Shahani, has established physical relations with her six to seven times.

19. Learned trial court observed that the victim was 19 years old, in this regard, Dr. P. N. Yadav, PW-9, deposed that in X-ray examination epiphyses of the right wrist of the victim was fused, on that basis, the victim's age was determined 17 to 18 years, but at the same time, it is also admitted that there may be difference of two years in determination of the age, therefore, if we consider difference of two years in the age of the victim, which is determined by the CMO, then it may be more than 18 years, meaning thereby that the victim was not minor at the time of the alleged incident. Her conduct also shows that the accused was no stranger, since she had left her home at about 3 o′clock on the calling of her neighbour, who accompanied her and took her to the forest, where accused met her and there after, he took her by a vehicle Bolero and thereafter they left for Delhi by train and then for Chandigarh by bus, where they stayed for a considerable period. It shows that accused was known to her for a long time and there was affair between them, otherwise, merely on being called by her neighbour, she would not have left her home without informing her parents.

20. As elucidated earlier that in respect of making hue and cry, there are major contradictions in the victim′s testimony. Although it is absolutely true that in the case of rape, conviction can be based on the sole testimony of the prosecutrix, as her evidence is in the nature of an injured witness, which is attributed a very high value to it by the courts, but nevertheless, when a person can be convicted on the testimony of single witness, the courts are bound to be very careful in examining such a witness and thus the testimony of such a witness must inspire confidence of the court. The testimony of the prosecutrix in the present case has however failed to inspire absolute confidence. Here it is also notable that the victim got medically examined by Dr. Sarita Prasad PW-4 who has deposed that no external injury was found on the private part or person of the injured, hymen was ruptured and healed. The Investigating Officer Sant Kumar Singh PW-7 has also

admitted that in medical examination allegation regarding commission of rape was not corroborated, despite of the fact, he added Section 376 of IPC. It is true that injury is not sine qua non for deciding whether rape has been committed, but it has to be decided on the facutal matrix of each case. As Hon'ble Apex Court has observed in many of the cases that if there is sole testimony of the prosecutrix, then it should be of a sterling quality. While considering the evidentiary value of testimony of the prosecutrix Hon'ble Apex Court in the case of **Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21** has observed that:-

"In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

21. On the anvil of the above principles when we test the version of the victim PW-1 then we find that unfortunately that the said witness has failed to pass any of the tests mentioned above. There is a total variation in her version from what was stated in the FIR and what was deposed before the court. There are material variations as regards the complexity of the accused person as well as the manner in which occurrence took place. When we consider the testimony of the prosecutrix on its face value, we find the evidence to be defective.

22. It is not believable that when the prosecutrix was caught by the accused, who is known to the prosecutrix, she went with him quite a distance on the way and then reached the railway station, thereafter she went to Delhi and thereafter she went to Chandigarh by Bus, but she did not make

endeavour to raise alarm. The only reason she gave was that the other co-accused person had threatened her on gun point, but they were exonerated by the IO.

23. In any case, as already stated above the testimony of prosecutrix does not inspire confidence. Under these circumstances, we are not inclined to interfere with the well considered judgment of the trial court.

24. Further, learned counsel for the appellant could not point out any illegality or infirmity in the judgment and order of acquittal passed in favour of respondents which is before this Court.

25. Keeping in view the aforesaid weakness of the prosecution case, as noted by the court below, we are of the view that the view taken by the court below was a probable and logical view, which is based on valid reasons. The judgment of the trial court cannot be said to be illegal, illogical and improbable and not based on material on record or is based on erroneous views and is against the settled position of law.

26. Accordingly, the appeal is **dismissed**.

27. No order as to costs.

(2026) 5 ILRA 1099
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 14.05.2026

BEFORE

THE HON'BLE AJAY BHANOT, J.
THE HON'BLE DIVESH CHANDRA SAMANT, J.

Jail Appeal No. 169 of 2018

Summilal Ahirwar **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

Matter pertains to legality of impugned order passed when guilt of accused not proved beyond reasonable doubt.

Headnotes

Murder-Indian Penal Code, 1860-S. 302- Deceased fatally assaulted with axe over alleged illicit relationship between accused (nephew) and deceased's wife- three eye-witnesses all related to accused and deceased- motive of illicit relationship set up by PW-1 contradicted by PW-2 and PW-3 -major variance between site plan and testimonies as to where witnesses were positioned-no source of light at night- presence at scene doubtful-FIR version contradicted by PW-1, PW-2 and PW-3's own accounts of accused being overpowered and tied to a tree-contradicted by Investigating Officer (PW-7) who arrested accused from his

doorstep on a tip-off-recovery memo and inquest report silent on presence of accused-unexplained delay in recording statement of PW-2 -accused sole heir to inherited property- credit of PW-1, PW-2 and PW-3 successfully impeached, testimonies discarded -trial court erred in relying on them - guilt not proved beyond reasonable doubt - conviction set aside — **Appeal allowed.**

Case Law Cited

Shahid Khan v. State of Rajasthan, (2016) 4 SCC 96

List of Acts

Indian Penal Code, 1860

List of Keywords

Circumstantial and ocular evidence; eye-witnesses; related witnesses ; illicit relationship; source of ; recovery of ; delay in recording statement under Section 161 CrPC ; property dispute ; benefit of doubt; guilt not proved beyond reasonable doubt.

Appearances of parties

Counsel for Appellant(s) : (Senior Advocate), Ali Jamal Khan, From Jail, Gyan Chandra Verma, Ramesh Prajapati, Sanjay Singh Counsel for Respondent(s) : A.G.A.

(Delivered by Hon'ble Ajay Bhanot, J.)

1. The instant appeal arises out of the judgement dated 09.11.2017 rendered by the learned Sessions Court in Sessions Trial No.79 of 2016 State vs. Summilal registered as Case Crime No. 277 of 2016 under Section 302 IPC at P.S. Talbehat, District Lalitpur.

2. The learned trial court by the impugned judgement has found the appellant guilty of the offence under Section 302 I.P.C. and has imposed a punishment of life imprisonment along with a fine of Rs. 10,000/-, and further imprisonment of 1 year upon default of payment of fine.

3. Briefly put the prosecution case set out in the FIR dated 11.05.2006 is that Sangeeta, daughter-in-law of the first informant was having illicit relations with his nephew Summilal. A quarrel broke out on 10.05.2016 at about 10:30 pm between Summilal and Prabhu (Sangeeta's husband/first informant's son) over the aforesaid relationship. In course of the altercation Summilal fatally assaulted Prabhu with an axe who fell dead at the incident site. The deceased's body was lying in front of the house. On hearing the noise, the wife of the first informant Sallo and step son Rajjan saw and chased away the accused.

4. Pursuant to the FIR, police investigations ensued and a chargesheet was filed against the appellant under Section 302 I.P.C. on 11.05.2016. Cognizance of the offence was taken by the learned trial court on 17.08.2016.

Charge:

5. The learned trial court framed the following charge against the appellant on 28.09.2016.

"यह कि दिनांक 10-05-2016 को समय करीब 22-30 बजे पी.एम. व स्थान पेश दरवाजा मकान वादी स्थित ग्राम सुनौरी थाना कोतवाली तालबेहट जिला ललितपुर में आपने वादी मुकदमा काशी अहिरवार के पुत्र प्रभू के ऊपर कुल्हाड़ी से प्रहार करके गम्भीर चोटें पहुंचाकर मृत्यु कारित कर हत्या कारित की। इस प्रकार आपने एक ऐसा अपराध कारित किया है, जो भा०दं०सं० की धारा 302 के तहत दण्डनीय है और जिसके प्रसंज्ञान लेने की अधिकारिता इस न्यायालय को प्राप्तव्य है।"

6. The charge was framed and explained to the accused. After the accused pleaded not guilty the case went to trial.

Evidences:

7. Prosecution evidences adduced during trial are depicted in tabular charts below:

Oral Evidence:- List of prosecution witnesses

Prosecution Witnesses

S No.	Witness No.	Witness	Nature of Witness
1.	P.W.-1	Kashiram	First Informant
2.	P.W.-2	Rajjan	Brother of Deceased
3.	P.W.-3	Sallo	Mother of Deceased
4.	P.W.-4	Constable Tek Singh	Head Moharrir
5.	P.W.-5	Dr Rakesh Kumar	Doctor who conducted the post-mortem
6.	P.W.-6	S.I Krishna Bihari Misra	Inquest Report Officer
7.	P.W. 7	SI Jitendra Singh	Investigating Officer

Documentary Evidences:

S No.	Documents	Proved by	Date	Exhibit
1.	Written Report	P.W.-1 Kashiram	29.11.2016	Ex. Ka-1
2.	Recovery Memo of blood stained Axe	P.W.-7 Inspector Jitendra Singh	05.08.2017	Ex. Ka-2
3.	Recovery Memo of blood stained and plain soil	P.W.-7 Inspector Jitendra Singh	05.08.2017	Ex. Ka-3
4.	Inquest Report	P.W.- 6 SI Krishna Bihari Mishra	24.07.2017	Ex. Ka-4
5.	F.I.R	P.W.- 4 Constable 705 Tek Singh	20.12.2016	Ex. Ka-5
6.	G.D Entry	P.W.-4 Constable 705 Tek Singh	05.08.2017	Ex. Ka-6
7.	Postmortem Report	P.W.-5 Dr Rakesh	22.12.2016	Ex. Ka-7

		Kumar		
8.	Letter from P.W. 6 requesting Post Mortem	P.W.- 6 SI Krishna Bihari Mishra	24.07.2017	Ex. Ka-8
9.	Letter to CMO for Post Mortem	P.W.- 6 SI Krishna Bihari Mishra	24.07.2017	Ex. Ka-9
10.	Photo Nash	P.W.- 6 SI Krishna Bihari Mishra	24.07.2017	Ex. Ka-10
11.	Police Challan- Form 13	P.W.- 6 SI Krishna Bihari Mishra	24.07.2017	Ex. Ka-11
12.	Sample Seal	P.W.- 6 SI Krishna Bihari Mishra	24.07.2017	Ex. Ka-12
13.	Site Plan	P.W.-7 Inspector Jitendra Singh	05.08.2017	Ex. Ka-13
14.	Description of all Proceedings (G.D.)	05.08.2017	05.08.2017	Ex. Ka-14
15.	Charge Sheet	P.W.-7 Inspector Jitendra Singh	05.08.2017	Ex. Ka-15
16.	FSL Report		19.01.2017	Ex. Ka-16

Material Evidences:

Sr No.	**Material**	**Exhibit**
1.	Blood Stained Soil sample	Material Exhibit- 1
2.	Plain Soil sample	Material Exhibit- 2
3.	Blood Stained Axe	Material Exhibit- 3
4.	Pant of deceased	Material Exhibit- 4
5.	T-shirt of deceased	Material Exhibit- 5
6.	Underwear of deceased	Material Exhibit- 6
7.	Amulet with thread	Material Exhibit- 7
8.	Kalava (Sacred Thread)	Material Exhibit- 8
9.	Chhalla (Ring)	Material Exhibit- 9

I. FIR:

8. The FIR records the date of incident was 10.05.2016 at about 2230 hrs. The information was received at the Police Station Talbehat, Lalitpur on 11.05.2016 at 0030 hours. Kashiram / P.W.1 the first informant testified that he had got the tehrir written down at home and submitted the same at Police Station, Talbehat, Lalitpur on 11.05.2026. The written report/tehrir bearing the thumb impression of P.W.1 was proved by him and marked as Exh Ka-1.

9. P.W.4-Constable 705 Tek Singh testified that he was on duty as head muharrir at P.S. Talbehat, when Kashiram (first informant) submitted a written tehrir at the police station. P.W.4 identified the tehrir which was marked as Exh.Ka 1. The P.W.4 further deposed that he had dictated the contents of the chik F.I.R. to Constable Devendra Singh who typed the same. The F.I.R. was signed by the Incharge of the Police Station and bore his seal. The P.W.4 proved the F.I.R. which was marked as Exh.Ka-5. P.W.4 also testified that pursuant to the receipt of tehrir an entry was

made in the general diary as Kayami report no.002 at his dictation. The said GD entry was proved by him and marked as Exh. Ka-6.

Time, Place of Incident and Cause of Death:

a. Inquest Report

10. The inquest report was drawn up by S.I. Krishna Bihari Mishra (P.W. 6) on 11.05.2016. The inquest report records that the incident was reported on 11.05.2016 at 00:30 hrs. The police party reached the site on 11.05.2016 at 01:15 hrs. The inquest proceedings were completed on 11.05.2016 at 9:30 a.m.

11. The inquest report records that in the opinion of the panchas it appeared that the deceased had died of injuries inflicted by an axe.

12. The panch witnesses to the inquest report included Rajjan /P.W. 2. The P.W.2 stated that he was a witness to the inquest proceedings and identified his signature on the inquest report whereupon the document was marked as Exh. Ka-4.

13. P.W.7/IO-SI Jitendra Singh Chandel testified that the inquest proceedings were conducted by P.W.6 in his presence. P.W.6-S.I. Krishna Behari who had written down the inquest report also proved the document and its contents before the learned trial court which was Exh.Ka-4.

b. Recovery Memo:

14. P.W.7 (S.I. Jitendra Singh Chandel) has testified that he reached the site on 11.05.2026 and prepared the recovery memo after recovering the incriminating articles. The recovery memo records that the blood stained axe was recovered in front of the door of first informant's house, and was lying near the head of the deceased. The recovered axe was taken into police custody and stitch wrapped in a piece of cloth and sealed.

15. Rajjan (P.W. 2) was the witness to the recovery memo and had fixed his signatures to the same. P.W.2 identified his signatures on the recovery memo and proved the same which was then marked as Exh. Ka-2. Exh. Ka-2 was also proved by its author P.W.7.

16. P.W. 7/Investigation Officer on 11.05.2016 also drew samples of plain soil and blood stained soil from the site of the incident. The said soil samples were respectively packed in separate plastic boxes taken into police custody, stitch wrapped and sealed. P.W. 2 was also witness to the aforesaid recovery, who identified his signatures on the recovery memo and the document was marked as Exh. Ka3.

17. The aforesaid recovery memos and their contents were proved by P.W. 7.

c. Site Plan:

18. P.W. 7 in his testimony before the trial court stated that the site plan was prepared at the pointing out of the first informant/ P.W.1 on 11.05.2016 when he visited the site of the incident. Place of occurrence as per site plan is near the front door of the informant's house. The site plan indicates that the first informant Kashiram was seated at place B in the courtyard on a charpoy and saw the incident. At place C Rajjan was lying on a charpoy and was woken up by the commotion. Rajjan saw the incident from place C. At place A, Sallo, mother of the deceased lay in bed and woke up on hearing the noise and saw the incident. All the three places A, B, C are in the open courtyard.

19. The route taken by the accused to flee the spot after the incident and upon throwing the axe near the body of the deceased has been marked in the aforesaid site plan.The site plan was proved by P.W.7/I.O. and marked as Exh.Ka13.

Medical Evidence/Postmortem report as evidence of the doctor (P.W. 5)

(i) PM report (ii) FSL report (iii) Medical Evidence

20. The inquest report records that the body of the deceased was stitch wrapped in cloth and sealed. The body was made over to constable 332 Kunwar Lal and Head Constable 213 Ram Sevak who proceeded to the mortuary along with the relevant documentation for conduct of the postmortem.

21. The postmortem was conducted on 11.05.2016 commenced at 4: 35 PM by Dr. Rakesh Kumar/P.W.5. The postmortem proceedings were concluded at 5:45 p.m.

22. The following antemortem injuries are recorded in the postmortem report:

"Injury No.1- Lacerated wound 16 cm x 3 cm on the backside of the neck bone deep. Clotted blood was present on the wound. The internal structures of the neck, specifically the trachea and the larynx along with the oesophagus were severed. Additionally, there was a fracture in the skull. Three cervical vertebrae were broken.

Injury No.2 : A stab wound located on the neck measuring 4cm x 4 cm which was also bone deep and reached injury no. 1, and the open surface of the wound was 4 cm x 4 cm.

Injury No.3 : Incised wounds were present on the back, measuring 7.00 cm x 0.50 cm, 10.00 cm x 0.50 cm, 12.00 cm x 0.50 cm, and 5.00 cm x 0.50 cm; these wounds extended deep into the muscle.

Injury No.4 : An incised wound was present in the right side of the abdomen measuring 4.00 cm x 0.50 cm extending deep into the muscles."

"चोट नं01- कटा हुआ घाव आकार 16 से.मी. x 3 से.मी. गर्दन के पिछले हिस्से में ऊपर की तरफ हड्डी तक गहरा था। चोट पर जमा हुआ रक्त मौजूद था। गर्दन के आन्तरिक अंग कंठनली व स्वर ग्रन्थि, खाने की नली कटी हुई थी। इसके साथ ही सिर की हड्डी में फ्रेक्चर था। गले की तीन वर्टिकल हड्डी टूटी हुई थी।

चोट नं02- घोंपा हुआ घाव गर्दन में आकार चार से.मी x चार से.मी. हड्डी तक गहरा चोट नं० एक तक खुला हुआ था तथा खुला भाग चार से.मी. x चार से.मी. था।

चोट नं03- कटे हुये घाव पीठ पर मौजूद थे जिनकी नाप सात से.मी.x0.50 से.मी., दस से.मी.x0.50 से.मी., 12.00 से.मी.x0.50 से.मी., 5.00 से.मी. x 0.50 से.मी. मांसपेशी तक गहरे थे।

चोट नं04- कटा हुआ घाव पेट के दांयी तरफ 4.00 से.मी. x 0.50 से.मी. मांसपेशी तक गहरा था।"

23. The postmortem report opines that the cause of death is as under:

"Shock and hemorrhage due to antemortem injuries"

24. According to the postmortem report time of death was:

"Time since death about one day."

25. P.W. 5 Dr. Rakesh Kumar proved the postmortem report which was marked as Exh Ka-7 Under cross examination P.W.-5 stated that injuries no. 1, 2 and 3 were caused by sharp edged weapon. However, injury no. 2 was a punctured wound and could have been inflicted by a pointed object such as the heel of an axe blade.

FSL Report:

26. The P.W. 7 in his testimony stated that the clothes of the deceased, the samples of plain earth and blood stained soil as well as the blood stained axe were sent to the F.S.L. for examination.

27. The F.S.L. report dated 19.01.2017 was sent by the Joint Director, Forensic Science Laboratory, Agra. The FSL report opines that human blood was found on the t-shirt, trousers as well as the blood stained samples of earth and the axe. The F.S.L. report was marked as Exh. Ka - 16 after the deposition of P.W. 7.

Material Exhibits

28. Various collected articles from the site including the blood stained axe, blood stained soil sample, plain soil sample and personal effects of the deceased were produced during the trial court and proved by P.W.7-Investigating Officer. The collected articles were marked as exhibits in the following manner:

1. Sample of bloodstained soil- **Material Exhibit-1**

2. Sample of plain soil- **Material Exhibit-2**

3. Bloodstained Axe- **Material Exhibit-3**

4. Pant of the deceased- **Material Exhibit-4**

5. T-shirt of the deceased- **Material Exhibit-5**

6. Underwear of the deceased- **Material Exhibit-6**

7. Amulet with thread- **Material Exhibit-7**

8. Kalava (Sacred thread)- **Material Exhibit-8**

9. Challa (Ring) - **Material Exhibit-9**

Oral Testimonies

P.W. 1 Kashiram - first informant

29. P.W. 1 Kashiram the deceased's father and first informant deposed as P.W. 1. P.W. 1 in his testimony before the trial court stated that Prabhu (deceased) and Summilal(accused) started arguing over the latter's affair with Sangeeta (wife of the deceased). Hot words were being exchanged between Prabhu and Summilal, when Summilal inflicted repeated axe blows on Prabhu. Prabhu fell to his death instantly. P.W. 1 has also stated that the accused used to handover his earnings to the wife of Prabhu. During the trial P.W.1 identified the accused as Summilal who had killed the deceased by attacking him with an axe.

P.W. 2 Rajjan - step brother of the deceased

30. Rajjan, the step brother of the deceased was introduced as P.W. 2. P.W. 2 in his deposition stated that the incident occurred on 10.05.2016 at about 9 to 9:30 p.m. P.W. 2 was in his house at the time of the incident. An altercation broke out between the deceased Prabhu and his wife with the accused Summilal. Prabhu asked his wife not to give rotis to Summilal and refuse him entry into their house. P.W.2 went to their house and after separating the parties stood at a distance of about 10 paces. Summilal inflicted 3 or 4 axe blows on Prabhu's neck and body.

31. P.W.2 Rajjan thereafter testified that he and 5 to 6 other persons overpowered Summilal and tied him to a tree. His father went and informed the police. When the police arrived they arrested Summilal and also recovered the bloodstained axe from a spot near his place of arrest.

P.W.3-Smt. Sallo

32 . Smt. Sallo-mother of the deceased entered the witness box as P.W.3 in her testimony before the learned trial court. P.W. 3 stated that the incident occurred about 7 months ago. P.W.3 stated that at about 10 P.M. she was sitting in her house with her husband (P.W.1) and son Rajjan (P.W.2). Prabhu was in his house which is adjacent to hers. Prabhu was telling his wife not to give food to Summilal nor permit him to enter their house. On hearing Prabhu's voice she rushed to the

site and witnessed the killing. Summilal attacked Prabhu with an axe. Prabhu dropped dead at the site. P.W.3 identified the accused in court.

33. According to P.W.3 Summilal was overpowered by her son Rajjan (P.W.2) and other persons along with the axe at the spot. Summilal was then tied to a Munga tree, and the axe was in his possession. After receiving information from her husband, the police authorities came to the site and arrested Summilal with the axe.

P.W.7-Jitendra Singh Chandel

34. The investigation officer was introduced by the prosecution as P.W.7. P.W.7 in his testimony described the process of investigation after receipt of the tehrir on 11.05.2016 at about 0030 hours.

35. P.W. 7 deposed before the learned trial court that he recorded the statement of the witnesses of the panchayatnama and the eye witness Rajjan on 09.06.2016.

Submissions from the Bar:

Arguments on behalf of appellant

36. Shri N.I. Jafri, learned Senior Counsel/Amicus Curiae, assisted by Sri Ali Jamal Khan, learned Amicus Curiae have canvassed the following submissions in favour of the appellant as under:

I. There are material contradictions in the F.I.R. and testimony of P.W.1.

II. There are major inconsistencies in the statements of the eye witnesses as well as other prosecution evidences in the record. The eye witnesses are unreliable and their testimonies are liable to be disbelieved. The presence of the P.W.-1, P.W.-2 and P.W.-3 at the site when the incident occurred is doubtful.

III. The prosecution failed to establish the presence of the appellant at the site of the incident and his arrest in the manner deposed to by P.W.1, P.W.2 and P.W.3. Inquest report, recovery memo and the arrest memo contradict the testimonies of P.W. 1 P.W 2 ,P.W. 3, and P.W.7 regarding arrest of the accused and recovery of the axe.

IV. Post mortem report and medical evidence disclose that all injuries were not caused by axe.

V. The appellant has been falsely implicated only to usurp his property.

VI. The delay in recording the statement of the eye witnesses particularly P.W.-2 who was present at the time of the inquest report as well as recovery memo supports the conclusion that the appellant was falsely framed in the instant case.

VII. The prosecution failed to establish the case against the appellant beyond reasonable doubt.

Arguments on behalf of State

37. Shri Paritosh Kumar Malviya, learned A.G.A-I and Shri Rishi Chaddha, AGA have vehemently opposed the submissions of learned Senior Counsel and have made following submissions:

I. This is a case of direct evidence and all prosecution witnesses gave consistent testimonies and remained unshaken during the cross-examination.

II. The ocular testimonies of the prosecution witnesses finds further corroboration in the post mortem report.

III. Material evidences like recovery of the dead body, recovery of weapon of assault, bloodstained soil establish the place of incident. Arrest of the appellant from the site also supports the prosecution case.

IV. The FSL report opines that human blood sample were found on the clothes of the accused corroborated the prosecution case.

V. The prosecution has proved the guilt of the appellant beyond reasonable doubt.

VI. The accused cannot be given the benefit of lapses in the investigation.

Appraisal of evidences:

I. FIR:

38. Recitals in the FIR and submission of tehrir, GD entry and other documentary evidences including the postmortem report does not disclose any inordinate delay in lodgement of the FIR. However, the veracity of the prosecution case set out in the F.I.R. can only be determined upon further appraisal of evidences in the record.

II. Place of Recoveries :

39. The body of the deceased was recovered from the place which is close to the house of the first informant. The blood stained axe was lying near the body of the deceased from where it was recovered.

Prosecution version of the incident and complicity of the accused:

Motive:

40. As per recitals in the FIR and testimony of P.W. 1 the cause for dispute between the deceased Prabhu and Summilal was illicit relations of the accused Summilal with Sangeeta (wife of the former). However, under cross examination P.W.1 stated that in the past there was no incident of quarrel between the accused and the deceased. Though Prabhu discouraged his wife from giving rotis to the accused Summilal. Summilal resided with Prabhu and his wife.

41. P.W. 2 Rajjan who is the stepson of P.W. 1 did not make any statement regarding illicit relations between the accused Summilal and Sangeeta. On the contrary he stated that Summilal and Prabhu resided separately and Summilal had his independent source of living and ran a separate kitchen. Summilal stayed separately from Kashiram as well.

42. P.W. 3 who is the mother of the deceased categorically testified that Summilal and wife of the deceased did not have any illicit relations. Further, P.W. 2 resided separately and independently managed their affairs.

43. The motive for commission of the offence as brought out by the P.W. 1 has been contradicted by P.W. 2 and P.W. 3. The said contradiction assumes significance inasmuch as three witnesses belong to one family and are also related to the accused appellant.

44. Under cross-examination P.W.2 stated that sometime back the accused had assaulted the deceased. However, no FIR was registered. The immediate cause of the fatal assault as per the three witnesses was an altercation which is distinct from the deep seated motive alleged by P.W. 1.

45. In this wake pre-existing motive on account of illicit relationship between the wife of the deceased and the accused-appellant is not worthy of belief.

Delay in recording the statement of P.W.2

46. The statement of PW-2 was recorded by the investigating officer on 09.06.2016 There was no justifiable reason for failure to record the statement of P.W.2 on a timely basis. P.W.2 was present when P.W.6 and police party had arrived at the site on 11.05.2016 after the tehrir was received at the police station. P.W.2 was witness to inquest report and the recovery memo which were drawn up on 11.05.2016. The admitted delay on part of P.W.6 in recording the statement of P.W.2 also makes the prosecution case questionable. The discussion can profit from authorities in point.

47. The Supreme Court in **Shahid Khan v. State of Rajasthan** while considering the effect of unexplained delay in recording the statement of a material witness by the Investigating Officer held as under:

"20. The statements of PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir were recorded after 3 days of the occurrence. No explanation is forthcoming as to why they were not examined for 3 days. It is also not known as to how the police came to know that these witnesses saw the occurrence. The delay in recording the statements casts a serious doubt about their being eyewitnesses to the occurrence. It may suggest that the investigating officer was deliberately

marking time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced. The circumstances in this case lend such significance to this delay. PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir, in view of their unexplained silence and delayed statement to the police, do not appear to us to be wholly reliable witnesses. There is no corroboration of their evidence from any other independent source either. We find it rather unsafe to rely upon their evidence only to uphold the conviction and sentence of the appellants. The High Court has failed to advert to the contentions raised by the appellants and reappreciate the evidence thereby resulting in miscarriage of justice. In our opinion, the case against the appellants has not been proved beyond reasonable doubt."

Presence of witnesses and accused at the time of the incident:

48. The second question which arises for consideration is the location of the houses of P.W. 1, P.W. 2, P.W. 3, accused and the deceased and whether the eye witnesses were present at the site of the incident when it occurred.

49. The location of houses of the parties are depicted in the site plan. P.W. 1 and P.W. 3 reside in the same house P.W. 2, the deceased and the accused resided separately in their respective houses . There is an open courtyard near the houses.

50. P.W. 1 in his testimony has stated that he and Prabhu stayed separately. Summilal resided with Prabhu. P.W. 1 deposed that at the time of the incident, he and his son Prabhu were in their respective houses. In his testimony P.W. 1 has not stated that he had seen the incident, nor mentioned about the presence of P.W. 3.

51. P.W. 2 claims that he was in his house when the incident occurred. He reached the site only upon hearing the altercation between the accused and the deceased.

52. P.W. 3 has stated that she, P.W. 1 and P.W. 2 were together in her house. Prabhu was in his house. She had seen the incident. There is no source of light in her house. The incident occurred in the night. Under cross-examination P.W. 3 stated that she was lying on a cot when the incident occurred and rushed to the site on hearing Prabhu's voice and saw the incident.

53. The site plan on the contrary shows that all the three witnesses were sitting in the open courtyard and not in their respective houses. As per the site plan all the three witnesses had a clear uninterrupted view to the site of the incident. However, from the site plan it is equally evident that no one could see the incident sitting in their houses.

54. There are major variations in the site plan and testimonies of P.W.-1, P.W.-2 and P.W.-3 with respect to the houses of the parties and the places from where the said witnesses saw the incident.

55. Furthermore the depositions of P.W. 1, P.W. 2 and P.W. 3 in respect to the place where the respective witnesses were present at the time of incident and the manner in which they had witnessed the incident are also mutually contradictory.

56.The witnesses were aware of the difference between a courtyard and house.

57. In view of the aforesaid inconsistencies the presence of the witnesses at the site of the incident and their claims to have witnessed the incident are seriously in doubt.

Presence of accused at the site when the incident occurred, arrest of accused, presence of eyewitness, recovery of axe and credibility:

58. The prosecution story stated in the FIR is that the accused inflicted fatal blows to the deceased. On hearing the commotion Sallo and the step son of the first informant P.W. 2 saw and chased away the accused.

59. The version of the FIR is contradicted in the testimony of the first informant. Under cross examination P.W.1 had stated that when the police reached the spot Summilal was lying tied up (bound down by rope/cloth) in the house and was trying to hang himself. The police untied Summilal. The axe was in the possession of Summilal and was recovered by the police from him.

60. The version of P.W.2 in respect of the immediate aftermath of the incident is also at sharp variance with the testimony of P.W.1.

61. According to the testimony of P.W.2 as seen earlier, after the incident the accused was overpowered by him along with five to six persons and tied to a tree. The accused was arrested with the axe at the site of the incident by the police. Under cross-examination, P.W.2 elaborated that he along with others had tied the accused to a tree. The police on their arrival untied the accused and arrested him. The weapon of assault was recovered from a point two feet away from the accused.

62. P.W.3 testified that Summilal was overpowered by Rajjan/P.W.-2 and others at the site of the incident, and tied up along with the axe to a Munga tree. The tree is in the courtyard of her house. When the police arrived at the spot they untied the accused from the tree and took him into the custody. When the police arrested Summilal the axe was with him.

63. The version of the arrest of the accused and recovery of axe from him as brought out in the testimonies of P.W. 1, P.W. 2 and P.W. 3 is squarely contradicted in the deposition of P.W.7/IO who had effected the arrest of the accused. P.W 7 under cross-examination stated that the accused was arrested from his doorstep, after a tip off was received from an informer. The arrest memo which is registered as Paper no. Ka-1 records that the accused was arrested on 11.05.2016 at 1400 hours from the front of his house.

64. Investigative processes like inquest and recovery commenced at the site on 11.05.2016 at 9:30 a.m. The recovery memo and the inquest report do not record the presence of the accused. P.W. 2 was witness to inquest report and recovery memo. At the time the said documents were drawn up, he did not inform the IO/P.W. 7 and P.W. 6 about the presence of the accused at the site. The recovery memo also does not state that the axe was recovered from the accused as was deposed by P.W. 1, P.W.2 and P.W.3. The Investigating Officer/P.W. 7 in his testimony has not stated that the axe was recovered from the accused or was lying near him when he was arrested. P.W. 7 stated

that the axe was near the head of the dead body at the time of recovery. P.W. 7 was silent on the presence of accused at the time of recovery of the axe.

65. The aforesaid contradictions in the prosecution case set out in the F.I.R., testimonies of P.W.1, P.W.2, P.W3, testimony of P.W.7 and other documentary evidences tendered by the prosecution are grave and irreconcilable. The presence of P.W.1, and P.W.3 at the time of the incident is doubtful. The claims of P.W.2 and P.W.3 of having witnessed the incident are not worthy of belief. Due to aforesaid inconsistencies in testimonies the credit of P.W.1, P.W2, and P.W.3 has been successfully impeached. The testimonies of P.W. 1, P.W. 2 and P.W. 3 insofar as they implicate the appellant are disbelieved. The testimonies of P.W. 1, P.W. 2 and P.W. 3 are accordingly discarded.

Section 313 Cr.P.C.: Proceedings

66. The accused was alerted to various incriminating evidences which emerged against him during the trial. The accused in his defence in the aforesaid proceedings stated that he was falsely framed as the first informant and his party wanted to usurp his share of the property.

67. Prosecution evidence in the record establishes that the accused was the nephew of P.W.1 and P.W.3. The accused is sole heir to the property which has devolved upon him by inheritance from his father. P.W.1, P.W.2, and P.W.3 have admitted their relationship with the accused and have consistently testified that the accused was unmarried and does not have any legal heirs.

Trial Court Judgment

68. The learned trial court in the impugned judgment, while convicting the appellant found P.W. 1, P.W. 2, and P.W. 3 to be reliable eyewitnesses. After upholding the implicatory testimonies of given by P.W.1, P.W. 2, and P.W. 3 learned trial court found them consistent with the various other prosecution evidences, including the post-mortem report, recovery memo, inquest report, and FSL report. On these footings, the learned trial court found the accused guilty of the offence under 302 IPC.

69. For the reasons stated in the preceding narrative, the learned trial court erred in law by not impeaching the credit of P.W.1, P.W. 2, and P.W. 3. The judgment rendered by the learned trial court is liable to be set aside and is set aside.

Conclusions:

70. In light of the preceding discussion, the prosecution has not been able to prove the charges against the appellant under Section 302 I.P.C. beyond reasonable doubt. The accused is liable to be acquitted and is acquitted of the charges framed against him by the learned trial court.

71. The Jail Appeal is allowed.

72. The appellant shall be forthwith released from prison and set forth at liberty unless required in any other criminal case.

73. The Court would like to accord its deep appreciation for the scholarly assistance rendered by Shri N.I. Jafri, learned Senior Counsel/Amicus Curiae assisted by Shri Ali Jamal Khan, learned Amicus Curiae for the appellant.

74. A copy of this judgement translated in Hindi to be communicated to the appellant by the Secretary, District Legal Services Authority.

(2026) 5 ILRA 1113
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 04.05.2026

BEFORE

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

Jail Appeal No. 212 of 2011

Dev Bahadur Yadav @ Matru Yadav ...Appellant
Versus
State of U.P. ...Respondent

Issue for consideration

Matter pertains to legality of child testimony.

Headnotes

Culpable Homicide not amounting to murder-Indian Penal Code, 1860 -Ss. 302, 304-Sole child eyewitness-appreciation of evidence-reliability-FIR suffering from infirmities not fatal-accused-husband causing death of wife by axe blows during sudden domestic quarrel-Ocular evidence corroborated by medical evidence-establishing homicidal death -delay in recording statement of child witness-omission of her name in FIR- improvements in testimony and alleged ante-timing of FIR -held not sufficient to discredit prosecution case-incident in course of sudden quarrel-without premeditation-without acting in cruel or unusual manner-held case covered by Exception 4 to S. 300 -Conviction altered from S. 302 to S. 304 Pt. II -Sentence reduced to period already undergone-fine maintained. **Appeal partly allowed.**

Case Law Cited

1. Pramila v. State of U.P., (2021) 12 SCC 550
2. State of U.P. v. Anil Singh, (1988) 3 SCC 68
3. Surinder Kumar v. Union Territory, (1989) 2 SCC 217
4. Chandigarh, Pundalik v. State of Maharashtra, (2010) 15 SCC 122
5. Rambir v. State (NCT of Delhi), (2019) 6 SCC 122

List of Acts

Indian Penal Code, 1860

List of Keywords

Testimony of a child witness, doctrine of falsus in uno-falsus in omnibus, heat of passion, sudden quarrel.

Appearances of parties

Counsel for Appellant(s) : Jail Appeal In Person, Dhananjay Kumar Singh Counsel for Respondent(s) : A.G.A

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

1. Heard, Sri Dhananjay Kumar Singh, learned Amicus Curiae for the appellant and Sri Pawan Kumar Mishra, learned AGA for the State. Perused the records.

2. The aforesaid jail appeal arises out of judgment and and order dated 27.10.2010 passed by the Additional Sessions Judge/Special Judge, Pratapgarh in S.T. No. 248 of 2009 (*State v. Dev Bahadur @ Matru Yadav*), arising out of case crime no. 62 of 2009, Police Station Antu, Sub-District Sadar, District Pratapgarh, whereby the appellant has been convicted under Section 302 of Indian Penal Code, 1860 (in short I.P.C.) for life imprisonment along with a fine of Rs. 20,000/ and in case of non-payment of fine, an additional imprisonment of six months.

Prosecution Story in Nutshell:

3. The prosecution story, in brief, is that on 27.03.2009, complainant Ram Bodh Yadav, s/o Sukhai Yadav, r/o village Shukulpur, Police Station Antu, District Pratapgarh submitted a written report stating therein that his daughter, Sunita, was married to Dev Bahadur @ Matru, s/o Nanda Yadav, r/o village Babu Ka Purwa Majra Umri, Police Station Antu, around fifteen years ago. On 27.03.2009 he received an information over telephone that his daughter, Sunita, had been murdered by her husband, Dev Bahadur @ Matru, with an axe at around 6:00 AM. On receiving such information he came to village Babu ka Purwa Majra Umri and saw that his daughter′s body was lying on a cot under a thatched roof.

4. On the basis of the written report, an F.I.R was registered under Section 302 I.P.C against the accused, Dev Bahadur @ Matru. The investigation of the case was entrusted to S.I. Upendra Yadav, who proceeded to the place of occurrence on the same day and conducted the inquest proceedings.

5. Upon completion of investigation, charge-sheet was submitted against the accused-appellant under Section 302 I.P.C. Thereafter, the case was committed to the Court of Session, where charge under Section 302 IPC was framed against the accused. The accused denied the charge, pleaded not guilty, and claimed trial.

6. In order to prove its case, the prosecution examined Ram Bodh Yadav (PW-1), Shalu(PW-2), Dr. Alok Shukla (PW-3), Constable Raj Bahadur Yadav (PW-4), Constable Gaya Prasad Patel (PW-5), and S.I. Upendra Yadav (PW-6).

7. Besides the aforesaid witnesses, the Trial Court, in exercise of its powers, examined S.I. Jai Shankar Ram as Court Witness (CW-1). The defence, however, did not adduce any oral or documentary evidence in support of its case.

8. The following exhibits were produced and proved before the Trial Court:

EXHIBIT NUMBER	**PARTICULARS**
Ext Ka-1	Written Report
Ext Ka-2	Post-mortem Report
Ext Ka-3	FIR
Ext Ka-4	Carbon Copy of GD and FIR
Ext Ka-5	Panchayatnama
Ext Ka-6	Sketch of dead body
Ext Ka-7	Police Form No. 13
Ext Ka-8	Letter to RI
Ext Ka-9	Letter to CMO
Ext. Ka-10	Sample Seal
Ext. Ka-11	Site plan of the place of occurrence
Ext. Ka-12	Recovery memo of axe
Ext. Ka-13	Site plan of recovery of axe
Ext. Ka-14	Recovery memo blood-stained earth, pieces of bangles of the deceased, blood stained woven cot, blood stained pieces of bed
Ext. Ka-15	Letter sent to the Forensic Science Laboratory, Lucknow for examination of clothes of the deceased, axe, blood-stained and plain earth, bedding and piece of a cot
Ext. Ka-16	Charge-sheet
Ext. Ka-17	Forensic examination report

9. The following material exhibits were produced and proved before the Trial Court:

EXHIBITS NUMBER	**ITEM/DESCRIPTION**
Material Exhibit-1	Sealed cloth containing axe, three sealed boxes and sealed bundle
Material Exhibit-2	Axe
Material Exhibit-3	Cloth used for sealing an axe
Material Exhibit-4	Sample of plain earth

Material Exhibit-5 & 6	Two sealed envelope
Material Exhibit-7	Sealed box
Material Exhibit-8	Bloodstained bedding
Material Exhibit-9	Bloodstained binding of cot
Material Exhibit-10	Piece of saree
Material Exhibit-11	Piece of petticoat
Material Exhibit-12	Piece of blouse
Material Exhibit-13 to 16	Sealed Envelope
Material Exhibit-17	Yellow metal ring
Material Exhibit-18 & 19	White metal anklet
Material Exhibit-20 & 21	Yellow metal ear tops
Material Exhibit 22	Yellow metal nose pin

10. The statement of the accused-appellant was recorded under Section 313 Cr.P.C., wherein he denied that he had ever been previously arrested in connection with any complaint lodged by the deceased, and that his arrest in present case and the recovery of the weapon were fabricated and wrong. He refused to have given any confessional statement to the police and alleged that the recovery of the T- shirt was also fabricated. He further stated that the FIR and GD are ante-timed and that the witnesses have given false testimony to frame him. The statement of the accused-appellant was recorded under Section 313 Cr.P.C., wherein he stated that he was not previously arrested on the basis of the complaint of the deceased and that his arrest and the recovery of the weapon were fabricated and wrong. He refused to have given any confessional statement to the police and alleged that the recovery of the T-shirt was fake. He further stated that the FIR and GD are ante-timed and that the witnesses have given false testimony to frame him.

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

11. Learned counsel for the accused-appellant submitted that the prosecution case is wholly unreliable and suffers from material contradictions, inasmuch as the FIR is ante-timed and appears to be concocted, which is evident from the inconsistencies in the prosecution timeline. It is further submitted that PW-2 Shalu, who is projected as the sole eyewitness, finds no mention in the FIR, and PW-1 has admitted that he did not disclose her name at the time of lodging the report, thereby casting serious doubt on her presence. Learned counsel further submitted that the occurrence took place in the course of a sudden quarrel between husband and wife, without any premeditation, and the act was committed in the heat of passion without the accused having taken undue advantage or having acted in a cruel or unusual manner; thus, no offence under Section 302 I.P.C. is made out and, at the highest, the case would fall within Exception 4 to Section 300 I.P.C., attracting Section 304 Part II I.P.C., there being no intention to cause death.

Submissions made by learned A.G.A : -

12. Per contra, learned A.G.A. submitted that the prosecution case is fully supported by the evidence on record and the conviction recorded by the trial court is well-founded. It is contended that the testimony of PW-2 Shalu is reliable and inspires confidence, and merely because her name was not mentioned in the FIR would not render her evidence unreliable. It is further submitted that the FIR cannot be said to be ante-timed and the alleged discrepancies are minor in nature. It is further submitted that the nature of injuries, particularly on vital parts of the body, clearly establishes intention to cause death and, therefore, the case squarely falls within the ambit of Section 302 I.P.C. and no case for conversion to Section 304 I.P.C. is made out.

Oral Testimonies:

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

13. **PW-01 Rambodh Yadav**, deposed that the incident took place on 27.03.2009 at about 6:00 A.M. He further deposed that he received information by telephone that his son-in-law, Dev Bahadur alias Matru Yadav, had killed his daughter, Sunita (deceased), by hitting her with an axe (kulhadi). He further deposed that upon receiving such information, he reached the house of his daughter and saw that her dead body was lying on a cot under a thatched roof (chhappar). He further deposed that he had performed the marriage of his daughter, Sunita, with the accused, Dev Bahadur. He further deposed that his daughter had three children from the accused and the eldest daughter Shalu was about 12 years of age. He further deposed that middle son is Kallu and youngest one is Bachha. He further deposed that his son-in-law was addicted to intoxicants and used to beat his daughter after consuming liquor. He further deposed that his daughter used to persuade the accused to give up his addiction, but he did not agree. He further deposed that due to such conduct, his daughter had earlier filed a case against the accused and he was sent to jail, but even after his release, there was no improvement in his behaviour. He further deposed that due to his bad habits, the father of the accused had separated him from the family about five years prior to the incident. He further deposed that the accused had cut and sold a Mahua tree situated in front of the house and had spent the money on his addiction. He further deposed that his daughter used to oppose such conduct and due to this dispute, the accused killed her by assaulting her with an axe. He further deposed that he got the report written through a village Thakur and after reading the same, submitted it at the police station, proving it Ext. Ka-1.He further deposed that the police conducted the inquest proceedings at the place where the body was lying and he had signed the same. He further deposed that on the same day at about 2:00 P.M., the police arrested the accused at Antu Railway Station in his presence and there were bloodstains on his T-shirt. He further deposed that the accused confessed before the police and disclosed about the axe used in the crime, which he had concealed. He further deposed that the accused led the police to his house and recovered the axe from the thatched roof (chhappar).

14. **During cross-examination**, he deposed that he was present when father of the accused had separated him (accused) from the family. He further deposed that his house is at a distance of about 4 to $4^{1/2}$ kos (13 to 14.5 Km) from the place of occurrence and he cannot tell the name of the

person who informed him by phone. He further deposed that he received the information at about 8:00 A.M. and it took him about one hour to reach the village by motorcycle. He further deposed that when he reached the house of his daughter, the police had already arrived there. He further deposed that it took about 5 to 10 minutes to get the report written and about half an hour to reach the police station, and he reached the police station at about 10:30 to 11:00 A.M. He further deposed that he had informed the Inspector that Shalu had witnessed the incident and had also given her statement, but he (witness) did not mention this fact in the written report. He further deposed that Shalu was present at the place of occurrence and had given her statement to the police. He further deposed that he could not tell the exact size of the axe blade but stated that it was small and fixed on a handle of about 1 to $1^{1/2}$ hands in length. He further deposed that he came to know about the accused beating his daughter about 12-13 years after the marriage and that the deceased had also filed a report regarding such beatings. He further deposed that the thatched roof where the incident took place was about 8 hands long and 4 hands wide and was surrounded by bamboo screens on all sides and there was no wooden door. He further deposed that about 3-4 steps to the north of the place of occurrence, there was the house of his relative Nanda. He further deposed that the deceased was lying on the cot on her right side, covered with a blood-stained sheet and there was blood on her clothes. He further deposed that when he reached the place of occurrence, the accused was not present there. He further deposed that the Inspector arrested the accused from Antu Railway Station at about 2:00 P.M., but he was not present at the time of arrest. He further deposed that he had not received any telephone call and that relatives from Nevada village had come and informed him about the incident. He further deposed that Nevada village is about 1 km away from his village. He further deposed that he received information about the incident at about 8:00 A.M. and denied the suggestion that the deceased was murdered by some unknown person in the night. He further denied the suggestion that he has falsely implicated the accused at the instance of others or that Shalu had not informed him about the incident.

15. **PW-02 Shalu**, daughter of deceased and accused-appellant, aged about 12 years, was examined before the Trial Court. Before recording her testimony, the Court conducted a preliminary inquiry and she deposed that she was studying in Class 5 in the village primary school and understood the meaning of an incident and oath, and that one must speak the truth and not tell lies. She further deposed that she was able to distinguish between right and wrong. Upon such satisfaction, the Trial Court found her competent to depose and proceeded to record her testimony.

16. **During examination-in-chief**, she deposed that the incident had occurred about one year prior and at about 6:00 A.M., her father assaulted her mother with an axe (*kulhadi*), as result of which she died at home. She further deposed that at the time of the incident, she was warming herself near a bonfire (*kauda/कौड़ा*), while her parents were quarreling inside the thatched roof (*chhappar*) on account of domestic dispute relating to the conduct of the accused, who used to sell household articles and would not maintain the family. She further deposed that such quarrels were frequent and, on the date of occurrence, during the course of such dispute, the accused struck her mother with an axe on the neck and head. She further deposed that when her parents were arguing, her father scolded her due to which she got frightened and remained standing there. She further deposed that after the occurrence, the accused remained there and thereafter her grandfather and villagers came, caught hold of the accused and tied him to a tree. She identified the accused, who was present before the trial court.

17. **During cross-examination**, she deposed that she was sitting near the bonfire at a short distance from the thatched hut, along with her younger brother Dharmaraj, while her parents were inside. She further deposed that it was early morning and not fully daylight at the time of the incident. She further deposed that her mother was lying on a cot due to illness, when she was assaulted by the accused. She deposed that prior to the incident, partition had taken place between her father and grandfather. On the previous night, they had dinner and went to sleep at about 8:00 P.M. and there was no quarrel between her parents. At the time of the incident, her mother was suffering from fever and was lying on a cot, when the accused assaulted her and she could not save herself. She further deposed that her grandfather and villagers arrived about half an hour after the incident and thereafter the police came, completed the paperwork and took the accused to the police station. She further deposed that she had shown the place of occurrence to the Investigating Officer and informed him that her father had assaulted her mother. She further deposed that after she raised alarm, the accused came out of the hut and ran towards the drain. At the time of the incident, he was carrying an axe and a knife and assaulted her mother with both, and was wearing jeans and a full-sleeved black baniyan (vest).She further deposed that her father had separated from her grandfather and did not maintain the family, and that her grandfather used to support them. She denied the suggestion that her mother was killed by unknown persons or that she had not witnessed the incident or was falsely implicating her father.

18. **P.W-03 Dr. Alok Shukla**, District Hospital, Pratapgarh, deposed that on 27.03.2009 he was posted as a Consultant at the District Hospital, Pratapgarh and at about 3:30 P.M., he conducted the post-mortem examination of the deceased Sunita, aged about 29 years, and proved the post-mortem report (Ext. Ka-2). He further deposed that the death had occurred approximately 12 hours prior to the examination. He further deposed that the following ante-mortem injuries were found on the body of the deceased:

- Injury No. 1: Incised wound 3 cm X 2 cm X bone deep, on right side of neck, 4 cm below right angle of mandible; underlying structures are cut.
- Injury No. 2: Incised wound 3 cm X 1 cm X muscle deep, on the right side of upper most part of neck, 2 cm below right ear; underlying structures are cut.
- Injury No. 3: Incised wound 8 cm X 6 cm X brain deep, on the left side of the occipital region of scalp on the back of the head; underlying structures are cut.

He further deposed that on internal examination, the heart was empty due to excessive blood loss and the cause of death was shock and haemorrhage resulting from ante-mortem injuries.

19. **During cross-examination**, he deposed that the time of death could be around 3:30 A.M. with a variation of 2-3 hours. He further deposed that the injuries could have been caused by a sharp-edged weapon, which may include an axe or a knife. He further deposed that all injuries could have been caused by a single weapon, though it was also possible that different injuries were caused by different sharp-edged weapons. He further deposed that he had not been shown the weapon of offence and could not give any specific opinion in that regard.

20. **PW-04 Raj Bahadur Yadav**, Constable, deposed that on 27/3/2009, he was posted as Constable in Antu Police Station and on the same day, at around 8:10 A.M., on the basis of the

written report of the complainant, Shri Ram Bodh Yadav, a cognizable offence had been disclosed and under check no. 37, crime no. 62/09, a case under Section 302 of the I.P.C was registered against accused- appellant, Dev Bahadur. He proved that the Check Paper is in his handwriting and signature (Ext. Ka-3).

21. **During the cross-examination**, he deposed that when the complainant arrived between 8:00 -10:00 A.M., he immediately registered the FIR. He denied the suggestion that complainant went to the police station at around 11:00-12:00 A.M. to get the FIR register and that check FIR was anti-timed.

22. **PW-05 Gaya Prasad Patel**, Constable, deposed that on 27.3.2009 he was posted as Constable in Antu Police Station. He further deposed that he recorded the details of the proceedings in case crime no. 62/09 registered by him and he also proved the entry of the same in the General Diary as Ext. Ka-4.

23. **During Cross-Examination**, he proved that FIR was registered by constable Raj Bahadur. He deposed that after the GD entry was made the IO left for the place of incident. He denied the suggestion that entry in the GD was anti-time.

24. **PW-06 Upendra Yadav**, SHO, Police Station Atnu, District Pratapgarh, deposed that on 27.03.2009 he was posted as Station House Officer and on the same day, on basis of complaint by Rambodh Yadav, Case Crime No. 62/9 under Section 302 of the I.P.C was registered and he took up the investigation. He further deposed that he, along with SI Jai Shankar Rai, immediately proceeded to the place of the occurrence. He verified and proved panchayatnama as Ext. Ka-5, which was prepared by SI Jai Shankar Rai at his (witness) instance. He further proved sketch of dead body as Ext. Ka- 6, Police Form 13 as Ext. Ka- 7, letter to RI as Ext. Ka- 8, letter to CMO as Ext. Ka- 9, sample seal as Ext. Ka- 10 and site plan of the incident site as Ext. Ka- 11. He further deposed that after recording the statements of the witnesses, the accused was arrested and admitted to having committed the offence. He further deposed that pursuant to such disclosure, the axe used in the offence was recovered at the instance of the accused, for which recovery memo was prepared and proved as Ext. Ka- 12. He also proved the site plan of place of recovery as Ext. Ka- 13. He further proved the recovery memo of samples of blood stained and plain earth taken from the place of incident, pieces of bangles of the deceased, blood stained woven cot, blood stained pieces of bed as Ext. Ka- 14. He further verified and proved the letter sent to the Forensic Science Laboratory, Lucknow for examination of clothes of the deceased, axe, blood-stained and plain earth, bedding and piece of a cot as Ext. Ka-15. He further proved the charge sheet dated 18.6.2009 as Ext. Ka-16. He further deposed that the axe sent to the Forensic Science Laboratory was returned after examination in sealed cloth and is produced before the trial court as Material Ext.- 1.Upon opening the sealed cloth before the Trial Court, an axe, three sealed boxes, and a sealed bundle were found. The witness identified the axe as the same, which was recovered at the instance of the accused and it was as Material Ext.- 2, and cloth used for sealing the axe was marked as Material Ext.-3. Further, when the sealed boxes were open, sample of a plain earth was found in one box which was marked as Material Ext.- 4; from second box, two sealed envelope were found, which were marked as Material Ext.-5 and 6 respectively and box was marked as Material Ext.-7. The envelope marked as Material Ext.-5 conditioned a piece of bloodstained bedding, which was marked as Material

Ext.-8 and the envelope marked as Material Ext.-6 contained a piece of bloodstained rope of cot (खून लगा हुआ चारपाई के बांध का एक टुकड़ा), which was marked as Material Ext.-9. Further when a sealed bundle was opened, a piece of saree, a piece of petticoat, a piece of blouse, and four sealed envelopes were found. The saree was marked as Material Ext.-10, petticoat as Material Ext.-11, pieces of blouse as Material Ext. 12; and the four envelopes were marked as Material Ext.- 13, 14, 15 and 16 respectively. He further deposed that the envelope marked as Material Ext. 13 contained a yellow metal ring, which is marked as Material Ext.17; the envelope marked as Material Ext.-14 contained two white metal anklets (payal) which were marked as Material Ext. 18 and 19 respectively; the envelope marked as Material Ext.-15 contained two yellow metal ear tops which were marked as Material Ext. 20 and 21 respectively; and envelope marked as the Material Ext.- 16 contained a yellow metal nose pin, which was marked as Material Ext.- 22. The witness verified the seal and signature of the Director of the Forensic Science Laboratory, Lucknow, on the reports, marked as Ext. Ka- 17.

25. **During Cross-Examination**, he deposed that he measured the handle of the axe, Material Ext.-2, with his own hands which is around 2 balist 5 angul (दो बालिस्त 5 अंगुल) (roughly around 0.5 meters) in length, and when the same was measured before the trial court, it turned out to be of similar length. He further deposed that the handle of the axe was cracked near the blade and that a wooden piece was attached thereto, though these facts were not mentioned in the recovery memo. He further deposed that while the length of the iron blade was mentioned as about 6 angul (6 अंगुल) (roughly around 0.108-0.12 meters) in the recovery memo, its width was not recorded. He denied the suggestion that the axe was not recovered at the instance of the accused or that the same was planted. He further deposed that the recovery memo of the bloodstained T-shirt of the accused, Ext. Ka-12, was not produced before him in Court and that the said T-shirt was not sent to the Forensic Science Laboratory. He further deposed that at the time of preparing the *panchayatnama*, he had seen and inspected the injuries on body of deceased and the same were recorded accordingly. He further deposed that no knife was recovered during investigation and that PW-2, Shalu, had not stated before him that her father used a knife or that she was warming herself near a fire (*कौड़ा*) at the time of the incident or that the accused was tied to a tree after the occurrence. He further deposed that the statement of PW-2, Shalu, was recorded on 05.06.2009, whereas the incident occurred on 27.03.2009. He further deposed that though he met Shalu on the date of inquest proceedings, he did not record her statement at that time and only recorded it later as per requirement of investigation. He denied the suggestion that her statement was deliberately delayed or fabricated. He further deposed that he reached the place of occurrence within about half an hour of starting the investigation, though he did not remember whether Ram Bodh accompanied him. He admitted that the timings of commencement and conclusion of investigation were not recorded in the case diary. He denied the suggestion that the FIR was ante-timed or that the recovery memo was fabricated. He further deposed that at the time of arrest, he did not notice bloodstains on the body of the accused except on his T-shirt and admitted that the T-shirt was not sent for forensic examination. He further deposed that he did not make an investigation regarding prior allegation of beating or earlier criminal proceeding between the parties. He denied the suggestion that the investigation was biased or that the accused was falsely implicated.

26. **During re-chief examination**, he deposed that the panchayatnama (Ext. Ka-5) was prepared by by SI Jaishankar Rai at his (witness) instance and that upon examining the body, injuries No.1 and 2 were found on the right side and were recorded accordingly. He further deposed that the sketch of the dead body(Ext. Ka- 6) also reflects injuries on the right side.

27. **During cross-examination**, he deposed that the sketch of the dead body (Ext. Ka-6) and the panchayatnama (Ext. Ka-5) were prepared by S.I. Jai Shankar Rai. He denied the suggestion that the injuries were recorded only on the left side or that he was deposing after seeing the post-mortem report. He further deposed that the site plan (Ext. Ka-11) does not show the place where Shalu and her brother were allegedly warming themselves near the fire (कौड़ा).

28. **CW-01 Jaishankar Rai**, deposed that the panchayatnama (Ext. Ka-5) was prepared by him on the instructions of SHO Upendra Yadav and that the process of appointing panch witnesses was carried out by the SHO. He further deposed that he noted three injuries found on the body of the deceased at the end of the panchayatnama and, on the instructions of the SHO, depicted injuries No. 1 and 2 on the right side. He further deposed that the panchayatnama was in his handwriting. He also verified and proved the sketch of the dead body (Ext. Ka-6) and stated that the injuries were shown on the right side therein.

29. **During cross-examination**, he denied the suggestion that he had recorded the injuries on the left side or that he was deliberately showing them on the right side. He further deposed that he did not remember whether his statement was recorded by the Investigating Officer during investigation. He affirmed that the panchayatnama was not signed by him and stated that the SHO was present at the spot throughout the preparation of the panchayatnama. He denied the suggestion that he was deposing falsely before the Court.

Court Analysis:

Credibility and Reliability of PW-2 (Child Witness)

30. The learned counsel for the accused-appellant has vehemently contended that the conviction rests primarily on the testimony of PW-2, who is a minor child of the deceased, therefore, her evidence ought to be discarded being an interested witness and susceptible to tutoring. It is crystal clear that the entire case of the prosecution is based on the sole testimony of PW-2, Shalu. This Court is unable to accept the said contention in its entirety.

31. The above-mentioned arguments of the learned counsel for the appellant deserves to be appreciated in the light of the settled legal position. Section 118 of the Indian Evidence Act, 1872 provides that all persons shall be competent to testify unless the Court considers that they are incapable of understanding the questions or giving rational answers by reason of tender years or other similar causes. In the present case, the competency of PW-2 was duly tested by the Trial Court before recording her testimony and she was found capable of understanding the questions and giving rational answers. Thus, her testimony is admissible in evidence.

32. The law relating to appreciation of evidence of a child witness is well settled. It is not a rule of criminal jurisprudence that the testimony of a child witness is inherently unreliable or liable to be discarded merely on account of age. However, as a rule of prudence, such evidence requires careful and cautious scrutiny, as a child witness is susceptible to tutoring and impressionable influence.

33. In ***Pramila v. State of U.P.*, (2021) 12 SCC 550**, Hon'ble Supreme Court has held that even the sole testimony of a child witness can form the basis of conviction, provided the Court is satisfied that the possibility of tutoring is ruled out. The Supreme Court emphasized in paragraph 5 of the case as under:

"5. ...where a child witness is to be considered, and more so when he is the sole witness, a heightened level of scrutiny is called for... The Court has, therefore, to satisfy itself that all possibilities of tutoring or otherwise are ruled out and what was deposed was nothing but the truth"

34. Applying the aforesaid principles to the facts of the present case, it is evident that PW-2 is a natural witness being the daughter of the deceased and residing in the same house where the incident took place. Her presence at the place of occurrence is natural and probable. The core of her testimony, namely, that the accused assaulted the deceased with a sharp-edged weapon, remains consistent and finds corroboration from the medical evidence.

35. At the same time, certain infirmities cannot be ignored. PW-2 was not named as an eyewitness in the FIR and her statement under Section 161 Cr.P.C. was recorded with considerable delay. Further, some improvements are noticeable in her testimony with regard to the manner of occurrence and surrounding circumstances, which are not fully supported by the investigation.

36. However, these infirmities do not go to the root of the prosecution case so as to render her entire testimony unreliable. It is a settled principle of criminal jurisprudence that the doctrine of falsus in uno, falsus in omnibus is not applicable in India, and the Court is required to separate the grain from the chaff. Even if a part of the testimony is found to be unreliable, the Court can rely upon the credible portion of the evidence.

37. Accordingly, this Court finds that the testimony of PW-2 is reliable to the extent that it establishes the presence of the accused and his involvement in causing injuries to the deceased. However, the inconsistencies and improvements do create some doubt regarding the precise manner of occurrence, which assumes significance while determining the nature of offence.

Non-examination of Material Witnesses

38. Learned counsel for the accused-appellant has further contended that the prosecution has failed to examine several material witnesses, including the scribe of the written report, certain panch witnesses, and other witnesses named in the charge-sheet, and therefore the prosecution case is liable to be disbelieved.

39. The said contention cannot be accepted as; it is well settled that the prosecution is not bound to examine each and every witness cited in the charge-sheet. Under Section 134 of the Indian Evidence Act, no particular number of witnesses are required to prove a fact, and it is the quality of evidence and not the quantity, which is material. The Hon′ble Supreme Court, in **State of U.P. v. Anil Singh, (1988) 3 SCC 686**, has held that it is not necessary for the prosecution to examine all witnesses and non-examination of some witnesses is not a ground to reject the prosecution case, if the evidence of the witnesses examined is found to be reliable. In the present case, the witnesses examined by the prosecution are found to be cogent and trustworthy, and no prejudice has been shown to have been caused to the accused by non-examination of the scribe or panch witnesses. Therefore, such omission is not fatal to the prosecution case.

40. In the present case, the prosecution has examined the material witnesses, including PW-2 (eyewitness), PW-3 (doctor) and PW-6 (Investigating Officer). The core prosecution story stands supported by their testimonies. No specific prejudice has been demonstrated by the defence on account of non-examination of the scribe or certain panch witnesses.

41. Furthermore, while appreciating the evidence of a rustic village lady, villager or a child witness hailing from a rural background, the Court must bear in mind the background from which such witness comes, their mental state and age at the time of the incident, and the time gap between the occurrence and the recording of their evidence before the Court. The Court must also consider to what extent such witness is capable of understanding and answering the questions put to them during cross-examination.

42. It is a matter of common experience that there is a marked and considerable variation in the level of understanding amongst people from different backgrounds. The intellect of an educated person living in a city differs from that of a person of the same age group living in a village. Generally, people living in rural areas are comparatively simple and less complex in their expression than those from urban settings.

43. In the present case, PW-2 is a girl of tender age of about 12 years, whose mother was done to death by her own father in her presence. The mental condition and agony which she must have faced can be easily understood. The learned counsel for the appellant has questioned and assailed the testimony of PW-2 on the ground of her being tutored, but has failed to indicate any material from which it can even remotely be inferred that she was tutored. In fact, there is no iota of evidence which can be termed as '*tutoring*'.

44. It is also important to consider as to why a minor girl would depose falsely against her own father and what benefit she would derive from such false implication. The learned Trial Court, after careful evaluation and appreciation of the entire evidence on record, has found the testimony of PW-2 to be reliable, which finding does not call for outright rejection, though it requires cautious scrutiny in light of the surrounding circumstances.

Ocular Evidence vis-a-vis Medical Evidence:

45. Learned counsel for the accused-appellant further submits that there exists inconsistency between the ocular version and the medical evidence on record. It is a settled principle of criminal jurisprudence that where the ocular evidence is credible and trustworthy, minor inconsistencies with medical evidence do not render the prosecution case doubtful. However, where the medical evidence probabilizes an alternative version or creates doubt regarding the manner of occurrence, the Court must carefully reconcile the two and extend benefit to the accused on the question of nature of offence.

46. In the present case, PW-2 has deposed that the accused assaulted the deceased with a sharp-edged weapon, namely an axe, and in her deposition has further introduced the use of a knife. However, this part of her testimony does not find support from the investigation and evidence of post-mortem doctor (PW-6), as PW-6 has categorically deposed that no knife was recovered and such fact was not stated by PW-2 during investigation. Thus, to that extent, her testimony is clearly an improvement and cannot be relied upon.

47. The medical evidence, as proved by PW-3, shows that the deceased sustained three incised wounds on vital parts of the body, particularly on the neck and occipital region of the head, with injury No. 1 being bone deep and involving cutting of internal structures of the neck. The cause of death has been opined to be shock and hemorrhage as a result of ante-mortem injuries. The doctor has further clarified in cross-examination that all the injuries could have been caused by a single sharp-edged weapon and that even injury No. 3, which is deeper, could be the result of application of greater force by the same weapon.

48. Thus, the medical evidence clearly establishes that the death was homicidal and caused by a sharp-edged weapon. It also substantially corroborates the core of the ocular testimony that the accused inflicted injuries upon the deceased.

FIR is ante-timed and concocted

49. The submission of the learned counsel for the accused-appellant that the FIR is ante-timed deserves consideration in light of certain inconsistencies appearing on record.

50. From the testimony of PW-1, it emerges that he received information at about 8:00 A.M. and reached the police station at around 10:30-11:00 A.M., whereas the FIR is shown to have been lodged at 8:10 A.M. This discrepancy creates doubt regarding the exact time and manner of lodging of the FIR. Further, PW-1 has given inconsistent versions regarding the source of information and has admitted that when he reached the place of occurrence, the police had already arrived there.

51. These circumstances indicate that the prosecution version regarding prompt lodging of the FIR is not free from doubt and suggests possibility of some delay or embellishment.

52. However, it is well settled that merely because the FIR is suspected to be ante-timed, the entire prosecution case cannot be discarded if the core of the prosecution case is otherwise proved by reliable evidence. In the present case, the homicidal death of the deceased stands established and the ocular testimony of PW-2 finds support from medical evidence.

53. Accordingly, while the FIR suffers from certain infirmities, the same is not sufficient to discard the entire prosecution case, but calls for cautious appreciation of the evidence.

Absence of Motive and Plea of Sudden Act:

54. Learned counsel for the accused-appellant has contended that there was no premeditated motive to commit the offence and that the occurrence took place in the course of a sudden quarrel between husband and wife, in the heat of passion. Learned counsel for the accused-appellant has placed reliance upon the judgments of ***Surinder Kumar v. Union Territory, (1989) 2 SCC 217; Chandigarh, Pundalik v. State of Maharashtra, (2010) 15 SCC 122***; and ***Rambir v. State (NCT of Delhi), (2019) 6 SCC 122*** to contend that the benefit of Exception 4 to Section 300 IPC ought to be extended and the offence would fall under Section 304 IPC.

55. In ***Surinder Kumar*** (supra), the Hon'ble Supreme Court has explained that for invoking Exception 4, four conditions must be satisfied, namely: (i) the occurrence must be sudden; (ii) there must be no premeditation; (iii) the act must be done in the heat of passion; and (iv) the offender must not have taken undue advantage or acted in a cruel or unusual manner. Similarly, in ***Pundalik*** (supra), in the context of a matrimonial dispute, the conviction under Section 302 IPC was altered to Section 304 IPC, where the assault was the result of a sudden quarrel between husband and wife. In ***Rambir*** (supra), it was held that even use of a weapon picked up at the spur of the moment during a sudden quarrel would attract Exception 4, provided the act is not barbaric or unusually cruel.

56. Applying the aforesaid principles to the facts of the present case, it emerges from the evidence on record that the accused and the deceased were husband and wife and there existed domestic discord between them. The occurrence took place inside the house and arose out of a quarrel. There is no material on record to suggest any premeditation or prior planning. The weapon used appears to have been picked up at the spot during the course of the incident.

57. Further, though the injuries are on vital parts, the medical evidence does not indicate such excessive or barbaric assault so as to conclusively infer that the accused acted in a cruel or unusual manner or took undue advantage. The act appears to have been committed in the heat of passion upon a sudden quarrel.

58. Thus, the ratio laid down in the aforesaid judgments squarely applies to the facts of the present case. All the essential ingredients of Exception 4 to Section 300 IPC stand satisfied. Accordingly, while the conviction of the accused cannot be sustained under Section 302 IPC, the case would fall within the ambit of Section 304 Part II IPC.

Conclusion:

59. In view of the foregoing discussion and upon a comprehensive re-appreciation of the entire evidence on record, this Court is of the considered opinion that the prosecution has been able to establish beyond reasonable doubt that it was the accused who caused the injuries to the deceased which resulted in her death. The findings of the learned trial court to this extent, regarding the involvement of the accused, are affirmed.

60. However, this Court finds that the prosecution has not been able to establish the element of intention so as to bring the case within the ambit of Section 300 I.P.C. The evidence on record indicates that the occurrence took place in the course of a sudden quarrel without premeditation. At the same time, considering the nature of the act and the injury caused, the accused can be said to be attributed with the knowledge that such act was likely to cause death.

61. Accordingly, the conviction of the accused, Dev Bahadur, under Section 302 I.P.C. is liable to be altered to one under Section 304 Part II I.P.C.

62. The conviction of the accused-appellant under Section 302 I.P.C., as recorded by the learned trial court, is hereby altered to a conviction under Section 304 Part II I.P.C.

63. Insofar as the sentence is concerned, it is noted that the accused has already undergone incarceration for a period of 18 years, 07 months and 11 days as on 16.12.2025, which exceeds the maximum sentence prescribed under Section 304 Part II I.P.C., i.e., imprisonment for a term which may extend to 10 years.

64. In view of the aforesaid, the period of imprisonment already undergone by the accused is held to be sufficient sentence for the offence under Section 304 Part II I.P.C. The sentence of fine, imposed by the trial court, is maintained. However, in case the fine has already been deposited, no further order is required; and in case of default sentence, it is observed that the accused has already undergone incarceration exceeding even the maximum prescribed term.

65. The appeal, therefore, stands **partly allowed**.

66. The accused-appellant is directed to be released forthwith, if not required in any other case.

67. Pending applications, if any, shall stand disposed of.

68. Let a certified copy of this judgment along with the lower court record be transmitted to the court concerned forthwith, and in any case within a period of one week, for compliance.

(2026) 5 ILRA 1127
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 15.05.2026

BEFORE

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

Criminal Appeal No. 665 of 1984

Sheo Kumar Tiwari & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to whether the conviction and sentence of the appellants under Sections 148 and 302 read with Section 149 of the Indian Penal Code, 1860 are sustainable where the prosecution relies upon ocular evidence, medical evidence and other corroborative circumstances, despite the dying declaration being found unreliable on account of the medical condition of the deceased, and whether the prosecution proved beyond reasonable doubt the existence of an unlawful assembly sharing the common object of committing murder. (Paras 1, 2, 65, 75, 88)

Headnotes

Criminal Law - Murder - Appreciation of ocular evidence vis-à-vis dying declaration and medical evidence - Indian Penal Code, 1860 - Ss. 148 and 302 read with S. 149 - Code of Criminal Procedure, 1973 - S. 374(2) - Burden lies upon prosecution to establish guilt beyond reasonable doubt and prompt FIR cannot be treated as ante-timed merely on the basis of mathematical calculations regarding time taken for recording proceedings where witnesses state only approximate time. (Paras 55-63)

Criminal Law - Dying Declaration - Medical fitness of maker - Indian Penal Code, 1860 - Ss. 302 and 149 - Where severe injuries to the lips, tongue, maxilla, neck muscles and carotid artery rendered the deceased medically incapable of making a statement, the alleged dying declaration was not worthy of reliance and stood discarded. (Paras 67, 68)

Criminal Law - Identification of accused - Source of light - Indian Penal Code, 1860 - Ss. 148 and 302 read with S. 149 - Co-villagers can identify each other by voice, appearance and manner and the light available from the bonfire, lantern and torches was sufficient for identification of the assailants. (Para 70)

Criminal Law - Ocular evidence - Medical corroboration - Indian Penal Code, 1860 - Ss. 302 and 149 - Minor variations regarding firing distance or presence of blackening, tattooing and scorching do not render ocular testimony unreliable where the evidence of eye-witnesses is otherwise trustworthy and consistent with the prosecution case. (Paras 71, 79)

Evidence - Conduct of witnesses - There is no universal rule prescribing how a witness must react to a murder and evidence cannot be discarded merely because a witness did not behave in any particular manner. (Para 81)

Criminal Law - Motive - Though motive assumes lesser significance where there is reliable direct evidence, the deceased being the most influential member of the family and actively pursuing earlier proceedings against the appellants furnished a clear motive for the crime. (Paras 83, 85)

Criminal Law - Unlawful Assembly - Common Object - Indian Penal Code, 1860 - Ss. 148 and 149 - Common object established where all the appellants arrived together armed with firearms and deadly weapons, raised the exhortation maaro-maaro, participated in the assault and fled together after the occurrence - Conviction under Sections 148 and 302 read with Section 149 IPC affirmed notwithstanding rejection of the dying declaration, as the prosecution proved the case beyond reasonable doubt through reliable ocular and corroborative evidence. (Paras 86-88)

Held: The court of law cannot be guided by arithmetic calculations since the memory of witnesses is fallible and the time stated by them is only approximate and mere calculation of minutes cannot render the prompt FIR ante-timed - The alleged dying declaration requires careful scrutiny and where the deceased had sustained extensive injuries to the lips tongue maxilla neck muscles and carotid artery making him medically incapable of giving a statement no reliance can be placed upon such dying declaration - The source of light from the bonfire lantern and torches was sufficient for co-villagers to identify the assailants by voice appearance and manner - Ocular evidence has primacy unless it is wholly irreconcilable with medical evidence and minor variations regarding firing distance or blackening tattooing and scorching do not demolish otherwise reliable eye-witness testimony - There is no rule of natural reaction and evidence cannot be discarded merely because a witness did not react in a particular manner - Motive loses significance where there is direct and trustworthy evidence though the deceased being the most influential member of the family and actively pursuing proceedings against the appellants furnished a clear motive for the crime - Common object stood established as all the appellants arrived together armed with firearms and deadly weapons raised the exhortation maaro-maaro participated in the assault and fled together after the occurrence - The

prosecution proved its case beyond reasonable doubt and the conviction of the appellants under Sections 148 and 302 read with Section 149 of the Indian Penal Code was rightly affirmed. (Paras 60, 68, 70, 71, 79, 81, 83, 85, 86, 87, 88) (E-7)

Case Law Cited

State (Delhi Administration) Vs. Laxman Kumar & Ors **(1985) 4 SCC 475***; Panchanand Mandal Alias Panchan Mandal Vs. State of Jharkhand* **(2013) 9 SCC 800***; The State of Jharkhand Vs. Shailendra Kumar Rai @ Pandav Rai* **2022 (14) SCC 299;** *K. Ramachandra Reddy v. Public Prosecutor,* **1976 (3) SCC 618***; Krishnegowda & Ors Vs. State of Karnataka* **(2017) 13 SCC 98***;* **Criminal Appeal Nos.541-543 of 2015** *(Sri Chikkegowda & Ors. Vs. State of Karnataka etc.); Darbara Singh v. State ofPunjab5; State of U.P. v. Hari Chand; Pruthviraj Jayantibhai Vanol v. Dinesh Dayabhai Vala & Ors; Nima Ghosh & Ors Vs. State of Bihar* **2025 INSC 816***; Rana Pratap v/s State of Haryana* **AIR 1983 SC 680, (1983) 3 SCC 327***; Aslam Alias Imran Vs. State of Madhya Pradesh* **2025 SCC Online 670***; State of Maharashtra v. Kashirao,* **(2003) 10 SCC 434**

List of Acts

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

List of Keywords

Murder; Unlawful assembly; Common object; Ocular testimony; Dying declaration; Ante-timed FIR; Blackening and tattooing; Identification; Bonfire; Country-made pistol; Farsa

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 preferred against the judgment and order dated 03.03.1984 passed by Shri G.D. Dubey, Sessions Judge, Ballia, in Session Trial No. 75 of 1983, arising out of Case Crime No. 24 of 1983 (State Vs. Sheo Kumar Tiwari and Others), convicting and sentencing the appellants under Sections 148 and 302 read with 149 of the Indian Penal Code, 1860.

Appearances for Parties

Advs. for the Appellant:
Jitendra Shanker pandey, Rajeev Goswami,
Virendra Singh, Rakesh Kumar
Advs. for the Respondents:
Ms. Divya Ojha, Learned A.G.A. for the State of U.P.

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

1. The instant Criminal Appeal, under Section 374 (2) Cr.P.C., has been preferred by appellants/convicts Sheo Kumar Tiwari son of Jageraas Tiwari; Kailash Mishra son of Gopal Mishra; Raj Narain Tiwari son of Sheo Kumar Tiwari; Shiv Shankar Pandey son of Varmeshwar Pandey; Ishwar Das Tiwari son of Ramashray Tiwari; Durgadas Tiwari and Devdas Tiwari both sons of Mohan Tiwari, all residents of Village- Puras, Police Station- Bansdih Road, District- Ballia, against the judgment and order dated 03.03.1984 passed by Shri G.D. Dubey, Sessions Judge, Ballia, in Session Trial No. 75 of 1983, arising out of Case Crime No. 24 of 1983 (State Vs. Sheo Kumar Tiwari and Others), under Sections 148 and 302 read with 149 Indian Penal Code,1860, (in short IPC), Police Station- Bansdih Road, District- Ballia.

2. By the impugned judgment and order, all the appellants were held guilty and have been convicted and sentenced to undergo imprisonment for one year's rigorous imprisonment for offence

punishable under Section 148 IPC; each of them were further sentenced to undergo imprisonment for life for offence punishable under Section 302 read with 149 IPC, and it was directed that all the sentences shall run concurrently.

3. The present Criminal Appeal in regard to accused appellant nos. 1 Sheo Kumar Tiwari and appellant no.3 Raj Narain Tiwari, has abated, vide order dated 4th July, 2025. Therefore, the present Criminal Appeal now proceeds in regard to appellant Nos. 2, 4, 5, 6 and 7, to wit, Kailash Mishra, Sheo Kumar Pandey, Ishwar Dayal Tiwari, Durga Das Tiwari and Deo Das Tiwari, respectively, only.

4. Brief facts of the prosecution case are that informant Ram Ji Singh son of Ram Jhalak Singh, resident of Village Puras, Police Station- Bansdih Road, District- Ballia, submitted a written application (tehrir) dated 08.02.1983 (Ext. Ka-2) in Police Station- Bansdih Road, stating therein that earlier he had lodged a report with regard to assault committed by Sheo Kumar Tiwari and others, which was being inquired. Sheo Kumar Tiwari and his men were under impression that informant′s brother Akhand Pratap Singh, a Sub-Inspector in Police Department, was doing pairvi in that case. His brother Akhand Pratap Singh had come to home, on leave, with regard to a marriage ceremony.

5. Today, i.e., 08.02.1983 at about 06:30 p.m. when applicant and his brother Akhand Pratap Singh, nephew Ranvijay Singh, Moti Lal Gonsai son of Nand Kishore Gonsai, Sudarshan Singh son of Shiv Nandan Singh all resident of Village- Puras, and Kamta Singh son of Ram Govind Singh resident of Village- Rohua, Keshav Singh son of Faujdaar Singh resident of Village- Harpur, Police Station- Bansdih Road, were sitting at his door around bonfire (alaao), when Kailash Mishra, Sheo Kumar Tiwari, Raj Narain Tiwari, carrying guns in their hands, alongwith Shiv Shankar Pandey, Ishwar Dayal Tiwari, Durga Das Tiwari and Dev Das Tiwari, carrying farsa, entered in the courtyard shouting **"maaro maaro"** and after flashing their torches Sheo Kumar Tiwari, Kailash Mishra and Raj Narain Tiwari, fired at his brother Akhand Pratap Singh with the intention to kill, as a result Akhand Pratap Singh fell at the spot. He identified the assailants and their companions in the light of bonfire, lantern and flash of the torches. Thereafter, all the seven accused fled towards southern direction, after giving threat to him. He brought his injured brother Akhand Pratap Singh to the police station, who has sustained grievous gunshot injuries and his condition was critical.

6. On the basis of above application (tehrir), chik FIR under case crime no. 83 of 1983, under Sections 147, 148, 149 and 307 IPC was registered on 08.02.1983 at 21:10 p.m., at Police Station- Bansdih Road, District- Ballia, against all the seven appellants and the investigation commenced.

7. The Investigating Officer Laxmi Singh Mishra, reached at the place of occurrence and collected blood-stained earth and plain earth from there and prepared its fard baramadagi (Ext. Ka-16). He also collected blood-stained wood cut from the chair, on which the deceased was sitting, and prepared its *fard baramadagi* (Ext. Ka-17). He further collected an empty cartridge 12 bore and 11 pellets and prepared its *fard baramadagi*, (Ext. Ka-18). He raided accused′s houses to apprehend them. The statement of informant, Ranvijay Singh and also of injured Akhand Pratap Singh (Ext. Ka-13) was recorded at the police station. His brother was medically examined at Sadar Hospital, Ballia, who found his condition critical and referred him to Varanasi for further treatment. On way

to Varanasi, his brother Akhand Pratap Singh died. His post-mortem was conducted and inquest was prepared. The I.O. recorded statements of other witnesses, inspected the place of occurrence and prepared its site-plan, (Ext. Ka-14). He sent blood-stained earth, blood-stained wood, blood-stained clothes, allegedly worn by the deceased for forensic examination. Human blood was found over clothes, cartridge and under garments. After collecting the evidence, the I.O. submitted charge-sheet before the concerned Magistrate court.

8. The concerned court took cognizance of the offence and summoned the accused. They appeared before the court and were furnished copies of relevant prosecution papers under Section 207 Cr.P.C., thereafter the case was committed to the court of sessions for trial.

9. The appellants appeared before the court of sessions and charge under Section 148 and 302 read with 149 IPC was framed against them to which they pleaded not guilty and claimed to be tried.

10. The prosecution has examined 16 witnesses in support of the case, to wit, P.W. 1 Ramji Singh; P.W. 2 Moti Lal Gosai; P.W. 3 Kamta Singh; P.W. 4 Ranvijay Singh; P.W. 5 Dr. S.N. Pandey; P.W. 6 Dr. R.N. Sharma; P.W. 7 Prabhunath; P.W. 8 S.I. Rameshwar Prasad Mishra; P.W. 9 S.O. Laxmi Singh; P.W. 10 Constable Shivlakhan Ram; P.W. 11 Head Constable Lalji Yadav; P.W. 12 Prabhunath; P.W. 13 Head Constable Bhrigunath; P.W. 14 Constable Dileep Kumar Ojha; P.W. 15 Constable Awadh Narain Singh; and P.W. 16 Constable Chandrapal. Chandra Bhan Singh was also examind as C.W. 1.

11. P.W. 1 Ramji Singh is the informant and eye-witness of the case. He has said that he has four brothers and all of them live jointly. His brother Shivji is in Army, Parshuram Singh is in Railways and Akhand Pratap Singh is Inspector in Police Department. His house is to the south of village having door to the East. There is a courtyard in front of the gate surrounded by a boundary wall. All the seven appellants are residents of his village. In an election for Gram Pradhan, in the year 1982, Raj Narain Tiwari, the informant and Chand Bhan Singh and some others contested. Raj Narain Tiwari won the election by a single vote. This election was challenged by Chand Bhan Singh, on behalf of informant, which raised tension between both the parties. Police initiated proceedings under Section 107 Cr.P.C. against some of the accused. On 04.12.1982 he was beaten by the accused, while on way at return from the tubewell, and they took him in a garden to kill, but he escaped when some persons reached there. Thereafter, he had lodged the report at the police station in this regard. The witness had proved the carbon copy of the report (Ext. Ka.1), and has said that his brother Akhand Pratap Singh was murdered about five months ago. He had come to the village 4-5 days earlier in connection with a marriage. Akahnd Pratap Singh had done pairvi with regard to his report in the police station. At about 06:30 p.m., on the fateful day, the informant, the deceased and Keshav Singh, Kamta Singh, Ranvijay Singh, Sudarshan Singh and Motilal Gosai were sitting in front of the bonfire (alaao). Akhand Pratap Singh was sitting on a chair, there was a lantern lit on the wall of a nearby room, some light was also coming from the bonfire. The boundary gate was open, then all the seven accused came there, out of them Raj Narain Tiwari, Shiv Kumar Tiwari and Kailash Mishra were carrying country-made pistols and Durga Das Tiwari, Dev Das Tiwari, Ishwar Dayal Tiwari and Shiv Shankar Pandey were having farsa in their hands. They came there flashing their torches and saying "maaro- maaro". Shiv

Kumar Tiwari, Raj Narain Tiwari and Kailash Mishra shot his brother Akhand Pratap Singh and other accused flashed their torches. Thereafter, they ran towards South, after giving them threat. The villagers came and he wrote down the written application which he proved as Ext. Ka.1.

12. He has further said that his brother was alive and he was taken to the police station on a cot, there he submitted his written application. The Inspector was present there, who inquired from him, his brother Akhand Pratap Singh and nephew Ranvijay Singh. His brother Akhand Pratap Singh was speaking slowly, but was conscious. From the Police Station, he was sent to the Hospital at Ballia. In Ballia the doctors advised them to take the injured to Varanasi after giving him first-aid. Thereafter, they proceeded to Varanasi but on the way his brother died. Then they returned to the Hospital at Ballia. The lantern which was hanging at the time of the incident was taken to the police station, but in a hurry it was left in the hospital at Ballia and later it was lost. The blood had splattered where his brother was sitting on chair and was shot. Blood also dropped on the chair. His brother Akhand Pratap Singh was posted as Sub-Inspector in District- Kanpur. The above witness has been throughly cross-examined. At the time of argument the attention of this Court was drawn towards some contradictions in his statement to discredit this witness, which shall be discussed in later part of the judgment.

13. P.W. 2 Moti Lal Gosai, is one of the eye-witness of the case, he has said that on the fateful day at about 06:30 pm., he was sitting with the informant, the deceased and other persons in the courtyard of the informant around bonfire. Akhand Pratap Singh was sitting on the chair, a lantern was lit hanging at the wall of a room. The gate of courtyard was open then all the seven accused came there out of them, Shiv Kumar Tiwari, Raj Narain Tiwari and Kailash Mishra were having country-made pistol and rest were having farsa in their hands. After entering inside the gate upto 5-6 steps, they shouted 'maaro-maaro' and Shiv Kumar Tiwari, Raj Narain Tiwari and Kailash Mishra shot at Akhand Pratap Singh while Ishwar Dayal Singh and Shiv Shankar Tiwari flashed their torches. After shooting, the accused fled from the spot giving them threat. Nobody chased the appellants. Ramji, Ranvijay Singh and others took the Akhand Pratap Singh to the police station on a cot. He did not go to the police station. The above witness has been throughly cross-examined. At the time of argument the attention of this Court was drawn towards some contradictions in his statement to discredit the witness, which shall be discussed in later part of the judgment.

14. P.W. 3 Kamta Singh is also one of the eye-witness of the case, who has also stated that on the fateful day at about 06:30 p.m. he had gone to the Ramji Singh's house alongwith Keshav Singh, resident of Harpur, with regard to proposal for marriage of his mama's daughter. He was sitting alongwith Ramji Singh, Ranvijay Singh, Motilal Gosai, Sudarshan Singh on the ground, Akhand Pratap Singh was sitting on a chair at a little distance. A lantern was lit on the western wall. The light was also coming from the bonfire. Meanwhile, all the seven accused came shouting 'maaro-maaro. Shiv Kumar, Raj Narain Tiwari and Kailash Mishra, were carrying country-made pistols and rest of them were having farsa. Shiv Shankar and Ishwar Dayal were flashing torches. After entering in the courtyard, Shiv Kumar, Raj Narain Tiwari and Kailash Mishra shot at Akhand Pratap Singh as a result he fell on the chair. The accused fled from the place after giving them threat. Ramji, Ranvijay Singh, and others took Akhand Pratap Singh to the police station on a cot. The deceased was wearing Bu-shirt, Sweater, and Pant having strip and thread (Ext. 9 to Ext. 13). The above witness has been throughly cross-examined. At the time of argument the attention of this

Court was drawn towards some contradictions in his statement to discredit the witness, which shall be discussed in later part of the judgment.

15. P.W. 4 Ranvijay Singh, has said that the deceased was his father. During the days when the incident occurred, he was studying in Gorakhpur and the deceased had come to the village 4-5 days before the incident. He himself came one day prior to the incident, after the examination was over. His father had came with regard to his tau's daughter's marriage. His own marriage was already settled. This was also one of the reason why the deceased had come to the village. On the date of incident at about 06:30 p.m. they were sitting in the courtyard around bonfire along with deceased and others. His father was sitting on a chair and rest of the persons were sitting on the ground over bricks. All the accused came there shouting 'maaro-maaro'. Raj Narain Tiwari was carrying double barrel gun and Shiv Kumar and Kailash Mishra were having single barrel guns and rest of the accused were carrying farsa. Ishwar Dayal and Shiv Shankar Pandey were having torches in their hands. All the three men carrying country-made pistols, shot at his father and the other accused flashed their torches. His father fell and the accused fled from the spot giving threat. His father was carrying a revolver and bullets. His uncle gave him the revolver and bullets, which he kept inside the house. His uncle Ramji Singh wrote down the application at the spot and thereafter they carried his father on a cot to Police Station- Bansdih Road, where his uncle Ramji Singh gave application to the Constable. From the police station, his father was sent to the District Hospital- Ballia along with constables. His father was examined at a Hospital at Ballia who advised them to take his father to Varanasi and when they were taking his father to Varanasi then near Fefana, he died. Then they returned to the Hospital. He has further said that at the police station his father was speaking, in low voice. The truck by which his father was taken to Ballia was paid fare and the witness filed a receipt in this regard which he has proved as Ext. Ka-3. His father was wearing strip and thread while being taken to the police station, where the Inspector saw them. The Inspector did not ask about the revolver. His father was posted in Police Station- Bankata, District- Deoria in year 1979-80. He did not know that any inquiry was pending against him. He had reached Ballia in the evening of 06.02.1983 and the next day he had went to his village. On the date of incident he remained at his house since morning till the incident took place. After shouting maaro-maaro, the accused flashed their torches. The Constable had seen his father's injuries at the Police Station. He reached at the Police Station at about 09:00 p.m. and remained there for about half an hour. He reached hospital at 09:45 p.m. and remained there for 15 minutes. At the time of argument the attention of this Court was drawn towards some contradictions in his statement to discredit the witness, which shall be discussed in later part of the judgment.

16. P.W. 5 Dr. S.N. Pandey, is the expert witness who has conducted post-mortem of deceased on 09.02.1983 at 03:00 p.m. at mortury in District- Ballia. He has said that the body was average built, rigor mortis was present over the body. He found following ante-mortm injuries over the body of the deceased:-

(i) Lacerated wound 3cm x 2.5 cm x bone deep to the corner of left jaw and right corner of mouth adjacent to both lips. There was blackening, tattooing and singeing of hairs present over 1/3 part of lips. Half part of left jaw, some teeth and left and lower part of maxilla, muscles and jaw veins of left part of neck and jaw blood vessels and veins were badly lacerated.

(ii) Lacerated wound 3cm x 1cm x bone deep to the edge and middle dorsal object right middle finger; bones, muscles and tendons were badly lacerated. Blackening, tattooing or singeing was not present.

(iii) Lacerated wound 1.5 cm x 1cm x bone deep over last pour of index finger of right hand. Bones, muscles, vessels and tendons were badly lacertated. Blackening, tattooing and singeing was not present. There was yellow lotion found over injury no. 3;

(iv) Lacerated wound 1.5 cm x 1 cm muscle deep, at the root of right thumb. No blackening, tattooing or singening was present. Yellow lotion was found over the wound;

(v) Lacerated wound 1.5 cm x .5 cm x muscle deep, to the front of right wrist. Blackening, tattooing and singeing was not present. Yellow lotion was found over the wound;

(vi) Lacerated wound 1.5 cm x 1.5 cm x muscle deep, oval shape over right illiac fossa. Blackening, tattooing and singeing was present. Yellow lotion was found over the wound;

(vii) Lacerated wound 0.5 cm x 0.5 cm, skin deep over right illiac fossa, just over injury no. 6. Blackening, tattooing and singeing was not present. Yellow lotion was found over the wound;

(viii) Stitched wound of the length of 15 cm from right iliac crest upto pubic symphysis. After opening the stitches, the injury of size of 15cm x 4cm x muscle deep was found. Blackening, tattooing and singeing was present. The margins are inverted and burnt. Pellets, 17 in numbers, were recovered from inside the muscles.

In internal examination, one litre blood was found inside the stomach. Small intestine was empty, large intestine was filled with gases and faecal matter.

17. In the opinion of the doctor, the cause of death was haemorrhage and shock as a result of ante-mortem injures. He has proved post-mortem report as Ext. Ka-4 and has further stated that 15 pellets found from the body were sealed in a packet (Ext. Ka-16) and handed over to the Constable.

18. In cross-examination he has said that injury no.1 was caused from a distance of less than 3 feet, but it cannot be said from which direction the above injury was caused. As he has not written how much the tongue was injured, therefore, he cannot tell that the deceased was in a condition to speak or not. If he would have be able to speak then his voice would have been changed. Left side of mouth and veins were injured. There was no blackening or singeing over injury nos. 2 and 3, therefore, it could not have been caused by the same fire as was over injury no. 1. Injury nos. 2 and 3 could be caused by a single shot. Injury nos. 4 and 5 were caused by different shots. He had not written the direction from where the pellets entered the body. The pellets could reach only upto the muscle of the stomach and have not entered inside the stomach. Injury no. 8 was caused from a direction of upward to downward.

19. P.W. 6 Dr. R.N. Sharma, has examined the deceased in injured condition at Sadar Hospital, Ballia. He has said that on 08.10.1983 at about 09:30 p.m. he was posted as medical officer in Sadar Hospital, Ballia then at 09:45 p.m. Akhand Pratap singh was brought by Constable Ramsinhasan Maurya. He examined the patient and found following injuries:-

(i) Lacerated wound 6 cm x 1.5 cm depth kept under observation over upper left side of upper lip upto 1.3 of lower lip. Fresh bleeding was present.

(ii) Lacerated wound 1.5 cm x 0.5 cm through and through over left part of tongue. The margins were lacerated and bleeding was present.

(iii) Lacerated wound 14 cm x 3.5 cm, depth kept under observation over lower part of right side of the stomach below right iliac superior spine upto testicles. The margins were lacerated and bleeding was present.

(iv) Lacerated wound 3 cm x 2 cm, depth kept under observation over middle of right palm. The margins were lacerated and bleeding was present.

(v) Lacerated wound 2.5 cm x 1.5 cm, depth kept under observation over left part of right palm 3 cm below injury no. 4. The margins were lacerated and bleeding was present.

(vi) Lacerated wound 2 cm x 1 cm, through and through, over the dorsal aspect of right middle finger on tip. The margins were lacerated and bleeding was present.

(vii) Lacerated wound 2 cm x 1 cm through and through, over the tip of right ring finger. The margins were lacerated and bleeding was present.

(viii) Lacerated wound, two in numbers, of the same size 1 cm x 1 cm x depth kept under observation, over lower part of right side of stomach, 3 cm below injury no. 3.

All the injures were kept under observation and X-Ray was advised. All the injuries were fresh. He has proved injury report Ext. Ka-5 and has said that the above injuries could have been caused on 18.02.1983 at 06:30 p.m. and the injuries were sufficient to cause death. He has also stated that he had informed the death of the deceased to the Police Station- Kotwali by a memo which he proved as Ext. Ka-6.

20. He further stated that the condition of the injured was critical so the injured was sent to Hospital at Varanasi. He has brought bed head ticket of the injured in which his condition is shown as critical. He was breathing heavily and was semi conscious, he has proved bed head ticket as Ext. Ka-7.

21. In his cross-examination, P.W. 6, has said that the injured was admitted in the Hospital at 09:40 p.m. and he was sent to the Varanasi at 10:40 p.m. He has written a note that the patient was not in a condition to give any dying declaration. The surgeon had also opined the same.

22. P.W. 7 Prabhunath, Clerk District Hospital, Ballia is a formal witness who had taken five sealed bundles to carry them for forensic examination to Forensic Science Laboratory, Uttar Pradesh, Agra.

23. P.W. 8 S.I. Rameshwar Prasad Mishra, has prepared inquest of the deceased on 09.02.1983 at 09:20 a.m. He has proved inquest as Ext. Ka-8 and related papers from Ext. Ka-9 to Ext. Ka-12. He has further said that, he prepared inquest of the deceased at Sadar Hospital, Ballia, and after preparation of inquest the body was sealed for being sent to mortuary for autopsy.

24. P.W. 9 S.O. Laxmi Singh, is the I.O. of the case. He has said that the case was registered at the police station in his presence. He recorded statements of Ramji Singh, Ranvijay Singh and Akhand Pratap singh at the police station. Akhand Pratap Singh was in a condition to speak and he was conscious. Whatever Akhand Pratap Singh told, he wrote down that in his case diary. The copy of which he has proved as Ext. Ka-13 and has said that Akhand Pratap Singh was seriously injured

so he was sent to District Hospital, Ballia by truck along with his brother Ramji Singh and others. Thereafter, he reached at the place of occurrence and recorded statements of other witnesses and inspected the place of occurrence in the light of petromax and prepared its site-plan, which he proved as Ext. Ka-14. He found bonfire at the place of occurrence, which he has shown in the site-plan. He also found the chair and the blood splattered over there. He collected sample of blood-stained earth and plain earth into separate boxes and sealed them at the spot (Exts. 17 and 18), and prepared its *fard baramadagi* which he proved as Exts. Ka-15 and Ka-16. He also took a piece of blood-stained wood from the chair and prepared its *fard baramadagi* (Ext. Ka.17). He also found some pellets there, which he sealed. The witness has proved blood-stained wood (Ext. 19). He has also said that he found empty cartridge at place-B, shown in the site-plan, which was a mis-fired cartridge. The witness has proved this cartridge as Ext. 20.

25. On 09.09.1983 he came to know about the death of Akhand Pratap Singh and the case was converted under Section 302 IPC. He searched the accused, but they absconded. He attached their properties after taking necessary orders from the concerned Magistrate and after collecting evidence he filed charge-sheet which he has proved as Ext. Ka-43. He has further said that he has sent blood-stained articles for chemical examination.

26. In cross-examination he has said that the witness Moti lal and Kamta were present at the time of inspection of place of occurrence. The witness had told him the place from where the fire was shot, which was approximately 10 steps from the deceased. Ranvijay Singh had not stated that Ramji Singh was also sitting around bonfire and accused Shiv Shankar and Ishwar Dayal were flashing their torches. It took 5-6 minutes for the Head Moharrir to scribe FIR and enter it in GD. In 15-20 minutes he came to know that the truck has arrived till then he had recorded the statement of Ramji Singh. He remained in the police station upto 09:45 p.m. Akhand Pratap Singh was stating in low voice with interruptions. His statement was recorded in 6-7 lines, it took about 4-5 minutes in recording his statement. He did not take any signature over the statement of Akhand Pratap Singh. In his case diary, it is mentioned that Ran Vijay Singh has come to the police station. The area of courtyard of the deceased is not shown in the said site-plan. He did not collect ash or burnt wood from bonfire. It is the rule that whenever an Inspector proceeds on leave, he should deposit his service revolver in the police station. None of the accused were license holders of fire arms.

27. P.W. 10, Constable Shiv Lakhan Ram, is a formal witness who had taken the body of the deceased to mortuary for post-mortem.

28. P.W. 11, Head Constable Lal Ji Yadav, is also a formal witness who had deposited the sealed articles in Sadar Maalkhana and sent them for Forensic Chemical Examination to Agra.

29. P.W. 12 Prabhunath, is also a formal witness who had taken five sealed packets to Forensic Science Laboratory, Uttar Pradesh, Agra.

30. P.W.13 Bhrigunath, is the scribe of the FIR. He has stated that on 08.02.1983, he was posted in Police Station Bansdih Road as Head Constable and at 09.10 p.m. Ramji Singh gave him a written application, bringing injured Akhand Pratap Singh on a cot the same time. He scribed the chik FIR (Ext. Ka-44) and entered its gist in G.D. No.33 (Ext. Ka-45). Constable Sitaram prepared

chitthi majrubi of the injured which bears signature of SO Laxmi Singh. He has proved chitthi majrubi as Ext. Ka-5a. The injured was conscious but had difficulty to speak. On 09.02.1983 at 06:45 a.m. Constable Ram Singhasan came to the police station and informed that Akhand Pratap Singh had died thereupon he converted the case from 307 IPC to 302 IPC.

31. On 10.02.1983 at 12:30 Laxmi Singh came at the police station and deposited sealed packets. On 12.02.1983 at 01:45 p.m. Constable Chandrapal Singh came to the police station and deposited sealed packets. On 22.02.1983 at 09:10 a.m. sealed packets and sample seal was given to the Constable Awadh Narayan Singh to deposit them at Sadar Maalkhana, Ballia. On 06.02.1983, S.I. Laikh returned to the police station. In his cross-examination, the witness has said that at the time he was scribing the chik FIR, Akhand Pratap Singh was lying on a cot outside and he himself saw the injuries. Crime number and section was not mentioned in chitthi majrubi. It is not mentioned in G.D. that Akhand Pratap Singh was conscious and was able to speak. Akhand Pratap Singh was not having any revolver only shell and cord was there. After he completed the G.D, within 7-8 minutes Akhand Pratap Singh was sent to Ballia.

32. P.W. 14 Constable Dileep Kumar Ojha, has proved G.D. dated 09.02.1983 and 12.02.1983 at Police Station- Kotwali, scribed by Constable Uma Shankar as Ext. Ka-51 and Ext. Ka-52.

33. P.W. 15 Constable Awadh Narain Singh, is a formal witness, who had taken sealed packets to Sadar Maalkhana, Ballia and deposited there.

34. P.W. 16 Constable Chandrapal, is also a formal witness who has said that on 12.02.1983 sealed case property was taken from Police Station- Kotwali to Police Station- Bansdih Road and he deposited them in sealed condition.

35. As C.W. 1, the court has examined Chandra Bhan Singh, who has said that he is the Manager in Vaishali Hotel, District- Ballia, since last 8 years. The register of guests, having entries with regard to there destination and purpose, is maintained at the hotel. The date, time and allotted room no. is also written in the register. The signature of the guest are also taken over the register. At the time of recording of statement Ramji Singh was also present in the court. The witness said that he had never seen him and he does not know his father's name as well as his address. Entry made in the register at Serial No.2804 was not entered in his presence. On entry at Serial Nos. 2603, 2932 and 2993 dated 08.02.1993 Ramji Singh is written and his father's name Shiv Nandan Singh is written with another ink pen. The above register is kept at the counter of the hotel. He does not know when 'son of Shiv Nandan Singh' was written over it and who had written it. At Serial Nos. 2992 and 3006, father's name are entered. The customer who stayed at the hotel and whose name appears at Serial No.2993, his Bill No.2998 was issued and he stayed at the hotel till 06:00 p.m. on 08.02.1983 and had left at 10:00 a.m. on 09.02.1983. The bill book is in the handwriting of Ram Surat, Manager, he knows his handwriting. The witness submitted photostate copy of the receipt, Ext. C-1 and said that the above bill book commences from 25.01.1983, Serial No.2901 to 09.02.1983, Serial No.3000. The witness has proved photo copies of the register Ext. Ka-1 to 8.

36. In cross-examination C.W. 1 has stated that the name of Ramji Singh is written in different handwriting. The signatures at Serial Nos. 3221, 2603, 2932 match with each other.

37. After closure of prosecution evidence, the statements of accused were recorded under Section 313 Cr.P.C. in which they have denied the prosecution case and have said that the case has been lodged against them due to enmity and witnesses are giving false statement against them. Appellant Sheo Kumar Tiwari, stated that Ramji Singh used to say that he would get him killed in police encounter, so he left to Mirzapur. It is admitted that Akhand Pratap Singh had come to his house.

38. The defence has examined four witnesses in defence, to wit, D.W.1- Tribhuvan Nath Pandey, D.W.2- Banshram Yadav, D.W.3- Tej Bahadur Singh and D.W.4- Chhiteshwar Tiwari.

39. D.W.1- Tribhuvan Nath Pandey, has stated that one Nand Kishore Singh resident of Village- Sitakund had executed sale deed of his land in favour of his father and uncle on 03.04.1951. Brahmdev Mishra and Harendra Upadhyay were marginal witness of the said sale deed. Nand Kishore Tiwari had filed a case under Section- 229-B regarding the same land before the S.D.M. which was pending since 4 years. In the said case, Nand Kishore Mishra had summoned Brahmdev Mishra as witness who is Purohit of Brahmdev Mishra. He came to know that due to influence of Ramji Singh, Brahmdev Mishra refused to come in the court as a witness. Ramji Singh had said that he is going to Ballia and will stay in Vaishali Hotel, you can come and meet me there at 07:00 p.m. The same day I met with Ramji Singh in Vaishali Hotel, where Ramji Singh asked him to come to Vaishali Hotel at 08:00 a.m. next day. On next day, when he reaced at Vaishali Hotel, at 08:00 a.m., it came to know that Ramji Singh is not in the hotel and his brother Akhand Pratap Singh had been murdered.

40. In cross-examination D.W. 1 has said that he had met Brahmdev Singh 5-6 days prior to meeting Ramji Singh. Nand Kishore Singh is the complainant of the case filed under Section 229-B.

41. D.W.2- Constable Banshram Yadav, has said that on 03.03.1981 he was posted as Constable Moharrir in Police Station- Bankata, District- Deoria, and before that, S.I. Akhand Pratap Singh was already transferred from there. The Circle Officer, Barhaj, District- Deoria has lodged a case against Akhand Pratap Singh on 03.03.1981 under Sections- 161, 220, 409, 392 and 414 I.P.C. and Section 5 of Prevention of Corruption Act. The above case was registered as G.D. Nos.25, 26 and 27 on 03.03.1981. The witness has proved G.D. and in his cross-examination has said that he does not remember whether charge-sheet was filed in the said sections or not.

42. D.W.3- Tej Bahadur Singh, has stated that Chandrama is a village Pradhan and he is well acquainted with his handwritings and signatures. The accused had filed three papers, to which the witness has said that they bear signatures of Chandrama Singh, Pradhan, and the witness has proved them as Ext. Kha-2 to 4.

43. In his cross-examination he has said that Chandrama Singh and Ramji Singh are friends.

44. D.W.4- Chhiteshwar Tiwari, has said that donation was being collected for construction of culvert of his village and in this regard receipt was issued by him and Ramji Singh. He is well versed with handwriting and signatures of Ramji Singh. After perusing customer register of

Vaishali Hotel dated 17.01.1983 at Serial No.2804 the witness has said that this is written by Ramji Singh, which bears Ramji Singh's signature. Similarly, at Serial No.2603 dated 28.01.1983 the endorsement is entered by Ramji Singh, and also at Serial No.2632 dated 30.01.1983 and Serial No.2993 dated 08.02.1983 there are Ramji Singh's signature. He has said that the 'son of Shiv Nandan Singh' is not in the handwriting of Ramji Singh. The witness has proved the copies of these documents as Ext. Kha-5 to Kha-12.

45. In cross-examination, D.W.4- has said that he has low vision. He has denied that he is purohit of Ramji Singh and has studied with him. Culvert was constructed in 1981. At Serial Nos. 3402 and 839 of the register, the signatures do not belong to Ramji Singh, but the entry dated 17.01.1983 bears the signatures of Ramji Singh.

46. After the closure of evidence, the learned trial court heard both the parties and came to the conclusion that the prosecution has been able to prove its case beyond reasonable doubt. The FIR was lodged promptly. The dying declaration of Akhand Pratap Singh was reliable. The prosecution witnesses are consistent, reliable and trustworthy and have supported the prosecution case. The ocular testimony is corroborated by medical evidence. There was motive for the appellants to commit this murder, therefore, the learned trial court found the appellants guilty and convicted and sentenced them to the term as indicated above.

47. We have heard learned counsel for the parties and Ms. Divya Ojha, learned A.G.A, on behalf of State and perused the record.

48. It is submitted on behalf of the appellants that no specific role has been assigned to appellant nos. 4, 5, 6 and 7. The alleged occurrence is highly improbable. Allegedly the deceased was shot from 12 bore country-made pistol, but surprisingly, none of the alleged witnesses sustained any gun shot injury. The ocular testimony is not corroborated by medical evidence. The absence of case detail, in Chhithi Majrubi infers that the FIR was lodged ante-timed. It is also submitted that the time described for the proceedings taken at the police station at the time FIR was lodged, is such which makes it impossible that the FIR, G.D. and the alleged statements of deceased and witnesses would be recorded at the police station during such short time.

49. It is further submitted that as per the medical condition of the deceased, it was highly improbable for him to given his dying declaration. No such certificate was given by the scribe that deceased was mentally and physically fit to give statement. Thus, dying declaration is not believable. It is also submitted that it was dark night and there was not much light as stated by the witnesses, which could help them to identify the assailants. Further, it is submitted that P.W. 1 Ramji Singh was not at the place of occurrence, whereas he was in Hotel Vaishali in Ballia, therefore, his presence at the place is highly doubtful.

50. P.W. 2, Moti Lal and P.W.3 Kamta Singh are interested and chance witnesses and their testimony consists of material contradictions which renders their testimony unreliable.

51. P.W.4, Ranvijay Singh, is the son of the deceased, who was not present at the place of occurrence and being son of the deceased he was a related witness, therefore, his testimony has to

be scrutunized with greater care and circumspection. It is also submitted that the doctor who medically examined the deceased has stated that the injured was not in a fit condition to give a dying declaration. The appellants have been falsely implicated in this case. There is no specific role assigned to the appellant nos.4 to 7 and no overt act has been assigned to them, therefore, they were not sharing any common object and offence under Section 148 and offence under Section 302 read with 149 IPC is not made out against them.

52. Lastly, it is submitted that the prosecution evidence consists of major contradictions, omissions and improvements which creates doubt over the prosecution case and the learned trial court without appreciating the evidence correctly reached at the conclusion of guilt of the appellants incorrectly, on surmises and conjectures. In view of the above, the impugned judgment and order is liable to be set aside.

53. On the other hand, learned A.G.A-I, has submitted that the prosecution has been able to prove its case beyond reasonable doubt. The witnesses are consistent with their version througout the trial and their testimonies are trustworthy. The FIR was lodged promptly. Specific role was assigned to all the assailants. All the appellants were sharing a common object and reached at the place of occurrence, in furtherance thereof, committed the offence. Therefore, all of them were members of the unlawful assembly are equally liable for the act committed by all or any of them. Eye witnesses have corroborated the prosecution story and there was motive for the appellants to commit murder of the deceased. The testimony of Manager of the Vaishali Hotel, Ballia is not reliable. It is not proved that the first informant was not present at the place of occurrence at the time of incident.

54. It was also submitted that P.W.3 has stated that injured Akhand Pratap Singh was conscious and was speaking with pain, therefore, looking into the nature of injuries sustained by the deceased, he was in a condition to give his dying declaration to the Investigating Officer. In view of the above, this appeal has no force and is liable to be dismissed.

55 In a criminal case, it is settled law that, the burden of proof lies upon the prosecution to prove its case beyond reasonable doubt. In the present case, the first contention on behalf of the appellants is that the FIR has been lodged ante-timed and as per prosecution, the F.I.R. was lodged at 9.10 pm and at 9.40 pm the injured reached at the Ballia District Hospital, which is 7 kms away from the Police Station, meaning thereby, within 30 minutes after reaching at the police station, the injured had reached at the hospital and in the meantime the F.I.R. was lodged, entry in general diary was made, statements of first informant, the injured and Ranvijay Singh were recorded by the I.O. at the Police Station. All this was not possible within such a short span of time at the Police Station which means that the F.I.R. was ante timed and it was lodged later on with earlier date on it.

56. In this regard, the perusal of record shows that the incident occurred on 08.02.1983 at 06:30 p.m. As per chik FIR, the FIR was lodged the same day at 09:10 p.m. and the alleged incident occurred near the sahan door of the first informant in village- Puras under police station-Bansdih Road. As per chik FIR the distance between place of occurrence and place of incident is about 6 kms. So, after the incident, within 2 hours 40 minutes, the FIR was lodged at the police station.

57. P.W.1 Ramji Singh is the brother of the deceased and is also the first informant of this case. He has said that after the incident he wrote down the tehrir at home and thereafter, took the injured Akhand Pratap Singh on cot to the police station where the I.O. of the case was present. He lodged the FIR, his statement as well as the statement of injured Akhand Pratap Singh and Ran Vijay Singh were recorded. He has said that Akhand Pratap Singh was talking slowly, but was conscious and from the police station he was taken to District Hospital, Ballia.

58. P.W. 4 Ranvijay Singh is the son of the deceased, he has also said that his (uncle) chacha i.e. Ran Vijay Singh, wrote down the tehrir at the spot and thereafter, the deceased was taken to police station- Bansdih on cot where his uncle Ramji Singh lodged the report. It has come in his evidence that his statement was recorded inside the police station thereafter, a truck came and on truck the injured was taken to hospital. He has said that at about 09:00 p.m. he reached at the police station and stayed there for about half an hour.

59. P.W. 9 Investigation Officer, Laxmi Singh, has taken statements of all these three witnesses at the Police Station and has said that the FIR was lodged in his presence and he recorded statements of all the three witnesses. Akhand Pratap Singh was conscious and was in a condition to give his statement. It has come in his statement that the Head Moharrir scribed the FIR within 5-7 minutes, thereafter, he recorded statements of Ramji Singh which took about 6-7 minutes, thereafter, he recorded statements of Akhand Pratap Singh within 3-4 minutes and statement of Ran Vijay Singh within 6-7 minutes. Upon calculation of this time it has been vehemently argued on behalf of the appellants that if we take the case of the prosecution as is stated above then, recording of statements and the FIR would have taken more than 30 minutes and as per the prosecution it took only 30 minutes in reaching Ballia, Hospital. It has come in evidence that it took time for the truck to reach at Ballia, Hospital, therefore, the entire calculation goes to show that it was not possible to conduct the entire proceeding within the aforesaid period. It shows that G.D. was stopped and the FIR was lodged later on with earlier date, falsely implicating the applicants in this case.

60. We do not agree with this submission of the learned counsel for the appellants, the court of law cannot be guided by such arithmetic calculations, memory of the witness is fallible and the time taken in any action/event cannot be proved by a witness with precision and his observation in this regard may vary from one person to another. The time stated by the witnesses is approximate time taken according to their memory and a swift police officer can write down the statements in the aforesaid period. It is proved beyond doubt that the deceased was taken from the police station to Ballia, Hospital by truck so all these minute details from the time of lodging the FIR up to the time of the injured of reaching at the hospital are not very material.

61. As per the injury report of injured Akhand Pratap Singh, he was medically examined at 09:45 p.m. at Ballia, Hospital and from there he was sent for further treatment to Varanasi. The chik FIR shows that the FIR was lodged under Section- 307 I.P.C., meaning thereby the deceased was alive when the FIR was lodged. It has come in evidence that on way to Varanasi, Akhand Pratap Singh died and thereafter, the case was converted under Section- 302 I.P.C.

62. Here, it is to be noted that the informant would not have been benefitted by merely lodging the case under Section- 307 IPC, if Akhand Pratap Singh had already died. On the other hand, he could have reported the matter straightway under Section- 302 IPC and would have stated that the Akhand Pratap Singh had died. In this case Chhitti Majrubi was prepared at the police station. There is a G.D. entry at the police station that the injured reached at the Police Station and from there was sent for treatment to Ballia Hospital. The injury report prepared at Ballia Hospital shows that the injured Akhand Pratap Singh was alive and his condition was critical therefore, he was referred for further treatment to Varanasi. It shows that the deceased was alive when the FIR was lodged.

63. On 09.02.1983 at about 06:45 a.m., Constable Ramji Singh informed that Akhand Pratap Singh had died and the case was converted from Section- 307 IPC to Section- 302 IPC. P.W. 3 has gien his statement on this point and the defence has not cross-examined him over this point. In view of the above, the argument advanced on behalf of the appellants that the FIR was ante-timed has no force and it is held that the FIR was not ante-timed and it was lodged at the time as mentioned in the FIR.

64. So far as the place of occurrence is concerned, according to the prosecution the incident occurred in front of sahan door of the informant in village- Puras under Police Station- Bansdih Road. P.W. 1 Ramji Singh; P.W. 2 Moti Lal Gosai; P.W. 3 Kamta Singh and P.W. 4 Ran Vijay Singh are all eye witnesses of the alleged incident. It has come in their evidence that the incident occurred infront of the sahan door of the first informant. The I.O. has recovered sample of blood stained earth, pellets, piece of blood stained leg cut from chair etc., from the place of occurrence and prepared its recovery memo. The I.O. has prepared site-plan of the place of occurrence, depicting the alleged incident at the place, which is alleged by the prosecution. The defence has not suggested any other alternative place of occurrence and has not cross-examined the witnesses with regard to the place of occurrence, therefore, the place of occurrence in this case is fully established.

65. It is also argued on behalf of the appellants that the alleged dying declaration of Akhand Pratap Singh is not believable. It has further been submitted that as per prosecution, it was wrote down that Akhand Pratap Singh was in pain, but was able to give his statement. It is further submitted that as per injury report of Akhand Pratap Singh and statement of P.W. 6- Dr. R.N. Sharma, injured sustained eight injuries, most of them on face and hand and bleeding was present from wounds. After three hours, ten minutes the deceased was medically examined, therefore, looking into the injuries sustained by him, it was not possible for Akhand Pratap Singh to give his statement to the Investigation Officer. In this regard, it is also submitted that the I.O, has not taken the signature of Akhand Pratap Singh over this statement, the I.O. has also not stated that at the time of statement Akhand Pratap Singh was conscious and was fit to give his statement.

66. In this regard, he has placed reliance upon judgments in **State (Delhi Administration) Vs. Laxman Kumar & Ors (1985) 4 SCC 475 Para 21-26 and Panchanand Mandal Alias Panchan Mandal Vs. State of Jharkhand (2013) 9 SCC 800 Para 15**, wherein it was held that in absence of thumb impressions, signatures of relatives and certificate of fitness, the dying declaration cannot be relied upon. He has also placed reliance on a judgment of Supreme Court in 2022 (14) SCC 299 in The State of Jharkhand Vs. Shailendra Kumar Rai @ Pandav Rai, where the Supreme Court has

held that the issue of whether a dying declaration recorded by police is admissible must be decided after considering facts and circumstances of each case.

67. In this regard, a perusal of injury report and post-mortem report of the deceased shows that, he sustained 08 injuries on face and abdomen, the various parts such as lips, teeth, tongue were badly injured; 1/3rd part of the upper lips and lower lips were torn; tongue had a piercing wound of 1.5 cm x .5 cm; edges of tongue of left side were torn; jabban maxilla left lower position; muscles and veins of left side of neck were badly injured; eight pellets were taken from lips, carotid artery was badly lacerated which consists blood from mouth to tongue. Beside this the abdominal injury was also grievous and eight pellets were recovered from lips and 17 pellets were recovered from abdomen, so under this medical condition the deceased, after three hour and 10 minutes, would not have been able to give statement, when bleeding was present from the wounds.

68. The argument on behalf of the appellants has force in it. The court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration, as held by Hon'ble Supreme Court in **K. Ramachandra Reddy v. Public Prosecutor, 1976 (3) SCC 618**. Here, the statement of P.W. 6-Dr. R.N. Sharma is also relevant, who has stated that in their opinion the injured was not in a fit condition to give dying declaration and this observation was recorded at 09;40 p.m. i.e. after half an hour, when the alleged statement of the deceased was recorded by the I.O. So, in view of the above, it cannot be held that Akhand Pratap Singh was in a fit condition to give his statement and was conscious enough, so the above statement of Akhand Pratap Singh is not worth believable and no reliance can be placed on it.

69. It is submitted on behalf of the appellants that source of light at the time of alleged incident is not such in which the witnesses could have identified the assailants, because as per prosecution the source of light was lantern and light from bonfire, but according to the prosecution some of the assailants were carrying torches in their hands and they flashed torches on face of the deceased. The other witnesses are alleged to have present near the deceased, therefore, due to the flash of torch they could not have identified the assailants. It is also submitted that light from the bonfire which was closure to the witnesses would have been very luminous having dazzling effect, so in front of such bright light the torches (responsible for low light, vision gets bleached and illuminated and only cones, responsible for bright light vision are activated in the retina. In such scenario, things in such low light cannot be seen in total absence of rods.

70. We do not agree with this submission, because it is not in dispute that the appellants are resident of same village so the witnesses have had opportunity to know them since before the incident. In case of co-villagers even by voice, appearance and manner one can identify his co-villager. It has come in evidence that the assailants were not covering their faces and had shouted maaro-maaro. Further, it has come in evidence that the deceased, as well as the witnesses, were sitting around the bonfire and the deceased was sitting on a chair whereas the witnesses were sitting on the ground. It has not come in evidence that the deceased as well as the witnesses were sitting on the same side, so it cannot be said that all the witnesses were not in a position to identify with precision the assailants at the time of incident. Therefore, we come to the conclusion that the source

of light was such that the witnesses were in a position to identify the appellants and submission on behalf of appellants has no force in it.

71. It has also been argued that there are material contradictions in oral and medical evidence which rules out the prosecution case. We do not agree with this submission, as it is the case of the prosecution that the deceased was shot and as per post-mortem report as well as the injury report, he sustained gunshot wounds. Though, it has come in evidence that the deceased was shot from a distance of about 12 steps and the post-mortem report shows that some of the entry wounds are having blackening, tattooing and scorching around the wounds, whereas at some injury wounds blackening, tattooing and scorching was not present. The above medical evidence shows that some of the shot were fired from a close range and some from a little more distance. It is to be noted that in such kind of incident, the victim, the assailants and the witness has to react swiftly and it cannot be assumed that during the entire incident all of them would remain stand still, on the other hand, in such kind of incident the assailants, the witnesses can keep changing their position(s) and observation of one witness of a particular thing may vary from the other. It has come in evidence that three assailants fired at the deceased, so it cannot be assumed that all of them would shoot from the same distance. Their distance from each other may also vary, therefore, if there was blackening, tattooing and scorching on some wounds of entry and it was not there, on other wounds of entry then merely on this ground the testimony of eye-witnesses cannot be disbelieved and this is not a material contradiction to rule out the prosecution case.

72. It is further submitted on behalf of the appellants that the testimony of all the four eye witnesses is not consistent and reliable. All of them are interested witnesses. Out of them P.W.1 Ram Ji Singh, was not present at the place of occurrence, as he was in Vaishali Hotel in Ballia, which is proved by D.W.1 and Tribhuwan Nath Pandey and C.W.-1 Jitendra Chand Singh, the Manager of the Hotel by bringing the register of the hotel. It is also submitted that P.W.4 Ran Vijay Singh, the son of the deceased, has not given statement to the Investigation Officer that P.W. 1 Ram Ji Singh was present at the place of occurrence, so the presence of P.W. 1 Ram Ji Singh, is highly doubtful. It is further submitted that P.W. 2 is interested witness, because he takes water from Ram Ji Singh to irrigate of his field and he lives in another village, so there was no reason for him to be present at the place of occurrence. It is further submitted that P.W. 3 is friend of Ram Ji Singh′s brother Keshav and he is also a chance witness, because he lives in another village and as per testimony he came for his niece′s marriage with deceased′s son whose marriage had already been settled, about one and a half year ago with another girl. So there was no valid purpose for P.W. 2 to be present there at the place of occurrence. It is next submitted that so far as P.W. 4 Ran Vijay Singh is concerned, he is not witness of the inquest and his presence is also not noted in the G.D. when the FIR was lodged so his testimony is also doubtful.

73. We do not agree with all these submissions of the appellants. D.W. 1 has stated that he met Ram Ji Singh in hotel Vaishali in Ballia. But in this regard, C.W.01 the manager of the Hotel, who brought the concerned register, could not prove the name and signature of Ram Ji Singh in Vaishali Hotel′s register to prove his presence there. Ram Ji Singh has denied that he stayed in Vaishali Hotel and has also denied his handwriting and signatures. The defence has not proved it by any handwriting expert. Beside this, mere non-mentioning of Ram Ji Singh′s name by P.W. 4, in his submission to the Investigation Officer under Section- 161 Cr.P.C., does not rule out his presence

at the place of occurrence, because he is the first informant who wrote down the application (tehrir) after the incident. All the other witnesses have also stated that Ram Ji Singh was also present at the place of occurrence. There is entry in the G.D. which shows that Ram Ji Singh, the first informant reached Police Station- Bansdih and lodged the FIR along with injured Akhand Pratap Singh. There is no evidence on behalf of defnce that P.W. 2 and P.W. 3 have any animus against the appellants. Simply because P.W. 2 lives in another village and he takes water from Ram Ji Singh for irrigation is no ground to believe that he is an interested witness, whereas it is natural for him to be present at the house of Ram Ji Singh, because they are known to each other before the incident.

74. So far as P.W. 3 is concerned, though he lives in another village and it is stated that he came at Ram Ji Singh′s house for his niece′s marriage with the deceased′s son, whose marriage had already settled one and a half year ago with another girl, but it does not mean that P.W. 3 would have known the engagement of deceased′s son with another girl, it may be that he had no knowledge that deceased′s son′s marriage has already been settled with another girl. So his coming over there for this reason is not very unnatural, therefore, the argument on behalf of the appellants has no force in it.

75. In view of the above, it comes to the conclusion that P.W. 1, P.W.2, P.W.3 and P.W. 4 were present at the place of occurrence and they have witnessed the incident. A perusal of their testimonies goes to say that their statements with regard to the incident are consistent with each other and also supports the prosecution case. There are no material contradictions in their testimony to doubt their credibility, therefore, their testimony is trustworthy and reliable.

76. It is argued on behalf of the appellant that the presence of these witnesses is doubtful, on the ground that they have not sustained any injuries whereas, as per prosecution case the deceased was shot from firearm and the dispersal of pellets would have caused injuries to these witnesses also, if they were present around the bonfire along with the deceased. By not sustaining any pellet injuries rules out their presence at the spot and creates doubt over the prosecution case.

77. We do not agree with this submission also. It has come in evidence that eight gunshot wounds were caused and out of them five wounds were not having any blackening, tattooing or scorching, around them. The deceased was sitting at a chair and the rest of the persons were sitting around the bonfire on ground. The position of the deceased as has been shown in the site-plan as well as has come in the statements of eye witnesses shows that, the deceased was shot from such a distance that the witnesses would have escaped from dispersal of pellets and did not sustain any injuries. The Investigation Officer has found pellets from under and near the chair, on which the deceased was sitting at the time of incident. From no other place around the bonfire the Investigation Officer has found any pellet. The target for the appellants was deceased Akhand Pratap Singh and at that time, being an inspector and sitting in his sahan, due to some respect for him the witnesses were sitting on ground and he himself was sitting on a chair, so it might have been that the persons near him may have maintained some distance while sitting around bonfire (alaao). Therefore, if these witnesses have not sustained any injuries from pellets, then merely on this ground their presence at the spot cannot be doubted.

78. Learned Counsel for the appellants has submitted that there are material contradictions between medical and ocular evidence so the benefit of doubt should go to the accused and in this regard, he has placed reliance upon a decision of Supreme court in the case of **Krishnegowda & Ors Vs. State of Karnataka (2017) 13 SCC 98 Para 42**, where the Supreme Court has held that:-

"Once there is clear contradiction between the medical and the ocular evidence coupled with severe contradictions in oral evidence and clear latches in investigation, then the benefit of doubt goes to the accused"

79. Further, reliance has been placed upon another judgment of Supreme Court in **Criminal Appeal Nos.541-543 of 2015 (Sri Chikkegowda & Ors. Vs. State of Karnataka etc.) decided on 07.10.2025**, the relevant portion of the judgment is extracted hereinbelow:-

"23. It is well settled that if there is a conflict in the ocular testimony and the medical testimony/evidence, it is the ocular evidence which will prevail unless found to be totally unreliable. In this regard, reference may be made to the followings decision wherein the above principle was reiterated:

23.1.In the judgment of Darbara Singh v. State ofPunjab5, it was held that:

"10. So far as the question of inconsistency between medical evidence and ocular evidence is concerned, the law is well settled that, unless the oral evidence available is totally irreconcilable with the medical evidence, the oral evidence would have primacy. In the event of contradictions between medical and ocular evidence, the ocular testimony of a witness will have greater evidentiary value vis-a-vis medical evidence and when medical evidence makes the oral testimony improbable, the same becomes a relevant factor in the process of evaluation of such evidence. It is only when the contradiction between the two is so extreme that the medical evidence completely rules out all possibilities of the ocular evidence being true at all, that the ocular evidence is liable to be disbelieved.."

(Emphasis supplied)

*23.2.In the judgment of **State of U.P. v. Hari Chand**, it was held that:*

"13. ....In any event unless the oral evidence is totally irreconcilable with the medical evidence it has primacy."

*23.3.In the judgement of **Pruthviraj Jayantibhai Vanol v. Dinesh Dayabhai Vala & Ors**, it was held that:*

"17. Ocular evidence is considered the best evidence unless there are reasons to doubt it..."

23.4. In the aforesaid decisions, this Court has consistently accorded greater weight to ocular testimony than to the opinion of medical experts, and the same principle governs the case before us."

80. Learned Counsel for the appellants has further submitted that the conduct of the persons present at the spot was not natural and they should have reacted to save the deceased which they did not do, therefore, their presence at the spot is doubtful and their testimony is not reliable. In this regard, he has relied upon a decision of Supreme Court in **Nima Ghosh & Ors Vs. State of Bihar**

2025 INSC 816 Paras 14 (sub para 22, 24, & 32, 17), wherein it has been held that the conduct of near relatives as to what steps they took to save life of the injured deceased are relevant and a failure to take any steps casts serious doubts on their testimony and presence at the spot.

81. We do not agree with this submission. There is no genearl rule that during a crime a person would react only in a particular manner. It would be relevant to quote observation of the Supreme Court in ***Rana Pratap v/s State of Haryana AIR 1983 SC 680, (1983) 3 SCC 327 at page 330 of SCC***:

"Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. The others rush to the rescue of the victim, even going to the extent of counter attacking the assailants. Every one reacts in his own special way. There is no such rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."

82. It is also submitted on behalf of the appellants that the motive to commit the crime is very weak and motive of enmity is a double edged weapon which gives cause for false implication as well. Therefore, on this basis it is argued that the appellants have been falsely implicated in this case and in this regard, reliance has been placed upon a decision of Supreme Court in **Aslam Alias Imran Vs. State of Madhya Pradesh 2025 SCC Online 670 Para 22**, which clearly states that motive of enemity is a double edged sword and given motive for false implication as well.

83. So far as motive is concerned, though in the case of direct evidence motive looses its significance and this case is based on direct evidence. Nevertheless, it has come in evidence that the deceased was an Inspector and about 3-4 days prior to this incident, an FIR was lodged from the informant's side against the appellant's side and the deceased had come over to the village and was doing pairvi of this case and upon being annoyed the appellants could have murdered the deceased. It has come in evidence that there was prior enmity between the parties and civil litigations and criminal cases were pending between them. It is argued on behalf of the appellants that the first informant, Ram Ji Singh, was of a very bad character harassing people of the area and in this regard, complaints against him were lodged by persons, some of them having produced by defence and is proved by D.W.3. A perusal of these complaints shows that they were filed by D.W.3 Tej Bahadur Singh, but he is neither the scribe nor the complainant of these complaints, nor these complaints were written in his presence. The person who has sent these complaints has not been examined by the defence. Therefore, these reports are not admissible in evidence. No other evidence is adduced on behalf of defence in support of this contention therefore, it has no force in it.

84. It is also submitted on behalf of the appellant that if there was any enmity between Ram Ji Singh and the appellants then the appellants would have killed Ram Ji Singh and not Akhand Pratap Singh, so the motive as alleged by the prosecution is not believable.

85. We do not agree with this submission. Motive is a state of mind of a person which cannot be seen from outside. Here, it is to be noted that Akhand Pratap Singh was the most influential person of the family of the first informant, who was not only an Inspector in Police Department, but was also doing pairvi against the appellants, of a criminal case lodged few days prior to the incident, so he would have been first target for the appellants to take revenge, against Ram Ji Singh's family.

86. It is submitted by learned Counsel for the appellants that there was no common object to kill the deceased, so far as appellant nos. 4 to 7 are concerned, and there is no credible evidence in this regard, therefore, they are not liable for the alleged offence. In this regard he has relied upon a judgment of Supreme Court in **State of Maharashtra v. Kashirao, (2003) 10 SCC 434** in which at Para 12-15 it has been held that:-

"Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The word "object" means the purpose or design and, in order to make it "common", it must be shared by all. In other words, the object should be common to the persons who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression "in prosecution of common object", as appearing in Section 149 has to be strictly construed as equivalent to "in order to attain the common object". It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter."

87. Though the legal position is not disputed but we do not agree with this submission of appellant and there is evidence which shows that appellant nos. 4 to 7 shared common object with other appellant regarding the offence. It has come in evidence that all the appellants came at the spot together, some of them carrying firearms and some others torches and other weapons. They shouted maaro-maaro and the deceased was shot by three of the appellants and thereafter, all of them ran way. It means that their object was common to commit murder of Akhand Pratap Singh. Therefore, appellant nos. 4 to 7 were members of the unlawful assembly alongwith other appellants, sharing common object. Therefore, the argument on behalf of the appellant in this regard has no force.

88. In view of the above discussion, we come to the conclusion that the prosecution has been able to prove its case beyond reasonable doubt. It is proved that appellants to wit, Kailash Mishra, Sheo Kumar Tiwari, Raj Narain Tiwari, carrying guns in their hands alongwith Shiv Shankar Pandey, Ishwar Dayal Tiwari, Durga Das Tiwari and Dev Das Tiwari carrying farsa, came at the place of occurrence, sharing common object, formed an unlawful assembly and in furtherance thereof, appellants, to wit, Kailash Mishra, Sheo Kumar Tiwari, and Raj Narain Tiwari shot at Akhand Pratap Singh causing him gunshot injuries due to which he died on way to the hospital.

Therefore, all the appellants are found guilty of offence punishable under Sections 148 and 302 read with 149 IPC and in this regard learned trial court has appreciated the evidence on record correctly, and has reached at the right conclusion with regard to the guilt of the appellants. Therefore, this appeal has no force and is accordingly, dismissed.

89. Thus, the present appeal lacks merit and is, accordingly, **dismissed**. The impugned judgment and order convicting and sentencing the appellants is **confirmed**.

90. Appellant appellant Nos. 2, 4, 5, 6 and 7, to wit, Kailash Mishra, Sheo Kumar Pandey, Ishwar Dayal Tiwari, Durga Das Tiwari and Deo Das Tiwari, respectively, are on bail. Their personal bonds and bail bonds are cancelled and sureties are discharged. They are directed to surrender before the learned Trial Court within six weeks from today to undergo the remaining part of their sentence, failing which, the Trial Court is directed to adopt coercive measures for securing their presence.

91. Let a copy of this order be forwarded to the Trial Court concerned alongwith the record of the Trial Court for information and necessary compliance.

(2026) 5 ILRA 1149
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 12.05.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 753 of 2012

Sharief @ Gathiya **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration
Matter pertains to legality of conviction based on solitary testimony of rape victim.

Headnotes
Rape-solitary testimony of victim-Indian Penal Code, 1860 -S. 376; Indian Evidence Act-sec 114- Appellant alleged to have entered the complainant's house at night and raped her in presence of her children - sole testimony of victim not corroborated by medico-legal examination report -no injury on any part of the victim's body-though victim alleged biting on breast and thighs - pathological examination report not placed on record-giving rise to presumption under Section 114 illustration (g) Evidence Act that it was not favourable to the prosecution -highly improbable that appellant would rape a woman aged 35 years by use of force -in presence of 4-5 children and all the children would continue to sleep peacefully-and the one child aged 7 years who woke up would not raise any hue and cry -daughter said to have witnessed the incident not produced- adverse inference -conviction cannot be based on solitary testimony of victim -facts and circumstances raise a doubt - prosecution failed to establish offence - conviction set aside. **Appeal allowed.**

Case Law Cited

1. Ritesh Chakarvarti v. State of M.P., (2006) 12 SCC 321
2. Davinder Singh v. State of Punjab, (2023) 19 SCC 229
3. Takhaji Hiraji v. Thakore Kubersing Chamansing, (2001) 6 SCC 145

List of Acts

1. Indian Penal Code, 1860
2. Indian Evidence Act

List of Keywords

Sole testimony of victim; solitary testimony; absence of injury; Section 114 Evidence Act - illustration (g);- child witness; no hue and cry; suggestion not a confession; false implication.

Appearances of parties

Counsel for Appellant(s): Santosh Kumar Srivastava
Counsel for Respondent(s): Govt. Advocate

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

1. Heard Shri Santosh Kumar Srivastava, the learned counsel for the appellant and Shri G.D. Bhatt, the learned AGA-I for the State of U.P.

2. By means of the instant appeal, the appellant has challenged the validity of a judgment and order dated 15.03.2012 passed by the learned Additional Session Judge, Ambedkar Nagar in Session Trial No.80 of 2006 arising out of Case Crime No.252 of 2005 under Sections 457, 323, 376 IPC, Police Station Kotwali Akbarpur, District Ambedkar Nagar, whereby although the trial Court has acquitted the appellants for the offence under Section 457 and 323 IPC, the appellant has been convicted for the offence under Section 376 IPC and he has been sentenced to undergo rigorous imprisonment for 7 years and to pay Rs.2,000/- as fine.

3. Briefly stated, the facts of the case are that the victim herself had lodged an FIR at 12:30 p.m. on 01.12.2005 stating that her husband works as a labourer at Ludhiana and had not visited the home for the past nine months. The complainant lives with her children. At about 01:00 a.m. on the previous night while she was sleeping in her room along with her children, the appellant entered her house by scaling the boundary wall and, thereafter, he entered her room after breaking the window. The electric light was switched on. The appellant shut her mouth, disrobed her and bit on her breast. The complainant's daughter woke up. The appellant threatened her daughter and raped the complainant. The complainant stated that she had suffered injuries on her breast and thighs due to biting and beating. She further stated that she did not come in the morning to lodge the FIR because of fear and she had come in the afternoon with the help of some villagers. The complainant stated that her age was 35 years.

4. The husband of village Pradhan was examined as PW-2. He stated that the complainant had told him that the appellant had raped her. PW-3- Aadya Prasad stated that the complainant was living in the village along with her children and her husband was working at Ludhiana. PW-3 stated that on the date of the incident, he was not in the village. PW-3 was declared hostile. During cross-examination PW-3 stated that the complainant had four children. The eldest was aged about 12-13

years at the time of the incident. After the incident, the complainant went to Ludhiana along with her children and did not return to the village.

5. The victim/complainant was examined as PW-4. She stated that the appellant had forcibly disrobed and raped her and he had threatened her.

6. The Doctor, who had conducted the medico-legal examination of the victim/complainant was examined as PW-5. She stated that no mark of injury was found on the private parts of the complainant's body. She had prepared two slides of vaginal swab and had sent the same for being examined in the District Hospital, Faizabad. She stated that the complainant is mother of five children and she could not say about commission of rape with certainty.

7. The Investigating Officer was not examined because of his ailment and a constable-Pairokar was examined as PW-6 who proved the site plan and the other documents.

8. In the statement recorded under Section 313 Cr.P.C., the appellant denied the allegations and stated that he has been falsely implicated as a part of a conspiracy.

9. It was contended on behalf of the defence that the victim had stated during her examination-in-chief that her daughter Pushpa had woke-up. The daughter had been summoned to appear as a witness but on the prosecution's application, examination of the daughter was discharged as she was merely 7 years of age. The trial Court held that non-examination of 7 years old daughter of the complainant would not have adverse consequence on the prosecution case.

10. The trial Court found that the statement of the victim (PW-4) that the appellant had made physical relations against her wish and the confession made by the defence that the appellant had made physical relations with her, prove that the appellant had raped the victim.

11. The trial Court found that the charge of committing offence under Section 457 Cr.P.C. was not proved. Further, as the medical examination report does not mention any injury suffered by the victim charge for commission of offence under Section 323 is also not proved.

12. Although it is correct that conviction for commission of rape can be based on the sole testimony of a victim, but it can be done only where the victim's testimony is of sterling quality and it inspires confidence. Where the facts and circumstances of the case raise a doubt against the prosecution case, conviction cannot be based on the solitary testimony of the victim.

13. In the present case, the victim stated that the appellant had bit on her breast and thighs but this statement is not corroborated by the findings of the medico-legal examination report, which revealed no injury on any part of the victim's body.

14. The vaginal swab slides were sent for pathological examination, but the pathological examination report has not been placed on record, from which it appears that the report was not favourable to the prosecution and the allegation of commission of rape is not corroborated by the medico-legal examination report.

15. PW-5 has stated that the victim is a mother of five children. PW-3 has stated that the victim had told her that she has four children, the eldest of them was aged 12-13 years. The victim has stated that she was sleeping in a room along with all the children in the night of the incident. As per the victim, only one of her 4-5 children aged 7 years had woke up and the victim had threatened her, rest of her four children, including the eldest child aged 12-13 years, continued to sleep peacefully in the same room where the victim was allegedly being raped. It appears to be highly improbable that a person would enter the room of a house, rape a woman aged 35 years by use of force in presence of 4-5 children and all the children will continue to sleep peacefully and the one child who woke up would not raise any hue and cry or offer any resistance and no mark of injury or sign of use of force will appear on her body. Absence of pathological examination report confirming commission of rape is also a factor which raises a serious doubt against the prosecution case.

16. Section 114 of the Evidence Act provides that the court may presume the existence of any fact which it thinks likely to have happen, regarded being had to the common course of natural events, human conduct, public and private business in relation to the facts of the peculiar case. Illustration (g) appended to Section 114 provides that the court may presume that evidence which could be and is not produced would, if produced, be unfavourable to a person who withholds it.

17. In **Ritesh Chakarvarti v. State of M.P.**: (2006) 12 SCC 321, the Hon'ble Supreme Court held that An adverse inference can be drawn for non-examination of material witnesses.

18. In **Davinder Singh v. State of Punjab**: (2023) 19 SCC 229, the Hon'ble Supreme Court referred to an earlier precedent on this point in the following passage: -

*"9. On the issue of non-examination of material witness, we wish to place reliance on the decision of this Court in **Takhaji Hiraji v. Thakore Kubersing Chamansing** [(2001) 6 SCC 145]:*

"19. So is the case with the criticism levelled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself. whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses."

19. Non-production of pathological examination report of the vaginal swab and non-production of the victim's daughter who is said to have witnesses the commission of rape, gives rise to a presumption that had the aforesaid report and the witness been produced, the report and the testimony of the witness would have been detrimental to the prosecution case.

20.The trial Court held that the suggestion given by the learned Counsel for the accused-appellant during cross-examination of the victim, that she had made physical relations with the appellant with her consent and after some villagers saw the appellant coming out of her house, she falsely implicated her, amounts to a confession that the appellant had made physical relations with the victim and since the appellant failed to prove the victim's consent, it is proved that he had raped her.

21. The trial Court noted that the victim had supported the FIR version. During cross-examination, a suggestion was given to her that she had developed an acquaintance with the appellant about 3-4 years ago and that the appellant had repetitively been making physical relations with her consent. At the night of the incident also, the appellant had entered her house through the door and had spent 3-4 hours with the complainant. Three villagers, namely, Sadru, Momin and Sharif had seen the appellant coming out of the complainant's house and they had seen the complainant had come to the door to see the appellant off. It was suggested that on the night of the incident, the appellant had made physical relations with consent of the complainant. However, all the aforesaid suggestions were denied by the victim. The trial Court held that this suggestion amounts to a confession that the appellant had made physical relations with the complainant and when the complainant has alleged that the appellant had made physical relations against her wishes and by use of force, the burden lies on the defence to prove that the physical relation was made with consent of the victim.

22. The aforesaid reasoning given by the trial Court is perverse as a suggestion given by a learned Counsel during cross-examination of a victim cannot be taken as a confession made by the accused and no conviction can be based treating the suggestion of the Counsel as the confession of the accused.

23. In view of the foregoing discussion, I am of the considered view that the prosecution has failed to established that the appellant has committed the offence under Section 376 IPC. The trial Court has passed the order without adverting to the aforesaid facts of the case which vitiates the trial Courts order.

24. In view of the foregoing discussion, the appeal is **allowed**. The order dated 15.03.2012 passed by the learned Additional Sessions Judge, Ambedkar Nagar in Session Trial No.80 of 2006 arising out of Case Crime No.252 of 2005 under Section 457, 323, 376 IPC relating to Police Station- Kotwali Akbarpur, District- Ambedkar Nagar is **set aside** and the appellant is acquitted of all the charges.

25. The appellant is directed to furnish a personal bond before the Chief Judicial Magistrate Ambedkar Nagar as per the requirement of Section 437-A Cr.P.C. for ensuring his presence before

the Hon'ble Supreme Court in case any appeal is filed against this order and the Hon'ble Supreme Court issues notice of the appeal.

(2026) 5 ILRA 1154
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 27.05.2026

BEFORE

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

Criminal Appeal No. 956 of 2006

Rajendra **...Appellant**
Versus
The State of U.P. **...Respondent**

Issue for consideration

Matter pertains to legality of conviction order based upon testimony of child victim.

Headnotes

Rape of child - Indian Penal Code, 1860-S. 376 - Child witness-Competency and appreciation of evidence- delay in lodging FIR-once the Trial Court is satisfied that the child witness is capable of understanding the questions and giving rational answers-her testimony, if natural, consistent, trustworthy and free from tutoring- can form the sole basis of conviction without corroboration-delay of nearly two days in lodging the FIR- satisfactorily explained -does not discredit the prosecution case-minor inconsistencies and discrepancies in the evidence of a child witness and rustic witnesses-do not affect the prosecution case-medical evidence is corroborative in nature -absence of external injuries is not a sine qua non for determining whether rape has been committed-hostility of one prosecution witness does not affect the prosecution - testimony of the prosecutrix is reliable and is supported by medical and other corroborative evidence - conviction upheld -**Appeal dismissed.**

Case Law Cited

1. Vidyadharan vs State Of Kerala ; AIR 2004 SC 536
2. Amar Singh vs. Balwinder Singh and Others; AIR 2003 SC 1164
3. Balram Singh Versus State of Punjab; AIR 2003 SC 2213
4. State of Madhya Pradesh Vs Balveer Singh; (2025) 8 SCC 545
5. Dattu Ramrao Sakhare v. State of Maharashtra; (1997) 5 SCC 341
6. Pradeep v. State of Haryana; (2023) 19 SCC 221
7. Ratansinh Dalsukhbhai Nayak v. State of Gujarat; (2004) 1 SCC 64
8. Panchhi v. State of U.P. ; (1998) 7 SCC 177
9. Suryanarayana v. State of Karnataka; (2001) 9 SCC 129
10. Arbind Singh v. State of Bihar ; 1995 Supp (4) SCC 416
11. Digamber Vaishnav v. State of Chhattisgarh; (2019) 4 SCC 522
12. State of M.P v. Ramesh; (2011) 4 SCC 786,
13. State of U.P. vs. Naresh; 2011 (4) SCC 324

14. Leela Ram vs State of Haryana; (1999) 9 SCC 525
15. State of Punjab Vs. Gurmit Singh; 1996 (2) SCC 384

List of Acts

Indian Penal Code, 1860

List of Keywords

child witness; medical evidence; beyond all reasonable doubt; natural, consistent, trustworthy and free from tutoring.

Appearances of parties

Counsel for Appellant (s) : Virendra Moha, Ambica Tripathi, Avikshit Mishra, Raj Kumar Mishra, Rakesh K. Tripathi, Ram Avtar Singh, Ramkant Jayswal Counsel for Respondent(s) : Govt. Advocate

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

(1) The instant criminal appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (here-in-after referred to as "***Cr.P.C.***") has been filed by the accused/convict/appellant, Rajendra, assailing the judgment and order dated 28.04.2006 passed by Additional District & Sessions Judge, Court No.4, Hardoi, in Sessions Trial No. 485 of 2005; State Versus Rajendra, emanating from Case Crime No. 112 of 2005, under Section 376/511 of the Indian Penal Code, 1860 (here-in-after referred to as "***I.P.C.***"), Police Station Beniganj, district Hardoi, whereby the accused/appellant has been convicted and sentenced under Section 376 I.P.C. to undergo life imprisonment and a fine of Rs.10,000/-. In default in payment of fine, the accused/appellant would undergo one year's additional rigorous imprisonment.

(2) The prosecution case, in short, is that complainant, Smt. Rooprani, had submitted a written report at police station Beniganj, district Hardoi on 30.03.2005, alleging therein that she is the resident of village Bargadiya, hamlet of Atiya Majhigawan, police station Beniganj, Hardoi. Yesterday, in the afternoon of 28.03.2005, her husband had gone to his maternal village Akouhara to meet/greet 'Holi'. She was not well, therefore, she was lying at home. The son of her elder brother-in-law, Ravindra son of Ram Prasad, was present with her. At about 06:30 in the evening, upon hearing the cries of her daughter (here-in-after referred to as '**victim**') aged about 9 years coming from behind her house, she and Ravindra rushed behind the house and saw that her neighbour, Rajendra son of Rameshwar, was trying to commit a wrongful act with her daughter by removing her shorts, who, on seeing them, fled from the place of occurrence. Due to social shame, she remained silent. Today, when her husband returned, she told him everything. She has come to the police station along with her husband and her daughter. Appropriate action may be taken.

(3) On the basis of the aforesaid written report (Ext. Ka.1), F.I.R., bearing Case Crime No. 112 of 2005, under Sections 376/511 I.P.C. was registered at Police Station Beniganj, district Hardoi on 30.03.2005 at 02:30 P.M. against accused Rajendra.

(4) The investigation of the case was conducted by S.I. Raj Bahadur Singh on 03.03.2005. He, after inspecting the place of occurrence on the pointing out of the complainant Rooprani, prepared

the site-plan (Ext. Ka.7) and recorded the statement of complainant on 30.03.2005 and on the same day, he arrested the accused/appellant.

(5) The medical examination of the victim was performed on 30.03.2005 at 06:00 P.M. at District Hospital, Hardoi by Dr. Nisha Srivastava (P.W.4), who found that height of the victim was 128 cm; weight was 20 Kg; teeth were 12/12; she was average built; axillary hair not present; breast not developed and there was no mark of injury on any part of the body. On examination of private parts of the victim, doctor noted that pubic hair not present on private parts and P/V Hymen torn at 6 O′clock position margins red and inflammed. Slight oozing vagina admitting 1 finger with pain.

(6) After examining the victim, Dr. Nisha Srivastava took her vaginal smear and sent it to Pathological Department, Balrampur Hospital for ascertaining the presence of spermatozoa and also the victim was sent to X-ray Department, District Hospital, Hardoi for x-ray of right wrist joint (all carpal bones) for determination of age.

(7) On reference, the x-ray of the victim was conducted by Dr. I.K. Srivastava (P.W.5) at District Hospital, Hardoi on 01.04.2005, who found that only seven carpal bone has appeared, pisiform not appeared Epiphysis of lower end of radius and ulna and base of 1st meta carpal has appeared but not fused.

(8) Based on the Vaginal Smear Report No. 151 dated 23.04.2005 done by Senior Pathologist, Balrampur Hospital, Lucknow that no sperm smear and gonococci are not seen as well as aforesaid x-ray report, Dr. Nisha Srivastava had prepared supplementary report of the victim on 05.05.20005, wherein she, after examining the Medical Report and vaginal smear report, opined that allegation of intercourse might have been done and according to physical appearance and x-ray report, age of victim is below 12 years.

(9) The Investigating Officer S.I. Raj Bahadur Singh, recorded the statement of victim on 05.04.2005 and after collecting the incriminating material and completion of the investigation, submitted the charge-sheet (Ext. Ka. 8) against the accused Rajendra under Sections 376, 511 I.P.C. on 05.05.2005.

(10) The Additional Chief Judicial Magistrate, Court No. 2, Hardoi took cognizance of the aforesaid charge-sheet and committed the case to the Sessions Court on 04.06.2005, wherein the case was registered as Sessions Trial No. 485 of 2005. The Additional Sessions Judge, Court No.4, Hardoi, had framed charges against the accused Rajendra under Sections 376/511 I.P.C. on 15.07.2005, which was denied by the accused and claimed to be tried. Thereafter, the charge was amended to Section 376 I.P.C. on 06.09.2005, which too was denied by the accused and claimed to be tried.

(11) In order to prove its case, the prosecution examined seven witnesses, who are as under :-

P.W.1	Victim
P.W.2-Rooprani	complainant/mother of the victim

P.W.3-H.M. Krishna Pal Singh	Prepared the check F.I.R. on the basis of written report of the complainant
P.W.4-Dr. Nisha Srivastava	Conducted the medical examination of the victim and proved the medical examination reports
P.W.5-Dr. I.K. Srivastava	Conducted the x-ray and proved its report
P.W.6-Ravindra	Nephew of complainant/hostile witness
P.W.7-SSI Raj Bahadur Singh	Investigating Officer

(12) Apart from the aforesaid witnesses, the prosecution placed on record the documentary evidence and proved it, which are as under :-

Ext. Ka. 1	Written Report
Ext. Ka. 2	Check F.I.R.
Ext. Ka. 3	Copy of Rapat No. 22 (time 14:30 hours dated 30.03.2005)
Ext. Ka.4	Medical Examination Report of victim prepared by Dr. Nisha Srivastava
Ext. Ka. 5	Supplementary Medical Examination Report prepared by Dr. Nisha Srivastava
Ext. Ka. 6	X-ray report prepared by Dr. I.K. Srivastava
Ext. Ka.7	Site plan
Ext. Ka. 8	charge-sheet

(13) The prosecution has also produced material exhibit i.e. x-ray of the victim as material Exhibit 1.

(14) After completion of evidence of prosecution, the statement of the accused Rajendra was recorded under Section 313 of Cr.P.C., wherein he denied the prosecution story as false and concocted and stated that he has been implicated in the case due to enmity. He further stated that goat of brother-in-law of the complainant, namely, Lallaram was stolen, for which Lallram had made suspicion on him and on his asking, the complainant has falsely been implicated him. The defence has not led any documentary or oral evidence in support of his defence.

(15) After hearing learned Counsel for the parties and considering the evidence and material on record, the learned trial Court convicted and sentenced the accused/appellant Rajendra by means of the impugned judgment and order dated 28.04.2006 in the manner as stated in paragraph-1 here-in-above. Consequently, the convict/appellant, Rajendra, has preferred the instant appeal.

ARGUMENTS

(16) Heard Shri Avikshit Mishra, learned Amicus Curiae for the appellant and learned A.G.A. for the State.

(17) The learned *Amicus Curiae* appearing on behalf of the appellant submitted that the impugned judgment and order has been passed without considering the evidence and material available on record appropriately. He submitted that the FIR was lodged after delay of two days from the date of the alleged incident and the prosecution has failed to given satisfactory explanation for such delay and it has been lodged after consultation with embellishment, which is apparent from evidence of P.W.2. He next submitted that there are material contradictions in the statements of P.W.1 (the victim) and P.W.2, who is the mother of the victim, which goes to the root of the prosecution case and render it unreliable. He further submitted that the alleged eye witness, P.W.6-Ravindra, who is the cousin brother of the victim (P.W.1) and nephew of P.W.2, has not supported the prosecution case and turned hostile, which creates serious doubt on story.

(18) Learned *Amicus Curiae* for the appellant next submitted that the place of occurrence could not be established by the prosecution beyond reasonable doubt, therefore, it is doubtful. He next submitted that the medical evidence also does not support the prosecution case, therefore, prosecution case renders unreliable. However, learned trial Court failed to consider it and passed the impugned judgment and order on the basis of surmises and conjectures in an illegal manner without considering the lacunas in prosecution case and aforesaid, therefore, it was neither warranted in law nor on facts. Thus, it is liable to be set-aside and the appellant is liable to be acquitted.

(19) *Per contra*, learned A.G.A. opposed the submissions of the learned Amicus Curiae for the appellant and while supporting the impugned judgment and order, submitted that it has been passed after due appreciation of the evidence and material available on record and does not suffer from any illegality or infirmity. According to learned A.G.A., delay of two days in lodging the F.I.R. has been satisfactorily explained by the prosecution, which is natural and plausible in the facts and circumstances of the case. Moreso, mere delay in lodging the FIR is not fatal to the prosecution case, particularly in offences of such nature where hesitation in approaching the authorities is common. Thus, the contentions in this regard are not sustainable. He further submitted that the alleged contradictions in the statements of P.W.1 (the victim) and complainant (P.W.2-Rooprani) are minor in nature and do not go to the root of the prosecution case. He submitted that such discrepancies are bound to occur due to normal errors of observation, memory, lapse of time and village lady, which does not affect the core of the prosecution story. According to learned A.G.A., the testimony of the victim (P.W.1) is consistent and trustworthy on material particulars and inspires confidence and conviction could have been authored only on it. He further submitted that the mere fact that P.W.6-Ravindra has turned hostile does not demolish the entire prosecution case, especially when the testimony of the victim (P.W.1) is cogent, consistent and reliable.

(20) Learned A.G.A. next submitted that the place of occurrence has been duly established from the evidence available on record and there is no ambiguity in it. He submitted that the testimony of P.W.1 (the victim) clearly describes the place of occurrence and the same stands corroborated by the evidence of complainant (P.W.2) and other material brought on record. He further submitted that the medical evidence on record fully supports the prosecution case and there

is no inconsistency between the medical opinion and the ocular version of the prosecution witnesses. Even otherwise, minor variations, if any, between medical and ocular evidence are natural and do not affect the core of the prosecution story. According to learned A.G.A., the medical report cannot be read in isolation and has to be appreciated in conjunction with the testimony of the victim (P.W.1), which is consistent, reliable, and duly corroborated by other evidence on record. Thus, submission is that the argument of learned *Amicus Curiae* in this regard is not sustainable. There is no illegality, error or perversity in the impugned judgment and order and the learned trial Court has rightly convicted the appellant after considering the evidence and material on record and dealing it appropriately. The appeal has been filed on misconceived and baseless ground, which lacks merit and liable to be dismissed.

ANALYSIS

(21) We have heard learned Counsel for the parties and gone through the records as well as the impugned judgment and order passed by the learned trial Court.

(22) The first question we have to consider is the impact of delay of nearly two days in lodging the F.I.R. The learned trial Court, in the impugned judgment, has relied upon the judgment of Hon'ble Supreme Court rendered in the cases of **Vidyadharan vs State Of Kerala** ; AIR 2004 SC 536, **Amar Singh vs. Balwinder Singh and Others**; AIR 2003 SC 1164 and **Balram Singh Versus State of Punjab**; AIR 2003 SC 2213. In **Vidyadharan vs. State of Kerala (supra)**, Hon'ble Supreme Court has held that even if there is delay in lodging first information report, that cannot be a ground to discredit the evidence of victim. The relevant paragraph-9 is extracted below :-

"*9. ..... It is seen that though there was some delay in lodging the FIR, it is but natural in a tradition-bound society to avoid embarrassment, which is inevitable when the reputation of a woman is concerned. Delay in every case cannot be a ground to arouse suspicion. It can only be so when the delay is unexplained..... It is not that on account of enmity false implications are made. It would, however, be unusual in a conservative society that a woman would be used as a pawn to wreak vengeance. When a plea is taken of false implication, courts have a duty to make deeper scrutiny of the evidence and decide the acceptability or otherwise of the accusations. In the instant case, both the trial court and the High Court have done that. There is no scope for taking a different view."*

(23) Similarly, in the case of Amar Singh vs. Balwinder Singh and others (supra), Hon'ble Supreme Court has held that there is no hard and fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. It depends upon facts and circumstances of each case as to whether there has been any such delay in lodging the FIR, which may cast doubt about the veracity of the prosecution case and for this a host of circumstances like the condition of the first informant, the nature of injuries sustained, the number of victims, the efforts made to provide medical aid to them, the distance of the hospital and the police station etc. have to be taken into consideration. There is no mathematical formula by which an inference may be drawn either way merely on account of delay in lodging of the FIR. In the case of **Balram Singh Versus State of Punjab (supra)**, Hon'ble Supreme Court has held that if the ocular evidence adduced by the

prosecution is worthy of acceptance, the element of delay in registering a complaint or sending the same to the jurisdictional Magistrate by itself would not in any manner weaken the prosecution case.

(24) It will also be apposite to refer the decision of the Hon'ble Supreme Court rendered in the case of Tulshidas Kanolkar v. State of Goa; 2003 (8) SCC 590, wherein rape of a girl was committed, whose mental ability was undeveloped, considering the same, the Hon'ble Supreme Court in regard to delay in F.I.R., has held as under :-

"5…….....In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render prosecution version brittle."

(25) In the backdrop of the aforesaid principles, the question of delay in lodging the F.I.R. is to be examined in the facts and circumstances of the present case. As per prosecution, the alleged incident occurred on 28.03.2005 at 06:30 in the evening, whereas F.I.R. was lodged on 30.03.2005 at 02:30 p.m. at police station Beniganj, district Hardoi. Thus, there was a delay of nearly 02 (two) days in lodging the FIR. The contents of the written report (Exhibit Ka-1) contain the statement of complainant (P.W.2 Smt. Ruprani) that due to social shame, she remained silent and when her husband came, she narrated all the facts to him, whereupon she, her husband and her daughter (victim) went to the police station and lodged the report. It is also mentioned in the written report (Exhibit Ka-1) that at the time of the incident, husband of the complainant had gone to his maternal home for greeting Holi. The victim (P.W.1) was subjected to rape and her age as mentioned in the written report, was only 9 years and the medical evidence also shows that she was below 12 years of age. It was, thus, obvious for the complainant to wait for husband as it has not been shown that any else major member was at home, to whom she could have told it. Generally, every person first tries to ensure that such a matter does not spread in society, particularly unless he/she decides to go for an action, looking to the future of minor and social stigma. In the instant case, when the husband of the complainant was away from home, it is probable that she would wait for her husband's return. The victim, who appeared as P.W.1, has also stated that her father had gone in relation to greet on 'Holi'. There is no cross-examination from P.W.1 and P.W.2 on this point. Learned trial Court, after considering the evidence and material on record, has recorded a finding that the instant case is of rape with a 9 year old girl and in such mater any person would lodge F.I.R., only after thinking over a lot, thus, sufficient explanation of delay is on record. This Court is in agreement with the finding recorded by learned trial Court.

(26) Highlighting the evidence of complainant (P.W.2-Rooprani), in cross-examination that "मै रिपोर्ट इसलिए नही कि थी पहले सलाह कर लो फिर रिपोर्ट की जाये जब सलाह हो गयी तब मै रिपोर्ट करने थाना गयी। सलाह यही बनी की रिपोर्ट राजेन्द्र के नाम करनी है।", learned Amicus Curiae for the appellant argued that it is apparent that the F.I.R. was lodged after consultation and deciding to lodge F.I.R. against the appellant. The contention of learned Counsel for the appellant is misconceived and not tenable for the reason that the complainant, who is a rustic village lady, waited for her husband to return and after return of her husband, she told him about the incident, whereupon they decided to lodge F.I.R. against the convict/appellant and accordingly, it was lodged. There is no further cross-examination on the point. Thus, her evidence on this issue is quite natural as the pride and future of their minor daughter was involved. It does not in any manner indicates that consultation was made with the police for lodging false report against the accused/appellant. P.W.2-Rooprani, however, deposed in her statement that when she reached the police station, the Station House Officer called a person and asked him to write a report, which does not mean that the Station House Officer got a false report written. It only indicates that the Station House Officer called a person and the complainant got the report written through him as per what she stated. Furthermore, the defense has failed to show as to why the police would falsely implicate him by lodging a false report unless there is some enmity or motive behind it. There is no evidence of any prior enmity between the accused and the police personnel. At least the same has not been shown. Learned trial Court has also recorded a finding that there is no criminal history of accused, nor he has any enmity with any policeman, therefore, police personnel would have involved in lodging the false F.I.R. against him is not believable. Nothing contrary could be shown by learned Counsel for the appellant, on account of which a contrary view is possible on this issue. Thus, this Court does not find any illegality or error in it and there is no reason to disbelieve the version of F.I.R. and the prosecution has satisfactorily explained the delay in lodging the F.I.R.

(27) The next argument advanced by learned *Amicus Curiae* for the appellant was that there is material contradictions in the evidence of P.W.1-victim and P.W.2-Rooprani and an alleged eye-witness Ravindra (P.W.6) has not supported the prosecution case, which itself lends the prosecution case doubtful in as much as the presence of complainant (P.W.2) at the place of occurrence doubtful, therefore, on the basis of sole testimony of child witness (victim, P.W.1) only, learned trial Court erred in convicting the appellant.

(28) To consider the argument of learned Amicus Curiae for the appellant, firstly we will consider the evidence of the victim, who appeared as PW.1. The victim was a minor, below 12 years of age. P.W.5, Dr. I.K. Srivastava, who conducted the x-ray of P.W.1 (victim) has stated in cross-examination that age of injured (P.W.1) could not be more than 11 years and there may be a year′s difference on either side. Thus, first it is to be seen as to whether she was competent to depose before the Court of law and as to how her evidence was required to be considered. Section 118 of the Indian Evidence Act, 1872 provides that all persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions by tender years etc.

(29) Section 118 of the Indian Evidence Act, 1872 is extracted here-in-below :-

"**118. Who may testify**.-All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind."

(30) In view of above, a child witness is not prevented from deposing before the Court of law unless he/she is prevented from understanding the questions put to him/her. Thus, it casts a duty upon the Court to first examine the witness so as to satisfy that the witness is capable of understanding the questions put to him/her and giving rational answers to those questions. The Hon'ble Supreme Court elaborately discussed as to how the testimony of a child witness should be looked into and appreciated in the case **of State of Madhya Pradesh Vs Balveer Singh**; (2025) 8 SCC 545, wherein the Hon'ble Supreme Court, placing reliance on the cases of **Dattu Ramrao Sakhare v. State of Maharashtra**; (1997) 5 SCC 341, **Pradeep v. State of Haryana**; (2023) 19 SCC 221, **Ratansinh Dalsukhbhai Nayak v. State of Gujarat**; (2004) 1 SCC 64, **Panchhi v. State of U.P.** ; (1998) 7 SCC 177, **Suryanarayana v. State of Karnataka**; (2001) 9 SCC 129, **Arbind Singh v. State of Bihar** ; 1995 Supp (4) SCC 416, **Digamber Vaishnav v. State of Chhattisgarh**; (2019) 4 SCC 522, **State of M.P v. Ramesh**; (2011) 4 SCC 786, has observed that

"43. From the above exposition of law, it is clear that the evidence of a child witness for all purposes is deemed to be on the same footing as any other witness as long as the child is found to be competent to testify. The only precaution which the court should take while assessing the evidence of a child witness is that such witness must be a reliable one due to the susceptibility of children by their falling prey to tutoring. However, this in no manner means that the evidence of a child must be rejected outrightly at the slightest of discrepancy, rather what is required is that the same is evaluated with great circumspection. While appreciating the testimony of a child witness the courts are required to assess whether the evidence of such witness is its voluntary expression and not borne out of the influence of others and whether the testimony inspires confidence. At the same time, one must be mindful that there is no rule requiring corroboration to the testimony of a child witness before any reliance is placed on it. The insistence of corroboration is only a measure of caution and prudence that the courts may exercise if deemed necessary in the peculiar facts and circumstances of the case."

(31) The Hon'ble Supreme Court, in **State of Madhya Pradesh Vs Balveer Singh (supra)**, summarized the principles pertaining to the appreciation of evidence of a child witness from Para 67.1 to para 67.12 as under :-

*"**67.1**. The Evidence Act does not prescribe any minimum age for a witness, and as such a child witness is a competent witness and his or her evidence and cannot be rejected outrightly.*

***67.2**. As per Section 118 of the Evidence Act, before the evidence of the child witness is recorded, a preliminary examination must be conducted by the Trial Court to ascertain if the child-witness is capable of understanding sanctity of giving evidence and the import of the questions that are being put to him.*

***67.3**. Before the evidence of the child witness is recorded, the Trial Court must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and must clearly state why he is of such opinion.*

67.4. *The questions put to the child in the course of the preliminary examination and the demeanour of the child and their ability to respond to questions coherently and rationally must be recorded by the Trial Court. The correctness of the opinion formed by the Trial Court as to why it is satisfied that the child witness was capable of giving evidence may be gone into by the appellate court by either scrutinizing the preliminary examination conducted by the Trial Court, or from the testimony of the child witness or the demeanour of the child during the deposition and cross-examination as recorded by the trial court.*

67.5. *The testimony of a child witness who is found to be competent to depose i.e., capable of understanding the questions put to it and able to give coherent and rational answers would be admissible in evidence.*

67.6. *The Trial Court must also record the demeanour of the child witness during the course of its deposition and cross-examination and whether the evidence of such child witness is his voluntary expression and not borne out of the influence of others.*

67.7*. There is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered. A child witness who exhibits the demeanour of any other competent witness and whose evidence inspires confidence can be relied upon without any need for corroboration and can form the sole basis for conviction. If the evidence of the child explains the relevant events of the crime without improvements or embellishments, the same does not require any corroboration whatsoever.*

67.8. *Corroboration of the evidence of the child witness may be insisted upon by the courts as measure of caution and prudence where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions. There is no hard and fast rule when such corroboration would be desirous or required, and would depend upon the peculiar facts and circumstances of each case.*

67.9. *Child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded and as such the courts must rule out the possibility of tutoring. If the courts after a careful scrutiny, find that there is neither any tutoring nor any attempt to use the child witness for ulterior purposes by the prosecution, then the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. In the absence of any allegations by the accused in this regard, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition.*

67.10. *The evidence of a child witness is considered tutored if their testimony is shaped or influenced at the instance of someone else or is otherwise fabricated. Where there has been any tutoring of a witness, the same may possibly produce two broad effects in their testimony; (i) improvisation or (ii) fabrication.*

(i) Improvisation in testimony whereby facts have been altered or new details are added inconsistent with the version of events not previously stated must be eradicated by first confronting the witness with that part of its previous statement that omits or contradicts the improvisation by bringing it to its notice and giving the witness an opportunity to either admit or deny the omission or contradiction. If such omission or contradiction is admitted there is no further need to prove the contradiction. If the witness denies the omission or contradiction the same has to be proved in the deposition of the investigating officer by proving that part of police statement of the witness in question. Only thereafter, may the improvisation be discarded from evidence or such omission or contradiction be relied upon as evidence in terms of Section 11 of Evidence Act.

(ii) Whereas the evidence of a child witness which is alleged to be doctored or tutored in toto, then such evidence may be discarded as unreliable only if the presence of the following two factors have to be established being as under: -

Opportunity of Tutoring of the Child Witness in question*- whereby certain foundational facts suggesting ordemonstrating the probability that a part of the testimony of the witness might have been tutored have to be established. This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such witness was doubtful, or by imputing any motive on the part of such witness to depose falsely, or the susceptibility of such witness in falling prey to tutoring. However, a mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.*

Reasonable likelihood of tutoring*- wherein the foundational facts suggesting a possibility of tutoring as established have to be further proven or cogently substantiated. This may be done by leading evidence to prove a strong and palpable motive to depose falsely, or by establishing that the delay in recording the statement is not only unexplained but indicative and suggestive of some unfair practice or by proving that the witness fell prey to tutoring and was influenced by someone else either by cross-examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negates their presence as unnatural.*

67.11*. Merely because a child witness is found to be repeating certain parts of what somebody asked her to say is no reason to discard her testimony as tutored, if it is found that what is in substance being deposed by the child witness is something that he or she had actually witnessed. A child witness who has withstood his or her cross-examination at length and able to describe the scenario implicating the accused in detail as the author of crime, then minor discrepancies or parts of coached deposition that have crept in will not by itself affect the credibility of such child witness.*

67.12*. Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored or untainted part inspires confidence. The untutored part of the evidence of the child witness can be believed and taken into consideration or the purpose of corroboration as in the case of a hostile witness.″*

(32) Adverting to the facts of the instant case, this Court finds that trial Court, in order to testify as to whether the child witness P.W.1 (victim) is capable of understanding and answering the questions rationally, first put certain questions to her. The trial Court asked as to whether she studies, she replied that she studies in Class-5. In regard to the question as to in which direction the sun rises, she stated that she do no know. She also in regard to the question as to whether she knows that to speak lie is sin, she stated that she does not know. However, she further, on examination, stated that we are three sisters and two brothers. Her three brothers and sisters are studying in School. She will speak truth today. The man should speak truth. The sun rises in the morning. Thereafter, the trial Court recorded its observations that the witness is witless (नासमझ) and on being asked, unable to give answer of the questions in one go and on repeated impressing

upon answers with difficulty. Thus, the trial Court's observation indicates that the witness is capable of answering the questions, but with difficulty. Thus, after satisfying itself about the capability of child witness to answer the questions put to her, the trial Court proceeded to record her evidence in accordance with law. Thereafter, she was examined.

(33) In the examination-in-chief, P.W.1 (victim) deposed that she knows the accused Rajendra, who is present in Court. He is a resident of her village. About 6 months ago, it was 06:00 in the evening. She had gone for call of nature behind her house. Her mother was lying inside the house. Her father had gone to greet 'Holi in his relation. Accused Rajendra came near her and took her lifting under eucalyptus trees and took off her underwear and committed wrongful act. When she cried, her mother arrived. Then, accused left her and ran away and no one else had come. Her mother lifted her and brought home. When her father returned after greeting Holi, her mother had gone to police station. Upon a question put separately by the Court, her explanation was that the accused also became naked and laying down on her, he rubbed his penis on her vagina and thereafter pushed off, upon which she cried out. What emerges from the aforesaid examination-in-chief of the victim (P.W.1) that she is acquainted with the accused and proved presence of the accused at the place of occurrence and she has satisfactorily explained chronology of the incident. Her testimony establishes that the accused took her to a secluded place under the eucalyptus trees, removed her undergarments and not only subjected her to sexual assault but committed rape also, and on her cry, her mother immediately reached on the spot, whereupon the accused fled away from the place of occurrence.

(34) In cross-examination, the victim; P.W.1 stated that the place of occurrence is a eucalyptus grove. There are very big trees as well as some small trees, where the land is uneven and there are pits at places. In the evening, she had gone to defecate. It had become a little dark. She sat in the same eucalyptus grove for defecation. This grove is adjoining to the house of Munne. Due to the darkness, she did not go farther and sat there for defecation. She had gone for defecation by taking a plastic container. As soon as she raised an alarm, the accused ran away. The accused fled towards the north, passing through mango grove. As soon as the accused ran away, her mother arrived some time thereafter. She sustained injury in her private part. There was no visible injury on the body. Her mother and her elder aunt (*badi mummi*) have come along with her. Her mother and elder aunt told her that whatever had happened to her, she should state the truth in Court. She further, in cross-examination, deposed that blood had stained on her clothes. The Inspector (Daroga Ji) had not made any inquiry from her. She had gone to the police station. The blood-stained clothes were seen by the police personnel at the police station. She further deposed that it is wrong to say that she is deposing against the accused Rajendra on asking of her mother. It is also wrong to say that she is giving false evidence on telling of her mother. It is also wrong that such incident would not have happened with her. She further deposed that accused remained lying on her for sometime.

(35) The aforesaid evidence of the victim shows that her testimony is consistent on every material particulars, particularly with regard to identity of the accused and the manner of occurrence. Nothing material could be extracted in cross-examination, on account of which, her testimony can be discarded. In **State of Madhya Pradesh Vs Balveer Singh (supra)**, the Hon'ble Supreme Court has held that the testimony of a child witness, if found to be natural, consistent and free from tutoring, can be relied upon and form the sole basis of conviction. The Hon'ble Supreme

Court, however, emphasised that such evidence must be evaluated with caution and the Court must be satisfied that the child possesses sufficient intelligence and understands the duty to speak the truth. Applying the said principles to the facts of the present case, it is evident that P.W.-1 has given a cogent and consistent account of the occurrence not only with regard to accused and incident, but with regard to the description of the surroundings, including the uneven land, presence of pits, grove and lanes, which lends assurance to her testimony. The so-called contradictions pointed out by the defence pertain only to peripheral details such as exact distances, directions and layout of surrounding houses and lanes. In view of the dictum laid down by the Hon′ble Supreme Court, such minor discrepancies are bound to occur, particularly in the testimony of a child witness and if the core of the prosecution case is in corroboration, her testimony cannot be said to be unreliable.

(36) The defence has attempted to suggest that P.W.1 has been tutored by her mother. However, P.W.1 has categorically denied the said suggestion and nothing could be extracted in cross-examination nor any material has been brought on record to substantiate the plea of tutoring. On the contrary, her testimony appears spontaneous and bears the ring of truth. Moreso, the absence of visible external injuries on other parts of the body is also not of such a nature as to discredit her version, particularly when she has specifically deposed about injury to her private part and presence of blood on her clothes. Even otherwise, it is trite in law that if the ocular evidence is worthy of credence, any discrepancy or contradiction in medical evidence is not sufficient to belie the ocular evidence. In **State of U.P. vs. Naresh; 2011 (4) SCC 324**, it has been held that minor contradictions regarding injuries do not discredit otherwise reliable evidence.

(37) Thus, this Court is of the view that the testimony of P.W.-1 is credible, trustworthy and free from material contradictions. The minor inconsistencies highlighted by the defence are insignificant and do not affect the substratum of the prosecution case. Accordingly, the testimony of the victim (P.W.-1) is held to be reliable and worthy of acceptance.

(38) The complainant, who is the mother of victim, has been examined as P.W.2. She deposed that she knew the accused Rajendra, who is present in Court. The incident is about six months old. Her husband had gone to relatives for greeting 'Holi′. She was not well. She was lying at home. Her children and the son of her husband′s elder brother (jeth), Ravindra was also lying there. It was 6:00-6:30 in the evening. Her daughter (victim) had gone for defecation. She heard the cries of her daughter (victim) from behind her house. On hearing the noise, she and Ravindra rushed to the spot. Then, Rajendra ran away leaving her daughter. She saw Rajendra running away. Her daughter told her that Rajendra had committed a wrongful act with her. She further deposed that when her husband returned from the relation, then, she went along with her husband and daughter to the police station. Outside the police station, she, on her dictation, got the written report (तहरीर) written by one person. Whatever she stated was written by him. It was read over and explained to her and thereafter, she affixed her signature on it. She proved her signature on the written report (Ext. Ka.1). She handed over the written report to the Moharrir (clerk) and the Moharrir registered her report. Her daughter was medically examined and her X-ray was conducted at Hardoi Hospital. The Investigating Officer (Daroga Ji) made inquiries from her.

(39) In cross-examination, P.W.2 stated that her husband is Rajpal. Lalaram and Ram Prasad are his brother. Ravindra, son of Ram Prasad is a witness in this case. Rajpal and Lalaram frequently visit to eat and drink with each other. The house of her husband and his brothers is situated in close to each other. She further deposed that goat of her husband′s elder brother (jeth), Lalaram, had been stolen prior to this incident. One goat had been stolen. The wife of Lalaram is her elder sister-in-law (jethani). She does not know as to whether Lalaram had any quarrel with the accused Rajendra on account of the theft of the goat or not. She further deposed that it is incorrect to say that she is concealing the fact of quarrel between Lalaram and Rajendra. She further deposed that the eucalyptus grove was planted by her husband about 5 years ago. There are also mango trees in that grove. She further deposed that on the day of the incident, she was suffering from fever. She had been having fever for about 2-3 days prior to the incident. In the evening, her husband′s elder brother (jeth) and her small children were present. Her daughter had gone to defecate. On hearing her cries, Ravindra rushed and she also rushed. She saw Rajendra running away towards the north. At that time, she was standing on the bank of pond. The accused was at about 50 steps towards north of her grove at that time. Her grove is about 100 steps long north-south. In the entire field, eucalyptus trees are planted. Adjacent to her grove, there is also a mango grove. Her daughter was found near the house of her jeth Lalaram. The door of Lalaram′s house is towards the east of her eucalyptus grove, where several people from the neighbourhood were present at that time, including her elder sister-in-law (jethani) Seema. She did not have any conversation with those witnesses nor did she tell them anything. Thereafter, she brought her daughter and went to home. She did not have any conversation with her daughter at that time. She further deposed that she did not lodge the report as she wanted to consult first and lodge report thereafter. When consultation was made, then, she went to police station for lodging the report. Upon consultation, opinion was formed that the report should be lodged against Rajendra. Thereafter, she went to the police station at about 8:00 a.m. by tempo, which was at a distance of about $1^{1/2}$ *kosh* from her village and reached there in about half an hour. At the police station, police personnel and the Inspector (Daroga Ji) were present, called the person who had written her report, on which she put signature. She further deposed that from the injuries sustained by her daughter, blood was oozing out. The Inspector made inquiries from her on the same day, when the report was written. Thereafter, no further inquiry was made from her nor she met again. The back of her daughter was scratched and the hand was also scratched at some places. Her daughter was medically examined at Hardoi. Her daughter showed all the injuries to the doctor. The blood-stained clothes were taken to the police station as well as to the hospital and those clothes were shown to the Inspector and the Moharrir. She further deposed that she had informed the Inspector that her daughter had gone to defecate and if the same has not been written in her statement by the Investigating Officer, she could not tell the reason thereof. She further deposed that it is wrong to say that she is giving false evidence. It is also wrong to say that no such incident occurred as she is telling. It is also wrong to say that due to village enmity or *partybandi*, she, in collusion with her husband and Lalaram, got a false report written against the accused. It is also wrong to say that no such incident took place at the alleged place and time. It is also wrong to say that she did not see the accused running away.

(40) What emerges from the evidence of P.W.2 is that she is the mother of the victim and a natural witness to the immediate aftermath of the incident. She has narrated the incident in examination-in-chief and as to when she went and how to lodge the F.I.R. and also proved the written report and as to how it was written and medical examination of the victim. It further

transpires from her testimony that she noticed injuries on the person of the victim and blood on her clothes. She has denied the suggestion that the report was lodged falsely due to village enmity or prior disputes. Thus, the testimony of P.W.-2, the mother of the victim, lends corroboration to the version of P.W.1 on material particulars, particularly with regard to the immediate conduct, fleeing of the accused, the disclosure made by the victim and lodging of the FIR. Nothing could be extracted in cross-examination, which may create doubt about veracity of the testimony. The minor discrepancies or contradiction or delay in lodging F.I.R., which has sufficiently been explained, does not materially affect the substratum of the prosecution case. The emphasis of learned Amicus Curiae for the appellant on consultation for F.I.R. in cross-examination to show concoction in prosecution case is totally misconceived for the reason that the evidence is of a village lady, who is unaware and unmindful of the effect of words in law, otherwise, her contention was that family members formed opinion for lodging F.I.R. against the accused, otherwise, it may cause a social stigma on minor daughter, which may affect her future also.

(41) In view of above and upon a close and comparative evaluation of the testimonies of P.W.-1 (victim) and P.W.-2 (mother of the victim), it is to be seen as to whether minor inconsistencies as pointed out by learned Amicus Curiae for the appellant are such, which may affect the substratum of the prosecution case.

(42) The Hon′ble Supreme Court, in the case of *Leela Ram vs State of Haryana*; (1999) 9 SCC 525, observed as follows :-

"9. Be it noted that the High Court is within its jurisdiction being the first appellate court to reappraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. In this context, reference may be made to the decision of this Court in State of U.P. v M.K. Anthony [State of U.P. v M.K. Anthony, (1985) 1 SCC 505 : 1985 SCC (Cri) 105] . In para 10 of the Report, this Court observed : (SCC pp. 514-15)

'10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of

evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals.″

10. In a very recent decision in Rammi v. State of M.P. [Rammi v. State of M.P., (1999) 8 SCC 649 : 2000 SCC (Cri) 26] this Court observed : (SCC p. 656, para 24)

24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.″

This Court further observed : (Rammi case [Rammi v. State of M.P., (1999) 8 SCC 649 : 2000 SCC (Cri) 26] , SCC pp. 656-57, paras 25-27)

'25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:

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

*(1)-(2)****

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

26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be "contradicted″ would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to "contradict″ the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to "contradict″ the witness.

27. To contradict a witness, therefore, must be to discredit the particular version of the witness. Unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to contradict that witness (vide Tahsildar Singh v. State of U.P. [Tahsildar Singh v. State of U.P., 1959 SCC OnLine SC 17 : AIR 1959 SC 1012]).″

(43) The Hon′ble Supreme Court has cautioned about attaching too much importance on minor discrepancies in the evidence of the witnesses in ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat***; (1983) 3 SCC 217 as follows :-

5. …. We do not consider it appropriate or permissible to enter upon a reappraisal or reappreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by the learned counsel for the appellant. Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious:

'(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by the counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him - perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.′″

(44) Similarly, in the case of ***Appabhai v. State of Gujarat***; 1988 Supp SCC 241, the Hon′ble Supreme Court observed as under :-

"13. …. The court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire

prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy. Jaganmohan Reddy, J. speaking for this Court in Sohrab v. State of M.P. [Sohrab v. State of M.P., (1972) 3 SCC 751 : 1972 SCC (Cri) 819] observed : (SCC p. 756, para 8)

'8. .... This Court has held that falsus in uno, falsus in omnibus is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered

(45) It is pertinent to note that the scene of crime was in a rural area and the witnesses being rustic, their evidence has to be appreciated in the light of the behavioural pattern in the rural environment. In this regard, we may refer to the decision of Hon'ble Supreme Court, in ***Shivaji Sahabrao Bobade v. State of Maharashtra***; (1973) 2 SCC 793, wherein it was held that :-

"8. Now to the facts. The scene of murder is rural, the witnesses to the case are rustics and so their behavioural pattern and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of the various witnesses we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered. The learned Sessions Judge has at some length dissected the evidence, spun out contradictions and unnatural conduct, and tested with precision the time and sequence of the events connected with the crime, all on the touchstone of the medical evidence and the post-mortem certificate. Certainly, the court which has seen the witnesses depose, has a great advantage over the appellate Judge who reads the recorded evidence in cold print, and regard must be had to this advantage enjoyed by the trial Judge of observing the demeanour and delivery, of reading the straightforwardness and doubtful candour, rustic naivet and clever equivocation, manipulated conformity and ingenious inveracity of persons who swear to the facts before him. Nevertheless, where a Judge draws his conclusions not so much on the directness or dubiety of the witness while on oath but upon general probabilities and on expert evidence, the court of appeal is in as good a position to assess or arrive at legitimate conclusions as the court of first instance. Nor can we make a fetish of the trial Judge's psychic insight."

(46) This Court is also of the view that while dealing with the evidence of witnesses who are rustic, because of minor inconsistencies, their evidence should not be ignored and discarded on material points, if the core of prosecution case or substratum of the prosecution case is not affected. It is apposite to refer the following paragraphs of ***Prabhu Dayal v. State of Rajasthan***; (2018) 8 SCC 127 by Hon'ble Supreme Court, dealing with testimony of witnesses from rustic background :-

"18. It is a common phenomenon that the witnesses are rustic and can develop a tendency to exaggerate. This, however, does not mean that the entire testimony of such witnesses is falsehood. Minor contradictions in the testimony of the witnesses are not fatal to the case of the prosecution. This Court, in State of U.P. v. M.K. Anthony [State of U.P. v. M.K. Anthony, (1985) 1 SCC 505 : 1985 SCC (Cri) 105] , held that inconsistencies and discrepancies alone do not merit the rejection of the evidence as a whole. It stated as follows : (SCC p. 514-15, para 10)

10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross-examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible."

*19.****

20. The Court can separate the truth from the false statements in the witnesses' testimony. In Leela Ram v. State of Haryana [Leela Ram v. State of Haryana, (1999) 9 SCC 525 : 2000 SCC (Cri) 222] , this Court held as follows : (SCC p. 534, para 12)

"12. It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment - sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their over anxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same."

21. Moreover, it is not necessary that the entire testimony of a witness be disregarded because one portion of such testimony is false. This Court observed thus in Gangadhar Behera v. State of Orissa [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381 : 2003 SCC (Cri) 32] : (SCC p. 392, para 15)

"15. To the same effect is the decision in State of Punjab v. Jagir Singh [State of Punjab v. Jagir Singh, (1974) 3 SCC 277 : 1973 SCC (Cri) 886] and Lehna v. State of Haryana [Lehna v. State of Haryana, (2002) 3 SCC 76 : 2002 SCC (Cri) 526] . Stress was laid by the appellant-accused on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of falsus in uno, falsus in omnibus (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno, falsus in omnibus has no application in India and the witnesses cannot be branded as liars. The maxim falsus in uno, falsus in omnibus has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded.' "

(47) Keeping the aforesaid principles of law laid down by Hon'ble Supreme Court in mind, the evidence of the victim (P.W.1) and mother of the victim (P.W.2) are to be seen and considered. The trial Court has meticulously examined the evidence of P.W.1 and P.W.2 before coming to the conclusion that their evidence is reliable and credible.

(48) It is also to keep in mind that P.W.-1 is a child witness, and some variation in narration is natural. In **State of M.P. v. Balveer Singh (supra)**, the Hon'ble Supreme Court has held that the testimony of a child witness, if found natural and trustworthy, can be relied upon notwithstanding minor inconsistencies. Even otherwise, minor discrepancies in evidence of prosecutrix are bound to occur on account of trauma faced by her. In **State of Punjab Vs. Gurmit Singh;** 1996 (2) SCC 384, it has been held that minor inconsistencies in the testimony of the prosecutrix are not fatal when the overall version inspires confidence.

(49) In the present case also, both P.W.-1 and P.W.-2 are consistent on the core aspects. Contradictions highlighted by the defence pertain only to peripheral matters and do not shake the foundation of the prosecution case. Significantly, the medical evidence also lends assurance to the prosecution case. P.W.4, Dr. Nisha Srivastava, who examined the victim (P.W.1), has opined that in all probabilities, the intercourse might have been done with the victim. In cross-examination, she (P.W.4) deposed that parts of vagina were slight bloody. In a query from the trial Court, she deposed that hymen may torn by cycling or playing, but injuries would not come in the manner sustained by the injured. Though the opinion is expressed in cautious terms, however, it does not negate the prosecution case and is consistent with the version of the victim. It is well settled that medical evidence is corroborative in nature and where the ocular testimony is clear and reliable, minor inconsistencies with medical opinion do not override such evidence. Thus, medical evidence also supports the prosecution case. Even otherwise, the presence of injuries is not a sine qua non for determining as to whether the offence of rape has been committed or not. It has been observed by the Hon'ble Supreme Court in *Lalliram & Anr. V State of M.P.*, (2008) 10 SCC 69 that injury is not a sine qua non for deciding whether rape has been committed but it has to be decided on the factual matrix of each case. Thus, the contention of learned Amicus Curiae for the appellant that the medical evidence does not support the prosecution case as no external injuries were found, is misconceived and not tenable. In view of the aforesaid

discussion, declaration of hostile of P.W.6-Ravindra has no bearing on the case. Even otherwise, normally relatives avoid to give evidence in such cases, particularly when they are known to each other.

(50) In view of the aforesaid discussion and the law laid down by the Hon'ble Supreme Court, this Court is of the view that the contradictions in the statements of P.W.-1 and P.W.-2 are minor, natural, inconsequential and without any embellishment, which do not create any reasonable doubt in the prosecution case. The evidence of both the witnesses remains reliable, consistent with the prosecution case and among themselves and trustworthy. We are in full agreement with the view taken by the learned trial Court, which has appropriately appreciated the evidence on record and rightly held that such minor contradictions do not affect the prosecution case.

(51) The other official formal witnesses have also proved the procedure followed by them and nothing could be extracted from them, which may create any doubt about their testimony and affect in any manner the prosecution case.

(52) In view of the clear, cogent, and reliable testimony of the victim (P.W.1), duly supported by medical and other corroborative evidence on record, we are of the view that the prosecution has successfully proved the guilt of the appellant beyond all reasonable doubt for the offence punishable under Section 376 I.P.C. The learned Trial Court has rightly appreciated the evidence and material on records in its proper perspective and has arrived at a well-reasoned finding for conviction. The view taken by the Trial Court is neither perverse nor suffers from any illegality or error warranting interference by this Court. Thus, the appeal is liable to be dismissed.

(53) The appeal is hereby **dismissed**. The conviction of the appellant under Section 376 I.P.C. as recorded by the learned Trial Court is upheld. The sentence awarded is also maintained. The appellant is in jail. He shall serve out the sentence awarded by the trial Court.

(54) Pending application(s), if any, stands disposed of accordingly.

(55) Let a copy of this judgment and the trial Court's record be transmitted to the Court concerned forthwith and in any case within two weeks from today for information and compliance.

(2026) 5 ILRA 1174
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 15.05.2026

BEFORE

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

Criminal Appeal No. 976 of 1985

Madan Kumar & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

Matter pertains to credibility of interested witness.

Headnotes

Murder – Indian Penal Code, 1860-Ss. 302- testimony of related witnesses cannot be rejected- merely on the ground of relationship-where such witnesses are also chance witnesses-their evidence requires greater circumspection-material contradictions in ocular evidence-inconsistency with medical evidence- omission of material facts- delayed medical examination of injured witness- non-examination of available independent witnesses -failure to satisfactorily explain injuries sustained by accused -defence version could not be ruled out – prosecution failed to prove guilt beyond reasonable doubt-Conviction and sentence set aside – **Appeal allowed.**

Case Law Cited

1. Lakshmi Singh and others Vs. State of Bihar, AIR (1976) SC 2263
2. Babu Ram and others Vs. State of Punjab, AIR (2008) SC 1260
3. Kumar Vs. State, represented by Inspector of Police, AIR (2018) SC 2386
4. Gautam Lal Vs. State (1981) Crl. Law J. 1187
5. Hem Raj v. State of Haryana, A.I.R. 2005 S.C. 2110

List of Acts

Indian Penal Code, 1860

List of Keywords

Circumstantial and direct evidence; Ocular-medical inconsistency; Interested witness; Chance witness; Proof beyond reasonable doubt.

Appearances of parties

Counsel for Appellant(s) : Ashutosh Yadav (A.C.), P.N.Misra, Padmaker Pandey, Sunil Kumar Srivastava
Counsel for Respondent(s) : A.G.A.

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

1. This Criminal appeal has been filed under Section 374(2) of Code of Criminal Procedure, 1973 (in short "Cr.P.C."), by appellants Madan Kumar, Mukund Kumar, Badshah @ Sushil Kumar and Prem Kumar @ Pappu, against the impugned judgment and order dated 06.04.1985 passed by Mr. M.C. Jain, Special Judge (E.C. Act)/Additional Sessions Judge, Kanpur in Sessions Trial No. 139 of 1983 (State Vs. Madan Kumar and others).

2. By the impugned judgment and order, the learned Trial Court convicted and sentenced appellant Prem Kumar @ Pappu to undergo imprisonment for life for offence punishable under Section 302 IPC and other appellants, Madan Kumar, Mukund Kumar and Badshah @ Sushil Kumar were sentenced to undergo imprisonment for life for offence punishable under Section 302 read with Section 149 IPC. The learned Trial Court further convicted appellants Mukund Kumar, Prem Kumar @ Pappu and Badshah @ Sushil Kumar to undergo rigorous imprisonment for two years for offence punishable under Section 148 IPC; appellant Madan Kumar to undergo rigorous

imprisonment for one year for offence punishable under Section 147 IPC; and all the appellants to undergo rigorous imprisonment for three years for offence punishable under Section 324 read with Section 149 IPC. It was directed that all the sentences shall run concurrently.

3. Brief facts of the prosecution case are that Tapeshwari son of Mahavir, resident of House No. 22/46, Patkapur, Police Station Pheelkhana, District Kanpur, gave a verbal information at Police Station Pheelkhana, Kanpur on 22.12.1982 that today, at about 12 noon, Madan Kumar and Badshah @ Sushil Kumar have had an altercation with his nephew Parwat, wherein both parties hurled abuses at one another. He himself intervened and pacified the matter. It was further reported that the above dispute occurred because Parwat had objected Madan and others for teasing girls of his locality. Today, i.e. 22.12.1982 at about 05:15 p.m., the first informant and Rakesh Tewari had gone to chew Paan at Naala Road, Kooda Ghar roundabout. At the same time, his nephew Kaloo was proceeding for attending nature′s call, while another nephew Parwat, alongwith Raju son of Kishan, was coming from the side of Tapeshwari temple. At the same time, five persons namely Madan, his brother Mukund, Madan′s brother-in-law Badshah and Prem Kumar @ Pappu and one unknown person came from a lane. All of them, after looking at Parwat, said that Parwat has been found today, beat him and let him not escape. Immediately, all of them attacked Parwat near Mazaar roundabout. Madan caught hold of Parwat, and Prem took out a bomb from his pocket and hit it at Parwat′s temple, as a result Parwat fell to the ground, injured. The first informant, Kaloo, Rakesh and Raju raised alarm and tried to catch them, thereupon Mukund and Badshah attempted to attack them with knives, causing injuries to Kaloo and accused Prem Kumar. Accused Prem Kumar′s right hand from the wrist was blown away on account of the explosion. They lifted injured Parwat, and all the accused persons fled towards the Dwaraka Dheesh Road through the lane they had come from. He tried to catch the accused persons, but due to fear of bomb, could not apprehend them. He had identified the unknown person in the electricity light. He had taken his nephew to K.P.M. Hospital, from where he was referred to Parade Hospital and, before reaching there, his nephew succumbed to his injuries. It was further stated that the dead body of Parwat is lying in the hospital.

4. On the basis of above verbal information, an FIR under Case Crime No. 332 of 1982, under Section 147, 148, 149, 302 IPC was registered at Police Station Pheelkhana, District Kanpur on 22.12.1982 at 07:00 p.m. against all the four appellants and one unknown person and the investigation commenced.

5. The investigation of the case was entrusted to S.I. Malkhan Singh (P.W.9), who reached at the place of incident, collected blood-stained earth and plain earth from the place of occurrence, sealed them in two separate boxes and prepared its recovery memo (Ext. Ka-13). He also collected pieces of country made bomb, pieces of plastic and thread from the place of occurrence, kept them in a sealed box and prepared its recovery memo (Ext. Ka-14). Thereafter, injured Ram Kumar @ Kaloo, Prem Prakash @ Pappu were medically examined. The Investigating Officer also recorded the statement of informant and other witnesses. P.W.3 S.I. Sultan Ahmad prepared deceased′s inquest report and thereafter, the cadaver was sent for post-mortem examination. After concluding the investigation and collecting evidence, the Investigating Officer filed charge-sheet against the appellants under Section 147, 148, 149 and 302 IPC before the concerned Magistrate. The learned Magistrate took cognizance of the offence and summoned the appellants to appear before the Court.

They were furnished copies of relevant prosecution papers, under Section 207 Cr.P.C., and thereafter the case was committed to the Court of Sessions for trial.

6. The appellants appeared before the Court of Sessions, where charges under Section 147 IPC was framed against appellants Madan Kumar, Mukund Kumar and Badshah @ Sushil Kumar; charge under Section 148 IPC was framed against appellant Prem Kumar @ Pappu; charge under Section 302 read with 149 IPC was framed against Madan Kumar, Mukund Kumar and Badshah @ Sushil Kumar; a charge under Section 302 IPC was framed against Prem Kumar @ Pappu; and charge under Section 307 read with 149 IPC was framed against all the four appellants. The above charges were read over and explained to them. The appellants abjured the said charges, pleaded not guilty and claimed to be tried.

7. The prosecution, in order to prove its case, has examined as many as ten witnesses namely, Dr. Om Prakash Dubey (P.W.1), Head Constable Bardani Prasad (P.W.2), S.I. Sultan Ahmad (P.W.3), Tapeshwari, uncle of the deceased (P.W.4), Dr. H.C. Prasad (P.W.5), Constable Hakim Singh (P.W.6), Kaloo, real brother of the deceased (P.W.7), Dr. Naresh Yadav (P.W.8), S.I. Malkhan Singh, first Investigating Officer (P.W.9) and S.S.I. Shri Narayan Upadhyay, second Investigating Officer (P.W.10).

8. P.W.1 Dr. Om Prakash Dubey is a formal witness, who conducted medical examination of injured Ram Kumar @ Kaloo on 24.12.1982 at 02:30 p.m. in K.P.M. Hospital, Kanpur. He has found following injury:-

Infected lacerated wound with serous discharge 1/4 cm x 1/4 cm x skin deep over back and middle of little finger of left hand.

9. P.W.1 opined that the injury was simple in nature caused by hard and blunt object and was about two to three days old. P.W.1 has proved Kaloo′s injury report as Ext. Ka-1 and said that the above injury could have been caused on 22.12.1983 between 05:00-05:15 p.m. He further stated that the edges of the wound were infected, therefore, it was not possible to ascertain whether it was an incised wound, but visibly, it looked like a lacerated wound.

10. In his cross-examination, P.W.1 has said that the injury was superficial in nature and could have been self inflicted, depending upon the will power of the injured. He has not seen any cut mark over the bony part of the injury. At the time of examination, it was his opinion that the injury was caused by a blunt object.

11. P.W.2 Bardani Prasad, Head Constable, at the relevant time, was posted at Police Station Pheelkhana, who scribed the chik FIR (Ext. Ka-.2) and prepared G.D. No.44 (Ext. Ka-3), wherein the gist of the FIR was entered. He has proved the chik FIR as Ext. Ka-2. He has said that on 22.12.1982, he was posted as Head Constable at Police Station Pheelkhana. Tapeshwari had come at 07:00 p.m. and, upon his verbal dictation, P.W.2 scribed the chik FIR. He has further said that the special report of the case was sent the same day at 20:10 hours through Constable Chatrapal Singh, who returned after 12 midnight. In cross-examination, he has said that informant Tapeshwari had come to the police station alone and before registration of this case, on 22.12.1982

at 06:30 a.m., an FIR for a cognizable offence under Section 379 IPC was registered vide G.D. No. 9.

12. P.W.3 S.I. Sultan Ahmad is a formal witness, who has conducted inquest on 23.12.1982 at 08:00 a.m. and prepared inquest report of the deceased along with other papers and subsequently handed over the corpse to Constables Jawahar Lal and Hakim Singh for taking it to mortuary for post-mortem examination. He has proved the inquest report as Ext. Ka-4 and related papers such as, photo-nash, challan-nash, sample seal, letter to R.I., letter to C.M.O. as Exts. Ka-5 to Ka-9, respectively.

13. In his cross-examination, P.W.3 has stated that on 22.12.1982 at 08:00 p.m., he proceeded from police station to prepare the inquest report. Due to darkness, the inquest could not be prepared there. The dead body was lying at the mortuary.

14. P.W.4 Tapeshwari is the first informant and uncle of the deceased, who claims himself to be an eye-witness of the incident. He, in his examination-in-chief, has said that the deceased Parwat was his nephew. He knew all the four accused since before the incident. On 22.12.1982 at around 12 noon, an altercation took place between the deceased, Parwat, and Madan and Mukund. Later, the witness corrected himself and stated that it was actually Madan and Badshah and he has mistakenly mentioned the name of Mukund. He further deposed that he intervened and settled the dispute. Thereafter, Madan and Badshah as well as his nephew left the place. The same day at 05:15 p.m., he and Rakesh had gone to chew paan near a Mazar. He saw Parwat and Raju coming from the direction of Tapeshwari temple and all the named accused and an unknown person from the Dwaraka Dheesh lane. Madan yelled, Parwat has come. Let′s not spare him. They at once attacked his nephew. Madan caught hold of Parwat and Prem @ Pappu took out a bomb from his pocket and struck Parwat with it, as a result, Parwat fell to the ground. Prem had struck the bomb from a very close range by which flesh of Prem′s hand also flew off. The above incident was witnessed by Kaloo, Raju and Rakesh Tewari. They tried to catch the accused, but Mukund and Badshah had knives by which they attacked. Kaloo sustained injuries from the knives on his hand and the accused Prem @ Pappu also sustained injuries from knives. There was blood splattered at the place, where Parwat had fallen and the pieces and papers of bomb were also lying there. All the accused escaped from the spot. Thereafter, he took his nephew Parwat to K.P.M. Hospital, where the doctor, after giving him first-aid, advised to take him to U.H.M. Hospital. He along with other people took Parwat to U.H.M. Hospital, but on the way Parwat breathed his last. P.W.4 went to the Police Station and lodged verbal report. The witness has proved the chik FIR as Ext. Ka-2.

15. P.W.4, in his cross-examination, has said that he had not seen how many times Badshah and Mukund attacked with knives, but three-four blows being struck on Prem @ Pappu. He reached at the police station at 07:00 p.m. and stayed there for about 30 to 45 minutes. Firstly, he went to hospital taking Parwat on a Rickshaw. Parwat′s blood had dropped on his pant and shirt, which was seen by the Head Constable in the police station, but he did not take his blood-stained clothes. The Investigating Officer recorded his statement at about 08:30-09:00 p.m., at the place of occurrence. The Investigating Officer did not ask him to handover his blood-stained clothes. Raju and Kaloo, along with Rakesh, also went to the hospital. K.P.M. Hospital is nearby to the place of incident. There was no house near the place of occurrence, only a paan gumti (beetle nut shop), a general

merchant shop and a flour mill was there. He was chewing paan. Shops were open. Prem fled towards the Dwaraka Dheesh road. He did not see blood dripping from his hand, but saw his hand's flesh flying away, which stuck to the wall. He chased the accused up to ten steps, but the accused turned around, took out their knives and attacked them. He did not see whose knife's blow hit Kaloo and Prem @ Pappu, but Mukund and Badshah had knives, which they were wielding. Prem did not sustain any knife blow while he was on the run. At that time, there was a crowd of six-seven persons. The bomb hit Parwat. Badshah and Mukund, who were two-three steps away from Parwat. Earlier a case under Section 324 IPC was lodged against Parwat. He (P.W.4) was called by the Investigating Officer at about 08:30-09:00 p.m. After lodging the FIR, he came to his house at 08:00 p.m. He had shown the place of incident to the Investigating Officer, and the spot from where he witnessed the incident. He further said that he is a tailor in an ordinance factory and on the day of incident, his shift was from 07:30 p.m., but he did not go for work and, on the next day, he had applied for leave.

16. It is further stated by P.W.4 that before this incident, a case of stabbing knife to Mahavir was lodged against him, Kaloo and Parwat etc. Prem struck the bomb over Parwat's head, standing close to him, holding the bomb in his hand. He did not know the name of Badshah prior to the incident. He came to know about his name at the place of occurrence at about 06:00-06:15 p.m. He did not send Kaloo to Lucknow. Kaloo did not return along with him from U.H.M. Hospital. He met Kaloo the next day at 06:00-07:00 p.m., at his house. He did not tell him to get himself medically examined. Prem was neither crying nor said why he was being hit by knives, upon receiving injuries.

17. P.W.5 Dr. H.C. Prasad was a radiologist in U.H.M. Hospital, who conducted autopsy on the person of deceased Parwat. He has said that on 13.12.1982, he was posted as Medical Officer in U.H.M. Hospital, Kanpur and at 04:20 p.m., he conducted post-mortem examination of the deceased. The deceased was about 22 years old. There was mark of bleeding from nose. Rigor mortis was present over upper part of the body and had passed through the lower part. Post-mortem staining was present over back and hip. The doctor noted the following ante-mortem injuries over the cadaver of the deceased:-

i. Lacerated wound 7 cm x 4 cm bone deep to the left of head, 3 cm above the left ear. The hair around the wound had burnt tattooing bleeding was present at some places.

ii. A contusion 7 cm x 2 cm over left over left scapula region.

18. On internal examination, parietal, frontal and temporal bones were found fractured. Fractured bones sinked and membrane was underneath. Brain was found lacerated in part at some places. There was six ounce of semi-digested food material in the stomach. Small intestine and large intestine were filled with gases. Left chamber of heart was found empty and right chamber filled with blood.

19. In the opinion of doctor, the cause of death was shock and excessive bleeding as a result of head injury and were caused within two days before the autopsy. Injury No. (i) could have been caused by explosive weapon such as, hand grenade. It was further opined that Injury No. (ii) could be caused after falling on the ground. Injury No. (i) was sufficient in itself, in normal course, to

cause death. He has proved post-mortem report as Ext. Ka-10 and said that the deceased could have died on 22.12.1982 at about 05:45 to 06:20 p.m. The above witness has not been cross-examined by the defence.

20. P.W.6 Constable Hakim Singh is a formal witness, who had taken the dead body of the deceased for post-mortem examination and was also present at the time of inquest of the deceased at Ursala Hospital, Kanpur. He has said that the mortuary is about four-five kilometers away from the Ursala Hospital.

21. P.W.7 Kaloo is the eye-witness as well as injured witness of the case. He has said that deceased Parwat was his real brother. He knew accused Prem @ Pappu, Madan, Mukund and Badshah @ Sushil Kumar since before the incident. Madan and Mukund were real brothers, Badshah was their brother-in-law and Prem Kumar @ Pappu was their friend. On the date of incident at about 05:15 p.m., he was going to attend nature′s call. When he reached near Koodaghar from his lane, he saw his brother Parwat and Raju coming from the direction of Tapeshwari Devi temple going towards Mazaar. He further said that his uncle Tapeshwari and Rakesh Kumar were standing at a paan shop. Then, all the four named accused, along with one unknown person, came from Dwarka Dheesh street and yelled that Parwat has been found, beat him and not let him escape. Madan caught hold of his brother Parwat, then Prem Kumar hurled a bomb at his brother′s temple. Parwat got injured and fallen to the ground. Prem Kumar′s hand, above the wrist, was also blown off. The accused persons tried to run away. When they tried to apprehend the accused persons, Mukund and Badshah attacked them with knives. In defence, he caught hold of Prem @ Pappu and pushed him forward in front of him to hide himself. He suffered a knife injury on his finger and Prem Kumar also sustained knife blows. All the appellants fled away. Thereafter, Parwat was taken to K.P.M. Hospital and from there he was referred to Ursala Hospital, however, before reaching Ursala Hospital, Parwat died. On 24.12.1982, he was medically examined because, after the incident, he had gone to Lucknow to inform his maternal uncle about the incident.

22. In his cross-examination, P.W.7 said that he did not tell the Investigating Officer that he had pulled Prem Kumar @ Pappu in front of him. He went to Lucknow at 08:00 p.m. on the date of incident. He went to K.P.M. Hospital, but he did not get himself medically examined, as he was in grief. He reached at U.H.M. Hospital after Parwat had died. He was puzzled and frightened and as a result did not get himself medically examined initially. He did not not sustain any injury except over his finger. Prem Kumar @ Pappu sustained knife injuries. When he also received injury over his finger, then he left Prem Kumar. He saw Parwat being hit by a bomb from a distance of three-four steps. He cannot say at which part of the body Prem Kumar sustained injuries from knife. He cannot say whether it was Mukund or Badshah, whose knife blows struck Prem Kumar.

23. In further cross-examination, he has said that he makes kite thread and lives 30-35 steps away from the place of occurrence. He was empty handed and had not gone to attend nature′s call after the incident. The Investigating Officer had recorded his statement on 24.12.1983. He did not get himself medically examined in Lucknow. The Inspector had sent him for medical examination along with Constable at 02:00 p.m. He did not chase any of the accused persons. Before telling about the incident to the Investigating Officer, he did not tell about it to any other person. After the incident and before going to Lucknow, he went to his house and had a chat with his mother. His

mother had reached hospital in front of him. Nobody told him to lodge an FIR. He was detained at Pheelkhana Police Station in a case under Section 25 of Arms Act, 1959, but was acquitted in the case.

24. P.W.8 Dr. Naresh Yadav is C.M.O., who at the relevant time was posted at LLR Hospital, Kanpur. He has examined accused Prem Prakash @ Pappu. He has said that on 22.12.1982, he was posted at LLR Hospital, Kanpur as C.M.O. On that day at 07:45 p.m., he medically examined Prem Prakash @ Pappu and found following injuries on his body:-

i. Blackening over right hand, wrist and the bone of wrist, muscle deep. Excessive bleeding was present.

ii. Lacerated wound over left upper arm 2 cm x 1 cm fresh bleeding present. 10 cm below the outer edge of clavical.

iii. Incised wound over left side of chest 4 cm above the nipple in the area of 2 cm x 1 cm, fresh bleeding was present and the depth could not be measured.

iv. Incised wound to the left side behind the chest to the level of 5, 6 dorsal spine in diagonal direction 3 cm away of the size of 5 cm x $1^{1/2}$ cm. Depth not known. Fresh bleeding was present.

v. Incised wound below injur no4 1.5 cm x .5 cm. x muscle deep. Fresh bleeding was present.

vi. Incised wound behind the chest to the right part in the level of dorsal spine 5, 6 of the size of $2^{1/2}$ cm x 1 cm x depth not probed. Fresh bleeding present.

25. In the opinion of P.W.8, injury no.1 was caused by blast of some explosive material and injury no. 2, 3, 4, 5 and 6 were caused by any sharp edged weapon. All the injuries were fresh. The patient was admitted and injuries were kept under observation. X -ray was advised of chest and hand and the Police were informed. He has said that he prepared the injury report in his own handwriting, which he proved as Ext. Ka-11 and said that the above injuries could have occurred on 22.12.1982 at 05:15 p.m. He has further said that if the injured attacks with a grenade in his hand and it blasts in his hand itself, then injury no.1 could be caused, but if the explosive contains led or iron, then incised wound could also be caused.

26. In his cross-examination, P.W.8 has said that he cannot tell whether he had prepared supplementary report or not, unless he peruses the record. Injury no.2 to 6 could have been caused by knives. It is not necessary that in an injury caused by blast, foreign matter would retain in the incised wound. In these injuries, there was no foreign matter, internally or externally. Injury nos. 2 to 6 could not be caused by blast of a single bomb blast. If the bomb blast is caused from explosive material, then particles of explosive materials would be found inside the wounds.

27. P.W.9 S.I. Malkhan Singh is the first Investigating Officer of this case. He has said that he recorded statement of the informant at the place occurrence and, at his pointing out, inspected the place of occurrence and prepared its site plan, which he has proved as Ext. Ka-12. He collected sample of plain earth and blood stained earth from the place of occurrence, sealed them in separate boxes and prepared it recovery memo, which he proved as Ext. Ka-13. He has further said that he collected papers, pieces of polythene and thread of the country made bomb and prepared its

recovery memo, which he has proved as Ext. Ka-14. S.I. Sultan Ahmad told him that there was no proper arrangement of light in the mortuary, so the inquest could not be prepared in night. He got an information at Bada Chauraha that injured accused Prem Prakash @ Pappu is admitted in Lala Lajpat Rai Hospital. He went there and after interrogation took him into custody. On 23.12.1982, he arrested Badhshah. Thereafter, he was transferred and the investigation was handed over to S.S.I. Sri Narayan Upadhyay (P.W.10).

28. In cross-examination, P.W.9 stated that Tapeshwari neither showed him mark of blood nor flesh on the wall of gumti, however, he showed the place from where he had witnessed the incident, but inadvertently, he missed to depict it in the site-plan.

29. P.W. 10 S.S.I. Sri Narayan Upadhyay is the second Investigating Officer of the case. He, in his examination-in-chief, has stated that after the transfer of first Investigating Officer, the investigation was handed over to him. During investigation, he recorded the statements of Raju and Rakesh, but now Raju is untraceable to give evidence and has fled somewhere. He collected injury report of witness Kaloo on 05.01.1983. Thereafter, he submitted charge-sheet, which he has proved as Ext. Ka-13. P.W.10 has not been cross-examined by the defence.

30. After closure of the evidence of prosecution, statements of appellants were recorded under Section 313 Cr.P.C., in which they denied the prosecution case and said that the witnesses are deposing against them false due to pressure of Police and enmity. Appellant Prem Kumar @ Pappu further said that the real facts are that deceased Parwat had enmity with him. On the date of incident, Parwat and his friends attacked him with knives and during the incident, the companion of Parwat threw a hand grenade over him, with an intention to kill, as a result, he sustained injuries on his hand and Parwat was also injured in it. Some people took him to the hospital, where he was given medical treatment. The accused persons have not produced any evidence in their defence.

31. After perusing the evidence and material on record, the learned Trial Court came to the conclusion that the prosecution has been able to prove its case beyond reasonable doubt. The testimony of the informant and injured witness were held reliable and trustworthy. It is further held by the Trial Court that there was no contradiction in ocular and medical evidence and, accordingly, all the appellants were convicted and sentenced for the term noted in earlier part of the judgment.

32. We have heard rival submissions of Mr. V.P. Srivastava, learned Senior Advocate assisted by Mr. Padmakar Pandey, learned counsel for the appellant nos. 1, 2 and 3, Mr. Ashutosh Yadav, learned Amicus Curiae on behalf of appellant no.4 and Mr. Shashi Shekhar Tiwari along with Mr. Anil Kumar Mishra, learned Additional Government Advocates on behalf of State.

33. It is submitted on behalf of the appellants Madan, Mukund and Badshah that they were not present at the place and time of the incident and have been falsely implicated in the case. It is also submitted on behalf of all the appellants that the eye-witness produced by the prosecution are not reliable and their presence at the spot is highly doubtful.

34. It is next argued on behalf of the appellants that there were injuries on appellant Prem Kumar @ Pappu, however, the prosecution has not given any explanation of these injuries. Thus,

the entire prosecution case is doubtful. It is further submitted on behalf of the appellants that the injured witness Kaloo′s injuries are superficial and self inflicted, and it was not caused in the incident. The medical examination of Kaloo was conducted late and delay in this regard has not satisfactorily been explained by the prosecution.

35. Per contra, learned AGA on behalf of the State has submitted that the prosecution case is prove beyond reasonable doubt. This is a case based on direct evidence. It is further submitted that P.W. 4, Tapeshwari, and P.W.7, Kaloo, are the two eye witnesses, who have been examined by the prosecution and they have supported the prosecution case, and their testimony is consistent and reliable. The ocular evidence is supported by medical evidence. The injuries to appellant Prem Kumar @ Pappu are also well explained. It is further submitted by learned AGA that there was motive for the appellants to commit the crime, therefore, this appeal has no force and it is liable to be dismissed.

36. It is settled law that in a criminal case, the burden of proof lies upon the prosecution to prove its case beyond reasonable doubt. This case is based on direct evidence. The prosecution has examined two witnesses of fact namely P.W.4 Tapeshwari and P.W.7 Kaloo. Tapeshwari is the uncle of deceased Parwat, whereas Kaloo is Parwat′s real brother. Therefore, both these witnesses are relative as well as interested witnessess.

37. In case of relative and interested witness, the law is well settled that their testimony would not be rejected outrightly only on the basis of their being relative witnesses. What is required is that their testimony is to be scrutinized with greater care. Here, it is also relevant to note that, according to P.W.4 Tapweshwari, he had gone to chew Paan along with Rakesh Tewari at a Paan shop near Mazaar. So far as Kaloo is concerned, it is the case of the prosecution that he was going to attend the nature′s call and, while he was on his way, he happened to be present at the place of occurrence. Therefore, both these witnesses are also chance witness and their presence at the place of occurrence is not natural or normal. It has come in the evidence of P.W.7 Kaloo that he goes to attend the nature′s call daily, in the evening, so on that particular day his present at the spot is by chance.

38. In case of chance witnesses also, the law is well settled that their testimony is to be seen with greater circumspection. According to the prosecution, the incident occurred on 22.12.1982 at 05:15 p.m. at Nala Road near Kooda Ghar Chauraha, under Police Station Pheelkhana, District Kanpur Nagar. The FIR was lodged the same day at about 07:00 p.m.. by P.W. 4 Tapeshwari. All the appellants are named in the FIR. It is alleged on behalf of the appellants that the presence of both the eye-witnesses is highly doubtful and the manner and way, in which they have stated that the occurrence took place, is not improbable.

39. In this regard, after examining the testimony of both these witnesses their testimony is not reliable and trustworthy. It is the case of the prosecution that on the fateful day at about 12 noon, an altercation had taken place between Madan and Badshah on one side and Parwat on the other with regard to teasing girls. The matter was pacified with the intervention of Tapeshwari. On the same day at about 05:15 p.m., the appellants attacked Parwat. The above alleged motive is very weak. It has not been disclosed that how serious the incident was, which occurred at 12 noon and prompted

appellants to take such drastic step to commit this offence. Though, in case of direct evidence motive loses its significance, but like any other fact, if the prosecution has alleged the motive, then it is to be proved like any other fact, which the prosecution has failed to do so.

40. It has come in the statement of P.W.4 Tapeshwari that Madan shouted that Parwat has come, do not let him go and thereafter, they attacked his nephew Parwat. He has said that Madan caught hold of Parwat and Prem Kumar @ Pappu took out a bomb from his pocket and strucked it to Parwat from a very close distance, as a result, Parwat fell on the ground injured. He has also said that Prem′s hand was also injured and pieces of flesh flew off. When they tried to catch the appellants, then Mukund and Badshah, who were having knives, wielded them, as a result Kaloo sustained injuries over his hand and appellant Prem Kumar @ Pappu was also injured.

41. There are material contradictions in the testimony of P.W.4 and P.W.7 vis-a-vis each other with regard to the manner in which the incident took place, raising doubt over their presence at the time of incident. According to P.W.4, blood had splattered on the ground where Parwet fell, whereas according to P.W.7 Kaloo, no blood was splattered at the place of occurrence. According to P.W.4 Tapeshwari, pieces of flesh of appellant Prem @ Pappu′s hand flew off and stuck on the Gumti′s wall, which he claims to have shown to the Investigating Officer, however, according to P.W.7, Kaloo, no such pieces of flesh stuck on the Gumti′s wall. According to P.W.7 Kaloo, after the attack, when the appellants tried to flee away, he and his uncle attempted to apprehend them. In that process, Mukund and Badshah wielded their knives, and in defnece, he caught hold of appellant Prem Kumar and stood behind him, using him as a shield, whereby his left hand′s finger got injured and Prem Kumar also sustained injuries from knife. P.W.4 Tapeshwari has not stated any such thing that Kaloo had used Prem Kumar as his shield and in that process Prem Kumar sustained injuries from knife.

42. The manner in which both these witnesses describe the incident is highly improbable and unreliable. They say that appellant Prem Kumar @ Pappu took out a bomb from his pocket, held it in his hand and hit it at Parwat′s temple, while co-accused Madan was holding Parwat. It is highly unnatural and improbable that a person would strike a bomb to another, in such a manner, while holding it in his hand, knowing that in this process he may also get injured. Secondly, if all the accused had come there with the criminal intent and Madan was holding Parwat, then Prem Kumar @ Pappu must have known that the bomb may cause injuries to his fellow Madan also. Thirdly, if Madan was holding Parwat and Parwat sustained injuries over his head from bomb, which proved fatal, then some injuries must have been caused to Madan also, who according to the prosecution, was catching hold of Parwat when the bomb struck at his head. In the present case, Madan has not sustained any such injury from bomb, which completely rules out the manner in which the prosecution witnesses say the incident had taken place.

43. There are, admittedly, injuries caused to appellant Prem Kumar @ Pappu and he was medically examined the same day. One injury is over his right hand and P.W.8 Dr. Naresh Yadav, who medically examined him, has opined that those injuries were caused by blast of an explosive material, while rest of the injuries were caused by a sharp-edged weapon. A perusal of the injury report of appellant Prem @ Pappu show that he sustained injury nos. 2 to 6 of incised wound over his upper arm, left side of chest and back side of chest. So all these injuries are caused by sharp-

edged weapon and most of them are caused on vital parts of the body. P.W.4 Tapeshwari and P.W.7 Kaloo say that appellant Prem Kumar @ Pappu sustained injuries from knife, which were wielded by co-appellant Badshah and Mukund. According to the prosecution, appellant Prem Kumar @ Pappu sustained these injuries from knife because P.W.7 Kaloo had caught hold of Prem Kumar @ Pappu and used him as shield and, when co-appellant Mukund and Badshah attacked at Kaloo, except one injury over Kaloo′s finger, rest of the blows and injuries were caused to Prem Kumar @ Pappu.

44. It is highly unlikely that the appellants, after coming at the place of occurrence with common intention to commit the incident, would, in fact, wield knives over Kaloo in such a manner that their own companion would receive almost all the injuries over his body. Therefore, the explanation given by the prosecution with regard to the injury of the incised wound, sustained by appellant Prem Kumar @ Pappu, is neither satisfactorily nor well explained.

45. So far as injury sustained by P.W.7 Kaloo is concerned, it has come in evidence that after the incident, he accompanied first informant and deceased Parwat to the Hospital. It is surprising that being injured Kaloo did not ask for his own medical examination at both the hospitals. Had he sustained the injury over his finger of the hand in this incident, he should have been medically examined the same day.

46. In this regard, the explanation by the prosecution is that the same night, Kaloo left to Lucknow to inform his maternal uncle about the incident and when he returned on 24.12.1982, his statement was recorded by the Investigating Officer and, thereafter, he was medically examined. This explanation, in itself, is not satisfactory because on one hand Kaloo says that he went to Lucknow to inform his maternal uncle about the incident and on the other hand, he says that till his statement was recorded by the Investigating Officer, he did not tell anybody about the incident. Both these statements of P.W.7 Kaloo is contrary to each other, which raises suspicion over his testimony and also raises doubt that Kaloo sustained only injury in this incident.

47. Here, it is relevant to mention that Kalaoo did not mention in his statement to the Investigating Officer, recorded under Section 161 Cr.P.C., that he had used Prem Kumar @ Pappu as shield at the time of incident, whereby most of the blows of knife were sustained by Prem Kumar @ Pappu. This was a very material fact, the omission of which in his statement under Section 161 Cr.P.C., is not satisfactorily explained by the prosecution.

48. In view of the above, the said omission amounts to contradiction in view of Section 162 (1) Cr.P.C. A perusal of injury report of P.W.7 Kaloo @ Prem Kumar shows that he sustained only one injury of the nature of infected lacerated wound with serus discharge over back of left hand′s middle finger. The doctor has opined it as simple in nature and said that it could have been caused by blunt object. The doctor has said that it was possible that it could have been an incised wound, but it appeared lacerated wound. He has specifically said that the above injury was caused by blunt object and was superficial, which could have been self-inflicted also. The nature of this injury creates doubt and raises suspicion that the said injury was caused during incident to Kaloo. Besides this, delay in his medical examination and the contradictions in his testimony, as discussed above, raises serious doubt over his presence at the place of occurrence.

49. Therefore, in view of the above discussion of testimonies of P.W.4 Tapeshwari and P.W.7 Kaloo, their presence at the spot is highly doubtful and the manner in which, they say that the incident had taken place is not believable. Here, it is relevant to mention that except for both these witnesses, the prosecution has not produced any other independent witnesses like Raju, who, according to prosecution, was accompanying Parwat at the time of incident and Rakesh Tewari, who also witnessed the incident. The witnesses of fact, who have been examined are not found reliable and trustworthy, so non-examination of other independent witnesses raises adverse inference over the prosecution case, as held by Hon'ble Supreme Court in **Hem Raj v. State of Haryana, A.I.R. 2005 S.C. 2110**, that an unexplained omission to examine independent eye-witness would create an adverse inference, particularly when the eye-witnesses actually produced were not found to be reliable and there were serious doubts about their presence at the spot.

50. In the present case, the prosecution has not been able to satisfactorily explain the injuries to appellant Prem Kumar @ Pappu, of the nature of incised wound, which are five in nature. The manner in which the prosecution says he sustained these injuries is not believable. So non-explanation of these injuries creates serious doubt over the prosecution case and it raises doubt over the genesis of the incident.

51. Learned counsel for the appellants has relied upon the case law in **Lakshmi Singh and others Vs. State of Bihar, AIR (1976) SC 2263**, in which it is held as under:

"This Court clearly pointed out that where the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue: and (2) that the injuries probabilise the plea taken by the appellants. The High Court in the present case has not correctly applied the principles laid down by this Court in the decision referred to above. In some of the recent cases, the same principle was laid down. In ***Puran Singh v. The State of Punjab Criminal Appeal No. 266 of 1971 decided on April 25, 1975*** *: which was also a murder case, this Court, while following an earlier case, observed as follows:*

In State of Gujarat v. Bai Fatima Criminal Appeal No 67 of 1971 decided on March 19, 1975 :) one of us (Untwalia, J., speaking for the Court, observed as follows:

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

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

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

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

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

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

(1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version:

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

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

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the Court to rely on the evidence of PWs. 1 to 4 and 6 more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused."

52. Learned counsel for the appellants has further relied upon the decision of **Babu Ram and others Vs. State of Punjab, AIR (2008) SC 1260**, in which it is been held as under:

"19. Further, it is important to point out that the omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one."

53. Learned counsel for the appellants has further relied upon the case law in **Kumar Vs. State, represented by Inspector of Police, AIR (2018) SC 2386**, in which it is been held as under:

"32. A duty is cast on the prosecution to furnish proper explanation to the Court how the person who has been accused of assaulting the deceased, received injuries on his person in the same occurrence. We may note that the injuries alleged to have been caused are not properly explained. An alternative story is set up wherein the injuries are attributed to mob justice, such allegations without substantive evidence cannot be accepted."

54. P.W.4 has said that he could not witness, whose blows struck Kaloo and whose blows struck Prem Kumar @ Pappu, but Badshah and Mukund were wielding knives. When further asked, the witnesses said that he could not see at which part of the body, Prem Kumar sustained injuries from knife because, it was crowded. When further, asked, he said that there was a crowd of 6-7 persons.

55. A group of 6-7 persons cannot be termed as crowd, as stated by P.W.7. If, out of them, four were the appellants and one was Parwat, and the others were the witnesses and the informant, then it could not be said that there was such a crowd, which could obstruct his view to observe and

see, who was wielding the knives and to whom blows were inflicted. He has said that the pieces of flesh of Prem′s hand had stuck on the Gumti′s wall and he had shown them to the Investigating Officer, however, the Investigating Officer has said that, he was not shown any such pieces of flesh at the place of occurrence. The Investigating Officer has not sent the blood-stained earth and plain earth as well as pieces of country made bomb for forensic examination and no satisfactory explanation is given by the prosecution for this failure.

56. In view of the above discussion, we come to the conclusion that the prosecution has not been able to prove its case beyond reasonable doubt. The testimony of P.W.4 and P.W.7 Kaloo is not consistent and reliable. They are highly interested witnesses and their presence at the place of occurrence is highly doubtful. The injuries sustained by appellant Prem Kumar @ Pappu have not been satisfactorily explained by the prosecution, which raises doubt over genesis of the incident, and the manner in which the prosecution say that the incident has taken place.

57. The case put up by the defence can not be completely ruled out that, in fact, Parwat and his men attacked Prem Kumar @ Pappu with knives and in that process one of the companions of Parwat threw bomb over Prem Kumar @ Pappu, which caused injuries to his right hand and also hit Parwat over his head, causing him injuries, which probablises the defence version. Further, where versions of both parties are not totally acceptable, then the appellant would be entitled to the benefit of doubt.

58. In this regard the learned counsel for the appellants has relied upon the decision of **Gautam Lal Vs. State (1981) Crl. Law J. 1187**, a decision of this Court, in which a Division Bench of this Court held as under:

"11. ..... It is now a well settled principle of criminal law that an accused can be convicted only when on the evidence produced the court is in a position to come to a definite conclusion beyond the possibility of reasonable doubt that the accused committed the offence with which he stood charged. No conviction can be based on mere possibility. Nor is it permissible for the court to speculate as to what had really happened. If both the parties come to court with untrue facts and conceal the real truth they have themselves to blame and they cannot expect the court to arrive at any definite conclusion on the unreliable evidence produced either for or against either of the parties. In such a case the court will certainly attempt to separate the grain from the chaff but only if it is possible to do so. In certain circumstances it may be found to be an Impossible task. That would particularly be when the evidence of both the parties is unreliable and cannot be accepted even in part with safety. In such a case it is not open to the court to make out a third case which is different from the case set up by both the parties. In a situation like this the court can only say that the matter is doubtful in the extreme and it is not possible to arrive at any conclusion one way or the other. The result of such a finding may be that the person who stands as an accused in the case may have to be given the benefit of doubt."

59. Consequently, the prosecution case is not proved beyond reasonable doubt. Therefore, the Trial Court has failed to appreciate the evidence on record correctly and, on the basis of surmises and conjectures, has formed an opinion towards the guilt of the appellants, therefore, the impugned judgment and order is not sustainable and is, hereby, **set aside** and the appeal stands **allowed**.

60. Appellant nos.1, 2 and 3, Madan Kumar, Mukund Kumar, Badshah @ Sushil Kumar, respectively, are on bail. Their bail bonds and personal bond are cancelled and the sureties discharged. Appellant nos.1, 2 and 3, need not surrender.

61. **Appellant no.4, Prem Kumar @ Pappu** is in **custody**. He is ordered to be **released** forthwith, if not wanted in any other case.

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

63. Let a copy of this order be sent to the Trial Court concerned, along with the Trial Court record, for information and necessary compliance.

(2026) 5 ILRA 1189
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED:ALLAHABAD 08.05.2026

BEFORE

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

Criminal Appeal No. 1106 of 1985

Kali Das & Anr. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

Matter pertains to legality of conviction order.

Headnotes

Murder-Indian Penal Code, 1860-S. 302; Indian Evidence Act,1872-sec.145-Assault on deceased-on exhortation of co-accused-arising out of prior enmity- three eye-witnesses- natural, consistent and trustworthy -delay explained by carrying injured on cot over 9.6 km -informant seeing assailants flee with weapon -a witness of res gestae-credible ocular testimony to be preferred over medical opinion and discarded only where medical evidence renders it wholly improbable-Sec 145 Evidence Act-dying declaration recorded after brain surgery and tracheostomy rightly discarded-its absence immaterial where robust ocular evidence exists-exhortation to kill immediately before the fatal blow establishing common intention without proof of prior plan -testimony reliable and supported by medical and corroborative evidence- conviction upheld -**Appeals dismissed.**

Case Law Cited

Baldev Singh v. State of Punjab, (1995) 6 SCC 593
Ram Kumar Pandey v. State of M.P., (1975) 3 SCC 815

Bishan Dass v. State of Punjab, (1975) 3 SCC 700
Pedda Narayana v. State of A.P., (1975) 4 SCC 153
Gurnam Kaur v. Bakshish Singh, 1980 Supp SCC 567
State of Haryana v. Sher Singh, (1981) 2 SCC 300
State of U.P. v. Ballabh Das, (1985) 3 SCC 703
Jagtar Singh v. State of Punjab, (1988) 1 SCC 712
Baldev Singh v. State of Punjab, (1990) 4 SCC 692
State of U.P. v. Krishna Master, (2010) 12 SCC 324
CBI v. Tapan Kumar Singh, (2003) 6 SCC 175
Veerendra v. State of M.P., (2022) 8 SCC 668
Sukhar v. State of U.P., (1999) 9 SCC 507
Pruthiviraj Jayantibhai Vanol v. Dinesh Dayabhai Vala, (2022) 18 SCC 683
State of M.P. v. Dharkole, (2004) 13 SCC 308
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Vadivelu Thevar v. State of Madras, AIR 1957 SC 614
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Masalti v. State of U.P., AIR 1965 SC 202
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State (Delhi Administration) v. Laxman Kumar, (1985) 4 SCC 476
Anjan Ganguly v. State of West Bengal, 2013 SCC OnLine Cal 22948
V.K. Mishra v. State of Uttarakhand, (2015) 9 SCC 588
Vinod Kumar v. State (NCT of Delhi), (2025) 3 SCC 680
Laxman v. State of Maharashtra, (2002) 6 SCC 710
Paparambaka Rosamma v. State of A.P., (1999) 7 SCC 695
Koli Chunilal Savji v. State of Gujarat, (1999) 9 SCC 562
Gulab v. State of U.P., (2022) 12 SCC 677
Sandeep v. State of Haryana, (2022) 14 SCC 812

List of Acts

Indian penal Code, 1860
Inian Evidence Act,1872

List of Keywords

common intention, FIR not an encyclopaedia , res , ocular evidence , medical evidence , related witnesses, proof of contradiction, dying declaration, constructive liability, vicarious liability.

Appearances of parties

Counsel for the Appellants : Mr. Kamal Krishna, Sr. Advocate, assisted by Mr. Abhinav Dwivedi, Advocate
Counsel for the Respondent : Mr. Deepak Mishra, A.G.A

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

1. The appellants, Kali Das and Chhotey Lal, who have preferred separate appeals, stood their trial before Mr. U.S. Tripathi, the then Additional Sessions Judge, Mirzapur, for the murder of

Mangla Singh in Sessions Trial No. 298 of 1983, amalgamated with Sessions Trial No. 356 of 1983. They were convicted vide judgment and order dated 19.04.1985 for the offences punishable under Section 302 of the Indian Penal Code, 1860 (for short, 'IPC') and Section 302/ 34 IPC, respectively, and sentenced to imprisonment for life.

2. Bansh Bahadur Singh lodged a First Information Report (for short, 'FIR') on 26.07.1983 at 10.30 p.m. regarding an incident, that had happened earlier in the day at 6.00 p.m. in Village Mamolapur, Chunar, District Mirzapur, giving rise to Crime No. 118 of 1983, under Sections 307, 324 IPC, Police Station Chunar, District Mirzapur. According to the FIR, that was lodged with the Police by Bansh Bahadur Singh at about 6.00 p.m., his cousin Mangla Singh was proceeding towards the west of the village, where the canal is located, in order to relieve himself. Kali Das Nat and Chhotey Lal, both sons of Gulab Das, who are said to be involved in a long standing litigation with the informant's family and harbour animosity against them, arrived there armed with a gandasa. At that moment, Chhotey Lal exhorted Kali Das to kill Mangla Singh. Upon the exhortation, Kali Das assaulted Mangla Singh with the gandasa. Mangla Singh raised alarm, upon hearing which Ram Kishor Singh, Tejbali Singh and other natives of the village rushed to the place of occurrence, and in meanwhile, Kali Das, with an intention to kill Mangla Singh, struck him on the head with the gandasa he wielded. Mangla Singh fell down. He delivered another blow to the victim, employing his gandasa. The witnesses, who reached there, made the assailants, Kali Das and Chhotey Lal, retreat. They left Mangla Singh for dead. The assault left Mangla Singh in a critical condition. The FIR said that the informant had brought the injured along (to the police station), who had suffered a severe head injury and was unconscious.

3. On the basis of the aforesaid FIR, Case Crime No. 118 of 1983, under Sections 307, 324 IPC was registered at Police Station Chunar, District Mirzapur, as already said. The aforesaid FIR was registered on the basis of the written information dated 26.07.1983, addressed by Bansh Bahadur Singh to the S.H.O., Police Station Chunar, District Mirzapur. The written information, that was handed over to the Police by the first informant, after being proved in accordance with law, was marked as Ex. Ka-1. The check FIR was marked as Ex. Ka-2, which was drawn up by Head Constable Shivaji Singh, PW-5. He made an entry of the crime, that was registered, in G.D. No. 25, marked as Ex. Ka-3. He sent the victim for his medical examination to the Primary Health Centre, Chunar vide a memo (chitthi majrubi), marked as Ex. Ka-4. The victim was sent along with Constable Ramayan Rai. The doctor was on leave at P.H.C. Chunar, and, therefore, the victim was conveyed to the District Hospital, Mirzapur. At the District Hospital, the victim's injuries were examined by Dr. S.N. Singh, PW-6, in the wee hours of 26/27.07.1983, to be precise, at 1 o'clock. The doctor found one incised wound 19cm x 2cm x bone deep on the scalp and an abrasion 3cm x 1cm on the right thigh. The injury report was drawn up by the doctor, which is marked as Ex. Ka-9. The injuries noticed are as under:

1. Incised wound 19cm x 2cm x bone deep on the scalp (Head) 4cm above from Rt. Ear. Transverse in direction. Margin clear, regular everted. Advice X-ray of skull/ AP (Antero-posterior) & Lateral view.

2. Abrasion 3xm x 1cm on the anterior aspect of Rt. thigh, 6cm above the knee joint.

Opinion: Injury No. (1) K.U.O. X-ray advised. Caused by sharp edged weapon.

Injury No. (2) simple & caused by blunt object. Duration fresh."

4. Sub-Inspector Ram Lakhan Tiwari, then posted at P.S. Chunar, was appointed the I.O., who took up the investigation. He proceeded to Village Mamolapur and took down the statements of Bansh Bahadur Singh (PW-1), Gulam Mohammad (PW-2), Ram Kishor Singh (PW-3) and Tej Bali Singh (PW-4). He inspected the place of occurrence and drew up a site-plan, Ex. Ka-17. He launched a hunt for the appellants, but they were not available at home. The victim, Mangla Singh, was in a precarious state and, therefore, shifted to the care of a better medical facility at the Sir Sundar Lal Hospital, Institute of Medical Sciences, B.H.U, Varanasi on 29.07.1983. At the B.H.U. Hospital, the deceased was treated by Dr. S. Mohanty, PW-11. Dr. Mohanty operated the deceased in connection with his head injury on 29.07.1983. The Investigating Officer visited the B.H.U. Hospital, Varanasi on 31.07.1983 and took down the deceased's statement. He recorded the deceased's statement, later exhibited, and marked as Ex. Ka-18. It is part of the case diary. The I.O. also took into his possession the bloodstained clothes that the victim wore at the time of incident. These were sealed and a recovery memo drawn. The recovery memo is marked Ex. Ka-19. The Investigating Officer made further efforts to apprehend the appellants, who were not available. He secured processes under Section 82 and 83 Cr.P.C. on 07.08.1983, that were duly executed. The appellants still could not be apprehended. A charge-sheet was filed by the Investigating Officer on 08.08.1983 under Section 307 IPC, showing the appellants as absconders. The charge-sheet dated 08.08.1983 is marked Ex. Ka-21.

5. The appellants surrendered before the Chief Judicial Magistrate, Gyanpur, District Varanasi on 01.08.1983. Later on, they were sent to Mirzapur. The learned III Additional Munsif Magistrate, Mirzapur vide order dated 28.09.1983 committed the case to the Sessions. Mangla Singh, the victim, who had been battling for his life at the Sir Sundar Lal Hospital, B.H.U., Varanasi, lost the battle and died on 22.10.1983 at 4.30 p.m. Information regarding Mangla Singh's death was sent to P.S. Lanka, District Varanasi on 23.10.1983 at 6.45 p.m. Sub-Inspector Hridai Narain Rai, PW-9, was detailed to hold the inquest. PW-9 held inquest on 23.10.1983 at 10.15 a.m. and drew up an inquest report, Ex. Ka-13. He made a photo of the corpse (lash), Ex. Ka-14, a challan of the corpse (lash), Ex. Ka-15 and a report requesting autopsy, Ex. Ka-16. The dead body was sealed and handed over to Constables Jai Prakash and Adya Prasad Mishra of P.S. Lanka for the purpose of conveying the cadaver for autopsy.

6. The autopsy of the dead body was conducted by Dr. S.K. Tripathi, PW-8, on 23.10.1983 at 2.00 p.m. at the Institute of Medical Sciences, B.H.U., Varanasi. The doctor found healing wounds on the head, thigh, leg, knee, knee joint, left ankle joint, and according to him, the cause of death was due to coma on account of head injury. The autopsy report is marked as Ex. Ka-12. The ante-mortem injuries noted in the report are as under:

"1. Healing wound 8cm x 8cm on the sacral region covered granulation tissue and surrounded 1cm freshly healed tissue.

2. Healing wound 10cm x 5cm on the upper and outer aspect of left thigh at 88cm above left heel.

3. Healing wound 3 x 2cm at the outer and back left knee covered with scab.

4. Healing wound with healthy granulation $3^{1/2}$ cm x $2^{1/2}$ cm on the left outer aspect of left heel.

5. Healing wound with healthy granulation tissue $2^{1/2}$ cm x $2^{1/2}$ cm on the right heel back and outer aspect.

6. Fresh healed scar with healing granulation tissue here and there in it; is 25cm placed right to left over scalp and it is 20 cm from the nose junction and $3^{1/2}$ cm above the right ear and 8cm above the left ear and the underneath tissue on opening is adhered with the skull. Skull has 2 oval shaped hole (sic whole) with healing margin, one on left 6cm x $4^{1/2}$ cm x cavity deep and second on right side 8cm x 4cm x cavity deep with healing margin, joint with each other with tissue fracture of $2^{1/2}$ cm, membrane ruptured and adhered to skull bone margins and brain matter coming to these.

7. One oval healing wound $2^{1/2}$ x $2^{1/4}$ cm x trachea deep over front of neck, $3^{1/2}$ cm above the sternal notch.

Internal examination

Cause of death: Coma as a result of head injury.″

7. After the deceased passed away on 22.10.1983, his brother Prem Nath Singh moved an application to the Superintendent of Police, Mirzapur, seeking conversion of the case into one under Section 302 IPC. The Superintendent of Police directed the S.H.O. to further investigate the case vide his endorsement Ex. Ka-2. In compliance with the aforesaid order made by the Superintendent of Police, fresh investigation was undertaken by S.N. Yadav, PW-7, the then Senior Sub-Inspector, P.S. Chunar. He went to P.S. Lanka, District Varanasi and took down the statements of Hridai Narain Rai, PW-9, and Constables Jai Prakash and Adya Prasad Mishra. On 28.10.1983, the case was altered into one under Section 302 IPC vide G.D. Entry No.29, marked as Ex. Ka-7. The investigation led the Investigating Officer S.N. Yadav to submit another charge-sheet against the appellants in the same crime under Section 302 IPC, marked as Ex. Ka-11.

8. Committal proceedings, on the basis of the second charge-sheet, were held before the Chief Judicial Magistrate, who committed both the appellants to the Court of Sessions in connection with the case under Section 302 IPC vide order dated 29.11.1983. The case under Section 307 IPC was altered to one under Section 302 IPC, but since the case under Section 307 IPC had been committed to the Court of Sessions before Mangla Singh died, a separate sessions trial, on the basis of the committal order dated 29.11.1983, was registered as S.T. No. 356 of 1983 under Section 302 and 302/34 IPC. Both the sessions trial were amalgamated. Separate charges were framed against the two appellants by the learned Additional Sessions Judge on 27.01.1984 with Kali Das being charged under Section 302 IPC and Chhotey Lal under Section 302 read with Section 34 IPC.

9. Though, there is some reference to the prosecution evidence in the narration of facts hitherto made, it would be profitable to copiously refer, firstly to the witnesses, who testified on behalf of the prosecution. They are:

1. PW-1 - Bansh Bahadur Singh, the first informant,
2. PW-2 - Gulam Mohammad, an independent eye-witness of the incident,
3. PW-3 - Ram Kishor Singh, another independent eye-witness,
4. PW-4 - Tejbali Singh, still another independent eye-witness,
5. PW-5 - Shivaji Singh, Head Moharrir, P.S. Ahraura, District Mirzapur, the then Head Moharrir, P.S. Chunar,

6. PW-6 - Dr. S.N. Singh, E.M.O. Sadar Hospital, Mirzapur, who examined the injuries of Mangla Singh,

7. PW-7 - S.S.I. Surya Lal Yadav, City Kotwali, Mirzapur, the then Senior Investigating Officer, P.S. Chunar,

8. PW-8 - Dr. Surendra Kumar Singh, Lecturer, Institute of Medical Science, Banaras Hindu University, Varanasi, the then Senior Resident, B.H.U., Varanasi, who conducted postmortem of the deceased Mangla Singh,

9. PW-9 - Hridai Narain, Sub-Inspector, P.S. Lanka, District Varanasi, who prepared the inquest,

10. PW-10 - Ram Lakhan Tiwari, P.S. Kotwali, District Mirzapur, the then Sub-Inspector, P.S. Chunar, who prepared site-plan and scribed other documents and submitted the charge-sheet under Section 307 IPC, and,

11. PW-11 - Dr. S. Mohanty, Resident Surgeon, Institute of Medical Science, B.H.U., Varanasi, who operated Mangla Singh in connection with his head injury.

10. It is also necessary to more-fully refer to the documentary evidence produced by the prosecution. It is given below:

Sr. No.	Exhibit No.	Exhibited documents with brief particulars
1.	Ex. Ka-1	Written report dated 26.07.1983 lodged with Police Station Chunar, District Mirzapur, proved by PW-1, Bansh Bahadur Singh
2.	Ex. Ka-2	Check FIR dated 26.07.1983, proved by PW-5, Shivaji Singh, Head Moharrir
3.	Ex. Ka-3	Copy of GD Entry No.25 Time 22.30 hours dated 26.07.1983, proved by PW-5, Shivaji Singh, Head Moharrir
4.	Ex. Ka-4	Letter sent by the S.H.O., Chunar to the M.O., Chunar, District Mirzapur dated 26.07.1983 for medical examination of injured Mangla Singh, proved by PW-5, Shivaji Singh, Head Moharrir
5.	5 Ex. Ka-5	Copy of GD Entry No.10 Time 08.45 hours dated 27.07.1983, by which injured Mangla Singh was sent to Government Hospital, Mirzapur, proved by PW-5, Shivaji Singh, Head Moharrir
6.	Ex. Ka-6	Copy of GD Entry No.25 Time 18.30 hours dated 31.07.1983, proved by PW-5, Shivaji Singh, Head Moharrir
7.	Ex. Ka-7	Copy of GD Entry No.29 Time 20.15 hours dated 28.10.1983, by which the case was converted to one under Section 302 IPC, proved by PW-5, Shivaji Singh, Head Moharrir
8.	Ex. Ka-8	Copy of GD Entry No.10 Time 09.05 hours dated 23.11.1983, proved by PW-5, Shivaji Singh, Head Moharrir
9.	Ex. Ka-9	Injury report of Mangla Singh dated 27.07.1983, proved by PW-6, Dr. S.N. Singh,
10.	Ex. Ka-10	Order dated 26.10.1983 passed by the S.P., Mirzapur on the application moved by the deceased′s brother Premnath Singh for conversion of case from under Section 307 IPC to one under Section 302 IPC, proved by PW-7, S.S.I Surya Lal Yadav
11.	Ex. Ka-11	Charge sheet dated 28.10.1983 submitted for the offence punishable under Section 302 IPC, proved by PW-7, S.S.I Surya Lal Yadav
12.	Ex. Ka-12	Postmortem Report of the deceased Mangla Singh dated 23.10.1983, proved by PW-8, Dr. Surendra Kumar Tripathi
13.	Ex. Ka-13	Inquest report dated 23.10.1983, proved by PW-9, S.I. Hridai Narain Rai
14.	Ex. Ka-14	Photo lash dated 23.10.1983, proved by PW-9, S.I. Hridai Narain Rai

15.	Ex. Ka-15	Challan lash dated 23.10.1983, proved by PW-9, S.I. Hridai Narain Rai
16.	Ex. Ka-16	Report postmortem dated 23.10.1983, proved by PW-9, S.I. Hridai Narain Rai
17.	Ex. Ka-17	Site-plan of the place of occurrence dated 27.07.1983, proved by PW-10, S.I. Ram Lakhan Tiwari
18.	Ex. Ka-18	Statement of the injured Mangla Singh recorded in the G.D. dated 31.07.1983, proved by PW-10, S.I. Ram Lakhan Tiwari
19.	Ex. Ka-19	Memo taking possession of the bloodstained clothes of the deceased dated 31.07.1983, proved by PW-10, S.I. Ram Lakhan Tiwari
20.	Ex. Ka-20	Memo attaching property of the accused dated 07.08.1983, proved by PW-10, S.I. Ram Lakhan Tiwari
21.	Ex. Ka-21	Charge sheet dated 08.08.1983 submitted for the offence punishable under Section 307 IPC, proved by PW-10, S.I. Ram Lakhan Tiwari
22.	Ex. Ka-22	Copy of the charge-sheet submitted in Crl. Case No.356 of 1983
23.	Ex. Ka-23	Copy of the order-sheet of Crl. Case No.356 of 1983
24.	Ex. Ka-24	Copy of the FIR registered under Section 428 IPC by father of the accused dated 03.05.1982

11. After the testimony of the prosecution was over, the statements of both the appellants were recorded by the learned Additional Sessions Judge under Section 313 Cr.P.C. Both of them denied the circumstances appearing against them. The learned Additional Sessions Judge by his judgment and order dated 24.04.1985 proceeded to convict Kali Das of the offence under Section 302 IPC and Chhotey Lal of the offence under Section 302 read with 34 IPC. Both of them received life sentences.

12. Aggrieved by the judgment of conviction and the sentence awarded by the learned Trial Judge, both the appellants have preferred separate appeals.

13. Heard Mr. Kamal Krishna, learned Senior Advocate assisted by Mr. Abhinav Dwivedi, learned Counsel for the appellants, Mr. Deepak Mishra, learned Additional Government Advocate for the State in both the appeals and perused the record.

The genesis of the dispute inter se the deceased and the appellants and the prosecution case

14. The origin of hostilities, between the deceased and the assailants leading to whatever happened on the fateful day, can best be recounted from the testimony of Bansh Bahadur Singh, a cousin of the deceased Mangla Singh. A year before the occurrence, Kali Das′s father, Gulab Das owned a goat, that would venture into Mangla Singh′s field and consume his vegetable crop. The deceased Mangla Singh had time and again asked Gulab Das to constrain the goat, but the latter would pay no heed. One day, Mangla Singh hit the intruding goat with a stick, causing a fracture to one of its limbs. The aforesaid incident was reported to the Police and until time when Bansh Bahadur Singh entered the dock to testify, that case against Mangla Singh was going on. Six months before the occurrence, the residents of the village convened a Panchayat to find an amicable solution to the case involving the goat, but no settlement could be reached. In the Panchayat, there was an exchange of sharp words between Gulab Das and Kali Das, on one hand, and Mangla Singh, on the other. It is said that eversince hostilities between parties had been

engendered and until the date of occurrence, the case regarding Gulab Das's injured goat was going on in Court.

15. On the 26th of July, 1983 in the evening hours at about 6 o'clock, Bansh Bahadur Singh, PW-1, had gone over to Parashu Ram's place in order to muster labourers. He was instructing the labourers, when from the west he heard a call for rescue from Mangla Singh. The call was SOS. Upon hearing that call, Bansh Bahadur Singh rushed towards the bridge on the canal. Racing towards the bridge, he saw Kali Das wielding a gandasa and Chhotey Lal barehanded running from the western bank of the canal northwards in the direction of Village Deoria. The witness says that he saw Mangla Singh lying on the bridge over the canal. Residents of the village, to wit, Ram Kishor Singh, Tejbali Singh and Gulam Mohammad were present there. Upon reaching over to the place, where Mangla Singh had fallen, Bansh Bahadur Singh saw a wound inflicted to the victim's head by a gandasa. The wound was bleeding. The clothes that he wore were drenched in blood. These men together tied up the wound sustained by Mangla Singh using a cloth that Mangla Singh carried on him (a gamchha). Mangla Singh was unconscious at that time. Ram Kishor and Tejbali were shouting that Kali Das and Chhotey Lal had assaulted Mangla Singh. These men present there, after a little while, made Mangla Singh lie on a cot, and Bansh Bahadur Singh, Ram Kishor, Premnath and Vinod Kumar set out for Police Station Chunar, reaching Chunar Bazaar by 10 o'clock in the night. They picked up some papers from the bazaar. At that time, Mangla Singh regained slight consciousness. Bansh Bahadur Singh asked his injured cousin as to who assaulted him. He named Chhotey Lal as the one, who exhorted Kali Das, and Kali Das was named as the man, who assaulted him with a gandasa.

16. The prosecution case would not be fully stated, if the version of PW-2, PW-3 and PW-4 is not mentioned, who said they saw the occurrence. According to these witnesses, Mangla Singh was struck by Kali Das employing his gandasa, first on the head, and a second blow was delivered to his thigh.

The doubtful presence of PW-1 at the scene of crime and the veracity of the FIR

17. It is submitted by Mr. Kamal Krishna, learned Senior Advocate appearing on behalf of the appellants, that the presence of PW-1 at the scene of crime is very doubtful and facts would show that he was not about the place. According to the learned Senior Advocate, it is not said in the FIR by PW-1 that he saw the incident himself. Rather, the case is that PW-3 Ram Kishor Singh and PW-4 Tejbali Singh disclosed the incident to him. However, this vital fact does not find mention in the FIR. It is urged that this is a serious omission, which casts doubt about the presence of PW-1 Bansh Bahadur Singh at the place of occurrence. It is next submitted that PW-1 had said that Mangla Singh regained consciousness near the Chunar Bazaar and made an oral dying declaration, naming Kali Das as the assailant, who acted on the exhortation of Chhotey Lal. This fact, though would have obviously been within the knowledge of Bansh Bahadur Singh, was not mentioned in the FIR. The omission of this very important fact casts a serious doubt about the genuineness of the FIR version.

18. It is next urged that Gulam Mohammad, PW-2, is not mentioned in the FIR at all. It is also pointed out by Mr. Kamal Krishna that a mention of the background of simmering hostilities

between parties over the incident of the injured goat is conspicuously missing in the FIR, weakening the prosecution story. It is next urged that PW-1 has admitted in his cross-examination that when he reached the place of occurrence, Mangla Singh was lying on the road and he noticed one deep injury on his head and a slight injury on his right thigh. It is urged that this part of PW-1′s testimony in his cross-examination excludes his presence at the scene of crime. The postmortem report reveals only an abrasion, which falsifies his claim. It is further urged that the testimony of PW-1, where he has said that he had gone to Parshu Ram Pal to arrange labourers but did not mention this fact in the FIR or his statement under Section 161 Cr.P.C., belie his version. It is also submitted that Bansh Bahadur Singh, PW-1, has said in his cross-examination that the incident was disclosed to him by PW-3 Ram Kishor Singh and PW-4 Tejbali Singh, a fact also missing in the FIR. It is also admitted in his cross-examination, according to Mr. Kamal Krishna, that Gulam Mohammad did not disclose anything about the incident to the first informant, Bansh Bahadur Singh. It is submitted that these contradictions and non-disclosure to PW-1 make his presence very doubtful. The learned Senior Advocate submits that from all these facts and evidence, it can be safely inferred that PW-1 was not present at the time of incident. He submits that if the author of the FIR had not seen the incident, the FIR itself falls for grave doubt.

19. The learned A.G.A. has resisted the appellants′ case regarding the doubt about PW-1′s presence on the scene of crime and says that he reached there upon hearing call for rescue. He did not see the assault himself, but reached there so promptly that he saw the assailants′ escape.

20. So far as the FIR is concerned, the incident happened on 26.07.1983 at 6 o′clock in the evening hours at Village Mamolapur, P.S. Chunar, District Mirzapur, located at a distance of 6 miles from the police station, which works out to 9.6 kilometers. The FIR was lodged on 26.07.1983 at 10.30 p.m. Given the circumstances of the parties and the times, the deceased was carried on a cot to the police station with the aid of three other men, besides the informant, to wit, Ram Kishor, Premnath and Vinod Kumar, the party travelling through the Chunar Bazaar, where they reached at about 10 o′clock. The FIR was scribed on way, the papers for the purpose being purchased at Chunar Bazaar. This logically would have involved some interruption in the slow journey that was undertaken on foot, onerous as it was, by the weight of the injured Mangla Singh that each of the four men carrying him, shared simultaneously during the course of the journey. In the circumstances, in our opinion, the FIR has been lodged with reasonable promptness. The total time period spent between the occurrence and the lodging of the FIR is four and a half hours, most of which was consumed in carrying the deceased on foot, with the aid of a cot, to the police station. The period of time involved and the nature and circumstances of its utilization that involved physical exertion for the informant, in our opinion, effectively excludes the possibility and avenue for the first informant to cook up a story, borne on second thought. The FIR is, therefore, without doubt a prompt version of the occurrence.

21. It would be apposite in this connection to notice the legal position exposited in **Baldev Singh v. State of Punjab, (1995) 6 SCC 593**, where it has been held by this Supreme Court:

"10. We are of the view that there is no discrepancy between Ex. P-7, FIR and the deposition of PW 5 in Court. We should remember that Ex. P-7, FIR was given within two hours of the incident and PW 5, a lady, would have been in an agitated mind then. In Ex. P-7, PW 5 only

stated that Sham Singh fired from his pistol at her husband which struck his chest. That could only be what she inferred. She did not state that her husband died as a result of the above pistol shot. It is because of the various injuries inflicted by the other accused, Balbir Singh died. And as PW 5, she stated that Balbir Singh was not hit when the accused Sham Singh fired from the pistol at Balbir Singh, but Balbir Singh fell down. Bundles of hay fell on his head and the other accused inflicted various injuries on other parts of the body. Really, there is no contradiction or variation in the deposition of PW 5 from what she stated in FIR, Ex. P-7. We are of the view that the plea of the appellants' counsel fails to reckon the proper value to be attached to the FIR, the customary or essential details to be mentioned therein and the use that can be made of it. There are innumerable decisions of this Court dealing with the above aspects of the FIR. Mention may be made of a few important decisions of this Court on the subject - Ram Kumar Pandey v. State of M.P. [(1975) 3 SCC 815 : 1975 SCC (Cri) 225 : AIR 1975 SC 1026] , Bishan Dass v. State of Punjab [(1975) 3 SCC 700 : 1975 SCC (Cri) 145 : AIR 1975 SC 573] , Pedda Narayana v. State of A.P. [(1975) 4 SCC 153 : 1975 SCC (Cri) 427 : AIR 1975 SC 1252] , Gurnam Kaur v. Bakshish Singh [1980 Supp SCC 567 : 1981 SCC (Cri) 496 : AIR 1981 SC 631] , State of Haryana v. Sher Singh [(1981) 2 SCC 300 : 1981 SCC (Cri) 421 : AIR 1981 SC 1021] , State of U.P. v. Ballabh Das [(1985) 3 SCC 703 : 1985 SCC (Cri) 452 : AIR 1985 SC 1384] , Jagtar Singh v. State of Punjab [(1988) 1 SCC 712 : 1988 SCC (Cri) 254 : AIR 1988 SC 628] and Baldev Singh v. State of Punjab [(1990) 4 SCC 692 : 1991 SCC (Cri) 61] . Stated briefly, the FIR is not a substantive piece of evidence, it is only relevant in judging the veracity of prosecution case and the value to be attached to it depends on the facts of each case. Only the essential or broad picture need be stated in the FIR and all minute details need not be mentioned therein. It is not a verbatim summary of the prosecution case. It need not contain details of the occurrence as if it were an "encyclopaedia" of the occurrence. It may not be even necessary to catalogue the overt acts therein. Non-mentioning of some facts or vague reference to some others are not fatal. We should also bear in mind that the FIR was given by PW 5, who is an illiterate lady soon after the occurrence, when she should have been very emotional and in a disturbed state of mind. We find that the evidence of PW 5 is substantially in accord with Ex. P-7, FIR and the court below was justified in placing reliance on Ex. P-7 and the evidence of PW 5. We repel the plea of the appellants' counsel to the contrary."

22. Reference may be made with profit to the decision of the Supreme Court in **State of U.P. v. Krishna Master, (2010) 12 SCC 324**. In **Krishna Master** (supra), it was observed:

"67. Law requires FIR to contain basic prosecution case and not minute details. The law developed on the subject is that even if an accused is not named in the FIR he can be held guilty if prosecution leads reliable and satisfactory evidence which proves his participation in crime. Similarly, the witnesses whose names are not mentioned in the FIR but examined during the course of trial can be relied upon for the purpose of basing conviction against the accused. Non-mentioning of motive in the FIR cannot be regarded as omission to state important and material fact. As a principle, it has been ruled by this Court that omission to give details in the FIR as to manner in which weapon was used by the accused is not a material omission amounting to contradiction. Further, this is a case wherein FIR was filed by a rustic man and, therefore, non-mentioning of motive in the FIR cannot be attached much importance.

68. In CBI v. Tapan Kumar Singh [(2003) 6 SCC 175 : 2003 SCC (Cri) 1305 : AIR 2003 SC 4140] , it has been held by this Court that mere absence of indication about the source of light

in the FIR for identifying the assailants does not, in any way, affect the prosecution version. The FIR is not the last word in the prosecution case and in some cases detailed FIR could be a ground for suspicion. What is relevant to find out is whether the FIR was lodged promptly and whether it is actuated by mala fides.″

23. It is well-known that an FIR is not substantive evidence, but has a special significance attached to it, and, that is, that it is the earliest version of the occurrence available to the Court and, of course, to the Investigator, and for that reason, considered to be most accurate. The FIR in the present case, we must remark, has not been castigated by the appellants as one lodged with an unexplained delay and based on afterthought. At the same time, the appellants have criticized the FIR not as a truthful version of the occurrence for other reasons. Of these, one of the chief grounds is that the author of the FIR had himself not seen the incident. It is also said that he was nowhere around the scene of occurrence, soon afterwards as well, and did not see the appellants′ escape the scene of crime, as he testifies.

24. So far as the veracity of the FIR is concerned, of course, an FIR lodged by an eye-witness promptly may always be regarded as more reliable. But, an FIR lodged by a man, who has not seen the occurrence, is not to be suspected on that ground alone, if it otherwise carries an accurate version, not fundamentally belied by the testimony of eye-witnesses, that is later on led at the trial. There is criticism of the FIR on ground that though the information about the crime therein, furnished about the assault, is based on the testimony of eye-witnesses, PW-3 Ram Kishor Singh and PW-4 Tejbali Singh, the fact is not mentioned in the FIR. It is not necessary that the FIR may carry all details of the occurrence, which, on a hind sight, may be regarded by a person, sitting back in the comfort of his home, as something that ought have been mentioned. The promptness of the FIR is certainly a virtue that guarantees the earliest account of the occurrence, unvarnished by the adulterating influences of imagination and similar factors. It need not carry details of acquisition of the information.

25. Likewise, non-mention in the FIR that the deceased had briefly regained consciousness near the Chunar Bazaar and disclosed the name of the assailants, virtually an oral dying declaration, cannot be taken exception to by the appellants as a fact that derogates from the veracity of the FIR. The non-mention of this fact in no way creates doubt about the genuineness of the FIR, as the learned Senior Advocate for the appellants would want us to believe. Likewise, is the case with non-mention of PW-2 Gulam Mohammad′s name in the FIR. Two of the three eye-witnesses were named, and allowance made for the presence of others by employment of words to the effect that besides these two, who saw the assault and rushed to the deceased′s aid, there were number of other men nearby, who upon hearing the call for rescue also rushed to the deceased′s aid. To say that omission in the FIR regarding the fact of there being animosity between parties over the incident relating to a goat owned by the appellants′ father, Gulab Das, renders the FIR weak, is almost preposterous. It is the insistence on details, such as these, in the FIR and upon failure of mention of such details, the castigation of the FIR, that has led lawyers and Courts both to become ardent subscribers of the phrase that 'the FIR is not an encyclopedia of the occurrence′. It is not that these words are repeated by the prosecution ad nauseam, but the fact is that insistence by the defence on details in the FIR, stretching it to preposterous limits, leave the prosecution and the Court, both to take frequent resort to the wisdom of these words. We are of clear opinion, therefore, that the

omission of these details in the FIR does not at all make it an unreliable account of the occurrence. Rather, the facts would show that the deceased reached the scene of crime soon after the occurrence, gathered details from eye-witnesses and was assured of the truth of these. He did see the subsequent conduct of the appellants in running away from the scene of crime with Kali Das holding the gandasa. The further fact that PW-1 Bansh Bahadur, with the assistance of three others, conveyed the deceased on a cot to the police station and thence to medical aid, shows that he was an early arrival at the scene of crime. There is nothing, therefore, in the FIR or the conduct of the informant, which may derogate from the veracity of the FIR, at least as the earliest account of the occurrence.

26. Specifically about the doubt raised regarding the presence of PW-1 on the spot, we have mostly dealt with the issue while commenting on the veracity of the FIR. There are certain submissions of the learned Senior Advocate that were put forward to show that PW-1 was not there on the scene of crime, when it happened. He has said that in his cross-examination, PW-1 Bansh Bahadur Singh has said that when he reached the place of occurrence, Mangla Singh was lying on the road and he noticed one deep injury on his head and a slight injury on his right thigh. The submission is that the postmortem report reveals that the deceased had an abrasion alone, which not only falsifies PW-1's testimony in this regard, but shows that he was never present at the spot at the time when Mangla Singh fell, in consequence of the assault. We do not agree.

27. It is true that the injury report, Ex. Ka-9, shows that there was an incised wound bone deep on the scalp (head) and an abrasion on the anterior aspect of the right thigh, but the description of the second injury, so far as PW-1 is concerned, is not at all inaccurate. He has described it in his cross-examination in the following words: *'Dusri halki chot dahini jangh par thi '*. We are minded to think that so far as this witness is concerned, his description of the second injury, as one that was slight and on the right thigh, would more or less correspond to the medico-legal evidence, where in the injury report, the second injury is described as an abrasion on the anterior aspect of the right thigh. So far as the postmortem report goes, that is quite irrelevant to gauge the nature of the second injury, because the autopsy took place almost three months after the occurrence, the deceased having survived all this period of time to die in hospital on 22.10.1983. There is no reason to doubt the presence of this witness at the scene of crime, which he reached soon after the assault and as the appellants were making good their escape. He saw them leave the scene of crime.

28. PW-1 Bansh Bahadur Singh is not an eye-witness, but he is a witness of res gestae, that is to say, not the fact in issue, but a relevant fact so intimately connected with the fact in issue and contemporaneous in point of time as to form part of the same transaction. PW-1, when he reached the scene of crime upon hearing the call for rescue from Mangla Singh, saw him lying on the road with injuries and the two appellants escaping at a distance of 60 paces to the north, heading towards Village Deoria. Kali Das was holding a gandasa and Chhotey Lal was barehanded. Now, the fact that with the victim lying on the road, PW-1 saw the two appellants running away from the crime scene, one holding a gandasa in hand, is a fact intimately connected to the assault, the fact in issue, which makes PW-1 a witness of res gestae. In this connection, reference may be made to **Veerendra v. State of M.P., (2022) 8 SCC 668**, where it is remarked by the Supreme Court:

"71. The evidence of PW 12 was actually taken as res gestae under Section 6 of the Evidence Act, 1872 by the High Court. In Sukhar v. State of U.P. [Sukhar v. State of U.P., (1999) 9 SCC 507 : 2000 SCC (Cri) 419] this Court explained the said provision. It was held therein that the statement sought to be admitted, as forming part of res gestae, must have been made contemporaneously with the acts. Thus, it is evident that the essence of the doctrine of res gestae is that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" that it becomes relevant by itself. A conduct of the accused after the incident may become admissible under Section 6 of the Evidence Act, though not in issue, if it is so connected with the fact in issue."

The time and place of occurrence

29. The place of occurrence is fully described by PW-1 in his examination-in-chief. He has said that to the west of his Village Mamolapur, there is a big canal flowing from south to north. This canal is called Bhagwat Rajbaha. From the Kailhat Bazaar in the village, a pucca road connects Adalhat. This road is oriented from west to east. The road crosses the canal located to the west of the village and where it passes over the canal, there is a bridge. Some 50 paces away from the bridge, one reaches the fringes of the village abadi. According to this witness, the place of occurrence was at the bridge built over the canal to the west of the village. PW-2 Gulam Mohammad says that Mangla Singh was sitting on the southern part of the bridge towards the western side. This fact the witness has said in his examination-in-chief. PW-3 Ram Kishor has described the place of occurrence as the southern wall of the bridge on the west end, where Mangla Singh was sitting. PW-4 Tejbali Singh has described the place of occurrence in his examination-in-chief as the southern wall of the bridge over the canal on the western side, where Mangla Singh was sitting. The place 'A' in the site-plan Ex. Ka-17 corresponds to this consistent description by the three eye-witnesses, PW-2, PW-3 and PW-4. There is nothing in the cross-examination of either of the three eye-witnesses, which may derogate from the consistent identity of the place of occurrence described by them. The place of occurrence is the southern wall of the bridge on the western side. All the witnesses are unanimous that the time of occurrence was 6 p.m. on 26.07.1983. Going by the consistent testimony of the eye-witnesses as well as that of PW-1, who is a witness of res gestae, arriving soon after the occurrence at the scene of crime, read together with the site-plan, we find that the date, time and place of occurrence is established by the prosecution beyond reasonable doubt.

The Testimony of eye-witnesses, PW-2, PW-3 and PW-4, and the manner of assault

30. The moot point here is, if the witnesses are consistent in essential particulars about the manner of assault, so that their testimony can be accepted as reliable and creditworthy. The test of credit for these witnesses would also involve determination of the fact if these eye-witnesses, to wit, PW-2, PW-3 and PW-4, indeed witnessed the occurrence, or are mere foists in evidence to prove the prosecution case. In assessing the credibility of the three eye-witnesses, we would not only endeavour to analyze their respective testimonies in the dock for the consistency of version with each other, but also juxtapose their ocular version with the medico-legal evidence to see if the ocular version is made, so wholesomely impossible by the medico-legal evidence that the credit of these witnesses must be held impeached.

31. We have formulated the above propositions for consideration, broadly based on the submissions that Mr. Kamal Krishna, Senior Advocate, with his inimitable tenacity made at the hearing before us. Before we embark on the task that we have delineated for ourselves on consideration of this part of the evidence, we must notice the most pertinent of submissions that Mr. Kamal Krishna advanced. The learned Senior Advocate has urged that PW-2 does not find mention in the FIR, and, therefore, his evidence in the dock is but foisted testimony, brought in later, to lend buttress to the prosecution.

32. The next submission advanced is that PW-2 Gulam Mohammad has categorically said in his testimony that Kali Das inflicted two blows to the deceased, employing his gandasa - one on the head, and the other, on his leg. But, PW-6 Dr. S.N. Singh, who examined the deceased soon after the assault and while he was alive, admitted in his cross-examination that injury No.2 was caused by a blunt object and not a gandasa. Therefore, in the submission of Mr. Kamal Krishna, ocular evidence is in conflict with medical evidence to the extent that the two cannot be reconciled. It is a case, according to the learned Senior Advocate, where ocular evidence has to be rejected as false in the face inherently inconsistent medical evidence. The third submission advanced by Mr. Kamal Krishna is that PW-2 Gulam Mohammad also did not say that the deceased made a dying declaration orally in his presence, though he was present at the time when the FIR was lodged. This contradiction between the testimonies of PW-1 and PW-2 render both unreliable.

33. It is next submitted by the learned Senior Advocate that according to the site-plan, the place of occurrence is situate to the west of the village. But, PW-3 Ram Kishor Singh says in his cross-examination that he was not going to ease himself towards the north of the village. He was proceeding to the west for the purpose. It is submitted that his stand is vacillating and inconsistent. The next submission advanced on behalf of the appellants is that all the three eye-witness - PW-2, PW-3 and PW-4 - claimed that they were going to ease themselves, which appears to be unnatural and absurd, making their presence at the scene of crime doubtful. The other submission is more or less like the one, earlier advanced, in regard to the testimony of PW-2.

34. It is argued that PW-3 Ram Kishor Singh and PW-4 Tejbali Singh, both said that two blows were delivered with the gandasa, but medical evidence contradicts this, as injury to the thigh, that was caused, is attributed to a blunt object. Dr. S.N. Singh has contradicted ocular testimony of a second blow by the gandasa to the victim's right thigh, inasmuch as he has said that the second injury or the injury on the thigh was caused by a blunt object.

35. It is next argued that PW-4 Tejbali Singh has said that he was going to ease himself, when he reached the scene of crime, but this fact has not been mentioned in his statement recorded under Section 161 Cr.P.C. It is then argued that about the weather, some witnesses said that there was rain in the night. PW-9, the Investigating Officer Hridai Narain, admitted that the witnesses had not told him about any rain. These contradictions, according to the learned Senior Advocate, further make PW-3 and PW-4 unreliable.

36. PW-4 Tejbali Singh, in the submission of the learned Senior Advocate, also admitted that Rajaram and his father Lalta are brothers of full blood, which shows the close kinship between the

witnesses and the informant. Mr. Kamal Krishna, therefore, impeaches the testimony of these witnesses as tainted by interest.

37. It is next argued that no blood was found at the place of occurrence and though the witnesses say that there was rain, the fact is not mentioned either in the FIR or in the statements of witnesses recorded under Section 161 Cr.P.C. Therefore, on behalf of the appellants, it is urged that the prosecution in this regard, cannot be relied at all. Almost drawing a close to this part of the submissions, Mr. Kamal Krishna says that though it is alleged that the deceased regained consciousness, no efforts were made by the Investigating Officer to get his dying declaration recorded by a Magistrate in the presence of a doctor. This failure makes the prosecution case extremely doubtful.

38. In the last lap of his submissions on the issues that we are presently concerned with, it is urged by Mr. Kamal Krishna, learned Senior Advocate, on behalf of the appellants that it is clear that the witnesses are unreliable, have not seen the incident and the prosecution case is shrouded in suspicion.

39. PW-2 Gulam Mohammad, though not named in the FIR, has ample room for his presence as a prosecution witness. The FIR names two of the three eye witnesses, to wit, PW-3 Ram Kishor Singh and PW-4 Tejbali Singh. At the same time, the FIR makes ample allowance for the presence of others by employment of words to the effect that besides these two, there were others, who saw the assault and rushed to the deceased's aid. Gulam Mohammad was one of them. PW-2 Gulam Mohammad was not a surprise or a trap, sprung for the first time in the dock, as the cross-examination of this witness would show. The witness was cross-examined with reference to his statement made before the Investigating Officer under Section 161 Cr.P.C., where it was not recorded that Kali Das had struck Mangla Singh twice with his gandasa. The witness said that he did speak about the two blows in his statement to the Investigating Officer, and if the Investigating Officer had not made it part of his statement, he could not explain the reason for the omission. All that emerges from this reference to the cross-examination of PW-2 is that during investigation, he was one of the witnesses, whose statement was recorded by the Investigating Officer.

40. In addition, it is noteworthy that the fact that the statement of Gulam Mohammad was recorded by the Investigating Officer figures in the examination-in-chief of PW-10, Sub-Inspector Ram Lakhan Tiwari.

41. We do not now have the benefit of perusing the contents of the case diary, but the cross-examination of PW-2 lends infallible assurance to the fact that this witness was there before the Investigating Officer, who took down his statement under Section 161 Cr.P.C. It is with reference to those statement that the witness was cross-examined in the dock, amongst other things. Therefore, it is utterly misplaced to think that PW-2 Gulam Mohammad was not an eye-witness merely because his name did not figure in the FIR. The other witnesses named in the FIR have alluded to his presence in their dock evidence consistently. All this taken together, is good assurance of the presence of PW-2 at the scene of crime. There is, therefore, neither doubt about the presence of this witness nor the prosecution story itself on the basis of the fact alone that PW-2's name was not mentioned in the FIR. After all, there is no rule, which requires that every eye-

witness must be mentioned in the FIR, upon pain of being disbelieved at the trial about his presence at the scene of crime.

42. The other submission regarding inconsistency in the essential version of assault given by PW-2 Gulam Mohammad and the medico-legal evidence, that is to say, the testimony of PW-6 Dr. S.N. Singh, is again quite unfounded. It is urged that PW-2 categorically said that Kali Das inflicted two blows, one on the victim's head, and the other, on his right thigh, but PW-6 Dr. S.N. Singh's testimony shows that injury No.2, in his opinion, was caused by a blunt object and not a gandasa. There is no such irreconcilable variation between the ocular version that PW-2 has put forward and the medico-legal evidence, that must lead to the rejection of a much superior kind of evidence, that is to say, ocular testimony. As a rule, ocular testimony is to be preferred over the opinion evidence of a doctor, unless the medico-legal evidence discloses a state of things, which inevitably makes ocular testimony unreliable. This is not a case of the latter kind. In this regard, reference may be made to **Pruthiviraj Jayantibhai Vanol v. Dinesh Dayabhai Vala, (2022) 18 SCC 683**. In **Pruthiviraj Jayantibhai Vanol** (supra), it was held by the Supreme Court:

"17. Ocular evidence is considered the best evidence unless there are reasons to doubt it. The evidence of PW 2 and PW 10 is unimpeachable. It is only in a case where there is a gross contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved. In the present case, we find no inconsistency between the ocular and medical evidence. The High Court grossly erred in appreciation of evidence by holding that Muddamal No. 5 was a simple iron rod without noticing the evidence that it had a sharp turn edge."

43. No doubt in his evidence (examination-in-chief), PW-2 Gulam Mohammad has described the final moments of assault in the manner that upon hearing Chhotey Lal's exhortation, as soon as Mangla Singh attempted to get up, Kali Das attacked him with his gandasa, the blow landing on his head. After receiving the injury, Mangla Singh tumbled down on to the road from the bridge, where he was sitting. Upon this fall, Kali Das delivered a second blow, which struck Mangla Singh in the thigh. The injury report, Ex. Ka-9, notes the first injury to be an incised wound on the scalp (head) and, the second injury, an abrasion on the anterior aspect of the right thigh. Regarding this injury, PW-6 Dr. S.N. Singh, who had examined Mangla Singh, when he was brought in to the Government Hospital, Mirzapur on 27.07.1983, after proving the injury report, in his examination-in-chief said that injury No.2 could be caused by a slight touch of the nose of a gandasa. In his cross-examination, he has said that injury No.2 was not a linear abrasion. The said injury could be caused by the friction from a blunt object. The injury from the nose of a gandasa would leave behind a line. There is no doubt that the ocular testimony of PW-2 clearly ascribes to the appellant Kali Das two gandasa blows, one that landed on the head and caused the fatal injury, and the other, on the right thigh.

44. Now, the possibility that the second injury, though the result of a gandasa blow, merely resulted in an abrasion, cannot be said to belie the ocular testimony. We are of opinion that it would be apposite to note what each of the three eye-witnesses said about the result of the second injury.

PW-2 Gulam Mohammad, whose testimony has been firstly criticized on this score, spoke about the result of the injuries in the following words in his examination-in-chief:

"चोट लगने से मंगला सिंह बेहोश हो गये। उनकी सर की चोट से खून बह रहा था जो जमीन पर गिरा। कपड़े पर खून नही लगा। मंगला सिंह लुंगी पहने थे व गमछा लिये थे।"

45. PW-1 Bansh Bahadur Singh, who is not an eye-witness, but a witness of res gestae, who arrived soon after the occurrence and decidedly had occasion to see the injuries sustained by Mangla Singh, spoke of these injuries in his cross-examination thus:

"मंगला सिंह के शरीर पर दो चोटे देखी एक गहरी चोट सर पर थी व दूसरी हल्की चोट दाहिनी जाँघ पर थी इसके अलावा और कोई चोट नही थी।"

(emphasis by Court)

46. PW-3 Ram Kishor Singh, who is again an eye-witness and saw both the assault and the injuries, spoke of the second injury as follows in his cross-examination:

"दूसरा गड़ासा मंगला सिंह की दाहिनी जाँघ पर लगा था। जाँघ की चोट से मंगला सिंह की पहनी हुई लुंगी नही कटी थी।"

47. From a close scrutiny of the testimony of these witnesses, while it is apparent that the second blow was received by Mangla Singh to his right thigh, but for myriad factors, such as the absorbing effect of the folds of the dhoti that he wore, he does not seem to have received an incised wound to his right thigh, the force and the cutting action of the gandasa being lost on account of the angle of strike, the position of his thigh, the folds of the dhoti, and whatever other factors worked. All that he received, was an abrasion, which could be from the nose of the gandasa, as the doctor has opined, or may be the blunt end, which landed on his thigh, entangled in the folds of the dhoti that he wore.

48. There is also an argument advanced by the learned Senior Advocate to the effect that PW-3 and PW-4 have both said in their testimonies that two blows with the gandasa were delivered to the deceased, but medical evidence contradicts this ocular evidence, as the injury on the thigh was caused by a blunt object. Much reliance has been placed on the testimony of Dr. S.N. Singh, who has, according to the learned Senior Advocate for the appellants, clearly opined that the injury on the thigh was produced by a blunt object. He submits that a gandasa is not a blunt object. We must remark here that this criticism of the testimony of PW-3 and PW-4 is an extension of the criticism of PW-2's evidence on the same score, with which we have dealt in substantial measure already. It would be apposite, therefore, to refer to the relevant part of the testimonies of PW-2, PW-3 and PW-4, the three eye-witnesses in wholesome detail regarding the manner of assault. PW-2 Gulam Mohammad has said in his examination-in-chief:

".. पुल पर मंगला सिंह बैठे थे मंगला सिंह पुल पर दक्षिणी हिस्से पश्चिम तरफ बैठे थे। छोटे लाल व कालीदास मुल्जिमान हाजिर अदालत मंगला सिंह के पास पहुँच रहे थे। कालीदास के हाथ में गड़ासा था व छोटे लाल खाली हाथ थे छोटे लाल ने ललकारा कि मंगला मौके से मिल गया है इसे जान से मार दो। छोटे लाल की ललकार सुनकर मंगला सिंह ज्योंही उठना चाहे कि कालीदास ने उनके ऊपर गड़ासा से वार किया गड़ासा मंगला सिंह के सर पर लगा। गड़ासा की चोट खाकर मंगला सिंह पुल से सटकर सड़क पर गिर गये। गिरने पर कालीदास ने दूसरा वार किया जो मंगला सिंह की जाँघ पर लगा। मारकर मुल्जिमान नहर की पश्चिमी पटरी से उत्तर तरफ देवरिया गांव की ओर भाग गये।"

49. PW-3 Ram Kishor Singh in his testimony has described the assault in the following words:

"..... कालीदास गड़ासा लिये थे व छोटे लला खाली हाथ नहर के पुलपर, दक्षिणी दीवाल पर पश्चिमी किनारे की तरफ मेरे गांव के मंगला सिंह बैठे थे। पुल पर पहुँच कर मंगला को देख कर छोटे लाल ने ललकारा कि "मौके से मिला है जान से मार डालो" छोटे लाल की ललकार पर मंगला सिंह खड़े होकर भागना चाहे कि इतने में कालीदास ने मंगला की गड़ासा से मारा जो उनके सर पर लगा। उस समय हम लोग मंगला सिंह से 15-16 कदम पूरब तरफ सड़क पर थे। गड़ासा की चोट लगने से मंगला सिंह सड़क पर पुल पर गिर गये। उनके गिरने पर काली दास ने उनपर गड़ासे का दूसरा बार दिया जो उनकी (मंगला सिंह की) जाँघ पर लगा। मार कर कालीदास व छोटे लाल उत्तर की तरफ भाग गये।"

50. PW-4 Tejbali Singh has described the assault in his dock evidence in the following words:

"..... कालीदास गड़ासा लिये थे व छोटे लाल खाली हाथ थे। उस समय नहर के पुल पर की दक्षिणी दीवाल पर पश्चिमी किनारे पर मंगला सिंह बैठे थे। पुल पर पहुँच कर छोटे लाल ने मंगला सिंह के सामने ललकारा कि मारो साले को अच्छा मौका मिला है। ललकारने पर मंगला सिंह खड़ा होना चाहे तब तक कालीदास ने उन्हे गड़ासा से मारा जो उनके सर पर लगा। हम लोग उस समय मंगला सिंह से 15-16 कदम पूरब तरफ सड़क पर थे। चोट लगने से मंगला सिंह पुल के पास ही सड़क पर गिर पड़े गिरने पर हम लोग चिलाये। कालीदास ने मंगला सिंह के गिरने पर दूसरा गड़ासा मारा जो उन की दाहिनी जाँघ पर लगा। घटना को मेरे अलावा राम किशोर गुलाम मोहम्मद ने देखा बाद में वंश बहादुर भी आ गये मुल्जिमान नहर पकड़ कर देबरिया गांव की तरफ भाग गये।"

51. There is a remarkable consistency in the manner of assault in all its detail between all the three witnesses, which is hard to forsake, on the basis of medical evidence, that could be the result of any kind of failure of physical force that kept a classical injury from a gandasa assault to Mangla Singh's thigh from being caused. In the face of a sterling ocular testimony of the three witnesses, the discrepancy emanating from the nature of the second injury loses significance to the extent as to

raise a doubt about the veracity of the prosecution, or the presence of the witnesses at the scene of crime.

52. All the three witnesses are unanimous about the manner in which the appellant Kali Das struck Mangla Singh with two blows from his gandasa, one on his head, and the other on his right thigh. The first blow produced the fatal injury and there is no cavil about it. The ocular and the medical evidence, as regards the first injury, are ad idem. About the second injury, apart from what we have said of the possibilities that led to the slighter injury being caused, what must not be lost sight of is that a second injury was there and it was sited on the right thigh; albeit an abrasion. Therefore, the ocular testimony about the manner and the site where the weapon landed, is believable. It cannot be discarded as something so inconsistent with medical evidence that it is impossible to believe the ocular version.

53. The primacy accorded to a consistent ocular version that inspires confidence over medical evidence, that is, after all opinion evidence, is well illustrated by the Supreme Court in **State of M.P. v. Dharkole, (2004) 13 SCC 308**. In **Dharkole** (supra), it was remarked:

"8. Coming to the plea that the medical evidence is at variance with ocular evidence, it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the "variable" keeping the medical evidence as the "constant".

9. It is trite that where the eyewitnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bentham said, are the eyes and ears of justice. Hence the importance and primacy of the quality of the trial process. Eyewitnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts; the "credit" of the witnesses; their performance in the witness box; their power of observation, etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."

54. The next submission that endeavours to advance the appellants' case regarding inconsistencies between the three eye-witnesses is that PW-2 has not testified to the fact that the deceased made an oral dying declaration in his presence, though he says that he was present at the time when the FIR was lodged. This contradiction between PW-1 and PW-2 renders the testimony of both witnesses unreliable. We must note that PW-1 has described how Mangla Singh spoke to him regaining consciousness for a little while enroute to the Chunar police station from the scene of crime. He had regained his consciousness while the party reached the Chunar Bazaar at about 10.00 p.m. The manner, in which Mangla Singh was conveyed to P.S. Chunar, is described in the examination-in-chief by PW-1 thus:

"कुछ देर बाद मंगला सिंह को चारपाई पर लिटाकर मै, राम किशोर, प्रेम नाथ व विनोद कुमार चुनार थाने के लिये पैदल चले हम लोग चुनार बाजार रात के 10 बजे पहुँचे चुनार बाजार में रूककर कागज लिये उस समय मंगला सिंह को कुछ होश आ गया था मैने उनसे पूछा कि किसने मारा तो उन्होने बताया कि छोटे लाल के ललकारने पर कालीदास ने गड़ासा से मार दिया चुनार बाजार में ही मैने रिपोर्ट तैयार की जो मेरे लेख व हस्ताक्षर में है Marked Ex. क-1 रिपोर्ट व मंगला सिंह को लेकर चुनार थाने आया वही रिपोर्ट दीवान जी को दिया।"

55. In his cross-examination, it is stated by PW-1 about conversation with Mangla Singh, when he regained consciousness at the Chunar Bazaar:

"घटना के बाद मुझसे मंगला सिंह से पहली बार बातचीत चुनार बाजार में हुई थी बाजार में मंगला सिंह से बातचीत 10 बजे रात हुई बातचीत की जगह थाने के पूरब एक फर्लांग दूर हुई थी। सड़क पर चारपाई उतार कर बातचीत की। बातचीत की जगह दूकान के सामने चौराहे पर हुई।"

56. As would appear from the testimony of PW-1 Bansh Bahadur Singh, Mangla Singh was placed on a cot to be conveyed to P.S. Chunar and the cot was carried by Ram Kishor Singh, Premnath, Vinod Kumar and PW-1 Bansh Bahadur Singh himself. When the FIR was registered at P.S. Chunar, the G.D. Entry, relating to the FIR, bearing No. 25, Ex. Ka-3, shows that four men were present at the station, to wit, Bansh Bahadur Singh, Premnath, Vinod Kumar and Ram Kishor. These are the four men, who had carried Mangla Singh on the cot to the police station. Therefore, there is not much force in the contention advanced on behalf of the appellants that PW-2, though present at the time of registration of the FIR, did not mention the fact of Mangla Singh making an oral dying declaration. Even otherwise, PW-2 Gulam Mohammad has spoken about all relevant details relating to the occurrence. He was not a relative or friend of Mangla Singh, who would necessarily accompany him after the event, when he was taken to the police station or the hospital. The submission advanced on behalf of the appellants, therefore, cannot be accepted.

57. Much ado has been made on behalf of the appellants of the fact that PW-2, PW-3 and PW-4 claimed to have gone to the scene of crime to ease themselves together - all at one time, which appears unnatural and absurd, making their presence doubtful. The scene of crime was a bridge on the canal, where Mangla Singh himself had gone to answer the call of nature. Apparently, it is a part of the village, which is used for the purpose. Therefore, if PW-2, PW-3 and PW-4 felt the need to answer the call of nature, one at the same time, there is nothing so illogical about it that it may be regarded as absurd or unnatural. In the privacy of one's home at the same point of time, scores of persons could be using their privies. Such matters are not recorded anywhere. It is only for reason that the fact has become relevant in connection with a gruesome crime that this rather private affair had to figure on public records. There is, thus, no substance in this contention advanced on behalf of the appellants as well.

58. Dovetailed to this submission is an allied argument advanced on behalf of the appellants that the fact that PW-4 Tejbali Singh went to the scene of crime to answer the call of nature, is a

fact not mentioned in his statement recorded by the I.O. under Section 161 Cr.P.C. The witness, upon being confronted with this submission, said that he had told the fact to the Investigating Officer, but if it is not there in his statement, he could not say the reason why it was so. This matter is of little consequence because broadly understood the testimony of PW-4 is consistent with the other two eye-witnesses. The omission on the part of the I.O. in this regard cannot be held against the prosecution, so as to bring it under a cloud of doubt on this score alone.

59. The credit of PW-3 and PW-4 about the fact that there was rainfall in the night, is sought to be shaken by the learned Senior Advocate for the appellants, who has urged that PW-9 Hridai Narain, the Investigating Officer, has acknowledged the fact that these witnesses did not tell him about any rainfall during the night. These are minor lapses, either on the part of the witnesses or the Investigating Officer taking down the statements under Section 161 Cr.P.C., which would not go a long way to shake an otherwise sound prosecution case.

60. It is next urged that two of the witnesses, Bansh Bahadur Singh and Tejbali Singh are sons of two brothers of full blood, that is to say, Lalta and Rajaram, respectively. The victim was a cousin of Bansh Bahadur Singh, and a fortiori of PW-4 Tejbali Singh. It is argued that the victim and two of the witnesses being related by blood, they are interested witnesses and their evidence should be approached with caution. For one, the testimony of PW-1 Bansh Bahadur Singh and PW-4 Tejbali Singh is broadly consistent and firm regarding material facts and corroborated by circumstances as well. There is no inherent flaw to doubt its veracity.

61. PW-3 has testified consistent with the other two eye-witnesses. He has clarified in ample measure that he is not related to either PW-1 or PW-4. PW-2 is certainly not related to either the deceased or any of the witnesses. If in such circumstances, the testimony of the eye-witnesses and the witness of res gestae is consistent, there is no reason to disbelieve them only on the ground that there is some kinship of the deceased with two of the witnesses. The above facts, which turn on the evidence here apart, there is no principle that the testimony of a witness related by blood is to be viewed with suspicion, much less rejected for the said reason alone. Reference in this connection may be made to **Bhargavan and others v. State of Kerala, (2004) 12 SCC 414**. In **Bhargavan** (supra), it was held by the Supreme Court:

"7. We shall first deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

8. In Dalip Singh v. State of Punjab [(1953) 2 SCC 36 : AIR 1953 SC 364 : 1953 Cri LJ 1465] it has been laid down as under : (AIR p. 366, para 26)

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent

person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

9. The above decision has since been followed in Guli Chand v. State of Rajasthan [(1974) 3 SCC 698: 1974 SCC (Cri) 222] in which Vadivelu Thevar v. State of Madras [AIR 1957 SC 614: 1957 Cri LJ 1000] was also relied upon.

10. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh case [(1953) 2 SCC 36 : AIR 1953 SC 364 : 1953 Cri LJ 1465] in which surprise was expressed over the impression which prevailed in the minds of the members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed : (AIR p. 366, para 25)

"25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in – 'Rameshwar v. State of Rajasthan [1951 SCC 1213 : AIR 1952 SC 54 : 1952 Cri LJ 547] ' (AIR at p. 59). We find, however, that it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel."

11. Again in Masalti v. State of U.P. [AIR 1965 SC 202 : (1965) 1 Cri LJ 226] this Court observed : (AIR pp. 209-10, para 14)

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. - The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.""

62. For all these reasons we are unable to accept the contention of the learned Senior Advocate for the appellants that there is any taint about the testimony of Bansh Bahadur Singh (PW-1) and Tejbali Singh (PW-4).

63. Another point, that was urged by the learned Senior Advocate on behalf of the appellants, is that no blood was found at the place of occurrence, and though the witnesses stated that there was rain, this fact is not mentioned either in the FIR or in the statements under Section 161 Cr.P.C. It is, therefore, submitted that the prosecution story cannot be relied upon.

64. It must be remembered that the Investigating Officer of the case, Ram Lakhan Tiwar, PW-10, was locally posted at Mirzapur and was about the place when the incident happened. On 27.07.1983, the investigation was handed over to him and on the same day, he proceeded to the

scene of crime, situate in Village Mamolapur. After recording the statements of eye-witnesses, Tejbali Singh, Gulam Mohammad, Ram Kishor Singh and the informant Bansh Bahadur Singh, PW-10 went to the place of occurrence and inspected it at the pointing of the informant and the witnesses. He drew up a site-plan promptly, that is to say, within a day (Ex. Ka-17). In his examination-in-chief, he has testified:

"घटना स्थल पक्की सड़क पर पुल पर था घटना की रात बारिश होने से घटना स्थल पर खून नही मिला आस पास के लोगो से पूछतांछ की अभियुक्तो की तलाश किया पर वे गांव में नहीं थे।"

65. Therefore, the fact, that the blood was washed away as a result of rains in the night, was something within the cognizance of PW-10, the Investigating Officer himself. To the above extent, he was a witness of fact. There is no reason to disbelieve his assertion notwithstanding the fact that the witnesses of the occurrence might not have told the Investigating Officer that it had rained during the night. It is for this reason that the learned Trial Judge has accepted this fact on the Investigating Officer's credit that the blood was washed off on account of rainfall during the night. There is no reason to take a different view.

66. Quite apart, experience dictates that, however, inept an Investigating Officer of the Police might be, he learns his duty of mechanically collecting bloodstained samples of earth, stone or whatever the substance and unstained samples from the surroundings. If it had not rained during the night and the place of occurrence had not been a pucca road, the Investigating Officer would have gone after the blood or noted the fact in his case diary that at the place of occurrence, no blood was found. There is, thus, no substance in the contention of the appellants that the witnesses not telling the I.O. in the statements under Section 161 Cr.P.C. about the rainfall, their testimony on the point in the dock is rendered valueless.

67. One of the submissions, that has been advanced with much force by the learned Senior Advocate appearing for the appellants, is that the deceased regained consciousness in the Varanasi Hospital, but no efforts were made by the Investigating Officer to record his dying declaration, either before a Magistrate or a doctor. It is urged that this failure makes the prosecution case extremely doubtful. The submission is that if best evidence in the form of a dying declaration was forthcoming, there was no reason not to secure that evidence and lead it. It is submitted that the Investigating Officer did not record the dying declaration of Mangla Singh in the proper way, that is to say, after getting a certificate of his being fully conscious and in a fit state of mind to make statement and then getting it recorded by a Magistrate or a doctor, or may be himself if no one else was there. He also had to take a certificate about his mental fitness at the end of the dying declaration.

68. What we find from the record is that the Investigating Officer (PW-10) did indeed record Mangla Singh′ s dying declaration on 31.07.1983, when he went to the B.H.U. Hospital, Varanasi. The circumstances in which he recorded Mangla Singh′s dying declaration are testified to in his examination-in-chief, where he has said:

"मजरूब मंगला सिंह का बयान लेने हेतु 30.7.83 को सदर अस्पताल मिर्जापुर आया पर वहाँ पता लगा कि उसे बी.एच.यू. अस्पताल वाराणसी भेज दिया गया है 31.7.83 को बी.एच.यू. अस्पताल गया। मजरूब Special वार्ड के कमरा नं. 26 मे भर्ती था। मंगला सिंह के पास गया वह बहुत धीरे बोल रहा था। मेरे प्रश्नो को समझ रहा था व उसका उत्तर देने की स्थिति में थे। मंगला सिंह ने बहुत धीरे धीरे बताया कि "26 तारीख को शाम 6 बजे नहर की पुलिया पर मुझे छोटे लाल नट के ललकारने पर उसके भाई कालीदास ने मुझे गड़ासे से मारा है" मंगला सिंह का उक्त बयान केस डायरी में अंकित किया जो मेरे लेख में है व इस पर मेरे हस्ताक्षर है जिसे दाखिल कर रहा हूँ Marked Ex- क-18."

69. The dying declaration was no doubt recorded in the case diary, instead of drawing up a separate formal document regarding the dying declaration. The Investigating Officer (PW-10) was cross-examined on behalf of both the appellants by Mr. Gulab Singh, Advocate, where this witness has said:

"दिनांक 31.7.83 को बी.एच.यू. अस्पताल मैं करीब 8-9 बजे सुबह पहुँचा था। मजरूब का बयान मैने करीब 12-1 बजे लिखा था। मंगला सिंह के बयान लिखे जाने का समय केस डायरी में अंकित नही किया था। मंगला सिंह का बयान अलग कागज पर नही लिखा बयान लेते समय मुझे यह ख्याल नही था। कि मंगला सिंह मर जायेगा। मंगला सिंह का बयान लेते समय उसके पास और कोई नही था। मंगला सिंह का बयान लेते समय उसका Bed Head Ticket नही देखा। 31.7.83 के पहले मंगला सिंह का आपरेशन हो चुका था। उसके सिर की चोट का आपरेशन हो चुका था। डाक्टरो से मंगला सिंह की हालात के बारे में पूछताछ नही किया। मंगला सिंह ने जो बयान दिया उसके बाद चुप हो गया व आँखे बन्द कर लिया व आगे नही बोला घटना स्थल वाली कौन सी पुलिया थी यह मंगला सिंह से नही पूछा।

31.7.83 का पर्चा C.O. आफिस में 4.8.83 को पहुंची थी।

यह कहना गलत है कि 31.7.83 को न तो मै बी.एच.यू. अस्पताल गया न मंगला सिंह का बयान लिया व फर्जी पर्चा तैयार किया।"

70. So far as the submission of the learned Senior Advocate for the appellants noticed above is concerned, we must remark that it is true that for a fact, there is no certification obtained from any doctor that Mangla Singh was in a fit state of mind to make a statement regarding the circumstances attending the assault etc., nor was the statement caused to be formally recorded by a Magistrate. The moot question, therefore, is whether the dying declaration made by Mangla Singh to the Investigating Officer on 31.07.1983 and recorded by him in his C.D., which he has proved and is on record marked as Ex. Ka-18, can be read as a dying declaration. The law did require at some point of time that the mental fitness of the victim to make a statement about the circumstances, in which he received the fatal injuries, ought be certified before the dying declaration and afterwards as well. But, that position of the law has now completely changed.

71. This matter engaged the attention of a Constitution Bench of the Supreme Court in **Laxman v. State of Maharashtra, (2002) 6 SCC 710**. In **Laxman** (supra), the Court noticed the conflicting opinions in **Paparambaka Rosamma v. State of A.P., (1999) 7 SCC 695** and **Koli Chunilal Savji v. State of Gujarat, (1999) 9 SCC 562** and held:

"3. ..... The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise."

72. The Trial Court has refused to act on the dying declaration recorded by the Investigating Officer, which he has called the second dying declaration. This is so because there is a case that an earlier dying declaration was orally made before PW-1 Bansh Bahadur Singh when being conveyed from the place of occurrence to P.S. Chunar, Mangla Singh, he momentarily regained consciousness at the Chunar Bazaar. The Trial Judge has recorded his conclusions to reject the dying declaration for reasons that figure in the following remarks:

"The second dying declaration relied on by the prosecution was recorded by the I.O. Sri Ram Lakhan Tiwari P.W.10 at the hospital on 31.7.83. The medical evidence on record shows that the deceased was not in a position to make any declaration in the hospital after his operation on 29.7.83. Dr. Tripathi P.W.8 has opined that after tracheaostomy the patient (deceased) was not in

a position to speak. Injury no.7 found by Dr. Tripathi was a surgical wound made for artificial respiration. It is true that unfortunately it could not be ascertained from Dr. Mohanty P.W.ll as to when tracheaostomy was done to the deceased but considering the nature of injury and the fact that the wounds of the deceased was operated on 29.7.83 it can be inferred that tracheaostomy was done at the time of operation. If that was the position the deceased could not speak on 31.7.83. In the instant case, the dying declaration was recorded by the I.O. in the hospital were admittedly several Doctors were available to certify about the mental state of deceased. But no doctor was called by the I.O. for this purpose and as such there is no evidence to show that the deceased was in a fit state of mind to make dying declaration allegedly recorded by the 1.O. In this way, the medical evidence also show that the deceased was not in a position to make any dying declaration in the hospital. Therefore, the above two dying declarations relied on by the prosecution are not worth reliable.″

73. It is true that by the law that has now come to be settled, there is absolutely no requirement for a medical opinion to be secured regarding the victim being conscious or in a fit state of mind to make the dying declaration. But, the circumstances here are different. The deceased had undergone a brain surgery and there was tracheostomy done to facilitate breathing. The autopsy doctor (PW-8), when questioned about the consequences of tracheostomy, has said that a patient, who has undergone it, cannot speak. The brain surgery was done on 29.07.1983 and the learned Trial Judge has concluded on the circumstances that tracheostomy would have been done contemporaneously. Therefore, the learned Judge has drawn the inference that on 31.07.1983, when the Investigating Officer visited him, he would not have been in a position to speak. There is this oddity that the statement was recorded in the hospital, where the patient had undergone surgery. He was just not an injured patient, away from medical surroundings. In these circumstances, if the Trial Judge has held that a dying declaration could have been recorded after ascertaining the deceased Mangla Singh′s fitness to make a statement at that time by the I.O. from a doctor, who would be at hand, the dying declaration would be a document inspiring confidence, there is nothing exceptionable about it. On the contrary, Mangla Singh having undergone a brain surgery two days before the dying declaration was recorded by the I.O., which the Trial Judge has refused to accept, we are also not minded to differ from the conclusions of the Trial Judge on this score. The absence of a dying declaration, however, if there is cogent evidence to prove the prosecution case, particularly a robust ocular version, would not affect the prosecution.

Omissions in the FIR and previous statements, if contradictions that would vitiate the testimony of relevant eye-witnesses

74. It is next submitted by the learned Senior Advocate on behalf of the appellants that vital omissions in the FIR, and in particular, the statement under Section 161 Cr.P.C., already spoken of, which will be again pointed out for clarity's sake, are material and relevant, and would, therefore, amount to contradictions in view of the explanation to Section 162(1) Cr.P.C. Such omissions have the effect of discrediting the testimony of particular witnesses and to that extent the prosecution itself. Reliance in this connection has been placed by the learned Senior Advocate on the decision of the Supreme Court in **Vinobhai v. State of Kerala, 2025 SCC OnLine SC 178**, where material omissions in the testimony of witnesses with reference to their previous statements have been

regarded as contradictions, leading to the witnesses in that case being disbelieved by the Supreme Court.

75. Now, the omissions, which have been highlighted by the learned Senior Advocate, begin with the FIR. The foremost omission pointed out in the FIR is that PW-1 Bansh Bahadur Singh has not said in the FIR that he witnessed the incident. The submission is stated to be rejected. It is not the case of the prosecution that PW-1 witnessed the occurrence or saw what is the fact in issue, that is the assault on the deceased. PW-1 is a witness of res gestae, that is to say, a relevant fact, relevant under Section 6 of the Indian Evidence Act, as he reached the scene of crime upon hearing the deceased's call for rescue, saw the deceased fallen on to the ground after suffering the assault and the appellants escaping from the scene of crime. He is, thus, a witness of important relevant facts, including that soon after the occurrence he saw the appellants' escape from the scene of crime. Therefore, to say that it is an omission, which amounts to a contradiction as it is not said in the FIR that PW-1 witnessed the incident, is to attribute something to the prosecution, which is not their case at all. The other omission pointed out is that PW-2's name does not find mention in the FIR. It is not every omission, which is material and has the effect of discrediting the prosecution or a prosecution witness. There were a number of eye-witnesses, two of whom were named, leaving PW-2 in the omnibus description that others also witnessed the occurrence. As soon as the investigation started, PW-2's statement was recorded under Section 161 Cr.P.C. as an eye-witness. The omission is, therefore, not at all material.

76. The non-mention of the oral dying declaration in the FIR as an omission that amounts to a contradiction is also besides the point. There is a salutary principle, forgotten all through this part of the submission and that is that an FIR is not an encyclopedia of the occurrence. It reports essential facts. Unless the omission of a certain fact in the FIR is such as to throw a doubt about the prosecution case going to the root of the matter, omission of details, even important details, cannot be regarded to vitiate the prosecution case, if those facts or details figure in the investigation and are established at the trial.

77. The other omission, that is harped upon, is that it is not mentioned in the FIR as to who told the informant about the incident. The objection is entirely misplaced and immaterial. The informant reached the place of occurrence soon after the assault as the assailants were escaping. The mere fact that in the FIR, it is not mentioned who told the informant about the identity of the assailants, is not such a material fact, the absence of which would bring the FIR version under a cloud of doubt or amount to a contradiction in the prosecution case.

78. The silence in the FIR regarding motive is also immaterial. It is a well settled principle of the law that motive in a case of direct evidence has but slight relevance. An eye-witness account, which is dependable, does not require the motive to be proved. If a motive is established, it would support the prosecution, but its non-establishment would not derogate from the prosecution case, if the prosecution otherwise establish their case on the basis of evidence aliunde.

79. There are certain other omissions pointed out in the statements under Section 161 Cr.P.C., that have already been mentioned earlier. But, for the sake of deciding the point in hand raised on behalf of the appellants, reference may be made to the objection regarding PW-4, where it is said

that it has figured in his testimony that he was going to ease himself, but this fact is not mentioned in his statement under Section 161 Cr.P.C. This again is said to be an omission, which amounts to a contradiction, and, therefore, one that vitiates the testimony of this witness and dents the prosecution.

80. Taken this way, there are three omissions in the statement of PW-4 given to the Investigating Officer, which figure in his testimony, but not in his statement under Section 161 Cr.P.C. It includes the one, which the learned Senior Advocate has pointed out, that is to say, the one relating to the fact that he was going to ease himself, when he landed at the place of occurrence on the fateful day and time. It would be apposite to reproduce the relevant part of PW-4′s cross-examination, where these omissions are brought to the witness′s notice. The relevant part of the cross-examination of PW-4 reads:

"मैने दारोगा जी को बताया था कि "नित्य क्रिया के लिये गांव के पश्चिम जा रहा था" मेरे बयान में यह बात न होने की कोई वजह नहीं बता सकता।

कालीदास व छोटे लाल मुझसे 15-16 कदम आगे जा रहे थे। यह लोग आपस में बातचीत करते हुये जा रहे थे। छोटे लाल पुल पर बीच सड़क से ललकारा। छोटे लाल ने एक बार पहला गड़ार्सा मारने के पहले ललकारा व एक बार दूसरा गड़ासा मारने के पहले ललकारा दोनो बार छोटे लाल ने यही कहा था कि मारो साले को अच्छा मौका मिला है दारोगा जी से बताया था कि ललकारा कि मारो साले को अच्छा मौका मिला है" यह भी बताया था कि दो बार ललकारा था मेरे बयान में यह बाते न होने की कोई वजह नहीं बता सकत।

दारोगा जी से यह भी बताया था कि "मंगला सिंह के गिर जाने पर दूसरा गड़ासा जाँघ पर मारा" घटना के बाद रात में बारिस होने की बात भी दरोगा को बताई थी मेरे बयान में यह बात न होने की वजह नहीं बता सकता।"

81. Likewise, there is a statement attributed to this witness (PW-4) made before the Investigating Officer that the deceased Mangla Singh was sitting on the canal, located in the north of the village, when he was assaulted, contrary to his stand in the dock evidence that the place of assault was on the main canal bridge located to the west of the village. The aforesaid contradiction was, therefore, pointed out to the witness by putting to him the statement recorded to the above effect by the Investigating Officer, which he denied. The relevant part of PW-4′s cross-examination reads:

"घटनास्थल मेरे घर के ठीक पश्चिम है। घटना स्थल वाले पुल से करीब 100 कदम उत्तर से एक दूसरी नहर पूरब तरफ गई है। यह नहर मेरे गांव की आबादी के उत्तर तरफ पड़ती हैं उस नहर पर भी एक छोटा सा पुल है। मैने दारोगा जी से यह बयान नही दिया था कि "मंगला जबकि गांव के उत्तर नहर पर बैठा था उसे .....मारा" यह कहना गलत है कि गांव के उत्तर नहर की पुलिया पर अंधेरे में मंगला सिंह को चोटे आई व किसी ने देखा नही।"

82. Section 162 Cr.P.C. reads:

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

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

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

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

(emphasis by Court)

83. It is beyond cavil in view of the explanation appended to Section 162 Cr.P.C. and also high authority that an omission to state a fact or circumstance in the statement under Section 161 Cr.P.C., which later on appears in the testimony of a witness, may amount to a contradiction within the meaning of the proviso to Section 162(1). Of course, if there is a positive statement made by a witness under Section 161, from which he resiles and takes an inconsistent position, the said statement can always be used to contradict the witness during cross-examination by the accused. However, it may be added that so far as an omission is concerned, in order to amount to a contradiction within the meaning of the explanation appended to Section 162 Cr.P.C., it must *appear to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context, shall be a question of fact*, to borrow the phraseology of the statute.

84. Thus, the principle of contradicting a witness by the accused with regard to his previous statement reduced into writing is well established and stands extended to an omission in such previous statements, which can be regarded as a contradiction. But, before that is done, the contradiction, properly so called in the previous statement in writing or an omission there, must be proved in the manner provided under Section 145 of the Evidence Act. It is true that an unexplained contradiction in a previous statement reduced into writing and the dock evidence, or for that matter, a significant omission, would both lead to the testimony of the concerned witness being rendered unreliable. This, however, does not mean that an omission with reference to the

testimony of a witness in Court, which does not figure in the previous statement of the prosecution witness reduced to writing or a statement recorded in the previous statement, that is contradicted by the stand of the witness in the dock, can be regarded as a contradiction or omission, that would shake the credit of the witness merely by pointing out the contradictory or omitted statement to the witness in the dock.

85. Before a contradiction or an omission can be relied upon in Court to shake the credit of a witness with regard to a previous statement in writing, the contradiction or the omission, wherever it occurs, has to be proved. There is a manner to prove it as provided by the law. The procedure is that if there is a previous statement of the witness reduced to writing under Section 161 Cr.P.C. and the accused desires to contradict the witness on its basis vis-a-vis his dock evidence, the attention of the witness to the contradictory statement must be drawn by the Court, marking that statement. If the witness admits that statement as one made by him, the previous statement can straight away be regarded as proved and exhibited. If the witness denies having made such a previous statement to the Investigating Officer, the Investigating Officer has to be called to prove that statement, who may prove it by his evidence. It can then be held proved and exhibited. It is only such proved statements, previously recorded, and likewise omissions that are similarly proved, which can be relied upon by the accused to discredit a prosecution witness. Reference in this connection may be made to the authority of the Supreme Court in **Pedda Narayana v. State of A.P., (1975) 4 SCC 153**, where it was held:

"10. ..... A statement recorded by the police during the investigation is not at all admissible and the proper procedure is to confront the witnesses with the contradictions when they are examined and then ask the Investigating Officer regarding those contradictions. This does not appear to have been done in this case....."

86. Reference in this regard may also be made to **State (Delhi Administration) v. Laxman Kumar and others, (1985) 4 SCC 476**, where following Pedda Narayana (supra), it was held:

"41. .... This Court pointed out in Pedda Narayana v. State of A.P. [(1975) 4 SCC 153 : 1975 SCC (Cri) 427] that a statement recorded by the police officer during investigation is inadmissible in evidence and the proper procedure is to confront the witness with the contradictions when they are examined and then ask the investigating officer regarding the contradictions....."

87. A very detailed statement of the law on the point is there in **Anjan Ganguly and others v. State of West Bengal, 2013 SCC OnLine Cal 22948,** where it has been held:

"23. Proviso to Section 162(1), Cr.P.C. state in clear terms that the statement of the witness ought to be duly proved. The words if duly proved, cast a duty upon the accused who want to highlight the contradictions by confronting the witness to prove the previous statement of a witness through the police officer who has recorded the same in the ordinary way. If the witness in the cross-examination admits contradictions then there is no need to prove the statement. But if the witness denies a contradiction and the police officer who had recorded the statement is called by the prosecution, the previous statement of the witness on this point may be proved by the police

officer. In case prosecution fail to call the police officer in a given situation Court can call this witness or the accused can call the police officer to give evidence in defence. There is no doubt that unless the statement as per proviso to sub-section (1) of Section 162, Cr.P.C. is duly proved, contradiction in terms of Section 145 of the Indian Evidence Act cannot be taken into consideration by the Court.″

88. In a later decision, the Supreme Court in **V.K. Mishra and others v. State of Uttarakhand and another, (2015) 9 SCC 588**, adumbrated the law in the following words:

"19. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction.″

89. The position of the law, as above enumerated, has very recently been endorsed by the Supreme Court in **Vinod Kumar v. State (NCT of Delhi), (2025) 3 SCC 680**, where it has been held:

"15. ..... The law is well settled. The portion of the prior statement shown to the witness for contradicting the witness must be proved through the investigating officer. Unless the said portion of the prior statement used for contradiction is duly proved, it cannot be reproduced in the deposition of the witnesses. The correct procedure is that the trial Judge should mark the portions of the prior statements used for contradicting the witness. The said portions can be put in bracket and marked as AA, BB, etc. The marked portions cannot form a part of the deposition unless the same are proved.″

90. A perusal of the testimony of PW-4, that is to say, the cross-examination like that of other witnesses of fact, shows that contradictions or omissions with reference to the previous statement in writing recorded under Section 161 Cr.P.C. were put to the witness concerned, but upon denial of the contradiction or omission, the Investigating Officer, who had recorded the previous statement,

has not been called to prove the contradiction or the omission. No previous statement, contradiction or omission has been proved in the manner provided by Section 145 of the Evidence Act and the law laid down in this connection.

91. Therefore, all those material facts, that are sought to be contradicted by the appellants in the testimony of the prosecution witnesses, on the basis of their previous statements in writing, are of no consequence. The testimony of the prosecution witnesses, on the basis of contradictions or omissions, sought to be impeached without proof of those contradictions or omissions, is inconsequential, out of which the appellants cannot derive any benefit by seeking to shake the credit of the prosecution witnesses or successfully questioning the truth of any part of their testimony.

92. Here, we must take note of the reliance placed by Mr. Kamal Krishna on **Vinobhai** (supra), where taking note of the omissions in the statement of the prosecution witnesses with reference to their earlier statements in writing, the Supreme Court regarded each omission as a contradiction and held the testimony of PW-4 and PW-5, the two eye-witnesses in that case not creditworthy. Now, **Vinobhai** is not a decision where the point arose as to how a contradiction and omission is to be proved, or if at all there was lack of proof of the omissions, noticed by the Supreme Court in the manner prescribed by law. Since the said point was not involved in **Vinobhai,** the said authority is of no assistance to the appellants.

93. The substance of the above analysis is that omissions in the FIR and previous statements may constitute contradictions, that would vitiate the testimony of relevant eye-witnesses, but in this case since those contradictions, including omissions, have not been proved by the appellants in accordance with law, the testimony of the eye-witnesses in the dock remains unshaken.

The appellant Chhotey Lal's involvement in the crime, if doubtful

94. It has been argued, particularly about Chhotey Lal, by Mr. Kamal Krishna, learned Senior Advocate, that the role assigned to Chhotey Lal is one of exhortation and a mere frame up to rope in both brothers in the crime. The learned A.G.A. has opposed this submission as well, because according to him, there is ample evidence to show that Chhotey Lal is equally liable on account of a common intention shared with Kali Das.

95. We have given a thoughtful consideration to the matter. It is true as the consistent testimony of the three eye-witnesses would have it, the assault was single-handedly carried out by Kali Das. But, it is equally true that the evidence of all the three eye-witnesses is consistent as well on the point that Kali Das and Chhotey Lal moved together to the place where Mangla Singh was sitting to relieve himself, and when they were at suitable distance, it was Chhotey Lal, who exhorted Kali Das to kill Mangla Singh. The description of the exhortation is found with unanimity in the testimony of all the three eye-witnesses, to wit, PW-2 Gulam Mohammad, PW-3 Ram Kishor Singh and PW-4 Tejbali Singh. The difference, if any, is about the number of times the exhortation was made. There is little reason to doubt that the appellant

Chhotey Lal exhorted Kali Das to do the victim Mangla Singh to death, upon which Kali Das assaulted Mangla Singh with his gandasa. The credit of the three witnesses of fact, all of whom are eye-witnesses, has not been shaken as regards their account of exhortation by Chhotey Lal. If, therefore, Chhotey Lal exhorted Kali Das to kill, he would certainly share the common intention contemplated under Section 34 IPC to make him constructively liable for the offence that Kali Das actually committed. The principle that the one who exhorts is as much vicariously and constructively liable as the one, who wields the weapon by virtue of Section 34 IPC, is a well settled one. Reference in this connection may be made to **Gulab v. State of U.P., (2022) 12 SCC 677**, where the Supreme Court held:

"30. Recently in Sandeep v. State of Haryana [Sandeep v. State of Haryana, (2022) 14 SCC 812 : 2021 SCC OnLine SC 642], a two-Judge Bench of this Court held that an exhortation given by an accused immediately before a co-accused fired a shot killing the deceased would prove his involvement in the crime beyond reasonable doubt. Accordingly, this Court upheld the conviction of the accused under Sections 302 and 34IPC.

31. The evidence on the record clearly establishes a common intention in pursuance of which the appellant exhorted Idrish to kill the deceased. The prosecution is not required to prove that there was an elaborate plan between the accused to kill the deceased or a plan was in existence for a long time. A common intention to commit the crime is proved if the accused by their words or action indicate their assent to join in the commission of the crime. The appellant reached the spot with a lathi, along with Idrish who had a pistol. The appellant's exhortation was crucial to the commission of the crime since it was only after he made the statement that the enemy has been found, that Idrish fired the fatal shot. The role of the appellant, his presence at the spot and the nature of the exhortation have all emerged from the consistent account of the three eyewitnesses."

96. We, therefore, hold that Chhotey Lal is co-extensively liable with Kali Das in the commission of the crime.

97. In view of what we have found hereinabove, we are of the considered opinion that the prosecution have brought home the charges against the appellants beyond all reasonable doubt.

98. In the result, these appeals fail and are **dismissed**. The appellants are on bail. They would surrender to their bail bonds in order to serve the sentence of law imposed upon them. Their bail bonds stand cancelled and the sureties discharged. In the event, however, the appellants do not surrender within a period of six weeks from date, the Chief Judicial Magistrate, Mirzapur, shall ensure that they are caused to be arrested and committed to prison.

99. Let a copy of this judgment be forwarded to the Trial Court concerned along with the lower court record for information and necessary compliance.

(2026) 5 ILRA 1222
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 21.05.2026

BEFORE

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

Criminal Appeal No. 1133 of 2009

Maheshwari Prasad & Anr. ...Appellants
Versus
State of U.P. ...Respondent

Issue for Consideration

Matter pertains to the correctness of the judgment of conviction and sentence passed against the appellants for the offences under Ss. 302/34 IPC and S. 25 Arms Act and whether the prosecution succeeded in proving the guilt of the appellants beyond reasonable doubt on the basis of prompt F.I.R., ocular testimony of related eye-witnesses, medical evidence, recovery of weapons, forensic evidence and surrounding circumstances, despite plea of false implication, interested witnesses and alleged contradictions in the prosecution evidence. (Paras 15-40)

Headnotes

Criminal Law - Murder - Appreciation of evidence - Indian Penal Code - Ss. 302/34 - Arms Act, 1959 - S. 25 - Whether prompt lodging of F.I.R. ruled out embellishment and false implication - F.I.R. lodged within half an hour of the occurrence naming the accused persons specifically - Prompt reporting excluded delay and afterthought - Held, prosecution version stood strengthened on account of immediate lodging of the F.I.R. (Paras 17, 19)

Criminal Law - Murder - Appreciation of evidence - Indian Penal Code - Ss. 302/34 - Identification of accused during night occurrence - Availability of sufficient light - Lantern in the compound coupled with illumination from the temple and generators provided sufficient light for identification - Accused and deceased were closely related and residing in the same compound - Identification held reliable. (Paras 19-21)

Criminal Law - Murder - Motive - Indian Penal Code - Ss. 302/34 - Illicit relationship and property dispute - Evidence disclosed illicit relationship of one deceased with the wife of one accused and also dispute regarding partition of property - Circumstances furnished a strong motive for commission of the offence - Motive found established. (Paras 20, 23)

Criminal Law - Murder - Hostile witness - Indian Penal Code - Ss. 302/34 - Effect of hostile testimony - Though one prosecution witness turned hostile, material facts regarding the occurrence, relationship of parties, existence of light and surrounding circumstances stood established from his evidence - Hostile testimony to the extent supporting the prosecution could be relied upon. (Paras 22-23)

Criminal Law - Evidence - Related witness - Indian Penal Code - Ss. 302/34 - Whether testimony of relatives requires rejection - Relationship by itself not a ground to discard evidence - Testimony of related witnesses, after careful scrutiny, found truthful, reliable, trustworthy and confidence inspiring - Conviction can safely rest upon such evidence. (Paras 27-33)

Criminal Law - Evidence - Minor contradictions - Indian Penal Code - Ss. 302/34 - Appreciation of discrepancies - Minor omissions and trivial contradictions not affecting the core of the

prosecution case do not render otherwise reliable testimony unacceptable - Such discrepancies ignored as natural. (Paras 34-35)

Criminal Law - Murder - Medical evidence - Indian Penal Code - Ss. 302/34 - Ocular evidence vis-a-vis post-mortem evidence - Medical evidence regarding entry and exit gunshot wounds corroborated ocular version that three shots were fired at the three deceased - Ocular testimony fully supported by medical evidence. (Para 36)

Criminal Law - Recovery of weapon - Indian Penal Code - Ss. 302/34 - Arms Act, 1959 - S. 25 - Recovery of country-made pistols and cartridges on the pointing out of the accused from their compound - Recovery from place under exclusive possession of accused could not be treated as recovery from a public place - Recovery held reliable. (Para 37)

Criminal Law - Forensic evidence - Indian Penal Code - Ss. 302/34 - Arms Act, 1959 - S. 25 - Ballistic examination - Empty cartridges recovered near the dead bodies matched the country-made pistols recovered on the pointing out of the accused - Forensic Science Laboratory report corroborated ocular and recovery evidence and connected the accused with the crime. (Para 38)

Criminal Law - Common intention - Indian Penal Code - S. 34 - Pre-planned murder - Accused procured illegal firearms, selected the first day of Navratri when generators and video sound would mask gunfire, acted in concert and executed the plan by firing separately at each deceased - Existence of pre-plan, pre-meditation and prior concert proved - Conviction under Ss. 302/34 IPC and S. 25 Arms Act affirmed and appeal dismissed. (Paras 39-41)

Held: The prosecution has proved its case beyond reasonable doubt - the first information report was lodged within half an hour of the incident without any delay and afterthoughts and specifically named the accused persons - there was sufficient electricity and light from the lantern in the compound and the bulb coming from the temple to identify the accused persons who were committing the crime and the accused and the deceased had been living in the same compound and were closely related to each other - the evidence of the eye-witnesses is truthful reliable and creditworthy and inspires confidence and merely because the witnesses are related to the deceased or are family members is no ground to reject their evidence if after careful scrutiny it is found to be wholly reliable - the hostile testimony also establishes the occurrence the surrounding circumstances and the motive for commission of the crime - the minor contradictions and omissions pointed out are trivial in nature and do not affect the core of the prosecution case - the ocular evidence stands fully corroborated by the medical evidence which establishes that one gunshot was fired at each deceased and also by the recovery of the country-made pistols and cartridges on the pointing out of the accused from the compound under their exclusive possession - the report of the Forensic Science Laboratory conclusively establishes that the empty cartridges recovered near the dead bodies were fired from the country-made pistols recovered at the pointing out of the accused thereby connecting the recovered weapons with the commission of the offence - the evidence further establishes that the accused acted with pre-plan pre-meditation and prior concert selected the first day of Navratri and the time when generators and videos were running so that the sound of firing would not be noticed and jointly executed the murder of all the three deceased - the Trial Court has appreciated the evidence in proper perspective and in legal manner according to the settled principles of law and there is no illegality infirmity or perversity in the judgment of conviction and sentence - the criminal appeal is devoid of merits and is liable to be dismissed and the conviction and sentence are affirmed - appeal dismissed. (Paras 17-40) (E-7)

Case Law Cited

State of Rajasthan v. Smt. Kalki and Another, **(1981) 2 SCC 752***; Harbans Kaur and Another v. State of Haryana,* **(2005) 9 SCC 195***; Sucha Singh and Another v. State of Punjab,* **(2003) 7 SCC 643***; Brahm Swaroop and Another v. State of Uttar Pradesh,* **(2011) 6 SCC 288***.*

List of Acts

Indian Penal Code, 1860; Arms Act, 1959; Code of Criminal Procedure, 1973; Indian Evidence Act, 1872

List of Keywords

Murder; Common intention; Triple murder; Eyewitness; Related witness; Interested witness; Hostile witness; Prompt F.I.R.; Motive; Illicit relation; Property dispute; Appreciation of evidence; Minor contradictions; Medical

evidence; Postmortem report; Recovery of weapon; Country-made pistol; Empty cartridges; Live cartridges; Forensic Science Laboratory; Ballistic examination; Recovery on pointing out; pre-plan; Pre-meditation; Prior concert; Conviction; Sentence; Criminal appeal.

Case Arising From

APPELLATE JURISDICTION: Criminal appeal against the judgment and order of conviction and sentence dated 31.01.2009 passed by the Trial Court in Sessions Trial No. 103 of 2006, Sessions Trial No. 104 of 2006, and Sessions Trial No. 105 of 2006.

Appearances for Parties

Advs. for the Appellants:
Sri Rajrshi Gupta and Sri D.S. Parmar.
Advs. for the Respondents:
Sri G.N. Kanaujiya, learned A.G.A.-I.

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

1. Heard Sri Rajrshi Gupta and Sri D.S. Parmar, learned counsel for the appellants; Sri G.N. Kanaujiya, learned A.G.A.-I for the State-respondent; perused the judgment and the Trial Court record.

2. This criminal appeal has been filed by accused-appellants, Maheshwari Prasad and Adarsh Kumar @ Chandra Bhan Rajpoot, against the judgment and order dated 31.01.2009 of learned Trial Court passed in Sessions Trial No. 103 of 2006 (State v. Maheshwari Prasad and another) arising out of Case Crime No. 219 of 2005, under Section 302/34 IPC, Police Station Muskara, District Hamirpur, Sessions Trial No. 104 of 2006 (State Vs. Maheshwari Prasad) arising out of Case Crime No. 220 of 2005, under Section 25 Arms Act, Police Station Muskara, District Hamirpur and Sessions Trial No. 105 of 2006 (State Vs. Adarsh Kumar @ Chandra Bhan Rajpoot) arising out of Case Crime No. 221 of 2005, under Section 25 Arms Act, Police Station Muskara, District Hamirpur.

3. Facts of the case as revealed by written report, Exhibit Ka-1, is that informant Watan Singh son of Maniram is resident of 6 Thok, Kasba and Police Station Muskara, District Hamirpur. Watan Singh (PW-1) got scribed written report, Exhibit Ka-1, from Ajit Singh on 05.10.2005 and lodged the same at Police Station Muskara, District Hamirpur. In the written report, Exhibit Ka-1, it is stated by the informant Watan Singh (PW-1) that he is resident of 6 Thok, Kasba Muskara. On 04.10.2005 at about 11:50 P.M., my real brother, Vishwanath, and sister-in-law, Neelibai @ Raj Kumari and their son Mahesh resident of 6 Thok, Kasba Muskara were murdered by my real nephew, Maheshwari son of Vishwanath, and his sons, Adarsh and Neeraj, with fire-arm assault with intention to kill them. Mahesh had illicit relation with Smt. Asha wife of Maheshwari. Due to this reason, these three people jointly murdered them. Since it was a day of Navratri, generator was running in the famous Kalika Devi Temple. A lantern was also illuminated in the compound of Vishwanath. On hearing the sound of the fire-arm, I along with Om Prakash son of Rameshwar resident of Village Damdama, Police Station Khalela, District Mahoba came at the spot. We shouted that three people were firing and video was also playing in the temple. We all collectively chased the accused and identified them clearly. They ran away towards Chandaura Road by firing. Due to this incident, there is anguish in the town. Adarsh, by assaulting Vishwanath with a country-

made pistol, caused his death. Neeraj murdered Neelibai @ Raj Kumari, by firing from a country-made pistol. Maheshwari caused the death of Mahesh. The dead bodies of all three deceased were lying in the compound of Vishwanath.

4. On the basis of the written report, Exhibit Ka-1, lodged by informant Watan Singh (PW-1), Constable Clerk Chandrabhan Dubey (PW-7) registered a first information report at Police Station Muskara on 05.10.2005 at 12:20 A.M. in the night. The above F.I.R. was registered at Case Crime No. 219 of 2005, under Section 302 IPC against accused Maheshwari, Adarsh and Neeraj. After registration of the F.I.R. and receiving the information about the incident, Shailendra Singh (PW-5), the then Station House Officer of Police Station Muskara visited the place of occurrence and investigation of the case was taken by him in his hand. The Investigating Officer took into possession an empty 315-bore cartridge, which was found on the ground near the head of the deceased, Mahesh Rajpoot, and prepared a recovery memo, Exhibit Ka-2. He also took into possession an empty cartridge of 315 bore from the ground of left side of dead body of the deceased, Vishwanath, and prepared recovery memo as Exhibit Ka-3. He also took into possession an empty cartridge of 315 bore from the ground of right side of the head of deceased, Neelibai @ Raj Kumari, and prepared recovery memo, Exhibit Ka-4. The Investigating Officer also took into possession one generator and one lantern which were running and illuminating respectively at the time of the incident and thereafter handed over the same to the President of the Kalika Devi Temple Committee and prepared recovery memo, Exhibit Ka-5. The Investigating Officer Shailendra Singh (PW-5) got prepared the panchayatnama of the dead body of the deceased from S.I. Surya Pal Singh. S.I. Surya Pal Singh prepared the panchayatnama on the dictation of Shailendra Singh (PW-5) of deceased Mahesh Rajpoot, Exhibit Ka-9. He also prepared photo nash, Exhibit Ka-11, and letter to C.M.O., Exhibit Ka-12, and other necessary police papers, which were prepared at the time of the panchayatnama. The panchayatnama of dead body of the deceased, Neelibai @ Raj Kumari, was also prepared as Exhibit Ka-13, and other necessary police papers, such as, photo nash, Exhibit Ka-14, challan nash, Exhibit Ka-15, letter to C.M.O., Exhibit Ka-16, and also prepared other necessary police papers. The panchayatnama of the deceased Vishwanath was also prepared by S.I. Surya Pal Singh on the dictation of the Investigating Officer as Exhibit Ka-17. Apart from the panchayatnama, Exhibit Ka-17, other necessary police papers were also prepared, such as, photo nash, Exhibits Ka-18 and 19, letter to C.M.O. and other necessary police papers were also prepared.

5. After completing the proceedings of the panchayatnama, the dead bodies of the deceased Mahesh, Neelibai @ Raj Kumari and Vishwanath were sent to District Hospital for conducting post mortem examination. The Investigating Officer also collected bloodstained soil and plain soil from the ground where the dead body of the deceased, Mahesh, was lying and prepared recovery memo as Exhibit Ka-21. Sample of bloodstained soil and plain soil from the place where the dead body of deceased, Neelibai @ Raj Kumari was lying, were also taken into possesion and recovery memo of the same was prepared as Exhibit Ka-22. Sample of bloodstained and plain soil were also taken from the place where the dead body of the deceased, Vishwanath, was lying and recovery memo was prepared as Exhibit Ka-23. At a distance of 10 steps from the place of occurrence, a towel, full of blood, of sky-blue colour was taken into possession and recovery memo was prepared as Exhibit Ka-24. The Investigating Officer Shailendra Singh (PW-5) arrested the accused Maheshwari Prasad and Adarsh on 08.10.2005 at 11:30 A.M. and on the pointing out of the accused Maheshwari Prasad, from the compound of his house, beneath the guava tree, one country-made pistol of 315

bore and one live cartridge of 315 bore was recovered and taken into possession. On the pointing out of accused Adarsh @ Chandra Bhan Rajpoot, from the same compound from the bushes of bamboo tree, one country-made pistol of 315 bore and two live cartridges of 315 bore were recovered and taken into possession. A recovery memo was prepared by the Investigating Officer of the above murder weapons and cartridges as Exhibit Ka-26. The recovered murder weapon, country-made pistol, empty and live cartridges of 315 bore were sent to the Forensic Science Laboratory for their examination. The Investigating Officer Shailendra Singh (PW-5) prepared the site plan of the place of occurrence, Exhibit Ka-25. The Investigating Officer also recorded the statements of the witnesses under Section 161 Cr.P.C.

6. After recovery of the country-made pistol of 315 bore along with empty and live cartridges from the accused-appellants, Maheshwari Prasad and Adarsh, Constable Chandrabhan Dubey (PW-7) registered a case at Case Crime No. 220 of 2005, under Section 25 Arms Act against accused-appellant, Maheshwari Prasad, and Case Crime No. 221 of 2005, under Section 25 Arms Act against accused-appellant, Adarsh @ Chandrabhan Rajpoot. The cases against the accused-appellants under Section 25 Arms Act were investigated by S.I. Rampal Singh (PW-6). S.I. Rampal Singh (PW-6) prepared site plan of the recovery of murder weapon (country-made pistol) along with empty and live cartridges as Exhibit Ka-28 and site plan in respect of recovery of the murder weapon of the country-made pistol and empty and live cartridges was prepared by the Investigating Officer Shailendra Singh (PW-5) as Exhibit Ka-27. After transfer of the first Investigating Officer Shailendra Singh (PW-5), investigation of the main Case Crime No. 219 of 2005, under Sections 302/34 IPC was taken by the second Investigating Officer Bhaskar Mishra (PW-8). The second Investigating Officer Bhaskar Mishra (PW-8) recorded the statement of Dr. Dinesh Chandra Tiwari (PW-4), who conducted the autopsy on the dead bodies of the deceased, Mahesh, Neelibai @ Raj Kumari and Vishwanath and after completing all the formalities of the investigation in Case Crime No. 219 of 2005, under Sections 302/34 IPC, submitted charge-sheet against the appellants, Maheshwari Prasad, Chandrabhan Rajpoot and also against accused Neeraj @ Jai Narayan as Exhibit Ka-35. The second Investigating Officer Bhaskar Mishra (PW-8) also investigated the Case Crime Nos. 220 of 2005 and 221 of 2005, both under Sections 25 Arms Act. He took the prosecution sanction in respect of recovery of the illegal country-made pistol from the District Magistrate, Hamirpur against the appellant, Maheshwari Prasad, as Exhibit Ka-36 and he also took prosecution sanction for conducting the case against the appellant, Adarsh Kumar, under Section 25 Arms as Exhibit Ka-37. The second Investigating Officer Bhaskar Mishra (PW-8) after completing all the formalities of the investigation in respect of illegal country-made pistol/murder weapon and empty and live cartridges against the appellants, Maheshwari Prasad and Adarsh Kumar, submitted charge-sheet against Maheshwari Prasad as Exhibit Ka-38 and against Adarsh Kumar as Exhibit Ka-39.

7. Dr. D.C. Tiwari (PW-4) conducted the post mortem examination of dead body of the deceased, Mahesh, and prepared the post mortem report, Exhibit Ka-6. According to Dr. D.C. Tiwari (PW-4), following ante mortem injuries were found on the dead body of the deceased, Mahesh :-

"(i) Gunshot wound of exit 5 cm x 3 cm on the just anterior of the skull directly in front of the left ear and margins of the wound are everted and clotted blood present around the wound.

(ii) Gunshot wound of entry 1 cm x 1 cm circular in shape on the just anterior of skull directly in front of the right ear, margin of wound is inverted and contused ring is present. Clotted blood present around the wound. This wound communicate to the wound (injury no. 1).

The cause of death is shock and haemorrhage due to ghunshot wound.″

Dr. D.C. Tiwari (PW-4) conducted the post mortem examination of the dead body of the deceased, Smt. Neelibai @ Raj Kumari wife of Vishwanath, and prepared the post mortem report, Exhibit Ka-7. According to Dr. D.C. Tiwari (PW-4), following ante mortem injuries were found on the dead body of the deceased, Neelibai :

"(i) Gunshot wound of entry 1.5 cm x 1.5 cm on the right side of forehead 2 cm above from the right eye. Margin of the wound is inverted and contused ring present. Clotted blood present around the wound.

(ii) 5 cm x 5 cm gunshot wound of exit present on the left side of skull at parietal bone. Brain matter is coming out from the wound. Clotted blood present around the wound.

The cause of death is shock and haemorrhage due to ghunshot wound.″

Dr. D.C. Tiwari (PW-4) also conducted the post mortem examination on the dead body of the deceased, Vishwanath son of Maniram, and prepared the post mortem report as Exhibit Ka-8. According to Dr. D.C. Tiwari (PW-4), following ante mortem injuries were present on the dead body of the deceased, Vishwanath :

"(i) Gunshot wound of entry 1 cm x 1 cm on the left side of back of chest 3 cm latral from the vertebral column. Margins of wound are inverted and contused ring present.

(ii) Gunshot wound of exit on the centre of chest in front 4 cm above from the xiphisternum, margins of wound are everted and clotted blood present around the wound.

The cause of death is haemorrhage due to ghunshot wound.″

8. Investigating Officer filed the charge-sheets, Exhibits Ka-35, Ka-38 and Ka-39, against the accused-appellants, Maheshwari Prasad and Adarsh Kumar in the concerned Magistrate Court having jurisdiction. Since the case was exclusively triable by the Court of Sessions, learned Magistrate committed the case to the Court of Sessions.

9. Learned Trial Court framed the charges against the appellants, Maheshwari Prasad and Adarsh @ Chandrabhan, under Section 302 read with Section 34 IPC on 11.07.2006. Charges were also framed against the appellants, Maheshwari Prasad and Adarsh Kumar @ Chandrabhan under Section 25 Arms Act on 11.07.2006 itself. The appellants denied from all charges framed against them and claimed trial.

10. To substantiate the charges against the appellants, prosecution has adduced informant Watan Singh (PW-1), Om Prakash (PW-2), Ramesh (PW-3) as witnesses of the facts and Dr. D.C. Tiwari (PW-4), Shailendra Singh (PW-5), Ram Pal Singh (PW-6), Chandra Bhan Dubey (PW-7) and Bhaskar Mishra (PW-8) as the formal witnesses. Apart from the above oral evidence, prosecution also relied on documentary evidences from Exhibits Ka-1 to Ka-40 in support of its case.

11. After recording of the evidence of the prosecution witnesses, Trial Court examined the appellants under Section 313 Cr.P.C. The appellants denied the charges levelled against them. They have answered questions under Section 313 Cr.P.C. put to them in negative. They have also stated that false case was registered against them due to enmity. The Investigating Officer wrongly investigated the case and falsely implicated them for commission of the crime. The accused-appellants have also stated in answer to the question no.23 that witnesses Watan Singh (PW-1) and Ramesh (PW-3) with collusion of the police, falsely implicated them in this case. Watan Singh and Udairaj wanted to take possession of my and my father′s house and its compound (Bada) on the basis of the false case but they lost the case in the Court, therefore, forged proceedings were came into light. Now they want to grab the property after sending all our family member in jail. Although the accused-appellants have stated that they will adduce defence evidence, but they did not adduce any evidence in their support.

12. Learned Trial Court after hearing the arguments of both sides and after perusing the whole evidence available on record found the accused-appellants, Maheshwari Prasad and Adarsh, guilty for commission of the alleged crime. Learned Trial Court convicted the accused-appellants, Maheshwari Prasad and Adarsh Kumar @ Chandrabhan Rajpoot, under Section 302 read with Section 34 IPC with life imprisonment and a fine of Rs. 10,000/- each and in default of payment of the fine, they have to undergo six months′ additional imprisonment. The accused-appellants, Maheshwari Prasad and Adarsh Kumar @ Chandrabhan Rajpoot, were also held guilty and convicted under Section 25 Arms Act for three years′ rigorous imprisonment and a fine of Rs. 5000/- each and in default of payment of the fine, they were also directed to serve additional imprisonment for three months. All the sentences were directed to run concurrently.

13. Aggrieved by the judgment and order of conviction and sentence dated 31.01.2009, the accused-appellants have preferred this criminal appeal before this Court.

14. At the outset, it is worthwhile to mention that it appears from the record of the case that although charge-sheet was also filed against the accused Neeraj @ Jai Narayan, he was found juvenile, therefore, his case was separated and sent for trial to Juvenile Justice Board.

15. Learned counsel for the accused-appellants has argued that statements of the prosecution witnesses recorded on oath are contrary to each other and therefore, are unreliable. The prosecution story is not only highly improbable but absurd also. Learned counsel has also submitted that informant has falsely implicated the appellants in the present case but the learned Trial Court has not considered the actual facts and circumstances of the case and passed the impugned judgment and order, which is not sustainable in the eyes of law. It is also submitted that there is no independent and reliable witnesses adduced by the prosecution in support of its case. The prosecution witnesses, informant Watan Singh (PW-1), Om Prakash (PW-2) and Ramesh (PW-3) are highly interested witnesses. These witnesses of the prosecution are family members and relatives of the deceased persons in this case. Informant Watan Singh (PW-1) wanted to grab all the properties of the deceased, Vishwanath, after falsely implicating the accused-appellants in this case and sending them in the jail. There was enmity between the informant Watan Singh (PW-1) and accused-appellant, Maheshwari Prasad, in respect of immovable property. Some other accused has killed the deceased persons in the night, but the accused-appellants have been falsely and purposely

implicated in this case by the informant Watan Singh (PW-1). Learned Trial Court did not appreciate the evidence in its proper perspective and in a legal manner, and it wrongly relied on evidence that was unreliable and doubtful to hold the accused-appellants guilty for commission of the crime. The finding and reasoning as delivered by the learned Trial Court are also against the evidence and settled principles of law, therefore, the criminal appeal preferred by the appellants is liable to be allowed and impugned judgment and order of conviction and sentence passed by the learned Trial Court dated 31.01.2009 is liable to be set aside.

16. Per contra, learned A.G.A. for the respondent-State has vehemently opposed the arguments of learned counsel for the appellants and submitted that the accused-appellants and deceased persons had been living in the same and one compound (ahata) adjoining each other′s house. The accused-appellants, taking advantage of the occasion, being the first day of Navratri, when videos were playing and generators were running at the temple at about 11:50 P.M., murdered all the deceased persons, with a view that the sound of the gunfire would not be heard by anyone due to the noise from the generators and videos. The accused-appellants have chosen a very appropriate and useful time for commission of the offence. The accused-appellants by murdering the deceased persons have betrayed the very close relations of father and son and also grandfathers and grandsons. Prosecution by adducing informant Watan Singh (PW-1), Om Prakash (PW-2) and Ramesh (PW-3) has proved its case beyond reasonable doubt. Although Om Prakash (PW-2) has turned hostile and has not supported the prosecution case but the informant Watan Singh (PW-1) and Ramesh (PW-3) have fully supported the prosecution case by their evidence. Allegations as levelled against the accused-appellants have been fully proved by the evidence of the prosecution. Learned Trial Court has appreciated the evidence in proper perspective and in legal manner. The finding and reasoning of the learned Trial Court are based on the cogent evidence and also on the settled principles of law. There is no infirmity, illegality or perversity in the impugned judgment and order of the learned Trial Court, therefore, criminal appeal filed by the accused-appellants is devoid of merits and is liable to be rejected.

17. In the light of the rival submissions of learned counsel for both the parties and from perusal of the written report, Exhibit Ka-1, we find that incident is said to be happened on 04.10.2005 at 11:50 P.M. and report about the incident has been lodged by the informant Watan Singh (PW-1) at Police Station Muskara, District Hamirpur on 05.10.2005 at 12:20 A.M. in the night. Meaning thereby, within half an hour, without any delay and afterthoughts, F.I.R. has been registered by the informant Watan Singh (PW-1) at the police station naming accused-appellants, Maheshwari Prasad, Adarsh and Neeraj as accused persons, therefore, we find no delay in lodging the F.I.R. at the police station after happening of the incident.

18. Apart from perusal of the written report, Exhibit Ka-1, we have also perused and gone through the evidence of the informant Watan Singh (PW-1), Om Prakash (PW-2) and Ramesh (PW-3).

19. From the perusal of the evidence of the prosecution witnesses, we find that informant Watan Singh (PW-1), who is an eye-witness of the incident and has seen commission of the crime by the accused-appellants, has stated in his evidence in the Court corroborating the statements as he has written in the written report, Exhibit Ka-1. From perusal of the evidence of informant Watan

Singh (PW-1), it is revealed that incident of this case has happened on 04.10.2025 at about 11:50 P.M. in the night and it was a first day of Navratri when idol of Goddess Durga is being installed in the pandals and worshiped. Due to being the first day of Navratri, at Kalika Devi Temple in the town, Navratri ceremony was being organized and a large number of people were gathered there to celebrate Navratri pooja of Kalika Devi. For the entertainment of the devotee, videos were being playing showing religious films. There were 2-3 generators running for sufficient electricity for the night ceremony and convenience of the people gathered there. On the date of the incident, informant Watan Singh (PW-1) was also sitting at the platform (chabutra) of the Kalika Devi Temple. According to the evidence of informant Watan Singh (PW-1), it is revealed that house of Vishwanath is situated in Ahata (compound). On the southern direction of the Ahata (compound), deceased Vishwanath, his wife Neelibai @ Raj Kumari and his son Mahesh were living. On opposite direction, accused persons were living. On that date, deceased Mahesh, nephew of this witness, returned from Kanpur. He talked with this witness and as soon as he entered in the compound, then sound was being heard. On hearing the sound, this witness ran towards the compound then he saw that accused Maheshwari Prasad, Adarsh and Neeraj have caught hold Mahesh and made him to fall on the ground. Accused Maheshwari Prasad assaulted Mahesh with country-made pistol and fired upon him from his country-made pistol. Then Neelibai has come to intervene then accused Neeraj with his country-made pistol fired upon her. Accused Adarsh shot from his country-made pistol at Vishwanath. After receiving gunshot injury, all the above three persons died on the spot. Accused after firing ran away towards Chandaura Road. According to this witness, in the compound (ahata), a lantern was illuminating and light of the bulb from the temple was also reaching. According to this witness, he heard that deceased Mahesh had illicit relations with Asha wife of accused Maheshwari. From perusal of the evidence of this witness, it is revealed that accused Maheshwari Prasad was son of deceased Vishwanath and deceased Neelibai @ Raj Kumari was the mother and deceased Mahesh was brother of accused, Maheshwari Prasad. Accused Adarsh Kumar @ Chandrabhan and Neeraj @ Jai Narayan were sons of accused Maheshwari Prasad.

20. From this fact, it is revealed that accused Maheshwari Prasad, with his own sons Adarsh and Neeraj have murdered his real father, Vishwanath, his real mother, Neelibai @ Raj Kumari, and also murdered his real brother, Mahesh. It is also revealed from the evidence of this witness that there was illicit relations between the deceased, Mahesh, and Asha, wife of accused Maheshwari Prasad, which appears to be the motive for commission of the alleged crime. Apart from the above, from the evidence of this witness, it is also revealed that the informant, Watan Singh (PW-1), is the younger brother of the deceased, Vishwanath. It is also revealed that there was also a dispute in respect of the compound in which the deceased and accused persons were living. A case, Watan Singh v. Maniram, was filed in respect of the land of the compound. From the evidence of this witness, it is also revealed that 04.10.2005, the date on which the incident occurred, was the first day of Navratri, and on that day, the idol of Goddess Durga was installed in the pandals. This witness has stated that he had heard the sound of the fire, and at that time, this witness was not in the ground of the temple, but he was sitting at the platform of the temple. When, after hearing the sound of the fire, he reached at the gate of Vishwanath, then he saw the occurrence committed by the accused persons.

21. It is also revealed from the evidence of this witness Watan Singh (PW-1) and from perusal of the written report, Exhibit Ka-1, that the light of a lantern and the light of a bulb, which was coming from the temple, have been mentioned in the written report, Exhibit Ka-1 and in the evidence of this witness also. Thus, we find that at the time of the happening of the incident at 11:50 p.m. in the night, there was sufficient electricity/light to identify the accused persons, who were committing the crime. Apart from the above facts, it is also worthwhile to mention here that the accused persons and the deceased persons had been living in the same compound (ahata). Accused Maheshwari Prasad was the son of the deceased, Vishwanath, and accused, Adarsh and Neeraj, were the grandsons of Vishwanath. The deceased Neelibai @ Raj Kumari was the mother of the accused, Maheshwari Prasad, and the grandmother of Adarsh and Neeraj. The deceased Mahesh was the uncle of accused Adarsh and Neeraj.

22. Although next witness Om Prakash (PW-2) has turned hostile and has not supported the prosecution story, however, in spite of the hostile evidence of Om Prakash (PW-2), this fact is established that accused Maheshwari Prasad was the son of deceased, Vishwanath. On the date of incident, in the night at 11:50 PM, when ceremony was going on at the temple, the temple was decorated, the generator was running, the bulb was illuminating, and there was sufficient light, and the fact that murder of deceased Vishwanath, his wife Neelibai @ Raj Kumari, and his son Mahesh has been committed on that day and time, this fact is clearly proved. However, this witness has denied that he had not seen any person committing the murder of the deceased persons. According to this witness, he has seen accused persons running towards Chandaura Road by firing, but he could not identify them. However, one important fact is revealed from the evidence of this witness that before this witness, informant Watan Singh (PW-1) had reached at the place of occurrence. From the evidence of this witness, it is revealed that there was partition dispute of land between the deceased Vishwanath and his son Maheshwari Prasad. Deceased Mahesh was unmarried brother of accused Maheshwari Prasad. This witness has accepted that it is true that deceased Mahesh was a man of loose character and a man with the habit of consuming intoxicants. This witness has clearly accepted in his cross-examination that after happening of the incident, accused Maheshwari Prasad and his sons, Adarsh and Neeraj, have not reached near the dead bodies of the deceased in the ahata (compound). This witness was unable to tell this fact that even after murder of real mother, father and brother and even living in the same compound, why accused persons have not reached near the dead bodies of the deceased and why they have left the ahata and ran away. According to this witness, on the date of incident, which was the first day of Navratri, this witness came at town Muskara to see the Durga Pooja.

23. Thus, even from the hostile evidence of this witness, Om Prakash (PW-2), this fact is established that on the date and time of the incident, deceased Vishwanath, his wife Neelibai @ Raj Kumari, and his younger son Mahesh had been murdered and even after the murder of the above three persons, accused Maheshwari Prasad and his both sons, Adarsh and Neeraj, have not reached near the dead bodies of the deceased; even they were living in the same compound. This fact is also clearly established from the evidence of this witness that there was a land dispute between the deceased, Vishwanath, and his son, Maheshwari Prasad, in respect of partition of the land. This fact also established strong motive against the accused persons, especially accused Maheshwari Prasad for commission of the crime and eliminating his father, deceased Vishwanath, his mother Neelibai @ Raj Kumari, and his unmarried younger brother, Mahesh, with intention that after their death,

being nearest heir, they will automatically become owner of the properties of the deceased, Vishwanath, and deceased, Mahesh. This is being strong motive against the accused-appellants for commission of the crime, which is levelled and is proved by the hostile evidence of Om Prakash (PW-2).

24. From perusal of the evidence of Ramesh (PW-3), we find that, according to the prosecution, this witness is also an eye-witness of the incident. This witness Ramesh is brother-in-law (behnoi) of accused Maheshwari Prasad, and accused Maheshwari Prasad is brother-in-law (sala) of the witness, Ramesh. From perusal of the evidence of this witness, it is revealed that when on hearing the sound of fire, this witness had seen towards the gate of the compound (ahata), he saw that the accused, Maheshwari Prasad, and his sons, Adarsh and Neeraj, were holding country-made pistols in their hands. Accused Maheshwari Prasad has thrown the deceased Mahesh on the ground and fired gunshot upon him, accused Adarsh has fired gunshot at deceased Vishwanath and accused Neeraj has fired gunshot at Neelibai @ Raj Kumari. After receiving gunshot injuries, all the above three persons had died on the spot. When this witness reached at the spot, then accused persons by firing ran towards Chandaura Road. According to this witness, at the time of incident and at the place of occurrence, there was light of the bulb from the generator and, in the compound (ahata) of the Vishwanath, a lantern was also illuminating. According to the evidence of this witness, Investigating Officer had recovered three empty cartridges near the ground where the dead bodies of the deceased were lying and prepared recovery memo.

25. During the cross-examination of this case, he stated that he stayed in the house of his father-in-law, Vishwanath. From the evidence of this witness, it is established that on the date and time of the incident, this witness was present near the place of occurrence for watching Navratri ceremony at the Kalika Devi Temple. From the evidence of this witness, this fact is corroborated that on the night of the incident, 2-3 generators were running and those generators were kept on the north side of the pond and one generator was kept on the backside of the pandal. Religious films were playing in the video. From the statement of this witness, it is also revealed that after happening of the incident about 12:15 A.M. in the night, police had reached at the place of occurrence. From perusal of the cross-examination of this witness, it appears that according to this witness, Investigating Officer had recorded the statement of this witness on 05.10.2007 at 06:00 A.M. in the morning. However, from perusal of the case diary, we find that in reality, Investigating Officer had recorded the statement of this witness on 05.10.2005 itself. Thus, it appears that at the time of recording the evidence of this witness, the reader or the typist who was recording the statement of this witness, has wrongly written 05.10.2007 in place of 05.10.2005. This fact indicates that incident happened on 04.10.2005 at 11:50 p.m. in the night, and the Investigating Officer on the next day on 05.10.2005 at 06:00 A.M. in the morning had recorded the statement of this witness under Section 161 Cr.P.C. Recording of evidence of this witness on 05.10.2005 at 06:00 A.M. in the morning in the compound of deceased Vishwanath established this fact that this witness was present at the time of happening of the incident at the house of his father-in-law, deceased Vishwanath, and this witness was also present at the place of the occurrence. This fact clearly proved the presence of this witness at the place of occurrence and seeing the commission of the crime by the accused persons with his own eyes. According to this witness, accused persons have shot on the deceased, Vishwanath, Neelibai @ Raj Kumari and Mahesh, with country-made pistols. According to this witness, accused persons in all fired three shots. From the evidence of this

witness, it is revealed that this witness had taken food with Moolchandra. This witness has clearly stated that Vishwanath and Neelibai @ Raj Kumari had taken food with us. Neelibai @ Raj Kumari had given food to me. After taking food, I and Moolchandra had come into pandal at about 08:00 P.M.

26. From perusal of the evidence of this witness, it is revealed that after death of deceased, Vishwanath, Neelibai @ Raj Kumari and Mahesh, this witness has also filed an application for mutation in respect of the property of the deceased, Vishwanath, in his name and in the names of his wife and his sister-in-law. Evidence of this witness also revealed that accused Maheshwari Prasad had also filed a case against his wife and sister-in-law in the Court of Civil Judge, Senior Division, and that case was pending in the Court of Civil Judge, Senior Division.

27. Thus, from perusal of the evidence of Ramesh (PW-3), it is revealed that this witness is an eye-witness of the incident because when the incident happened on 04.10.2005 at 11:50 P.M. in the night in the compound of deceased Vishwanath and accused persons, he was present there. This witness has seen commission of the crime by the accused persons. From perusal of the evidence of this witness, it is clearly revealed that this witness is a natural witness and he has stated in the Court in a very simple words about happening of the incident. This witness has clearly accepted this fact that after the death of the deceased, Vishwanath, Neelibai @ Raj Kumari and Mahesh, this witness has filed an application for mutation of the property in his name and in the names of his wife and sister-in-law. It is also revealed that this witness is son-in-law of the deceased, Vishwanath, and brother-in-law of the accused, Maheshwari Prasad. Meaning thereby, daughter of deceased, Vishwanath, and sister of accused, Maheshwari Prasad, was married with this witness. This witness is a close relative of both sides. We find no ground to suspect and doubt the statement and evidence of this witness as relative witness, because this witness is a close relative of both sides and is related to both sides by his marriage with the daughter of deceased, Vishwanath, and sister of accused, Maheshwari Prasad. There is no reason or ground to disbelieve and doubt the evidence of this witness. We find that this witness has filed an application after death of Vishwanath, Neelibai @ Raj Kumari and Mahesh for endorsing the names of this witness, his wife, and his sister-in-law in respect of the land in the Revenue Court, is no reasonable ground to doubt and disbelieve the statement of this reliable witness. It is a natural fact that when a person dies by any means, whether natural or unnatural, their nearby relatives would naturally file an application for mutation of property in their names. Therefore, solely on that ground, we could not doubt or disbelieve the reliable, trusthworthy and creditworthy evidence of this witness, Ramesh (PW-3). In other words, we find the evidence of this witness fully reliable, truthful that inspires confidence.

28. In the light of the evidence of informant Watan Singh (PW-1), Om Prakash (PW-2), and Ramesh (PW-3), as we have perused and discussed, we find that although informant Watan Singh (PW-1) is younger brother of deceased, Vishwanath, and uncle of accused, Maheshwari Prasad, in this way, Watan Singh (PW-1) is related by blood with both deceased persons and accused persons. Only on this ground that informant Watan Singh (PW-1) is family member of the deceased persons and accused persons. We cannot doubt and reject the evidence of this important eye-witness. There is no law of this kind that prescribes that evidence of related witness and family members must be rejected. According to the settled principles of law in case of related witness and family members as a witness, only this requires that evidence of that kind of witness must be carefully and deeply

scrutinized and appreciated. If after deep scrutiny and careful appreciation of the evidence of interested witnesses or family members as a witnesses, Court find that their evidence is truthful and testimony is creditworthy and inspires confidence, then in this condition, Court can rely and convict accused persons on the basis of the evidence of related witness and family members as a witness. There is no evidence of this kind that informant Watan Singh (PW-1) is interested in conviction of the appellants for commission of the crime.

29. Hon'ble Supreme Court in the case of **State of Rajasthan v. Smt. Kalki and Another, (1981) 2 SCC 752**, has held on interested and related witnesses in para 7 that;

"7. As mentioned above the High Court has declined to rely on the evidence of P.W. 1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased", and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. In the instant case P.W. 1 had no interest in protecting the real culprit, and falsely implicating the respondents."

30. Hon'ble Supreme Court in the case of **Harbans Kaur and Another v. State of Haryana, (2005) 9 SCC 195** in para 7, has held that;

"7. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused. No evidence has been led in this regard."

31. In the same way, Hon'ble Supreme Court in the case of Sucha Singh and Another v. State of Punjab, (2003) 7 SCC 643, has held in para 13 that;

"13. ..... Relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible."

32. Thus, in the light of the law as propounded by the Hon'ble Supreme Court, it is clear that being an interested witness or a family member is no ground to doubt and disbelieve the evidence of related witnesses and family members as witnesses. What is required is that the Court must be careful and alert, and a deep scrutiny and cautious appreciation of evidence is only required in that kind of case. If the Court finds that the evidence of the related witnesses and family members, who

are witnesses, indicates that they are eye-witnesses of the incident, their evidence are wholly reliable, that inspire confidence, then the Court, without any hesitation, can convict the accused for the commission of the crime.

33. In the case at hand, We find that although the informant, Watan Singh (PW-1), is a family member of the deceased and the accused persons, and Ramesh (PW-3) is a close relative of both sides and is related by blood to the accused persons as well as to the deceased, being the son-in-law of the deceased Vishwanath. In this case, Ramesh (PW-3) would only speak true facts about the happening of the incident and who committed the crime. We, after appreciation of the evidence of both the witnesses, find that their evidence is truthful, reliable and creditworthy that inspire confidence. In view of this, their evidence is fully reliable.

34. As far as arguments of learned counsel for the appellants that there are contradictions between two eye-witnesses is concerned, we find that those contradictions that are indicated by learned counsel for the appellants are very minor and trivial in nature. Whatever contradictions and omissions exist are minor and trivial in nature, and we find that they are not material or major contradictions. According to human nature and tendency, some minor contradictions and omissions are likely to occur in the testimony of any witness.

35. Hon'ble Supreme Court in the case of **Brahm Swaroop and Another v. State of Uttar Pradesh, (2011) 6 SCC 288** has held in para 32 that;

"32. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not prompt the Court to reject the evidence in its entirety. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." Difference in some minor details, which does not otherwise affect the core of the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witnesses. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses."

36. Evidence of Ramesh (PW-3) also finds corroboration from the evidence of Dr. D.C. Tiwari (PW-4), who conducted the postmortem examination of deceased Mahesh, Neelibai @ Raj Kumari, and Vishwanath. From the perusal of the postmortem report, Exhibit Ka-6, of deceased Mahesh, we find that injury no. 1 was exit wound of the gunshot which was found at the skull in front of the left ear of the deceased Mahesh and the injury no. 2 was the entry wound of the gunshot which was found at the skull in front of the right ear. That indicates that one bullet shot was fired at the temporal bone at the head of the deceased Mahesh which entered from the right ear from the temporal region and the same exited on the left side of left ear on the temporal region. The postmortem report of deceased, Neelibai @ Raj Kumari (Exhibit Ka-7), revealed that one gunshot

entry wound was found on the forehead towards the right eye, 2 cm above the right eye, that bullet exited from the parietal bone of the skull from the left side. From perusal of the post mortem report of the deceased, Vishwanath, Exhibit Ka-8, we find that only one bullet shot had been found on the backside 3 cm left from the backbone. That bullet shot exited from the center of the chest. Thus, we find that one bullet shot was fired at deceased Mahesh, one bullet shot was fired at deceased Neelibai @ Raj Kumari, and one bullet shot was fired at deceased Vishwanath. This fact indicates that the evidence of Ramesh (PW-3) found to be true as this witness has stated only three gunshots were fired towards the deceased.

37. From perusal of the record, we find that the weapons of murder were recovered on the pointing out of the accused, Maheshwari Prasad and Adarsh, from the compound of the deceased and accused persons, and also the empty cartridges were recovered and taken into possession from the place where the dead bodies of the deceased were lying. Those empty cartridges which were recovered near the dead bodies of the deceased, country-made pistols and live cartridges recovered at the pointing out of the accused Maheshwari Prasad and Adarsh, were sent to the Forensic Science Laboratory for their examination. At the pointing out of the accused persons, Maheshwari Prasad and Adarsh, incriminating articles, weapon of murder, and cartridges were recovered from the compound of the accused persons and deceased persons where they were living. This compound is not a public place where every person could easily come and go at their will. Since compound of any person is in the exclusive possession of the owner, therefore, no person could dare to come and go without permission of the owner in the compound. In the light of above facts, we are unable to believe the arguments of learned counsel for the appellants in this respect that weapons of murder were recovered from a public place or from open place.

38. The report of the Forensic Science Laboratory, Agra, Uttar Pradesh, is available on the record as Paper Nos. 30-Ka/2 and 30-Ka/3. Recovered empty cartridge of 315 bore which was being near the dead body of the deceased Vishwanath was marked as EC-1. Empty cartridge of 315 bore which was recovered near the dead body of deceased Neelibai @ Raj Kumari, was marked as EC-2 and empty cartridge of 315 bore, which was recovered from nearby the place where dead body of deceased Mahesh was lying, was marked as EC-3. Recovered country-made pistol at the pointing out of the accused Maheshwari Prasad and one live cartridge of 315 bore were marked as 1/2006 and LC-1 respectively. In the same way, recovered country-made pistol of 315 bore and two live cartridges of 315 bore at the pointing out of the accused Adarsh Kumar are marked as 2/2006 and LC-2 and LC-3. In the same way, recovered country-made pistol and two live cartridges of 315 bore at the pointing out of the accused Neeraj was marked as 3/2006 and LC-4 and LC-5. In the examination result of Forensic Science Laboratory, Agra, Uttar Pradesh, disputed cartridge EC-1 was found fired from marked country-made pistol 2/2006, and disputed cartridge EC-2 was found fired from country-made pistol marked as 3/2006, and disputed cartridge EC-3 was found fired from country-made pistol marked as 1/2006. Thus, from the examination report of Forensic Science Laboratory, it is clear that empty cartridges which were recovered from the place near the dead body of the deceased persons were found fired by the country-made pistols, which were recovered at the pointing out of the accused persons from their compound. In other words, examination report of the Forensic Science Laboratory, Agra, Uttar Pradesh corroborates this fact that those empty cartridges which were lying near the dead bodies of the deceased were fired from the country-made pistols which were recovered at the pointing out of the accused persons from their compound. It

means and indicates that illegal country-made pistols which were recovered at the pointing out of the accused persons from their compound, empty cartridges which were recovered near the dead bodies of the deceased persons were found used as weapons of murder by the accused persons in the commission of the alleged crime. Thus, we find that weapons of murder, which were recovered from the possession of the accused-appellants on their pointing out, were used in the commission of the murder of the deceased persons by the accused persons. Therefore, in the light of above facts and evidence, arguments of learned counsel for the appellants in this regard is not sustainable.

39. We have also gone through the judgment and order of the learned Trial Court dated 31.01.2009. From perusal of the findings and reasoning as given by the learned Trial Court, we find that the learned Trial Court has fully discussed whole evidence as available on the record. Learned Trial Court has also discussed and given a finding that accused-appellants, with pre-plan, pre-meditation, and prior concert, prepared the plan for commission of the heinous crime and murdered the deceased persons. This fact is revealed from the facts of the case that accused-appellants, Maheshwari Prasad and Adarsh, with other accused, Neeraj, prepared a plan of this murder. They procured illegal country-made pistols of 315 bore and also live cartridges of 315 bore. Both accused-appellants, Maheshwari Prasad and Adarsh, with juvenile accused, Neeraj @ Jai Narayan, dragged each deceased persons and assaulted and fired upon them with their respective country-made pistols. This fact clearly revealed that there was clear-cut pre-plan, pre-meditation and prior concert among the accused persons for commission of the alleged crime. Apart from the above facts, the accused-appellants have chosen the date of incident as the first date of Navratri of Durga Pooja. The date of incident, i.e., 04.10.2005 was the first day of Navratri and at the Kalika Devi Temple, 2-3 generators were running for sufficient light and religious films were also running. There was crowd gathered for participating in the first day of Navratri Pooja and the appellants have chosen the time of incident as 11:50 P.M. of the night. The intention and purpose of the appellants were that on the first day of Navratri of Durga Pooja, after 11:00 p.m. in the night, when generators were running and making noise, and videos were also playing showing the religious pictures, with a view that at this time, sound of the fire from the country-made pistols will not reach to the peoples and accused-appellants will be able to execute their plan easily. The appellants have hatched a plan with pre-plan, pre-meditation, and prior concert and executed the plan in which three persons were killed by them by their well-prepared and managed plan. Thus, we find that the Trial Court has fully discussed all the evidence and based its finding on cogent and reliable evidence in this regard. From perusal of the finding and reasoning of the Trial Court, we find that the Trial Court has appreciated evidence in a proper perspective and in legal manner and according to the settled principles of law in this regard. We find no illegality or perversity in the impugned judgment and order dated 31.01.2009 of conviction and sentence, therefore, we find no force in the arguments of learned counsel for the appellants in this respect.

40. In this view of the matter, we find that the criminal appeal of the accused-appellants is devoid of merits and it lacks force. Hence, we are of the view that the criminal appeal of the accused-appellants is liable to be dismissed and the judgment and order of conviction and sentence dated 31.01.2009 is liable to be affirmed.

41. In the result, the criminal appeal is **dismissed**. The impugned judgment and order dated 31.01.2009 passed by the learned Trial Court is affirmed. The appellants, Maheshwari Prasad and

Adarsh @ Chandrabhan Rajpoot, are in jail. They shall remain in jail to serve out the sentence awarded to them by the Trial Court.

42. Let a copy of this judgment be transmitted to the Trial Court along with the Trial Court records forthwith for necessary compliance.

(2026) 5 ILRA 1238
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 21.05.2026

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE ZAFEER AHMAD, J.

Criminal Appeal No. 1139 of 2016 alongwith 2175 of 2022

Surendra Kumar Verma **...Appellant**
Versus
State of U.P. **...Respondents**

Issue for consideration

Matter pertains to conviction in case of extra judicial confession.

Headnotes

Circumstantial evidence -Indian Evidence Act, 1872 -Ss. 101 and 106 - Indian Penal Code, 1860 - Ss. 302/34 and 201 - Extra-judicial confession- Delay in FIR- Medical evidence - Benefit of doubt - Held, where the prosecution case rested entirely on circumstantial evidence- but failed to establish a complete and unbroken chain of incriminating circumstances-alleged extra-judicial confession -suffered from material contradictions-lacked independent corroboration - delay in lodging the FIR inadequately explained-medical evidence established only death by drowning-not conclusively prove homicidal drowning- the possibility of accidental drowning not having been ruled out- S. 106 of the Evidence Act could not be invoked to cure deficiencies in the prosecution case -accused were entitled to the benefit of doubt and acquittal. **Appeal allowed.**

Case Law Cited

1. Shailendra Rajdev Pasvan v. State of Gujarat, (2020) 14 SCC 750
2. Sahoo v. State of U.P., AIR 1966 SC 40
3. Sujit Biswas v. State of Assam, (2013) 12 SCC 406
4. Indrakunwar v. State of Chhattisgarh, 2023 SCC OnLine SC 1364
5. Shambu Nath Mehra v. State of Ajmer, (1956) 1 SCC 337
6. Murlidhar v. State of Rajasthan, (2005) 11 SCC 133
7. Nupur Talwar (Dr.) v. State of U.P., 2017 SCC OnLine All 2222
8. Nagendra Sah v. State of Bihar, (2021) 10 SCC 725 and Anees v. State (NCT of Delhi), (2024) 15 SCC 48
9. Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116

List of Acts

1. Indian Evidence Act, 1872
2. Indian Penal Code, 1860

List of Keywords

Last-seen circumstance; proximity of time and place; last-seen theory; material improvements; extra-judicial confession; complete and unbroken chain of incriminating circumstances; beyond reasonable doubt; homicidal drowning.

Appearances of parties

Counsel for Appellant(s) : Syed Fazal Abbas Rizvi, Abdul Rafey Siddiqui, Akbar Siddiqui, Anand Dubey, Kamal Anwar Baig, Martand Pratap Singh, Rehan Ahmad Siddiqui Counsel for Respondent(s) : Govt. Advocate

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

1. Heard Sri Anand Dubey and Ms. Jyoti Rajpoot, learned counsel for the appellants and Ms. Charu Singh, learned A.G.A for the State. Perused the records.

2. The aforesaid criminal appeals arise out of judgment and order dated 16.07.2016, passed by the learned Additional Sessions Judge, Court No. 1, Ambedkar Nagar, passed in Session Trial No. 201 of 2010 (State v. Pushpa & Surendra Kumar Verma), arising out of case crime no. 921 of 2010, police station Kotwali Akbarpur, District Ambedkar Nagar, whereby the appellants have been convicted to undergo life imprisonment along with a fine of Rs. 10,000/- each under Section 302 r/w Section 34 of Indian Penal Code, 1860 (in short I.P.C.) and in default of payment of fine, an additional imprisonment of six months, further the appellants have been convicted under Section 201 IPC to undergo imprisonment for five year along with a fine of Rs. 5,000/- each and in default of payment of fine, an additional imprisonment of three months.

3. Since the aforesaid criminal appeals arise out of a common judgment and order dated 16.07.2016, as such same have been heard together and decided by a common order.

Prosecution Story in Nutshell:

4. The prosecution story, in brief, is that the complainant, Jagdish Yadav, r/o village Gohna, Police Station Kotwali Akbarpur, District Ambedkar Nagar, was employed in a textile mill at Delhi, while his children and wife Pushpa Devi were residing separately in the village. On 10.09.2010, the informant received information through telephone that his daughter Priya, aged about 8 years, and son Shani, aged about 3 years, had been found dead inside a well in the village. Upon reaching the village, he came to know that his wife had developed illicit relations with co-accused Surendra Kumar Verma, s/o Munshi Ram Verma, and that his daughter Priya had allegedly seen them in a compromising position and threatened to disclose the same. It is alleged that on account thereof, Pushpa Devi and Surendra Kumar Verma, in furtherance of their common intention, threw both the children into the well and thereafter Pushpa also jumped into the well in an attempt to conceal the occurrence. It was further alleged that villagers had seen Pushpa Devi along with Surendra Kumar Verma near the well during the night/morning of the incident.

5. On the basis of the written report, an F.I.R. was registered under Section 302 and 201 I.P.C against the appellants. The investigation of the case was entrusted to Kamal Kumar Singh, who proceeded to the place of occurrence on 10.09.2010 and conducted the inquest proceedings.

6. Upon completion of investigation, charge-sheet was submitted against the accused-appellant under Section 302 and 201 IPC. Thereafter, the case was committed to the Court of Session, where charge under Section 302 r/w 34 and 201 IPC was framed against the appellants. Both the accused denied the charge, pleaded not guilty, and claimed trial.

7. In order to prove its case, the prosecution examined Jagdish yadav (PW-1), Ram Teerath Yadav (PW-2), Hriday Ram Yadav (PW-3), Suresh (PW-4), Ram Prasad Yadav (PW-5), Dr. Dhirendra (PW-6), S.I. Vimal Kumar Singh (PW-7), and Ram Karan Nishad (PW-8).

8. In defence, the accused-appellants relied upon the charge-sheet in NCR No. 185 of 2004 (Ext. Kha-1) and the application filed under Section 155(2) Code of Criminal Procedure, 1973 (in short Cr.P.C.) (Ext. Kha-2).

9. The following exhibits were produced and proved, by prosecution, before the Trial Court:

Exhibit No.	**Particulars/Item**
Ext. Ka -1	Written Report
Ext. Ka -2	Recovery Memo of Torch
Ext. Ka -3	Post-mortem report of Priya
Ext. Ka-4	Post-mortem report of Shani
Ext. Ka-5	Site Plan
Ext. Ka-6	Charge-Sheet
Ext. Ka-7	Check FIR
Ext. Ka-8	Carbon Copy of GD
Ext. Ka-9	Police Form No. 13 for dead body of Priya
Ext. Ka-10	Police Form No. 13 for dead body of Shani
Ext. Ka-11	Sample Seal
Ext. Ka-12	Sketch of dead body of Shani
Ext. Ka-13	Challan Lash of dead body of Shani
Ext. Ka-14	Letter to CMO
Ext. Ka-15	Sample Seal
Ext. Ka-16	Sketch of dead body of Priya
Ext. Ka-17	Challan lash of dead body of Priya

10. The following exhibits were produced and proved, by defence, before the Trial Court:

Exhibit No.	**Particulars/Item**
Ext. Kha -1	Charge-sheet in NCR No. 185 of 2004
Ext. Kha -2	Application filed under Section 155(2) Cr.P.C.

11. The following material exhibits were produced and proved before the Trial Court:

Material Exhibit Number	**Particulars/Item**
Material Exhibit-1	Photograph of well
Material Exhibit-2	Photograph of well

12. The statements of the accused-appellants were recorded under Section 313 of the Code of Criminal Procedure, wherein accused-appellant Surendra Kumar Verma denied the prosecution allegations in toto and stated that the prosecution witnesses had deposed falsely before the Court. He further stated that the Investigating Officer, after conducting a biased and false investigation, had submitted a false charge-sheet against him. The accused-appellant also denied having any illicit relationship with co-accused Pushpa and asserted that, owing to enmity arising out of pending legal disputes, he had been falsely implicated in the present case. He further stated that he had no knowledge as to how the children died. Accused-appellant Pushpa, in her statement recorded under Section 313 Cr.P.C., also denied the prosecution case and stated that she had been falsely implicated on account of the alleged illicit relationship with accused Surendra Kumar Verma. She further stated that it was Surendra Kumar Verma who had killed her children and thrown them into the well, and that she had jumped into the well in an attempt to save them.

Submissions made by learned Amicus Curiae for the accused-appellant:-

13. Learned counsel for the accused-appellants submitted that the impugned judgment and order of conviction is contrary to law and evidence available on record. It has been argued that the present case is based entirely upon circumstantial evidence, however the prosecution has failed to establish a complete chain of incriminating circumstances as required in law. It has further been submitted that there was unexplained delay in lodging of the FIR and the prosecution story underwent material improvements during the intervening period. Learned counsel also questioned the reliability of the alleged extra-judicial confession and submitted that the same suffers from material contradictions and was not put to accused Pushpa under Section 313 Cr.P.C. Learned counsel further submitted that motive, last-seen circumstance and involvement of co-accused Surendra Verma have not been proved by reliable evidence. It has also been argued that the medical evidence does not conclusively establish homicidal death and possibility of accidental drowning has not been ruled out. It has also been submitted that Section 106 of the Evidence Act cannot be invoked to cure deficiencies in the prosecution case and the accused-appellants are entitled to benefit of doubt.

Submissions made by learned A.G.A : -

14. Per contra, learned A.G.A. supported the impugned judgment and submitted that the learned Trial Court has rightly appreciated the oral and documentary evidence available on record. It has been submitted that the prosecution successfully proved motive, extra-judicial confession and surrounding circumstances connecting the accused-appellants with the crime. Learned A.G.A. further submitted that accused Pushpa was found inside the well along with the deceased children and failed to furnish satisfactory explanation regarding the circumstances in which the children died, thereby attracting Section 106 of the Evidence Act. It has also been argued that minor contradictions in testimonies of prosecution witnesses are natural in nature and do not affect the core of the prosecution case. Accordingly, it has been submitted that the prosecution has proved its case beyond reasonable doubt and no interference is warranted with the impugned judgment and order.

Oral Testimonies:

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

15. **PW-1 Jagnish Yadav**, husband of accused Pushpa, deposed that he was working in Delhi at the time of occurrence and was informed telephonically by his father on 10.09.2010 that his daughter Priya aged about 8 years and son Shani aged about 3 years had died after falling into a well. He further deposed that co-accused Surendra belonged to his village and used to visit and talk to his wife, although he had objected the same on several occasion. Upon returning to the village, when he initially made inquiry from his wife, who told him that both the children had gone for easing themselves and accidentally fell into well. He further deposed that the said well is situated at some distance from his house and, therefore, he found the explanation doubtful, particularly because it was night time and the children could not have gone so far on their own. Upon making further inquiry from villagers, he came to know that after his departure to Delhi, accused Pushpa had developed illicit relation with co-accused Surendra and that Surendra used to visit his wife during night hours. He further deposed that on third day after the incident he took Pushpa into confidence and questioned her regarding the death of the children, whereupon she started weeping and confessed that on the date of occurrence, Priya had seen them in compromising condition and threatened to disclose the same to others, upon which Surendra suggested that both the children be eliminated. Thereafter, both the accused persons allegedly conspired to eliminate the children. In furtherance of their common intention, accused Surendra picked up Priya, while accused Pushpa took Shani, and both proceeded towards the nearby well. Further, Surendra threw both Priya and Shani into the well and thereafter went to the house of Pushpa to bring a torch. Upon returning, he noticed that Priya was still alive and standing inside the well, as the water level therein was only about two feet. By that time, Shani had already drowned. Accused Surendra then stated to Pushpa that in the event Priya survived, the entire incident would be disclosed. Thereupon, Pushpa herself jumped into the well, caught hold of Priya by her hair and forcibly submerged her in water, thereby causing her death. Thereafter, Surendra threw the torch into the well and fled from the place of occurrence, whereas Pushpa remained inside the well. The witness further deposed that on the following morning, accused Pushpa raised alarm from inside the well, whereupon the villagers and family members arrived at the spot, rescued her, and recovered the dead bodies of both the children from the well. On the basis of the disclosure allegedly made by accused Pushpa, the informant lodged the written report, which was verified and proved by him as Ext. Ka-1.

16. **During cross-examination**, he admitted that he had not personally witnessed the occurrence and that he was residing in Delhi at the relevant time. He further admitted that the report was lodged on the basis of information allegedly received from his wife and villagers after his return from Delhi. He also admitted previous enmity and litigation between his family and the family of co-accused Surendra Verma. The witness, however, denied the suggestion that due to such enmity, the accused persons had been falsely implicated. He further deposed that the well is situated towards the eastern side of the village and at the relevant time there was about $2^{1/2}$ to 3 feet water in the said well. He further admitted that the FIR came to be lodged on the third day of the occurrence. He further deposed that Pushpa was his third wife and he had no suspicion regarding her conduct prior to the incident. He further denied the suggestion that no such occurrence had taken place on the manner alleged by the prosecution.

17. **PW-2 Ram Teerath Yadav**, elder brother of Jagdish Yadav, deposed that informant had been residing separately prior to the occurrence. He further deposed that on the date of the incident, Jagdish was not present at his house and was working as a labourer in Delhi. He further deposed that the dead bodies of the children were recovered from a well situated approximately 700 meters towards the east of the village. He further deposed that at about 6:00 A.M., Chandrabhan telephonically informed Hriday Ram, the younger brother of the witness, that Pushpa had fallen into the well. Thereafter, the witness along with several villagers proceeded to the spot and noticed a torch switched on inside the well. He further deposed that Pushpa was seen standing in the water while holding the body of Shani in her lap. Thereafter, with the aid of a rope and ladder, the villagers descended into the well and brought out Pushpa along with the dead bodies of both the children. He further deposed that upon being questioned, Pushpa informed them that both the children had gone there to ease themselves and accidentally fell into the well, whereupon she also jumped into the well in an attempt to save them, but failed. He further deposed that his father was the first person to inform the police regarding the incident. He further deposed that he had never seen accused Surendra visiting or leaving the house of Jagdish and Pushpa. He further deposed Jagdish returned on the next day after the occurrence. He further deposed that he was unaware of any conversation that had taken place between Jagdish and Pushpa regarding the incident and that he himself had no such discussion with Jagdish. At this stage, the witness was declared hostile before the trial court.

18. **During cross-examination**, he deposed that there was no toilet in the house of Jagdish and, therefore, the family members used to go outside for easing themselves. He further deposed that Shani, aged about two and a half years, was unable to walk properly and generally crawled on his knees. He further deposed that the house of Jagdish was situated at a distance of about 50-60 meters from the house of Surendra. He denied having seen Surendra visiting Pushpa. He further deposed that he was unaware of what Pushpa had told Jagdish regarding the occurrence, though he admitted that Pushpa had narrated the incident to Jagdish. He further deposed that Surendra did not come to the place of occurrence. He denied the suggestion that he had colluded with the accused persons and was deposing falsely. He further deposed that litigation was pending between the families of Jagdish and Surendra and, on account thereof, the family members of Surendra did not come to the place of occurrence. He further deposed that he had neither heard nor was aware of any conversation which had taken place between Jagdish and Pushpa in relation to the incident

19. **PW-3 Hriday Ram Yadav**, brother of Jagdish Yadav, deposed that on the morning following the occurrence he received information from village resident Chandrabhan that accused Pushpa had fallen into the village well. Upon reaching the spot, he found Pushpa standing in water inside the well while the bodies of deceased children Priya and Shani were recovered therefrom with the help of villagers. He further deposed that two days after the occurrence, Jagdish Yadav returned from Delhi and when he questioned Pushpa regarding the occurrence, she disclosed before family members that she had developed illicit relations with co-accused Surendra Verma and that on the intervening night of 09/10.09.2010, deceased Priya had seen them in a compromising position and threatened to disclose the same, whereafter, both children were thrown into the well.

20. **During cross-examination**, he admitted that prior disputes and litigations existed between the family of accused Surendra Verma and the family of the informant in relation to a quarrel

concerning water from a hand-pump, due to which relations between the families were strained. He further admitted that he had not personally witnessed the occurrence and that Pushpa had initially informed villagers that the children accidentally fell into the well while going for easing themselves and that she entered the well in an attempt to save them. He deposed that the informant Jagdish Yadav reached the village from Delhi, two days after the occurrence and the FIR was thereafter lodged. He further deposed that the deceased children's bodies were recovered from a well situated near bushes and open fields where villagers generally went to ease themselves, and admitted that Pushpa's house had no toilet facility. He further deposed that although he had heard allegations regarding illicit relations between Pushpa and Surendra Verma, he had never personally seen them together in any compromising situation. He denied the suggestion that due to prior enmity and suspicion, a false case had been fabricated against the accused persons.

21. PW-4 Suresh Chandra, deposed that Priya, aged about 8 years, and Shani, aged about 3 years, were murdered on 10.09.2010. He further deposed that the panchayatnama of the dead bodies of both the children was prepared at about 11:00 A.M. in the presence of Inspector Ram Prasad Verma, Ram Jag Yadav, Ram Ji Yadav and Pushpa Devi. He further deposed that the dead bodies were recovered from a well overgrown with bushes, situated about 500-600 meters towards the east of the village. He further deposed that on 13.09.2010, the Investigating Officer recovered a red three-cell torch having a black thread tied to it from the said well. He verified and proved the recovery memo of the torch before the Trial Court, which was marked as Ext. Ka-2. He further deposed that the Investigating Officer had also taken photographs of the said well, which were marked as Material Exts. 1 and 2.

22**. During cross-examination**, he deposed that he had appended his signatures on Ext. Ka-2 at the police station and that the time of recovery had not been mentioned therein. He further deposed that he had signed the panchayatnama while being at his residence. He denied the suggestion that no signatures were obtained at the place of occurrence and that the documents had been signed only at the police station.

23. **PW-5 Ram Prasad Yadav**, that the dead bodies of deceased children Priya and Shani were recovered from a well situated towards the eastern side of the village with the assistance of villagers. He further deposed that inquest proceedings of the dead bodies were conducted in his presence at the house of Mr. Yadav, father of complainant Jagdish Yadav, wherein Pushpa Devi was also present after being taken out from the well. The witness identified his signatures upon the panchayatnama prepared during the inquest proceedings.

24. **During cross-examination**, he deposed that the panchayatnama proceedings commenced around 11:00-12:00 noon and concluded within approximately ten minutes. He further deposed that he was not aware whether the Investigating Officer had mentioned the exact time in the panchayatnama or not. He further deposed that at the relevant time he had informed only that the deceased children had fallen into the well and had not disclosed to anyone that they had been murdered and thrown therein. He further deposed that such allegation was being made by him for the first time before the Court. He also denied the suggestion that his signatures were not obtained at the spot and clarified that the same were not made at the police station.

25. PW-6 Dr. R. Dhirendra, District Medical Officer, Sultanpur Hospital, deposed that on 10.09.2010 he was posted as medical officer at District Hospital, Akbarpur, Ambedkar Nagar. He further deposed that on the same he conducted the post-mortem examination of deceased Priya′s body at around 2:10 PM. On external examination he found, both the eyes and mouth were closed, rigor mortis had disappeared from the upper body and was present in the lower part and foam was oozing out of the nose. Following ante-mortem injuries were found on the body of the deceased:

- **Injury No. 1-** Abrasion measuring 0.5 cm X 0.3 cm on the upper part of the right eye.
- **Injury No. 2-** Abrasion measuring 0.3 cm X 0.2 cm on the left side of the face, just below the left eye.

On internal examination, he found that the brain was congested and a foreign body was present in the windpipe. Both lungs were found filled with water. The right chamber of the heart was half-filled with dark-coloured blood. The stomach contained approximately 50 ml of water along with a foreign body, namely weeds. The small intestine contained stool and semi-digested food, while the large intestine contained stool. The liver, spleen and kidneys were found congested. The gall bladder was full and the urinary bladder was found half-filled. He deposed that at the time of the autopsy, body was one day old and in his opinion, the death was likely caused by asphyxia resulting from drowning. He verified and proved the post-mortem report before the trial court, which is marked as Ext. Ka-3.

26. On the same day, at around 2:45 PM, he also conducted the post-mortem examination on the body of Shani, and on external examination he found that the body was approximately one day old, both the eyes and mouth were closed, foam was oozing out from nose, rigor mortis had disappeared from the upper extremities and remained in the lower extremities. He found the following ante-mortem injuries:

- Injury No. 1: Abrasion measuring 0.5 cm X 0.3 cm on the right upper eyelid
- Injury No. 2: Abrasion measuring 0.5 cm X 0.3 cm on the left upper eyelid
- Injury No. 3: Abrasion measuring 1.2 cm X 0.5 cm on the tip of the nose

On internal examination, he found the brain to be congested and a foreign body present in the windpipe. Both lungs were filled with water. The right chamber of the heart was found half-filled with dark-coloured blood. The stomach contained a foreign body along with approximately 25 ml of fluid. Stool, fluid and gas were present in the small intestine, while stool was found in the large intestine. The gall bladder was full and the urinary bladder was half full. The liver, spleen and kidneys were also found congested.

27. In the opinion of the doctor, the cause of death was asphyxia due to drowning. He duly proved and verified the post-mortem report before the Trial Court, which was marked as Ext. Ka-4. He further deposed that it was possible that both the deceased had died during the night intervening 10.09.2010. He further deposed that the debris found on the bodies of the deceased could have adhered thereto as the bodies were recovered in a face-down position in a well surrounded by bushes, from where such debris might have come.

28. **During cross-examination**, the witness deposed that rigor mortis generally spreads throughout the entire body within 24 hours of death and ordinarily subsides within 48 hours. He further deposed that rigor mortis had started subsiding from the head region of the deceased, which, according to him, is a condition usually found after about 24 hours of death. He further deposed that if bushes were present inside the well, it was possible that the injuries found on the bodies of the deceased could have been caused while falling into the same. He further deposed that if there was water in the well, the possibility of the deceased having died due to falling into the well could not be ruled out. He further deposed that the deceased could have died at any time prior to 2:00 PM on 09.09.2010.

29. **PW-7 Vimal Kumar Singh**, Crime Branch, Lucknow, deposed that on 13.09.2010 he was posted as Station House Officer at Police Station Akbarpur, District Ambedkar Nagar. On the said date, complainant Jagdish Prasad Yadav submitted a written report alleging that on 10.09.2010 his wife Pushpa and co-accused Surendra Verma, with whom she allegedly had illicit relations, had murdered his daughter Priya aged about 8 years and son Shani aged about 3 years by throwing them into a nearby well. He further deposed that n the basis of the said written report, Case Crime No. 921 of 2010 under Sections 302/201 IPC was registered and investigation was taken up by him. He further deposed that prior information regarding recovery of the bodies from the well had already been entered on 10.09.2010, as per the information given by Mr. Yadav (father of the complainant), and the inquest proceedings were conducted by SI Shyam Lal, thereafter the bodies were sent for post-mortem examination. He further deposed that during investigation he prepared case diaries, inspected the place of occurrence, prepared the recovery memo of the torch recovered from the well and recorded statements of witnesses. He further deposed that accused Pushpa Devi was arrested and her statement was recorded wherein she allegedly confessed her guilt. Thereafter, statements of witnesses including Ram Prasad, Suresh Yadav, Chandrabhan Yadav, Arvind Kumar Verma and independent witness Lallu Yadav were recorded. He further deposed that after completion of investigation, charge-sheet was submitted against accused Pushpa Yadav and Surendra Verma. He verified and proved the recovery memo, site plan and charge sheet and prepared by him before the trial court, which were marked as Ext. Ka-2, Ext. Ka-5 and Ext. Ka-6 respectively.

30. **During cross-examination**, he admitted that he had not mentioned the time of commencement and conclusion of investigation proceedings in the case diary. He further admitted that the time of recovery of the torch from the well was also not mentioned in the recovery memo. He also admitted that no witness had informed him that the children were murdered and thereafter thrown into the well. He deposed that no inquest report contained the time of commencement or conclusion of the inquest proceedings. He denied the suggestion that no investigation was conducted at the spot and that all proceedings were completed while sitting at the police station.

31. **PW-8 Ram Karan Nishad**, Head Moharrir, deposed that on 13.09.2010 he was posted at Police Station Akbarpur and on the basis of the written report submitted by the complainant, he registered the check FIR and prepared GD entry No. 39 at 16:10 hours. He proved the check FIR and GD entry as Ext. Ka-7 and Ext. Ka-8 respectively. He identified the handwriting and signatures of SI Shyam Lal on both the panchyatmanas which were marked as Ext. Ka9 and Ext. Ka-10; sample seals marked as Ext. Ka-11 and Ext. Ka-15, sketch of dead bodies marked as Ext. Ka-12

and Ext Ka-16, challan lash marked as Ext. Ka-13 and Ext Ka-17, letter to CMO marked as Ext. Ka- 14.

32. **During cross-examination**, he deposed that the CO office was situated at a distance of about two kilometres from the police station and post used to be sent daily from the police station to the CO office. He admitted that no date was mentioned below the signature of the CO on the check FIR and that preparation of the check report may have taken about 20-25 minutes. He further admitted that the inquest report did not mention the time of commencement or conclusion of the proceedings and that the original GD was not produced before the Court. He denied the suggestion that the FIR was ante-timed and ante-dated.

Court Analysis:

Evidentiary value of Extra-Judicial Confession:

33. The principal circumstance relied upon by the prosecution against accused-appellants is the alleged extra-judicial confession said to have been made by accused Pushpa before PW-1 Jagdish Yadav after his return from Delhi. According to PW-1, accused Pushpa disclosed before him that deceased Priya had seen accused Pushpa and co-accused Surendra Verma in a compromising position and threatened to disclose the same, whereafter both the accused persons threw the children into the well and thereafter Pushpa herself entered the well and drowned Priya.

34. This Court finds that the aforesaid circumstance, which forms the very foundation of the prosecution case, suffers from serious legal and factual infirmities.

35. At the outset, it is noteworthy that the written report and the FIR were admittedly lodged on 13.09.2010, i.e., three days after the occurrence. However, neither in the written report nor in the check FIR is there any clear recital that accused Pushpa had made any specific extra-judicial confession before PW-1 in the manner subsequently narrated before the Court. The prosecution story regarding confession has substantially improved during oral deposition before the Trial Court. The alleged confession, which constitutes the core incriminating circumstance against the accused-appellants, thus emerges for the first time during trial. Such material improvement strikes at the root of the prosecution case.

36. In this regard, learned counsel for the appellants has rightly placed reliance upon ***Shailendra Rajdev Pasvan v. State of Gujarat, (2020) 14 SCC 750***, wherein the Hon′ble Supreme Court held that where no reference to an extra-judicial confession is made in the FIR and the same surfaces subsequently during evidence, such circumstance becomes doubtful, particularly when material contradictions exist regarding the manner and circumstances in which the alleged confession was made.

37. Further, the testimonies of the prosecution witnesses themselves create serious doubt regarding the existence and manner of the alleged confession. PW-2 Ram Teerath Yadav specifically deposed that accused Pushpa merely informed the villagers that the children had accidentally fallen into the well and that she herself had jumped inside in an attempt to save them.

He further categorically stated that he had no knowledge regarding any conversation which allegedly took place between PW-1 and accused Pushpa concerning the incident.

38. Contrary thereto, PW-3 Hriday Ram Yadav deposed that accused Pushpa allegedly confessed before the family members that she had illicit relations with accused Surendra Verma and that both children were thrown into the well after deceased Priya witnessed them in a compromising condition.

39. Thus, there exists a material contradiction between the prosecution witnesses themselves with regard to the very existence, manner and audience of the alleged confession. One witness denies knowledge thereof altogether, whereas another witness claims that the confession was made before family members collectively. Such contradictions strike at the root of the prosecution case and render the alleged confession wholly unsafe to rely upon.

40. Furthermore, the learned Trial Court, while relying upon the alleged extra-judicial confession, failed to appreciate that the prosecution witnesses themselves were not consistent regarding the manner, timing and audience of the alleged confession. The Trial Court proceeded as if the confession stood conclusively proved, despite the fact that PW-2 had specifically denied knowledge of any such confession whereas PW-3 alleged that the same was made before the family members collectively. The Trial Court further failed to consider that no such confession finds mention either in the written report or in the earliest version of the prosecution case, thereby rendering the subsequent oral improvement wholly doubtful.

41. The law regarding extra-judicial confession is no longer res integra. Learned A.G.A. has placed reliance upon ***Sahoo v. State of U.P., AIR 1966 SC 40***, to contend that in the present case extra-judicial confession should be treated as reliable evidence. However, a careful reading of the said judgment itself reveals that the Hon'ble Supreme Court drew a distinction between admissibility and evidentiary weight of such confession. The Court categorically observed that such confessional statements are often utterances of a disturbed or confused mind and before acting upon the same, the exact words used by the accused must be proved by cogent evidence. The Court further held that prudence and justice demand that such evidence ordinarily should not form the sole basis of conviction and may at best be used as a corroborative piece of evidence.

42. In the present case, the alleged confession neither inspires confidence nor receives corroboration from independent evidence. No independent witness has supported the prosecution version regarding such confession. Even the medical evidence does not conclusively support homicidal death, rather PW-6 admitted that possibility of accidental drowning could not be ruled out. Thus, the alleged confession remains wholly uncorroborated.

43. Apart from the above, this Court further finds that the alleged extra-judicial confession was not specifically put to accused Pushpa during her examination under Section 313 Cr.P.C. The object and scope of Section 313 Cr.P.C. is not merely procedural but substantive in nature and is founded upon the principles of natural justice embodied in the maxim audi alteram partem. The provision casts a mandatory duty upon the Court to put every incriminating circumstance appearing

in the prosecution evidence to the accused so as to afford him/her an effective opportunity of explanation.

44. In this regard, learned counsel for the appellants has rightly placed reliance upon the judgment of the Hon'ble Supreme Court in ***Sujit Biswas v. State of Assam, (2013) 12 SCC 406***, wherein it was held that circumstances not put to the accused under Section 313 Cr.P.C. must be excluded from consideration. Similar principles were reiterated in ***Indrakunwar v. State of Chhattisgarh, 2023 SCC OnLine SC 1364***, wherein it was held that the Court is obligated to put all incriminating circumstances to the accused and omission thereof causes serious prejudice to the defence.

45. In the present case, since no specific question regarding the alleged extra-judicial confession was put to accused Pushpa under Section 313 Cr.P.C., the same cannot legally be read against her.

46. Therefore, considering:

(i) absence of clear recital regarding confession in the FIR,

(ii) material improvements during trial,

(iii) contradictions between PW-2 and PW-3,

(iv) lack of independent corroboration,

(v) failure to put such incriminating circumstance to accused Pushpa under Section 313 Cr.P.C.,

47. This Court is of the considered opinion that the alleged extra-judicial confession is wholly unreliable and unsafe to form the basis of conviction.

Burden of Proof and Applicability of Section 106 of the Evidence Act:

48. Learned A.G.A. has submitted that both the deceased children were last seen in the company of accused Pushpa and that accused Pushpa herself was found inside the well from where the bodies of the deceased children were recovered. It has further been argued that since the occurrence had taken place during night hours and the relevant facts were especially within the knowledge of accused Pushpa, the burden lay upon her under Section 106 of the Indian Evidence Act to explain the circumstances in which the children died. According to learned A.G.A., failure of the accused to furnish satisfactory explanation constitutes an additional incriminating circumstance against her.

49. Per contra, learned counsel for the appellants has submitted that Section 106 of the Evidence Act cannot be invoked to relieve the prosecution of its initial and primary burden of proving the guilt of the accused beyond reasonable doubt. It has been argued that accused Pushpa

had consistently offered explanation that the children had gone for easing themselves near the well, accidentally fell therein and that she herself jumped into the well in an attempt to save them. It has further been submitted that unless the prosecution first establishes a complete chain of incriminating circumstances, adverse inference under Section 106 cannot be drawn against the accused.

50. The law relating to burden of proof in criminal trials is well settled. Section 101 of the Indian Evidence Act, 1872 embodies the cardinal principle of criminal jurisprudence that the burden always lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt. Section 106 of the Evidence Act, 1872 is only an exception to the aforesaid general rule and cannot be interpreted so as to shift the primary burden of proving guilt upon the accused.

51. In this regard, learned counsel for the appellants has rightly placed reliance on ***Shambu Nath Mehra v. State of Ajmer, (1956) 1 SCC 337***, wherein it was categorically held that Section 106 is not intended to relieve the prosecution of its duty to prove the guilt of the accused. The Hon′ble Supreme Court observed that the provision applies only to such exceptional facts which are especially and pre-eminently within the knowledge of the accused and which it would be impossible or disproportionately difficult for the prosecution to establish. The Hon′ble Supreme Court further cautioned that Section 106 cannot be construed in a manner which would result in placing the burden upon the accused to prove his innocence. This principle squarely applies to the facts of the present case.

52. In the instant matter, the prosecution has itself attempted to establish the occurrence through alleged direct and circumstantial evidence by relying upon motive, extra-judicial confession and surrounding circumstances. The prosecution case is not one where the facts were exclusively incapable of being proved except through the accused. Rather, the prosecution itself examined witnesses in support of its own version regarding the occurrence. Therefore, once the prosecution undertook the burden of proving the occurrence through its own evidence, it cannot invoke Section 106 merely to overcome deficiencies in the prosecution case.

53. In this regard, reliance placed by learned counsel for the appellants upon ***Murlidhar v. State of Rajasthan, (2005) 11 SCC 133***, is also apposite. In the said case, the Hon′ble Supreme Court held that where the prosecution itself proceeds on the footing that there are eyewitnesses to the occurrence, Section 106 of the Evidence Act cannot subsequently be invoked to sustain conviction when the prosecution evidence itself suffers from contradictions and improbabilities. The Apex Court held that the prosecution must first establish foundational facts before any burden can shift upon the accused.

54. Similarly, reliance placed by the learned counsel for the appellant upon ***Nupur Talwar (Dr.) v. State of U.P., 2017 SCC OnLine All 2222***, is also applicable to the present case. The Court therein held that Section 106 cannot be utilized to fill up lacunae in the prosecution case and that the prosecution must independently establish the chain of circumstances before adverse inference can be drawn against the accused.

55. The aforesaid principles have recently been reiterated by the Hon'ble Supreme Court in ***Nagendra Sah v. State of Bihar, (2021) 10 SCC 725 and Anees v. State (NCT of Delhi), (2024) 15 SCC 48***, wherein it was held that failure of the accused to explain circumstances under Section 106 may at best provide an additional link only when the prosecution has otherwise succeeded in establishing a complete chain of incriminating circumstances.

56. In the present case, the foundational facts themselves remain doubtful. The prosecution version initially was that the children accidentally fell into the well and accused Pushpa had entered the well in an attempt to save them. PW-2 specifically deposed that accused Pushpa informed villagers that the children had accidentally fallen into the well and she herself had jumped inside to save them. Even according to prosecution witnesses, accused Pushpa was found alive inside the well in the morning and was rescued by villagers. The conduct attributed to accused Pushpa is not wholly inconsistent with the defence version.

57. Furthermore, The learned Trial Court erred in shifting the burden upon the accused-appellants without the prosecution first discharging its primary burden of proving the foundational facts beyond reasonable doubt. The Trial Court invoked the conduct of accused Pushpa being found inside the well as an incriminating circumstance, while failing to appreciate that accused Pushpa had consistently offered an explanation that she had entered the well in an attempt to save the children after they accidentally fell therein. In absence of a complete and cogent chain of incriminating circumstances, adverse inference under Section 106 of the Evidence Act could not have been drawn against the accused-appellants

58. Thus, in absence of a complete and unimpeachable chain of circumstances, merely because accused Pushpa was present inside the well along with the deceased children would not by itself be sufficient to invoke Section 106 of the Evidence Act so as to shift the burden of proof upon her. The prosecution must stand on the strength of its own evidence and cannot derive support from the weakness of the defence.

Delay in Lodging of FIR

59. Learned counsel for the accused-appellants has submitted that the FIR in the present case was lodged after an inordinate and unexplained delay of approximately three days from the date of occurrence and the said delay materially affects the credibility and spontaneity of the prosecution case. It has been argued that the occurrence allegedly took place during the intervening night of 09/10.09.2010, whereas the FIR came to be lodged only on 13.09.2010 after sufficient time for deliberation and consultation.

60. Per contra, learned A.G.A. has submitted that the delay stands sufficiently explained as PW-1 Jagdish Yadav was residing in Delhi and the FIR came to be lodged after his return to the village.

61. Admittedly, the dead bodies of the deceased children were recovered from the well on the morning following the occurrence itself. The prosecution evidence further reveals that police authorities were informed immediately thereafter and inquest proceedings were conducted on the

same day. Thus, the investigating machinery had already been set into motion and police had reached the spot at the earliest point of time.

62. At this juncture, it would be apposite to notice the distinction between proceedings contemplated under Section 174 Cr.P.C. and registration of a First Information Report under Section 154 Cr.P.C. The object of an inquest proceeding under Section 174 Cr.P.C. is confined to ascertaining the apparent cause of death and the nature of injuries found on the body of the deceased. Such proceedings are merely preliminary in character and do not constitute investigation into a cognizable offence in the strict legal sense. An inquest report is not substantive evidence and cannot be treated as a substitute for a promptly lodged FIR where allegations of homicidal death are involved.

63. In the present case, it is admitted position that immediately after recovery of the dead bodies, police authorities were informed and inquest proceedings were conducted on the very date of occurrence itself. Therefore, the prosecution was under a corresponding obligation to satisfactorily explain as to why, despite police intervention at the earliest point of time and despite availability of family members at the spot, no FIR alleging commission of murder came to be lodged until after lapse of approximately three days i.e. only after PW-1 returned from Delhi.

64. The aforesaid circumstance assumes further significance in view of the material inconsistencies appearing in the testimonies of the prosecution witnesses regarding the return of PW-1, the alleged extra-judicial confession and the subsequent lodging of the FIR.

65. PW-1 Jagdish Yadav, in his deposition, has not specifically stated the exact date on which he returned from Delhi. He merely stated that on the third day after the occurrence he took accused Pushpa into confidence and thereafter she allegedly made confession before him regarding the incident, pursuant to which the FIR came to be lodged.

66. However, PW-2 specifically deposed that PW-1 returned from Delhi on the second day after the occurrence, i.e. on 12.09.2010 and PW-3 has also stated that PW-1 returned on the second day after the occurrence, and thereafter they went to the police station for registration of the FIR on the same day itself.

67. Thus, according to PW-2 and PW-3, the FIR should have been lodged immediately after arrival of PW-1, whereas according to PW-1, the FIR came to be lodged only after accused Pushpa allegedly made confession before him after he took her into confidence.

68. This creates a serious inconsistency regarding the very genesis and development of the prosecution case because if, according to PW-2, they had immediately left for lodging the FIR upon arrival of PW-1, then the prosecution version regarding the alleged extra-judicial confession having taken place prior to registration of the FIR becomes doubtful.

69. In other words, the prosecution has failed to clearly establish:

(i) the exact date of arrival of PW-1 from Delhi;

(ii) the exact date and time of lodging of FIR;

(iii) the point of time at which the alleged confession was made; and

(iv) whether the FIR was lodged before or after the alleged confession.

70. These contradictions are not minor discrepancies arising out of lapse of memory, but go to the very root of the prosecution story and materially affect its credibility.

71. Furthermore, the learned Trial Court, though noticing that PW-1 was residing in Delhi and had returned subsequently, failed to properly appreciate the significance of the delay in lodging the FIR. It failed to consider that the inquest proceedings themselves were admittedly initiated by Shri Yadav, father of PW-1, on the very date of occurrence. However, despite availability of family members and despite police intervention at the spot itself, no FIR was lodged immediately.

72. It is a settled principle of criminal jurisprudence that prompt lodging of FIR lends assurance to the prosecution case as it minimizes the possibility of deliberation, embellishment and subsequent improvement. Conversely, where there is substantial delay and the prosecution story undergoes material changes during the intervening period, the Court is required to scrutinize the prosecution evidence with greater caution.

73. In the facts of the present case, the possibility of consultation, deliberation and gradual development of the prosecution story during the intervening period cannot be safely ruled out.

Appreciation of Evidence Qua Accused-Appellant Surendra

74. So far as accused-appellant Surendra is concerned, this Court finds that the prosecution has failed to establish any independent incriminating circumstance conclusively connecting him with the commission of the alleged offence.

75. Admittedly, there is no direct evidence against accused-appellant Surendra. No prosecution witness has deposed having seen him near the place of occurrence during the relevant time. There is also no evidence establishing that the deceased children were last seen alive in his company. No recovery, forensic material or scientific evidence has been brought on record connecting accused-appellant Surendra with the alleged occurrence.

76. The prosecution primarily sought to implicate accused-appellant Surendra on the basis of alleged illicit relationship with accused Pushpa and the alleged extra-judicial confession. However, as already discussed hereinabove, the alleged motive itself has not been conclusively established by reliable and independent evidence. Similarly, the alleged extra-judicial confession suffers from material contradictions, improvements and inherent improbabilities and does not inspire confidence.

77. This Court further finds that the learned Trial Court placed undue reliance upon the statement of accused Pushpa recorded under Section 313 Cr.P.C., wherein she alleged that accused-

appellant Surendra had thrown the children into the well. However, such statement of a co-accused cannot be treated as substantive evidence against another accused person. The statement under Section 313 Cr.P.C. is intended only to provide an opportunity to the concerned accused to explain incriminating circumstances appearing against him or her and cannot independently form basis for conviction of a co-accused in absence of legally admissible corroborative evidence.

78. The prosecution witnesses themselves admitted existence of prior disputes and litigations between the families, thereby rendering possibility of false implication incapable of being completely ruled out.

79. Thus, in absence of any independent, cogent and reliable evidence connecting accused-appellant Surendra with the commission of offence, this Court is of the considered view that the prosecution has failed to prove the charges against him beyond reasonable doubt. Mere suspicion, however grave, cannot substitute proof beyond reasonable doubt.

Medical and Forensic Evidence vis-A-vis Prosecution Theory of Homicidal Drowning:

80. PW-6 Dr. Dhirendra, who conducted the post-mortem examination upon the bodies of both deceased children, opined that death had occurred due to asphyxia resulting from drowning. However, the medical evidence merely establishes the cause of death and not necessarily the manner of death. In forensic jurisprudence, a distinction always exists between "cause of death" and "manner of death". While the former relates to the physiological reason leading to death, the latter concerns whether the death was homicidal, suicidal, accidental or natural. In the present case, although drowning stands medically established as cause of death, the prosecution was still required to independently establish through reliable evidence that the drowning was homicidal in nature.

81. Significantly, except minor abrasions near the eyes and nose, no ante-mortem injuries suggestive of violent assault, forcible restraint, throttling, smothering or struggle were found on the bodies of either deceased child. No nail marks, grip marks, contusions, abrasions on wrists, defensive injuries or signs of physical resistance were noticed during post-mortem examination.

82. The doctor himself admitted during cross-examination that the abrasions found upon the bodies could occur due to contact with bushes or rough surfaces while falling into the well. He further admitted that if water was present in the well, possibility of accidental fall resulting in drowning could not be ruled out.

83. The prosecution version specifically alleges that deceased Priya had initially survived after falling into the well and was thereafter forcibly submerged in water by accused Pushpa. However, if such forcible drowning had actually taken place, particularly involving conscious and resisting children, some corresponding signs of physical struggle or resistance would ordinarily be expected upon the bodies. In cases of homicidal drowning, forensic indicators such as struggle injuries, defensive marks, bruising caused by restraint or signs of forcible immersion often assume evidentiary significance. The complete absence of such injuries materially weakens the prosecution theory.

84. The learned Trial Court, while accepting the prosecution version of forcible drowning, failed to properly appreciate this important forensic aspect. The Trial Court proceeded on presumptions unsupported by medical science and failed to consider that the medical evidence did not conclusively corroborate the prosecution theory regarding forcible submersion and homicidal drowning.

85. It is a settled principle of criminal jurisprudence that where medical evidence is equally consistent with two possible views, one pointing towards guilt and the other towards innocence, the view favourable to the accused must ordinarily be adopted. Medical evidence may corroborate or contradict ocular evidence, but where the prosecution case itself rests substantially upon circumstantial evidence, inability of medical evidence to conclusively support the prosecution theory assumes greater significance.

86. In the present case, the medical and forensic evidence does not conclusively establish homicidal drowning and fails to furnish reliable corroboration to the prosecution case. On the contrary, the possibility of accidental drowning has not been effectively ruled out by the prosecution beyond reasonable doubt.

Failure to Establish Complete Chain of Circumstances:

87. Learned counsel for the accused-appellants has submitted that the present case rests entirely upon circumstantial evidence and the prosecution has failed to establish a complete and unbroken chain of incriminating circumstances pointing only towards the guilt of the accused-appellants. In support of the aforesaid contention, reliance has been placed upon the judgment of the Hon'ble Supreme Court in Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116.

88. The Hon'ble Supreme Court in the aforesaid judgment authoritatively laid down that in a case based upon circumstantial evidence:

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

(ii) the circumstances must be consistent only with the hypothesis of the guilt of the accused;

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

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

(v) there must be a complete chain of evidence so as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused.

89. The aforesaid principles constitute the settled foundation of criminal jurisprudence governing cases resting upon circumstantial evidence.

90. In the present case, the prosecution seeks to establish guilt of the accused-appellants primarily on the basis of:

(i) alleged illicit relationship between accused Pushpa and co-accused Surendra Verma;

(ii) alleged extra-judicial confession;

(iii) presence of accused Pushpa inside the well;

(iv) alleged last-seen circumstance; and

(v) subsequent conduct of the accused persons.

91. However, upon careful scrutiny of the evidence available on record, this Court finds that the prosecution has failed to conclusively establish even a single incriminating circumstance beyond reasonable doubt, much less a complete chain excluding every hypothesis of innocence.

92. So far as the alleged motive relating to illicit relationship is concerned, the same remains wholly unsubstantiated by independent evidence. None of the prosecution witnesses claimed to have personally seen accused Pushpa and Surendra Verma in any compromising position. The prosecution case in this regard rests merely upon suspicion and hearsay allegations. Mere suspicion, however grave, cannot take the place of legal proof.

93. The next circumstance relied upon by the prosecution is the alleged extra-judicial confession made by accused Pushpa. However, as already discussed hereinabove, the said confession suffers from serious contradictions and inherent improbabilities. The confession does not find clear mention in the FIR; there are material inconsistencies regarding the time and manner in which it was allegedly made; and even the prosecution witnesses contradict each other on this aspect. Moreover, the alleged confession was not specifically put to accused Pushpa during her examination under Section 313 Cr.P.C. Thus, the said circumstance cannot safely be relied upon.

94. The prosecution has further attempted to rely upon the fact that accused Pushpa was found inside the well along with the deceased children. However, the said circumstance by itself does not conclusively establish guilt. On the contrary, accused Pushpa consistently offered explanation that the children had accidentally fallen into the well while going for easing themselves and that she herself jumped inside in an attempt to save them. PW-2 also supported the said version in his testimony.

95. The last-seen circumstance has also not been proved in accordance with law. No witness has deposed that the deceased children were last seen alive exclusively in the company of both accused-appellants immediately prior to the occurrence. No evidence has been led to establish that the accused persons were seen taking the children towards the well during the relevant time. Thus,

the prosecution has failed to establish proximity of time and place necessary for applying the last-seen theory.

96. It is well settled that last-seen theory is itself a weak type of evidence and can be relied upon only where the time gap between the accused and deceased being last seen together and the occurrence of death is so small that possibility of intervention by any third person is completely excluded. No such circumstance exists in the present case.

97. Furthermore, the FIR itself was lodged after substantial delay and the prosecution story underwent material improvements during the intervening period. The initial version before the villagers and police authorities was admittedly one of accidental drowning. The prosecution version subsequently developed into one of homicidal death after the arrival of PW-1 from Delhi. Such improvements materially weaken the credibility of the prosecution case.

98. Thus, the chain of circumstances sought to be established by the prosecution is neither complete nor incapable of explanation upon any hypothesis other than guilt of the accused-appellants. Several missing links, inconsistencies and alternative possibilities emerge from the evidence on record.

99. In criminal jurisprudence, suspicion, however strong, cannot substitute proof. Unless the chain of circumstances is so complete as to conclusively point towards guilt and exclude every reasonable hypothesis of innocence, conviction cannot be sustained.

100. The learned Trial Court committed manifest error in holding that the chain of circumstances stood fully established, whereas several vital links remained unproved. There was no reliable last-seen evidence against either of the accused-appellants; no independent witness supported the allegation regarding illicit relationship; the alleged motive itself rested merely upon suspicion and hearsay; and the prosecution witnesses admitted existence of prior enmity and litigations between the families. Despite such material deficiencies, the Trial Court proceeded to record conviction on the basis of conjectures and assumptions rather than legally admissible and reliable evidence.

101. Accordingly, this Court is of the considered opinion that the prosecution has failed to establish a complete and unbroken chain of incriminating circumstances against the accused-appellants beyond reasonable doubt.

Conclusion:

102. On cumulative consideration of the entire evidence available on record, this Court finds that the prosecution has failed to establish a complete and unbroken chain of incriminating circumstances against the accused-appellants. The prosecution evidence suffers from material contradictions, improvements and inherent improbabilities. The alleged extra-judicial confession is unreliable, the last-seen circumstance has not been proved and the delay in lodging of the FIR remains inadequately explained.

103. It is a settled principle of criminal jurisprudence that suspicion, however grave, cannot take the place of legal proof. Where two views are possible, the one favourable to the accused must necessarily be adopted. The prosecution must stand upon the strength of its own evidence and cannot derive benefit from weaknesses of the defence.

104. In view of the aforesaid discussion, this Court is of the considered opinion that the findings recorded by the learned Trial Court are not sustainable in the eyes of law and the accused-appellants are entitled to benefit of doubt.

105. Accordingly, both the present appeals are hereby **allowed**. The judgment and order of conviction and sentence passed by the learned Trial Court is **set-aside.**

106. The accused-appellants, Pushpa and Surendra Kumar Verma, are directed to be released forthwith, if not required in any other case. Pending applications, if any, shall stand disposed of.

107. Let a certified copy of this judgment along with the lower court record be transmitted to the court concerned forthwith, and in any case within a period of one week, for compliance.

(2026) 5 ILRA 1258
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 13.05.2026

BEFORE

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

Criminal Appeal No. 1417 of 1988

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

Issue for consideration

Matter pertains to legality of findings in impugned order upon common intention.

Headnotes

Common intention- Indian Penal Code, 1860 - Ss. 302/34, 307/34 and 449- Mere presence at scene of offence -no overt act or participation in assault - insufficient to attract constructive liability- No evidence of prior meeting of minds- pre-arranged plan-medical evidence not supporting prosecution allegation that body was dragged-rendering appellant's presence doubtful- Appellant also shown to be merely a helper of co-accused and a witness in earlier litigation against informant- furnishing possibility of false implication - convicted appellant by mechanically invoking S. 34 without recording findings regarding common intention - Held, common intention cannot be inferred merely from presence or subsequent conduct unconnected with commission of offence-prosecution failed to establish essential ingredients of S. 34 beyond reasonable doubt- Conviction set aside and appellant acquitted. **Appeal allowed.**

Cases Cited

1. Krishna Govind Patil v. State of Maharashtra, AIR 1963 SC 1413
2. Constable 907 Surendra Singh v. State of Uttarakhand, (2025) 5 SCC 433

List of Acts

Indian Penal Code, 1860

List of Keywords

Pre-plan, or premeditation, or pre-consult; prior meetings of minds.

Appearances of parties

Counsel for Appellant(s) : Keshav Sahai, V.p. Singh Kashyap Counsel for Respondent(s) : D.G.A.

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

1. Heard Mr. V.P. Singh Kashyap, learned counsel for the appellant, Mr. G.N. Kanaujiya, learned A.G.A.-I for the State/ respondent and perused the record.

2. This criminal appeal has been filed by accused-appellant, Karan Singh, against the judgment and order dated 09.06.1988 of learned Trial Court passed in Sessions Trial No. 272 of 1987 (State v. Hawai Singh @ Hari Singh and another) arising out of Case Crime No. 94 of 1987, under Sections 449, 302/34, 307/34 IPC, Police Station Tanda, District Rampur.

3. Brief facts of the case as revealed from the written report, Exhibit Ka-1, is that informant Charan Singh, son of Late Rohtash Singh, is resident of Mewla Dharu, Police Station Tanda, District Rampur has written himself the written report, Exhibit Ka-1, and lodged the same at Police Station Tanda, District Rampur. Informant Charan Singh (PW-1) has stated in his written report that "my name is Charan Singh. My father's name is Rohtash Singh. I am resident of Mewla Dharu. My house and house of my uncle, Hawai Singh @ Hari Singh, are situated in front of each other. Between my uncle and my father, there was no cordial relationship. They quarrel even on petty issues by abusing each other. Yesterday, on 14.06.1987 in the morning, my father had gone to Kashipur to get the engine repaired and to take diesel. When he has returned at the house at about 11 P.M. then in the passage, both brothers started abusing each other in respect of old issues. My father, after parking his tractor, climbed on the roof. Behind him, we including myself, my mother Anchali Devi, sisters Bhago Devi, Murti Devi and Sama Kaur have also reached at the roof. Hawai Singh @ Hari Singh bringing a gun from his house and Karan Singh, who is also resident of my village, came to our boundary (gher) and Hawai Singh @ Hari Singh started firing upon my father and upon us in upper direction with intention to kill. He fired two shots, out of which, one hit at the chest of my father and the other hit the hands of my mother. After receiving gunshots, my father fell down. We started taking care of our father then my uncle Hari Singh and Karan Singh by stairs have come on the roof and shot fire on my mother and father. Due to which, they both died on the spot. Then we jumped towards the house of Budda and ran away and saw from the east direction of my house that my uncle was dragging the dead body of my father and Karan Singh was dragging the dead body of my mother through stairs, took them to the house of my uncle. My sisters, Km. Bhago Devi and Sama Kaur, have also received pellets injury. On hearing our cries, people of the

village came out from their houses. We have seen and identified my uncle Hari Singh and Karan Singh in moonlight and in the light of the lamp. I had also told about the incident to my uncle Ram Saroop Singh of Mewla Kala. This written report was written on 15.06.1987 and given to the police on the same day itself.

4. On the basis of the written report, Exhibit Ka-1 dated 15.06.1987, a chik F.I.R. was registered at Case Crime No. 94 of 1987, under Sections 452, 302, 307 IPC, Police Station Tanda, District Rampur by Constable Clerk Gajraj Singh (PW-6). At the time of registration of the F.I.R., S.O. Y.S. Ahlawat (PW-4) was also present at the police station.

5. After registration of the F.I.R., investigation of the case was taken by S.I. Y.S. Ahlawat (PW-4). The Investigating Officer after receiving the information about the incident reached at the place of incident and inspected the same. He found the dead body of Rohtash Singh and Anchali Devi in the house of Hawai Singh @ Hari Singh. On the dictation of the Investigating Officer, S.I. K.K. Verma prepared the panchayatnama, Exhibit Ka-3, of the dead body of the deceased, Rohtash Singh, challan nash, Exhibit Ka-4, diagram of dead body, Exhibit Ka-5, report to CMO, Exhibit Ka-6, letter to RI, Exhibit Ka-7, and he sealed the dead body of the deceased, Rohtash, in cloth and prepared the sealed sample, Exhibit Ka-8. S.I. K.K. Verma also prepared panchayatnama of the dead body of the deceased, Anchali Devi, Exhibit Ka-9, challan nash, Exhibit Ka-10, diagram of the dead body, Exhibit Ka-11, letters to CMO and RI, Exhibits Ka-12 and Ka-13, and also sealed the dead body of deceased, Anchali Devi, in cloth and prepared then sealed sample, Exhibit Ka-14. Thereafter, dead bodies of the deceased, Rohtash Singh and Anchali Devi, were handed to Constable Pratap Singh and Mahendra Singh for autopsy. The Investigating Officer inspected the place of occurrence and prepared the site plan, Exhibit Ka-15. He has also taken bloodstained and simple plaster of cement from the jeena (stairs) and prepared the recovery memo, Exhibit Ka-16. He also took the bloodstained and simple soil from the house of accused, Hawai Singh @ Hari Singh, where the dead bodies of the deceased were found and prepared recovery memo, Exhibit Ka-17. From the roof of the house of the deceased, Investigating Officer also took bricks. Among these bricks, in one brick, there was mark of pellets and on others, there was bloodstains and he prepared recovery memo, Exhibit Ka-18. He also took from the roof, bloodstained and simple maize and prepared Exhibit Ka-19. From the roof of the house of the deceased, five empty cartridges, pellets and buttons (tikli) were taken into possession and fard was prepared as Exhibit Ka-20. From the roof also, broken bangles of the deceased, Anchali Devi, were taken into possession and prepared memo as Exhibit Ka-21. The Investigating Officer also took into possession oil lamp that was kept in the courtyard (aangan), and a fard was prepared as Exhibit Ka-22. Thereafter, the Investigating Officer took accused, Hawai Singh @ Hari Singh, in police custody remand and on pointing out of accused, Hawai Singh @ Hari Singh, recovered a licensee double barrel gun no. 21876, Made in England, that was wrapped in a bag, made of shun, from the sugarcane field of his brother Ram Swaroop about two meters away from the boundary (medh) and prepared recovery memo as Exhibit Ka-23. The Investigating Officer also recovered empty cartridges and licensee gun and sent them to the ballistic expert to send his report, Exhibit Ka-2, showing that empty cartridges were fired from the licensee gun of the accused-Hawai Singh @ Hari Singh.

6. The Investigating Officer Y.S. Ahlawat (PW-4) recorded the statements of informant Charan Singh (PW-1) and other witnesses of the facts and formal witnesses. After completing all the formalities of the investigation, the Investigating Officer submitted charge-sheet, Exhibit Ka-25, against the accused-appellant, Karan Singh and Hawai Singh @ Hari Singh. The injured Km. Sama Kaur and Km. Bhago Devi were sent by the police for their medical examination.

7. Dr. Satyendra Kumar (PW-5) examined Km. Sama Kaur and prepared injury report as Exhibit Ka-26. He found following injuries on the body of Km. Sama Kaur :-

" (i) Solitary gun-shot lacerated wound measuring 0.2 cm x 0.2 cm x muscle deep on front of nose. Margins lacerated, inverted, clotted blood present on wound, no pallet palpate, no blackening or charring seen.

(ii) Solitary gun-shot lacerated wound measuring 0.2 cm x 0.2 cm x muscle deep on right side of face about 3 cm anterior to right ear. Margins lacerated, inverted, clotted blood present on wound. No fresh bleeding present. No blackening and charring seen.

(iii) Gun-shot lacerated wounds (3 in number) on scalp on right side, each measuring 0.2 cm x 0.2 cm x muscle deep, margins inverted, lacerated, clotted blood seen on wound. No fresh bleeding seen. No blackening, tattooing etc. seen."

Dr. Satyendra Kumar (PW-5) also examined the injured Km. Bhago Devi and prepared injury report, Exhibit Ka-27, and found following injuries on her body :-

"(i) Gun-shot lacerated wounds on front of face in except forehead, front of neck, front of chest (upper 1/3), right shoulder and front of right upper arm, each measuring 0.2 cm x 0.2 cm. Some are superficial and some are muscle deep. Depth on chest not measured. No blackening, tattooing seen. Clotted blood present on wounds. Margins inverted, lacerated. No. of wounds 48 (8 on face, 18 on neck, 6 on chest, 6 on right shoulder and upper arm). X-ray advised."

8. Dr. A.K. Garg (PW-7) conducted the post-mortem examination of the dead bodies of deceased, Rohtas Singh and Smt. Anchali Devi, and prepared the post-mortem reports, Exhibit Ka-31. Dr. A.K. Garg (PW-7), on examining the dead body of deceased, Rohtash Singh, found the following ante-mortem injuries on his body :

(i) Fire-arm wound of entry 2 cm x 2 cm x brain cavity deep, communicating to injury no. 2. Injury present over left ear. Blackening, scorching and tattooing present.

(ii) Fire-arm wound of exit 6 cm x 6 cm over right eye communicating to injury no. 1, brain matter protruding out. No blackening and scorching and tattooing present.

(iii) Multiple fire-arm wounds of entry, each 1/3 cm x 1/3 cm x muscle deep on the front of chest in middle in area of 10 cm x 10 cm.

(iv) Multiple fire-arm wounds of entry, each 1/3 x 1/3 cm x muscle deep on the front of left forearm 3 cm. above wrist in the area of 5 cm x 5 cm.

In my opinion, the cause of death was due to shock and haemorrhage as a result of ante mortem injuries."

9. Dr. A.K. Garg (PW-7) also found the following ante-mortem injuries on the dead body of the deceased, Smt. Anchali Devi, and according to Exhibit Ka-32, following ante-mortem injuries were found :

"(i) Fire-arm wound of entry 4 cm x 4 cm on the front of chest on left side lying 4 cm below nipple, lung and heart tissue protruding out. Blackening, scorching and tattooing present.

(ii) Fire-arm wound of entry 3/4 cm x $^{3/4}$ cm on the front of abdomen lying 4 cm. away from umblicus on left side. Blackening, scorching and tattooing present.

(iii) Multiple fire-arm wounds of entry on the outer aspect of left thigh in area of 10 cm x 10 cm, each measuring 1/3 cm x 1/3 cm x muscle deep.

(iv) Multiple fire-arm wound of entry over upper 2/3 of left leg in front, each measuring 1/3 cm x 1/3 cm x muscle deep."

In the injury Nos. 3 and 4 - blackening, scorching and tattooing not present.

In my opinion, the cause of death was due to shock and haemorrhage as a result of ante mortem injuries."

10. Investigating Officer filed the charge sheet, Exhibit Ka-25, in the concerned Magistrate Court having jurisdiction. Since the case was exclusively triable by the Court of Session, learned Magistrate committed the case to the Court of Session.

11. Charges were framed against the accused persons by the learned Trial Court on 15.12.1987 under Section 302 read with 34 IPC, Section 307 read with Section 34 IPC, and also under Section 449 IPC. Accused persons denied the charges and claimed for trial.

12. In support of its case, the prosecution adduced Charan Singh (PW-1) and Km. Bhago Devi (PW-2) as eye-witnesses of the incident; and Ram Aashrey Pandey (PW-3), Y.S. Ahlawat (PW-4), Dr. Satyendra Kumar (PW-5), Gajraj Singh (PW-6), and Dr. A.K. Garg (PW-7) as formal witnesses. Apart from the oral evidence, the prosecution also relied on documentary evidence from Exhibits Ka-1 to Ka-28 in support of its case.

13. After recording the evidence of the prosecution witnesses, the accused persons were examined under Section 313 Cr.P.C. by the Trial Court. In his statement under Section 313 Cr.P.C., accused, Karan Singh, denied all the allegations. He accepted that he is a helper of accused, Hawai Singh @ Hari Singh. The accused-appellant, Karan Singh, has also stated that due to enmity, he was falsely implicated in this case. He also stated that he was a witness in a case between accused Hawai Singh @ Hari Singh and the deceased Rohtash Singh. Due to this reason, he was falsely implicated by the informant in this case.

14. After recording of the evidence of the prosecution witnesses and completing the proceeding of evidence, the learned Trial Court, after hearing the arguments of both the parties, found accused-appellant, Karan Singh, along with accused, Hawai Singh @ Hari Singh, guilty for commission of the crime.

15. Learned Trial Court convicted and sentenced both the accused-appellants under Section 302 read with Section 34 IPC to undergo life imprisonment, and to undergo five years' rigorous

imprisonment for the offence under Section 307 read with Section 34 IPC. The accused-appellant, Karan Singh, was also convicted and sentenced for the offence punishable under Section 449 IPC to undergo five years' rigorous imprisonment. All the sentences were directed to run concurrently.

16. Aggrieved by the judgment and order of conviction and sentence dated 09.06.1988, the accused-appellant has preferred this criminal appeal before this Court.

17. It is worthwhile to mention here that although accused, Hawai Singh @ Hari Singh, and the present appellant, Karan Singh, both were convicted and sentenced by the learned Trial Court vide judgment and order dated 09.06.1988. However, this appeal has been filed only by the present appellant, Karan Singh, therefore, we are adjudicating the present appeal in respect of only appellant, Karan Singh.

18. Learned counsel for the accused-appellant, Karan Singh, has submitted that appellant, Karan Singh, has been falsely implicated in this case. There is no incriminating role assigned by the prosecution against appellant, Karan Singh. The appellant, Karan Singh, has not fired any gunshot, or even has not attacked the deceased persons by any lathi, danda, kick or fist. The appellant, Karan Singh, has not even abused the deceased persons or their family members. The only allegation against the present appellant, Karan Singh, as levelled by the prosecution is that he was present with accused, Hawai Singh @ Hari Singh, at the place of occurrence and, after happening of the incident, as per the allegations of the prosecution, appellant, Karan Singh, dragged the deceased, Anchali Devi, from the roof through stairs to the room of the house of main accused, Hawai Singh @ Hari Singh. However, there is no mark of dragging of the dead body of deceased, Anchali Devi. If, in reality, the present appellant, Karan Singh, could have dragged the dead body of the deceased, Anchali Devi, then in this condition, there were many injuries either on lower part or upper part of the body of the deceased, Anchali Devi. However, there is no injury of this nature by which it could be proved that deceased, Anchali Devi, was dragged from the roof through stairs to the room of the house of the main accused, Hawai Singh @ Hari Singh, by the present appellant.

19. In spite of the above facts, the learned Trial Court has not considered these major and material facts in its findings and reasoning. The prosecution, falsely and wrongly with a view to implicate and harass Karan Singh, has named him in the written report, Exhibit Ka-1, as an accused. The presence of the appellant, Karan Singh, at the place of occurrence at the time of the incident is doubtful. There is no role in the incident committed by the accused-appellant, Karan Singh. The Trial Court has not appreciated the evidence in a proper perspective and legal manner in respect of the accused-appellant, Karan Singh, and wrongly, and against the evidence and settled principles of law, held the accused-appellant, Karan Singh, guilty with the aid of Section 34 IPC. There is no finding in respect of the fact that accused-appellant, Karan Singh, had pre-plan, pre-meditation or pre-consultation with the main accused, Hawai Singh @ Hari Singh, for commission of the crime. Learned Trial Court, without considering these major and material aspects in its judgment and order dated 09.06.1988, and only with the help of Section 34 IPC, wrongly convicted and held the accused-appellant, Karan Singh, guilty without any cogent evidence and against the settled principles of law. In view of the above, the appeal of the appellant, Karan Singh, deserves to be allowed and the judgment and order of conviction and sentence passed by the learned Trial Court dated 09.06.1988 is liable to be set aside in respect of the present appellant, Karan Singh.

20. Per contra, learned A.G.A. appearing on behalf of the respondent-State has vehemently opposed the above arguments of learned counsel for the appellant, Karan Singh. Learned A.G.A. has submitted that the present appellant, Karan Singh, was present with the main accused, Hawai Singh @ Hari Singh, from the beginning of the incident till the end of the incident. Although the appellant, Karan Singh, has not fired any gunshot, nor used any lathi, danda or any other means, but he was present with the main accused Hawai Singh @ Hari Singh at the place of occurrence. After happening of the incident, appellant, Karan Singh, dragged the dead body of deceased, Anchali Devi, from the roof, through stairs, to the room of the house of the main accused, Hawai Singh @ Hari Singh. This fact indicates that the appellant, Karan Singh, was throughout present with the main accused, Hawai Singh @ Hari Singh, and assisted him in removing the dead body of the deceased, Anchali Devi, from the roof to the house of main accused, Hawai Singh @ Hari Singh. This fact is sufficient evidence to hold the appellant, Karan Singh, guilty with the aid of Section 34 IPC for commission of the crime. There is no illegality or perversity in the judgment and order of the learned Trial Court. Learned Trial Court has appreciated the evidence in proper and legal perspective, hence, the criminal appeal of the appellant, Karan Singh, is devoid of merit and deserves to be rejected.

21. In the light of the rival submissions of both the parties and from perusal of the written report, Exhibit Ka-1, it is revealed that according to written report, Exhibit Ka-1, as written by informant Charan Singh (PW-1), it is stated therein that on the date of incident dated 14.06.1987 at 11:00 p.m., Hawai Singh @ Hari Singh had brought his gun from his house and came into the boundary (gher/sahan) of the deceased, Rohtash Singh, with co-accused, Karan Singh. The main accused, Hawai Singh @ Hari Singh, from the boundary (gher) fired in the direction of the roof of deceased, Rohtash Singh aiming him. The shot was fired by main accused Hawai Singh @ Hari Singh which hit Rohtash Singh, his wife Anchali Devi, daughters, Km. Bhago Devi and Sama Kaur. Thereafter, according to prosecution story, main accused Hawai Singh @ Hari Singh with present appellant, Karan Singh, came on the roof of the deceased by stairs. After coming on the roof, Hawai Singh @ Hari Singh again fired shot upon Rohtash Singh and his wife Anchali Devi. Thus, according to the written report, Exhibit Ka-1, there is no role assigned during the happening of the incident to the present appellant, Karan Singh. The only role assigned to appellant, Karan Singh, is that he was present with Hari Singh. After the death of Rohtas Singh and his wife Anchali Devi, appellant, Karan Singh, dragged the dead body of the deceased Anchali Devi from the roof of her house through stairs to the house of the main accused, Hawai Singh @ Hari Singh and Hawai Singh @ Hari Singh dragged the dead body of his elder brother, Rohtash Singh, from the roof using stairs, that is the only role assigned to the present appellant Karan Singh in this case.

22. In this case, only two eye-witnesses have been produced by the prosecution in support of this case. The first eye-witness is informant Charan Singh (PW-1), who is the son of the deceased Rohtas Singh, and the second eye-witness is Km. Bhago Devi (PW-2), who is an injured witness in this case and an eye-witness of the incident and she is also the daughter of the deceased Rohtas Singh and Anchali Devi. From the perusal of the whole evidence of informant Charan Singh (PW-1), who is an eye-witness of the case and was also present at the place of occurrence, when the incident happened, we find that Charan Singh (PW-1) has stated that accused, Karan Singh, is the helper of main accused Hawai Singh @ Hari Singh, whose caste is Dhimar. According to informant Charan Singh (PW-1), main accused Hawai Singh @ Hari Singh, deceased and his family are Jats

by caste. It means that present appellant Karan Singh was a servant-kind of man, who worked with Hawai Singh @ Hari Singh as a servant. From the evidence of informant Charan Singh (PW-1), it is revealed that the main accused, Hawai Singh @ Hari Singh, and deceased, Rohtash Singh, usually and often in a routine manner quarrelled among themselves and usually used to abuse each other. However, there is no statement in the evidence of informant Charan Singh (PW-1) that present appellant, Karan Singh, had abused or quarrelled with deceased, Rohtas Singh, or with his family members at any time. From the perusal of the evidence of the informant Charan Singh (PW-1), we find that it is stated by Charan Singh (PW-1) the same things that were stated in the written report, Exhibit Ka-1. Informant Charan Singh (PW-1) has stated in the same way that Hari Singh had brought his licensee gun from his house and came with Karan Singh. They came to the boundary (gher) of the deceased and Hawai Singh @ Hari Singh fired two gunshots towards his father, mother, and sisters, Km. Bhago Devi and Sama Kaur, aiming the direction of the roof. Those shots hit his father, mother, and sisters, Km. Bhago Devi and Sama Kaur. The shots hit the chest of Rohtas Singh and he fell down. Thereupon, accused persons, Hawai Singh @ Hari Singh and Karan Singh, came on the roof and Hawai Singh @ Hari Singh again fired upon the father and mother of the informant (PW-1) from his gun. Thus, we find that there is no role assigned to the present appellant, Karan Singh, in firing the gunshots. Thereafter, it is stated by this witness that this witness has seen that Hawai Singh @ Hari Singh dragged the dead body of his father and the present appellant, Karan Singh, dragged the body of his mother into the house of Hawai Singh @ Hari Singh, that is the only role assigned to the present appellant, Karan Singh. In his cross-examination, this witness has stated that a case under Section 325 IPC is pending against him and his father, deceased Rohtas Singh, in which appellant, Karan Singh, is a witness.

23. In the same way, the next eye-witness, Km. Bhago Devi (PW-2), who is an injured witness, has stated in her evidence the same things and in the same manner as stated by her brother, informant Charan Singh (PW-1). From the perusal of the evidence of the eye-witness, Km. Bhago Devi (PW-2), we find that this witness has also stated the same facts and things as were stated by informant Charan Singh (PW-1). Thus, we find that the same role has been assigned by this witness, Km. Bhago Devi (PW-2) is that after the death of her mother and father, present appellant, Karan Singh, dragged the dead body of her mother, Smt. Anchali Devi, from the roof through the stairs to the house of Hawai Singh @ Hari Singh.

24. Thus, from the perusal of the written report, Exhibit Ka-1, and the evidence of informant Charan Singh (PW-1) and injured witness Km. Bhago Devi (PW-2), it is revealed that there is only one role assigned to the present accused-appellant, Karan Singh, is that after happening of the incident, appellant, Karan Singh, dragged the dead body of the deceased, Anchali Devi, from the roof through the stairs to the house of the main accused, Hawai Singh @ Hari Singh. The present appellant, Karan Singh, has not recited any insulting words towards deceased, Rohtas Singh, or his family members. The present appellant, Karan Singh, even has not instigated or exhorted the main accused, Hawai Singh @ Hari Singh. The present appellant, Karan Singh, did not have any weapon in his hands, either a firearm or any other weapon like knife, lathi and danda. From the perusal of the prosecution evidence, it is revealed that the present appellant, Karan Singh, has not done any act during the happening of the incident. According to the prosecution story, he was only present with the main accused Hawai Singh @ Hari Singh. Thus, from the perusal of the prosecution evidence, it is revealed that from the beginning of the incident and till the happening of the incident

or in other words, from the beginning of the abusing between main accused, Hawai Singh @ Hari Singh and his brother, deceased Rohtash Singh, and till the death of the deceased Rohtash Singh and his wife Anchali Devi, present appellant, Karan Singh, has not performed any act or overt act in the commission of the crime.

25. This fact is clearly established itself by the statements of the eye-witnesses of the case, informant Charan Singh (PW-1) and injured witness Km. Bhago Devi (PW-2), that Karan Singh did not even use filthy or abusive language towards the deceased and their family members. It is said that he was merely present with the main accused at the place of occurrence and, after happening of the incident, dragged the dead body of the deceased, Anchali Devi, from the roof, through the stairs, to the house of the main accused, Hawai Singh @ Hari Singh, that is the only role assigned to him by the prosecution.

26. According to the prosecution, it is said that present appellant, Karan Singh, is a helper of main accused, Hari Singh. From the evidence of informant, Charan Singh (PW-1), this fact is revealed that a case under Section 325 IPC was pending against the informant Charan Singh (PW-1) and his deceased father, Rohtash Singh, in which present appellant, Karan Singh, was a witness. It appears from the evidence and the above facts that, since the present appellant, Karan Singh, was the helper like servant of main accused, Hari Singh, and he was a witness in a case under Section 325 IPC which was pending against Charan Singh and his deceased father Rohtash Singh, therefore, he was falsely implicated in this case with main accused, Hawai Singh @ Hari Singh, for commission of the alleged crime.

27. Prosecution witnesses, Charan Singh (PW-1), and injured witness, Km. Bhago Devi (PW-2), who are the eye witnesses of the incident, in their statements, stated that after happening of the incident, present appellant, Karan Singh, dragged the dead body of the deceased, Anchali Devi, from the roof, through stairs, to the house of main accused, Hari Singh.

28. Dr. A.K. Garg (PW-7) who conducted the postmortem examination of deceased, Rohtas Singh and Anchali Devi, and prepared the postmortem reports, Exhibit Ka-31 and Ka-32, stated during his cross-examination that if, after receiving a gunshot, the dead body of Anchali Devi is dragged by holding the leg, there will be marks of dragging. If the body is dragged by holding the head, injuries should appear on other parts of the body except the heels. If the dead body is dragged from the stairs by holding the head, and it falls on every step of the stairs, injuries would also be expected on the heels. However, such injuries may not occur because the skin of the heels is too thick. If a dead body is dragged, injuries are generally found on the legs, feet, and palms.

29. Thus, from the perusal of the statement as given by Dr. A.K. Garg (PW-7) in his cross-examination, it is revealed that there is no injury on the dead body of the deceased, Anchali Devi, from which it could conclusively be inferred and proved that dead body of the deceased, Anchali Devi, was dragged from the roof through stairs to the house of main accused, Hari Singh. If the dead body of the deceased, Anchali Devi, would be dragged by present appellant, Karan Singh, then, in this condition, some abrasions and contusions are likely to be caused on the dead body of the deceased, Anchali Devi, however, there is no injury of this nature or kind that could indicate conclusively that the body of the deceased, Anchali Devi, was dragged by present appellant, Karan

Singh, after happening of the incident. Thus, on this point, there is major difference between oral evidence and medical evidence, which makes presence of the present appellant, Karan Singh, at the place of occurrence, highly doubtful.

30. It is also a notable fact that a case under Section 325 IPC was pending against informant Charan Singh (PW-1) and his father, deceased Rohtas Singh, in which present appellant, Karan Singh, was the witness. This fact indicates that this could be a reason of falsely implicating the present appellant, Karan Singh, in the present case. Apart from the above facts, it is also a fact that Karan Singh was the helper of main accused, Hari Singh. This fact also could be a reason to falsely implicate and involve the present appellant, Karan Singh, for commission of the crime. Since the present appellant, Karan Singh, was working as a helper with accused, Hawai Singh @ Hari Singh, that indicates that he was working with him as a servant in his daily routine works. This fact also appears to be a reason and motive for false implication of the present appellant, Karan Singh, in the present case. Generally, in Indian Societal Framework, when any person is found involved in any crime, it is general tendency to implicate also his helper or servant along with owner, employer, or master. From the perusal of the evidence, it appears that because the appellant, Karan Singh, was the helper of Hari Singh and was also a witness against Charan Singh (PW-1) and deceased, Rohtash Singh, under Section 325 IPC, it appears that due to this reason, the present appellant, Karan Singh, was falsely implicated in this case.

31. From perusal of the finding and reasoning of the learned Trial Court, it appears that learned Trial Court has not considered this legal aspect according to the evidence as available on the records that for conviction with the aid of Section 34 IPC, a definite and clear-cut finding must be recorded of this nature by the Court that there was pre-plan, pre-meditation, and pre-consult among the accused persons for the commission of the crime. However, from perusal of the finding and reasoning of the learned Trial Court, we find that there is no finding or reasoning on this legal aspect in the judgment and order of the learned Trial Court. The Trial Court, only on general basis and simply applying the Section 34 IPC without any cogent evidence in respect of pre-plan, pre-meditation, and pre-consult of present appellant, Karan Singh, with main accused, Hawai Singh @ Hari Singh, wrongly held the present appellant, Karan Singh, guilty for commission of the alleged crime.

32. The Constitutional Bench of the Supreme Court, consisting of Four Judges in the case of **Krishna Govind Patil v. State of Maharashtra, AIR 1963 SC 1413**, has held on Section 34 IPC long before in the year 1963 in para 6 that:-

"It is well settled that common intention within the meaning of the section implied a pre-arranged plan and the criminal act was done pursuant to the prearranged plan. The said plan may also develop on the spot during the course of the commission of the offence; but the crucial circumstance is that the said plan must precede the act constituting the offence. If that be so, before a court can convict a person under Section 302, read with Section 34, of the Indian Penal Code, it should come to a definite conclusion that the said person had a prior concert with one or more other persons, named or unnamed, for committing the said offence."

33. Recently, Hon'ble Supreme Court in the case of **Constable 907 Surendra Singh and another v. State of Uttarakhand, (2025) 5 SCC 433**, has held in para 30 that:-

"By now it is a settled principle of law that for convicting the accused with the aid of Section 34IPC the prosecution must establish prior meetings of minds. It must be established that all the accused had pre-planned and shared a common intention to commit the crime with the accused who has actually committed the crime. It must be established that the criminal act has been done in furtherance of the common intention of all the accused."

34. Thus, in the light of the law laid down by the Hon'ble Supreme Court in the cases of **Krishna Govind Patil (supra) and Constable 907 Surendra Singh (supra)** on Section 34 IPC, we find that for conviction of any person under Section 302 read with Section 34 IPC, Court should come to a definite conclusion that said person had prior concern with one or other person, named or unnamed, for committing the said offence. Apart from this, there must be clear-cut evidence on behalf of the prosecution to establish this fact that there was prior meetings of minds between the accused persons for commission of the crime. However, from perusal of the evidence of informant Charan Singh (PW-1) and Km. Bhago Devi (PW-2), we find that the prosecution has not led any evidence of this nature from which it could be established that there was a prior meetings of minds or pre-plan, or pre-meditation, or pre-consult between the present appellant, Karan Singh, with main accused, Hari Singh, for commission of the crime. The finding and reasoning recorded by the learned Trial Court in its judgment and order dated 09.06.1988 is also silent on this legal aspect. There is no discussions or reference about the elements of Section 34 in the finding and reasoning of the Trial Court. Learned Trial Court only on simple ground with the aid of Section 34 IPC held the appellant, Karan Singh, guilty without giving any cogent evidence about this fact that there was no evidence of pre-meditation, pre-plan or pre-consult or meetings of minds between the present appellant, Karan Singh, and main accused Hawai Singh @ Hari Singh for commission of the crime.

35. From the perusal of the whole evidence of prosecution and eye-witnesses, informant Charan Singh (PW-1) and Km. Bhago Devi (PW-2), we find that presence of present appellant, Karan Singh, at the place of occurrence on the date and time of the incident, is highly doubtful and suspicious. Due to above reasons and legal aspects, including the evidence, we are unable to affirm the judgment and order of conviction and sentence passed by the learned Trial Court dated 09.06.1988 in respect of present appellant, Karan Singh. The learned Trial Court has not appreciated the evidence in proper perspective and in legal manner, keeping in mind the legal elements of Section 34 IPC. We find that the Trial Court without cogent evidence and against the settled legal principles of law, has wrongly held the accused-appellant, Karan Singh, guilty for commission of the alleged crime. Due to this reason, judgment and order of conviction and sentence passed by the learned Trial Court dated 09.06.1988 is liable to be set aside in respect of present appellant, Karan Singh.

36. The criminal appeal is **allowed**. Accordingly, we set aside the impugned judgment and order dated 09.06.1988 of conviction and sentence passed against the accused-appellant, Karan Singh, by learned Trial Court in Sessions Trial No. 272 of 1987 (State v. Hawai Singh @ Hari Singh and another) arising out of Case Crime No. 94 of 1987, under Sections 449, 302/34, 307/34 IPC, Police Station Tanda, District Rampur. The appellant is acquitted of the charge under Sections

302/34, 307/34 and 449 IPC. The appellant, Karan Singh, is on bail. He need not surrender. His bail bonds are cancelled and sureties stand discharged. However, he shall comply with the provisions of Section 437-A Cr.P.C.

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

(2026) 5 ILRA 1269
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 19.05.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE PRASHANT MISHRA-I, J.

Criminal Appeal No. 1468 of 1987

Rama Kant **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

Matter pertains to dowry death on account of burn injuries sustained by the deceased in her matrimonial home.

Headnotes

Suicide-Indian Penal Code, 1860- Ss. 302 -Wife found burnt to death in locked store of matrimonial home- husband himself lodging FIR alleging suicide-no eye-witness - three inconsistent motives (dowry harassment, illicit relationship, and deceased's desire for separate living)- extra-judicial confession allegedly made by husband to deceased's mother- disbelieved- accused himself lodging FIR promptly and present at scene when constable (PW-11) arrived -medical evidence decisive -chain of circumstances not complete- guilt not proved beyond reasonable doubt - co-accused acquitted on same evidence - conviction set aside -**Appeal allowed.**

Case Law Cited

Nil

List of Acts

Indian Penal Code, 1860

List of Keywords

circumstantial evidence; bride burning; separate living; ante-mortem burns ; Section 106 Evidence Act; benefit of doubt; chain of circumstances.

Appearances of parties

Counsel for Appellant(s) : Raghuvansh Misra, Rahul Misra Counsel for Respondent(s) : A.G.A.

(Delivered by Hon'ble Siddhartha Varma, J.
& Hon'ble Prashant Mishra-I, J.)

1. The instant Criminal Appeal has been filed against the judgment and order dated 16.05.1987 passed by the Additional Sessions Judge Vth, Bareilly convicting the appellant Ramakant under Sections 302, 201 of I.P.C.

2. When an incident took place on the 8/9th of May, 1980 in the house where the appellant, Ramakant, his father, Munendra Prasad, and the deceased along with other relatives were staying, an F.I.R. was lodged by the appellant himself stating that while the entire family was sleeping on the roof and the wife of the appellant and his younger sister were sleeping on the ground floor, his wife, Prabha Devi after locking herself in the kitchen/store sprinkled kerosene oil over herself and put herself on fire and resultantly died. In the morning of 09th May, 1980 when it started drizzling and everybody came down from the roof, the first informant Ramakant Pandey searched for his wife and when he discovered that smoke was emanating from the store of the house, he pushed the door of the store so that it may open. However, since it was closed from inside, he tried his level best and when the door opened he found that his wife had already died.

3. From the place of the incident, soil which was burnt because of the fire was taken into custody; kadhai which was lying on the left side of the dead-body, container containing two liters of kerosene oil and one match box were recovered and a recovery memo of these articles was prepared as Exhibit Ka-1. Thereafter, the post-mortem of the dead-body was done on 09.05.1980 at 04:30 PM and the cause of death was shown as shock. Upon the conclusion of the investigation the appellant, first informant, Ramakant Pandey was himself made the accused and charges were framed on 04.07.1984 under Sections 302 and 201 of I.P.C. Along with the appellant, on that very same date, there were charges framed against Munendra Prasad, father of the first informant; Smt. Savitri Devi, mother of the first informant; Km. Beena, Asha Devi and Laxmikant, who were the family members, and they were charged under Sections 120-B, 202 of the I.P.C. From the side of the prosecution as many as 12 prosecution witnesses were produced.

4. PW-1, Smt. Ram Kali, was the mother of the deceased. She had stated in her examination-in-chief that the deceased was her only daughter. She had one more son namely Ramesh Chandra Tiwari who was elder to the deceased daughter. The deceased daughter was married to the appellant, Ramakant Pandey, five years prior to the date of occurrance. She had recognized the other accused Munendra Prasad, father of the appellant, Laxmikant, brother of the appellant, Savitri, mother of the appellant, Asha and Beena, sisters of the appellant. The marriage was solemnized after payment of Rs. 24,000/-. After the marriage, the deceased stayed with her husband for around a year but her relations with him were not very congenial. About one year after the marriage, the appellant Ramakant had dropped his wife at her mayka at Farrukhabad. He did not call her for two and half years. When Ramakant′s sister was to get married then he took the deceased along with him. The conciliation occurred because of the intervention of her brothers, Uma Shanker and Girja Shanker of Mohalla Chaudhari, Bareilly. After that also there was information coming to the PW-1 that her daughter was being tortured by her husband. She had also testified in the court that her daughter had told her that the appellant, Ramakant, was having illicit relationship with some other girl as well. She had stated that two days prior to the incident, she had

gone to her brother Uma Shanker's house at Mohalla Chaudhary. From there she had gone to visit the mother-in-law of the deceased about whom the PW-1 had heard that she was ill. When she had gone to visit the mother-in-law of the deceased, she had complained about the Almirah and scooter not having been given in the dowry. There only the deceased's mother had asked the mother-in-law of the deceased to make her live separately. Upon this, the mother-in-law and her sisters-in-law of the deceased started scolding her and also gave her beating. At that point of time the mother-in-law had said that if you wanted to live separately, I would ask my son to make you part from this world itself. Then she, PW-1, had stated that her daughter had said that the salary of the husband of the deceased was being kept by her mother-in-law and she was not being given anything. Upon hearing this, the mother-in-law had thrown all the money which was with her so as to reach the daughter of the PW-1. This money was kept by the daughter of the PW-1. Since, the appellant was working in Pant Nagar, the PW-1 had advised her daughter that she should also stay with the accused at Pant Nagar. She had then stated that, on the next day, Ramakant had come to her brother's house and had started weeping and had said to his mother-in-law (PW-1) that she may excuse him as he had committed a great mistake. Upon this Ramakant said that on the advice of his mother and his sisters, he had lost his mind. He had thrown away all the money which the deceased had taken and he had tried to turn her out from his house in the night and thereafter had held her hair and hit her head against the wall because of which she fainted. Thereafter, he poured kerosene oil on his wife and put her on fire and killed her. She said that she would not spare him and call the police and at that point of time when this entire tale was being narrated by the accused-appellant to her, Sushila, Pushpa, Bhagwati and Sharda were present and then Ramakant left her house. Thereafter, she had gone to the police station to get the F.I.R. lodged. This F.I.R. was, however, not lodged by the police. At the police station, there was a gentleman, who was watching all this happening, and he had said that he would telegram about all this to the relevant persons. Upon that she had given him five rupees and thereafter the telegram was sent. However, she had stated in her cross-examination that when Ramakant had come to her house, her brothers and nephews were not at home. She had thereafter informed the court, upon a question being put, as to who all stayed in the house of her brothers Uma Shanker and Girja Shanker. She had stated that she had gone to the police station by herself on a rickshaw. Upon a specific question being put by the court, she had replied that she had never gone to the police station before that particular date. She had in the court herself stated that if she was asked to go to the police station, she would not be able to go by herself. From the police station she had gone to the house of Ramakant, the accused, where a lot of police personnel were there. Upon a specific question being asked as to whether she knew the name of the person whom she had given the amount of five rupees to get the F.I.R. lodged then she replied that she had not asked his name. She also did not know if the telegram had been sent in Hindi or in English. She had stated that the accused had not kept his daughter properly after the marriage. In the telegram, she had not implicated the other family members but had only implicated Ramakant. She had stated that many things she had stated in the court were not recorded in her statement under Section 161 of Cr.P.C. At that time she was not in her proper senses and therefore she could not tell the police that Ramakant was having an affair with another girl. The Inspector of the CID had once again recorded her statement 8 to 10 months after the incident. She had stated that if the mention about the telegram was not there in her statement made under Section 161 of Cr.P.C. before the police and also in the statement given to the CID inspector, she replied that she did not know the reason for that. She, of course, had stated that she had informed both the police and the CID about the demands of dowry. She had also stated that she was not aware of the illness of the mother of the

appellant. When her daughter was beaten by the appellant, Ramakant, the immediate neighbours did not come. She had stated that her daughter was alive for five years after her marriage but she did not have any children. She used to be very sad about this fact and also depressed and used to weep also. However, it was wrong to say that because of her depression, she killed herself. She had denied the fact that somebody else had informed her about the death.

5. PW-2, Girja Shanker, was the brother of the mother of the deceased and he had narrated about the incident in the court just as his sister had narrated with regard to the marriage etc. and about how the information of the death reached him.

6. PW-3, Hari Shanker Mishra, was also the brother of the mother of the deceased and he had also told the same facts as were told by the other brother, the PW-2.

7. PW-4 was one Sharda Mishra, who was living in the neighbourhood of the house of the mama of the deceased. She had also told the same story as was the story told by the PW-1. PW-4 had stated that Ramakant had gone to inform his mother-in-law about the fact that he had killed the deceased.

8. PW-5, Ramesh Chandra Tiwari, was the brother of the deceased and had narrated the manner in which his sister was being tortured by her in-laws. He date-wise told the incident as had occurred with regard to the demand of dowry and also with regard to the fact as to how the accused-appellant Ramakant had left his wife at her parental home and also he informed the court as to how by the intervention of the mamas she returned to the house of the in-laws. He had also produced in the court the letters which Ramakant, appellant, had written to the deceased. He had also produced, from his possession, the document which showed how the demands for dowry were made from the girl′s side. He had also informed the court as to how the police had not taken much action in the case and, therefore, he had written to the Chief Minister for investigation by the CID. He had categorically stated in the court that he, upon coming to know about the demands of dowry, had not informed the police as he did not want to further spoil the relations between the two families. When the deceased was left at her parental house in Farrukhabad then no maintenance was given by the accused-appellant and also no application for demand of maintenance was made by the brother of the deceased. He had stated that never before he had informed the police about the demands of dowry and also about the letter which he had written to the Chief Minister. He had not mentioned about the fact that dowry was demanded. First time during the investigation by the CID, this aspect of the matter was revealed. He had also stated that no information was received by him by any telegram which might have been sent on 09.05.1980. He had stated that his mother had probably sent the telegram. He had also stated that his mother had never told him about the fact that the accused-appellant had come her place to inform her about the fact that he had killed his wife. He had also stated that his mother had only told him that she had sent a telegram to someone but did not inform him as to whom she had sent the telegram. He had stated that he was aggrieved by the method by which the police had investigated and thereafter 9-10 months after the incident he had written to the CID. He had also stated that when he had come to Bareilly on 11.05.1980, after the incident had occurred on 09.05.1980, he had not gone to the house of Ramakant and had also not taken the photographs of the place of incident.

9. Upon being cross-examined about the fact that he had sent the photographs of the place of incident to the Chief Minister, he had stated that he had never sent those photographs and if he had stated earlier about the fact that he had sent the photographs then that fact was wrongly stated.

10. PW-6 was Dr. M.C. Sharma, Senior Medical Surgeon of the District Hospital, Bareilly. He had given his opinion extensively about the injuries on the body of the deceased which might have occurred prior to her death. At page no. 67 of the paper-book, he had stated as follows:

"4 - मृतका के शरीर पर मृत्यु से पूर्व की निम्नलिखिल चोटें थी

*(1) - Extensive burn सारे शरीर पर था। चेहरा ऊपरी हिस्सा सीने का, कमर, व पीछे, पेट आगे व पीछे, दोनों अग्र बाहु, हाथ, severe degree burnes थें charring था, तथा भीतर की खाल व deep tissues भी जलकर सामप्त हो गये थे। सिर के बाल जले व झुलसे थे। बाकी शरीर में **फफोलों** की खाल छूट रही थी।*

5 - मृतका का आंतरिक परिक्ष पर मैने पाया था कि सिर की चमड़ी जली हुई थी, बाल झुलसे व जले हुए थे, दिमाग की झिल्ली व दिमाग Congested था। सीने की खाल जली व Congested थी, Pleura, lungs व उनकी झिल्लियां व दिल की झिल्ली congested थी, हृदय के अन्दर रक्त भरा हुआ था तथा Cherry Coloured था। छोटी आंत खाली थी, बड़ी आंत में गैस व मल था जिगर (कागज फटा) व गुर्दे Congested थे। बच्चेदानी खाली (का० फटा)

6 - मृतका की मौत जलने के सदमें से हुई थी। ये चोटें मृत्यु के लिये (कागज फटा) पर्याप्त थी। मृतका को शरीर पर से नाक की लौंग, 2 बिछुए, कानकी एक बाली, 1 चूडी जला हुआ धोती का टुकड़ा तथा चोली का टुकड़ा सील करके SO. कोतवाली को भेजा था। मैने Post Mortem Report बरवक्त शव विच्छेदन तैयार किया था। इसपर Ex. क 6 डाला गया। मृतक की मृत्यु 8/9-5-80 की रात में होना सम्भव था।"

11. Upon being recalled for cross-examination, PW-6 had appeared again on 05.01.1987 and had stated that he had seen the injuries at the time of the post-mortem and because of the symptoms and signs on the dead-body, he had stated that those injuries were ante-mortem. He had clearly opined that if death had occurred due to suffocation then carbon particles in trachea were to be found and if death had occurred because of the burning and suffocation then it was not essential that carbon particles had to be there in the trachea. He had also stated that there were no injuries on any other part of the body.

12. PW-7 was the photographer, Som Vig, who had taken the photographs of the place of incident. He had stated that he had taken all the photographs and also he had given his statement to the CID and that was much after the incident had taken place. Who had taken him to the place of incident for the purpose of photographs of the dead-body etc., he did not know. He in fact had not remembered even the date on which the photographs had been taken. Whether he had taken the photographs for the purposes of publishing in the press or whether he had taken them for the police, he did not know. However, he was an authorized photographer of the press.

13. PW-8 was Dr. Krishna Kumar Singh, who was a State Medico Legal Expert and had testified before the CID. He had stated that the case was referred to him on 02.01.1981. He had opined that the death had occurred because of murder and that it was not because of suicide or accident and for that, opinion which he was giving, he had stated that he had given a detailed report and that he had stated that she was actually killed by throttling which had resulted in asphyxia and thereafter she was burnt. The chief reason while he was opining that there was murder was that there was no carbon soot particles in the breathing track. If a person was alive and had killed herself then it was essential that there ought to be carbon soot in her trachea etc. He had stated that he had worked from 1954 to 1973 as physician and had never worked as surgeon and had also not treated burn cases. However, he had stated that he had only given preliminary treatment in burn cases. He had very categorically stated that he had neither seen the dead-body nor the place where the incident had occurred. He had expressed his doubt as to how Dr. M.C. Sharma had given his opinion. He had stated that if a person was alive when he was being burnt then blisters were to be found. In the case of asphyxia, he had stated that normally chambers of the heart were empty. However, he had stated that if a person was alive and had got burnt then there would be smoke particles in the trachea. Upon a definite question being asked as to whether Dr. M.C. Sharma had seen the signs of carbon particles in the breathing pipe then the answer was that he could not say with any certainty.

14. PW-9 was Sri Ramesh Chandra Pandey, Sub-Inspector. He had informed the court how he had done the investigation.

15. PW-10, V.P. Singh, was again an Investigating Officer and had narrated the method of investigation.

16. PW-11, Ram Kumar, was the police personnel who had taken the dead-body for post-mortem.

17. PW-12, O.P. Sharma, was the Sub-Inspector of C.B.C.I.D. and he had also given a formal statement before the court with regard to how he had done the investigation.

18. Upon the completion of the investigation, the statements of the accused persons were recorded. They had denied the commission of crime and had stated that there was a false implications. Upon the judgment having been passed on 20.05.1987 wherein only the accused-appellant, Ramakant, was sentenced for life imprisonment under Section 302 of I.P.C. and with a sentence of four years of rigorous imprisonment under Section 201 of I.P.C., then the instant Appeal was filed. However, the other accused namely Munendra Prasad, Laxmikant, Smt. Asha Devi and Km. Beena were acquitted of the charges. Learned counsel for the appellant Sri Rahul Mishra assisted by Sri Raghuvansh Mishra made the following submissions:

(i) Nobody had seen how and when Prabha Devi, deceased, died. Meaning thereby there was no direct evidence of murder. As such it was a case of circumstantial evidence and the prosecution, he submits, did not complete the chain of circumstances so as to prove that the appellant and the appellant alone had committed the crime beyond reasonable doubt. Learned counsel for the appellant submits that definitely the prosecution was not sure about the motive and the reason for

the death of Prabha Devi, deceased. At certain places they had come up with the story of dowry and at other places they had come up with a story of the appellant being in relationship with another lady. At one point of time, the case which was taken by the prosecution was that there was a quarrel between the mother-in-law (saas) and sister-in-law (nand) with the deceased who had requested for separate living. Learned counsel for the appellant states that the defence had come up with a definite stand that in fact the deceased wanted a separate living as she was not happily living with her mother-in-law (saas), sister-in-law (nand) and brothers-in-law (devars). The mother-in-law was a cancer patient and the deceased had to do all household works while her husband was employed in Pant Nagar University and was away from home from 06:30 AM to 10:00 PM. The deceased was also unhappy by the fact that she was not having a child. He submits that in fact the PW-1, the mother of the deceased, had also stated in so many words at page no. 27-28 of the paper-book that the deceased wanted a separate living.

(ii) Learned counsel for the appellant states that if one looks at the conduct of the appellant, it clearly showed that he was an innocent person. He was not having any guilty mind and he was a person who had gone to inform the police. He was also the person who had informed the relatives of the deceased. The PW-11, the Constable Ram Kumar, who had gone to the scene of crime, had found that the accused and his mother, Savitri, were very much present at the scene of the crime till such time as he was there.

(iii) So far as the extra judicial confession of the appellant, Ramakant Pandey, to Smt. Ram Kali at 07:00 AM at her residence was concerned, learned counsel for the appellant stated that this version was not believable because if the appellant had gone to the house of Ram Kali who herself was staying in her brother's house where there was not just the brothers living but the brothers' families were also living. Both the brothers had their wives and there were three more sons and all the sons had their own children along with their wives and if the appellant had gone to inform the PW-1 about the death and also about the fact that he had killed her then the relatives of the deceased would not have allowed him to go back from their house. In fact at page no. 63 of the paper-book, the PW-5, son of the PW-1 had stated as follows:

"मेरी मां ने मुझे यह नहीं बताया कि मुलजिम रामा कान्त प्रभा के मरने के बाद उनके पास आया था और उसने प्रभा के मरने का पूरा विवरण दिया और अपने जुर्म का इकबाल किया था और वह उसे पकड़ना चहाती थी नही बताया था। यह भी नही बताया था कि उस वकत और लोग मौजूद थे।"

Learned counsel for the appellant, therefore, states that the story about the extra judicial confession was only a story and thus could not be believed.

(iv) Even though the case was that the deceased was staying in a congested area/locality and many neighbours were staying but no one came forward to testify against the appellant.

(v) The medical evidence which was based on the post-mortem report and the statement of the doctor, who had conducted the post-mortem, namely Dr. M.C. Sharma (PW-6) had absolutely falsified the prosecution story that Prabha Devi, deceased, was murdered. He had stated at page no. 67 of the paper-book that the dead-body was a pugilistic posture and the body had become

stiffened. There were extensive burns on the whole body. There was charring and, what is more, there were blisters on the body. As per the page no. 67 of the paper-book "*बाकी शरीर में फफोलों की खाल छूट रही थी।*"

According to the medical jurisprudence, blisters come when burn injuries are ante-mortem i.e. when a live body is put on fire. Further, the doctor again had stated that the brain was congested along with the chest, pleura, lungs and the heart was full of blood and the blood was cherry coloured. Here again these injuries showed that it was an ante-mortem burn case and in the conclusion at page no. 68 of the paper book in paragraph 6 Dr. M.C. Sharma had categorically stated that "*मृतका की मौत जलने के सदमें से हुई थी।*" and at page no. 69 of the paper-book the PW-6 clearly says

"मैने शव परीक्षण के समय चोटो को देखा था तथा signs जो चोटों में पाये थे, उनके ही आधार पर चोटों को मैने anti mortem लिखा था। मैने जो burns लिखे है, वे स्वयं यह बताते थे कि वे anti mortem थे, इसीलिये मैने burns anti mortem लिखे है। यदि मृत्यु जलने पर suffocation से होती है, तब carbon particles trachea में पाये जाने सम्भव होते है, लेकिन यदि मृत्यु जलने के कारण हुई हो तथा suffocation न हुआ हो तो आवश्यक नही है कि carbon particles trachea में मौजूद हो। यदि खुद को जलाकर मृत्यु होते तभी भी asphyxia हो सकता है। मृतक के सिर, छाती, या शरीर के किसी अंग पर कोई जाहिरा चोट के निशानात नहीं थे। Third degree तथा extensive burns में line of redness disappear हो जाती है और burns charring हो जाती है। Asphyxia तथा anti mortem burns में internal organs congested हो जाते है।"

Thus it indicated that the prosecution story was a false one and the deceased had died on account of the fact that she had committed suicide.

(vi) A dispute, however, had arisen because of the opinion provided by PW-8, Dr. Krishna Kumar Singh who was a Medico Legal Expert. He had stated that to him the case was sent along with the post-mortem examination report and other relevant documents and thereafter had given his opinion that it was a case of murder. The main reason for him to say that it was a murder was that no soot particles were present in the breathing line. In paragraph no. 7 of his testimony at page no. 75 of the paper-book, the PW-8 had stated that he was only a physician and that he had never taught in any medical college and also he was not an expert of such injuries as he was dealing with. He had in so many words stated that he was not an expert in burn cases. He had neither seen the dead-body of the deceased nor had he visited the scene of crime. However, with regard to there being blisters, he was very clear that the blisters would be there only if a live person was being burnt. At page no. 77 of the paper-book he had stated as follows:

"..... लेकिन छाले यदि कोई शख्स कुछ क्षण जिन्दा रहें, तब पड़ते है वरना नही। यानी यदि आग जलकर बुझ जाये और जलने वाला व्यक्ति कुछ क्षण या घंटे जीवित रहे, तो छाले पड़ जाते हैं। ऐसा मेरा अनुभव है, तथा ऐसा Medical Books में भी लिखा है,"

Thus he, in effect, accepted that the burn injuries were ante-mortem burn injuries.

(vii) In the instant case, on the same set of evidence, four other remaining accused persons were acquitted. It is common knowledge that for a single person to commit a crime of the magnitude which was involved in the instant case was not possible. First of all, it was difficult to catch hold a 25 years old lady and thereafter it was even more difficult to pour kerosene oil on her and burn her without creating any ruckus. In fact there was no screaming etc. at the relevant point of time. Learned counsel for the appellant tried to reconcile the evidence as was produced by Dr. M.C. Sharma, PW-6, and what was said by Dr. Krishna Kumar Singh, PW-8 –

(a) Blistering upon oedema of tissues and capillary dilation was a vital reaction of the body during lifetime of the deceased and that proved ante-mortem burning. Learned counsel for the appellant referred to Medical Jurisprudence and Toxicology by HWV Cox [Vth Edition, 1987] Section 4, Chapter-I.

(b) The brain, chest, pleura, lungs and heart were congested. Further more, there was blood found in the heart and the learned counsel for the appellant further relying upon LYON'S Medical Jurisprudence for India [Xth addition] Chapter-XIII, Burns, Scalds and Cold (page 387), submitted that if death took place after receipt of burns from shock, lungs were likely to be found congested. Heart would be a relaxed one with both sides full of blood. Stomach would be dilated and large intestine and congestion of abdominal viscera would be there. With regard to the presence of soot etc., the treaties had stated that if death was by asphyxia due to inhalation of CO2 and other gases which was different from death by shock then only there would be carbon soot present.

(c) When PW-8 had claimed that no carbon or soot particles were found in the breathing line and had inferred that first the live person was killed and thereafter the dead-body was burnt, this was refuted by the learned counsel for the appellant relying upon Dr. R.M. Jhala's book [Chapter-XXXVIII, Page 436] (VIth Edition)

"It should however be realised that in cases of instantananeous death there is no time left for inhalation of soot and the injured dies before that. The carbon particles can be found only if sufficient time is allowed between exposure to the flame and death. ***Hence the absence of soot does not rule out death from extensive burns or indicate the post-mortem nature of burns. This is the universal opinion of all the authorities."***

(d) The presence of cherry colour blood in the heart was on account of the fact that carbon monoxide had reached in the blood stream.

19. Further more, learned counsel for the appellant submitted that definitely the PW-8 had no access to the dead-body as the post-mortem had already been done many months before and therefore everything was academic and not based on the actual situation.

20. Sri Muni Raj Mehrotra, learned A.G.A. however has opposed the Appeal and has submitted that the mother of the deceased was a natural witness whose presence or immediate arrival at the place of incidence was logical. There was no legal bar on relying upon the testimony of a close relative, specially when she was worth believing. He then relied upon Section 106 of the Evidence Act and submitted that when the incident had occurred in the matrimonial home then it was a duty of the husband having special knowledge of the facts to explain as to how the incident had occurred. Also, he submitted that though there was no requirement to elaborate on the motive aspect of the matter but the motive was that the deceased was throughout harassed for dowry and for that purpose she was also killed. The Medical Jurisprudence, he has submitted, also were pointing towards the fact that the appellant had first murdered the victim and thereafter had burnt her. Learned A.G.A. also laid much emphasis on the extra judicial confession by the husband before his mother-in-law.

21. Having heard Sri Rahul Mishra assisted by Sri Raghuvansh Mishra, learned counsel for the appellant and Sri Muni Raj Mehrotra, learned A.G.A. for the State, we find that when the incident occurred in the intervening night of 8/9.5.1980, it had occurred not in the house of the appellant but in the house of the father of the appellant whose name was Munendra Prasad and he was also an accused. We also find that when the incident had occurred and was discovered by the appellant Ramakant Pandey himself then he had immediately lodged the F.I.R. on 09.05.1980 at 06:40 AM. Still further, we find that the appellant and the deceased/victim had married each other sometime in the year 1975 i.e. almost five years before the occurrence. The motive became important to be dealt with because the incident was not seen by anyone, that is to say, that there was no eye-witness account. However, speaking of a motive, three stories had come up; (i) with regard to the dowry, (ii) with regard to an illicit relationship of the appellant with another lady and (iii) because the mother-in-law and the sisters-in-law of the deceased were pestering the deceased and therefore she wanted a separate living.

22. From the evidence on record, we find that the appellant was working in Pant Nagar and used to go out at 06:30 AM and he used to come back almost in the late night at around 10:00 to 10:30 PM. The victim, after five years of marriage, had no children and her family responsibilities in a joint family were becoming very irritating so much so that she wanted to have a separate living. This idea of the victim staying separately was also confirmed by her own mother in her testimony. We also find that the appellant was the one who had got the F.I.R. lodged and he was very much at the site at the time when the PW-11 i.e. Constable Ram Kumar had visited the site. On his visit, PW-11 had found that Ramakant along with his mother and the mother of the deceased were there at the site. So far as the extra judicial confession of the appellant to Ram Kali the PW-1 (mother of the deceased) is concerned, we find that the confession before the PW-1 regarding the murder was not believable. There was no reason whatsoever for the appellant to have gone to the house of PW-1 to make the extra judicial confession and even if he had gone to make the extra judicial confession before the PW-1, he would not have been spared by the PW-1 who was staying alongwith two of her brothers, their wives, three sons of the brothers and the innumerable children. What is more, even PW-5, the brother of the deceased, had stated that his mother had never told him about the fact that the appellant Ramakant had confessed to her that he was the person who had killed the deceased. Under such

circumstances, we also rule out the theory of extra judicial confession. We also find that the place where the incident had occurred was a busy place but no neighbour etc. had come to testify in the case. What is more, we find that the doctor who had conducted the post-mortem, PW-6, after having looked into the case and after having studied the dead-body, the site where the dead-body was found and after having considered threadbare the post-mortem report had opined that the deceased had died on account of the fact that she had got burnt by herself. He had analysed the ante-mortem injuries and had thereafter given his conclusion. We have also gone through the statement of the doctor, PW-6, and find that there were blisters on the dead-body which was a clear indication of the fact that a live person was burnt and thereafter she had died. He had also dealt with the fact that as to why there was no soot in the trachea etc. He had stated that if a person died out of pure shock then the presence of soot was not possible and if a person died due to actual asphyxia, due to suffocation, then only the soot particles were to be found in the nasal passage. We have also gone through the various treaties as were produced by the learned counsel for the appellant namely Medical Jurisprudence and Toxicology by H.W.V., the LYON'S Medical Jurisprudence for India [Xth Edition] and also the treaties on this subject by Dr. R.M. Jhala and we have found that what Dr. M.C. Sharma, PW-6, had stated was the correct position of law and science and that principle alone had to be applied while deciding the instant case. When the deceased had died immediately on being burnt, she had virtually stopped breathing and therefore had died due to shock and, therefore, no question of carbon soot entering in the nasal passage arose. Also, when there was ante-mortem death, there had to be blisters on the body and those blisters definitely were present. Definitely, PW-8 who came as an expert appointed by the C.B.C.I.D. had given his opinion. He was not a regular doctor, practicing on the burn cases and also he was not teaching medicine in any medical college therefore he had also given his report on the basis of various science books. His conclusion though had said that if a person had been burnt while he/she was alive had to have soot in his breathing nasal passage, the aspect of the matter that if a person had died due to shock would not have soot in the nasal passage was not considered. Thus, when no one had seen the incident occurring, when there were blisters on the dead-body indicating that a live person had been burnt, when no extra judicial confession was believed and also when the doctor, PW-6, himself had stated that first the living person was burnt and thereafter she died, we are of the view that the view taken by the trial court was erroneous and thus we allow the Appeal and set-aside the judgment and order dated 20.05.1987.

23. The appellant, Ramakant Pandey, is acquitted of all the charges as were framed against him. Bail Bonds and sureties be discharged.

(2026) 5 ILRA 1279
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 21.05.2026

BEFORE

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

Criminal Appeal No. 1476 of 1990

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

Issue for Consideration

Matter pertains to the validity of conviction of the appellants under Ss. 302 and 34 IPC and whether the prosecution proved its case beyond reasonable doubt on the basis of the evidence of related eyewitnesses, despite alleged contradictions, omissions, non-recovery of the weapon of offence and lapses in investigation, warranting interference with the judgment of conviction and sentence passed by the Trial Court. (Paras 17-33)

Headnotes

Criminal Law - Murder - Appreciation of evidence of eyewitnesses - Indian Penal Code - Ss. 302, 34 - Criminal Procedure Code, 1973 - S. 313 - Prompt lodging of first information report - Legal Principle - A prompt first information report naming the accused without delay, consideration or afterthought lends assurance to the prosecution case - Application to facts - The occurrence took place at 9:00 A.M. and the report was lodged at 11:15 A.M. on the same day naming the accused-appellants with a clear account of their respective roles - Held, the written report was promptly lodged and inspires confidence. (Paras 17-20)

Criminal Law - Murder - Related witnesses - Indian Penal Code - Ss. 302, 34 - Appreciation of evidence - Legal Principle - Evidence of family members or related witnesses cannot be discarded merely on the ground of relationship and requires careful scrutiny - Application to facts - The eyewitnesses were natural witnesses present at the place of occurrence, their evidence was simple, natural, consistent and free from any major contradiction, omission or improvement and their presence could not be doubted - Held, their testimonies were wholly reliable, trustworthy and sufficient to sustain conviction. (Paras 21-27)

Criminal Law - Murder - Minor contradictions - Appreciation of evidence - Indian Penal Code - Ss. 302, 34 - Legal Principle - Minor omissions, contradictions, embellishments and exaggerations which do not affect the core of the prosecution case do not render eyewitness testimony unreliable - Application to facts - No major or material discrepancy affecting the substratum of the prosecution case was found in the evidence of the eyewitnesses - Held, the defence challenge on this ground was rejected. (Paras 21-23)

Criminal Law - Murder - Lapses in investigation - Indian Penal Code - Ss. 302, 34 - Legal Principle - Failure of the investigating officer to recover the weapon of offence or collect blood-stained soil does not by itself confer any benefit upon the accused where reliable direct evidence establishes the prosecution case - Application to facts - Though the investigating officer failed to recover the knife or collect blood-stained and simple soil, the trustworthy eyewitness account remained unaffected - Held, the prosecution case was not vitiated by such investigative lapses. (Paras 28-29)

Criminal Law - Murder - Medical evidence - Indian Penal Code - Ss. 302, 34 - Legal Principle - Medical evidence must be read harmoniously with ocular testimony and apparent discrepancies are to be explained by the surrounding medical circumstances - Application to facts - The alleged discrepancy between the injury report and post-mortem report stood satisfactorily explained by the operation and insertion of a rubber drain during treatment - Held, there was no contradiction between the medical evidence and the ocular account. (Para 29)

Criminal Law - Common intention - Indian Penal Code - Ss. 302, 34 - Legal Principle - Prior planning, premeditation, concert and the specific role assigned to each accused establish common intention under S. 34 IPC - Application to facts - One accused caught hold of the deceased from behind enabling the other to inflict a fatal knife blow on the abdomen in execution of their pre-arranged plan - Held, conviction under Ss. 302 and 34 IPC was fully justified. (Paras 30-33)

Held: The written report having been lodged promptly without any delay, consideration or afterthought naming the accused-appellants and assigning specific roles lends assurance to the prosecution case - The evidence of the eyewitnesses who were closely related to the deceased could not be discarded merely on the ground of relationship as they were natural witnesses whose presence at the place of occurrence was fully established and whose testimonies were simple, natural, consistent and free from any major and material contradiction, omission or improvement - Minor discrepancies did not affect the core of the prosecution case -

Lapses on the part of the investigating officer in not recovering the weapon of offence or collecting blood-stained soil could not enure to the benefit of the accused when reliable direct evidence established the occurrence - The medical evidence fully corroborated the ocular account and the apparent discrepancy between the injury report and the post-mortem report stood satisfactorily explained by the surgical procedure performed during treatment - The conduct of the accused in acting with prior planning, premeditation and prior concert clearly established common intention and justified the conviction of one accused under S. 302 read with S. 34 IPC and the other under S. 302 IPC - The Trial Court rightly appreciated the evidence in its proper legal perspective and no illegality, perversity or infirmity was found in the judgment of conviction and sentence which was accordingly affirmed and the appeal dismissed. (Paras 17-33) (E-7)

Case Law Cited

Brahm Swaroop and another v. State of Uttar Pradesh; **2011 (6) SCC, 288***; State of Rajasthan v. Smt. Kalki and Another;* **(1981) 2 SCC 752***; Sucha Singh and Another v. State of Punjab;* **(2003) 7 SCC 643***.*

List of Acts

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

List of Keywords

Murder; Common intention; Related witnesses; Natural witnesses; Interested witnesses; Appreciation of evidence; Eyewitness account; Prompt first information report; Minor contradictions; Omissions; Improvements; Medical evidence; Injury report; post-mortem report; Investigation; Lapses in investigation; Recovery of weapon; Direct evidence; Reliability of witnesses; Conviction; Appeal; Life imprisonment

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal against the judgment and order dated 23.07.1990 passed by the Additional Sessions Judge/Special Judge, Etawah in Sessions Trial No. 223 of 1989 arising out of Case Crime No. 91 of 1989 whereby the appellants were convicted under Ss. 302 and 34 IPC and sentenced to life imprisonment.

Appearances for Parties

Advs. for the Appellant:
Sri S.N. Singh learned Senior Counsel assisted by Sri Akhilendra Singh.
Advs. for the Respondents:
Sri Sushil Kumar Pandey learned A.G.A.-Ist for the State.

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

1. Heard Sri S.N. Singh, learned Senior Counsel assisted by Sri Akhilendra Singh, learned counsel for the appellants; Sri Sushil Kumar Pandey, learned A.G.A.-Ist for the State and perused the judgment and material on record of the Trial Court.

2. This criminal appeal has been preferred by the appellants-Neksey and Lakhan Singh, against the judgment and order dated 23.07.1990 passed by the Additional Sessions Judge/Special Judge, Etawah in Sessions Trial No. 223 of 1989 (*State vs. Neksey and Another*), arising out of Case Crime No. 91 of 1989, under Sections 307 and 302 IPC, registered at Police Station Jaswant Nagar, District Etawah.

3. Prosecution story as revealed from the written report (Exhibit Ka-1) is that informant Mulayam Singh (PW-1), a resident of village Nagla Chhand, Police Station Jaswant Nagar, District Etawah has got ascribed a written report (Exhibit Ka-1) by Ram Prakash and lodged the same at

Police Station Jaswant Nagar, District Etawah, stating therein that my father had retired 6-7 years ago and had purchased 5 bighas of land in the village, which was in the name of my uncle (Neksey) and my father (Munna Lal). My dau-Ram Dularey (the elder brother of my father) was not named in the land. My father and uncle were sowing the land and this year there was wheat crop. After the wheat crop was harvested, my dau-Ram Dularey asked for a share in this land, then my father said that take an equal share in wheat crop of this land, upon this my uncle Neksey Lal said that I will not give any share, do whatever you want to do. Today I was talking with my dau regarding this matter that give us Rs. 3500/- and take equal share in the land, and my father was also sitting near us in front of the door, then at about 9 o′clock in the day my uncle Neksey came carrying a kanta and Neksey′s son Lakhan Singh came carrying a knife and said that finish him today, he asks for share in the land. My uncle Neksey caught hold of my father and Lakhan Singh, with intention to kill, stabbed a knife in the abdomen due to which my father′s intestines came out. This incident was seen by my dau, my mother and the villagers.

4. On the basis of the written report (Exhibit Ka-1), Daljeet Singh (PW-7), who was posted as Head Moharrir, registered the first information report, (Exhibit Ka-3), against the named accused persons (present appellants) at Police Station Jaswant Nagar on 21.05.1989 at 11:15 AM, under Section 307 IPC.

5. After registration of the first information report against accused appellants- Neksey and Lakhan Singh, investigation of the case was handed over to S.I. Kalyan Singh (PW-8). Investigating Officer, Kalyan Singh (PW-8) inspected the place of occurrence, recorded the statements of prosecution witnesses, and prepared the site plan (Exhibit Ka-12) of the place of occurrence.

6. Injured Munna Lal was taken to the District Hospital, Etawah for medical examination and treatment. At the hospital, his injury report was prepared and his statement was recorded. During treatment at the District Hospital, Etawah, the injured Munna Lal passed away on 28.05.1989. Due to the death of the injured Munna Lal, the case was converted from Section 307 IPC to Section 302 IPC, and the investigation of the case was taken up by S.H.O. Rama Shankar Singh (PW-6).

7. Sub Inspector, Hira Lal Sharma (PW-7) prepared the *Panchayatnama* (Exhibit Ka-8), of the deceased Munna Lal, along with other necessary police papers such as *Challannash* (Exhibit Ka-9); Photonash (Exhibit Ka-10) and the letter to the C.M.O. (Exhibit Ka-11). After completing the proceedings of the *Panchayatnama*, the dead body of the deceased Munna Lal was sent for post-mortem examination.

8. Initially, injured Munna Lal was taken to the District Hospital at Etawah, where his injury report (Exhibit Ka-6), was prepared by Dr. S.C. Gupta (PW-5). According to the injury report of Munna Lal, the following injuries were found on his body:

"(i) Stab wound on lower part & abdomen in middle 2.0 cm x 0.6 cm x Abdominal cavity deep. Margin everted. 3.0 cm below umbilicus. Fresh blood present on surface. Loops of intestine present on surface."

Dr. S.C. Gupta (PW-5) opined that the above injury is caused by sharp and pointed object.

9. After the death of Munna Lal at District Hospital, Etawah, Dr. B.L. Bisariya (PW-4) conducted the post-mortem examination of the deceased. According to the post-mortem report (Exhibit Ka-5), the following ante-mortem injuries were found on the body of the deceased, Munna Lal:-

> "(i) Stitched wound of 10 cm on the right side of abdomen 1 cm apart from umbilicus.
> (ii) Stitched wound of 1 cm on the left illiac region."

According to Dr. B.L. Bisariya (PW-4), injured Munna Lal died due to shock and hemorrhage as a result of above ante-mortem injuries.

10. Upon completion of all necessary formalities, the second investigating officer, Rama Shankar Singh (PW-6), submitted a charge-sheet, marked as Exhibit Ka-7, against the accused-appellants under Sections 307 and 302 of the IPC in the concerned Magistrate Court having jurisdiction. The learned Magistrate committed the case to the Court of Sessions for trial. The Trial Court framed charges against the accused-appellant, Neksey, under Section 302 read with Section 34 IPC on 06.10.1989. Charges were also framed against the accused-appellant, Lakhan Singh, by the Trial Court under Section 302 IPC on 06.10.1989. Both accused-appellants denied the charges and claimed trial.

11. In support of its case, the prosecution produced informant Mulayam Singh (PW-1) and Smt. Shyam Devi (PW-2) as witnesses of fact. Further, Daljeet Singh (PW-3), Dr. B.L. Bisariya (PW-4), Dr. S.C. Gupta (PW-5), Rama Shankar Singh (PW-6), Hira Lal Sharma (PW-7) and Kalyan Singh (PW-8) were adduced as formal witnesses. Apart from the above witnesses, Dr. R.A. Goyal was examined as a court witness (CW-1). In addition to the oral evidence, the prosecution also relied upon documentary evidence from Exhibit Ka-1 to Exhibit Ka-12.

12. The accused-appellants were examined under Section 313 Cr.P.C., and in their statements recorded thereunder, they denied all questions put to them and stated that they were falsely implicated in this case due to enmity. Accused appellant Neksey has stated that Munna Lal instructed us not to buy the 2.5 bigha land, but we did not comply with that instruction and purchased the land because we had paucity of land. This sale was done through a registered sale deed. I and Munna Lal had given Rs 8,000/- separately to Sharda Devi, wife of Kalyan Singh, before the Registrar. Due to this reason, they falsely implicated us so that they could take possession of the land. Accused appellant Lakhan Singh has stated that being the son of Neksey, he was falsely implicated in this case. Accused appellants have also stated that they will adduce defence witnesses in their support. Accused appellants adduced Ram Dularey as DW-1 and Kitab Singh as DW-2 in support of their case.

13. The Trial Court, after recording the evidence of the prosecution as well as the defence, heard the arguments of both sides. After hearing the arguments, the learned Trial Court found the accused appellants guilty of the murder of the deceased Munna Lal. Accordingly, the Trial Court convicted accused appellant Neksey and sentenced him to life imprisonment under Section 302

read with Section 34 IPC, and accused appellant Lakhan Singh was also convicted and sentenced to life imprisonment under Section 302 IPC. Being aggrieved with the impugned judgment and order dated 23.07.1990 passed by the Trial Court, the accused appellants have preferred this criminal appeal before this Court.

14. Learned counsel for the accused appellants submitted that the eyewitnesses of the prosecution, namely, informant Mulayam Singh (PW-1), who is the son of the deceased Munna Lal, and Smt. Shyam Devi (PW-2), who is the wife of the deceased, are closely related to the deceased. It was contended that they are family members and highly interested witnesses. There is no independent eyewitness in this case who could corroborate the testimonies of PW-1 and PW-2. Since both witnesses are highly interested and related to the deceased, their evidence cannot be safely relied upon for conviction in a heinous crime like murder. Learned counsel further argued that several contradictions, omissions, and exaggerations are present in their evidence. It was further submitted that the accused appellants have been falsely implicated in this case due to enmity, with the purpose of grabbing the 2.5 bigha land of accused appellant Neksey. However, the Trial Court has not considered these legal facts in its judgment. The Trial Court has not appreciated the evidence in a proper and legal manner. The findings and reasoning recorded by the Trial Court are not based on cogent and unimpeachable evidence.

15. In view of the above, learned counsel for the accused appellants submitted that the present criminal appeal has merit and deserves to be allowed. Therefore, the judgment and order of conviction and sentence dated 23.07.1990 is liable to be set aside.

16. *Per contra*, the learned AGA for the State respondent submitted that this is a case of direct evidence. Informant Mulayam Singh (PW-1) and Smt. Shyam Devi (PW-2) are eyewitnesses to the incident, having witnessed the alleged occurrence with their own eyes as it happened in their presence. Informant Mulayam Singh (PW-1) and Smt. Shyam Devi (PW-2) were present at the place of occurrence when the accused appellants attacked and killed the deceased Munna Lal on 21.05.1989 at 9:00 AM. The learned Trial Court found the evidence of informant Mulayam Singh (PW-1) and Smt. Shyam Devi (PW-2) to be reliable and trustworthy. Hence, relying on the evidence of these eyewitnesses, the Trial Court rightly convicted and sentenced the accused appellants for the commission of the alleged crime. There are no major and material discrepancies in the evidence of PW-1 and PW-2. The Trial Court has appreciated the evidence in proper perspective and in a legal manner. Therefore, the criminal appeal filed by the accused appellants is devoid of merit and the same is liable to be rejected.

17. In the light of the above arguments and counter arguments of respective parties, we have perused the written report (Exhibit Ka-1) and the evidence of informant Mulayam Singh (PW-1) and Smt. Shyam Devi (PW-2). From perusal of the written report (Exhibit Ka-1), it is revealed that the accused appellant Neksey, who is the younger brother of the deceased Munna Lal and Lakhan Singh, son of the accused appellant Naksey, without any cause or reason and with the intention to kill Munna Lal, abruptly came to the place of occurrence. The accused appellant Neksey caught hold of the deceased Munna Lal from the back, and the accused appellant Lakhan Singh stabbed the knife in the abdomen of Munna Lal. We find that this incident happened on 21.05.1989 at 9:00 AM and the report was lodged at the concerned police station without any delay on 21.05.1989 at

11:15 AM itself. Thus, it appears that the informant Mulayam Singh (PW-1), without any delay, consideration, or afterthought, lodged the first information report naming the accused persons (present appellants) in the written report (Exhibit Ka-1) for the commission of the alleged crime. Thus, the written report has been filed in this case promptly without any delay.

18. From perusal of the evidence of eyewitnesses, informant Mulayam Singh (PW-1) and Smt. Shyam Devi (PW-2), it is revealed that the deceased Munna Lal had three brothers. The eldest brother was Ram Dularey, followed by the deceased Munna Lal himself, and the youngest brother was the accused appellant Neksey. The deceased Munna Lal was an army man and after his retirement from military service, when he returned to his village, he purchased 5 bighas of land in his own name and in the name of accused Neksey through a registered sale deed. Both the deceased Munna Lal and the accused appellant Neksey were land owners. Following this purchase of five bighas of land, a dispute regarding the share of the said land arose between Munna Lal and his brother Neksey. Ram Dularey, the elder brother, also wanted a share in this land and insisted that his name be included in the ownership. On the day of occurrence, a discussion on this issue was ongoing between the informant Mulayam Singh, his father (the deceased Munna Lal), and Ram Dularey. Mulayam Singh (PW-1) stated that they should persuade uncle Neksey to deliver Rs. 3,500/- to them, after which Ram Dularey's share would be included. On this point, Neksey stated that he would not give any share and they could do whatever they like.

19. From perusal of the evidence of Mulayam Singh (PW-1) and Smt. Shyam Devi (PW-2), it is further revealed that thereafter Neksey came armed with a kanta and Lakhan Singh came with a knife. Neksey caught hold of Munna Lal from behind and Lakhan Singh assaulted him with the knife in the abdomen, causing the intestine of Munna Lal to come out of the abdomen. Thereafter, Neksey and Lakhan fled from the spot. Informant Mulayam Singh (PW-1) arranged a buffalo cart and the injured Munna Lal was taken to the District Hospital, Etawah, where his injury report (Exhibit Ka-6) was prepared. However, Munna Lal succumbed to his injuries on 28.05.1989 at the District Hospital, Etawah, during the course of treatment.

20. From perusal of the evidence of Mulayam Singh (PW-1) and Smt. Shyam Devi (PW-2), it appears that these two prosecution witnesses were present at the place of occurrence when the interaction was going on between Mulayam Singh, Ram Dularey and accused appellant Neksey. This incident happened at 9:00 AM in broad daylight in front of the house of the informant. From perusal of the site plan (Exhibit Ka-12), it is revealed that the houses of the informant Mulayam Singh and the accused persons are situated on the western side in the same line, adjoining each other. The occurrence happened at the mark 'X', which is in front of the house of Mulayam Singh.

21. From perusal of the evidence of informant Mulayam Singh, PW-1, and Smt. Shyam Devi, PW-2, we find that without any provocation from the deceased Munna Lal, accused appellants have killed Munna Lal. Evidence of PW-1 and PW-2 reveals that both the eyewitnesses have stated the happening of the incident in a natural way and simple words, without any exaggeration, embellishment or improvements. Naturality and simplicity in the evidence of PW-1 and PW-2 show that these two witnesses have stated whatever has been seen by these witnesses with their own eyes. Presence of PW-1 and PW-2 at the place of occurrence would not be doubted on any ground because it was 9:00 AM in the morning and the houses of the informant and accused

appellants are situated on the same line, adjoining to one another. Although the defence, on behalf of the accused appellants, cross-examined PW-1 and PW-2 at length, however, in a lengthy cross-examination, the defence could not be able to create any evidence by which the testimonies of these witnesses could be doubted and disbelieved. We find no major and material discrepancy, contradiction, and improvement in the evidence of informant Mulayam Singh (PW-1) and Smt. Shyam Devi (PW-2). It is natural that in the evidence of any witness, minor contradictions and omissions are likely to emerge. However, we find no major and material contradictions, omissions, or improvements in the evidence of PW-1 and PW-2.

22. The Hon'ble Supreme Court in ***Brahm Swaroop and another v. State of Uttar Pradesh; 2011 (6) SCC***, 288 has held in para-32:

"32. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not prompt the Court to reject the evidence in its entirety. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." Difference in some minor details, which does not otherwise affect the core of the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witnesses. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses."

23. Thus, in the light of the law as propounded by the Hon'ble Supreme Court in ***Brahm Swaroop*** (Supra), it is clear that minor omissions, contradictions, embellishments, and exaggerations would not be material enough to cast any doubt on the veracity and credibility of the evidence of eyewitnesses. In view of the above, we find no force in the arguments of learned counsel for the accused-appellants advanced in this respect.

24. Although we find that eyewitnesses, informant Mulayam Singh (PW-1) and Smt. Shyam Devi (PW-2), are family members and closely related to the deceased Munna Lal (informant Mulayam Singh being the son and Smt. Shyam Devi being the wife of the deceased) but we cannot doubt their evidence solely on this ground. The presence of these two witnesses in front of their house at the time of the occurrence, where the accused-appellants committed the offence, is natural. They have narrated the prosecution story in a very simple and natural way, without any artificiality or concoction. There is no rule of law that the evidence of family members or related witnesses must be rejected merely on the ground of their relationship with the deceased. The only requirement of law in such cases is that the evidence requires deep scrutiny and careful appreciation by the Court.

25. The Hon'ble Supreme Court in ***State of Rajasthan v. Smt. Kalki and Another; (1981) 2 SCC 752***, has held on interested and related witnesses in para-7:-

"7. As mentioned above the High Court has declined to rely on the evidence of P.W. 1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased", and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. In the instant case P.W. 1 had no interest in protecting the real culprit, and falsely implicating the respondents."

26. The Hon'ble Supreme Court in ***Sucha Singh and Another v. State of Punjab; (2003) 7 SCC 643***, has held in para-3 that:-

"13. ..... Relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible."

27. In the light of the law as laid down by the Hon'ble Supreme Court in ***Smt. Kalki (Supra)*** and ***Sucha Singh*** (Supra), we find that in the present case, although informant Mulayam Singh (PW-1) and Smt. Shyam Devi (PW-2) are closely related to the deceased Munna Lal, however, on perusal of their testimonies, we find that their testimonies are reliable and creditworthy. No material contradictions or omissions have been brought on record in their cross-examination. Only because an eyewitness is a member of the deceased's family, per se, the evidence of such a witness cannot be discarded. If the evidence of an eyewitness who is a close relative of the deceased is cogent, reliable, and creditworthy, it can always be relied upon. Regarding the role of the accused-appellants, evidence of informant Mulayam Singh (PW-1) and Smt. Shyam Devi (PW-2) is consistent too. The same has ascribed a clear role to accused-appellant Neksey, who caught hold of the deceased Munna Lal from behind, thereby facilitating the accused Lakhan Singh to assault with a knife in the abdomen of Munna Lal. Accused-appellant Lakhan Singh thus got an opportunity to assault with a knife at the abdomen of Munna Lal. In this way, informant Mulayam Singh (PW-1) and Smt. Shyam Devi (PW-2) have ascribed a clear role played by the accused-appellants Neksey and Lakhan Singh in the commission of the crime. Thus, we find the testimonies and evidence of PW-1 and PW-2 wholly reliable, trustworthy, and inspiring confidence. In the light of the above discussions, we find no force in the arguments of learned counsel for the appellants in this respect.

28. From perusal of the record, we find that the first investigating officer, Kalyan Singh, has not collect blood-stained and simple soil from the place of occurrence. He also did not try to recover or take into possession the knife (the murder weapon) used by the accused-appellant Lakhan Singh in the commission of the alleged crime. However, in our considered view, the prosecution cannot get any benefit on the ground of such laches and lacunae on the part of the

investigating officer, because the investigating officer does not work under the control or supervision of the informant/complainant of any case. It was the duty of the investigating officer to recover the knife (the murder weapon) from the possession of the accused-appellant Lakhan Singh. However, the investigating officer was unable to perform his duty in accordance with the law as required from him in an investigation like murder.

29. From perusal of the injury report (Exhibit Ka-6), it is clear that one stab wound on the lower side of the abdomen in the middle was caused by accused-appellant Lakhan Singh by assaulting with a knife. Prosecution witnesses have also stated that accused-appellant Lakhan Singh assaulted on the abdomen of the deceased Munna Lal with a knife, due to which his intestine came out of the abdomen. When injured Munna Lal was under treatment to save his life, he was admitted in District Hospital, Etawah, where he was operated upon. Dr. R.A. Goyal (CW-1) has confirmed this fact in his evidence that he on 21.05.1989 operated upon Munna Lal, and his bed head ticket number was 1709. This witness has stated that after operation when the abdomen was being sealed, before that, he attached a rubber drain in the abdomen from the sides of injury so that dirty blood and pus could easily come out of the abdomen. Due to this reason, injury number 2, which was noted by Dr. B.L. Bisariya (PW-4) in the post-mortem report (Exhibit Ka-5), was shown as Injury No. 2. However, on the abdomen of deceased Munna Lal, only one injury of a stab wound was caused by accused-appellant Lakhan Singh by assaulting with a knife. Thus, we find that there is no contradiction in the injury report (Exhibit Ka-6) and the post-mortem report (Exhibit Ka-5) of the deceased Munna Lal, because it is clear that only one stab wound injury was caused and found on the abdomen of the deceased Munna Lal. Injury No. 2, as shown in the post-mortem report (Exhibit Ka-5) of the deceased Munna Lal, is due to the operation in his abdomen for easing the flow of dirty blood and pus, as a rubber drain had been inserted by Doctor R.A. Goyal (CW-1) in his abdomen. Thus, we find that there is no difference or contradiction in the injury report (Exhibit Ka-6) and the post-mortem report (Exhibit Ka-5) of deceased Munna Lal. Hence, in the light of the above discussions, the arguments of learned counsel for the appellants are not sustainable in the eyes of law.

30. From a perusal of the evidence of eyewitnesses, namely, Informant Mulayam Singh (PW-1) and Smt. Shyam Devi (PW-2), we find that according to the testimonies of these witnesses, appellant Neksey and appellant Lakhan Singh arrived at the place of occurrence as the houses of the appellants were adjoining to the house of the informant. Appellant Neksey, from the backside, caught hold of the deceased Munna Lal with pre-planning and premeditation, so that accused-appellant Lakhan Singh could easily assault the deceased with a knife on his abdomen, leaving him with no opportunity to defend himself. The specific role played by the accused-appellants in committing the crime clearly indicates that both of them came to the place of occurrence with prior planning, premeditation, and with prior concert with the intention to kill the deceased Munna Lal. In execution of their pre-arranged plan and with a prior meeting of minds, accused-appellant Neksey caught hold of the deceased Munna Lal from behind. Capitalizing on this opportunity, accused-appellant Lakhan Singh, in furtherance of the said plan, dealt a knife blow with immense force and gravity, causing a severe stab injury due to which the intestines of the deceased Munna Lal came out of his body. The manner and mode adopted by the accused-appellants during the commission of the offence is a clear manifestation of their intention to kill Munna Lal with pre-planning.

31. We have also gone through and examined the defence evidence of Ram Dularey (DW-1) and Kitab Singh (DW-2). From their evidence, it appears that these witnesses were produced by the accused-appellants with a view to create doubt about the truthfulness of the prosecution story. On considering and appreciating their evidence, it is clear that these witnesses were examined to save the accused-appellants from punishment for the alleged crime. In view of the direct evidence given by the prosecution eyewitnesses, namely, the informant Mulayam Singh (PW-1) and Smt. Shyam Devi (PW-2), the evidence of Ram Dularey (DW-1) and Kitab Singh (DW-2) is not relevant. Their evidence does not appear to be truthful, credible, or trustworthy. Therefore, we find that the evidence of Ram Dularey (DW-1) and Kitab Singh (DW-2) is unreliable and liable to be rejected. Accordingly, the accused-appellants cannot derive any benefit from their evidence.

32. Thus, we find that the learned Trial Court has rightly, and in accordance with the settled principles of law, held accused-appellant Neksey guilty under Section 302 read with Section 34 IPC, and accused-appellant Lakhan Singh guilty under Section 302 IPC. We have also perused the impugned judgment and order dated 23.07.1990 passed by the learned Trial Court. Upon examination of the findings and reasoning recorded therein, it is evident that the Trial Court has meticulously appreciated the entire evidence on record in its proper and legal perspective. The Trial Court has rightly placed reliance upon the testimonies of the eyewitnesses, namely, the informant Mulayam Singh (PW-1) and Shyam Devi (PW-2), after finding them wholly reliable and trustworthy. Since the findings recorded by the learned Trial Court are founded upon cogent, credible and reliable evidence, we do not find any illegality, perversity, or infirmity in the impugned judgment of conviction and sentence. Consequently, no ground is made out warranting interference with the well-reasoned and well-discussed judgment and order passed by the court below.

33. Therefore, the impugned judgment and order of conviction and sentence dated 23.07.1990 passed by the learned Trial Court is liable to be affirmed, and the submissions advanced by the learned counsel for the accused-appellants in this regard are devoid of force. In view of the aforesaid discussion, we hold that the appeal preferred by the accused-appellants lacks merit and is liable to be dismissed.

34. Accordingly, the impugned judgment and order dated 23.07.1990 passed by the learned Trial Court is hereby affirmed and the instant criminal appeal stands ***dismissed***.

35. The accused-appellants, Neksey and Lakhan Singh, were on bail, however, during the pendency of the appeal, they failed to appear before the Court either personally or through counsel. Consequently, Non-Bailable Warrants were issued against them, pursuant to which they were arrested and remanded to jail custody. At present, the accused-appellants are in jail. They are directed to serve out the remaining sentence awarded by the learned Trial Court vide judgment and order dated 23.07.1990.

36. Let a copy of this judgment and order be transmitted forthwith to the learned Trial Court along with the Lower Court Record, as well as to the concerned jail authorities, for necessary compliance.

(2026) 5 ILRA 1290
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 11.05.2026

BEFORE

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

Criminal Appeal No. 1594 of 1984

Ashok Kumar Chaurasia **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

Matter pertains to legality of impugned conviction order based upon chance witness and material contradiction in evidences.

Headnotes

Murder-firearm injury-Indian Penal Code, 1860 - S. 302 - Daylight murder by firearm arising out of pending civil litigation between informant and appellant -two witnesses of fact (PW-1 informant and PW-2) both chance witnesses- whose presence at place of occurrence highly doubtful - FIR stating deceased was going along with Shiv Shanker and Jagdeo, denied by PW-1 in Court- material contradiction amounting to contradiction under explanation to Section 162 CrPC - PW-2 not named in FIR- statement recorded after about 45 days- delay not satisfactorily explained- ocular version of shot from about five steps inconsistent with medical evidence -independent witnesses not examined-adverse inference-FIR ante-timed-no signature or seal of Magistrate-delay in despatch- motive extremely weak and unconvincing - prosecution failed to prove case beyond reasonable doubt-conviction set aside. **Appeal allowed.**

Case Law Cited

1. Vinobhai v. State of Kerala, Criminal Appeal No. 1730 of 2017 (SC), decided 29.01.2025
2. Awadhesh v. State of Madhya Pradesh, 1988 SCC (Cri) 361
3. Hemraj v. State of Haryana, AIR 2005 SC 2110
4. Meharaj Singh (L/Nk.) v. State of U.P., (1994) 5 SCC 188
5. Thulia Kali v. State of Tamil Nadu, (1972) 3 SCC 393
6. State of U.P. v. Ram Gopal Saini, 2020 (6) ADJ 522
7. Mohd. Muslim v. State of Uttar Pradesh (now Uttarakhand), (2023) 7 SCC 350

List of Acts

1. The Indian Penal Code, 1860
2. The Code of Criminal Procedure, 1973

List of Keywords

Firearm injuries; daylight murder; ocular evidence ; chance witness; explanation to Section 162 ; unexplained delay ; ante-timed ; delay in autopsy ; benefit of doubt; guilt not proved beyond reasonable doubt.

Appearances of parties

Counsel for Appellant(s) : Dharmendra Pratap Singh, Kamal Krishna, Prashant Mishra, Vikash Kumar Singh
Counsel for Respondent(s) : A.G.A.

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

1. This criminal appeal has been preferred, under Section 374(2) Cr.P.C., by the sole appellant, Ashok Kumar Chaurasia resident of Chak Raghu Nath, Police Station Naini, District Allahabad against the judgment and order dated 01.06.1984 passed by Sri U S Pandey Special Judge (Economic Offences), Allahabad in Session Trial No.202 of 1979, under Section 302 Indian Penal Code (in short 'I.P.C.'), Police Station Naini, District Allahabad.

2. By the impugned judgment and order, appellant Ashok Kumar Chaurasia was held guilty of the offence punishable under Section 302 I.P.C and convicted and sentenced to undergo imprisonment for life.

3. Brief facts of the prosecution case are that the informant, Smt. Sukhwanti, widow of Shanker Lal, resident of 158, Chak Raghu Nath, Police Station Naini, District Allahabad gave verbal information at Police Station Naini, District Allahabad on 28.01.1978 at 10.15 a.m., stating that she is the widow of Shanker Lal and his case was pending against Ashok Kumar Chaurasia's father, namely, Munni Lal. After Munni Lal's death Ashok Kumar Chaurasia is doing pairvi of the case against her. Her brother-in-law (devar), Sukhdev Prasad was doing pairvi on her behalf. Due to the above enmity, last year, there was an attempt to his murder and in this regard a case is pending. Two days ago, Ashok Kumar Chaurasia threatened her brother-in-law, Sukhdeo Prasad with dire consequences after coming to his house. Today, at about 9:00 a.m., Sukhdeo Prasad, Shiv Shanker and Jagdeo were going to the Kachahari Office and when they reached in front of Onkar Nath's house on Jail Road, Ashok Kumar Chaurasia fired at Sukhdeo Prasad with a pistol. Upon hearing the sound of fire and the cries of Sukhdeo Prasad, she ran to the spot, whereupon Ashok Kumar Chaurasia again shot at Sukhdeo Prasad. Many persons ran to the spot and upon their hue and cry, Ashok Kumar Chaurasia fled towards the northern side and could not be caught. Sukhdeo Prasad was lying dead at the spot.

4. Upon this verbal information, a chik FIR under Case Crime No. 41 of 1978, under Section 302 I.P.C. was lodged at Police Station Naini, District Allahabad on 28.01.1978 at 10:15 a.m. against Ashok Kumar Chaurasia. The investigation commenced and the Investigating Officer reached the place of occurrence and collected seven pellets from the body of the deceased, which were kept in a small box and sealed. The Investigating Officer also collected bloodstained earth and plain earth from the place of occurrence and prepared its recovery memo, Ext. Ka-3. The inquest of the deceased was prepared along with the related papers and the body was sent for post-mortem examination. In the post-mortem report, two firearm wounds of the nature of entry and exit found and the cause of death was shock and hemorrhage as a result of ante-mortem firearm injuries. The Investigating Officer recorded the statements of the informant and other witnesses, inspected the place of occurrence and prepared the site-plan, Ext. Ka-11.

5. After completion of investigation, the Investigating Officer filed the charge-sheet under Section 302 I.P.C. against Ashok Kumar Chaurasia before the concerned Magistrate, who took cognizance of the offence and summoned the appellant. The appellant appeared before the concerned Court and were furnished with copies of the relevant prosecution papers under Section 207 Cr.P.C. Thereafter, the case was committed to the Court of Sessions for trial.

6. The appellant appeared before the Court of Sessions, where charge under Section 302 I.P.C. was framed against him, to which, he pleaded not guilty and claimed to be tried.

7. The prosecution has examined seven witnesses to prove its case, namely, P.W.1 Sukhwanti, P.W.2 Banne, P.W.3 Sahajade, P.W.4 Ram Bishal Mishra (Constable), P.W.5 Devendra Pratap Singh (Inspector), P.W.6 Dr. M.K. Gupta and P.W.7 Praveen Singh (S.I.).

8. Out of these witnesses, P.W.-1 Sukhwanti is the informant and the *bhabhi* of the deceased. She deposed that the deceased, Sukhdeo was her brother-in-law (dever). The accused Ashok Kumar Chaurasia, is her second brother-in-law Munni Lal′s son. About 5-6 years prior to the incident, a case relating to a house was pending between her and Ashok Kumar Chaurasia. Sukhdeo was doing paravi on her behalf in that case. After the death of Munni Lal, accused Ashok Kumar Chaurasia was impleaded as a party to the suit, who contested case against her. Due to the said litigation, a dispute existed between Sukhdeo and Ashok Kumar Chaurasia. About 8-9 months prior to the incident, Ashok Kumar Chaurasia had fired at Sukhdeo, causing him injuries and a case in this regard was registered at Police Station Kotwali. About 2-3 days prior to the incident, Ashok Kumar Chaurasia threatened Sukhdeo with dire consequences. On the date of the incident, at about 9:00 a.m., she had gone to drop her grandson (nati) at a school near Naini Post Office. While Sukhdeo was going on jail road, she heard the sound of a gunshot. She moved forward and saw Sukhdeo lying on the road in an injured condition and Ashok Kumar Chaurasia holding a pistol, thereafter, he fired a second shot at Sukhdeo in her presence.

9. The said incident was witnessed by Dhoonu, Banne and others, after which, Ashok Kumar Chaurasia fled towards the northern direction. When she reached near Sukhdeo, she found him lying dead. She ran to the Police Station, Naini and lodged a report, which she proved as Ext. Ka-1. Witness, Banne remained at the place of occurrence for about two hours. Within half an hour, the Inspector reached at the place of occurrence and prepared the inquest. On the date of the incident, as usual, Sukhdeo had gone to the second house after sunrise to attend the call of nature. He had taken a cup of tea but had not taken any meal. She said that she had mentioned in her report that Banne and Dhoonu were present at the place of occurrence and had witnessed the incident. If the said fact was not mentioned in the report, she had no reason for the same. When she saw Sukhdeo for the first time after the incident, he was lying alone on the ground. It is incorrect that Sukhdeo was going along with Shiv Shanker and Jagdeo on the date of the incident. She had not named Shiv Shanker and Jagdeo as witnesses in her report and does not know why their names were mentioned therein. She was weeping and crying at the place of occurrence when the Police reached there and before that she had already lodged the report at the Police Station. After remaining present at the place of occurrence for about 1-2 hours, the Police took the dead body of Sukhdeo to the Police Station Naini, where the Inspector obtained her thumb impression. She reached the police station at about 2:00 p.m.

10. The place of occurrence is about 2-3 bighas away from her house. She said in her report as well as before the Investigating Officer that on that day she had gone to drop her grandson at the school near Naini Post Office. Her grandson was studying in Class-II and on some occasions she herself used to drop him to school. At about 8:00 a.m., she reached the school. Her grandson used to return home alone from the school. He also said that accused, Ashok Kumar Chaurasia, fired the second shot at Sukhdeo from a distance of 2-4 spans. At that time, Sukhdeo was lying on the ground and the second shot hit him on his stomach. When she heard the first gunshot, she was inside the school gate and upon hearing the sound, she came out. The distance between the school gate and the place of occurrence is about 60 yards.

11. P.W.-2 Banne is an eyewitness to the incident. He has said that on the date of the incident at about 9:30 a.m., he was taking tea near the Naini Post Office. After having tea, he went towards the northern side, where he heard the sound of a gunshot. When he proceeded further, he saw Sukhdeo lying on the road and accused, Ashok Kumar Chaurasia was standing there with a country-made pistol in his hand. Thereafter, Ashok Kumar Chaurasia fired a second shot at Sukhdeo, causing him injuries. At that time, many persons had gathered there and the accused fled towards the northern side. When he went near Sukhdeo, he found him dead. In his cross-examination, he said that he lives 400-500 yards away from the place of occurrence. He was employed at Pramod Cycle Store and was going to the said shop. The Post Office is 4-5 steps away from the Naini Triangle and a children′s school is about 50 steps towards the northern side from the Post Office. Pramod Cycle Store opens between 9:00 and 9:30 a.m. and at about 10:00 a.m., he reaches the shop to perform his duties. He further said that the Investigating Officer recorded his statement after about one and a half months. He did not say before the Investigating Officer that he was going to his house after having tea. He remained at the place of occurrence for about 1-2 minutes and thereafter went to the shop. He did not inform anyone about the incident before his statement was recorded by the Investigating Officer. After reaching Pramod Cycle Store, he did not say anyone about the incident. It had not come to his knowledge that the Police had reached at the spot. He never thought it necessary to inform the family members of the deceased or the Police to tell about the incident. He further said that when he first saw Sukhdeo was lying on the road and Ashok Kumar Chaurasia fired the second shot from a distance of about five steps.

12. P.W.-3, Sahajade said that after hearing that Sukhdeo had been murdered, he reached Jail Road, where the dead body was lying. The Inspector came to the place of occurrence and in his presence, collected the pellets from the spot and sealed them in a packet. The Inspector also collected samples of plain earth and bloodstained earth from the place of occurrence and prepared a recovery memo. In cross-examination, he said that he had never been a witness in any case from the Police side. He further said that two to three cases under the Gambling Act are pending against him. He stayed at the place of occurrence for about 10-20 minutes and during that period, he did not see Banne and Dhoonu there.

13. P.W.4, Ram Bishal Mishra (Constable) is a formal witness, who carried the dead body of the deceased for autopsy from the place of occurrence. He said that at about 12:30 p.m., he was handed over the sealed dead body along with the connected papers at the place of occurrence to carry them to the mortuary at Allahabad. He reached Allahabad at about 4:00 p.m. and on the next day, he produced the dead body and the connected papers before the doctor for autopsy. On

29.01.1978 at about 11:00 a.m., he handed over the papers at the Police Lines Hospital. The mortuary is about 14-15 k.m. away from the place of occurrence.

14. P.W.5, Devender Pratap Singh (Inspector) is the Investigating Officer of the case. He said that before him the case was being investigated by Praveen Singh (S.I.). He said that he recorded the statements of Banne, Dhoonu, Shiv Shanker and others and after completing the investigation, he submitted the charge-sheet, which is proved as Ext. Ka-4. In cross-examination, he said that he had no conversation with the informant, Smt. Sukhwanti, regarding the incident. Banne had said before him that he was going to his house after having tea.

15. P.W.6, Dr. M.K. Gupta, conducted the post-mortem of the deceased. He said that on 29.01.1978, he was posted as Medical Officer at Tej Bahadur Sapru Hospital, Allahabad and at about 12:30 p.m., the dead body of Sukhdeo Prasad was brought before him for post-mortem examination by Constable, Ram Bishal Misra. The deceased was about 55 years old and of average built. The following ante-mortem injuries were found on his body:

(i) Firearm wound of entry, lacerated, measuring 3/4 inch in diameter, on the left side of the abdomen just below the subcostal region, with the direction upwards and towards the right. Scorching and tattooing were present around the wound.

(ii) Firearm wound of exit, oval-shaped, measuring 1/2 inch x 1/3 inch, on the right side of the chest, close to and below the nipple.

(iii) Three oval-shaped firearm wounds of exit on the right side, just below the right maxilla.

(iv) Firearm wound of entry on the right side of the back, close to the midline, 6 inches below the right scapula, measuring 1 inch in diameter with lacerated margins. Scorching and tattooing were present. Internally, the liver, kidney, diaphragm, and lower lobes of the right lung were lacerated.

16. In the internal examination, his right chest wall was lacerated. Both lungs and the right kidney were lacerated. The intestines and liver were ruptured. Two pellets and one wadding piece were recovered from the liver. Three pellets were recovered from the abdominal cavity. There was fecal matter in the large intestine. The cause of death was shock and hemorrhage as a result of firearm injuries. P.W.6 proved the post-mortem report as Ext. Ka-5 and said that the death could have been caused at 9:30 a.m. on 28.01.1978 by two firearm shots. In cross-examination, he said that there may be a variation of six hours on either side with regard to the time of death. The stomach of the deceased was entirely empty and contained no liquid such as tea. The direction of the injuries was from below to upwards.

17. P.W.7, Praveen Singh (S.I.) is the first Investigating Officer of the case. He proved the chik report, Ext. Ka-1 and G.D. No. 21 dated 28.01.1978 at 10:15 a.m., scribed by Head Moharrir, Umanath Tiwari, stating that he was acquainted with his handwriting and signature. He said that he reached at the place of occurrence, where the inquest of the deceased was prepared. The witness proved the inquest report, Ext. Ka-7 and the photo nash, challan nash and report for post-mortem as Exts. Ka-8, Ka-9, and Ka-10. He said that he recovered seven pellets from the place of occurrence, which were taken into possession and sealed in his presence. He also said that he collected samples

of plain earth and blood-stained earth from the place of occurrence and sealed them. He inspected the place of occurrence and prepared the site-plan, which he proved as Ext. Ka-11. He further said that he collected a bag, cash and documents, etc., from near the deceased and handed them over to the informant after preparing the supurdaginama, which he proved as Ext. Ka-12. In cross-examination, he said that he reached the place of occurrence within half an hour and remained there for about 1-2 hours. It is incorrect that the thumb impressions of Smt. Sukhwanti were taken at the Police Station at about 2:00 p.m. Smt. Sukhwanti did not state in her statement that at the time of the incident, she had gone to her grandson's school near the Post Office to drop him. The Post Office is about 50 steps away from the place of occurrence towards the west. Until he remained at the place of occurrence, Banne and Dhoonu did not tell him anything. Smt. Sukhwanti said to him that on that day at about 9:30 a.m., her brother-in-law, Sudhdeo Prasad along with Shiv Shanker and Jagdeo were going to Thana Karchana, Kachahari.

18. The prosecution has produced following documentary evidence i.e. Ext. Ka-1 FIR, Ext. Ka-2 recovery memo of pellets, Ext. Ka-3 recovery memo of blood-stained and plain earth, Ext. Ka-4 charge-sheet, Ext. Ka-5 post-mortem report, Ext. Ka-6 G.D. No.21, Ext. Ka-7 Panchayatnama (inquest report), Ext. Ka-8 photo nash, Ext. Ka-9 letter to the R.I., Ext. Ka-10 letter to C.M.O., Ext. Ka-11 site plan, Ext. Ka.-12 recovery of memo of Jhola (bag) and Ext. Ka.13 order of transfer of property.

19. After the closure of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C., in which he denied the prosecution case and admitted that a case was pending between him and Shanker Lal, husband of Smt. Sukhwanti. He said that the witnesses were deposing against him due to enmity. He further said that Smt. Sukhwanti wanted to sell her land and he had obstructed it, which, according to him, was the reason the case was lodged against him.

20. The accused has not produced any evidence in his defence.

21. The Learned Trial Court, after examining the evidence, found that the prosecution had proved its case beyond reasonable doubt. The eyewitnesses supported the prosecution's case and their testimony was consistent, reliable and trustworthy. There were no contradictions between the ocular and medical evidence. Therefore, the appellant was found guilty and convicted and sentenced to the terms indicated above.

22. We have heard Mr. Kamal Krishna, learned Senior Advocate assisted by Mr. Abhinav Dwivedi for the appellant and Mr. Pradeep Kumar Rai and Mr. Ghan Shyam Kumar, learned Additional Government Advocate-I for the State and perused the evidence on record.

23. It is submitted on behalf of the appellant that the First Information Report does not contain essential facts which were supposed to be within the knowledge of the first informant. P.W.2, Banne, is not named in the FIR as a witness. The presence of P.W.1, Smt. Sukhwanti, at the place of occurrence is neither disclosed in the FIR nor in her statement recorded under Section 161 Cr.P.C., thereby rendering her presence at the scene highly doubtful. It is further submitted that

material omissions in the FIR and in the statement under Section 161 Cr.P.C. of a witness would amount to contradictions.

24. Learned Counsel for the appellant has relied upon the case law ***Vinobhai vs. State of Kerala Criminal Appeal no. 1730 of 2017 Supreme Court*** , dated 29.01.2025, in which, the Supreme Court found material omissions in testimony of prosecution witnesses and held that such omissions amount to contradictions and their version did not inspire confidence.

25. It is also submitted on behalf of the appellant that independent witnesses, namely Shiv Shanker and Jagdeo, who were allegedly accompanying the deceased, were not produced in Court. The school, where the first informant was allegedly present when the first shot was fired, is not shown in the site-plan. Further, the allegedly recovered blood-stained earth was never sent for chemical examination. The statement of P.W.2, Banne, under Section 161 Cr.P.C. was recorded approximately 45 days after the incident and this delay has not been explained by the prosecution. The shop where P.W.2 allegedly took tea is neither shown in the site plan nor mentioned in his statement under Section 161 Cr.P.C. P.W.3, Sahajade has categorically said that he did not see P.W.2, Banne, at the place of occurrence. According to medical evidence, the shots were fired from close range, whereas P.W.2 said that the assailants fired at the deceased from a distance of about five steps (approximately 12.5 feet). In view of these discrepancies, the occurrence of the alleged incident itself is highly doubtful. It is next submitted that the appellant has been falsely implicated in this case merely because he dissuaded a prospective purchaser while the informant intended to sell a piece of land.

26. It is submitted on behalf of the appellant that the learned Trial Court failed to appreciate the evidence properly and consequently, passed the judgment illegally. The same is, therefore, liable to be set aside.

27. On the other hand, it is submitted on behalf of the State that the prosecution case is proved beyond reasonable doubt. It is a daylight murder. The first informant and other eyewitnesses have supported the prosecution case. The ocular testimony is corroborated by medical evidence. There was enmity between the appellant and the deceased and the appellant had earlier attempted to commit the murder of the deceased, regarding which a case was pending. Therefore, the learned Trial Court has rightly convicted and sentenced the appellant. Thus, the prosecution case is proved beyond reasonable doubt and the appeal has no merit and is liable to be dismissed.

28. In view of the arguments of both the parties as well as the evidence on record, let us see whether the prosecution has been able to prove its case beyond reasonable doubt. As we know, in a criminal case, the burden of proof lies upon the prosecution. In the present case, the prosecution case is that on 28.01.1978 at 9:30 a.m., the appellant, Ashok Kumar Chaurasia, shot dead the deceased, Sukhdeo Prasad, brother-in-law of the informant, Smt. Sukhwanti Devi, near the house of Onkar Nath on Jail Road under Police Station Naini, District Allahabad.

29. It is not in dispute that there was a civil case pending between the first informant, Smt. Sukhwanti Devi and the appellant, Ashok Kumar Chaurasia. According to the first informant, the deceased was doing pairavi on her behalf in the said case. It is also not in dispute that the appellant

is the nephew of the first informant, being the son of Munni Lal, the other dewar of the first informant.

30. According to the post-mortem report of the deceased and the statement of P.W.6, Dr. M.K. Gupta, who conducted his autopsy, there were two firearm wounds of entry, one on the left side of the stomach and the other on the right side of the waist and two firearm wounds of exit on the right side of the chest of the deceased. In the opinion of the doctor, the cause of death was shock and hemorrhage as a result of ante-mortem gunshot injuries. Therefore, the deceased was shot dead and it was not a natural death. Now the question is whether the deceased was murdered by the appellant as alleged by the prosecution.

31. Here it is noteworthy to mention that, according to the prosecution, the place of occurrence was near the house of Onkar Nath, in front of Jail Road, under Police Station Naini, District Allahabad. P.W.1, Smt. Sukhwanti Devi and P.W.2, Banne have said that the incident occurred at the said place. The First Investigating Officer (P.W.7), Praveen Singh, prepared the inquest of the deceased at the place of occurrence, where the dead body of the deceased was lying by the side of the road. He collected seven pellets from the place of occurrence and also samples of blood-stained earth. He has proved the fardbaramadgi and the pellets before the Court. As per the site plan (Ext. Ka-11), the alleged incident occurred at place 'K', in front of the house of Onkar Nath by the side of the road. Therefore, from the above evidence, the prosecution has proved that the alleged incident occurred in front of the house of Onkar Nath on Jail Road. Though the Investigating Officer has not sent the blood-stained earth for chemical examination, this lapse on his part would have no bearing on the prosecution case because the defence has also not suggested any other place of occurrence where the death of the deceased was caused. In view of the above, the place of occurrence is also established.

32. To prove its case, the prosecution has examined two witnesses of fact, namely, P.W.1, Smt. Sukhwanti Devi and P.W.2, Banne. According to the prosecution, both these witnesses were present at the spot when the incident occurred. On examining the testimony of both these witnesses, their presence at the place of occurrence appears to be highly doubtful and their evidence does not inspire confidence and is thus neither reliable nor trustworthy. As per the prosecution, both these witnesses do not reside near the place of occurrence. According to the prosecution, P.W.2, Banne was employed at Pramod Cycle Store. Pramod Cycle Store is not nearby the place of occurrence, therefore, both these witnesses are chance witnesses. Being chance witnesses, their testimony is required to be scrutinized very closely.

33. So far as P.W.1, Smt. Sukhwanti Devi is concerned, she has said on oath that she had gone to a school near Naini Post Office to leave her grandson (nati) at school. She heard the sound of firing there and when she moved forward, she saw the appellant firing a second shot at the deceased with a pistol. The FIR was lodged by P.W.1, Smt. Sukhwanti Devi herself. She has not said in the FIR or in her statement under Section 161 Cr.P.C. to the Investigating Officer that she had gone to leave her grandson at school. For the first time, she has said this fact before the Court, which amounts to an improvement.

34. Besides this, according to the FIR, the deceased was going along with Shiv Shanker and Jagdeo towards Kachahari via Jail Road when the alleged incident occurred. On the contrary P.W.1, Smt. Sukhwanti Devi, in her statement before the Court, has denied that the deceased was going alongwith Shiv Shanker and Jagdeo. According to her, the deceased was going alone when he was attacked and murdered. Whereas, as per FIR, as well as, in the statement under Section 161 Cr.P.C. of the first informant, the deceased was going alongwith Shiv Shanker and Jagdeo. P.W.1, Smt. Sukhwanti Devi has admitted that she lodged a verbal report and that, at her dictation, the concerned constable read over the contents of the FIR to her, thereafter, she put her thumb impression over it. She has not said that the constable has wrongly mentioned the name of Shiv Shankar and Jagdeo. She has not given any satisfactory explanation given any why she mentioned in her FIR that the deceased was going along with Shiv Shanker and Jagdeo. Thus, there are material contradictions in the testimony of P.W.1 against her version in the FIR as well as in her statement under Section 161 Cr.P.C. In view of explanation to Section 162 Cr.P.C. it amounts to contradictions, as a result her testimony is not reliable.

35. Further, according to P.W.1, Smt. Sukhwanti Devi, her grandson′s school used to open at 8:00 a.m. and closes at 12:00 noon. She said that on some occasions she used to drop her grandson at school, though it was not a regular feature. On the fateful day, she reached the school at 8:00 a.m. to drop her grandson. The alleged incident occurred at 9:30 a.m., i.e., one and a half hours after the school had opened.

36. Now, the question is what was the reason that the informant remained present inside the school premises till 9:30 a.m. after dropping her grandson at school at 8:00 a.m. She has not disclosed the reason for her stay in the school premises till 9:30 a.m. Normally, after dropping her grandson at school, she would have returned to her house. It shows that the first informant is concealing true facts before the Court and her presence till 9:30 a.m. in the school premises is highly doubtful.

37. It has come in P.W.1, Smt. Sukhwanti′s statement that she heard the first sound of gunshot when she was inside the school gate. According to her, the school gate was about 60 yards away from the place of occurrence. After hearing the sound of the first shot, she came out of the school gate and moved in the direction of sound. She, then saw, the appellant standing on the road and the deceased lying on the ground. Thereafter, she saw the appellant fire second shot at the deceased from close range. It has also come in her evidence that she was about 40 yards away from the appellant when the second shot was fired. It is highly unlikely that she would have observed the incident so minutely as to disclose that the second shot was fired from a very close range. Therefore, in view of the above, the presence of P.W.1 at the place of occurrence is highly doubtful, and thus, her testimony is not reliable.

38. So far as P.W.2, Banne is concerned, his name is not mentioned in the FIR. After about 45 days, his statement was recorded by the Investigating Officer under Section 161 Cr.P.C. The Investigating Officer has explained the delay by stating that the said witness was not available. However, P.W.2 himself has said that he remained at his house and at the shop during the entire period from the time of the incident up to the recording of his statement under Section 161 Cr.P.C. Thus, the explanation for not recording the statement of witness, Banne, at the earliest is not

satisfactory, which raises suspicion regarding the presence of Banne near the place of occurrence. In **Awadhesh Vs. State of Madhya Pradesh, 1988 SCC (Cri) 361**, the Supreme Court found that the statement of the witness was recorded by the Investigating Officer two months after the occurrence and the delay was not explained. In view of the above, his testimony was discarded by the Court. The above case law fully applies to the resent case.

39. Secondly, according to P.W.2, Banne, he was taking tea at a tea shop near Naini Post Office and after having tea, he proceeded towards the north, from where he heard the sound of fire. During cross-examination, he said that on that particular day, tea was prepared at his house. He has not given any reason why he did not take tea at his house and instead went to a tea shop. He further said that he is employed at Pramod Cycle Store, which usually opens at 9:30 a.m. and that he had to remain present there on duty by 10:00 a.m. The directions given by P.W.2 regarding Pramod Cycle Store, the place where he was having tea and his own house show that his house was situated in between these two places. According to him, the place where he was having tea was towards the south-west, while Pramod Cycle Store was towards the west. He said that after having tea, he was going towards his shop, whereas Pramod Cycle Store was in other direction. If, after having tea, he was going to his shop, the direction given by him does not match his statement. In his statement under Section 161 Cr.P.C., he said that he was going towards his house after having tea. Thus, P.W.2 has given contradictory statements regarding the place to which, he was proceeding after having tea, which is a material contradiction.

40. According to P.W.2, Banne, he remained at the place of occurrence for about 1-2 minutes and then went to the shop. He has said that before giving his statement to the Investigating Officer, he did not tell any person about the said incident. He also did not inform anyone about the incident after reaching at Pramod's shop. The above conduct of the witness is highly unnatural. If a person witnesses such an incident, he would ordinarily disclose it to others. However, keeping himself silent for about 45 days and not disclosing the incident to anyone raises serious doubt regarding his presence, at the place of occurrence.

41. P.W.2, Banne has said that he knew the deceased since before the incident. If he knew the deceased and his family members since before the incident, then he should have told about the incident to his family members or to the Police. According to P.W.2, the appellant fired at the deceased from a distance of 5 steps and he saw only second shot, it is highly surprising that both the above witnesses i.e. P.W.1 and P.W.2 have witnessed only the second shot and not the first shot. The above statement of P.W.2, is not reliable because as per post-mortem report there was blacking and scorching around the firearm wound of entry and if pistol was used then blacking and scorching would be present around the wound of entry if the shot is fired from a distance of not more than 2-3 feet.

42. The presence of P.W.2 at the place of occurrence is doubtful and also on the fact that P.W.3, Sahajade, before whom samples of blood-stained earth and pellets were taken from the place of occurrence, by the Investigating Officer, has said that he remained at the place of occurrence for about 10-20 minutes and during this period did not see P.W.2, Banne, there. On the contrary P.W.2, Smt. Sukhwanti has said that P.W.2, Banne, remained present at the place of occurrence for about two hours. The above statement is also in contradiction with the testimony of

P.W.3, Sahajade. The Investigating Officer says that he reached at the place of occurrence within half an hour. In view of the above statements, the presence of P.W.2, Banne, near the place of occurrence is highly doubtful.

43. In view of the above discussion, it can safely be held that the presence of P.W.2, Banne, at the place of occurrence is highly doubtful, and thus his testimony is not reliable or trustworthy. It is also concluded that P.W.1, Sukhwanti Devi, and P.W.2, Banne, are not reliable witnesses, as they were not present at the place of occurrence when the incident occurred.

44. The prosecution has not examined Shiv Shanker and Jagdeo, who, according to the FIR, were going along with the deceased when the incident occurred. The prosecution has not explained the reason why Shiv Shanker and Jagdeo were not examined before the Court.

45. In ***Hemraj v. State of Haryana, AIR 2005 SC 2110***, it has been held that an unexplained omission to examine independent eyewitnesses would create an adverse inference, particularly when the eyewitnesses actually examined were not found to be reliable and there were serious doubts about their presence at the spot.

46. In view of the above case law and discussion made above, non-examination of Shiv Shanker and Jagdeo by the prosecution raises adverse inference over the prosecution case.

47. Here it is also relevant to mention that the FIR was lodged at 10:15 a.m., and preparation of the inquest started at 10:30 a.m. The inquest report does not disclose the time when the inquest was completed. P.W.4, Constable Ram Bishal Mishra, is the person who took the dead body of the deceased to the mortuary for autopsy. He has said that at about 12:30 p.m., he was handed over the sealed dead body of the deceased along with the papers and he proceeded to Allahabad, where he reached at 4:00 p.m. Thus, according to P.W.4, the dead body was sent for autopsy from the place of occurrence at 12:30 p.m.

48. On the other hand, P.W.1, Smt. Sukhwanti Devi, has said that she went with the dead body to the Police Station at about 2:00 p.m. If the statement of P.W.1 is believed, then the statement of P.W.4 becomes doubtful regarding the fact that the dead body was taken to Allahabad at 12:30 p.m. P.W.1 has further said that when she reached the Police Station along with the dead body, her thumb impression was taken by the Inspector. However, it has not been clarified by the prosecution on which document her thumb impression was taken at that time. When the witness was asked whether her thumb impression was taken at the time of lodging the FIR, she expressed ignorance. This raises doubt, whether the FIR was lodged at the time mentioned in the chik FIR. It is argued on behalf of the appellant that the FIR is ante-timed, the General Diary was stopped and after consultation and deliberation, the FIR was lodged and the appellant was falsely implicated in the present case.

49. Here it is pertinent to mention that according to P.W.4, Constable Ram Bishal Mishra, he reached Allahabad on the same day at about 4:00 p.m. for post-mortem and submitted the relevant papers at the hospital. However, the autopsy was conducted only on the next day, i.e., 29.01.1978 at 11:00 a.m. The prosecution has failed to explain why the papers and the dead body were

produced before the doctor only on the following day and not the same day. It is also relevant to note that a perusal of the chik FIR shows that it bears the initials of the Circle Officer dated 30.01.1978, which indicates that the FIR was forwarded to the concerned Court after two days it was lodged. No explanation for this delay has been offered by the prosecution. Furthermore, the chik FIR does not bear the signature or seal of the concerned Magistrate and therefore, there is no evidence on record to establish when the copy of the FIR was placed before him. These circumstances raise a serious doubt that the General Diary was withheld and the prosecution papers were prepared subsequently ante-dated, after deliberations and consultations. The effect of ante-dated and ante-timed FIR was discussed by the Supreme Court in **Meharaj Singh (L/Nk.) v. State of U.P., (1994) 5 SCC 188**, and in para 12 it was observed as under:

"FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an after thought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR, was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared u/s 174 Cr. P.C. is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in embryo and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante timed to give it the colour of a promptly lodged FIR."

50. In **Thulia Kali v. State of Tamil Nadu 1972 (3) SCC 393**, it is held by the Supreme Court that delay in lodging the First Information Report often results in embellishment, which is a creature of after-thought. On account of delay the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account of connected story as a result of deliberation and consultation. It is also held that in order to avoid all criticisms of the defence, it is therefore essential that the delay in lodging of the First Information Report should be satisfactorily explained.

51. In **State of U.P. v. Ram Gopal Saini, 2020 (6) ADJ 522**, this Court held that an unexplained delay in registering the FIR adversely affects the prosecution's case, and if the statements of witnesses are not recorded promptly by the Investigating Officer or after a reasonable lapse of time it may amount to defective investigation.

52. In **Mohd. Muslim v. State of Uttar Pradesh (now Uttarakhand), (2023) 7 SCC 350**, the Supreme Court held that an FIR in a murder case is a vital and valuable piece of evidence. However, infirmities in the FIR cast doubt on its authenticity, reduce its evidentiary value and may entitle the accused to the benefit of the doubt.

53. In view of the above discussion and legal position the submission of the defence has force that the FIR was lodged ante-timed, which raises serious doubt over the prosecution case.

54. According to the prosecution, the appellant had motive to commit the murder of the deceased, because he had attempted murder of the deceased about 8-9 months earlier, in respect of which a case was pending and 3-4 days before the incident, he had threatened the deceased to cause his death. However, the prosecution has failed to produce any evidence regarding the case of alleged earlier attempt to murder, except for the statement of P.W.-1, Smt. Sukhwanti Devi. Similarly, there is no evidence to establish the date and place where the appellant allegedly threatened the deceased 3-4 days prior to the incident. Therefore, this alleged motive cannot be relied upon and does not inspire confidence. It is further alleged by the prosecution that, since the deceased was pursuing a paravi in a civil suit on behalf of the first informant, the appellant had a motive to eliminate him. We do not agree with this submission, as by killing the deceased, the appellant would not have derived any benefit in acquiring the property of the first informant. Thus, the motive attributed to the appellant for committing the murder is extremely weak and unconvincing.

55. In view of the above discussion, we come to the conclusion that the prosecution has not been able to prove its case beyond reasonable doubt. The presence of P.W.1 and P.W.2 at the time of incident is highly doubtful. Their evidence contains material contradictions, omissions and improvements, which raise suspicion regarding their testimony. Therefore, their testimony is not reliable or trustworthy. The prosecution has not given any reason for not producing other independent witnesses. The FIR is ante-timed.

56. Thus, the prosecution has failed to prove its case beyond reasonable doubt and the learned Trial Court has appreciated the evidence on record incorrectly and reached at the wrong conclusion of guilt of the appellant on conjectures and thus, the conviction and sentence of the appellant is liable to be set aside.

57 . In view of the above, the instant criminal appeal is **allowed**. The impugned judgment and order dated 01.06.1984 passed by the Trial Court is **set aside** and the appellant, Ashok Kumar Chaurasia is **acquitted** of offence punishable under Section 302 I.P.C.

58. The appellant, Ashok Kumar Chaurasia is on bail. He need not surrender. His bail bond is cancelled and the sureties are discharged.

59. Before being released, the appellant shall execute a personal bond in the sum of Rs.20,000/- under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for his appearance, in the event of an appeal being preferred against his acquittal.

60. Let a copy of this order be forwarded to the Trial Court concerned along with the Trial Court record for information and necessary compliance.

(2026) 5 ILRA 1303
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 04.05.2026

BEFORE

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

Criminal Appeal No. 1605 of 2009

Vijai Nai **...Appellant**
Versus
State of U.P. **...Respondents**

Issue for Consideration

Matter pertains to the correctness and legality of the judgment of conviction based on circumstantial evidence and the last seen theory, the evidentiary value of recovery pursuant to disclosure under S.27 of the Indian Evidence Act, the effect of alleged contradictions in prosecution evidence, proof of motive, and whether the chain of circumstances was complete so as to establish the guilt of the accused beyond reasonable doubt. (Paras 10-42)

Headnotes

Criminal Law - Circumstantial Evidence - Conviction based solely on circumstantial evidence - Indian Penal Code - Ss. 302/34, 394, 201, 411 - Indian Evidence Act, 1872 - S.27 - Criminal Procedure Code, 1973 - S.374(2) - Five golden principles laid down in Sharad Birdichand Sarda constitute the Panchsheel of proof in a case based on circumstantial evidence and the prosecution must establish every circumstance completely, the circumstances must be consistent only with the hypothesis of guilt, must be of a conclusive nature, must exclude every hypothesis except that of guilt and the chain of evidence must be so complete as not to leave any reasonable ground consistent with innocence - Applying the aforesaid principles, the Court held that the chain of circumstances was complete and unerringly pointed towards the guilt of the appellant - Conviction affirmed. (Paras 10-12, 42-44)

Criminal Law - Last Seen Theory - Scope and applicability - Indian Penal Code - Ss.302/34, 394 - Indian Evidence Act, 1872 - Circumstantial evidence - Last seen theory by itself is insufficient to sustain conviction unless supported by other incriminating circumstances completing the chain of evidence - Evidence of prosecution witnesses established that the deceased driver and cleaner were last seen travelling with the appellant and the time gap between the last seen circumstance and the recovery of dead bodies was so short that the possibility of intervention by any other person stood excluded - Last seen circumstance, read with other proved circumstances, constituted a complete chain - Conviction upheld. (Paras 13-25)

Criminal Law - Motive - Relevance in a case based on circumstantial evidence - Indian Penal Code - Ss.302/34, 394 - Proof that the appellant had been removed from service by the complainant and had admittedly quarrelled regarding arrears of salary furnished a relevant motive - Such motive constituted an additional link supporting the prosecution case - Held, motive stood established and reinforced the chain of circumstances. (Paras 14, 26)

Evidence - Discovery of fact - Admissibility - Indian Evidence Act, 1872 - S.27 - Recovery pursuant to disclosure statement - Recovery made in consequence of information supplied by an

accused in police custody is admissible only to the extent that it distinctly relates to the fact thereby discovered - Recovery of the jack on the pointing out of the appellant was consistently proved by the complainant and the Investigating Officer and could not be discarded merely because one witness turned hostile - Recovery constituted an incriminating circumstance supporting the prosecution case. (Paras 27-37)

Evidence - Hostile witness - Effect - Indian Evidence Act, 1872 - Appreciation of evidence - Mere fact that a seizure witness turned hostile did not render the recovery inadmissible or unreliable where the Investigating Officer and other reliable witnesses consistently proved the recovery pursuant to disclosure by the accused - Recovery evidence accepted notwithstanding hostility of one witness. (Paras 28, 29, 33, 35, 37)

Criminal Trial - Appreciation of evidence - Contradictions and inconsistencies - Indian Evidence Act, 1872 - Minor inconsistencies or variations in testimony cannot be elevated to the level of reasonable doubt unless they strike at the root of the prosecution case - The alleged discrepancies relied upon by the appellant were not material and did not affect the credibility of the prosecution evidence or the established chain of circumstances - Conviction maintained. (Paras 38-41)

Criminal Law - Murder and Robbery - Circumstantial evidence - Indian Penal Code - Ss.302/34, 394, 201, 411 - Last seen evidence, motive, medical evidence, recovery pursuant to disclosure under S.27 of the Evidence Act, and other proved circumstances formed an unbroken chain excluding every hypothesis consistent with innocence - The appellant alone was found to be the perpetrator of the crime and the judgment of conviction and sentence recorded by the trial court called for no interference - Appeal dismissed. (Paras 42-45)

Held: The prosecution case being one of circumstantial evidence was required to satisfy the five golden principles constituting the Panchsheel of proof laid down in *Sharad Birdichand Sarda* and the evidence on record established that the deceased driver and cleaner were lastly seen travelling with the appellant in the truck immediately before their disappearance and thereafter they were never seen alive and their dead bodies were recovered within a short interval and the medical evidence fully supported the prosecution case regarding the time and manner of death - The appellant failed to offer any explanation as to when and where he parted company with the deceased and the proximity between the last seen circumstance and the death of the deceased excluded the possibility of any person other than the appellant being the perpetrator of the crime - The motive also stood established inasmuch as the appellant had admittedly been removed from service and had quarrelled regarding arrears of salary and the recovery of the jack on the pointing out of the appellant pursuant to his disclosure statement constituted a relevant incriminating circumstance admissible under S.27 of the Indian Evidence Act and merely because one witness to recovery turned hostile the recovery did not lose its evidentiary value when it stood consistently proved by the complainant and the Investigating Officer - Minor discrepancies and inconsistencies in the evidence neither affected the substratum of the prosecution case nor created any reasonable doubt and the circumstances proved were consistent only with the hypothesis of the guilt of the appellant and excluded every other hypothesis and the chain of circumstances was complete leaving no reasonable ground consistent with innocence - The learned trial court rightly appreciated the oral and documentary evidence and correctly recorded the finding that the appellant alone was the perpetrator of the offences punishable under Ss.302/34, 394, 201 and 411 IPC and the conviction and sentence did not suffer from any illegality or infirmity warranting interference in appeal and the appeal was therefore liable to be dismissed - appeal dismissed. (Paras 10-12, 18-42, 43-45) (E-7)

Case Law Cited

Sharad Birdichand Sarda versus State of Maharashtra; **(1984) 4 SCC 116***; Rambraksh alias Jalim versus State of Chhatisgarh;* **AIR 2016 SC 2381***; State of Karnataka versus Chand Basha;* **AIR 2015 SC (Supp) 2150***; Anter Singh versus State of Rajasthan;* **(2004) 10 SCC 657***; Mohammed Inayuttillah v. The State of Maharashtra* **(AIR 1976 SC 483);** *Palukuri Kotayya's case; Udai Bhan v. State of Uttar Pradesh* **(AIR 1962 SC 1116)***; Modan Singh versus State of Rajasthan;* **(1978) 4 SCC 435***; Mohd. Aslam versus State of Maharashtra;* **(2001) 9 SCC 362***; Kalinga @ Kushal versus State of Karnataka by Police Inspector Hubli;* **(2024) 4 SCC 735***; Govind versus State of Haryana;* **2025 Live Law (SC) 1106***; Tomaso Bruno versus State of U.P.;* **AIR 2015 SC (Supp) 412***; Krishnegowda versus State of Karnataka by Arkalgud Police;* **2017**

Cri. L.J. 2830; *State of Rajasthan versus Hanuman;* **2025 Live Law (SC) 691***; Shyamal Saha versus State of West Bengal; 2014 AIR SCW 4984; Ram Pratap versus State of Haryana;* **AIR 2023 SC 719***, Nanje Gowda versus State of Karnataka by Arkalgud Police;* **2017 Cri. L.J. 2830***.*

List of Acts

Criminal Procedure Code, 1973; Indian Penal Code,1860; Indian Evidence Act, 1872; Essential Commodities Act,1955

List of Keywords

Circumstantial evidence; Last seen theory; Panchsheel; Five golden principles; Chain of circumstances; Motive; Recovery; Disclosure statement; Discovery of fact; Confession; Extra judicial confession; Recovery pursuant to disclosure; Hostile witness; Medical evidence; Postmortem report; Strangulation; Robbery; Murder; Concealment of evidence; Reasonable doubt; Contradictions; Appreciation of evidence; Burden of proof; Conviction; Sentence; Recovery of jack; Truck; Scrap; Perpetrator of crime.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal under S.374(2) of the Criminal Procedure Code assailing the judgment and order dated 18.05.2009 passed by the Additional Sessions Judge/Special Judge, E.C. Act, Unnao in Sessions Trial No.230 of 2007 (The State versus Vijai Nai and Three Others), arising out of Case Crime No.508 of 2006, under Ss.394, 302/34, 201 and 411 of the Indian Penal Code, Police Station Ganga Ghat, District Unnao, whereby the appellant was convicted and sentenced under Ss.302, 394, 201 and 411 IPC and all the sentences were directed to run concurrently.

Appearances for Parties

Advs. for the Appellant:
Sri Adarsh Mehrotra, learned Amicus Curiae.
Advs. for the Respondents:
Sri Pawan Kumar Mishra learned AGA for the State.

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

(1) Heard Sri Adarsh Mehrotra, learned Amicus Curiae for the appellant and Sri Pawan Kumar Mishra, learned AGA for the State.

(2) This Criminal Appeal under Section 374(2) of Criminal Procedure Code (hereinafter referred to as Cr.P.C.), has been filed assailing the judgment and order dated 18.05.2009 passed by Additional Sessions Judge/Special Judge, E.C.Act, Unnao in Sessions Trial No.230/2007 (The State versus Vijai Nai and Three Others), arising out of Case Crime No.508/2006, under Sections 394, 302/34, 201, 411 Indian Penal Code(hereinafter referred as IPC),Police Station Ganga Ghat, District Unnao, by means of which the appellant has been convicted under Section 394, 302/34, 201, 411 IPC, sentencing him life imprisonment and fine of Rs.5,000/- under Section 302 of IPC, ten years rigorous imprisonment and fine of Rs.5000/- under Section 394 IPC, three years rigorous imprisonment under Section 411 IPC and five years rigorous imprisonment and fine of Rs.1000/- under Section 201 IPC and in default of payment of fine, one year additional imprisonment. It has further been provided that all the sentences shall run concurrently.

(3) Learned counsel for the appellant submitted that the impugned judgment and order has been passed without considering the evidence and material on record appropriately. He further submitted that it was a case of circumstantial evidence and last seen, as there is no eye witness to

the occurrence and the chain of circumstances is neither complete nor does it unerringly refer to the guilt of the appellant but the appellants have been convicted and sentenced by means of the impugned judgement and order. He further submitted that there was no motive against the appellant for committing the murder of driver and cleaner of the truck, specially when the grievance of the appellant could have been against the truck owner. He further submitted that the post mortem report has also not supported the prosecution case because as per the doctor, both the deceased died on account of strangulation and it was not possible for a single man to strangulate two persons at one time, that too, in a running truck. He further submitted that there is contradiction in the evidence of the witnesses of fact, but the learned trial court has failed to appreciate the same and wrongly and illegally relied on the evidence of such witnesses. He further submitted that recovery of jack and weapon of assault has not been proved and finger prints were also not taken from the recovered jack. He also submitted that though the truck was recovered but the scrap loaded in the truck was not recovered and the police has failed to recover the same. He further submitted that any of the family member of the victim has not been produced and it has not been clarified as to whether the dead bodies could have been identified in the condition in which it were found or not. Thus, learned counsel for the appellant submitted that the impugned judgment and order has been passed recording erroneous and perverse findings in an illegal manner, which are not sustainable in the eyes of law and liable to be set aside. Thus, the impugned judgment and order of conviction and sentence is liable to be set aside. The appeal is liable to be allowed and the appellant is liable to be acquitted. He relied on ***Rambraksh alias Jalim versus State of Chhatisgarh; AIR 2016 SC 2381, Kalinga @ Kushal versus State of Karnataka by Police Inspector Hubli;(2024) 4 SCC 735, Tomaso Bruno versus State of U.P.; AIR 2015 SC (Supp) 412, Anter Singh versus State of Rajasthan; (2004) 10 SCC 657, Shyamal Saha versus State of West Bengal; 2014 AIR SCW 4984, State of Karnataka versus Chand Basha; AIR 2015 SC(Supp) 2150, Ram Pratap versus State of Haryana; AIR 2023 SC 719, State of Rajasthan versus Hanuman; 2025 Live Law (SC) 691, Govind versus State of Haryana; 2025 Live Law (SC) 1106 and Nanje Gowda versus State of Karnataka by Arkalgud Police; 2017 Cri. L.J. 2830.***

(4) Per contra, learned AGA, vehemently opposed the submissions of learned counsel for the appellant. He submitted that though this is a case of circumstantial evidence and chain of circumstances are complete, which unerringly refer to the guilt of the appellant only. He further submitted that the appellant has admitted that he was a driver and working with the complainant. It is also not disputed that he had been sacked from service about a month ago of the incident. He has also not disputed the hot talks for dues of salary, therefore, there was motive. He further submitted that P.W.1 has proved that the scrap was loaded in the truck at Fazalganj, Kanpur, which was going to Sardar Rolling Mill, Lucknow, which was loaded on 11.10.2005 and the truck had departed on 12.10.2005 at 10:00 in the morning, in which the appellant had gone on his request. The F.I.R. was lodged at Police Station Fazalganj on 16.10.2005, which was subsequently transferred to the Police Station Gangaghat. On recovery of the dead bodies, the inquest was prepared on 14.10.2005 and the post mortem was conducted on 15.10.2005, which has supported the prosecution case. He further submitted that the dead bodies were found in Munshi Pulia, Police Station Azgain area and certain articles and scrap were missing from the truck. Jack was recovered on pointing out of the appellant. Thus, the submission is that the prosecution has proved it's case beyond reasonable doubt and considering the same, the trial court has passed the impugned judgment and order in accordance with law. The impugned judgment and order does not suffer from any illegality or

infirmity, which may call for any interference by this Court. The appeal has been filed on misconceived and baseless grounds. The appeal is liable to be dismissed.

(5) We have considered the submissions of learned counsel for the parties and perused the records.

(6) The prosecution case, in brief, is that the vehicle of the complainant was coming to Lucknow from Kanpur after loading scrap on 12.10.2005. The appellant asked the complainant to allow him to travel in the vehicle, stating that he has to go to Rama Devi Crossing, Kanpur. Accordingly, he proceeded in the complainant's truck alongwith the driver and the cleaner(helper). However, they did not reach their destination at Lucknow and after searching for the truck driver and cleaner, the complainant lodged the F.I.R. numbered Nil at Police Station Fazalganj, District Kanpur Nagar on 16.10.2005 at 10:15 A.M., which was later transferred to the police station Gangaghat. In the meantime, two unclaimed dead bodies were found on 14.10.2005 under Police Station Ganga Ghat, Unnao, the inquest of which were done on the same date and post mortem was done on 15.10.2005. Upon coming to know about the same from newspaper, the complainant and the family members of the driver went to see and found the dead bodies of the driver and cleaner of the vehicle of complainant, upon which the F.I.R. was transferred to Police Station Ganga Ghat, Unnao. Thereafter, the F.I.R. was lodged. The investigation was made and upon completion of investigation, a charge sheet was submitted. The magistrate, after taking cognizance on chargesheet, committed the case to session. Learned Session Judge framed charges, which were denied by the accused and they pleaded not guilty and claimed for trial. Hence trial held.

(7) The prosecution adduced oral evidence of Ramesh Chandra Porwal as P.W.1, Chotelal as P.W.2 , Dharam Pal as P.W.3, Manisha Bhadauria as P.W.4, Dr. Arun Prakash as P.W.5, Dheerendra Singh; S.I. as P.W.6, Ashok Kumar Yadav S.I. as P.W.7 and Prem Singh; writer of F.I.R. as P.W.8.

(8) The prosecution also placed on record and proved the following Exhibits:-

Written report	Ex. Ka 1
Recovery Memo	Ex. Ka 2
Inquest Report	Ex. Ka 3
Request to RI for post mortem	Ex. Ka 4
Request to CMO for post mortem	Ex. Ka 5
Challan Laash	Ex. Ka 6
Photo laash	Ex. Ka 7
Inquest Report	Ex. Ka 8
Challan Laash	Ex. Ka 9
Photo Laash	Ex. Ka 10

Request to RI for post mortem	Ex. Ka 11
Request to CMO for post mortem	Ex. Ka 12
Letter to the CMO	Ex. Ka 13
Post Mortem Report	Ex. Ka 14
Post Mortem Report	Ex. Ka 15
Site Plan	Ex. Ka 16
Site Plan	Ex. Ka 17
Charge Sheet	Ex. Ka 18
F.I.R.	Ex.Ka 19
Copy of G.D. Entry	Ex. Ka 20
Site Plan	Ex. Ka 21

(9) After prosecution evidence, the statement of the accused-appellants under Section 313 Cr.P.C. was recorded, in which they stated that the case has wrongly been conducted against him. However, the appellant Vijay Nai admitted in his statement under Section 313 Cr.P.C. that he was a driver on the vehicle No.U.P.78/346 of the complainant. He also stated that he has not seen the house of the complainant, who has a shop of quilt(rajai) and mattress(gadda).Truck No.U.P. 78 B 0019 is of the complainant. However, he does not know driver Munna Mishra. He also admitted that he was sacked one month prior to the incident. He also stated that he had gone on 07.09.2005 to demand arrears of salary of 13 months from the complainant, which was not paid, therefore, some quarrel took place. He also stated that he does not work in the work shop of Chotelal, therefore, he feels bad. He further stated that due to dispute regarding payment of arrears of salary, wrong evidence has been given.

(10) In view of above, it is a case of circumstantial evidence, which is to be tested on the touch stone of the five golden principles of circumstantial evidence enumerated in the case of ***Sharad Birdichand Sarda versus State of Maharashtra; (1984) 4 SCC 116***. The relevant paragraphs 153 and 154 of which, are extracted here-in-below:

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

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

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

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

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

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

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

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

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

(11) The Hon'ble Supreme Court has consistently followed the aforesaid principles and the same have been followed in the case of ***Shyama Saha versus State of West Bengal(supra)*** also.

(12) In view of above, the case in hand is to be tested on the touch stone of the aforesaid five golden principles known as Panchsheel and in case upon testing on the same, it is found that the circumstances unerringly refer to the guilt of the appellant only and the learned trial court considering the same, has passed the impugned judgment and order, it can be said that the appellant has rightly and in accordance with law been convicted and sentenced, failing which it may not be said that the appellant is guilty.

(13) The complainant Ramesh Chandra Porwal lodged a F.I.R. on 16.10.2005 at 10:15 a.m., alleging therein that the driver Munna Mishra and Mohan loaded the scrap in his Truck No.U.P.78 B 0019 on 11.10.2005 and the remaining scrap from Fazalganj. However, due to some defect in gear box, the vehicle was parked near Charan Safe Petrol Pump in Fazalganj and same was informed to him. Consequently, the complainant reached the spot on 12.10.2005 at about 10:00 a.m. alongwith the mechanic; Chotelal. While the repair was going on, his previous driver Vijay Nai (the appellant) arrived at the spot alongwith his friends. He had earlier been sacked from service by the complainant on account of some mess in fare about a month ago. Upon arrival, he touched the complainant's feet and started talking with the driver Munna Mishra. After some time, he went back and returned again after an hour and again started talking to driver Munna Mishra. The vehicle was repaired by 4:00 p.m. in the evening. Thereafter, Vijay Nai, alongwith three friends came and enquired as to where the vehicle is going and upon being informed by Munna Mishra that the vehicle was going to Lucknow, he asked him and Munna Mishra to go upto Rama Devi Crossing and sat alongwith his three friends on the vehicle, which was seen by Chotelal mechanic also. The complainant alongwith the mechanic returned to the shop after the vehicle went away.

(14) Ramesh Chandra Porwal appeared as P.W.1. He stated that his Truck No.U.P. 78 B0019 was being driven by driver Munna Mishra, while Mohan was working as conductor. The scrap was loaded in the said truck on 11.10.2005 from Fazalganj, which was going from Kanpur to Sardar Rolling Mill, Lucknow. During the journey, the vehicle had some problem near Charandas Petrol

Pump on 11.10.2005, as some fault had occurred in the gearbox. He reached near his vehicle on 12.10.2005 at about 10:00 AM. Prior to that, he had instructed the mechanic Chotelal to carry out the necessary repair of the vehicle. He is an old mechanic of his vehicle. On his information, Chotelal mechanic had reached near the vehicle prior to him and was opening the vehicle for repair. When he reached, Vijay Nai alongwith 2-3 persons were present there. The driver Munna Mishra and the cleaner Mohan were also present at the spot. Vijay Nai had earlier been driver of his vehicle but had been removed on account of some mess in the fare, due to which he bore enmity against the complainant. He recognized Vijay Nai, who was present in the Court. He further stated that he had gone to bring certain parts of vehicle and upon return found all of them present there. Thereafter, the vehicle proceeded from the petrol pump at about 3:30-4:00 on 12.10.2005. Vijay Nai enquired from him as to where the vehicle was going and upon being informed that it was going to Lucknow, he expressed his desire to go to Rama Devi. The complainant then asked him to enquire from the driver. Thereafter, Vijay Nai and his friends sat near the driver and proceeded. When they sat in the vehicle Chhotey Lao mechanic was also present. The vehicle then proceeded for Lucknow. Thereafter Chotelal returned to his shop.

(15) P.W.1 has further deposed that on 15.10.2005, he came to know from newspaper that two unclaimed dead bodies had been found aside the road near Thakur Dwara of village Ghazia kheda, Police station Ganga Ghat. On the same day, he also came to know from Lucknow that the truck loaded with scrap had not reached there. However, he informed that the vehicle had proceeded for Lucknow on 12.10.2005 at about 5:00 in the evening. He kept on searching for the vehicle on 13/14/15 and on 15.10.2005, he received the information. After reading the news in the newspaper, he went to the spot along with family members of Munna Mishra and identified the dead bodies. Out of the two dead bodies, one was of Munna Mishra and the second was of conductor Mohan. He stated that at that time he did not know the name of Mohan, but he was having knowledge that he was working as a helper on his vehicle because he had come 7 to 8 days ago to work on his vehicle. He identified the dead bodies from their clothes and face. Thereafter, he went to the police station alongwith them, however, there was no information regarding the vehicle and the goods. Then he went to the house of Vijay Nai but he was not found there, therefore, he became confident that Vijay Nai and his friends had killed the helper and truck driver in a planned manner, on account of his removal from service due to mess in fare. He proved the written report filed by him.

(16) Chhote Lal appeared as P.W. 2. He stated that he works as a mechanic. He knows Ramesh Chandra, who owns two trucks, the repair work of which are carried out by him. He also knows the driver Munna Mishra and Vijay Nai. He further stated that Munna Mishra used to get the work of Truck No.UP 78 B 0019 done at his workshop. On 11.10.2005 for repair, in the evening, the owner of vehicle Ramesh Chandra had informed that his vehicle was not moving ahead and some noise was coming from the gearbox. The scrap was loaded in the truck. He asked him that since it is night, the work could be done tomorrow. On 12.10.2005, he reached his shop at 9:15 a.m. and after collecting his tools, went to the place where the vehicle of Ramesh Chandra was parked, which was parked aside the road near Vijay Nagar Petrol Pump. He opened the gearbox and at that time, the driver of truck Munna Mishra and conductor, whose name he does not know but can identify, were standing near the vehicle. He further stated that Ramesh Chandra also came on the spot. Thereafter he went along with him to purchase the parts of vehicle. During that time, the driver Vijay Nai and one or two of his friends were present there. The truck was repaired by 4:00

p.m. on 12.10.2005. He was informed by the owner that the goods were to be transported to Lucknow. He further stated that although he had not heard any conversation between Vijay Nai and Ramesh Chandra as to where the truck was going but he had seen Vijay Nai and his two friends going from the truck towards Luknow. He also stated that Vijay Nai used to drive the said truck earlier, who is present in the court also. He further deposed that on account of dispute regarding exchange of money, Vijay Nai was removed from service by Ramesh Chandra, who had later informed him that driver and conductor had been killed, which was published in newspaper. However the truck and goods had not been recovered till that time. Thus, P.W. 2 has supported not only the prosecution case as disclosed in the FIR but the evidence of P.W.1 also to the extent that the appellant Vijay Nai along with his two friends had gone in the truck alongwith the driver Munna Mishra and cleaner Mohan on 12.10.2005, when it had proceeded, with scrap loaded on it, to Lucknow and appellant was his previous driver and he was sacked by him due to mess in fare. In the cross examination, nothing could be extracted from the witnesses, which may create any doubt about the evidence given by P.W. 1 and P.W. 2 in this regard.

(17) P.W. 3 Dharampal, also supported the prosecution case in his examination-in-chief and stated that the appellant Vijay Nai along with his two friends had gone in the truck with the driver Munna Mishra and the cleaner Mohan after informing Ramesh Chandra that they had to go to the Rama Devi crossing. However, in his cross examination, which was conducted after 14 days, he stated that on the date of incident, he was not present in the village and on 12-10-05 he was not in Kanpur as he had gone to Lucknow. Thus, he has not supported the evidence given by him in the examination-in-chief, but gave two contrary statements; one that he was not in village and other that he was not in Kanpur on 12.10.2005. However, it remains unrebutted that he had not gone to the place of incident along with the owner of the vehicle and he had not seen the appellant along with his two friends going with the driver Munna Mishra and cleaner Mohan, when the truck was going to Lucknow from Kanpur. However, even if his evidence is not considered there is consistent evidence of P.W.1 and P.W.2 that the appellant alongwith his two friends had gone with the appellant. Learned trial court has recorded a finding that the complainant Ramesh Chandra Porwal P.W.1, Chotelal P.W.2 and Dharampal P.W.3 had seen Vijay Nai lastly going with the deceased driver Munna Mishra and cleaner Mohan from Kanpur to Lucknow on the truck and thereafter the driver and cleaner have not been seen alive. Although Dharm Pal has stated in his cross examination that he was not in Kanpur on the said date but even if his examination-in-chief is not believed, P.W.1 the complainant Ramesh Chandra Porwal and P.W.2 Chotelal have given the conclusive proof of going of the accused lastly on the truck alongwith the driver Munna Mishra and cleaner Mohan and there is no contradiction in the same.

(18) In view of above, the deceased driver Munna Mishra and cleaner Mohan were lastly seen alongwith the appellant on the truck of the complainant Ramesh Chandra Porwal(P.W.1), which proceeded from Kanpur to Lucknow with scrap loaded on it. Thereafter the driver and the cleaner have not been found alive and their dead bodies were recovered on 14.10.2005 near thakurdwara of village Ghazia Kheda, Police Station Ganga Ghat, Unnao but neither the appellant nor the truck and the scrap loaded therein was found.

(19) The inquest of a dead body was prepared on 14.10.2005 between 12:42 to 13:30. As per the opinion of the inquest witnesses, the dead body was about 2-3 days old and the decomposition

had started. The skin was peeled of, maggots were present in the body and bad smell was coming. The injuries were not clear on account of decomposition. The dead bodies were found to be about three days old. The inquest of the other dead body was conducted between 13:30 to 14:20 and it's condition was also found similar to that of the first dead body. From the pocket of his lower, a diary was found, on the first page of which was written Munna Mishra, Dilipur,Sachendi, Kanpur and several telephone numbers were written in it. The said diary was taken into possession by the police.

(20) The postmortem of Munna Mishra was conducted on 15.10.2005 at 3:30 p.m., whose dead body was identified by Constable Dilshad, Police Station Gangaghat. The dead body was 3 to 5 days old. The following injuries and condition of dead body were found on external and internal examination of the body of the deceased:-

1. Contusion on right forehead 3 cmx 2 cm, 6 cm above right eyebrow
2. Contusion on neck & upper chest
3. Contusion on right wrist joint 4 cm x 3 cm
4. Contusion on left wrist joint 3 cm x 3 cm

External examination of Body

1. Total body swollen
2. Scrotum swollen
3.Tongue protruded
4. Eyes bulged out
5. Skin peeling
6. Maggots present all over body
7. Rigor mortis passed of from both the upper and lower extremities.
8. Scalp hair loosened
9. Teeth slight movable in sockets

Internal examination of Body

1. Trachea rings and Hyoid bones fractured
2.Left lungs,Right lungs, Pancreas, Spleen, Kidneys are congested

Cause of death due to asphyxia as a result of ante- mortem injuries strangulation

(21) The post mortem of Mohan was done by P.W.-5 on 15.10.2005 at 04:00 PM, whose dead body was identified by Constable Dilshad, Police Station Gangaghat. The dead body was 3 to 5 days old. The following injuries and condition of dead body were found on external and internal examination of the body of the deceased:-

1. Lacerated wound on right side of the forehead 3 cm x 1 cm x bone deep, 7 cm right eye brow.

2. Lacerated wound on right side of back head, 5 cm x 1.50 cm x bone deep 8 cm away from right ear.

3. Contusion on the left palm, fingers & middle finger (sic)

4. Contusion on the right hand 3 cm above the wrist joint.

External examination of Body

1. Swollen body
2. Abdomen, Scrotum and penis swollen
3. Body peeled off at most of the places
4.Rigor mortis passed of from both the upper and lower extremities.
5. Maggots present all over body
6. Scalp hair loosened
7. Tongue protruded
8. Teeth loosened in socket

Internal examination of Body

1. Front and back side bone of right side of skull fractured
2. Left and Right lungs are pale
3. Heart chamber are empty

cause of death due to shock and hemorrhage as a result of anti- mortem injuries

(22) In view of above, the deceased Munna Mishra and Mohan were lastly seen with the appellant on 12.10.2005 when he had proceeded with them on the truck and thereafter they were found dead on 14.10.2005. It is not the case of the appellant that after proceeding on 12.10.2005 with the deceased persons, he had got down at Rama Devi crossing or anywhere else, thus he is the only person, who could have been said to be guilty of committing murder of the deceased persons. The post mortem of the deceased persons was conducted on 15.10.2005 and the doctor has deposed that the dead body was 3-5 days old, which goes to 12.10.2005, when they were lastly seen. Thus, the time gap between the last seen with the appellant and their death is very short and there is no evidence of the deceased persons and the appellant being separated in between, therefore, the possibility of any person other than the accused being perpetrator of the crime is not possible.

(23) The Hon'ble Supreme Court, in the case of ***Rambraksh alias Jalim versus State of Chhatisgarh(supra)***, has held that it is trite law that the conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction on the basis of last seen, the prosecution has to complete the chain of circumstances to bring home the guilt of the accused. The relevant paragraph 10 is extracted hereinbelow:-

"10. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused."

(24) The Hon'ble Supreme Court, in the case of ***State of Karnataka versus Chand Basha(supra)***, has held that the Court for the purpose of arriving at a finding as to whether the said offence has been committed or not, may take into consideration the circumstantial evidence alongwith the last seen together.

(25) In view of above, it is trite in law that merely the proof of last seen together is not sufficient to hold the accused guilty of committing the crime unless the circumstances in terms of the five golden principles laid down by the Hon'ble Supreme Court, in the case of ***Sharad Birdichand Sarda(supra)***, also point out towards the guilt of the accused only. In this case, upon consideration of the evidence and material on record and the theory of last seen and circumstantial evidence, coupled with the post mortem report, which has supported the time of death and the gap between last seen with the deceased persons and their death, the accused-appellant can only be said to be the perpetrator of the crime.

(26) The motive was also with the appellant as he was sacked by the complainant i.e. the owner of the vehicle and admittedly he had a quarrel with him for payment of dues of salary of 13 months and subsequently truck was recovered but the scrap loaded in it was not in the truck, which after murder and robbery must have been sold and concealed the things stolen from it to disappear the evidence.

(27) P.W.-1 further stated that on 24/11/06, the SO Ganga Ghat had called him and informed that goods were to be recovered. He was called at the malhera crossing, where he reached at about 10:00 in the morning and after 15 to 20 minutes the Inspector came with 5 police personnel and Vijay Nai, who was sitting in the jeep. He further deposed that the said crossing was about 4 to 5 km away from the Ganga Ghat police station. Thereafter, he along with Inspector went to the village Ghazia kheda and after parking the Jeep, all of them went near thakurdwara and searched for the tirpal and rope of his vehicle in bushes, but the same could not be found. Then Vijay Nai stated that he had kept them there but the same had been been taken away by somebody. Thereafter, after going some ahead,Vijay Nai took out the Jack, after digging the said mud by the nails of fingers of leg which was kept under the sand mud, which was recognised by him and he stated that his jack was broken from the bottom and it was purchased a year ahead.

(28) It was stated by P.W.1 that on 24.11.2006, when he went for recovery of the goods, Dharampal was also with him. However, Dharmpal, who appeared as P.W. 3, though admitted recovery in his presence in examination-in-chief, but in cross examination, he denied that any recovery was made in his presence. Although Dharmpal supported P.W.1 on the point of recovery

in the examination-in-chief, however, in his cross examination, he denied that any recovery was made before him. However P.W.7 Ashok Kumar Yadav, Sub inspector and the Investigating Officer, supported the version of P.W.1 and proved that the recovery was made on the pointing out of the appellant Vijay Nai. He further proved the recovery of Truck Number U.P. 78 B 0019, which was found parked unclaimed at police station Ajgan on 25/11/ 2006.

(29) Learned counsel for the appellant had argued that P.W.1 has stated that the jack was new, therefore, the question of rusting on it does not arise. However, P.W.1 has stated that the Jack was purchased about a year ago of the incident and the recovery was made after more than a year of the date of incident, therefore, the contention of learned counsel for the appellant is misconceived and not tenable. The learned trial court has recorded a finding that although Dharampal has denied the recovery in his presence in his examination-in-chief and stated to have given evidence under the influence of the police, but even if his evidence is not believed, the evidence of P.W.1 Ramesh Chandra Porwal and P.W.7 S.I. Ashok Kumar Yadav, who was one of the Investigating Officer and witness to recovery on pointing of the appellant in furtherance of his disclosure statement, is consistent and the same is believable. They have given conclusive proof of recovery of the jack on the pointing out of the appellant Vijay Nai.

(30) Section 27 of the Evidence Act, which in fact is proviso to Section 26, provides as to how much of information received from accused may be proved. Section 27 of the Evidence Act, on reproduction, reads as under:

27. How much of information received from accused may be proved.

Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

(31) In view of above, though the confession of the accused in police custody cannot be proved in view of Section 26, but when any recovery is made in furtherance of the disclosure statement made by the accused, it becomes the relevant fact and upon proved before the court of law, it cannot be discarded.

(32) The Hon'ble Supreme Court, in the case of ***Anter Singh versus State of Rajasthan(supra)***, has dealt with the various requirements of Section 27 of Evidence Act and placing reliance on the extra judicial confession. The relevant paragraphs 14 to 16 of which, are extracted hereinbelow:-

"14.The expression "provided that" together with the phrase "whether it amounts to a confession or not" show that the section is in the nature of an exception to the preceding provisions particularly Section 25 and 26. It is not necessary in this case to consider if this Section qualifies, to any extent, Section 24, also. It will be seen that the first condition necessary for bringing this Section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such

fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly" relates "to the fact thereby discovered" and is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered. (See Mohammed Inayuttillah v. The State of Maharashtra (AIR 1976 SC 483).

15.At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact, now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this, as noted in Palukuri Kotayya's case (supra) and in Udai Bhan v. State of Uttar Pradesh (AIR 1962 SC 1116).

16.The various requirements of the Section can be summed up as follows:

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by accused's own act.

(4) The persons giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible"

(33) It has also been observed, in the case of ***Modan singh versus State of Rajasthan;(1978) 4 SCC 435***, that where the evidence of the investigating officer, who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witness did not support the prosecution version. Similar view was taken in the case of ***Mohd. Aslam versus State of Maharashtra;(2001) 9 SCC 362***, and it has been held that even if panch witnesses turn hostile, which happens very often in criminal cases, the evidence of the person, who effected the recovery would not stand vitiated.

(34) The Hon'ble Supreme Court, in the case of ***Kalinga @ Kushal versus State of Karnataka by Police Inspector Hubli(supra)***, has held that it is no more res integra that an extra judicial confession must be accepted with great care and caution. If it is not supported by other evidence on record, it fails to inspire confidence and in such a case, it shall not be treated as a strong piece of evidence for the purpose of arriving at the conclusion of guilt. The relevant paragraph 15 is extracted hereinbelow:-

"15. It is no more res integra that an extra judicial confession must be accepted with great care and caution. If it is not 6 (2022) SCC On Line SC 705 supported by other evidence on record, it fails to inspire confidence and in such a case, it shall not be treated as a strong piece of evidence for the purpose of arriving at the conclusion of guilt. Furthermore, the extent of acceptability of an extra judicial confession depends on the trustworthiness of the witness before whom it is given and the circumstances in which it was given. The prosecution must establish that a confession was indeed made by the accused, that it was voluntary in nature and that the contents of the confession were true. The standard required for proving an extra judicial confession to the satisfaction of the Court is on the higher side and these essential ingredients must be established beyond any reasonable doubt. The standard becomes even higher when the entire case of the prosecution necessarily rests on the extra judicial confession."

(35) In view of above, even though P.W.3 who is also a witness to the recovery has turned hostile, the same cannot be rejected as it has been proved not only by the Investigating Officer but the complainant also before whom the recovery of jack was made, pursuant to the disclosure statement made by the accused/appellant recorded in report no.13 of case diary, in pursuant where of, an application was moved by the Investigating Officer before the CJM, Unnao for remand of the appellant for recovery on 20.11.2006, which was allowed on 23.11.2006 and thereafter, the recovery was made on 24.11.2006 as discussed above. Even otherwise in absence of recovery or proof thereof the conviction can be made, if the prosecution is able to prove it's case otherwise.

(36) The Hon'ble Supreme Court, in the case of ***Govind Versus State of Haryana(supra)***, has held that the prosecution must prove the guilt beyond reasonable doubt on the basis of cogent material and evidence. For recovery under Section 27 of the Evidence Act to be relevant, the information received from the accused must relate distinctly to the fact thereby discovered. However, mere recovery is not sufficient to sustain a conviction for murder in the absence of other corroborative evidence connecting the accused to the crime.

(37) The learned trial court has recorded a finding that even if the evidence of P.W.3 Dharam Pal, who has stated that he had given the statement under the pressure of police is not considered, the evidence of P.W.1 Ramesh Chandra Porwal and P.W.7 S.I. Ashok Kumar Yadav was consistent and believable. The recovery of jack has been made on the pointing out of the appellant, which has rightly been proved.

(38) It has also been argued that there are material contradictions in the evidence of the prosecution witnesses and the material on record, but the learned trial court has failed to consider the same. It is settled in law that each and every contradiction and inconsistency in the evidence cannot be elevated to the level of a reasonable doubt, on account of which it may be said that the

prosecution has failed to prove it's case beyond reasonable doubt. However, learned counsel for the appellant has failed to point out any material discrepancy or inconsistency in evidence, which may have any dent on the prosecution case.

(39) It has been held by the Hon'ble Supreme Court, in the case of ***Kalinga(supra)***, that it is a trite law that a reasonable doubt is essentially a serious doubt in the case of the prosecution and minor inconsistencies are not to be elevated to the status of a reasonable doubt. A reasonable doubt is one, which renders the possibility of guilt as highly doubtful. The Hon'ble Supreme Court has further observed that the purpose of criminal trial is not only to ensure that an innocent person is not punished but it is also to ensure that the guilty does not escape unpunished. A judge owes this duty to the society and effective performance of this duty plays a crucial role in securing the faith of the common public in rule of law. Every case, wherein a guilty person goes unpunished due to any lacuna on the part of the investigating agency, prosecution or otherwise, shakes the conscience of the society at large and diminishes the value of the rule of law.

(40) The Hon'ble Supreme Court, in the case of ***Tomaso Bruno versus State of U.P. (supra)***, relying on certain cases of the Hon'ble Supreme Court has observed that there is possibility of some variations in the exhibits, medical and ocular evidence and it cannot be ruled out. But it is not that every minor variation or inconsistency would tilt the balance of justice in favour of the accused. Where contradictions and variations are of serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused.

(41) The Hon'ble Supreme Court, in the case of ***Krishnegowda versus State of Karnataka by Arkalgud Police (supra)***, has held that generally in the criminal cases, discrepancies in the evidence of witnesses is bound to happen because there would be considerable gap between the date of incident and the time of deposing evidence before the Court, but if these contradictions create such serious doubt in the mind of the Court about the truthfulness of the witnesses and it appears to the Court that there is clear improvement, then it is not safe to rely on such evidence. It is the duty of the Court to consider the trustworthiness of evidence on record. As said by Benthem, "witnesses are the eyes and ears of justice". It has also been held that mere lapse on the part of the Investigating Officer cannot be ground for acquitting the accused. If that is the basis, then every criminal case will depend upon the will and design of the Investigating Officer, therefore, the Courts have to independently deal with the case and should arrive at a just conclusion beyond reasonable doubt basing on the evidence on record. The Court should always make an endeavor to find the truth. A criminal offence is not only an offence against an individual but also against the society. There would be failure of justice if innocent man is punished. The Court should be able to perceive both sides i.e. the prosecution as well as the defence. Similar view has been taken by the Hon'ble Supreme Court in the case of ***State of Rajasthan versus Hanuman(supra)***.

(42) In view of above, and considering the overall facts and circumstances of the case and upon considering the material and evidence on record, on the principles of last seen theory, circumstantial evidence and proof of recovery pursuant to the disclosure statement of the appellant under Section 27, this Court is of the view that the chain of circumstances are complete, pointing out towards the guilt of the appellant only. It would be appropriate to reproduce the relevant

paragraphs of the impugned judgment and order disclosing the chain of circumstances against the appellant for recording his conviction:-

"1. अभियुक्त विजय नाई को वादी रमेश पोरवाल के द्वारा अपने ट्रक की ड्राइवरी से घटना से पौन महीना पूर्व भाड़े की गड़बड़ी करने की वजह से निकाल दिया गया था।

इस सम्बन्ध में अभियुक्त विजय नाई ने स्वयं अपने बयान अन्तर्गत धारा 313 दं०प्र०सं० में कहा है कि वह वादी के यहाँ ड्राइवरी का कार्य करता था, उनकी गाड़ी यू.पी. 78-346 को चलाता था। उसे नौकरी से एक माह पहले हटाया गया था। दिनांक-7.9.05 को वह वादी से तनख्वाह 13 महीने का बकाया माँगने गया था तो वादी ने पैसा नहीं दिया, उससे थोड़ी झड़प हो गई थी, कुछ खास नहीं हुई थी। इस प्रकार अभियुक्त विजय नाई के पास वादी रमेशचन्द्र पोरवाल को नुकसान पहुँचाने के लिये पर्याप्त मोटिव मौजूद था।

2. अभियुक्त विजय नाई कथित ट्रक पर सवार होकर मृतक ड्राइवर मुन्ना व क्लीनर मोहन के साथ अन्तिम बार कानपुर से लखनऊ के लिए ट्रक पर जाते हुये वादी रमेश चन्द्र पोरवाल व पी०डब्लू०-2छोटेलाल तथा पी०डब्लू०-3 धर्मपाल सिंह के द्वारा देखा गया था, जिसके पश्चात ड्राइवर व क्लीनर जीवित नहीं देखे गये। धर्मपाल ने यद्यपि जिरह में उक्त तिथि को अपने को कानपुर में न होना कहता है, परन्तु उसके मुख्य बयान पर यदि विश्वास न किया जाये तो भी वादी रमेशचन्द्र पोरवाल व पी०डब्लू०-2 छोटेलाल के द्वारा अभियुक्त के साथ अन्तिम बार चालक मुन्ना व हेल्पर मोहन को ट्रक पर जाते हुए देखने के सम्बन्ध में पुष्ट साक्ष्य दिया गया है, जिसमें कोई विरोधाभास नहीं है।

3. कथित ट्रक रास्ते से ही लखनऊ पहुँचने के पहले गायब हो गया तथा ड्राइवर व क्लीनर की लाश अजगैन क्षेत्र में फेंकी हुई प्राप्त हुई। चिकित्सीय साक्षी पी०डब्लू०-5 डा० अरुण प्रकाश श्रीवास्तव के अनुसार उक्त दोनो मृतकों केशरीर पर नीलगू निशान की पूर्व उल्लिखित चोटे थी। इसके साथ ही एक शव पर दो फटे हुए घाव की भी चोटे पाई गयी थी। आन्तरिक परीक्षण में उनकी मृत्यु गला दबाने के कारण "स्ट्रेगुलेशन" से होने की राय चिकित्सक के द्वारा दी गयी है।

4. कथित ट्रक लावारिस अवस्था में बरामद किया गया था। जिसपर सारा माल जैक, रस्सा, त्रिपाल, टायर आदि गायब थे।

5. अभियुक्त विजय नाई के पकड़े जाने के पश्चात ट्रक के जैक, रस्सा व त्रिपाल बरामद कराने के लिये कहा तो दिनांक 24.11.06 को उसने स्वयं बबूल की झाड़ियों से बालू में पैर की उंगली से कुरेदकर देखा और बताया कि यहीं गाड़ी का जैक गाड़ा था, फिर जैक को मौके पर निकालकर दिया। उक्त जैक का निचला बेस टूटे होने के सम्बन्ध में वादी रमेश पोरवाल ने साक्ष्य दिया है। जैक बरामद होने के तथ्य को वादी पी०डब्लू०-1 रमेश चन्द्र पोरवाल तथा पी०डब्लू-7 एस. आई. अशोक कुमार यादव द्वारा पुष्ट साक्ष्य दिया गया है।

पी०डब्लू०-3 साक्षी धर्मपाल यद्यपि जिरह में अपने सामने बरामदगी से इन्कार करता है तथा बयान पुलिस के दबाव में देना कहता है। परन्तु धर्मपाल के बयान को विश्वसनीय न मानने पर भी वादी

पी०डब्लू०-1 रमेश पोरवाल व पी०डब्लू०-7 एस.आई. अशोक कुमार यादव के बयान में एकरूपता है तथा उक्त साक्ष्य विश्वनीय है। विजय नाई के द्वारा स्वयं निशानदेही देकर लूट हुए जैक को बरामद करने के सम्बन्ध में पुष्ट साक्ष्य दिया गया है।

इस प्रकार वर्तमान मामले में साक्ष्य की सबी कड़ियाँ अभियुक्त विजय नाई के विरुद्ध पुष्टरूप से साबित है, जिससे अभियुकत विजयनाई की दोषसिद्धी का निष्कर्ष निकलता है। जो परिस्थितियां साबित की गयी है वह अभियुक्त के दोषी होने की परिकल्पना के अनुरूप है तथा अभियुक्त के दोषसद्धी के अतिरिक्त किसी अन्य परिकल्पना को सिद्ध नहीं करती है। परिस्थितियां "कन्क्लूसिव नेचर व टेडेन्सी" की है तथा साबित की गयी परिकल्पना के अतिरिक्त अन्य सभी परिकल्पनाओं को पृथक करती है। साक्ष्य की कड़ियाँ इस प्रकार पूर्ण है, जिससे अभियुक्त विजय नाई के निर्दोष होने का युक्तियुक्त आधार नहीं निकलता है तथा उक्त साक्ष्य की कड़ियाँ यह पुष्ट रूप से दर्शित करती है कि समस्त मानवीय परिकल्पनाओं में उक्त कृत्य केवल अभियुक्त विजय नाई के द्वारा ही किया गया है।

तदनुसार अभियोजन पक्ष अभियुक्त विजय नाई के विरुद्ध चालक मुन्ना व हेल्पर मोहन की हत्या कारित कर कथित ट्रक के सामान को लूटने के केस को साबित करने में अभियोजन पक्ष सफल रहा है तथा अभियोजन पक्ष अभियुक्त विजय नाई के कब्जे से चोरी गया जैक की बरामदगी के तथ्य को भी साबित करने में सफल रहा है। कथित जैक को छुपाने के साथ ही मृतक के शव ट्रक पर से अजगैन क्षेत्र में फेंकर साक्ष्य छुपाने के प्रयास का केस भी अभियुक्त विजय नाई के विरुद्ध पुष्ट रूप से साबित है। अभियुक्त विजय नाई तदनुसार धारा 394, 302/34, 201 व धारा 411 भा०दं०सं० के अन्तर्गत दोषी सिद्ध किये जाने योग्य है।

शेष अभियुक्तगण धीरज सिंह उर्फ धीरू, गुड्डू यादव एवं अजय को भा०दं०सं० की धारा-394, 302/34,201 के आरोप में सन्देह का लाभ देकर दोषमुक्त किया जाना उचित है।"

(43) In view of the discussion made herein above, this Court is of the view that the appellant is the only perpetrator of crime in the case in hand and the learned trial court has passed the impugned judgment and order in accordance with law by a reasoned and speaking order after considering the material and evidence on record appropriately. Thus, the contentions raised by learned counsel for the appellant are without any substance. The appeal has been filed on misconceived and baseless grounds, which lacks merit and is liable to be dismissed.

(44) The appeal is accordingly **dismissed**. The appellant is in jail and he shall serve out the remaining sentence.

(45) Let a copy of this judgment alongwith trial court's record be transmitted to the Court concerned forthwith and in any case within a period of one week from today for compliance.

(2026) 5 ILRA 1321
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 05.05.2026

BEFORE

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

Criminal Appeal No. 1752 of 1984

Dr. Vinod Alias Ram Vinod Alias Ram Niwas ...Appellant
Versus
State of U.P. ...Respondent

Issue for consideration

Matter pertains to legality of conviction order in case based on circumstantial evidence.

Headnotes

Murder-Indian Penal Code,1860-Section 302 -case rests on circumstantial evidence-deceased was son of the informant-post-mortem report has been filed and proved-prosecution able to prove that the dead body of the deceased was recovered at the pointing out of appellant -from the premises of Brij Ice Factory-is a formidable and incriminating evidence-prosecution has been able to prove motive-rightly convicted-**Appeal dismissed.**

Case Law Cited

Jagish Murav v. State of Uttar Pradesh and others, (2006) 12 SCC 626
Sampath Kumar v. Inspector of Police, Krishnagiri, (2012) 4 SCC 124
Jaikam Khan v. State of Uttar Pradesh, (2021) 13 SCC 716
State of Punjab v. Sawaran Singh, (2005) 6 SCC 101
Anand Ramachandra Chougule v. Sidarai Laxman Chougula and others, (2019) 8 SCC 50
Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116
State of Maharashtra v. Suresh, (2000) 1 SCC 471

List of Acts

Indian penal Code, 1860

List of Keywords

Circumstantial evidence; formidable and incriminating evidence; chain of events.

Appearances of parties

Counsel for Appellant(s) : Chandra Bhushan Prasad, G.P. Dixit
Counsel for Respondent(s) : A.G.A.

(Delivered by Hon’ble Sanjiv Kumar, J.)

1. This criminal appeal by the convict Dr. Vinod alias Ram Vinod alias Ram Niwas is directed against the judgment and order dated 05.06.1984 passed by Sri S.C. Srivastava, the then Special Additional Judge, Muzaffarnagar in Sessions Trial No. 47 of 1983 (State Vs. Suresh and another), under Section s 201, 364 and 302/34 IPC, Police Station Civil Lines, District Muzaffarnagar.

2. By the impugned judgment and order, the Trial Court has convicted the appellant, Dr. Vinod @ Ram Vinod @ Ram Niwas, and non-appellant, Suresh, for offences punishable under Section 302 r/w 34 IPC and sentenced them to undergo imprisonment for life and three years rigorous imprisonment for the offence punishable under Section 201 r/w 34 IPC, of which too they have been convicted. The Trial Court directed that both the sentences shall run concurrently.

3. Feeling aggrieved, Dr. Vinod @ Ram Vinod @ Ram Niwas has preferred the present criminal appeal, whereas non-appellant, Suresh, filed another Criminal Appeal No. 1719 of 1984, which was abated vide order dated 15.09.2025, as the appellant Suresh died.

4. Brief facts of the prosecution case are that upon an application dated 09.10.1982 (Ext. Ka-1) made by the informant Dr. Bale Ram Pal, son of Raja Ram Pal, a resident of village Chaitaura, Police Station Jansath, District Muzaffarnagar, along with a covering letter of same date by the Principal, Government Inter College, Muzaffarnagar, an information was given at Police Station Civil Lines, Muzaffarnagar, stating that the first informant′s son Sunil Kumar studies in Class-VII in Government Inter College, Muzaffarnagar. On October, the 8th, 1982, his son left school after 11:30, but did not return until 11:00 a.m. on 09.10.1982. He regularly goes to school from his house, situated in village Chitaura. When he did not return home, that day i.e. 09.10.1982, the informant made inquiries about him at the school, from his relatives and also launched a search for him. However, his whereabouts could not be traced. On the 9th, he met the Principal of the school and inquired from some students about his son. Thereupon he came to know that his son was last seen with his class-mates near the railway crossing, where buses ply for village Chitaura. Beside this, no other information came to his notice. He expressed apprehension that his son had been kidnapped.

5. The said report was endorsed to S.I. R.C. Gupta for necessary action, who sent it to Police Station Nai Mandi. A report was received back from Police Station Nai Mandi on 09.10.1982 and investigation commenced at Police Station Civil Lines on 16.10.1982. Meanwhile, the accused Suresh handed over two letters (Exts. Ka-9 and Ka-10) contained in a postal cover piece (Exts. Ka-7 and Ka-8) to Bale Ram. The envelop (Ext. Ka-7) contained Sunil′s photograph. In the aforesaid letters, a ransom of Rs.30,000/- was demanded and, according to the prosecution, the appellant Suresh intimidated Bale Ram that the boy was with him and would be killed, if Bale Ram takes any indiscreet step.

6. According to the prosecution, Bale Ram handed over these letters and photograph to S.I. R.C. Gupta, the same evening and, on that basis, a case under Section 365 IPC was registered at Police Station Civil Lines, the same day at 09:30 p.m. The investigation commenced on 17.10.1982. S.I. Surendra Singh (P.W. 8) commenced investigation and arrested the accused Suresh the same day, while co-accused Vinod was already confined in jail in another case. He was brought from the other jail and a confession of the appellant Vinod recorded. On 13.11.1982, Sunil′s is dead

body was recovered from the premises of the Brij Ice factory upon the information furnished by the appellant Vinod. The inquest was held and a report prepared at the spot and thereafter, the dead body was sealed and sent for autopsy. At the instance of the appellant Suresh, a school bag, books and exercise books of deceased Sunil were recovered form the same compound on the same day and its recovery memo prepared. Specimen handwriting of Suresh was obtained and the same along with ransom letters were sent to handwriting expert, who opined that the handwriting in both the documents was of the same person. The Investigating Officer recorded statements of the informant and other witnesses. The Investigating Officer inspected the place of occurrence from where deceased Sunil was kidnapped and prepared its site plan (Ext.Ka-104). He also prepared a site plan of the place, from where the dead body of the deceased was recovered (Ext. Ka-91). After completion of investigation, the Investigating Officer submitted a charge-sheet against Suresh and Dr. Vinod Alias Ram Vinod Alias Ram Niwas, under Sections 304, 302, 301 and 120B IPC before the learned Magistrate.

7. The Magistrate took cognizance of the offence and summoned the accused. They appeared before the Court and were furnished copies of relevant prosecution papers under Section 207 Cr.P.C. Thereafter, the case was committed to the Court of Sessions for trial.

8. The appellant and co-convict Suresh appeared before the Court of Sessions and charges under Sections 365 read with 34, 302 read with 34 and 201 IPC were framed against them, to which they pleaded not guilty and claimed to be tried.

9. The prosecution have examined nine witnesses to prove their case to wit, Ganga Sharan Sharma (P.W.1), Dr. Mahendra Kumar Taneja (P.W.2), Anwar Mohammad (P.W.3), Bale Ram (P.W.4), Ramesh Chand (P.W.5), Vijay Pal Singh (P.W.6), Mahender Pratap Singh (P.W.7), Surendra Singh (P.W.8) and Indar Pal Sharma (P.W.9).

10. P.W.1 Ganga Sharan Sharma is the Principal of the Rajkiya Inter College, Muzaffarnagar. He, in his testimony, has said that in October, 1982, the studies in his college used to be held in two shifts, namely from Class-VI to VII, in first shift (07:00 to 11:30 a.m.) and for rest of classes in second shift (12:00 noon to 05:00 p.m.). The school uniform was white shirt and khakhi pant. Sunil, son of Bale Ram, was a student in Class-VII, who came to attend classes on 08.10.1982 in the first shift. On 09.10.1982, after the school was opened, the deceased′s father, Bale Ram, came to his office and informed him that Sunil had not returned home after school yesterday. Thereafter, he asked his senior teacher Shri Ram Prasad to bring the attendance registers for Class-VII relating to all the sections and it was verified from the registers that Sunil had attended school on 08.10.1982. His attendance had been duly marked. Thereafter, his classmates were asked, who informed that after the school was over, Sunil was seen standing in college field, near the railway crossing. Thereafter, Sunil′s father gave the principal a written information, which he forwarded along with his own forwarding letter to the Police Station Kotwali, Muzaffarnagar. Bale Ram had written his application in his own handwriting, which P.W. 1 got typed out. Next, Bale Ram had put his signature and the same was sent to Police Station Kotwali. The witness has proved the application of Bale Ram and his own covering letter as Exts. Ka-1 and Ka-2, respectively.

11. In his cross-examination, P.W. 1 has said that senior teacher Shri Ram Prasad, after returning from Sunil's class, did not tell him the names of those students, who had seen Sunil standing near the railway crossing. His college's field extends up to the railway line. He has stated that in the application there is an overwriting on the word 'Kotwali' and subsequently 'Civil Lines' is scribed in Exts. Ka-1 and Ka-2 in his office by some clerk. It is because his college was not within the jurisdiction of Police Station Kotwali, but it fell under Police Station Civil Lines. It is correct that there are no initials over these cuttings. He had himself asked his clerk to make these cuttings.

12. P.W.2 Dr. Mahendra Kumar Taneja has conducted the post-mortem examination on deceased's cadaver on 13.11.1982 from 03:00 p.m. He has said that on 13.11.1982, he was posted as Medical Officer in District Hospital, Muzaffarnagar and on that day, at about 03:00 p.m., the body of deceased Sunil, son of Bale Ram, was brought to him for post-mortem examination by Constable Vijay Pal and Constable Dinesh Chand of Police Station Civil Lines, Muzaffarnagar in a sealed cloth. The deceased was aged about 12 years and death had occurred about one month ago. The entire body was decomposed. The skin, in some places, had vanished and the muscles had become blackish red. The hair were loose. Skull was present but its wall had decomposed. Heart and lungs had decomposed. Peritoneum membrane and tongue had also decomposed and were missing. There were fourteen teeth each in both upper and lower jaws. Heart had decomposed, weighing about one pound. Some parts of the deceased's body and bones were preserved. The witness has proved the post-mortem report as Ext. Ka-3 and said that the deceased had died between 08.10.1982 to 22.10.1982. He did not find any presence of maggots. He further said that after ten days from death, the skin starts decomposing and the muscles become blackish from red. The skin starts peeling after ten days and, after four weeks, hair loosen from the skin. There was a vest (Banyan), underwear, pant, shirt and a pair of sandal on the dead body. These materials were sealed in a box and handed over to the Constable. The above sealed box was opened before the Court, and the witness has proved articles contained in it as Exts. 1 to 5.

13. In his cross-examination, P.W. 2 has deposed that after burying a dead body under wet earth, decomposition delays, compared to decomposition in moist air. It is true that body of a child decomposes faster than that of a young man. It is not necessary that maggots would be found in a body after 14 to 20 days. Sunil could have died on 25/26 of October, 1982. The probability is less, but it cannot be entirely ruled out. The deceased could have died one or two days earlier than on 08.10.1982.

14. P.W.3 Anwar Mohammad is a witness of fact. He, in his examination-in-chief, has deposed that he was acquainted with Bale Ram, who resides in his village. He further stated that he also knows the appellants Suresh and Vinod. He next stated that he knows the appellant Vinod 15-20 days prior to the date of incident. On 08.10.1982 between 11:30 a.m.-12:00 noon, he had gone to Muzaffarnagar from his village Chitaura by bus. When his bus turned at the railway crossing, he saw the accused Suresh, Vinod and Sunil son of Bale Ram proceeding from the railway crossing towards Mahavir Chauk. Sunil was carrying his school bag and wearing a white shirt and khakhi pants. The same day at about 08:00 p.m., it came to his knowledge that his brother Mohammad, who resides in Meerut, had fallen ill. Therefore, the next day in the morning he went to Meerut and stayed with his brother. After 18-19 days, he returned to his village as there was curfew due to

Hindu Muslim riots in Meerut. Upon returning from Meerut, he went to his agricultural field and while returning from there, at about 04:30 p.m., he met the Investigating Officer near a temple, where he was inquiring about Bale Ram′s son. There, he told the Investigating Officer that he saw Sunil a few days ago. After seeing his (Sunil′s) photograph (Ext. Ka-29), P.W. 3 said that this is the photo of Dr. Bale Ram′s son, whom he had seen going along with the accused.

15. In cross-examination, P.W.3 deposed that his brother was not hospitalized, and was taking treatment from a private doctor. He was suffering from double pneumonia and the doctor had prescribed medicines to his brother before him. He had not told the Investigating Officer that he had gone to Meerut and returned after 18-19 days as the Investigating Officer had not asked so. He did not know that any Panchayat took place in village Chitaura after Sunil got missing. It is when the Investigating Officer enquired of him, it came to his notice that Sunil was missing and, as he had seen Sunil with the accused on 08.10.1982 who went missing since then, he thought that may be the accused had kidnapped him. He knows Dr. Vinod because the accused Suresh had come to him along with Vinod to get a room on rent.

16. P.W. 4 Dr. Bale Ram is the deceased Sunil′s father. He has said, on oath, that his son was aged about twelve years, who was studying in Class-VII in the Government Inter College, Muzaffarnagar. He used to go to the school daily by bus and usually returned by 12:30-01:00 p.m. He wore a white shirt and khakhi pants and was carrying his school bag and identity card. On 08.10.1982, Sunil had gone to school, but did not return home. During those days, he usually treated patients from the morning till 12:00 noon at his home, and thereafter, from 02:00 to 07:00 p.m. in the clinic at Vilaspur. On that day, he returned from Vilaspur at about 07:15 p.m., whereupon his wife Chandrakali informed him that Sunil had not returned from school, which caused him concern. Sunil, after telling him, had earlier stayed back on some occasions at his elder brother Ram Pal′s house, located in Mohalla Prempuri, Muzaffarnagar. On that day, Sunil had not told him that he was staying in Muzaffarnagar. He consoled his wife that Sunil might have stayed at his uncle′s house. In the morning at about 05:00 a.m., he went to Prempuri, where his son was not found. Thereafter, he enquired from his relatives, but Sunil was also not there. Next, he went to the Government College, Muzaffarnagar where, he met the Principal at 08:00 a.m.., who sent him to Class-VII with the teacher where, Sunil′s classmates told him that on 08.10.1982, they saw Sunil near the railway crossing, Nai Mandi, Muzaffarnagar at 12:00 p.m. carrying his school bag. The class teacher after perusing the school register told that Sunil was present on 08.10.1982 and attended all the periods. Thereafter, he wrote down an application and the Principal got it typed in duplicate. He had put his signatures over there and the Principal gave him a covering letter and asked him to go the police station along with the application and the covering letter to Police Station Kotwali. A constable from the Police Station Kotwali told him that Government Inter College is not within the territorial jurisdiction of Police Station Kotwali and it falls within the territorial jurisdiction of Police Station Civil Lines. Thereafter, he returned to the college and informed the Principal, who called a clerk, who scored out Police Station Kotwali and wrote it down as Police Station Civil Lines. Thereafter accompanied by a peon, he went to Police Station Civil Lines, where he filed the application. On 16.10.1982, at about 04:00 p.m., the accused Suresh, came to his house in village Chitaura and handed him two letters, one of the letters was bearing seal dated 12.10.1982 of the Post Office and the other had the seal dated 16.10.1982 over it. The witness has proved both these envelopes as Exts. Ka-7 and Ka-8 and letters as Exts. Ka-9 and Ka-

10. He has said that after handing him the envelops, the accused Suresh told him that his son is with him along with Vinod and two or three other accomplices and, if he raises any alarm, then his son would be killed. Thereafter, Suresh left his house and he opened envelope dated 12.10.1982, which carried Sunil′s photo and a letter. Thereafter, he called a few persons from the village and, after consultation, went to Muzaffarnagar and near the northern gate of the District Court. An Inspector from Police Station Civil Lines met him, whom he handed over the letters and the photo. The Inspector made inquiries from him on 13.11.1982.

17. P.W. 4 further testifies that Sunil′s dead body was found in Brij Ice Fatory. Sunil′s school bag and books were not found at the place of recovery. The accused Suresh and Vinod both were present there in handcuffs. The accused Suresh dug the earth near the place, where the dead body was found and pulled out the school bag from it. P.W. 4 identified his son′s school bag, books and school uniform, which were sealed at the spot. The witness has proved the vest (Ext. 1), underwear (Ext. 2), pants (Ext. 3), shirt (Ext. 4) and sandal (Ext. 5) and said that Sunil was wearing all these clothes. In the other sealed cover, seven books, nine copies, a diary and an instrument box, belonging to Sunil, were found, which the witness has proved as Exts. 11 to 29. On some of the books and copies, Sunil′s name and Class-VII-B was written.

18. In his cross-examination, he has deposed that a foul smell was emanating from the books as if something had rotten. Books were placed inside the school bag. The first page of the book was stuck but not torn. The books were recovered from a pit about one foot deep and about 2.5 to 2.25 feet width. The above pit was dug in his presence. The pit from which the dead body was recovered was not dug before him. The place from which the books were recovered was barren. He reached the Ice Factory at about 09:00 a.m. and the S.P. Muzaffarnagar was present there. The dead body was sent from the spot in his presence. He stayed there for about one or one and a half hour. There was a large crowd gathered there. The accused Vinod showed ignorance upon being asked about Sunil′s school bag, and told that Suresh might be knowing about it. On 13.11.1982, he stayed at his elder brother′s house in the city and went to the police station alone at 08:30 a.m. and there he came to know that Sunil′s dead body has been found in the courtyard of the Brij Ice Factory. He further deposed that the accused Suresh was his cousin, whose father is a peon in the Brij Ice Factory.

19. Further in his cross-examination, P.W. 4 deposed that Suresh handed him envelops Exts. Ka-7 and Ka-8 on 16.10.1982 at about 04:00 p.m. and had a conversation with him for about two-three minutes. Suresh told him that you read the letters and fulfill the demand mentioned in it. As Suresh had threatened him and the matter concerned his child′s life, he did not endeavour to apprehend him. He asked Suresh to stop but he ran away. He further stated that he does not remember whether Suresh was present in the village from 08.10.1982 to 16.10.1982, as he was busy in the search for his child. Suresh′s house is adjacent to his own house. On 16.10.1982, he did not search for Suresh in the factory, where his father worked. At that time, he was not familiar with Vinod and had seen him only once while going to Suresh′s house.

20. On 17.10.1982 and 18.10.1982, he did not search accused Suresh and on 18.10.1982, he had said the same before the Police. He held a meeting in the village on 16.10.1982 and the same day, the news spread in the village that his son was with the accused Suresh. In the night of

17.10.1982, he was at his house in the village, when he came to know that Suresh has been arrested. On 18.10.1982, he came to the police station Civil Lines along with many villagers. He does not know when the accused Vinod was arrested. On 18.10.1982, he reached the Police Station Civil Lines, where accused Suresh was present and was being interrogated.

21. P.W. 4 further stated that it is incorrect to say that on 08.11.1982, he appointed Shri Nazar Hussain, Advocate in Meerut for bail of accused Vinod and accused Vinod had refused to come out from jail. He knows that accused Vinod′s father is a doctor. Envelops (Exts. Ka-7 and Ka-8) bear the seal of Post Office, Muzaffarnagar. Since before the incident, he and the accused Suresh used to go to each other′s house. On 16.10.1982, when a meeting in the village was held, some persons collected donations. There was a place mentioned in both the letters, where the ransom was to be delivered and he went to that place alone on 18.10.1982. It is correct that another witness Ramesh Chand is his relative, who is married to his uncle Tara Chand′s daughter. It is correct to say that witness Tara Chand and Jodha Singh are cousins.

22. P.W.4 in his further cross-examination has said that in the month of April, since before the incident, there was an election for the Gram Pradhan, in which witness Sita Ram was one of the candidates. He does not know that there was some tension due to the election and that any firing had taken place at election booth, but some persons were arrested from the village. He himself and witness Sita Ram were also arrested and after being released from jail, he filed a complaint against Babu and Tarik Mehar Illahi. He got information about the dead body of his son on 13.11.1982 at Police Station Civil Lines. When he reached the Brij Ice Factory, about 100-150 person were present there. Some of them were his relatives and his fellow villagers.

23. P.W. 5 Ramesh Chand has stated that he knows the accused, the informant as well as the deceased. In the morning on 09.10.1982, Dr. Bale Ram came to his house inquiring about the whereabouts of Sunil and had said that Sunil had not returned from school. On 13.10.1982, at about 06:45 pm., he went to Police Station Civil Lines, Muzaffarnagar where two inspectors and four constables in a jeep along with the accused Suresh were present at the gate. The Inspector said to him that the accused is confessing to his crime and asked him to accompany them. Thereafter, he accompanied them. On the way, they met Kamar Abbas and Jodha Singh, who also came along with them. Subsequently, they reached near the Brij Ice Factory and the accused Vinod said that he had buried the dead body of Sunil′s body in this factory after he was killed with the help of a stick and with the assistance of Suresh. The Inspector recorded his statement and got his signature over it, which the witness has proved as Ext. Ka-4. Thereafter, Vinod dug the pit upto a depth of about three feet, and the deceased Sunil′s dead body was found buried there. Thereafter, other Police personnel reached there and the dead body was taken out of the pit. The dead body was identifiable. He has proved the recovery memo as Ext. Ka-5 and said that Bale Ram also reached there and identified the dead body. Bale Ram asked the Inspector to enquire from the accused about the school bag, upon which, Vinod said that Suresh knows about the bag. Thereafter, the Inspector sent a Constable to the police station and brought Suresh over. Suresh said that he had buried the school bag in the north western corner, near the wall. Suresh dug the pit and a school bag was found in it. The witness has proved the recovery memo relating to school bag as Ext. Ka-6 and said that at about 01:00 p.m., the dead body was sent for post-mortem examination.

24. In his cross-examination, P.W. 5 deposed that Bale Ram is his distant relative. Police Station Civil Lines is near the District Court. Brij Ice Factory is about three-four kilometers away from Police Station Civil Lines. They reached near the factory in 20-25 minutes. The Factory gate was close but not locked. Ext. Ka-5 was written at about 08:00 a.m. It took about half an hour to dig the pit. People living nearby and Member of Parliament Vijay Pal Singh had also reached the place, from where the dead body was recovered. Dr. Bale Ram reached after the dead body was taken out of the pit. Sunil Kumar never went to his house, since before this incident. The deceased′s body was not decomposed and the face was identifiable. He cannot give any reason why he has stated to the Investigating Officer that the dead body was decomposed and could be identifiable by clothes alone. The Constable had brought Suresh within an hour. The pit from which the school bag was recovered and the pit from which the dead body was recovered were about fifteen meters apart.

25. P.W.6 Constable Vijay Pal Singh has said that he was posted at Police Station Civil Lines as a Constable in October and November 1982 and the accused Vinod′s house was raided before him. On 13.11.1982, he along with Constable Dinesh Chand, Satpal and Kotwal, R.C. Gupta left the police station by jeep at 07:00 a.m. and reached Gata Bazar. They met Ramesh Chand there and took him along with them. At Prakash roundabout, two persons met and they were also taken along. They reached near the Ice Factory and Vinod said that this is the Kothri in which he, along with Suresh, had strangulated Sunil with the help of a stick. Thereafter, the accused Vinod showed them the place, where the dead body was buried and dug a pit from which the dead body was found. Thereafter, other police personnel, Sunil′s father and others reached there. Sunil′s father identified the dead body and asked the Inspector about the school bag and books of his son. Then Vinod said that only Suresh can tell about them. Thereafter, the Inspector sent a Constable and brought forth Suresh from the Police Station, who dug another pit nearby the place from which, the school bag was recovered.

26. In his cross-examination, P.W. 6 said that earlier this case was being investigated inquired by R.C. Gupta. He had not seen Ramesh Chand earlier at the Police Station. The dead body was found at about 08:20-08:45 a.m. and the constable had gone to the police station to bring Suresh at about 11:00 a.m. Suresh came at about 12:00 noon. Accused Vinod was at the Police Station in the night. He was also present at the place where the dead body was recovered, and there was no grass cover over it. Signatures of the witnesses were obtained on the recovery memo and he had also put his signatures over it. After perusing Exts. Ka-5 and Ka-6, the witness said that they do not bear his signature and he himself said that his signatures are there on the inquest report. When the witness was shown the inquest report, he said that it also does not bear his signature.

27. P.W.7 Mahender Pratap Singh is an expert witness and has said that he is a Document Expert with the Forensic Science Laboratory, Lucknow since 1961. He further said that he has prepared about 20,000 reports after examining disputed and sample hand writings. He compared the disputed letters Exts. Ka-9 and Ka-10 with sample letters and came to the conclusion that the person who had written the sample, shown as S-3520 to S-3610, had also written the disputed writing on Q-3513 to Q-3519. The witness has proved the expert reports as Exts. Ka-7 and Ka-8. His assistant had taken the negatives Exts. Ka-9 and Ka-10. Enlarged prints were also produced by him, which were 79 in numbers and proved them as Exts. Ka-11 to Ka-89. The point of similarity in hand writing are shown in red ink over those prints. The original letters (Exts. Ka-9 and Ka-10)

and sample on written paper 23/Ka/1 to 23/Ka/92 were brought by Constable Vijay Pal Singh of Police Station Civil Lines and sealed in a box before him.

28. In his cross-examination, P.W.7 said that line quality of both the disputed and sample writing, are poor and is written by the left hand. The letter formation is not well coordinated and has no flow of writing. It is correct that for identifying, the line quality is an important factor. If line quality is found poor, then an opinion is given that the writer is not skilled. All the sample writing, which are written with left hand and right hand, match the disputed writing. The writing characteristics of both the hands has natural variation except the line quality and the muscular co-ordination.

29. P.W.8 S.I. Surendra Singh is the Investigating Officer of the case and has said that before him S.I. R.C. Gupta was investigating the case, who was ill for the last eight-nine months. He has stated about the investigation carried out in this case and said that on 17.10.1982, he recorded the statement of informant Bale Ram and accused Suresh, who was arrested the same day. On 20.10.1982 and 21.10.1982, houses of Vinod at different place were raided. On 11.11.1982, accused Vinod was brought from Meerut Jail to Muzaffarnagar Jail. On 13.11.1982, he recorded the statement of accused Vinod and, at his pointing out, recovered the dead body of the deceased from Brij Ice Factory. He had taken samples of plain earth and blood-stained earth from the place, where the dead body was recovered, prepared its recovery memo and proved it as Ext. Ka-90. He had taken samples in two boxes, which he proved as Exts. 30 and 31. At his direction S.I. R.C. Gupta prepared the inquest report and recorded statement of the accused Suresh, upon whose pointing out, the school bag, books and copies were recovered. The recovery memo was proved as Ext. Ka-91. He proved the inquest report as Ext. Ka-92 and related papers, such as photo-nash, letter to CMO, reference report regarding post-mortem, letter to R.I., challan-nash as Exts. Ka-93 to 97 respectively. He had moved an application seeking police remand for the accused Vinod, which he proved as Ext. Ka-98 and the order of the learned Magistrate, as Ext. Ka-99. He has proved the charge-sheet Ext. Ka-102. He further stated that the accused Suresh′s father Kaluram was a watchman with the Brij Ice Factory.

30. In his cross-examination he deposed that on 13.11.1982, this case was converted into one under Sections 302, 120-B, 364, 201 IPC vide G.D. No.24 at 03:10 p.m. The dead body was sent from Brij Ice Factory on 13.11.1982 at 01:30 p.m. On 17.10.1982, the accused Suresh was arrested, and a country made pistol, along with cartridges, recovered from him. He was interrogated and he confessed to his crime. The door of the factory was not locked. At about 09:30 a.m., the dead body was recovered. Suresh was called from the Police Station after the dead body was recovered. He did not record statement of any student of Government Inter College, Muzaffarnagar, who had seen the deceased Sunil on 08.10.1982 near the railway crossing. No foul smell was emanating from the books, recovered. He has proved the site plan of the place of recovery as Ext. Ka-104 and the recovery memo of the attachment, as Exts. Ka-105 and 106. The sample of plain earth and the blood-stained earth were not sent for chemical examination. Witness Ramesh had given him the statement that the dead body was almost decomposed and could be identified only by clothes.

31. P.W.8 was recalled by the prosecution and, in his further statement, he stated that on 18.10.1982, the accused Suresh was brought before the court of the C.J.M. and his sample hand

written note was taken, which he proved as Ext. Ka-121 to Ka-126. He has said that he sent the sample and the disputed writing to the hand writing expert, who instructed him that sample of hand writing from both hands be obtained. Thereafter, sample of hand writing of both the hands of accused Suresh were taken.

32. P.W.9 Head Constable Indar Pal Sharma is a formal witness, who has said that on 13.10.1982, he was posted at Police Station Civil Lines, Muzaffarnagar. S.I. R.C. Gupta handed him an application and covering letter Exts. Ka-1 and Ka-2, upon which he lodged a report. He has proved report Ext. 107 and G.D. No. 28 at 15:40 hours as Ext. Ka-8. On 16.10.1982, he prepared G.D. No. 36 at 21:30 hours, which he proved as Ext. Ka-109. He has also proved G.D. No. 20 dated 17.10.1982 at 20:30 hours as Ext. Ka-110 and G.D. No.42 at 23:05 hours dated 20.10.1982 as Ext. Ka-111 and other police papers and G.Ds. of different dates as Exts. Ka-112 to Ka-120.

33. After closure of the prosecution evidence, the statement of accused were recorded under Section 313 Cr.P.C., where they denied the prosecution case and have said that they have been falsely implicated in this case and the witnesses were deposing against them on account of being relatives of Bale Ram. Accused Vinod has admitted that on 17.10.1982, the accused Suresh was arrested and accused Vinod surrendered in Meerut after his house was raided on 20.10.1982 and 21.10.1982. He brought to Muzaffarnagar on 11.11.1982. He has said that his father had a clinic near Soojdu Chungi and the informant Dr. Bale Ram wanted to have a shop adjacent yo the shop. His father did not let Bale Ram have that shop, on account whereof, he has been falsely roped in this case.

34. Accused Suresh has admitted that Ext. Ka-6 is Sunil′s photograph. On 17.10.1982, he was arrested. He also admitted that on 18.10.1982, his sample hand writing was obtained and, on 05.01.1983, the sample handwriting of his both hands were taken. He has said that last year, there was election in the village. One party was of Bale Ram and another was of his own. There was dispute between both the parties and Dr. Bale Ram was confined in jail. Dr. Bale Ram had suspicion about him and therefore, he has been falsely implicated in this case.

35. In defence, D.W.1 A.S. Kapoor, hand writing and finger print expert has been examined on behalf of the accused, who has stated that since last 51 years, he is engaged in the field of a handwriting expert. He had compared the disputed handwriting with the admitted handwriting and come to the opinion that they do not match each other. He has proved his expert report as Ext. Kha-1 and stated that he himself took the photographs and prepared its negatives and enlarged the prints. He has submitted negatives as Exts. Kha-2/1 to 2/11 and enlarged photos as Ext. Kha-3 to Kha-25. In his cross-examination, he has stated that over some letters in the disputed writing, the tilt is from left to right. Letter 'D' on Ext. Kha-8 has been written hurriedly without any hesitation, whereas letter 'Da′ in Ext. Ka-22 is written with hesitation and there are no similarities between the two. If a person is in habit of writing by his right hand but writes with the left hand, then there would be difference in both his writings. The slant of writing is from left to right in Ext. Ka-14. He is in private practice. In the sample handwriting, there is a wrist movement, whereas in the disputed writing, there is fingers′ movement. It is correct that in one of the cases in Meerut, the Additional Sessions Judge had passed strictures against him regarding the evidence, but the appellate court

was in agreement with him. He has denied the suggestion that the strictures against him remained untouched in appeal.

36. After hearing the submissions of both parties and perusing the evidence on record, the learned Trial Judge came to the conclusion that the prosecution have been able to prove their case beyond reasonable doubt. It was proved that the accused had murdered Sunil and to conceal evidence, buried the dead body in a pit at the Brij Ice Factory. The Trial Court found that technically the offence under Section 365 IPC was not proved as there was no evidence of deceit or use of force while taking away Sunil and, accordingly, the appellants Suresh and Dr. Vinod @ Ram Vinod @ Ram Niwas were found guilty, convicted, and sentenced to the term as indicated above.

37. Heard Mr. Chandra Bhushan Prasad, learned Counsel for the appellant and Mr. Anil Kumar Mishra, learned Additional Government Advocate appearing on behalf of the State.

38. It is submitted on behalf of the appellant that the prosecution have not examined material witnesses, such as Sita Ram (the alleged eye-witness), Jodha Singh and Qamar Abbas (witnesses of fard baramadgi), Dile Ram, Vijay Pal Singh, Atar Singh and Nirdosh Kumar (witnesses of inquest), other independent/public witnesses of the locality as well as the watchman and the owner of the Brij Ice Factory. Also statement of classmates of the deceased, who had last seen him at the railway crossing adjacent to the college field were not recorded and thus, non-production of these witnesses has materially affected the prosecution case. It is further submitted that in the post-mortem report, the cause of death could not be ascertained and viscera was preserved. The prosecution has not filed any Forensic Science Laboratory report to establish the cause of death, which has adversely affected their case. It is further submitted that the appellant, Dr. Vinod is neither a relative nor a friend of the deceased′s family. So, there was no occasion for P.W.4 and P.W.5 to know and identify him prior to the incident.

39. In support of his arguments, learned Counsel for the appellant has relied upon **Jagish Murav v. State of Uttar Pradesh and others, (2006) 12 SCC 626**, which relates to a case of attempt to murder. In the above case, the Trial Court had acquitted the accused and in appeal, the High Court set aside the acquittal and convicted the appellants, against which, they approached the Supreme Court. There, it was found that no independent witness was examined. The site-plan was also not brought on record. Report of the Serologist was not made available. The First Information Report (′FIR′ for short) was found ante-timed and ante-dated. The statements of prosecution witnesses were full of contradictions. In view of the above, the Supreme Court set aside the judgment of the High Court and acquitted the appellants.

40. Another authority that is relied upon by the learned Counsel for the appellant is, **Sampath Kumar v. Inspector of Police, Krishnagiri, (2012) 4 SCC 124**. The above case related to murder and is one based on circumstantial evidence. In the above case, it was found that the evidence of the prosecution witnesses was not reliable. It was only after five years of the occurrence that the witness, for the first time, disclosed in Court the story about him having seen the appellant standing near the deceased. There was no independent corroboration of the prosecution story. Thus, the appellants/accused were found entitled to acquittal and the appeal was allowed.

41. Similarly, **Jaikam Khan v. State of Uttar Pradesh, (2021) 13 SCC 716**, has been relied upon on behalf of the appellant, in which, it was held that the burden is on the prosecution to prove its case and when the prosecution is not able to prove its case beyond reasonable doubt, then it cannot take advantage of the fact that the accused has not been able to probabilise their defence. Accordingly, the conviction and death sentence imposed upon the accused was found unsustainable in law and the appeal was allowed.

42. The appellant has also pressed in aid **State of Punjab v. Sawaran Singh, (2005) 6 SCC 101**, The authority relates to Section 18 Narcotic Drugs and Psychotropic Substances Act, 1985. In the above case, the evidence of prosecution witnesses was not specifically put to the accused under Section 313 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) and thus, it was held that in the absence of these facts been put in the form of questions to the accused, the evidence could not have been used against him.

43. Lastly, it has been argued that the appellant was put composite question in the statement under Section 313 Cr.P.C. Therefore, he was prejudiced and thus, the conviction and sentence is not sustainable.

44. Per contra, the learned Additional Government Advocate on behalf of the State has submitted that the prosecution have proved their case beyond reasonable doubt. The case rests on circumstantial evidence and the prosecution have proved the chain of events, which ultimately point to the guilt of the appellant. The testimony of prosecution witnesses is consistent and reliable. The deceased was last seen alive in the company of the appellant and at his pointing out, the dead body was recovered. Therefore, the learned Trial Court had rightly convicted and sentenced the appellant.

45. In view of the arguments of both parties and the evidence on record, let us see whether the prosecution has been able to prove its case beyond reasonable doubt. It it settled law that in a criminal case, the burden of proof lies on the prosecution. In this regard, the following observations of the Supreme Court in the case of **Anand Ramachandra Chougule v. Sidarai Laxman Chougula and others, (2019) 8 SCC 50** are relevant :

10. The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. In contradistinction to the same, the accused has only to create a doubt about the prosecution case and the probability of its defence. An accused is not required to establish or prove his defence beyond all reasonable doubt, unlike the prosecution. If the accused takes a defence, which is not improbable and appears likely, there is material in support of such defence, the accused is not required to prove anything further. The benefit of doubt must follow unless the prosecution is able to prove its case beyond all reasonable doubt.

46. In the present case, it is not in dispute that the deceased, Sunil, aged about 12 years was son of the informant, Dr. Bale Ram. It is also not in dispute that Sunil has died. His post-mortem report has been filed and proved. There is no direct evidence that Sunil was murdered by the appellant and the co-convict. Thus, the case rests on circumstantial evidence.

47. In a case based on circumstantial evidence, the prosecution has to prove the chain of events, which ultimately point towards the guilt of the accused and it should be proved that it was the accused who had committed the murder of the deceased and none else. In **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116**, the Supreme Court has laid down the following golden tests to be satisfied in a case based on circumstantial evidence :

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

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

(3) The circumstances should be of a conclusive nature and tendency.

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

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

48. In the present case, it is not in dispute that the first informant, Dr. Bale Ram, gave a missing report of his child, Sunil on 09.10.1982. It is also an admitted fact that co-convict, Suresh, was arrested on 17.10.1982 and the surviving appellant, Dr. Vinod, surrendered in a Court in Meerut in another case, after his property was attached on 20.10.1982 and 21.10.1982. Admittedly, the appellant, Dr. Vinod, was brought from Meerut jail to Muzaffarnagar on 11.11.1982.

49. According to the prosecution, when the informant, Dr. Bale Ram, handed over two envelopes to Sub-Inspector R.C. Gupta containing letters regarding demand of ransom, then, on 16.10.1982, a case was lodged under Section 365 of the Indian Penal Code, 1860 (‘IPC′ for short). It was converted under Section 364 IPC. Further, on 13.11.1982, when the dead body of the deceased was recovered, then, the case was further converted under Sections 302, 120-B, 364 and 201 IPC.

50. Looking at the facts and circumstances of the present case, the prosecution has to prove the following chain of events to establish that it was the appellant, Vinod and co-convict, Suresh, who had kidnapped and murdered the deceased Sunil, and thereafter, to remove or destroy the evidence of crime, they buried the dead body:

(1) Whether the deceased, Sunil went to school on 08.10.1982 and did not return from there, after the school was closed at 11:30 a.m.?

(2) Whether the deceased was last seen alive in the company of appellant, Dr. Vinod and co-appellant, Suresh the same day i.e. 08.10.1982 at about 11:30 a.m. or 12 noon, while going towards Mahavir Chowk from railway crossing?

(3) Whether the dead body of the deceased was recovered at the pointing out of the appellant, Dr. Vinod, on 13.11.1982 from the premises of Brij Ice Factory?

(4) Motive?

51. With regard to Point No. 1, the prosecution have examined P.W.1 Ganga Sharan Sharma and P.W.4, Dr. Bale Ram to prove this point. P.W.1 Ganga Sharan Sharma is the Principal of Government Inter College, Muzaffarnagar, where the deceased was studying in Class VII. P.W.1 has said that in his college, there were two shifts. The first shift was for Class VI to VIII, which ran from 07:30 a.m. to 11:30 a.m. He has said that deceased Sunil was studying in Class VII and had come in the first shift to the college on 08.10.1982 for studies. He has said that on 09.10.1982, Sunil′s father, Bale Ram, came to him and said that his child had not returned by the evening of 08.10.1982. Then, he sent Bale Ram with a senior teacher, Ram Prasad, to his child′s classroom, where his classmates told that he was seen at the railway crossing near the school field, after school break. He has said that his school′s field extends up to the railway crossing and after calling for the attendance register of Class VII, it was verified that Sunil had come to school on 08.10.1982 and attended all the classes.

52. P.W.4, Dr. Bale Ram, is the father of the deceased. He said that his son, Sunil had gone to school on 08.10.1982 and did not return home. He has said that he is a doctor and when he reached his house in the evening from the clinic, his wife told him that Sunil had not returned from school, which worried them. On some occasions, Sunil, after informing, stayed at his uncle′s (Tau) house, so they thought that Sunil might have stayed at his Tau′s house. In the next morning, Bale Ram inquired about his son Sunil at his Tau′s house and other relatives, and when Sunil was not found there, then he went to the school, where he met the Principal and the class teacher. Then, he came to know that Sunil had attended the school on 08.10.1982, but did not return home. His classmates had told that he was seen near the railway crossing, after the school break.

53. There are no major contradictions in the testimony of P.W.1 Ganga Sharan Sharma, the Principal of the Government Inter College, Muzaffarnagar and P.W.4, Dr. Bale Ram, the father of the deceased on this point. It has neither been suggested to P.W.4 Dr. Bale Ram that Sunil had not come to the college for attending classes on 08.10.1982. Though the Investigating Officer (′IO′ for short) has not collected the attendance register and also not interrogated the classmates, who had seen Sunil standing near the railway crossing, but, looking into the above evidence, any lapse on the part of the IO on this point has no adverse effect on the prosecution case. P.W.4, Dr. Bale Ram, had submitted an application, (Ex.Ka.1) dated 09.10.1982, which also corroborates the prosecution case on this point. It has come in evidence that upon receiving the application of the informant the then Station House Officer, Surendra Singh had directed Sub-Inspector R.C. Gupta to take necessary action in the matter. Here, it is relevant to note that in the FIR, no accused was named and it was simply a missing report. If the first informant had any intention to manufacture a case, then he could have named the accused in his application. It proves the genuineness of the report and its receipt on 09.10.1982.

54. In view of the above discussion, we come to the conclusion that the prosecution has proved that on 08.10.1982, Sunil had gone to his school i.e. Government Inter College, Muzaffarnagar to study and after the school break, at 11:30 a.m., he did not return home.

55. So far as Point No. 2 is concerned, the prosecution has examined P.W.3, Anwar Mohammad. According to the prosecution, Anwar Mohammad is the person who had last seen the deceased alive in the company of the appellant and the co-appellant on 08.10.1982 between 11:30

a.m.-12 noon near the railway crossing. He has stated on oath that he knows both the appellants, Suresh and Vinod and also the first informant, Dr. Bale Ram. The above witness resides in the same village where the first informant lives. He has said that on 08.10.1982, at about 11:30 a.m.-12 noon, he was going to Muzaffarnagar from his village Chitora riding a bus. When his bus crossed the railway crossing at Mandi Ram Baag and turned towards the railway station, he saw appellants, Suresh and Vinod, along with Dr. Bale Ram′s son Sunil, going towards Mahavir Chowk. He has said that Sunil had a school bag with him and wearing a white shirt and a khakhi trouser. According to him, he returned to his village the same evening, but at about 08:00 p.m., he came to know that his brother, Aan Mohammad, residing in Meerut, was ill. So, in the morning, he went to Meerut and stayed there for 18-19 days, because, in the meantime, curfew was imposed due to Hindu-Muslim riots. When he returned to his village, then he saw the Inspector inquiring about Dr. Bale Ram′s child. Then, he told the IO what he witnessed at the railway crossing, while riding on the bus. The above witness has been thoroughly cross-examined, but nothing material has come in his deposition to make him unreliable.

56. It has been submitted on behalf of the appellant that the IO has recorded his statement under Section 161 Cr.P.C. belatedly, raising suspicion about his presence on the spot. We do not agree with his submission, because, the this witness has clearly stated that the same day, he received information about the illness of his brother at Meerut, and proceeded there the next morning. He returned after 18-19 days. He has also said that due to communal riots and the imposition of curfew at Meerut, he could not return earlier to his village. This witness was interrogated on 27.10.1982. P.W.3, Anwar Mohammad has said that his brother was suffering from double Pneumonia. In the circumstances, his staying at Meerut for the period of time that he did is not unnatural. Here, it is relevant to note that in the above circumstances, the I.O. could not have known before meeting this witness that he had seen Sunil in the company of the appellants. So, there was no occasion for the I.O. to interrogate him earlier. It has come in the statement of P.W.3, Anwar Mohammad, that when the I.O. asked him as to whether he knew anything about the child, then this witness came to know that Sunil was missing and he told the I.O. what he saw earlier at the railway crossing.

57. It is next submitted on behalf of the appellant that it was hard for P.W.3 Anwar Mohammad to see the deceased, while sitting inside a running bus, and thus, this witness is highly unreliable. We do no agree with his submission. There is no evidence on record to show as to which side of the bus P.W.3 Anwar Mohammad was sitting. It has come in his evidence that the bus was one of two-seat unit. After perusing the site plan Ex.Ka.104, it is clear that the appellants and Sunil were on the northern side of the road and Sunil went with them towards Mahavir Chowk on the southern side of the road. In that circumstance, if the bus was approaching from the eastern side, this witness would have seen Sunil and the appellants seated on the left side of the bus. Therefore, the testimony of P.W.3, Anwar Mohammad on this point is consistent and reliable. He has said that co-appellant Suresh resides in his own village, so naturally, Suresh was known to him since before.

58. So far as the appellant Dr. Vinod is concerned, the above witness has said that he knew Vinod since before 15-20 days of the incident, because co-appellant, Suresh, had brought the appellant, Dr. Vinod to his house to get an accommodation on rent. The defence has not cross-

examined the witness on this point. Therefore, his testimony, that he knew the appellant Dr. Vinod since before the incident is unchallenged and, thus, reliable. There is no evidence that this witness is inimical to the appellants or is close to the first informant. He is an independent witness and consistent in his testimony. He is thus reliable and trustworthy.

59. In view of the above discussion, we come to the conclusion that that the prosecution have been able to prove the point that the deceased, Sunil was last seen alive in the company of appellant, Vinod and co-appellant, Suresh on 08.10.1982 at 11:30 a.m.-12 noon while going from railway crossing towards Mahavir Chowk. There is no evidence that thereafter, the deceased was seen alive at any place by any person.

60. So far as Point No. 3 is concerned, the prosecution has examined P.W.4 Dr. Bale Ram, P.W.5 Ramesh Chand, P.W.6 Constable Vijay Pal Singh, P.W.8 IO Surendra Singh and P.W.9 Head Constable Indra Pal Sharma to prove this point. P.W.4, Dr. Bale Ram, has stated that when his son's dead body was found inside Brij Ice Factory on 13.11.1982, he went there and identified it. He has said that both Suresh and Vinod were present there. At the pointing out of co-appellant Suresh, the school bag and the school uniform of the deceased was dug out from a nearby place. The witness has proved the uniform, sandal, underwear of the deceased as Ex.1 to 5 and has said that Sunil was wearing all these apparels when he had left home for school. He has also identified books, copies, a diary and an instrument box as Ex. 11 to 29 and said that on some books and copies, it is written "सुनील कुमार कक्षा 7-B". He has said that he reached the ice factory at about 09:00 a.m. and after 45 minutes, the dead body was wrapped in a cloth before him. He has said that on 13.11.1982, he has stayed in the city at his elder brother's house and as usual, he went to the Police Station Civil Lines, Muzaffarnagar at about 08:30 a.m. There, he came to know that Sunil's dead body was recovered from the premises of Brij Ice Factory.

61. P.W.5 Ramesh Chand, is the first informant′s distant relative and according to him, Dr. Bale Ram happens to be his aunt′s (Bua) son. He has said on oath that on 13.11.1982, at about 06:45 a.m., he had reached Police Station Civil Lines, Muzaffarnagar, where, two Inspectors and four constables met him in a Jeep at the gate along with appellant Vinod and the Inspector had told him that the appellant is confessing his crime. Thereafter, he accompanied them and near Prakash Talkies, they met Qamar Abbas and Jodha Singh, who were also taken along and then they reached Brij Ice Factory, where the appellant Vinod said before them that he had buried the dead body in the factory and it was he and the co-appellant Suresh who had killed Sunil in this kothri by pressing his neck with a stick and strangulated him. The I.O. recorded the statement and obtained his signature, which he proved as Ex.Ka.4 and has said that thereafter, appellant Vinod took them to the western wall of the factory and dug about three feet deep into the earth with a spade, where the dead body was found.

62. The memo of recovery (*Fard Baramadgi*) of the dead body was prepared before him, which was proved as Ex.Ka.5. P.W.5 has said that meanwhile, Dr. Bale Ram reached there, who also identified the dead body. When Bale Ram asked about the deceased′s school bag, the appellant Vinod revealed that it was co-appellant Suresh who knew about the school bag. Then Suresh was called from the police station and at his pointing out, from another place to the north west,from a

flower bed like feature in the earth, the school bag containing copies and books was recovered. The witness has been cross-examined thoroughly by the defence, but nothing material has come in his evidence that may raise suspicion about his testimony.

63. P.W.5 Ramesh Chand has proved the statement Ex.Ka.4 made by appellant Vinod on 13.11.1982, leading to recovery of the dead body of Sunil by digging up earth on the premises of Brij Ice Factory by Vinod himself. As the above statement of the appellant Vinod contained a confession of killing Sunil and the fact that he could lead to the recovery of the dead body of the deceased, the above statement of appellant Vinod comes under Section 27 of the Indian Evidence Act, 1872 ('Evidence Act' for short). Acting upon the above statement, the dead body was recovered. Therefore, that part of the statement, which led to the recovery of the dead body of the deceased is admissible under Section 27 of the Evidence Act. The recovery memo contains the signature of P.W.5 Ramesh Chand. No doubt, Ramesh Chand is a relative of Dr. Bale Ram, but, merely on account of being a relative, the evidence of a witness cannot be discarded. Here, it is relevant to note that the defence has not put forth any suggestion or adduced any evidence to prove that there was enmity between the appellant, the first informant and P.W.5 Ramesh Chand. Therefore, there was no reason for P.W.5 Ramesh Chand to depose falsely against the appellants.

64. P.W.6 Constable Vijay Pal Singh is one of the policeman who accompanied the I.O. and the appellant to the Brij Ice Factory and before whom, the above recovery took place. He has testified about the manner of recovery. It is true that Constable Vijay Pal Singh has not signed Ex.Ka.4 to 6, but the fact remains that he was one of the constables who had been handed over Sunil's dead body, after the inquest was prepared and he conveyed the dead body on 13.11.1982 itself before the doctor for autopsy as would evident from the inquest report, Ex.Ka.92 and the autopsy report, Ex.Ka.3. Further, P.W.8, I.O. Surendra Singh has said that public witnesses were present at the time of recovery, so he had not taken the signatures of his fellow policemen. In the above circumstances, the presence of P.W.6, Vijay Pal Singh at the place of recovery cannot be doubted, simply on the ground that his signatures are not there on recovery memos. P.W.8, I.O. Surendra Singh is the person who had taken the witnesses and the accused to the place of recovery and recorded the confessional statement of the appellant, Vinod, which led to recovery of the deceased's dead body. P.W.8, I.O. Surendra Singh has proved the statement of the appellant Vinod about the burying the dead body of Sunil and recovery of the school bag etc. at the instance of co-appellant Suresh.

65. Here, it would not be out of place to mention that co-appellant, Suresh is the first cousin of the first informant and he lives adjacent to the first informant's house. It has come in evidence that Suresh's father was a watchman with the Brij Ice Factory. It has also come in evidence that when the police party, along with the appellant and the witnesses went to Brij Ice Factory, then the gate was closed, but it was not locked, and, in the premises of Brij Ice Factory, the dead body, school bag, uniform etc. were recovered at the pointing out of appellant Dr. Vinod and co-appellant Suresh.

66. It has been submitted on behalf of the appellant that the earth recovered from both the places of recovery was not sent to the chemical examiner. So, it cannot be held that the recoveries were made from the above two places. We do not agree with this submission. It has come in

evidence that foul smell was emanating from the pit in which the dead body of the deceased was buried, but, it may be noted that smell is a physical property which may evaporate with passage of time. So the chemical examiner, on the basis of smell, if any, could not have opined that it was the place where from the dead body was recovered.

67. It is submitted on behalf of the appellant that no local witness was called at the time of recovery, which renders the recovery doubtful. We do not agree with this submission also. It is true that according to P.W.8, Surendra Singh, a large number of people met on way from the police station to the ice factory and Ramesh Chand is a relative of Dr. Bale Ram. If the I.O. had not taken called any local witness for the to recovery, it would have no adverse effect over the prosecution case, because, Ramesh Chand, who was examined, as a witness of recovery was an independent, and it has come in evidence, that he had no animosity against the appellants to depose against them falsely.

68. It has come in the statement of Dr. Taneja, P.W.2 that the dead body could not be identified as the hair over the head were loose and the skin was peeling off. So, he may have been killed 14-20 days before the recovery of the dead body. But, it is also relevant to mention that the doctor had not found any sign of maggots infesting the dead body. In the present case, the heart and lungs had putrefied to such an extent that it was not possible to identify them, but the liver was identifiable. There is a process designated as "Adipocere", in which cases, the dead body retains its natural form, outline and facial features so well that it may be easily identified years after death. Taking into all these, the various changes after the death vary considerably with the temperature and the medium in which the body was lying.

69. P.W.2 Dr. Taneja had clearly opined that death had occurred about one month before the autopsy and the defence was not able to successfully challenge the above duration during the cross-examination of the witness. There is nothing in the autopsy report to show that the face of the deceased had been mutilated, though it has come in the statement of P.W.5, Ramesh Chand, recorded during investigation to the effect that the dead body was almost decomposed and was identified by clothes. But, this contradiction can only be used, so far as Ramesh Chand is concerned and has no effect on the testimony of Dr. Bale Ram, P.W.4. In any case, the clothes Ex.1 to 5 found on the body of the deceased were intact and identifiable, and which were also one of the modes of identification of the body of the deceased.

70. In view of the above discussion, we come to the conclusion that the prosecution has been able to prove that the dead body of the deceased Sunil was recovered at the pointing out of appellant Dr. Vinod on 13.11.1982 from the premises of Brij Ice Factory.

71. Recovery of the dead body from the place pointed out by the appellant is a formidable and incriminating evidence. In **State of Maharashtra v. Suresh, (2000) 1 SCC 471**, the Supreme Court, in the facts there, held that recovery of a dead body, which was from the place pointed out by the accused, was formidable and incriminating evidence. This would, the Court held, reveal that the dead body was concealed by the accused, unless there is material and evidence to show that somebody else had concealed it, and this fact came to the knowledge of the accused either because

he had seen that person concealing the dead body or was told by someone else that the dead body was concealed at the said location.

72. Here, if the accused declines and does not tell the Court that his knowledge of the concealment was on the basis of the possibilities that absolved him, the Court can presume that the dead body (or physical object, as the case may be) was concealed by the accused himself. This is because the person who can offer the explanation as to how he came to know of such concealment is the accused. If the accused chooses to refrain from telling the Court as to how has he came to know of it, the presumption is that the concealment was by the accused himself.

73. In view of above, the recovery of Sunil′s dead body at the instance of appellant Dr. Vinod is a significant circumstance against the appellant Dr. Vinod, showing his complexity in this crime.

74. Now, we come to the last point that needs our consideration in the case. According to the prosecution, the murder was committed for demand of ransom. To prove this fact, the prosecution has examined P.W.4, the informant, Dr. Bale Ram, who has said that co-appellant, Suresh, had handed him over two envelopes, containing a letter and a photograph of the deceased, demanding ransom to release the child. He has said both these letters were handed over to him by the deceased co-appellant Suresh and he had threatened him that the child is in his and Dr. Vinod′s custody, and if the informant acts otherwise, then serious consequences would follow.

75. The prosecution have examined P.W.7, Mahendra Pratap Singh, a handwriting expert from the Forensic Science Laboratory, Lucknow, who had compared the disputed handwriting with the specimen of Sunil′s handwriting. He has said that after examination the disputed handwriting and the specimen writing, he was of opinion that both had been written by the same person. He has proved his report Ex. Ka.8 and said that the person who has written the sample documents marked S-3520 to S-3610 has also written the disputed documents marked Q-3513 to Q- 3519. It is said in the report that upon an intense comparison, the disputed handwriting are consistent, amongst themselves, in their writing, characteristics and have been written by the same person. An examination of the line quality of the disputed handwriting exhibits less fluency and grace of outline. The lack of muscular control exhibited by the unaccustomed will be reflected in lack of fluency, poor rhythm, crudity in the formation of loops, curves and eyelets, which is absent from the normal handwriting. It means that the disputed handwriting have been written by an unaccustomed hand and are genuine.

76. So far as the sample writing is concerned, an intense comparison thereof exhibits the essential resemblance between the writing of two hands is not surprising, when it is realised that disputed handwriting is substantially the unconscious product of the mind. An intense comparison of sample writing reveals that samples marked S-3520 to S-3525 and S- 3568 to S-3610 have been written by an unaccustomed hand, which exhibits lack of muscular control, fluency and grace of outline and crude formation of letter, like the disputed handwriting. In comparing both the disputed sample handwritings, the hand action, poor muscular control, slow speed of writing, trembling line quality, combined with smooth and free nature of strokes, crude formation of letters, generally longer size of letters, medium proportion of the size of letters, relative spacing, slant alignment,

formation of curves, initials, terminals, direction of pen movement, poor rhythm of writing, all these, when examined together, show that both these hand writings are of the same person.

77. We have gone through the disputed hand writings as well as the specimen writing of co-appellant Suresh, and after careful examination, we agree with the conclusion of the handwriting expert P.W.7 Mahendra Pratap Singh. The shape of letters in Ex. 9 and 10 are more resembling the letters of the left hand specimen handwriting of the deceased co-appellant, Suresh.

78. The appellants have also examined handwriting expert S. Kapoor as D.W.1. He has opined that the disputed hand writings were not written by the person who had written the specimen handwriting. We have gone through his report, Ex. Kha 2/1 to Kha 2/11 and photo enlargements, Ex. Kha 3 to Kha. 25. We are of opinion that although he has tried to mention individual characteristics of letters and handwriting, but they are all superficial. He has admitted that in some of the letters in the disputed handwriting, the slant is from the left to the right, as in the specimen handwriting. Thus, we do not agree with the opinion of S. Kapoor, where he has pointed out that the production of some of the letters was different.

79. Therefore, we have come to the conclusion that the disputed letters, Ex.Ka.9 and Ex.Ka.10, regarding demand of ransom of Rs. 30,000/-, were written by Suresh, as he was a cousin of the first informant and lived in the house adjacent to the first informant's. So he must have had knowledge about the financial condition of the first informant, which may have led the appellants to kidnap his son and demand ransom money.

80. Thus, the prosecution has been able to prove motive for the appellants to commit the said crime.

81. It is submitted on behalf of the appellants that appellant Dr. Vinod was put composite questions in his statement under Section 313 Cr.P.C., which has prejudiced him in fair trial, resulting in the miscarriage of justice. Therefore, the conviction and sentence are not sustainable. In this case, we have perused the evidence of the prosecution as well as the statement of the appellant, Dr. Vinod under Section 313 Cr.P.C.

82. First of all, it is relevant to mention here that though this point has been raised on behalf of the appellants, but, attention of the Court has not been drawn to any specific question(s) which, according to the appellant, is a composite question of such nature, which resulted in prejudice to the appellant. Upon a perusal of the statement the appellant Dr. Vinod under Section 313 Cr.P.C., we do not find any of the questions which are composite in such a manner that it would have prejudiced the appellant and adversely affected him in this case. All the questions are well-drafted and thus, the argument on behalf of the appellant has no force.

83. In view of the above discussion, we come to the conclusion that the prosecution have been able to prove the chain of events, which show that it was the appellant, Dr. Vinod and the deceased co-appellant Suresh, who had kidnapped Sunil, and later on murdered him and, buried his dead body in the campus of Brij Ice Factory to conceal the evidence of crime.

84. The Trial Court had acquitted both the appellants of offence punishable under Section 365 IPC on ground that there was no evidence of use of force while taking away Sunil, and thus, technically, the offence under Section 365 IPC was not proved. The State has not come against the said acquittal of appellant on the charge under Section 365 IPC. So, we are reserving our views on this point.

85. In view of the above discussion, we come to the conclusion that the prosecution have to proved their case beyond reasonable doubt and the Trial Court has appreciated the evidence on record correctly and come to the right conclusion of the guilt for appellant, Dr. Vinod. He has rightly convicted and sentence the minimum of the law has rightly been passed upon the appellant Dr. Vinod as indicated above.

86. In view of above, this appeal has no force and is liable to be dismissed. It is, accordingly, **dismissed**. The conviction and sentence of the appellant are affirmed.

87. The appellant is on bail. His bail bonds and personal bonds are cancelled and the sureties discharged. He shall surrender before Chief Judicial Magistrate, Muzzafarnagar within three weeks of date to serve out the sentence awarded to him.

88. Let a copy of the order be sent to the Trial Court concerned and the C.J.M. Muzzafarnagar for information and necessary compliance. Let the lower Court records be returned to the Trial Court.

(2026) 5 ILRA 1341
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 06.05.2026

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE DR. AJAY KUMAR-II, J.

Criminal Appeal No. 1978 of 2011 connected with other cases

Krishan Pal @ Lala & Anr. ...Appellants
Versus
State of U.P. ...Respondent

Issue for Consideration

Matter pertains to whether the prosecution proved its case against the appellants beyond reasonable doubt, whether non-examination of the injured mother and other family witnesses was fatal to the prosecution, and whether the case was one of culpable homicide not amounting to murder attracting S. 304 IPC. (Para 21)

Headnotes

Criminal Trial - Appreciation of evidence - Injured eyewitness - Indian Penal Code - Ss. 302/149, 323/149, 148 - Criminal Law Amendment Act, S. 7 - Evidence of injured witnesses carries great weight and can be relied upon unless major contradictions or inherent improbabilities destroy the core of the prosecution case - Injuries on injured witnesses and the deceased, prompt FIR,

medical corroboration, and recovery of blood stained articles supported the prosecution version - Conviction under S. 302/149 IPC upheld on the evidence of the injured informant and another injured witness. (Paras 34, 38, 40, 43 onward).

Criminal Law - Homicidal death - Evidence - Medical evidence - Indian Penal Code - S. 302 - Postmortem findings showing fractures of ribs and limb bones, injury to lung, blood in thoracic cavity and trachea, and torn pleura established homicidal death - The deceased was mercilessly beaten and died due to shock and haemorrhage as a result of ante mortem injuries. (Paras 24, 25, 26).

Criminal Law - Common object of unlawful assembly - Liability of members - Indian Penal Code - Ss. 147, 148, 149, 323, 302 - Where assailants came armed, threatened the deceased, assaulted him and his rescuers, and fired shots to create terror, common object to commit the offence was proved - Non-examination of every witness present at the spot was not fatal where the injured eyewitness account was trustworthy. (Paras 3, 19, 20, 21, 38, 42).

Criminal Law - Appreciation of oral evidence - Injured witness - Criminal Trial - Appreciation of evidence - Minor discrepancies – Effect - Minor discrepancies, embellishments, or lapse of memory do not warrant rejection of testimony if the broad substratum remains intact - The Court relied upon the settled principle that an injured witness would not ordinarily spare the real culprits and falsely implicate others. (Paras 35, 36, 37, 40).

Criminal Law - Sentence - Culpable homicide not amounting to murder - Indian Penal Code - S. 304 - Plea that the act should be scaled down to S. 304 IPC rejected because the evidence disclosed a murderous assault and homicidal death, not a case of mere sudden fight or lesser culpability. (Paras 19, 20, 24, 42).

Held: Injured eyewitnesses inspired confidence and their presence at the place of occurrence stood established - Medical evidence completely corroborated the ocular version - Recovery of bloodstained articles and prompt FIR lent assurance to the prosecution case - Minor discrepancies and non-examination of some witnesses did not affect the core prosecution case - Nature of injuries established homicidal death and fully justified conviction under Ss. 302/149 IPC - Plea for conversion to S.304 IPC rightly rejected - Appeal dismissed. (Paras 24, 26, 30, 33, 38, 40, 42, 77) (E-7)

Case Law Cited

Balu Sudam Khalde v. State of Maharashtra, **(2023) 13 SCC 36***5; Bharwada Bhoginbhai Hirjibhai v. State of Gujarat,* **(1983) 3 SCC 217***; Leela Ram v. State of Haryana,* **(1999) 9 SCC 525***; Tahsildar Singh v. State of U.P.,* **1959 SCC OnLine SC 17***; Bhagwan Jagannath Markad v. State of Maharashtra,* **(2016) 10 SCC 537***; Masalti v. State of U.P.,* **AIR 1965 SC 202;** *State of M.P. v. Balveer Singh,* **(2025) 8 SCC 545***; State of Haryana Vs. Krishan,* **A.I.R. 2017 Supreme Court 3125***; Laxman Singh Vs. State of Bihar,* **(2021) 9 SCC 191***; Bhimappa Chandappa v. State of Karnataka* **(2006) 11 SCC 323;** *Joy Devaraj v. State of Kerala,* **(2024) 8 SCC 102***; Rohtash Kumar v. State of Haryana,* **(2013) 14 SCC 434***; Ravasaheb v. State of Karnataka,* **(2023) 5 SCC 391***; Avtar Singh v. State of Haryana,* **(2012) 9 SCC 432***; Tej Parkash v. State of Haryana* **(1996) 7 SCC 322***; Jodhan v. State of M.P.,* **(2015) 11 SCC 52***; Anbazhagan V. State Represented by the Inspector of Police (2024) 20 SCC 500; Phulia Tudu* **(2007) 14 SCC 588;** *Rajwant Singh v. State of Kerala,* **AIR 1966 SC 1874***; Pulicherla Nagaraju Vs. State of A.P.,* **2007 (1) SCC (Cri) 500***; State of Uttarakhand Vs. Sachendra Singh Rawat,* **(2022) 4 Supreme Court Cases 227***.*

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Evidence Act, 1872; Criminal Law Amendment Act.

List of Keywords

Murder; Common object; Unlawful assembly; Injured witness; Eyewitness; Ocular evidence; Medico-legal examination; Postmortem report; Lacerated wound; Fractures; Internal injuries; Defective investigation; Forensic Science Laboratory report; Delay in FIR; Motive; Pairavi; Prior enmity; Premeditated plan; Culpable Homicide; Clause thirdly; Sufficient in ordinary course of nature.

Case Arising From

APPELLATE JURISDICTION: Against the judgment and order dated 11.03.2011 passed by Additional Sessions Judge, Court No.1, Jhansi in Sessions Trial No.282 of 2008 arising out of Case Crime No.1223 of 2007, Police Station Nawabad, District Jhansi.

Appearances for Parties

Advs. for the Appellant:
Sri G.S. Chaturvedi, Sri Prashant Vyas, Sri J.P.N. Raj,
Sri Amit Kumar Pandey, Sri Rajrshi Gupta.
Advs. for the Respondents:
Sri Vimlendu Tripathi, Sri Vikas Goswami,
Sri Gaurang Dwivedi, Sri Suresh Chand Dwivedi.

(Delivered by Hon'ble Dr. Ajay Kumar-II, J.)

1. The validity and sustainability of the judgment and order dated 11.03.2011 passed by Additional Sessions Judge, Court No.1, Jhansi in Sessions Trial No.282 of 2008 (State Vs. Rishipal and others) arising out of Case Crime No.1223 of 2007 under Sections 147, 148, 149, 302, 323, 307 IPC and Section 7 Criminal Law Amendment Act, Police Station Nawabad, District Jhansi has been challenged by way of instant five connected criminal appeals, whereby the appellants Krishna Pal alias Lala, Rishi Pal, Raghunath, Ranjeet, Bahadur and Udham were convicted and sentenced to undergo imprisonment for life under Section 302/149 IPC with a fine of Rs.10,000/- each, in default thereof, to further undergo one year additional rigorous imprisonment, to undergo one year rigorous imprisonment under Section 323/149 IPC, to undergo one year rigorous imprisonment under Section 148 IPC and to undergo six months rigorous imprisonment under Section 7 Criminal Law Amendment Act. All sentences were directed to run concurrently.

2. Since these criminal appeals arise out of same case number and judgment, therefore, all these appeals have been heard together and are being decided by a common judgment. Criminal Appeal No.1978 of 2011 is being treated as a leading case.

3. The prosecution story, in brief, finds place in the F.I.R., which was lodged on the basis of the written report Ex.Ka.-1 given by informant Manoj Kumar, wherein it was narrated that on 01.07.2007 at 10:00 P.M., the informant Manoj Kumar son of Ramashanker, resident of Mustra Village, P.S. Nawabad, District Jhansi with his brothers Pushparaj alias Pushpendra, Ashok and informant′s cousin Jagdish, informant′s mother Bitti Bai and wife of Pushparaj namely, Vimla Devi were watching T.V. in their room after having dinner and at that moment they heard knocking at the door of the informant′s house, to which all of them went towards the door and as soon as the brother of the informant Pushparaj opened the door, they saw Krishan Pal alias Lala son of Bhagwandas, Rishi Pal son of Sher Singh of village Mairi and Raghunath alias Batauli son of Gajraj from the informant′s village were standing there, armed with Guns and Rifles while Ranjeet son of Gajraj was armed with an axe, Bahadur son of Betali was armed with a spear and Udham son of Kamal Singh was carrying a knife. All of them with a common object came to the door and threatened Pushparaj to kill him for pursuing the case filed against them by Rajesh of village Meri. Thereafter, all the accused started assaulting the brother of the informant with butts of weapons, axe and spear. When the informant′s side tried to save him, the accused also made assault upon them and pelted stones also. Hearing the noise, people from the neighbourhood reached there, on

which the accused opened several rounds of fire to scare them, which resulted into chaos. The people from the neighbourhood ran away and hid themselves. In this incident, the informant's mother Bitti and his sister-in-law / bhabhi Vimla also sustained injuries. The brother of the informant Pushparaj alias Pushpendra was brought in a critical condition and was admitted to the Medical College, Jhansi where he is undergoing treatment. On the gathering of the villagers and the raising of noise, the accused persons fled away from the spot, while firing shots. The incident was witnessed by the villagers and they also identified the accused persons in the electric light.

4. After the incident, informant Manoj Kumar brought his brother Pushpraj to Medical College, Jhansi where Pushpraj was medico legally examined at 1:15 A.M. on 02.07.2007. Thereafter, Manoj Kumar moved a written report / tehrir Ex.Ka.-1 in the Police Station Nawabad, District Jhansi on which first information report bearing Case Crime No.1223 of 2007 was registered at 1:35 A.M. on 02.07.2007. Informant / injured Manoj Kumar was also medico legally examined by Dr. Harish Kumar at 1:50 A.M. on 02.07.2007 in Medical College, Jhansi. During the course of treatment, injured Pushpraj alias Pushpendra succumbed to his injuries at 5:10 A.M. on 02.07.2007. Thereafter, aforesaid first information report was converted under section 302 IPC. After registration of the case, "chitthi majroobi" (letter for medical examination of injured) were prepared at the concerned police station for injured Bitti Bai and Vimla Devi. Smt. Bitti Bai was medico legally examined at 9:40 A.M. on 02.07.2007 and injured Vimala Devi was examined at 10:00 A.M. on the same day by Dr. Narendra Kumar.

5. When Pushpraj alias Pushpendra, the brother of the informant was brought in a critical condition and was admitted to the Medical College, Jhansi, he was medically examined by Dr. Harish Kumar on 02.07.2007 at 1:15 A.M., who found following injuries on his person :

(i) Lacerated wound measuring 5 cm. x 1 cm. bone deep on the left side of the upper part of forehead. Blood was oozing.

(ii) Multiple contusion over back of left shoulder of size 0.5 cm. x 0.5 cm. x muscle deep. X-ray was advised. Swelling was present.

(iii) Lacerated wound 0.5 cm. x 0.5 cm. x bone deep on right forearm on lateral aspect 5 cm. above to elbow joint. Fresh bleeding and swelling was present. X-ray was advised.

(iv) Traumatic swelling in left forearm just above to elbow joint. X-ray was advised.

(v) Multiple contusions of size 0.5 cm. x 0.5 cm. on dorsal aspect of left palm with swelling. Wound was red. X-ray was advised.

(vi) Lacerated wound on the front of right leg 6 cm. x 0.5 cm. x bone deep, 11 cm. below the knee-cap. Fresh bleeding was present. X-ray was advised.

(vii) Lacerated wound 0.5 cm. x 0.5 cm. x bone deep on the inner side of left ankle. Fresh bleeding and swelling was present. X-ray was advised.

The doctor opined that all injuries were fresh and caused by some blunt object. The medical report of injured Pushpraj alias Pushpendra is Ex.Ka.6.

6. Within 4 hours of preparation of the aforesaid injury report, the injured, Pushpraj alias Pushpendra, died on the very same day, i.e., 02.07.2007 at 5:10 P.M. The autopsy of the deceased

was performed by Dr. Raj Narayan on 02.07.2007 at 3:00 P.M., who found following ante mortem injuries on the person of the deceased Pushpraj alias Pushpendra :

(i) Stitched wound 6 cm. in length horizontally situated present over left side of forehead 5 cm. from left eyebrow. ***6 stitches and clotted blood present.***

(ii) Contused swelling 18 x 3 cm. present over right side of middle of chest.

(iii) Lacerated wound 3 cm. x 2 cm. present on outer surface of middle of right arm. ***Broken bone was visible and clotted blood was present.***

(iv) Stitched wound of 5 cm. of length present on front of right leg at middle vertically situated ***5 stitches present. Clotted blood present.***

(v) Contusion present around left leg at middle.

(vi) Stitched wound of 3 cm. present on medial side of left ankle. ***3 stitches present.***

(vii) Stitched wound of 4 cm. present on right sole at middle ***3 stitches present.***

(viii) Abrasion present on the back on the area of 15 cm. x 10 cm. on left side of back.

(ix) Abrasion present on the outer surface of upper part of left thigh measuring 26 cm. x 8 cm.

(x) Contusion around the left elbow.

Clotted blood was present over the injuries.

On internal examination, the right arm bone, left arm bone and elbow joint were found to be fractured. Right leg bone was also found fractured, which were corresponding with the aforesaid injuries.

On further internal examination, right side 5th & 6th ribs of the deceased were found fractured and the broken ribs were found inserted in the right lung. Right side of thoracic cavity was found filled with clotted blood. Trachea was also found filled with clotted blood. Right lung was found to be torn on anterior surface and clotted blood was also present there. Pleura was also found to be torn on right side. As per postmortem report Ex.Ka.-4, the deceased died at Medical College on 02.07.2007 at 5:10 A.M.

As per opinion of the Doctor, the cause of death of the deceased was due to shock and haemorrhage, as a result of antemortem injuries.

7. In this incident, the informant Manoj Kumar, his sister-in-law / bhabhi Vimla Devi (wife of the deceased Pushpraj alias Pushpendra) and his mother Bitti Bai also sustained injuries.

8. The injuries inflicted on the body of the injured Bitti Bai were examined by Dr. Narendra Kumar on 02.07.2007 at 9:40 A.M. at Medical College, Jhansi, who noted following injuries on her person :

(i) Lacerated wound of 1 cm. X 0.5 cm. with blood clot over posterior aspect of left wrist skin deep with swelling of 4.5 cm. X 4.5 cm. On posterior aspect of left hand. X-ray was advised.

(ii) Traumatic reddish swelling of 5 cm. around right ankle with tenderness. X-ray was advised.

As per doctor's opinion, both injuries were caused by hard and blunt object.

9. Dr. Narendra Kumar also medically examined the injured Vimla Devi on the same day at 10:00 A.M. and found injuries on her person as under :

(i) Traumatic reddish swelling of 5 cm. x 3.5 cm. at posterior medial aspect of right forearm. Tenderness was present. X-ray was advised.

(ii) Traumatic reddish swelling of 4.5 cm. X 4 cm. at posterior aspect of right hand. Tenderness was present. X-ray was advised.

(iii) Abrasion of 1 cm. x 05. cm. with clotted blood at anterior aspect of left knee.

As noted by doctor, injuries no. (i) & (ii) were caused by hard and blunt object and injury no. (iii) was caused by friction of hard and rough surface and was simple in nature.

10. Informant of the case Manoj Kumar was also examined by Dr. Harish Kumar on 02.07.2007 at 01:50 A.M., who noted following injury on his person :

(i) Traumatic swelling at left arm above the elbow joint. There was no visible external injury. X-ray was advised.

The Doctor opined that injury was fresh and caused by some blunt object. The injury was kept under observation.

11. Sub-Inspector Salim Ali P.W.9 started the investigation and he, after recording the statement of informant Manoj Kumar, visited the spot and on the pointing out of Smt. Bitti Bai, prepared the site plan Ex.Ka.-9. He also recovered an empty cartridge of 315 bore from the spot as well as one green-coloured used lungi and one light yellow-coloured used towel, both having blood stains and prepared the recovery memo Ex.Ka.10. Thereafter, he recorded the statements of some other witnesses. After receiving the information of the death of the injured, case was converted under section 302 IPC. He also prepared the inquest report Ex.Ka.-11 of the deceased. The then S.H.O. Ashwani Kumar Sinha P.W.10 took over the investigation and recorded the statement of witnesses of inquest and obtained non-bailable warrants and processes under section 82 Cr.P.C. against accused Udham Singh and Krishna Pal alias Lala. After the transfer of Inspector Ashwani Kumar Sinha P.W.10, Inspector Gaya Prasad Gautam P.W.11 took over the investigation and sent the recovered items to Forensic Science Laboratory. After recording the statements of some witnesses, he completed the investigation against Rishipal, Raghunath alias Batauli, Ranjeet, Bahadur and Udham Singh and submitted charge-sheet no.327 / 07 Ex.Ka.-18 under Sections 147, 148, 149, 307, 302 IPC and Section 7 Criminal Law Amendment Act and investigation against accused Krishna Pal alias Lala was kept pending. After his transfer, next S.H.O. Devi Prasad Shukla concluded the investigation against accused Krishna Pal alias Lala and since accused Krishna Pal alias Lala was found absconding, charge-sheet against him was submitted by the police in 'Mafroori' (abscondence).

12. The learned Magistrate took congnizance upon the charge-sheets and committed the case to Court of Sessions, as prima facie charge was for the Sessions triable offence.

13. Accused appeared before the Court of Session and after hearing both the parties, charges were framed against them under Sections 148, 323/149, 302/149 IPC and Section 7 Criminal Law Amendment Act. The accused persons denied the charges levelled against them, pleaded not guilty and claimed to be tried.

14. To bring home the charges against the accused, the prosecution produced in all eleven witnesses in oral evidence. They are P.W.1 Manoj Kumar (brother of the deceased and the informant / injured), P.W.2 Vimla Devi (wife of deceased / injured), P.W.3 Dr. Narendra Kumar (Doctor, who conducted medico legal examination of Bitti Bai and Vimla Devi and prepared their injury reports), P.W.4 Dr. Raj Narayan (autopsy surgeon, who conducted postmortem of the deceased and prepared the autopsy report), P.W.5 C.C. Sher Singh (who prepared Chik F.I.R.), P.W.6 Dr. Harish Kumar (Doctor, who conducted medico legal examination of deceased and informant), P.W.7 C.C. Ram Magan Singh (who made entry of registration of F.I.R. in G.D. and thereafter made entry of addition of Section 302 I.P.C. in G.D.), P.W.8 Daftari Bhagwan Das (who brought original injury register), P.W.9 S.I. Salim Ali (first Investigating Officer), P.W.10 S.H.O. Ashwani Kumar Sinha (second Investigating Officer) and P.W.11 Inspector Gaya Prasad (third Investigating Officer).

15. In documentary evidence, written report / Tehrir Ex.Ka.-1, injury report of injured Bitti Bai Ex.Ka.-2, injury report of injured Vimla Devi Ex.Ka.-3, Postmortem Report of deceased Ex.Ka.-4, Chik F.I.R. Ex.Ka.-5, injury report of injured Pushpraj Ex.Ka.-6, injury report of informant Manoj Kumar Ex.Ka.-17, copy of the G.D. Entry Ex.Ka-7, G.D. Entry relating to death of the deceased Pushpraj and addition of Section 302 I.P.C. in crime Ex.Ka.-8, Site Plan Ex.Ka.-9, Seizure Memo of empty cartridges / clothings of deceased Pushpraj Ex.Ka.-10, Inquest Report Ex.Ka.-11, letter related to postmortem of the deceased of R.I. Ex.Ka.-12, letter to C.M.O. Ex.Ka.13, Police Papers Ex.Ka.-13, Ex.Ka.-14, Photo nash Ex.Ka.-15, sample seal Ex.Ka.-16, Report of Forensic Science Laboratory Ex.Ka.-17, charge-sheet against accused Rishi Pal, Raghunath, Ranjeet, Bahadur and Udham Ex.Ka.-18 and charge-sheet against accused Krishan Pal Ex.Ka.-19 have been filed and proved. One green-coloured used lungi of deceased, one used light yellow-coloured towel of the deceased and one empty cartridge of 315 bore recovered from spot have been produced and proved as Material Objects 2, 3 & 4 respectively.

16. After conclusion of evidence, statements of accused persons were recorded under Section 313 Cr.P.C., in which they pleaded that F.I.R. in this case was lodged belatedly. Motive to commit the crime has not been proved by the prosecution. They further pleaded that they belong to different villages and their common object to commit the incident has also not been proved by prosecution. Earlier, a case was registered against the informant Manoj Kumar, his real brothers Ashok and Pushpraj and their father Ramashanker relating to murder of one Ram Swaroop and accused were witnesses of that case and they also gave testimony in the said murder case, due to which there was enmity going on between the parties. Political rivalry and pending litigations between the parties were also pleaded by the accused. It was also stated that the deceased of this case Pushpraj was a man of criminal antecedents and several criminal cases were registered against him, therefore, some unknown persons killed him and in order to create pressure upon them in the case of murder of Ramswaroop, they have been falsely roped in this case.

17. Trial Court, having heard learned counsel for parties and going through entire record, vide impugned judgment and order, convicted and sentenced the accused-appellants as above. Hence, feeling aggrieved with said judgment and order, present accused-appellants have filed these criminal appeals against their conviction.

18. Heard Sri G.S. Chaturvedi, learned senior counsel assisted by Sri Prashant Vyas and Sri J.P.N. Raj, learned counsel for the appellants and Sri Vimlendu Tripathi, learned counsel for the complainant / informant and Sri Vikas Goswami, learned AGA-I for the State in Criminal Appeal No. 1978 of 2011 (Krishna Pal @ Lala and another vs. State of U.P.). We have also heard Sri Amit Kumar Pandey holding brief of Sri Rajrshi Gupta, learned counsel for the appellants and Sri Vimlendu Tripathi alongwith Sri Gaurang Dwivedi holding brief of Sri Suresh Chand Dwivedi, learned counsel for the complainant / informant and Sri Vikas Goswami, learned AGA-I for the State in Criminal Appeal Nos. 1821 of 2011, 1868 of 2011, 2004 of 2011 and 2195 of 2011.

19. Assailing the impugned judgment on various grounds, learned counsel for the appellants have submitted that as per prosecution story, all the accused were armed with deadly weapons in the alleged incident, however, no incised or punctured wound or gunshot injury is found on the body of the deceased. Even, no blood has been found on the street, whereas as per prosecution witnesses, the alleged incident had happened at the place of alleged occurrence. The prosecution has withheld material witnesses namely Ashok (real brother of the deceased), Smt. Bitti Bai (mother of the deceased), Rama Shanker (father of the deceased), Jagdish (maternal brother of the deceased). Due to previous enmity, all the accused have been falsely implicated. The prosecution has failed to prove the place and manner of incident. There is no injury on the vital part of the body of the deceased or any other injured and that too of any deadly weapon like rifle or knife or axe. Lastly, learned counsels for the appellants argued that act, if any, is covered under section 304 IPC and, therefore, the conviction and sentence of the accused is liable to be converted and reduced accordingly.

20. On the other hand, learned A.G.A. for the State and learned counsel for the complainant while vehemently opposing the submissions made by the learned counsel for the appellants, have contended that the prosecution has successfully proved its case beyond reasonable doubt. The evidence of prosecution witnesses is trustworthy and reliable and as per the established legal principles, the conviction can always be successfully recorded on the basis of the evidence of eyewitnesses. While going through the evidence on record, it cannot be said that the offence under Section 302/149 IPC is not made out against the appellants. The learned trial Court has not committed any error of law or of fact, in convicting and sentencing the accused-appellants under Section 302/149 IPC. It is a case of cold-blooded murder of a young man and all the relevant evidence to record the conviction of the appellants is available on record. The false implication theory does not find any basis in the light of the evidence on record. There is no merit in the appeal and learned A.G.A. as well as learned counsel for the complainant thus urged for the dismissal of appeal.

21. In the light of above arguments, following questions arises for consideration in present appeal :

(i) Whether prosecution could be said to have proved its case against the appellants - convicts beyond reasonable doubt ?

(ii) Whether non-examination of other witnesses present on spot namely, injured Bitti Bai, deceased's father Ramashanker and deceased's brothers Ashok and Jagdish is fatal to prosecution and an adverse inference is to be drawn against the prosecution or not ?
(iii) Whether the present case is a case of culpable homicide not amounting to murder and, therefore, conviction / sentence of the appellants' convicts is liable to be converted / reduced under Section 304 IPC ?

ANALYSIS

Oral Evidence on Record

22. The prosecution has examined informant - injured Manoj Kumar as P.W.1 and injured Vimla Devi as P.W.2. Both of these witnesses are injured witnesses and on the strength of their depositions, the learned trial Court has decided the case against appellants. Therefore, evaluation of deposition of these two witnesses will be dealt with later on in this judgment.

23. Dr. Narendra Kumar P.W.3 medico legally examined injured Bitti Bai and Vimla on 02.07.2007 at 9:45 A.M. and 10:00 A.M. respectively in Medical College, Jhansi and prepared their injury reports, which have been proved by this witness as Ex.Ka.-2 and Ex.Ka.-3. The injuries noted by this doctor on the body of Bitti Bai and Vimla have already been mentioned in paragraph 8 and 9 of this judgment. In the opinion of this doctor, all the injuries sustained by injured Bitti Bai might have been caused by some hard and blunt object and injuries no.1 and 2 sustained by injured Vimla might have been caused by some hard and blunt object, however, injury no.3 might have been caused by friction from some hard and blunt surface. This doctor opined that duration of injuries of both the injured was 6 to 24 hours. Both the injured have been medico legally examined in the morning of 02.07.2007, therefore, as per deposition of this witness, the injured could have sustained those injuries on 01.07.2007 at 10:00 A.M.

24. Dr. Raj Narayan P.W.4 is an autopsy surgeon, who has conducted the postmortem examination of the deceased Pushparaj alias Pushpendra on 02.07.2007 at 3:00 P.M. The antemortem injuries noted by this doctor in his postmortem report have already been mentioned in paragraph 6 of this judgment. The injury no.1 noted by this doctor to be a stitched wound of 6 cm. in length, situated over left side of forehead, 5 cm. from left eyebrow, having six stitches, with clotted blood present. Likewise injuries no.4, 6 and 7 noted by this doctor to be of stitched wounds having stitches on it, reveals that the deceased Pushparaj was provided some medical treatment promptly. A total of ten antemortem injuries were noted by this autopsy surgeon and on internal examination, this autopsy surgeon found that 5th and 6th rib of the deceased were broken and were found piercing the right lung. Blood was found to be deposited in chest cavity as well as in trachea. Both right and left humerus bones, left elbow joint and right tibia were also found to be fractured corresponding to antemortem injuries found on the body of the deceased. Right lung anterior surface was found to be torn with clotted blood present therein. From the body of the deceased, one grey-coloured underwear was recovered. This witness has proved the postmortem report of the

deceased as Ex.Ka.-4. He has specifically stated that the deceased had died at 5:10 A.M. on 02.07.2007 in Maharani Laxmi Bai Medical College Hospital, Jhansi. On his cross-examination, this witness stated that no bone was found broken below injury no.1 and injuries no.3, 4, 5, 6, 7, 8, 9 & 10 were found on non-vital parts of the body of the deceased and injury no.2 could also have been caused if deceased falls on some hard object. However, from his deposition and from perusal of the postmortem report Ex.Ka.-4, it is clear that the deceased was mercilessly beaten resulting into fractures of his right and left humerus bones, left elbow joint, right tibia, 5th and 6th ribs. He was so mercilessly beaten that his 5th and 6th ribs after being broken, entered into the right lung, thereby causing blood to be stored in the right side of the thoracic cavity. Even deceased′s right pleura was found torn and trachea was also found filled with clotted blood. Anterior surface of the deceased′s right lung was also found torn and clotted blood was also found inside the same. **Therefore, the death of the deceased is a homicidal death.**

25. Constable 1078 Sher Singh P.W.5, was the scribe of first information report, who is a formal witness and has proved the first information report as Ex.Ka.-5.

26. Dr. Harish Kumar P.W.6 medico legally examined Pushpraj alias Pushpendra at 1:15 A.M. on 02.07.2007 and prepared his injury report, which has been proved by this witness as Ex.Ka.-6. This witness found a total of seven injuries on the body of the deceased which have already been mentioned in paragraph 5 of this judgment. He found a total of five lacerated wounds and in his opinion, the injuries found on the body of Pushpraj have been caused at 10:00 P.M. on 01.07.2007. This witness has specifically stated that all injuries noted by him could have been caused by some blunt object like the handle of the axe, stick, butt of gun and blunt side of axe. **This witness has also stated that injuries no.1 and 2 found on the body of the deceased were on his vital part.** It is important to observe here that this doctor found multiple contusions over his left side back, on which swelling was also present. This witness was cross-examined and in his cross-examination he stated that injury no.1 was simple in nature, however, injury no.2 was kept under observation. He further stated that there was no incised wound on the body of the injured, therefore, no injury from sharp edged portion of axe or spear or knife could have been caused. He further denied the suggestion of defence that no injury could have been caused from Gun.

27. This witness was again recalled on the request of prosecution and has deposed that in the injury report of injured / informant Manoj Kumar, which is Ex.Ka.-17, he found only one injury as a traumatic swelling on left arm above the elbow joint. He advised X-ray of the aforesaid injury. However, no supplementary report of this injury has been proved by the prosecution. In the opinion of the doctor, this injury has been caused at 10:00 P.M. on 01.07.2007. Injured Manoj Kumar was medico legally examined at 1:50 A.M. on 02.07.2007 in Medical College, Jhansi and this witness found the aforesaid injury as a fresh injury which could have been caused during six hours. Therefore, informant Manoj Kumar could have been injured on 01.07.2007 at 10:00 P.M.

28. Constable Clerk Ram Magan Singh P.W.7 is a formal witness, who has made an entry in G.D. No.2 at 1:35 A.M., regarding registration of first information report and the aforesaid G.D. has been proved by this witness as Ex.Ka.-7. This witness has also proved G.D. No.8 time 5:45 A.M. dated 02.07.2007 whereby Section 302 IPC was added in the aforesaid crime number. The aforesaid tarmeeme G.D. has been proved by this witness as Ex.Ka.-8.

29. Daftari Bhagwan Das Sharma P.W.8 is a formal witness, who brought original injury register regarding injured Manoj and has certified that photocopy available on record is correct as per the original brought by him. The original injury report of injured Manoj was available in said injury register at page 89 on OPD No.921.

30. Sub-Inspector Salim Ali P.W.9 was the first Investigating Officer, who started the investigation and reached Medical College, Jhansi where he found that Pushpraj was being treated by doctors and he was not in a position to speak. He recorded the statement of informant Manoj Kumar who was present in the Emergency Ward. Thereafter, he prepared the site plan on the pointing out of injured Bitti Bai. Site plan has been proved by this witness as Ex.Ka.-9. He also recovered an empty cartridge of 315 bore from the spot, as well as one green-coloured used lungi and one light yellow-coloured used towel, both were having blood stains and accordingly prepared recovery memo, which has been proved by this witness as Ex.Ka.10. When he returned to police post, he recorded the entry of G.D. No.8 time 5:45 A.M. dated 02.07.2007 in C.D., whereupon the case was converted from section 307 IPC to section 302 IPC and, therefore, he requested S.H.O. for further investigation by either S.H.O. or someone else under his direction. He also prepared the inquest report of the deceased Pushpraj, which has been proved by this witness as Ex.Ka.-11. Other papers related to inquest report have been proved by this witness as Ex.Ka.-12 to Ex.Ka.-16. He also proved one green-coloured used lungi, one light yellow-coloured used towel and an empty cartridge as Material Exbs.2, 3 & 4.

31. The then Incharge Inspector / S.H.O. Ashwani Kumar Sinha has been examined as P.W.10, who took over the investigation from first Investigating Officer Salim Ali, and recorded the statement of witnesses of inquest and also recorded statements of accused Raghunath Singh, Ranjeet Singh, Bahadur and Rishipal Yadav and obtained non-bailable warrants and processes under section 82 Cr.P.C. against accused Udham Singh and Krishna Pal alias Lala. He recorded the statement of Udham Singh and was searching accused Krishna Pal alias Lala. Thereafter he was transferred to district Jalaun.

32. Inspector Gaya Prasad Gautam P.W.11 was the last Investigating Officer, who took over the investigation after P.W.10, and sent the recovered items to Forensic Science Laboratory for examination and F.S.L. Report has been proved by this witness as Ex.Ka.-17. This witness also recorded the statement of Dr. Raj Narayan and after completing the investigation he filed charge-sheet no.327/07 against Rishipal, Raghunath alias Batauli, Ranjeet, Bahadur and Udham Singh and has proved the same as Ex.Ka.-18. However, the arrest of accused Krishna Pal alias Lala was still remaining. After his transfer, next S.H.O. Devi Prasad Shukla concluded the investigation against accused Krishna Pal alias Lala and since accused Krishna Pal alias Lala was found absconding, charge-sheet against him was submitted by this witness in 'Mafroori ' (abscondence), which has been proved by this witness (P.W.11) in secondary evidence as Ex.Ka.-19.

33. A perusal of Forensic Science Laboratory Report Ex.Ka.-17 reveals that lungi and towel of deceased Pushpraj, which were recovered from murder spot and underwear recovered from the body of the deceased, along with one empty cartridge recovered from the spot, all were sent to Forensic Science Laboratory for examination. As per aforesaid Forensic Science Laboratory Report, human blood was found on the aforesaid lungi, towel and underwear of the deceased.

(i) Whether prosecution could be said to have proved it's case against the appellants - convicts beyond reasonable doubt ?

34. In the present case, prosecution has examined injured - informant Manoj Kumar as P.W.1 and injured Vimla Devi as P.W.2 and on the strength of depositions of these two witnesses, the trial Court has convicted all the appellants. Therefore, in these criminal appeals against conviction we need to appreciate the oral evidence of these two witnesses.

35. On the point of appreciation of oral evidence of a witness the Apex Court in **Balu Sudam Khalde v. State of Maharashtra, (2023) 13 SCC 365** held the law in the following words :

"Appreciation of oral evidence

25. The appreciation of ocular evidence is a hard task. There is no fixed or strait jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

"I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eyewitness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.″

[See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat [Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217 : 1983 SCC (Cri) 728 : AIR 1983 SC 753] , Leela Ram v. State of Haryana [Leela Ram v. State of Haryana, (1999) 9 SCC 525 : 2000 SCC (Cri) 222 : AIR 1999 SC 3717] and Tahsildar Singh v. State of U.P. [Tahsildar Singh v. State of U.P., 1959 SCC OnLine SC 17 : AIR 1959 SC 1012]

26. When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the courts are required to be kept in mind:

26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

26.2. Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

26.3. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

26.4. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

26.5. If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

26.6. The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

27. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.″

36. The Hon′ble Supreme Court in the case of **Bhagwan Jagannath Markad v. State of Maharashtra, (2016) 10 SCC 537** explained that :

" 19. While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. Section 155 of the Evidence Act enables the doubt to impeach the credibility of the witness by proof of former inconsistent statement. Section 145 of the Evidence Act lays down the procedure for contradicting a witness by drawing his attention to the part of the previous statement which is to be used for contradiction. The former statement should have the effect of discrediting the present statement but merely because the latter statement is at variance to the former to some extent, it is not enough to be treated as a contradiction. It is not every discrepancy which affects the creditworthiness and the trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting the credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted [Leela Ram v. State of Haryana, (1999) 9 SCC 525, pp. 532-35, paras 9-13 : 2000 SCC (Cri) 222] . Want of independent witnesses or unusual behaviour of witnesses of a crime is not enough to reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit. The evidence may be closely scrutinised to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a "partisan″ or "interested″ witness may lead to failure of justice. It is well known that principle "falsus in uno, falsus in omnibus″ has no general

acceptability [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381, pp. 392-93, para 15 : 2003 SCC (Cri) 32] . On the same evidence, some accused persons may be acquitted while others may be convicted, depending upon the nature of the offence. The court can differentiate the accused who is acquitted from those who are convicted. A witness may be untruthful in some aspects but the other part of the evidence may be worthy of acceptance. Discrepancies may arise due to error of observations, loss of memory due to lapse of time, mental disposition such as shock at the time of occurrence and as such the normal discrepancy does not affect the credibility of a witness.

20. Exaggerated to the rule of benefit of doubt can result in miscarriage of justice. Letting the guilty escape is not doing justice. A Judge presides over the trial not only to ensure that no innocent is punished but also to see that guilty does not escape. [Gangadhar Behera case, (2002) 8 SCC 381, p. 394, para 17]

31.As already observed, the discrepancies of trivial nature could not be the basis of rejecting the evidence of injured eyewitnesses nor non-examination of some of the witnesses be a ground to reject the prosecution case when injured eyewitnesses were examined.

32.We may also refer to the judgment of this Court in Masalti v. State of U.P. [Masalti v. State of U.P., AIR 1965 SC 202 : (1965) 1 Cri LJ 226 : (1964) 8 SCR 133] to the effect that the evidence of interested partisan witnesses though required to be carefully weighed, the same could not be discredited mechanically. When a crowd of unlawful assembly commits an offence, it is often not possible to accurately describe the part played by each of the assailants. Though the appreciation of evidence in such cases may be a difficult task, the court has to perform its duty of sifting the evidence carefully.

37. The Hon'ble Apex Court in **State of M.P. v. Balveer Singh, (2025) 8 SCC 545** has held that when eyewitness are examined at length, it is quite possible for them to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.The role of courts in such circumstances assumes greater importance and it is expected of the courts to deal with cases like one in hand, in a more realistic manner and not allow the criminals to go scot-free on account of procedural technicalities, perfunctory investigation or insignificant lacunas in the evidence as otherwise serious crimes would go unpunished.

38. In the light of above well settled legal position regarding appreciation of oral evidence, we shall now be evaluating the depositions of injured - informant Manoj Kumar P.W.1 and injured Vimla Devi P.W.2. Manoj Kujmar P.W.1 has stated in his examination-in-chief that on 01.07.2007 at 10:00 P.M., his brother Pushpraj alias Pushpendra, he himself, his brothers Ashok and Jagdish, his mother Bitti Bai and Pushpraj's wife were all watching television inside the room after having taken their dinner. At that time, on hearing the sound of knocking at the door of their house, everyone went towards the door. His brother Pushpraj opened the door and as soon as he opened it, Krishan Pal alias Lala, Rishi Pal and Raghunath alias Batauli carrying rifles in their hands, Ranjeet carrying an axe in his hand, Bahadur having a spear in his hand, Udham Singh having a knife in his hand, all of them simultaneously threatened his brother that why he is doing pairvee / pursuing the case against them filed on behalf of one Rajesh of village Mairi and threatened him to kill. Thereafter, they all collectively assaulted him with an intention to kill. When informant and his family members tried to rescue Pusphraj, then they all were also beaten by the accused. **They all**

were attacked with the butt of rifle, axe, spear etc. On hearing their screams, people from the surrounding area arrived on the spot, whereupon accused fired several rounds of fire causing a stampede on the spot. In the incident, informant himself, his mother Bitti Bai and bhabhi Vimla Devi sustained injuries. His brother Pushpraj sustained serious injuries and was brought to Medical College in a critical condition, where he was under treatment. The accused have been identified in the electric light. This witness proved the written report / tehrir as Ex.Ka.-1, which is stated to be in his handwriting bearing his signature.

39. Examination-in-chief of P.W.1 was recorded on 23.03.2009 and only after a very brief cross-examination, an adjournment application was moved by the defence on which the case was adjourned. Thereafter, on 04.06.2009, 16.06.2009, 07.07.2009 and 23.07.2009, his detailed cross-examination was conducted. It is thus clear that cross-examination of this witness could be completed only after four months of recording of his examination-in-chief and that too on four different dates. Therefore, in this background, some contradictions are bound to occur in the statement of this witness.

40. P.W.1 is an injured witness and from the deposition of Dr. Harish Kumar P.W.6 and injury report of this witness Ex.Ka.-17, he has suffered injuries in the incident. In **State of Haryana Vs. Krishan, A.I.R. 2017 Supreme Court 3125**, it was held that deposition of an injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies. The same view was reiterated in **Laxman Singh Vs. State of Bihar, (2021) 9 SCC 191** by holding that deposition of injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein. Evidence of injured witness is entitled to a great weight and very cogent and convincing grounds are required to discard his evidence. **Therefore, evidence of P.W.1 is certainly entitled to a great weight.**

41. In the instant case, in his cross-examination, this witness (P.W.1) has stated that his brother - deceased Pushpraj was a practising advocate in District Court and has also fairly conceded regarding criminal cases pending against him and the deceased.

42. Learned counsel for the appellants drew the attention of this Court towards paragraphs no.52 and 53 of the cross-examination of this witness conducted on 16.06.2009 in support of appellants′ argument that inspite of use of sharp cut weapons, there was no incised or sharp cut injury on the body of deceased. It is the specific case of the appellants that inspite of appellants being armed with deadly weapons, no ante-mortem injury on the body of the deceased and any injury on the body of either of the three injured was found to have been caused by these deadly weapons and therefore, it was vehemently argued that the prosecution story on this account is suspicious in itself. In the backdrop of this specific argument, informant/injured Manoj Kumar PW-1 has specifically stated that deceased as well as injured were attacked by butts of rifles, axe, spear etc. P.W.1 in these paragraphs has stated that Ranjit was beating his brother Pushpraj after throwing him to the ground. He cannot tell how many times Ranjit assaulted Pushpraj with axe. Udham Singh was assaulting Pushpraj with knife. He stated that assault with axe and knife lasted for about 2, 3 minutes. During these 2, 3 minutes, he (informant) and his brother came there to save the deceased and when he tried to save the deceased, he was hit by the butt of rifle, thereafter he

did not try to save the deceased because he was also threatened to kill. He could not see who had hit him from his back. **This witness in paragraph no.52 of his cross-examination has specifically stated that whenever Pushpraj was being assaulted, he would turn to save himself.** Thus, it is clear that whenever Pushpraj was assaulted with axe or knife, in this duration of 2 - 3 minutes, he turned and saved himself from the sharp edges of these weapons. P.W.1 in his examination-in-chief, has specifically stated that they (including deceased) were assaulted with the butt of rifles, axe and spear. It is thus clear that deceased Pushpraj and other injured were assaulted with blunt side of sharp edged weapons and that is why there is no sharp cut or incised or punctured wound either on the body of the deceased or any of the injured. Therefore, we are of the opinion that the arguments of learned counsel for the appellants that no injury from any of the deadly weapons was found on the body of the deceased makes prosecution′s case suspicious, is completely devoid of merit and from above analysis, we are of the opinion that aforesaid argument is not helpful to the appellants.

43. In paragraph no.69 of his cross-examination, P.W.1 has affirmed the prosecution version. He stated that as soon as his brother (Pushpraj) opened the main door on hearing the sound of knocking, he (deceased) was dragged to the street and accused started making assault upon him. Informant himself, his mother, his brother Ashok and Jagdish came to the street to save him but they all were also beaten. Ashok and Jagdish did not sustain injuries. They were threatened by the accused. In paragraph 95 of his cross-examination done on 23.07.2009, this witness stated that the main door of his house is situated in southern direction where there is an iron gate. When some one enters through the said iron gate and after entering into the courtyard from eastern side, there is a room whose gate is in western side. In the northern side from the courtyard, there are several rooms and stairs. In paragraph no.96 of his cross-examination, he stated that at the time of incident deceased Pushpraj alongwith his family was residing in the room, situated in eastern side. **This part of his deposition fully corroborates the site plan Ex.Ka.-9.** In paragraph no.98 of his cross-examination, this witness further affirmed the prosecution version that informant, his brother Ashok, Jagdish, his mother Bitti Bai and his sister-in-law / bhabhi Vimla Devi came on door alongwith Pushpraj. This witness has also stated that accused opened fire, just to create terror / panic.

44. **P.W.1 has been cross-examined extensively. However, his deposition as far as date, time, place and manner of incident is concerned, remained consistent throughout.**

45. Smt. Vimla Devi, who is the wife of deceased Pushpraj, has been examined as P.W.2 and this witness is also the injured witness of the incident. P.W.2 Smt. Vimla Devi in her deposition has stated that on 01.07.2007 at 10:00 P.M., her family members including her husband Pushpraj, her husband's brothers Ashok, Manoj and Jagdish, her mother-in-law Bitti Bai and father-in-law Ramashanker were watching T.V. Suddenly, they heard knocking sound from the iron gate and upon hearing the same they all went towards the gate. Her husband Pushpraj opened the door, Krishan Pal alias Lal was an absconder at that time, Rishi Pal and Raghunath alias Batauli, who all were armed with rifles and guns, Ranjeet, who was carrying an axe, Bahadur, who was having a spear and Udham Singh, who was carrying a knife, they all came together and caught hold of her husband and warned that he (her husband) is doing pairvee from the side of Rajesh against them and therefore, they will kill him. **Thereafter they all started assaulting her husband with butt /**

blunt side of spear, axe, knife and rifles / guns in front of their door. They all (family members of deceased) tried very hard to save Pushpraj and she (P.W.2) even clung / embraced her husband but the accused pushed her away. She sustained injuries. They raised alarm on which people of the vicinity came on the spot and accused in order to create terror among them, fired from their guns which caused chaos in their village. She, her brother-in-law Manoj and mother-in-law Bitti Bai sustained injuries in the incident. Her husband also sustained multiple injuries. At the time of incident, there was electric light over there. Her husband was brought to the Medical College by their family members and he died during the course of his treatment. All the accused are present in Court.

46. Examination-in-chief of P.W.2 was recorded on 09.10.2009 and her cross-examination was deferred, thereafter she was cross-examined on 23.10.2009, 09.03.2010, 20.03.2010 and 02.04.2010. It is thus apparently clear that this injured witness was cross-examined on four different dates at length and her deposition could be completed in about eight months. Therefore, some contradictions are bound to occur in her deposition.

47. P.W.2 in her cross-examination has stated that she is not aware about directions. However, she stated that adjacent to her house, house of village watchman Sitaram is situated and adjacent to Sitaram′s house, the house of his son and thereafter house of Hukum Singh Yadav are situated. She also stated that in front of their main door, there is another house of village watchman Sitaram. **This part of her deposition fully corroborate the site plan Ex.Ka.-9.** She further deposed that on the date of incident, her husband Pushpraj was taken to hospital in their tractor-trolley. Their tractor was parked inside their courtyard and after the incident, main iron gate was opened and her husband was taken to the hospital in tractor-trolley. She further stated that all those houses which are situated in front of their house were having electric bulb outside their houses. She further deposed that when her husband was thrown on the ground and was assaulted, the said assault continued for about 2 - 3 minutes. She cannot tell that during assault made upon her husband whether knife, spear, lathi, stick, axe struck her husband. Accused although fired during the incident, but they did not fire on her husband or on this witness or any other family members. Jagdish did not sustain injuries in the incident. However, she tried to save her husband but she was threatened. **This witness also has been cross-examined extensively. However, her deposition as far as date, place and manner of incident is concerned, remained consistent throughout except some minor contradictions.** Moreover, P.W.2 in her examination-in-chief has clearly stated that her husband (deceased Pushpraj) was assaulted with blunt side / butt of rifles / guns, spear, axe and knife. Therefore, no sharp cut or incised or punctured wound were found on the body of the deceased, which strengthens our conclusion that deceased and other injured were assaulted with blunt sides of spear, axe and knife and butt of rifles / guns, which fact does not make the prosecution case suspicious.

No unnecessary delay in registration of F.I.R.

48. In the present case, the alleged incident is reported to be of 10:00 P.M. on 01.07.2007 and the first information report of the same has been registered in Police Station Nawabad, District Jhansi at 1:35 A.M. on 02.07.2007. Therefore, the first information report has been registered within 3 hours 35 minutes of the occurrence of the incident in the police station, which is situated at

a distance of about 6 kilometer from the place of incident. In the incident, a total of four persons from the side of informant got injured and one injured even succumbed to injuries within 4 hours of the preparation of his injury report. It is clearly mentioned in the first information report that the informant brought his brother injured Pushpraj to Medical College, Jhansi from the spot, where the aforesaid injured was admitted and his treatment started, thereafter the informant approached the concerned police station for registration of the first information report. **Therefore, in this background, the first information report seems to be registered promptly without any unnecessary delay.**

Motive

49. It is the case of prosecution that deceased Pushpraj was doing Pairavi in a case lodged by one Rajesh of village Mairi against accused Krishna Pal. It is also admitted position that both Pushpraj and appellant Krishna Pal were having their respective criminal history. As per written report / Tehrir (Ext. Ka-1), aforesaid Pairavi by Pushparaj annoyed the appellant Krishna Pal and was the motive behind this murder. PW-1 and PW-2 both in their respective depositions have clearly stated that all accused arrived at the spot and knocked at their main gate (iron gate), which was closed and when the main gate was opened by deceased Pushpraj, all of accused were found standing outside their main gate armed with deadly weapons and threatened Pushparaj for doing Pairavi and started assaulting him. PW-1 in his cross examination has stated that his brother deceased Pushpraj was doing practice as an advocate in court since last 10-11 years. PW-1 has also admitted pendency of various criminal cases against him and his brother Pushpraj. PW-1, however, in his cross examination has stated that he, his father, brother Pushpraj and Ashok were accused in the murder of their fellow villager Ram Swaroop Kushwaha in which they all were acquitted. In the aforesaid murder case, accused Raghunath @ Batole was eye witness, who had deposed against them in FTC Court. After their acquittal in the aforesaid case, another false FIR of robbery was lodged against him, but finding it false, a final report was filed in the aforesaid case. Appellant Bahadur was Tehrir writer of the aforesaid murder case. PW-1 denied all suggestions of the defense that accused appellants were falsely implicated because of aforesaid murder case. PW-1 in para-62 of his cross examination has stated that Ashok, Devendra, Bablu of village Mairi alongwith one Kushwaha boy of village Kotha Bhaper were murdered four months prior to murder of his brother Pushpraj. The appellant Krishna Pal was the accused in the aforesaid four murders of village Mairi. Few of accused of aforesaid murder case of village Mairi were absconding at the time of murder of his brother. In para-92 of his cross examination, PW-1 has denied to have any enmity of his brother Pushpraj with accused Krishna Pal and Rishipal.

50. PW-2 in her cross examination has stated that the appellant Krishna Pal was an accused in the four murders of village Mairi and was absconding. The aforesaid murders were committed 4-5 months before the murder of her husband. She in her cross examination has supported her deposition given in examination in chief that the deceased was threatened for doing Pairavi of aforesaid murders on behalf of one Rajesh. It is thus clear that there was a murder incident in village Mairi in which four persons were murdered and the appellant Krishna Pal was an accused in the same, who was absconding at the time of present incident.

51. It has come in the deposition of both PW-1 and PW-2 that Pushpraj was doing Pairavi in the aforesaid four murders on behalf of one Rajesh of village Mairi, which annoyed the appellant Krishna Pal and therefore, it became the motive for him to murder deceased Pushpraj. Both deceased Pushpraj and appellant were having criminal history and in this background Krishna Pal alongwith his companion accused wanted to give a message to the villagers that if anyone ever dared to do any Pairavi against Krishna Pal or his associates, will be dealt with similar fate. It has also come on record that a case of murder of one Ram Swroop Kushwaha was registered against informant - injured Manoj, his brothers deceased Pushpraj and Ashok, and his father. The appellant Bahadur was the scribe of written report / Tehrir in the aforesaid case and Raghunath @ Batole was eye witness, however, it has also come on record that the informant - injured Manoj PW-1, deceased, their father and brother all were acquitted in the aforesaid case. The aforesaid acquittal also had given motive to appellant Raghunath @ Batole and Bahadur to take revenge. However, just 4-5 months of the present incident, the appellant Krishna Pal became an accused as well as absconder in the four murders of village Mairi and deceased was doing Pairavi in the aforesaid case, therefore, the appellant Krishna Pal alongwith his other companion had the motive to commit murder of Pushparaj. **Therefore, we are of the opinion that the prosecution has been able to prove aforesaid motive behind the present murder.**

52. The informant-injured Manoj Kumar PW-1 and Smt. Vimla Devi, the wife of the deceased PW-2 in their respective depositions have consistently stated that on 01.07.2007 at 10:00 pm, the appellants-accused persons knocked the main iron gate. At that time, PW-1 and PW-2, deceased Pushpraj and their other family members Ashok and Manoj (maternal brothers of the deceased), Bitti Bai (mother of the deceased) and Ramashankar (father of the deceased) were watching T.V. On hearing the knocking sound, Pushpraj and others went towards main iron gate and Pushpraj opened the door. Outside their main gate, Krishna Pal @ Lala, Rishi Pal and Raghunath were carrying rifles in their hands, Ranjeet was carrying an axe in his hand, Bahadur was carrying a spear in his hand and Uddham Singh was carrying a knife in his hand. All of these accused simultaneously, threatened Pushpraj for doing pairvi from the side of Rajesh against them and by dragging Pushpraj collectively made an assault on him.

53. P.W.1 and P.W. 2 have not specifically stated that any blow was inflicted directly with sharp edged side of either spear, axe or knife. Both of these witnesses have specifically stated that firing was resorted to terrorize the family members of the deceased as well as people who have gathered from the surrounding area, because of which, there was stampede on the spot. From the very beginning, it is not the case of the prosecution that the deceased or any of the injured has sustained any sharp cut injury. Oral or documentary evidence available on record proves that PW.-1 and PW-2 both have sustained injuries during the incident, which in the opinion of doctors have been found to be sustained from some hard and blunt object. Therefore, PW-1 and PW-2 are the injured witnesses, who have deposed consistently regarding the presence of the appellants on spot and they all were armed with deadly weapons. Date, time, place and manner of incident has been proved by these witnesses. There is no inconsistency or contradictions in their depositions as far as presence of the appellants and their active participation in the crime and the date, time or place of incident is concerned. It is also important to observe here that the prosecution has been able to prove motive behind the crime. In Rajesh′s case, the appellant Krishna Pal was being prosecuted and Pushpraj was doing pairvi in this case and this was the motive for Krishna Pal to kill Pushpraj.

P.W.1 in his cross- examination has clearly stated that deceased was wearing a lungi over his underwear and was also carrying a towel. His (deceased's) lungi and towel fell on the spot during the assault, which were recovered from the spot by first Investigating Officer and were sent to Forensic Science Laboratory for examination along with underwear found on the body of the deceased during postmortem. The FSL Report Ex.Ka.-17 corroborates this part of deposition of P.W.1 because in FSL Examination, lungi, towel and underwear all were found having human blood. As far as argument of learned counsels for appellants that no blood was found on spot is concerned, this is a lapse on the part of Investigating Officer, indicative of defective investigation. Law is well settled that no benefit can be given to accused if prosecution has proved its case from trustworthy depositions of eyewitnesses.

From the incident as narrated by PW-1 and PW-2, it is crystal clear that there was no intention to kill any other member of Pushpraj's family. The informant Manoj Kumar, deceased's widow Vimla Devi, deceased's mother Bitti Bai tried to save Pushpraj, but they were also injured with blunt side of weapons, meaning thereby that the appellants have no intention to kill any other family members of the deceased Pushpraj. It has also come on record that Pushpraj was mercilessly beaten and there was no resistance from the side of Pushpraj. Therefore, the appellant did not feel any need to either shoot him or to cause injury from sharp side of sharp cut weapon. The appellants have mercilessly beaten the deceased Pushpraj in front of their main gate and were giving a message that if any one is going to do any pairvi against them, such person will also be taught a similar lesson.

54. Therefore, we are of the opinion that the prosecution has been able to prove it's case against the appellants-convicts beyond reasonable doubt and question no.1 is answered in affirmative.

(ii) Whether non-examination of other witnesses present on spot namely, injured Bitti Bai and deceased's brothers Ashok and Jagdish, is fatal to prosecution and an adverse inference is to be drawn against the prosecution or not ?

55. In the present case, informant Manoj Kumar, his mother Smt. Bitti Bai and his bhabhi Vimla Devi (wife of deceased) also sustained injuries. However, Smt. Bitti Bai has not been examined as prosecution witness and as per first information report, informant's brothers Ashok and Jagdish were also present on spot, however, these two alleged eyewitnesses have also not been examined. In this backdrop, learned counsel for the appellants have vehemently argued that material witnesses have been intentionally withheld by the prosecution and, therefore, an adverse inference has to be drawn against the prosecution. Law on this point is well settled that it is not the number of witnesses, which is important and material for prosecution to prove it's case, rather it is the quality of the deposition of the witnesses, which is important and material for the prosecution to prove it's case.

56. In **Bhimappa Chandappa v. State of Karnataka (2006) 11 SCC 323**, the Hon'ble Supreme Court held that testimony of a solitary witness can be made the basis of conviction. The credibility of the witness requires to be tested with reference to the quality of his evidence which must be free from blemish or suspicion and must impress the Court as natural, wholly truthful and

so convincing that the Court has no hesitation in recording a conviction solely on his uncorroborated testimony.

57. The Hon'ble Apex Court in **Joy Devaraj v. State of Kerala, (2024) 8 SCC 102** has held that even otherwise, Section 134 of the Evidence Act, 1872 ordains that no particular number of witnesses is required, in any case, to prove a fact. Therefore, it is not the law that a conviction cannot be recorded unless there is oral testimony of at least two witnesses matching with each other. It is the quality of evidence and not the quantity that matters. If the evidence of a solitary witness appeals to the Court to be wholly reliable, the same can form the foundation for recording a conviction.

58. The Apex Court in the case of Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434 has held that the prosecution is not bound to examine all the cited witnesses, and it can drop witnesses to avoid multiplicity or plurality of witnesses. The accused can also examine the cited, but not examined witnesses, if he so desires, in his defence. It is the discretion of the prosecutor to tender the witnesses to prove the case of the prosecution and "the Court will not interfere with the exercise of that discretion unless, perhaps, it can be shown that the prosecution has been influenced by some oblique motive". In an extraordinary situation, if the Court comes to the conclusion that a material witness has been withheld, it can draw an adverse inference against the prosecution, as has been provided under Section 114 of the Evidence Act. Undoubtedly, the public prosecutor must not take the liberty to "pick and choose" his witnesses, as he must be fair to the Court, and therefore, to the truth. In a given case, the Court can always examine a witness as a Court witness, if it is so warranted in the interests of justice. In fact, the evidence of the witnesses must be tested on the touchstone of reliability, credibility and trustworthiness. If the Court finds the same to be untruthful, there is no legal bar for it to discard the same.

59. The Hon'ble Supreme Court while summarising the law in the case of Ravasaheb v. State of Karnataka, (2023) 5 SCC 391 has observed that when a case involves a large number of offenders, prudently, it is necessary, but not always, for the court to seek corroboration from at least two more witnesses as a measure of caution. Be that as it may, the principle is quality over quantity of witnesses.

60. The Apex Court in the case of **Avtar Singh v. State of Haryana, (2012) 9 SCC 432** has interpreted the law as :

"18.The learned counsel further submitted that though the prosecution would claim injuries on several persons of the complainant party, the other persons who were stated to have been injured or were present at the place of occurrence were not examined. In this context, it will be relevant to refer to the decision of this Court reported in Tej Parkash v. State of Haryana [(1996) 7 SCC 322 : 1996 SCC (Cri) 412] wherein this Court held that all the witnesses of the prosecution may not be called and it is sufficient if witnesses who were essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution. The legal position has been stated in para 18 as under : (SCC p. 330)

"18. In support of his contention that serious prejudice was caused to the appellant by non-examination of Phool Singh who had been cited by the prosecution as one of the witness, Mr

Ganesh relied upon Stephen Seneviratne v. R. [(1936) 44 LW 661 : AIR 1936 PC 289] , Habeeb Mohammad v. State of Hyderabad [(1953) 2 SCC 231 : AIR 1954 SC 51 : 1954 Cri LJ 338 : 1954 SCR 475] and State of U.P. v. Jaggo [(1971) 2 SCC 42 : 1971 SCC (Cri) 401] . The aforesaid decisions can be of little assistance to the appellant in the present case. What was held by the Privy Council and this Court was that witnesses who were essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution whether the effect of their testimony is for or against the case for the prosecution and that failure to examine such a witness might affect a fair trial. It was also observed that all the witnesses of the prosecution need not be called. In the present case, the witnesses who were essential to the unfolding of the narrative had been examined.″

19. The law on this aspect can be succinctly stated to the effect that in order to prove the guilt of the accused, the prosecution should make earnest effort to place the material evidence both oral and documentary which satisfactorily and truthfully demonstrate and fully support the case of the prosecution. Where there were several persons stated to have witnessed the incident and the prosecution examined those witnesses who were able to depose the nature of offence committed more accurately leaving no room for doubt about the involvement of the accused in the occurrence and the extent of their involvement with specific overt act and also were able to withstand the cross-examination by maintaining the sequence and the part played as originally stated, it will be wholly irrelevant and unnecessary to multiply the number of witnesses to repeat the same version.″

61. The Apex Court in State of **M.P. Vs. Balveer Singh, (2025) 8 SCC 545** has held that there is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subordination of witnesses.

62. In the case of **Jodhan v. State of M.P., (2015) 11 SCC 52**, the Hon′ble Supreme Court has held that the testimony of the injured witness has its own significance and it has to be placed reliance upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and inconsistencies. As has been stated, the injured witness has been conferred special status in law and the injury sustained by him is an inbuilt guarantee of his presence at the place of occurrence.

63. Thus law on this issue is well settled that no particular number of witnesses is required in any case to prove a particular fact. It is the quality of the evidence and not the quantity, which matters, if the evidence of a solitary witness appeals to the Court to be wholly reliable, the same can form the foundation in recording a conviction. The prosecution is not bound to examine all the cited witnesses, and it can drop witnesses to avoid multiplicity or plurality of witnesses. If number of persons are injured in an incident, then it is not essential for the prosecution to examine all such witnesses and the prosecution may choose to examine such number of witnesses, who in it′s opinion are essential to prove the prosecution story. In a given case, not only the accused but Court can always examine a witness as a Court witness, if it is so warranted in the interest of justice. The defence can examine any cited witness, who has been dropped by the prosecution, if it so desires. Therefore, the prosecution can prove its story not only with the help of a reliable solitary witness, but can also call some other witnesses, not necessarily all the eyewitnesses or all the injured witnesses, which it finds essential for proving it′s case. There might be a number of reasons for the

prosecution for not examining all the cited witnesses in a case, if quality of the oral evidence of a single witness or any number of witnesses adduced by it, are sufficient to prove it's case.

64. In the present case, informant Manoj Kumar and deceased's wife Vimla Devi have been examined as prosecution witnesses and both of these witnesses are injured witnesses. Examination-in-chief of injured Manoj Kumar P.W.1 was of about 3 pages, whereas his cross-examination was of more than 39 pages, running into 160 paras. On 04.06.2009, 16.06.2009, 07.07.2009 and 23.07.2009, his (P.W.1's) detailed cross-examination was conducted. It is thus clear that cross-examination of this witness could be completed only after four months of recording of his examination-in-chief and that too on four different dates. Examination-in-chief of P.W.1 was recorded on 23.03.2009 and only after a very brief cross-examination, an adjournment application was moved by the defence on which the case was adjourned. Examination-in-chief of injured Vimla Devi P.W.2 was concluded in 3 pages, however, her cross-examination was concluded in 28 pages. Examination-in-chief of P.W.2 was recorded on 09.10.2009 and her cross-examination was deferred, thereafter she was cross-examined on 23.10.2009, 09.03.2010, 20.03.2010 and 02.04.2010. It is thus apparently clear that this injured witness was also cross-examined on four different dates at length and her deposition could be completed in about eight months.

65. It is thus, apparently clear that both these injured witnesses i.e. P.W.1 and P.W.2, were extensively cross-examined that too on several dates and their depositions could be concluded in several months. In this background, their depositions were bound to have minor contradictions. PW-1 and PW-2 have deposed consistently regarding the presence of the appellants on spot armed with deadly weapons. Date, time, place and manner of incident has been proved by these witnesses. There is no inconsistency or contradictions in their depositions as far as presence of the appellants and their active participation in the crime and the date, time or place of incident is concerned. Probably, when these witnesses have been extensively cross-examined, the prosecution has decided not to examine any other eyewitness or injured of the incident. Therefore, non-examination of other witnesses present on the spot, who are family members of the deceased as well as of these witnesses, is not fatal at all and no adverse inference can be drawn against the prosecution for non-examination of those other witnesses present on the spot. Therefore, we do not find any force in the arguments of learned counsel for the appellants as far as withholding of material witnesses by the prosecution is concerned. Informant Manoj Kumar is the younger brother of the deceased Pushpraj, who has been examined as P.W.1, who is also an injured witness. **Question No.2 is answered accordingly.**

(iii) Whether the present case is a case of culpable homicide not amounting to murder and, therefore, conviction / sentence of the appellants - convicts is liable to be converted / reduced under Section 304 IPC ?

66. The Supreme Court while analyzing difference between culpable homicide amounting to murder and culpable homicide not amounting to murder in **Anbazhagan V. State Represented by the Inspector of Police (2024) 20 SCC 500** in paras 39-44 has held that-

"39" This Court in Phulia Tudu (2007) 14 SCC 588 has observed that the academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed

the courts. The confusion is caused if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300 of the IPC. The following comparative table will be helpful in appreciating the points of distinction between the two offences:-

Section 299	*Section 300*
A person commits culpable homicide if the act by which the death is caused is done-	*Subject to certain exceptions culpable homicide is murder if the act by which death is caused is done-* *Intention*
(a)with the intention of causing death; *or*	*(1)with the intention of causing death; or*
(b)with the intention of causing injury as is likely to cause death; or	*(2)with the intention of causing such bodily injury as the of endor knows to be likely to cause the death of the person to whom the harm is caused; or*
	(3)with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or *Knowledge*
(c) with the knowledge that the act is likely to cause death	*(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as is mentioned above*

"40" Clause (b) of Section 299 of the IPC corresponds with clauses (2) and (3) of Section 300 of the IPC. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the of ender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the 'intention to cause death' is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the of ender's knowledge of the likelihood of such injury causing the death of the

particular victim, is sufficient to bring the killing within the ambit of this clause. This clause (2) is borne out by illustration (b) appended to Section 300 of the IPC.

"41" Clause (b) of Section 299 of the IPC does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 of the IPC can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result; of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300 of the IPC, instead of the words "likely to cause death" occurring in the corresponding clause (b) of Section 299 of the IPC, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 of the IPC and clause (3) of Section 300 of the IPC is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word 'likely' in clause (b) of Section 299 of the IPC conveys the sense of probable as distinguished from a mere possibility. The words "bodily injury"..sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

"42" For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries suf icient to cause death in the ordinary course of nature. The decision in the case of Rajwant Singh v. State of Kerala, AIR 1966 SC 1874, is an apt illustration of this point.

"43" The scope of clause thirdly of Section 300 of the IPC has been the subject matter of various decisions of this Court. The decision in Virsa Singh (supra) has throughout been followed in a number of cases by this Court. In all these cases the approach has been to find out whether the ingredient namely the intention to cause the particular injury was present or not? If such an intention to cause that particular injury is made out and if the injury is found to be sufficient in the ordinary course of nature to cause death, then clause thirdly of Section 300 of the IPC is attracted.

"44" Analysing clause thirdly and as to what the prosecution must prove, it was held in Virsa Singh (supra) as under:-

"15. First, it must establish, quite objectively, that a bodily injury is present;

16. Secondly, the nature of the injury must be proved; These are purely objective investigations.

17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended

18. Once these three elements are proved to be present, the enquiry proceeds further and,

19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is suficient to cause death in the ordinary course of nature. This part

of the enquiry is purely objective and inferential and has nothing to do with the intention of the of ender.″

It was further observed as under:-

"20. "If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional.″(Emphasis supplied)

The Apex court also observed in para 66 that

"66″Few important principles of law discernible from the aforesaid discussion may be summed up thus:-

"66.1″When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate : 'A' is bound hand and foot 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

"66.2″Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

"66.3″To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

"66.4" Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

"66.5" Section 304 of the IPC will apply to the following classes of cases:

(i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section,

(ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC,

(iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

"66.6" To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

"66.7" The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

"66.8" The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC

"66.9" The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

"66.10" Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary cause of nature to cause

death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

"66.11" When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

"66.12" Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the of ence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

"66.13" In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.

67. In the light of above well settled position of law regarding murder and / or culpable homicide not amounting to murder, we are again evaluating the oral as well as documentary evidence available on record to arrive on a just conclusion. The accused persons arrived at the spot armed with deadly weapons, in a premeditated manner, to murder Pushpraj and to give villagers a clear message. The prosecution has successfully proved the motive behind the murder of the deceased. It is a case in which all the accused have participated with a premeditated plan as well as in furtherance of their common object of murdering the deceased. In this background, injuries sustained by the deceased are carefully evaluated, which is clear from perusal of the postmortem report Ex.Ka.-4, that the deceased was mercilessly beaten resulting into fractures of his right and left humerus bones, left elbow joint, right tibia, 5th and 6th ribs. He was so mercilessly beaten that his 5th and 6th rib after being broken entered into right lung thereby causing blood being stored in right side thoracic cavity. Even deceased's right pleura was found teared and trachea was also found filled with clotted blood. Anterior surface of the deceased's right lung was also found teared and clotted blood was also found inside the same. The deceased was mercilessly beaten on 01.07.2007 at 10:00 P.M. and, therefore, was rushed for treatment to the Medical College, Jhansi, where he arrived at 1:50 A.M. on 02.07.2007. The deceased succumbed to injuries within four hours of preparation of his injury report and had actually died within seven hours of sustaining injuries. In his postmortem, the autopsy surgeon found four stitched wounds, having total seventeen stitches. In the lacerated wound found present on outer surface of middle of right arm, his (deceased) broken bone was clearly visible. The nature of injuries found in the postmortem report of the deceased clearly reveals the amount of force employed by the members of unlawful assembly in causing ante-mortem injuries to the deceased. The nature of injuries so caused by the appellants on the person of the deceased, as found and noted in his autopsy report, clearly reveals that those injuries were sufficient to cause death in natural course.

68. Hon'ble Supreme Court in **Pulicherla Nagaraju Vs. State of A.P., 2007 (1) SCC (Cri) 500**, has observed that there may be cases of murder, where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the Courts to ensure that the cases of murder punishable under Section 302 I.P.C., are not converted into the offence punishable under Section 304 Part I / II. This observation of the Hon'ble Supreme Court again found approval in **State of Uttarakhand Vs. Sachendra Singh Rawat, (2022) 4 Supreme Court Cases 227.**

69. All the appellants came together and after committing murder of Pushpraj ran together by resorting to fire for threatening the family members of Pushpraj and their neighbours, which is clearly indicative of premeditated plan. The manner in which, Pushpraj was brutally attacked, mercilessly beaten and grievously injured, shows not only their intention but their knowledge also. The accused could have very easily murdered the deceased either by single gunshot or by a single blow of sharp cut deadly weapon being carried by them, but instead they chose to murder by mercilessly assaulting the deceased from blunt side of their weapons, in presence of his family members, to give a stern message to everyone in village not to interfere in their matters and not to do any type of pairvi against them, else be ready to face the same consequence. All the accused in furtherance of their common object came on spot armed with deadly weapons and mercilessly thrashed the deceased, when the family members tried to save the deceased from their clutches, they were also beaten, resulting into injuries to P.W.1, P.W.2 and mother of the deceased namely Bitti Bai. The accused arrived in a premeditated design and they committed offence in such a manner to spread a wave of terror in the village and society. The manner in which the accused arrived on spot with deadly weapons and thereafter assaulted the deceased and type of injuries inflicted by them from the blunt side of the deadly weapons clearly indicates their intention to cause the murder of the deceased. In the mercilessly thrashing, the deceased's both hand, one leg and two ribs were fractured, which is clearly indicative of the extent of force used by the accused persons in the incident. All the accused persons arrived on the spot with deadly weapons and, therefore, it can be easily presumed that they all have the knowledge that murder is likely to be committed. Therefore, all the accused in a preplanned manner arrived at the spot with deadly weapons and formed an unlawful assembly and had thus assaulted the deceased. Every member of the unlawful assembly has actually participated in commission of the offence. Therefore, being members of unlawful assembly in prosecution of their common object, they all are liable for the offence of murder of the deceased. It is not a case of sudden quarrel or sudden fight or a case of free-for-all fight. It is also not a case where the incident had occurred by chance. It is neither a case of grave and sudden provocation or a case in the heat of passion. It is also not a case where only a single blow has been inflicted.

70. Therefore, any reasonable person with any stretch of imagination can come to a conclusion that injuries so mercilessly caused on the various parts of the body of the deceased would cause death were sufficient in the ordinary course of nature to cause death. The blunt side of deadly weapons were intentionally used to cause such injuries and, therefore, the case of appellants - convicts squarely falls within clause thirdly of Section 300 I.P.C. It is not a case which is covered under anyone of five exceptions of Section 300. Therefore, the appellants - convicts have been rightly convicted in the commission of murder of the deceased Pushpraj. It is not a case of culpable homicide not amounting to murder and, therefore, conviction / sentence of the appellants - convicts is not liable to be converted / reduced under Section 304 I.P.C. Question No.3 is accordingly answered in the negative.

71. In the light of foregoing discussions and considering the entire aspects of the matter and looking to the circumstances, under which the present offence has been committed, we are of the view that the impugned judgment and order passed by the trial Court is well thought and well discussed and the trial Court has rightly held that the prosecution has succeeded to prove the guilt of the accused appellants beyond reasonable doubt. The conviction in the case in hand is a right ending and sentence as imposed is proper. As such, the impugned judgement and order passed by the trial Court is liable to be upheld and the Appeals having no force are liable to be dismissed. **Question No.3 is, therefore, answered in the negative.**

72. No good ground to interfere in the well reasoned judgment of the trial court is made out. Thus there is no merit in the present criminal appeals. Consequently, the judgment and sentence dated

11.03.2011 passed by Additional Sessions Judge, Court No.1, Jhansi is hereby "**Affirmed**".

73. The appellant Krishan Pal alias Lala is in jail. He shall serve out remaining part of sentence imposed upon him by the trial Court.

74. The appellants Rishi Pal, Raghunath alias Batauli, Ranjeet, Bahadur and Udham Singh alias Matauli are on bail. Their personal and surety bonds are cancelled and they are directed to surrender before the Court concerned forthwith, who shall take them into custody and send them in jail for serving out the remaining sentence imposed upon them by the trial Court. In case they fail to surrender, as directed above, the Court concerned is directed to take coercive action against them in this regard.

75. Let a copy of the judgment be provided immediately to the appellant Krishan Pal alias Lala through Superintendent Jail, free of cost.

76. The record of the 'Trial Court' be sent back immediately with a copy of this judgment for necessary information and compliance.

77. The Appeals fail and are hereby **Dismissed**.

78. Pending applications including bail applications, if any, stand disposed of accordingly.

(2026) 5 ILRA 1371
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 19.05.2026

BEFORE

THE HON'BLE SANJIV KUMAR, J.

Criminal Appeal No. 3123 of 1986

Ram Darash & Ors. **...Appellant**
Versus
State **...Respondent**

Issue for consideration

Matter pertains to right of private defence.

Headnotes

Cross-case-Right of private defence- Indian Penal Code, 1860-cross-case- prosecution proved beyond reasonable doubt -that the accused formed an unlawful assembly and assaulted-testimony of the injured and independent eyewitnesses was found consistent and corroborated by the medical evidence-plea of private defence was rightly rejected -as the accused neither adduced any evidence -nor established that the complainant party was the aggressor-rather the evidence showed that the accused were the aggressors -and the injuries sustained were caused when the complainant side exercised its right of private defence-conviction upheld. **Appeal dismissed.**

Case Law Cited

1. Nathilal vs. State of U.P., 1990 (Suppl) SCC 145
2. Darshan Singh vs State of Punjab & Anr 2010 (2) SCC 333

List of Acts

Indian Penal Code, 1860

List of Keywords

Private defence; cross-case; burden of proof.

Appearances of parties

Counsel for Appellant(s) : A.N. Tripathi, Avanindra Kumar Mishra Counsel for Respondent(s) : A.G.A.

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

1. This Criminal Appeal has been preferred by appellants/convicts, Ram Daras, Jai Nath, Hari, Gulab and Bhikhari, under Section 374(2) Code of Criminal Procedure, 1973, ('in short' Cr.P.C.), against the judgment and order dated 13.11.1986, passed by Sri Umesh Chandra Mishra, IIIrd Additional Sessions Judge, Ballia, in Sessions Trial No.173 of 1983, under Section 147, 323 read with 149, 308 read with 149 and 324 read with 149 Indian Penal Code, 1860, (in short IPC), Police Station- Bhimpura, District- Ballia.

2. By the impugned judgment and order, dated 13.11.1986, the learned Trial Court has convicted all the appellants for offence punishable under Section 147 IPC to a term of 6 months rigorous imprisonment; under Section 323 read with 149 IPC to a term of 9 months of rigorous imprisonment; for offence under Section 308 read with 149 IPC to a term of 3 years of rigorous imprisonment and it was directed that all the sentences shall run concurrently. The appellant Ram Daras was acquitted of offence under Section 324 IPC and rest of the four appellants were acquitted of offence under Section 324 read with 149 IPC.

3. During the pendency of this appeal appellants Ram Daras, Hari, Gulab and Bhikhari have died and the appeal stands **abated** against them vide order dated 18.02.2026. Now, this appeal survives only on behalf of appellant no.2 Jai Nath.

4. Brief facts of the prosecution case are that first informant Sekha son of Dev Nandan, resident of Village- Chak Habsapur, Police Station- Bhimpura, District- Ballia, submitted a written application (tehrir) (Ext. Ka-1), before SHO, Police Station- Bhimpura, District- Ballia, stating therein that on the 14.06.1982 at about 08:00 a.m. his son Kailash was repairing his hut′s wall which had collapsed due to rain. Suddenly, Ram Daras, Jai Nath both sons of Bhikhari Lohar and Hari, Gulab both sons of Sukhari Lohar and Bhikari son of Sitaram threw his son Kailash into small pond (gadhai) after assaulting him with lathis. Upon alarm when he reached at the spot, his son was already beaten up. Upon his cry, Indrasan and Singhasan both sons of Gobari Lohar came running, thereupon, Ram Daras attacked Singhasan with a spear (bhala) causing him hurt over his left hand and also to Indrasan with lathis. Upon their alarm Raj Kumar son of Deu, Ganpat son of Neur and many other persons reached at the spot and intervened. Upon this information an FIR in Case Crime No. 21 of 1982, under Sections 147, 148, 324 and 323 IPC was lodged on 14.06.1982 at 09:30 a.m. against the appellants.

5. The investigation was conducted by S.I. Rajiv Rai, who recorded the statements of first informant and other witnesses, inspected the place of occurrence and prepared the site-plan. The injured were medically examined and after collecting evidence the I.O. has filed charge-sheet under Sections 147, 148, 323, 324 and 308 IPC against all the five appellants.

6. The concerned Court took cognizance of the offence and summoned the accused. They appeared and copies of relevant prosecution papers were furnished to them under Section 207 Cr.P.C. and thereafter the case was committed to the Court of Sessions for trial.

7. The accused appeared before the learned Sessions court, where charge under Section 148, 323 read with 149; 324 and 307 read with 149 IPC was framed against appellant Ram Daras and charge under Sections- 147, 323 read with 149, 324 read with 149, 307 read with 149 IPC was framed against appellants Jai Nath, Hari, Gulab and Bihari. All the appellants pleaded not guilty and claimed to be tried.

8. The prosecution examined six witnesses, to wit, P.W.1 Sekha; P.W. 2 Raj Kumar; P.W.3 Kailash Sharma; P.W.4 Dr. S.P. Narain, (medical officer); P.W. 5 Head Constable Sudama; and P.W. 6 Inspector Rajdeo Rai, to prove its case.

9. P.W. 1 Sekha, is the eye-witness, injured and is also the first informant. He has stated that the accused are his pattidar and since last one year they are living separately. They have partitioned their land and house since one year prior to the incident. According to the partition, the western portion of abadi land came in the first informant′s possession and the eastern portion came into possession of Hari and Others. The first informant has constructed a hut (madai) over his land and Hari′s house is to its east. The first informant has another house to the North of eastern corner, which is about 30 steps away from this madai. The small pond (gadhai) was filled with water upto the chest level, in the month of Jeth and Baisakh (English calendar month of June and July). P.W. 1 has further stated that accused wanted to take first informant′s abadi land. He has said that on the date of incident at about 08:00 a.m., he was at the door and his son Kailash was repairing the southern wall of madai with mud. Upon alarm he reached near madai and saw accused Ram Daras carrying spear, Jai Nath, Gulab, Hari and Bhikhari carrying lathis were assaulting his son Kailash,

and till he reached there Kailash was pushed into gadhai and then the accused started beating him also with lathis. When Indrasan and Singhasan came for his rescue then Ram Daras attacked Singhasan with spear causing injuries over his left hand. Indrasan was also assaulted with lathis. The witness has said that in self defence they also wielded lathis as a result accused also sustained injuries. Kailash was rescued from the Gadhai and his condition was critical. They took him on cot to Bhimpura police station and on the way Mahendra met, he got the tehrir written from him and lodged the FIR. The witness has proved tehrir (Ext. Ka-1) and has said that from the police station, he and Kailash were taken to Kidharapur hospital, where doctor was not found. Therefore, they were taken to Belthara Road, hospital from there Kailash was taken to District Hospital- Ballia. Kailash was also sent to Banaras for treatment.

10. In cross-examination he has said that a cross-case regarding the same incident is pending between him, Kailash, Indrasan, Singhasan and others. There is a vacant land between gadhai and Hari′s house. The accused were assaulting Kailash in his presence and they pushed him in gadhai. Kailash was only beaten with lathis. Ram Daras did not attack him with spear. Due to the assault by Ram Daras, he himself sustained injuries over his left hand. He has said that he could not see who had beaten him. He did not see any blood at the place of occurrence. There was blood over clothes worn by Singhasan and Indrasan. He himself, Singhasan and Indrasan were having lathis which they used in their self defence. He himself and his side did not carry any ballam in their hands. Ramesh was not present there and he did not see him in injured condition.

11. P.W. 2 Raj Kumar has stated that at the time of incident he was coming to his house from near the place of occurrence. The incident occurred at the southern corner of accused Hari′s land. He saw Kailash repairing his southern wall of madai, which had collapsed due to the rain and he was putting mud over it. Meanwhile, accused Ram Daras carrying bhala and other accused carrying lathis reached there, shouted, then, Kailash ran towards north western direction, accused surrounded him near Bhikhari′s house and started wielding lathis. He fell on the ground, then got up and ran towards north. The accused chased and pushed him in a gadhai. Upon alarm when Sekha, Indrasan and Singhasan reached, they were also beaten by the accused. In self defence Sekha, Indrasan and Singhasan also wielded their lathis causing injuries to accused Ram Daras and Hari. Soon thereafter, they entered in the gadhai, brought out Kailash, who had drowned in water and was unconscious. He was bleeding from head and he was taken to Bhimpura.

12. In cross-examination he has said that, he did not see any earth being dug from Hari′s land. Accused came and attacked without any altercation. All the five accused chased Kailash and after running to a distance of 10-15 steps Kailash was beaten with lathis. At the time Kailash was being beaten, his family members had not reached there. When Kailash got up and ran then accused chased him and pushed in gadhai with water upto the level of about 4 feet. He saw injuries over accused, Hari, Gulab and Ram Daras. There was blood flowing from Hari′s head and Ram Daras was also injured. He did not see Ramesh at the spot and he did not see Bhikhari′s injuries.

13. P.W. 3 Kailash Sharma is an injured witness. He has said that on the date of incident at 08:00 a.m., he was repairing his Southern wall of madai. Suddenly, accused came there, shouted at him, then he ran towards north. Accused started beating him with lathis. He suffered injuries and ran but the accused chased and pushed him in gadhai. Thereafter, he fell unconscious. He does not

know to swim, thereafter, what happened he did not know. He regained his consciousness after 2-3 days in District Hospital- Ballia.

14. In cross-examination he has said that when he was repairing his wall, his father Sekha was at the door, and all the five appellants came there. He does not remember which accused caused how many blows. Till then, no witness came at the scene. He does not remember whether accused surrounded him, while beating and he ran after getting up. Then one of the accused pushed him in gadhai. He has further said that he is accused in the cross-case and has denied the suggestion that accused Hari was digging earth from his chak (land) and was repairing the boundary then Sekha, Singhasan objected, and Indrasan and others attacked Hari, Ram Daras and others with lathi and spear and in their self defence he sustained injuries.

15. P.W. 4 Dr. S.P. Narain, is a formal witness who conducted medical examination of Sekha on 14.06.1982 at 04:30 p.m. in District Hospital, Ballia and found following injuries:

(i) Swelling 6cm x 4 cm over left forearm 3 cm from the elbow, there was complain of pain in it. The injury was simple and was caused by blunt object and it was fresh.

The same day at about 03:00 p.m. he examined Kailash and found following injuries over him:-

(i) Lacerated wound 4 cm x 1 cm x muscle deep over left side of head, 10 cm above left eye brow, the margins were lacerated and blood was present.

(ii) Abrasion 2 cm x 1 cm to the left side of head, 2 cm away from injury no.1.

(iii) Entire upper eye lid was swollen of the left eye. It was bluish and reddish in colour. The patient was unable to open his eyes and he was semi-conscious.

Injuries were kept under observation, the patient was admitted to hospital for 24 hours. All the injuries were caused by the blunt object and were fresh.

The witness has said that on the same day at about 04:00 p.m. he examined Singhasan and found following injuries over his body:-

(i) Swelling 3 cm x 2 cm over forehead, 8 cm above the root of nose.

(ii) Incised wound 1.5 cm x 0.5 cm x muscle deep over left palm between index finger and middle finger, the margins were clean cut and fresh blood was present.

(iii) Lacerated incised wound 1 cm x 0.5 cm x muscle deep on left palm between index figner and thumb. The margins were clean cut and fresh blood was present.

All the injuries were simple in nature. Injury no.1 was caused by blunt object and injury nos. 2 and 3 were caused by sharp edged weapon.

The doctor has said that the same day at 03:30 p.m. he has examined Indrasan and found following injuries:-

(i) Lacerated wound 5 cm x 0.5 cm x muscle deep in the middle of head, 9cm above the root nose, the margins were irregular, fresh blood was present.

(ii) Lacerated wound 3 cm x 0.5 cm x muscle deep to the left side of head, 6 cm above injury no.1.

(iii) Swelling 10 cm x 5 cm in the front of left leg x 12 cm below knee, the patient was in pain.

(iv) The patient had complain of pain in his right arm. All the injuries were simple in nature and were caused by blunt object and were fresh at the time of inspection.

16. The witness has said that he had prepared injury reports of all the four injured, which he proved as Ext. Ka-2 to 5. He has said that these injuries could have been caused on 14.06.1982 at about 08:00 a.m. He has further said that the injured Kailash could have fell unconscious after sustaining injuries and falling in water. There was no water in his stomach and lungs and in cross-examination he has said that he did not find any sign that injured Kailash had fallen in water.

17. P.W. 5 Head Constable, Sudama Mishra is a formal witness and he has proved chik FIR (Ext. Ka-6), and G.D. No.12 (Ext. Ka-7). He has also proved, as secondary witness, site-plan prepared by the Investigation Officer as Ext. Ka-8 and 9, respectively.

18. In his cross-examination he has said that in summoned record of Session Trial No.110 of 1985 (State Vs. Kailash), (Ext. Ka-2), was scribed by him and related G.D. is in his handwriting which the witness has proved as Ext. Kha-1 and Kha-2, respectively. Similarly, he has proved charge-sheet of the cross-case as Ext. Kha-3, 4 and 5, filed by the Investigation Officer, S.I. Rajdeo Rai.

19. P.W. 6 S.I. Rajdeo Rai, is the Investigation Officer of the case. He has stated about the investigation carried out by him and has said that he recorded statements of injured and other witnesses, inspected the place of occurrence and prepared its site-plan. He found that some part of southern wall of Sekha′s madai (hut) had fallen and some mud was put on it. He has proved site-plan and charge-sheet. In cross-examination has said that he had not found any blood at the spot.

20. After closure of prosecution evidence, the statement of accused were recorded under Section 313 Cr.P.C. in which they have admitted that they are pattidars of the first informant and are living separately since long ago. Rest of the prosecution case was denied and it was stated that witness are deposing due to enmity and to save their skin from the cross-case, this false case has been lodged against them.

21. The accused have not produced any evidence in defence.

22. The learned trial court after perusing the evidence on record, found that prosecution has been able to prove its case beyond reasonable doubt and accordingly, convicted and sentenced the appellants to the term as indicated above.

23. I have heard learned counsel for the appellant and learned A.G.A. on behalf of State and perused the material on record.

24. It has been submitted on behalf of the appellant that the prosecution evidence consists of material contradictions and inconsistencies. There are material contradictions in oral and medical evidence. It is also submitted that it was the first informant and his party who attacked the accused and in self defence injuries were caused to the side of the first informant.

25. Per contra, learned A.G.A has submitted that the witnesses examined by the prosecution are consistent, reliable and trustworthy. Oral testimony is supported with medical evidence. The accused have not adduced evidence in their support related to the cross-case. Thus the appellants have been rightly convicted and sentenced by the learned trial court.

26. It is settled law that in a criminal case the burden of proof lies upon the prosecution to prove its case beyond reasonable doubt. In the present case, it is not disputed that the matter relates to cross-case. P.W. 1, informant Sekha in his cross-examination has said that cross-case is pending against him and others and he has further said that they wielded lathis in their self defence causing injuries to the accused. P.W. 2 Raj Kumar, the independent witness, has also stated that in self defence lathis were wielded from the side of the first informant, causing injuries to accused. P.W. 3 Kailash have also stated the same narration. P.W. 4 Dr. S.P. Narain, has stated that he had examined Kailash, the injured of this case alongwith others, the same day. P.W. 5 Head Constable Sudama Singh, is the scribe of the FIR and he has stated that there is an FIR and copy of G.D. in Session Trial No.100 of 1985 and there is also a charge-sheet in the Session Trial, which the witness has proved as Ext. Kha-1 to Ext. Kha-5 and said that he scribed the FIR and G.D of the cross-case.

27. In view of the above, it is established that the present matter relates to cross-case. With regard to cross-case the Supreme Court in **Nathilal vs. State of U.P., 1990 (Suppl) SCC 145**, has held that in deciding each of the cases, the Judge can rely only on the evidence recorded in that particular case. The evidence recorded in the cross-case cannot be looked into, nor can the judge be influenced by whatever is argued in the cross-case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross-case.

28. As this matter relates to cross-case, therefore, with regard to the date, time and place of occurrence, there is no dispute and in this regard the appellant has not raised any issue. Therefore, only this much is to be seen that which party was the aggressor and whether the appellant caused injuries in the right of his private defence or it was a free fight.

29. According to the prosecution, at the time of incident, injured Kailash was repairing Southern wall of his *madai* (hut), which had collapsed due to rain. Then the appellants reached at the place and started committing maarpeet with him. Whereas, according to the appellant, appellant Hari was repairing his northern boundary by digging his *chak* (agricultural land). Singhasan stopped him and thereafter, others from the side of first informant reached there and started committing *maarpeet*. Here, it is relevant to mention that the appellants have not adduced any evidence in their defence and have not produced any witness in support of their version of the incident.

30. On the other hand, the prosecution has examined P.W. 1 Setha, P.W. 2 Raj Kumar, and P.W. 3 Kailash Sharma. P.W. 1 Sekha has supported the prosecution case and has said that accused are his *pattidars* and since long ago they are living separately. About one year before this incident, a partition had taken place between them regarding the abadi land, by which Western portion fell in his share and Eastern land fell to Hari and others. According to P.W. 1 the accused wanted to grab his portion of land. The witness has said that at the time of incident his son Kailash was repairing the Southern wall of his madai (hut) and was putting mud over the wall, then he heard noise and after reaching near madai he saw accused Ram Daras carrying spear and other accused, Jai Nath, Gulab, Hari Shankar and Bhikari, carrying lathis, were beating his son Kailash. Before he could reach near, they pushed Kailash in the small pond (*gadhai*) and then started beating him (the witness) also, with *lathis*. He has said that in self defence he and others from his side also started weilding *lathis* which caused injuries to accused. This witness has been cross-examined at length, but there are no major contradictions in his deposition to raise any suspicion over his statement. He has said that when he reached there, the accused were pushing Kailash near *Mahua* tree and were beating him with *lathis*. He has also said that he sustained injuries over his left hand and he could not see which of the accused had assaulted him. He has said that Singhasan also sustained injuries near *Mahua* tree and after beating, accused pushed Kailash in small pond. The witness has said that no one from his side was carrying *ballam.*

31. On the basis of above statement, it is submitted on behalf of the appellant that the witness is not narrating correct facts before the court and admittedly accused also sustained injuries. The appellant did not adduce any medical evidence in support of his contention to show which of the accused/appellant sustained injuries.

32. In view of the above, the statement of P.W.1 Sekha is consistent, reliable and trustworthy which supports the prosecution case.

33. P.W. 2 Raj Kumar, is an independent witness, he has also supported the prosecution case and has said that while returning from a Harijan abadi, as soon as he reached near the Southern corner of accused Hari′s agricultural land, he saw Kailash repairing Southern wall of his *madai* (hut) which had collapsed due to rain. In the meantime, all the accused reached there, shouted and Kailash tried to run away but near Bhikhari′s house, he was surrounded by the accused and they wielded lathis causing him injuries. Thereafter he got up and ran towards North where the accused pushed him in the small pond (*gadhai*). He has said that upon alarm, Sekha, Indrasan, Singhsan reached, then accused started beating them, and in self defence, Sekha, Indrasan and Singhsan also wielded lathis, causing injuries to Ram Daras and Hari. He saw injured Kailash had drowned under water, and was unconscious with blood flowing from his head. This witness has also been cross-examined at length, but there are no material contradictions or inconsistencies in his statement, which could raise any doubt over his evidence. He has said that he did not see appellant Hari digging earth from his land and said that the accused after reaching there started attacking Kailash, who sustained injuries over his head and back. He has said that while Kailash was being beaten, none of his family members reached there and when Kailash after sustaining injuries tried to run away, the accused chased and pushed him in a small pond (*gadhai*). He has said that he had seen injuries over appellants Hari and Ram Daras′s head. Ramesh was not present at the spot, and he did not see any injury over Bhikhari.

34. It is submitted on behalf of the appellant that, in view of statement of P.W. 2 Raj Kumar, P.W. 1 Sekha is not an eye-witness because he has said that at the time Kailash was being beaten, none of his family members reached there, therefore, testimony of P.W. 1 Sekha is not reliable and trustworthy and he is not an eye-witness of the incident. I do not agree with this submission because, P.W. 1 Sekha has said that when he reached there, the accused were pushing Kailash in small pond (*gadhai*) and it is not in dispute that Sekha was also beaten up by the accused, so his presence at the spot cannot be doubted. It appears that he reached at the place of occurrence when the incident had already started.

35. P.W. 3 Kailash Sharma is the injured witness and he has also supported the prosecution case and there are no inconsistencies and infirmities in his statement. He has said that at the time of incident, he was repairing Southern wall of his *madai* (hut) which had fallen due to rain. Then the accused reached there, shouted at him, and when he ran towards North and reached near Bhikhari′s house, which is to the West of Mahua tree, the accused started wielding lathis upon him, as a result he sustained injuries. Then he ran but the accused chased and pushed him in a small pond (*gadhai*), thereafter, he became unconscious and he does not know what happened thereafter. He regained consciousness after 2-3 days in District Hospital, Ballia. This witness has also been cross-examined at length, but no material inconsistencies have come in his statement to raise any suspicion over his evidence. He has said that he does not remember which accused hit him how may blows and till then none of his family member reached there. When he got up after sustaining injuries and ran then one of the accused pushed him in the small pond. It has come in his statement that when he was being beaten none of his family members was present there, but this is a case where the incident occurred in pieces at different places and when his father, P.W. 1 Sekha, reached, he was being pushed in the small pond (*gadhai*). Therefore, it has come in his statement that none of his family members were present while he was being beaten so it does not mean that P.W.1 Sekha did not reach at the spot during the incident. P.W. 1 Dr. S.P. Narain, has medically examined P.W. 1 Sekha also alongwith other injured Kailash, Singhasan and Indrasan and found injuries over his person.

36. In view of the above discussion, the witnesses of fact have proved the prosecution case. So far as the medical evidence is concerned, the prosecution has examined P.W.4 Dr. S.P. Narain and has produced injury reports of all the four injured persons namely Sekha, Kailash, Indrasan and Singhasan, to whom it is alleged that they were assaulted by accused. A perusal of their injury reports and the nature of injuries shows that they are caused by hard and blunt object so they could have been caused by lathi which is a hard and blunt object. Therefore, oral testimony is supported by medical evidence.

37. It is submitted on behalf of the appellant that their side wielded lathis in exercise of their right of private defence, because, appellant Hari was digging earth from his chak (agricultural land) and was repairing his field′s northern boundary, when Singhasan stopped him and the first informant′s side committed maarpeet, but as discussed above, the appellants have not produced any witness or any other evidence to support their case. The only evidence on record is that at the time of incident Kailash was repairing Southern wall of his madai (hut) which had fallen due to rain, then the accused reached there armed with lathis and committed maarpeet.

38. Considering the principle governing the right of private defence, the Hon'ble Supreme Court in Darshan Singh vs State of Punjab & Anr 2010 (2) SCC 333, was pleased to hold as under:

"54. In Vidhya Singh v. State of Madhya Pradesh, (1971)3 SCC 244, the court observed that:

"18. The right of self-defence is a very valuable right, serving a social purpose and should not be construed narrowly. Situations have to be judged from the subjective point of view of the accused concerned in the surrounding excitement and confusion of the moment, confronted with a situation of peril and not by any microscopic and pedantic scrutiny. In adjudging the question as to whether more force than was necessary was used in the prevailing circumstances on the spot it would be inappropriate, as held by this court, to adopt tests by detached objectivity which would be so natural in a court room, or that which would seem absolutely necessary to a perfectly cool bystander. The person facing a reasonable apprehension of threat to himself cannot be expected to modulate his defence step by step with any arithmetical exactitude of only that much which is required in the thinking of a man in ordinary times or under normal circumstances."

55. In Jai Dev v. State of Punjab, AIR 1963 Supreme Court 612 the court held as under:

"13.....as soon as the cause for the reasonable apprehension has disappeared and the threat has either been destroyed or has been put to rout, there can be no occasion to exercise the right of private defence."

56. In order to find out whether right of private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered.

57. In Buta Singh v. The State of Punjab, (1991)2 SCC 612, the court noted that:

"10.....a person who is apprehending death or bodily injury cannot weigh in golden scales in the spur of moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons.

In moments of excitement and disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him where assault is imminent by use of force, it would be lawful to repel the force in self-defence and the right of private-defence commences, as soon as the threat becomes so imminent. Such situations have to be pragmatically viewed and not with high-powered spectacles or microscopes to detect slight or even marginal overstepping.

Due weightage has to be given to, and hyper technical approach has to be avoided in considering what happens on the spur of the moment on the spot and keeping in view normal human reaction and conduct, where self- preservation is the paramount consideration.

But, if the fact situation shows that in the guise of self-preservation, what really has been done is to assault the original aggressor, even after the cause of reasonable apprehension has disappeared, the plea of right of private defence can legitimately be negatived. The court dealing with the plea has to weigh the material to conclude whether the plea is acceptable. It is essentially, as noted above, a finding of fact."

" 58. The following principles emerge on scrutiny of the judgments:

(i) Self-preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.

(ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.

(iii) A mere reasonable apprehension is enough to put the right of self defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is co-terminus with the duration of such apprehension.

(v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.

(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.

(vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.

(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(ix) The Indian Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened.″

39. In view of the above legal position and the evidence on record, it is clear that the act of appellants does not fall within the category of their exercise of right of private defence. There is also no evidence that it was a free fight or the first informant′s side was the aggressor, therefore, the appellants are not entitled to the plea of right of private defence. The evidence shows that the accused were aggressor and assaulted Kailash and others form the side of the first informant and accused suffered injuries when the first informant′s side exercised their right of private defence.

40. In view of the above discussion, it comes to the conclusion that prosecution has been able to prove it case beyond reasonable doubt and it is proved that on 14.06.1982 at about 08:00 a.m. in Village- Havsapur, within the Police Station Bhimpura circle, District- Ballia, while injured Kailash was repairing southern wall of his madai, then the accused reached there and in furtherance of their common intention, formed an unlawful assembly and committed riot and uttered abuses and by weilding lathis, caused hurt to Sekha, Kailash, Indrasan and Singhasan. Looking into the injuries of Kailash they fall under Section 308 read with 149 IPC.

41. Thus, the appellant Jai Nath is guilty of offence punishable under Sections 147, 323 read with 149 and 308 read with 149 IPC. So the Trial Court has appreciated the evidence on record correctly and reached at the right conclusion of guilt of the appellant.

42. Thus, the present appeal lacks merit and is, accordingly, **dismissed**. The impugned judgment and order is **confirmed** and the conviction and sentence of the Appellant No.2 Jai Nath is **upheld**. Appellant no.2, Jai Nath is on bail. His personal bonds and bail bonds are cancelled and

sureties are discharged. He is directed to surrender before the learned Trial Court within three weeks to undergo the remaining part of his sentence, failing which, the Trial Court is directed to adopt coercive measures for securing his presence.

43. Let a copy of this order be forwarded to the learned Trial Court concerned, alongwith trial court record for information and necessary compliance.

(2026) 5 ILRA 1382
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 25.05.2026

BEFORE

THE HON'BLE MANISH MATHUR, J.

Election Petition No. 6 of 2022

Abhay Kumar @ Dheeraj Ojha ...Petitioner
Versus
Rakesh Kumar Verma & Ors. ...Respondents

Issue for Consideration

1. Whether Section 97 of the Representation of the People Act does not contemplate any issuance of notice either to the returned candidate or any other party to the lis and in fact indicates only the aspect of notice to be given to the High Court for intention to file a recrimination petition within 14 days from the date of commencement of trial.

2. Whether applicability of the Code of Civil Procedure is only for convenience in following procedure pertaining to the conduct of an election petition and provisions of the Code are not strictly applicable either for decision in an election petition or even a recrimination petition

Head Notes

The Representation of People Act, 1951-Section 87, 97 & 98; The Allahabad High Court Rules, 1952-Chapter XV-A; The Code of Civil Procedure, 1908-Order V Rule 9, Order VII Rule 9 & Order VIII Rule 6A(4)- Provisions of Section 87 of the Act which clearly prescribes that every election petition shall be tried, as nearly as may be, in accordance with procedure applicable under the Code of Civil Procedure.

Recrimination petition under Section 97 of the Act is that of a counter claim and since Code of Civil Procedure is applicable to the trial of election petitions, it would necessarily follow that provisions of Order VIII Rule 6A pertaining to counter claim filed by defendant would apply.

Held- Section 98 of the Representation of the People Act particularly subsection(c) thereof clearly indicates that decision of the High Court at the conclusion of trial of election petition includes a decision on the recrimination petition under Section 97 itself in case the outcome of the election petition itself warrants a further adjudication of the recrimination petition- Since recrimination petition is in the nature of a consequential petition, subject to outcome of the election petition itself, the notices on such recrimination petition are required to be issued only in case recrimination petition is required to be adjudicated subject to final outcome of the election petition itself. (E-15)

(Para 40,41, 45 & 46)

Case Law Cited

Jabar Singh versus Genda Lal reported in AIR 1964 Supreme Court 1200; Janardan Dattuappa Bondre versus Govind Prasad Shiv Prasad Choudhar;(1979)4 SCC 516; N. Gopal Reddy versus Bonala Krishnamurthy & Ors. (1987) 2 SCC 58; B. Sundara Rami Reddy versus Election Commission of India & Ors. 1991 Supplementary (2) SCC 624.

List of Acts

The Representation of People Act, 1951; The Allahabad High Court Rules, 1952; The Code of Civil Procedure, 1908

List of Keywords

Election petition; Appplicability of CPC; Recrimination petition; Counter Claim; Notices to other party; Section 97; Representation of the People Act

Case Arising From

Application has been filed for issuance of notice on I.A. No.32 of 2024 filed by respondent No.1 of Election Petition. The said application has been filed pertaining to Recrimination Petition which has been numbered as I.A. No. 32 of 2024 in the Election Petition

Appearances for Parties

Counsel for Petitioner(s): In Person, Amol Kumar Srivastava, Chetan Kumar Tiwari, Kuldeep Pati Tripathi, Mahendra Bahadur Singh, Prabhat Kumar Mishra, Pramod Kumar Pandey, Rajnish Ojha, Sakshi Singh, Santosh Kumar Pandey, Shivanshu Mishra, Vikas Singh

Counsel for Respondent(s): Santosh Kumar Yadav, Abhinav Trivedi, Aishvarya Mathur, Anil Kumar Yadav, Anupam Mehrotra, Ashutosh Chaurasia, Dr. Pooja Singh, Kuldeep Pati Tripathi, Santosh Kr. Yadav Warsi, Sudhir Pande, Vijay Vikram Singh

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

Order On C. M. Application No.IA/43 of 2024.

1. Application has been filed for issuance of notice on I.A. No.32 of 2024 filed by respondent No.1 of Election Petition. The said application has been filed pertaining to Recrimination Petition which has been numbered as I.A. No. 32 of 2024 in the Election Petition.

2. Heard Mr. Anupam Mehrotra, learned counsel for recriminator/ respondent no.1 to the Election Petition, Mr. Sudeep Seth, learned senior counsel assisted by Mr. Rajnish Ojha, learned counsel for Election Petitioner and Mr. Sudhir Pandey, learned counsel for respondent no.4 in the Election Petition.

3. Mr. Anupam Mehrotra, learned counsel for recriminator/ respondent no.1 has submitted that earlier subsequent to filing of Election Petition, recrimination petition had been filed under Section 97 of the Representation of People Act, 1951 with the said recrimination petition initially being registered as Writ C No.4613 of 2022 in which notice was issued vide order dated 21.07.2022 whereafter the said recrimination petition was directed to be listed as an interim application in the election petition itself resulting as application no.32 of 2024.

4. It is submitted that since notice was issued initially in the writ petition and not in a recrimination petition, fresh notices are required therefore to be issued in the recrimination petition

to all the respondents particularly since even when the recrimination petition was registered as writ petition, despite issuance of notices, such notices have not been served upon all the respondents.

5. Elaborating upon his submissions, learned counsel has placed reliance on Chapter XV-A, Rule 5 of the Allahabad High Court Rules pertaining to special provisions relating to the trial of election petitions and submits that the said provision clearly indicates the provision for issuance of notices in an election petition. It is submitted that such a notice is required to the respondents to put up their defence, file the written statement and for purposes of leading evidence.

6. He has also referred to Chapter XV-A, Rule 12 of the Allahabad High Court Rules to submit that the Court has power to give directions in matters of practice and procedure which is consistent with the provisions of Section 87 of the Act of 1951 including recording of evidence.

7. He has also adverted to Section 87 of the Representation of People Act, 1951 to submit that before the High Court, every election petition has to be tried as nearly as may be, in accordance with procedure applicable under the Code of Civil Procedure 1908, to the trial of suits.

8. It is therefore submitted that since provisions of Code of Civil Procedure are applicable, provisions of Order V Rule 9, Order VII, Rule 9 and Order VIII, Rule 6A (4) of the Code are required to be followed.

9. It is submitted that in terms of Order VIII, Rule 6-A, procedure in case of a counter claim by defendant has been indicated and submits that in case of such a counter claim in respect of cause of action accruing to the defendant against the plaintiff, the same procedure is required to be followed as applicable to plaints & consequently as indicated in Order V and Order VII of the Code.

10. It is submitted that Order VII, Rule 9 of the Code indicates procedure on admitting a plaint and where the Court orders summons to be served upon defendant in the manner provided in Order V, Rule 9, the said procedure is required to be followed. He therefore submits that Order V, Rule 9 pertains to delivery of summons by the Court and the manner in which such service of summons is required to be delivered and effected.

11. Learned counsel therefore submits that a conjoint reading of Chapter XV-A of Allahabad High Court Rules, Order V, Rule 9, Order VII, Rule 9 and Order VIII, Rule 6A of the Code clearly indicates that even in case of a counter claim in an election petition particularly as in the case of recrimination petition under Section 97 of the Representation of the People Act, 1951, the procedure as indicated in the Code is required to be followed by issuance of and effecting notices upon respondents.

12. He has also adverted to Section 97 of the Representation of People Act to submit that the said provision indicates that when in an Election Petition, a declaration that any candidate other than the returned candidate has been duly elected, is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been returned candidate and a petition had been presented calling in question his election. It is

thus submitted that since Section 97 of the Representation of the People Act clearly indicates the aspect of providing evidence, such evidence can be given only in case such other party being returned candidate or any other party are provided notice of recrimination petition, failing which, they would not have notice of recrimination petition and therefore would be deprived from giving evidence. It is therefore submitted that in case notices are not issued on the recrimination petition, it would deem a failure of provisions of Section 97 of the Representation of People Act. He has also adverted to Section 86(4) of the Representation of People Act particularly the explanation thereto to submit that the word 'respondents' indicated in the explanation also indicates a date fixed for appearance before the High Court for answering the claim or claims made in the petition. It is thus submitted that the words 'respondents' in plural indicate an opportunity to all the respondents not only in the election petition but also in the recrimination petition to give their evidence in rebuttal, which can be achieved only in case notice is issued even in the recrimination petition.

13. Learned counsel has also placed reliance on **Black's Law Dictionary** Eighth Edition to indicate that the term recrimination has been indicated as a counter charge. Although the said designation is in terms of a divorce suit, it is submitted that the meaning attached in term recrimination would be applicable in terms of Section 97 of the Representation of the People Act as well. Reliance has also been made to the **Legal Glossary, 1988** issued by the Government of India in which the term recrimination specifically in terms of Section 97 of the Act of 1951 has also been defined a counter charge. It is in terms thereof that learned counsel submits that provisions of a recrimination petition under Section 97 of the Representation of the People Act is in the nature of a counter-claim and since in terms of Section 87 of the Representation of People Act read with Chapter XV-A of the Allahabad High Court Rules, principles of the Code of Civil Procedure are applicable, therefore the recrimination petition being a counter claim, procedure indicated in terms of Order VIII, Rule 6A(4) is required to be followed for purposes of issuance of notice.

14. Learned counsel has placed reliance on judgments rendered by Hon'ble the Supreme Court in the case of ***Jabar Singh versus Genda Lal***; AIR 1964 Supreme Court 1200 as also in the case of ***Bhag Mal versus Ch. Parabhu Ram & Ors.***; (1985)1 SCC 61.

15. Mr. Sudhir Pandey, learned counsel for respondent no.4 has also submitted and placed reliance on ***Black's Law Dictionary*** particularly with regard to the aspect that words to which reference is made in an instrument have the same effect and operation as if they were inserted in the clauses referring to them. In terms thereof, it is submitted that the procedure indicated in Section 87 of the Representation of People Act indicates legislation by reference and therefore since the procedure indicated under Order VIII Rule 6-A(4) indicates notices to be issued in case of a counter claim and recrimination petition under Section 97 of the Representation of the People Act being in the nature of a counter-claim, notices are therefore required to be issued.

16. Mr. Sudeep Seth, learned Senior counsel has refuted submissions advanced by learned counsel for recriminator as well as learned counsel for respondent no.4 and submits that Section 97 of the Representation of People Act applies only in case a composite claim is made in an election petition. He has referred to the aforesaid provision to submit that in terms of the aforesaid Section 97, recrimination can be claimed where in an election petition a declaration apart from challenge to the returned candidate is sought that in case that any other candidate in whose favour a declaration

has been sought or claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void had he been a returned candidate. It is submitted that although the recrimination petition filed in terms of Section 97 of the Representation of People Act is in the nature of a counter claim but would depend on the final out come of the election petition itself and therefore the recrimination petition would only be consequential in nature, due to which, no notices are required to be issued in the recrimination petition particularly at this stage when the election petition is still pending.

17. It is further submitted that Section 97 of the Representation of the People Act does not contemplate any issuance of notice either to the returned candidate or any other party to the lis and in fact indicates only the aspect of notice to be given to the High Court for intention to file a recrimination petition within 14 days from the date of commencement of trial. Learned counsel has also adverted to provisions of Chapter XV-A Rules 5 and 12 of the Allahabad High Court Rules read with Section 87 of the Representation of Peoples Act to submit that the provisions clearly indicate that the procedure required to be adopted by High Court for adjudication in election petitions are required to be as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure. It is therefore submitted that applicability of the Code of Civil Procedure is only for convenience in following procedure pertaining to the conduct of an election petition and provisions of the Code are not strictly applicable either for decision in an election petition or even a recrimination petition. He has placed reliance on judgments rendered by Hon'ble the Supreme Court in the case of ***Jabar Singh versus Genda Lal*** reported in AIR 1964 Supreme Court 1200, ***Janardan Dattuappa Bondre versus Govind Prasad Shiv Prasad Choudhar***;(1979)4 SCC 516, ***N. Gopal Reddy versus Bonala Krishnamurthy & Ors.*** (1987) 2 SCC 58, ***B. Sundara Rami Reddy versus Election Commission of India & Ors.*** 1991 Supplementary (2) SCC 624.

18. Learned counsel has also adverted to Application I.A. No.2 of 2024 in the recrimination petition and has particularly placed reliance on paragraphs 4, 5, 6 & 8 to submit that recriminator himself has admitted that in a recrimination petition filed under Section 97 of the Representation of People Act, no notice is required to be issued.

19. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it would be conducive to refer to the relevant provisions:

"86. Trial of election petitions. *.....(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.*

87. Procedure before the High Court*.-(1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits:*

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.]

97. Recrimination when seal claimed.-*(1) When in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election:*

Provided *that the returned candidate or such other party, as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of commencement of the trial, given notice to the High Court of his intention to do so and has also given the security and the further security referred to in sections 117 and 118 respectively.*

(2) Every notice referred to in sub-section (1) shall be accompanied by the statement and 24[***] particulars required by section 83 in the case of an election petition and shall be signed and verified in like manner."

CHAPTER XV-A SPECIAL PROVISIONS RELATING TO THE TRIAL OF ELECTION PETITIONS Rules 5 & 12 of the Allahabad High Court Rules as under:

5. Issue of notice to respondent. The election petition shall be laid before the Bench so constituted without delay, and unless it is dismissed under sub-section (1) of Section 86 of the Act or for being otherwise defective, the Bench may direct issue of notice to the respondent to appear and answer the claim on a date to be specified therein. Such notice shall also direct that if he wishes to put up a defence he shall file his written statement together with a list of all documents, whether in his possession or power or not, upon which he intends to rely as evidence in support of his defence on or before the date fixed; and further, that in default of appearnace being entered on or before the date fixed in the notice the election petition may be heard and determined in his absence. The notice shall be in Form No.34-A.

12. Court's power to give directions in matters of practice and procedure. The Bench may, consistently with the provisions of Section 87 of the Act, give such directions in matters of practice and procedure (including the recording of evidence) as it shall consider just and expedient.

ORDER VII Plaint of the Code of Civil Procedure, 1908 …....9. Procedure on admitting plaint.*-Where the Court orders that the summons be served on the defendants in the manner provided in rule 9 of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within seven days from the date of such order along with requisite fee for service of summons on the defendants.*

ORDER V Issue and Service of Summons Issue of Summons of the Code of Civil Procedure, 1908: ….....Rule 9. Delivery of summons by Court.-(*1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court.*

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him in such manner as the Court may direct.

(3) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court:

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

(4) Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgment due), the provisions of rule 21 shall not apply.

(5) When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant:

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule (1).

ORDER VIII 1 [Written statement, set-off and counter-claim] of the Code of Civil Procedure, 1908

[6A(4). Counter-claim by defendan -...** (4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints**.

20. A perusal of Section 97 of the Act of 1951 indicates a provision for filing of a recrimination petition and also indicates the twin aspect with regard to relief claimed whereunder only, a recrimination petition would be entertain-able particularly when in an election petition a declaration that any other candidate other than the returned candidate has been duly elected is claimed, provision has been made for returned candidate or any other party to provide evidence to prove that election of such candidate would have been void if he had been a returned candidate.

21. Chapter III of the Act of 1951 pertains to trial of election petitions with Section 87 adverting to the procedure required to be followed by the High Court for trial of election petitions. Sub-section 1 thereof clearly indicates that every election petition shall be tried by the High Court, as nearly as may be, in accordance with procedure applicable under the Code of Civil Procedure.

22. It is thus evident that for purposes of trial of election petition before this Court, procedure required to be followed is to be by and large in accordance with the Code of Civil Procedure. The said aspect has also been indicated in Chapter XV-A, Rule 5 which pertains to issuance of notice to respondent and also indicates that unless an election petition is dismissed in terms of Section 86(1) of the Act of 1951 or for being otherwise defective, notices are required to be issued to respondents to appear and answer the claim. Rule 12 indicates the power of Court to give directions in matters of practice and procedure which are consistent with the provisions of Section 87 of the Act of 1951.

23. Learned counsel for recriminator has placed special emphasis on provisions of Order VIII, Rule 6A(4) which indicates the procedure required to be followed in cases of a counter claim by a defendant.

24. The said provision provides a right to a defendant in a suit to setup by way of counter claim against the plaintiff, any right or claim in respect of a cause of action in terms of stipulations provided therein. Sub Rule 4 of Order VIII Rule 6A provides that the counter claim shall be treated as a plaint and governed by the Rules applicable to plaints.

25. Order VII Rule 9 of the Code pertains to procedure on admitting a plaint and refers to Order V Rule 9 with regard to procedure for serving of summons upon defendants.

26. Hon'ble the Supreme Court in the cases of ***Jabar Singh*** and ***Bhag Mal*** (supra) has clearly enunciated the aspect that a recrimination petition filed in terms of Section 97 of the Act of 1951 is in the nature of a counter claim.

27. In the case of ***Jabar Singh*** (supra), it has been held that the result of Section 97(1) of the Act is that in dealing with a composite election petition, the tribunal inquires into not only the case made out by petitioner but also the counter claim made by returned candidates. It is therefore the nature of proceedings contemplated under Section 97(1) that it is a counter claim. It has also been held that until and unless the returned candidate does not recriminate as provided under Section 97, he cannot make any attack against the alternative claim made in petition and in such a case an inquiry is required to held under Section 100 of the Act of 1951 and it is only when as a result of the said inquiry, declaration is made that the election of returned candidate is void, then the tribunal will proceed to deal with the alternative claim.

28. The relevant portion of judgment is as follows:

"11. There are, however, cases in which the election petition makes a double claim; it claims that the election of the returned candidate is void, and also asks for a declaration that the petitioner himself or some other person has been duly elected. It is in regard to such a composite case that Section 100 as well as Section 101 would apply, and it is in respect of the additional claim for a declaration that some other candidate has been duly elected that Section 97 comes into play. Section 97(1) thus allows the returned candidate to recriminate and raise pleas in support of his case that the other person in whose favour a declaration is claimed by the petition cannot be said to be validly elected, and these would be pleas of attack and it would be open to the returned candidate to take these pleas, because when he recriminates, he really becomes a counter-

petitioner challenging the validity of the election of the alternative candidate. The result of Section 97(1) therefore, is that in dealing with a composite election petition, the Tribunal enquires into not only the case made out by the petitioner, but also the counter-claim made by the returned candidate. That being the nature of the proceedings contemplated by Section 97(1), it is not surprising that the returned candidate is required to make his recrimination and serve notice in that behalf in the manner and within the time specified by Section 97(1) proviso and Section 97(2). If the returned candidate does not recriminate as required by Section 97, then he cannot make any attack against the alternative claim made by the petition. In such a case an enquiry would be held under Section 100 so far as the validity of the returned candidate's election is concerned, and if as a result of the said enquiry declaration is made that the election of the returned candidate is void, then the Tribunal will proceed to deal with the alternative claim, but in doing so, the returned candidate will not be allowed to lead any evidence because he is precluded from raising any pleas against the validity of the claim of the alternative candidate."

29. The same aspect has been enunciated in the case of ***Janardan Dattuappa Bondre*** (supra) placing reliance on the case of ***Jabar Singh*** (supra) and it has been held that proceedings under Section 97 of the Act of 1951 are consequential upon the outcome of the Election Petition.

30. It is thus established from the aforesaid pronouncements that the proceedings under Section 97 of the Act of 1951 are in the nature of a counter claim but are consequential to the final outcome of the election petition itself.

31. So far as the aspect of issuance of notice to respondents in a recrimination petition is concerned, the Supreme Court in the case of ***Janardan Dattuappa Bondre*** (supra) has held as follows:

"9. The inclusion of the 250 votes cast in favour of the appellant was material for the purpose of determining the total number of votes received by him. The accident that they were not placed in his packet but in Bahekar's packet did not render them any the less votes belonging to the appellant. Their inclusion in calculating the appellant's total was a necessary part of the process involved in deciding whether he had been duly elected or whether on the election petition his election should be declared void. It was a process relevant to the first of the reliefs claimed by the election petitioner, that is to say, that the election of the appellant be declared void. The other relief claimed by the election petitioner was that the fifth respondent be declared duly elected. Now, as we observed in Jabar Singh v. Genda Lal; (1964) 6 SCR 54, where both reliefs are claimed in an election petition the Court must first

decide the question whether the election of the returned candidate is valid or not, and if it is found that the said election is void, it makes a declaration to that effect and then deals with the further question whether the petitioner himself or some other person can be said to have been duly elected.

A notice of recrimination under Section 97 of the Act is necessary only where the returned candidate or other candidate disputes the grant of the further declaration sought by the election petitioner that he or some other candidate should be declared duly elected. When the re-count was taken, the High Court had not yet concluded that the election of the appellant was invalid. It was in the process of determining that question, and the question could properly be

determined only after giving to the appellant the benefit of all the votes cast for him. These would include the 250 votes cast in his favour, even though they were found placed in Bahekar's packet. Once the benefit of his 250 votes is given to the appellant, he becomes the candidate with the highest number of votes. His election cannot be declared void. That being so, no question arises of the appellant wanting to give evidence to prove that the election of any other candidate would have been void if he had been the returned candidate. Therefore, no notice for recrimination under Section 97 was necessary. In the circumstances, the High Court erred in declining to count the appellant's 250 votes in his total on the ground that no notice of recrimination under Section 97 of the Act had been given."

32. The same aspect has been propounded by Hon'ble the Supreme Court in the case of ***N. Gopal Reddy*** (supra) in the following manner:-

"12. A plain reading of the aforesaid section indicates that a notice of recrimination is to be given to the High Court by the returned candidate within a stipulated time if he desires to adduce evidence to prove that the election of the candidate in whose favour a declaration may have been asked would be void. The proviso to Section 97(1) further indicates that the returned candidate is not entitled to give such evidence unless he gives notice within 14 days from the date of the commencement of the trial to the High Court. It is relevant to note that Section 97 does not require notice of recrimination to be given to the election petitioner; instead it is to be given to the High Court. Absence of recriminatory notice does not prejudicially affect the candidate in whose favour relief of declaration may have been claimed. Moreover when the returned candidate points out the validity or invalidity of ballot papers already on record, he is not tendering any evidence before the court as contemplated by Section 97 of the Act; instead he is referring to the material which is already on record. If the High Court takes cognizance of such a material on record without a notice under Section 97 we do not think that the High Court would commit a jurisdictional error."

33. In the case of ***B. Sundara Rami Reddy*** (supra), the aspect of applicability of Code of Civil Procedure in election petition has been indicated that such provisions and procedure are not strictly applicable but have been made applicable to a limited extent only as indicated under Section 87 of the Act of 1951.

34. With regard to judgments cited by learned counsel for petitioner, it is relevant that all the judgments pertain to the aspect of recount of votes and it is in that context that Hon'ble the Supreme Court has held that since all the material evidence was already on record, there was no occasion for production of fresh evidence due to which fresh notices were not required to be issued for furnishing of fresh evidence.

35. However the aspect which requires adjudication is not confined only to the aspect of recount of votes but also the aspect of improper acceptance of the nomination form or any other aspect which would vitiate the election itself and would thus require submission of fresh evidence including in a recrimination petition filed under Section 97 of the Act.

36. It is in such premise that in the considered opinion of this Court, judgments relied upon by learned counsel for petitioner would be inapplicable where the election is challenged not only on the aspect of recount of votes but also on the aspect of improper acceptance of nomination form or any other aspect which materially affects the outcome of the election.

37. Learned counsel for election petitioner has also adverted to Section 86(4) of the Act to submit the said provision provides for any candidate not already a respondent, to be impleaded as one upon application made by him to the High Court within the time stipulated. It is also submitted that in explanation of Section 86(4) of the Act, although Section 97 has been indicated but it is only for the purpose of ascertaining the date of commencement of trial of a petition and not for any other purpose and therefore on a perusal of the entire Section 86 of the Act, there is no provision for issuance of notice under Section 97.

38. With regard to such submission, it is quite evident from a perusal of Section 86(4) of the Act that it would be applicable where the election petition has been filed seeking challenge to the election of returned candidate and not where a composite election petition has been filed as indicated here-in-above. Even otherwise the explanation to Section 86(4) of the Act indicates that Section 97 has been referred to not only for the purposes of ascertainment of the date of commencement for trial but also for the date which is fixed for respondents to appear before the High Court and answer the claim or claims made in the petition.

39. For compliance of the explanation clause of Section 86(4) of the Act, therefore it is evident that for the respondents to appear before the High Court and answer the claim made in the petition, obviously a notice is required to be issued and since the explanation to Section 86(4) of the Act refers to Section 97 as well, it would naturally follow that notice would be required to be issued in a recrimination petition under Section 97 as well fixing for appearance of the respondents without which no date can be fixed for respondents to appear.

40. It is also relevant to refer to provisions of Section 87 of the Act which clearly prescribes that every election petition shall be tried, as nearly as may be, in accordance with procedure applicable under the Code of Civil Procedure.

41. Although Section 97 of the Act does not indicate any provision for issuance of notice to any of the respondents but the said aspects as to the nature of a recrimination petition under Section 97 of the Act has clearly been defined and enunciated upon by Hon'ble the Supreme Court as observed here-in-above and is in the nature of a counter claim. It is in such circumstances that applicability of the Code of Civil Procedure is required to be examined.

42. Once it is already determined that the nature of recrimination petition under Section 97 of the Act is that of a counter claim and since Code of Civil Procedure is

applicable to the trial of election petitions, it would necessarily follow that provisions of Order VIII Rule 6A pertaining to counter claim filed by defendant would apply. Since the aforesaid Rule also prescribes issuance of notice on a counter-claim and there is no prohibition on the applicability of the Code of Civil Procedure with regard to Section 97 of the Act, in the considered opinion of this Court, the said provision of Order VIII Rule 6A(4) shall be applicable and a counter claim shall be treated as a plaint and would be governed by Rules applicable to the plaints whereby obviously notice would require to be issued in a recrimination petition under Section 97 of the Act.

43. In view of discussion made here-in-above, it is thus held that in recrimination petition filed under Section 97 of the Act, separate notices are required to be issued to the respondents of recrimination petition.

44. However at this stage, issuance of notice in the recrimination petition is also required to be examined and in that context, as delineated here-in-above,it has been held by Hon'ble the Supreme Court that a recrimination petition is required to be examined by the High Court subsequent to the outcome of the election petition itself since the recrimination under Section 97 of the Act is consequential. In such circumstances, Section 98 of the Act also requires examination and is in the following nature:

"98. Decision of the High Court.-

At the conclusion of the trial of an election petition the High Court shall make an order-

(a) dismissing the election petition; or

(b) declaring the election of all or any of the returned candidates to be void; or

(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected."

45. The aforesaid Section, particularly sub-section(c) thereof clearly indicates that decision of the High Court at the conclusion of trial of election petition includes a decision on the recrimination petition under Section 97 itself in case the outcome of the election petition itself warrants a further adjudication of the recrimination petition.

46. In view thereof, since recrimination petition is in the nature of a consequential petition, subject to outcome of the election petition itself, the notices on such recrimination petition are required to be issued only in case recrimination petition is required to be adjudicated subject to final outcome of the election petition itself.

47. In view of observation made here-in-above, application for notices to be issued to the respondents in the recrimination petition is directed to be kept in abeyance and shall be subject to final decision of the election petition itself, particularly in case any adjudication on the recrimination petition is warranted.

48. As prayed, list this case on 07.07.2026 at 03.30 P.M. for arguments on applications I.A No.22 of 2024 and I.A No.56 of 2025.

(2026) 5 ILRA 1394
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.05.2026

BEFORE

THE HON'BLE KSHITIJ SHAILENDRA, J.

Matters Under Article 227 No. 54 of 2022

Tara Chand & Ors. **...Petitioners**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

Whether the orders impugned were ex-parte; were issued without serving any notice upon the petitioners; were passed against principles of natural justice and since the petitioners are in actual and physical possession over the land and were not aware of the loan taken by their father, the orders being illegal and without jurisdiction, are liable to be set aside.

Head Notes

The Constitution of India, 1950-Article 227; The Code of Civil Procedure, 1908- Section 47, Order VII Rule 14 , Order XXI Rule 27 & 72- The decree drawn in the year 1985 became final 37 years prior to filing of the petition and whatever objections the petitioners being legal representatives of judgment debtor could take in execution proceedings, they had taken but remained unsuccessful. There was no factual or legal impediment in auctioning the property in the course of execution of a money decree and no error is found in auction sale and closure of execution proceedings in full satisfaction of the decree in terms of mutation, delivery of actual possession, confirmation of sale and registration of sale certificate/sale deed

Wherever the proceedings are held under the Code of Civil Procedure, the forum is the Civil Court and availability of a remedy under CPC will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline.

The holder of the decree may apply to the Court to execute the decree against the legal representative of the deceased- Decree holder can bid for or purchase the property in execution of the decree, however, the same has to be with the express permission of the Court- The executing court cannot go behind the decree and once the remedy available to the petitioners in terms of Section 47 CPC also stood exhausted in the year 1993 with no further challenge to the same, the validity of the decree cannot be reopened in a Matter U/A 227 of the Constitution of India after three (3)decades.

Held- The manner in which the proceedings have been conducted throughout, the Court deems it appropriate to impose cost of Rs 2/- (two) on the petitioners so as to convey them worth of their objections and conduct in the eyes of this Court. **Petition dismissed**. (E-15)

(Para 19, 22, 29, 34, 46 & 49)

Case Law Cited

Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others v. Tuticorin Educational Society and others : (2019) 9 SCC 538; Bal Krishna Agarwal v. State of U.P. : (1995) 1 SCC 614; Durga Enterprises (P) Ltd. v. Principal Secretary, Govt. of U.P. and others : (2004) 13 SCC 665; Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman: (1970) 1 SCC 670; Om Sakthi Sekar v. V. Sukumar & others : Civil Appeal No.3362 of 2026, decided on 13.03.2026; M/s Godrej Sara Lee Ltd. v. The Excise and Taxation Officer-cumAssessing Authority and others : Civil Appeal No.5393 of 2010, decided on 01.02.2023; Pramod Shroff v. Mohan Singh Chopra : Civil Appeal [arising out of SLP (Civil) No.20779 of 2025], decided on 16.04.2026

List of Acts

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

List of Keywords

Remedy available; Under Section 47 CPC stood exhausted; With no further challenge; Validity of the decree cannot be reopened in a Matter U/A 227 after three (3)decades; Decree holder can bid for or purchase the property in execution of the decree; With the express permission of the Court.

Case Arising From

This petition under Article 227 of the Constitution of India has been filed by legal representatives of the defendant in Original Suit No. 83 of 1984 filed by plaintiff-respondent No.3, challenging judgment and order dated 01.01.1985 passed in the suit as well as order dated 08.08.1993 passed by learned Munsif, Deoband, Saharanpur in Execution Case No.8 of 1989. Further prayer has been made to issue a direction to respondent No.2 i.e. Up-Ziladhikari, Tehsil Deoband, District Saharanpur not to dispossess the petitioners from the land in dispute, i.e. Khasra No.160, area 1.054 hectares, situated at Village Nandheda Khurd, Pargana and Tehsil-Deoband, District Saharanpur.

Appearances for Parties

Counsel for Petitioner(s) : Suman Kumar Yadav, Usha Kiran
Counsel for Respondent(s) : C.S.C., Sumit Daga

(Delivered by Hon'ble Kshitij Shailendra, J.)

1. Heard Ms. Usha Kiran, learned counsel for the petitioners, learned Standing Counsel on behalf of respondents No.1 and 2 and Shri Sumit Daga, learned counsel for respondents No. 4 to 8.

The Challenge

2. This petition under Article 227 of the Constitution of India has been filed by legal representatives of the defendant in Original Suit ('OS') No. 83 of 1984 filed by plaintiff-respondent No.3, challenging judgment and order dated 01.01.1985 passed in the suit as well as order dated 08.08.1993 passed by learned Munsif, Deoband, Saharanpur in Execution Case No.8 of 1989. Further prayer has been made to issue a direction to respondent No.2 i.e. Up-Ziladhikari, Tehsil Deoband, District Saharanpur not to dispossess the petitioners from the land in dispute, i.e. Khasra No.160, area 1.054 hectares, situated at Village Nandheda Khurd, Pargana and Tehsil-Deoband, District Saharanpur.

Brief facts as stated in the petition

3. The case of the petitioners is that the suit was filed against their father for return of a sum of Rs.8,000/- and the same was decreed ex-parte on 01.01.1985 directing the defendant to return the

money along with 6% interest per annum. The decree was put into execution in 1986. The defendant/judgment debtor died in the year 1988. The execution case was dismissed for want of prosecution, whereafter, the respondent No.3 filed another execution application in 1989 against the petitioners and on 08.08.1993, learned Munsif, without affording any opportunity to the petitioners, restrained them from selling, donating or transferring the property to any person, whereafter, an order was passed on 26.08.1993 for seizure of the property. Further case of the petitioners is that on 20.11.2012, respondent No.3 along with revenue authorities came to the land in dispute and attempted to measure the property for taking possession over the land and, only then, the petitioners came to know about the ex-parte proceedings initiated and decided against their father, prior to which they had no knowledge.

4. The grounds taken in petition are that the orders impugned were ex-parte; were issued without serving any notice upon the petitioners; were passed against principles of natural justice and since the petitioners are in actual and physical possession over the land and were not aware of the loan taken by their father, the orders being illegal and without jurisdiction, are liable to be set aside.

Supplementary Affidavit

5. A supplementary affidavit dated 10.08.2025 filed on 16.02.2026 is on record annexing therewith certified copy of the selective order sheet of execution case and stand taken in the affidavit is that though the objections filed by the petitioners under Section 47 CPC were directed to be taken on record fixing 20.07.1993, the same were not decided and the executing court proceeded to decide the application under Order XXI Rule 54 CPC for auctioning property in favour of the respondents, which was not permissible in law. It is further stated that in case of a decree drawn in a suit for recovery of money, there is no requirement of auctioning the property and further pleas have been taken questioning the procedure of publication etc. with a further comment on the ex-parte decree dated 01.01.1985 that the same had been drawn without following the mandatory provisions of CPC.

Counter Affidavit

6. Counter affidavit filed on behalf of the contesting respondents, who are legal representatives of deceased decree holder-respondent No.3, takes a stand that the judgment and order dated 01.01.1985 decreeing the suit ex-parte was never challenged and, hence, became final; that the petitioner No.2 appeared before the executing court and filed his objections under Section 47 CPC, which were decided on 20.07.1993; that no objection was ever raised regarding judgment and decree dated 01.01.1985; that further proceedings of execution case were held as per provisions contained under Order XXI CPC; that property was auctioned in favour of the plaintiff-respondent No.3 after following due process of law; that a sale deed was executed in his favour on 26.10.1999 based upon which, he came in possession over the property and his name was duly mutated in the revenue records and the proceedings of execution case were closed on 04.10.2002.

7. Further stand is that the petitioners had full knowledge of the proceedings of the OS as well as the execution case; that the petition is not maintainable challenging decree of 1985 and the order

dated 08.08.1993; that the predecessor-in-interest of the petitioners had appeared in the suit proceedings but did not file written statement; that the execution case was not dismissed for want of prosecution in 1986; rather it was filed in 1989 itself; that an application was filed by the petitioner No.2 in execution proceedings on 22.10.1992 and, therefore, it is false to allege that the petitioners got knowledge of the case only on 20.11.2012 and even if the said submission is accepted, the present petition was filed after ten years in the year 2022 with no cogent explanation. In the end, prayer has been made to dismiss the petition with heavy cost.

Submissions on behalf of the petitioners

8. Learned counsel for the petitioners has advanced submissions that since the petitioners′ father against whom the ex-parte decree was drawn in 1985, died in 1988, whereafter execution proceedings were filed in 1989, ex-parte decree is not binding against them and no knowledge of proceedings of execution case has been reiterated by her by contending that a highly valuable property could not be sold for petty sum during auction proceedings and, therefore, entire proceedings culminating into auction and execution of sale deed in favour of the contesting respondent are unsustainable.

Stand taken in Written Submissions

9. Written submissions have been filed on behalf of the petitioners stating that no documents in support of plaint were filed by the plaintiff which is clear violation of Order VII Rule 14 CPC; no evidence of loan was adduced before the Court; the plaintiff was not a registered money lender; no issues were framed before deciding the suit; the plaintiff never demanded interest nor pleaded the same in the plaint but trial court directed to pay interest @ Rs. 6% in an illegal and arbitrary manner; order dated 21.11.1984 indicates that two documents were filed by the plaintiff along with affidavit to prove his case but these two documents were not described in the order which is clear violation of Order VII Rule 14 (1) and (3); the trial court without following legal process, passed an ex- parte order, which is liable to be quashed/set-aside.

10. It is further stated in the written submissions that on 20.10.1986, decree holder filed execution proceedings which were dismissed for want of prosecution; on 26.10.1988, Jai Nand, father of the petitioners died; on 10.08.1989, respondent no. 3 again filed execution adding the names of petitioners as legal heirs of Jai Nand; on 08.08.1993, executing court, without affording any opportunity of hearing and without following the provisions of law, passed ex-parte order restraining the petitioners from selling, donating or transferring the property to any other person under order XXI Rule 54 C.P.C; on 04.12.1992, Kalu Ram-judgment debtor moved an application stating therein that decree holder without permission of the court purchased the auction property and such auction may be cancelled, therefore, the court granted time to the decree holder for filing objection by fixing date 01.01.1993.

11. It is further stated that on 05.02.1993, the executing court cancelled the auction and directed the decree holder to file objection under Section 47 CPC by fixing date 12.03.1993; on 20.07.1993, the executing court, without deciding application of the judgment debtor under section 47 C.P.C., directed to proceed under Order XXI Rule 54 of C.P.C, thereafter again proceeded for

auction and auctioned the property in favour of decree holder, which is not permissible under law; no valuation report was called for from registered valuer; no publication in local newspaper for auction was made; as per order sheet, the decree holders took possession over the land in dispute and their names have also been recorded in the revenue records, but actual and physical possession was not taken by the decree holders.

12. Contrary to the stand taken in paragraph 13 of the petition qua knowledge on 20.11.2012, it is stated in written submissions that on 20.11.2021, decree holder came to the land in dispute and started measuring the land for possession, only then judgment debtor came to this Hon'ble Court for stay from dispossession of the land in dispute and challenged the ex-parte order dated 01.01.1985 and proceedings under Order XXI Rule 54 issued on 08.08.1993.

13. It is further stated that at the time of auction, the property was mortgaged with the State bank of India, Krishi Vikas Shakha, Devband on 21.05.1983 against loan of Rs. 51,000/-, hence, the same could not be auctioned without permission of Court or without satisfying the loan; the judgment debtors have also filed a suit for cancellation of execution before Civil Judge (J.D.) which is registered as Suit No. 141 of 2022; despite request made to the Court by the counsel for the petitioner for filing rejoinder affidavit to the counter affidavit, the Court did not grant time to file rejoinder affidavit and suggested to argue the case on merits, hence, under the circumstances, the right to file rejoinder affidavit had been curtailed; the petitioner/Judgment Debtor is still in actual and physical possession over the land and that the judgment debtor was/is ready to pay entire decretal amount with further interest, as may be directed by this Court, within stipulated period.

14. In support of her submissions, learned counsel has placed reliance on **M/s Godrej Sara Lee Ltd. v. The Excise and Taxation Officer-cum-Assessing Authority and others : Civil Appeal No.5393 of 2010**, decided on 01.02.2023; **Pramod Shroff v. Mohan Singh Chopra** : Civil Appeal **[arising out of SLP (Civil) No.20779 of 2025]**, decided on 16.04.2026, **Vindhayachal v. Commissioner, Azamgarh, Division Azamgarh and others : 2009 (108) RD 63**, and **Om Sakthi Sekar v. V. Sukumar & others : Civil Appeal No.3362 of 2026**, decided on 13.03.2026.

Submissions on behalf of the respondents

15. *Per contra*, learned counsel for the respondents, by referring to the order sheet of the execution proceedings, has vehemently opposed the pleas *qua* "no knowledge". It is further submitted that once the petitioners are successors/legal representatives of the deceased judgment debtor, the decree is binding against them in all respect and contrary submissions advanced have no force. Further submission has been made that ex-parte decree could not be challenged by means of a petition under Article 227 of the Constitution of India and the same is liable to be dismissed on this ground alone and as far as the order dated 08.08.1993 is concerned, the same is not an order, rather a citation/form in terms of Order XXI Rule 54 CPC restraining the judgment debtor from alienating the property pending execution proceedings and challenge laid to the decree of 1985 and citation/form of 1993 after a period of 29 years being hopelessly barred and belated, the petition deserves dismissal with exemplary cost. Learned counsel has referred to various portions of order sheet of execution proceedings so as to contend that the petitioners are guilty of telling a patent lie

before this Court that they were ignorant of proceedings though they throughout participated in execution proceedings, took all possible objections but lost and even those orders have attained finality at every stage.

16. In support of his submissions, he has placed reliance upon **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others v. Tuticorin Educational Society and others : (2019) 9 SCC 538**, so as to contend that High Court cannot/should not entertain Matter Under Article 227 in a case where remedies are provided under CPC and since no appeal was filed against the decree, finality attached to the execution proceedings renders the petition as not maintainable.

DISCUSSION, ANALYSIS AND FINDINGS

17. I have considered the submissions made and perused the material available on record.

(a) interim order passed in this petition

18. Initially, an *ex-parte* interim order was passed on 25.01.2022 inviting response from the respondents and staying eviction of the petitioners till the next date. The same reads as under:

> "Learned Standing Counsel has put in appearance on behalf of respondent nos. 1 and 2.
> Issue notice to the respondent no. 3.
> All the respondents may file their counter affidavit by the next date fixed.
> Put up this case as a fresh case on 02.03.2022.
> Till the next date fixed, the petitioners shall not be evicted from the property in dispute. "

(b) On Maintainability of petition:

19. At the first blush, the ratio laid down by the Hon'ble Supreme Court in **Virudhunagar (supra)**, would be attracted against the petitioners as the decree and orders passed under different provisions of CPC were assailable within time under the provisions of CPC itself and the Hon'ble Supreme Court has observed that the courts should always bear in mind that availability of a remedy in terms of the provisions of CPC may have to be construed as a near total bar, **otherwise, there is a danger that someone may challenge in a revision or under Article 227 even a decree passed in a suit.** Therefore, wherever the proceedings are held under the Code of Civil Procedure, the forum is the Civil Court and availability of a remedy under CPC will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline.

20. However, the Court also deems it appropriate to refer judgment in **Bal Krishna Agarwal v. State of U.P. : (1995) 1 SCC 614**, wherein the Hon'ble Supreme Court turned down the decision of this Court whereby, after exchange of affidavits and after five years from filing of the writ petition, the High Court had non-suited the petitioner on account of availability of an alternative remedy. The Hon'ble Supreme Court allowed the writ petition on merits and issued appropriate directions. In **Durga Enterprises (P) Ltd. v. Principal Secretary, Govt. of U.P. and others : (2004) 13 SCC 665**, the Hon'ble Supreme Court, having found that this Court had entertained the writ petition 13 years ago in which pleadings were complete, observed that the High Court ought to

have decided the case on merits instead of relegating the parties to civil remedies and, on the said short point, the order of this Court was set aside and the matter was relegated to this Court for early decision on merits.

21. This petition was filed 4 years ago in 2022 and the same was not only entertained but an interim order, though ex-parte, was also passed and despite the fact that the petition under Article 227 challenging an ex-parte decree of 1985 and consequential form under Order XXI Rule 54 CPC was not maintainable at first stage itself, in view of the judgments refered above and detailed execution proceedings held, this Court proceeds to examine the pleas raised by both sides.

(c) Enforcement of decree against legal representatives of the judgment debtors-

22. As far as legal position regarding status of legal representatives of judgment debtor is concerned, **'legal representative'** as per Section 2(11) of CPC means a person who in law **represents the estate of a deceased person, and includes any person who inter-meddles with the estate of the deceased**. Further, **Section 146** of CPC deals with proceedings against legal representatives of the original parties providing that where any proceedings may be taken or application made by or against any person, **then the proceedings may be taken or the application may be made by or against any person claiming under him.** Further, **Section 50** CPC refers to a situation where judgment debtor dies before satisfaction of the decree and it provides that **the holder of the decree may apply to the Court to execute the decree against the legal representative of the deceased.**

23. Therefore, the submission made that decree could not be executed against the petitioners, who were not in picture when the suit was decreed *ex-parte*, does not have any force, hence discarded.

(d) On Merits and procedure:

24. There is no dispute about the fact that the petitioners' predecessor-in-interest, being defendant in the OS, appeared in the suit proceedings but did not file written statement. The suit proceeded ex-parte against him and was ultimately decreed on 01.01.1985 for recovery of money along with interest. Annexure No.3 to the petition indicates that execution application was initially filed in 1986, however, the same was dismissed for want of prosecution on 20.10.1986. Thereafter, the judgment debtor died on 26.10.1988 and the second execution application was filed on 10.08.1989 (which is not barred in law) against the legal representatives of the judgment debtor to whom notice was issued by order dated 20.09.1989 and, thereafter, further proceedings were held against the present petitioners.

25. In the execution proceedings, objections under Section 47 CPC were filed by the present petitioners. The submission made on behalf of the petitioners that the order sheet does not indicate disposal of objections under Section 47 CPC, cannot be accepted, as short reference of such disposal was indicated in the order dated 20.07.1993 recorded on the order sheet and a separate order running in four pages disposing of the objections was passed on the same day (Annexure CA-1 to the counter affidavit). Operative portion of the order dated 20.07.1993 reads as under:-

आदेश

प्रार्थी पर धारा 47 सी०आर०पी०सी० पर उजरदारी स्वीकार की जाती है। विपक्षी संख्या-1 गिरवर को निर्देशित किया जाता है कि वह पुनः आदेश 21 नियम 54 का पैरवी इजराय संख्या 8/89गिरवर बनाम जयनन्द में अमल में लाये।

दिनांक
20.7.93

(ए०सी०शर्मा)
मुंसिफ, देवबन्द।

26. It is apparent from the order sheet that the petitioner No.2 moved an application on 04.12.1992 seeking to set aside auction proceedings and the objections filed under Section 47 were decided on 20.07.1993 on merits. The said order was never challenged probably for the reasons that the judgment debtors were satisfied with the nature of directions issued in that order, i.e., to proceed under Order XXI Rule 54 CPC. Further proceedings in the execution case were indeed held in furtherance of the order dated 20.07.1993 wherein directions for proceeding as per Order XXI Rule 54 CPC were issued and the citation/form dated 08.08.1993 impugned in the petition was also issued. The property was attached on 26.08.1993 vide Annexure No. 5 to the petition.

27. The order sheet reflects that on account of nobody appearing for making a bid, citation of auction was returned to the executing court on 26.09.1998. Thereafter, on 28.05.1999, auction was again conducted by the Court and the decree holder himself being the highest bidder, purchased the property which fact was noted in the order dated 13.08.1999 by which, auction was confirmed. Thereafter, sale certificate was issued and was registered in the year 1999, however, it appears that for one reason or the other, possession of the property was not delivered to the respondents and subsequently orders dated 02.09.2002 and 04.10.2002 were passed and after taking note of mutation entries made in favour of the auction purchasers/respondents and delivery of actual and physical possession of the property to them, the proceedings of execution case were closed in full satisfaction. The orders dated 02.09.2002 and 04.10.2002 are reproduced as under:-

02.09.2002	आज निष्पादन वाद में डिक्रीदार की ओर से प्रा०पत्र 117 सी2 इस बावत प्रस्तुत किया गया कि नीलाम की गई सम्पत्ति का प्रार्थी के हक में दाखिल खारिज व कब्जा हो चुका है। अतः इस सम्बन्ध में कार्यवाही समाप्त की जावे पेश होकर आदेश हुआ कि वास्ते समात दिंनाक 4.10.2002 को पेश हो। ह०अपठनीय
04.10.2002	पत्रावली प्रस्तुत। पुकार पर डिक्री होल्डर के विद्वान अधिवक्ता हाजिर है। उनकी तरफ से एक प्रार्थना पत्र 17सी 2 इस आधार पर प्रस्तुत किया गया है कि प्रश्नगत इजराय में नीलाम की गयी सम्पत्ति का प्रार्थी के हक में दाखिल खारिज हो चुका है तथा मौके पर प्रार्थी का कब्जा भी हो चुका है। प्रार्थी द्वारा कार्यवाही दाखिल खारिज समाप्त किये जाने की प्रार्थना की है। चूंकि डिक्रीदार ने स्वयं स्वीकार किया है कि डिक्रीनिष्पादन पूर्ण रूप से हो चुका है। मौके पर प्रार्थी का कब्जा भी हो चुका है। प्रश्नगत डिक्रीपूर्ण रूप से सन्तुष्ट हो चुका है। जैसा डिक्रीदारने स्वयं स्वीकारा गया है। अतः डिक्री की सन्तुष्टी में प्रश्नगत इजराय की कार्यवाही समाप्त की जाती है। पत्रावली दाखिल दफ्तर हो। ह० अपठनीय

	सिविलजज(जू०डि०) देवबंद

(e) Decree holder himself being auction purchaser:

28. Code of Civil Procedure, 1908 contains comprehensive provisions regarding execution of a money decree, attachment of immovable property, passing of restraint order and all such questions can be decided as per the provisions itself. Reference can be made to Order XXI Rules 54 to 95 CPC, which need not be reproduced for the sake of brevity. As to whether a decree holder can purchase property in auction, Rule 72 of Order XXI CPC reads as under:-

"72. Decree holder not to bid for or buy property without permission. -(1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

(2) Where decree-holder purchases, amount of decree may be taken as payment-Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of Section 73, be set off against one another, and the Court executing the decree small enter up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder.

High Court Amendments

[Allahabad].-In sub-rule (2) for the words **"with such permission"** read the words **"the property sold"** and re-number this sub-rule as "Rule 72" and delete sub-rules (1) and (3).-(24-7-1926)"

29. A bare perusal of Rule 72 of Order XXI makes it clear that the decree holder can bid for or purchase the property in execution of the decree, however, the same has to be with the express permission of the Court. The Court finds that objections 34-Ka were filed on behalf of the petitioners in the year 1992 itself to the effect that since the property had been purchased by the decree holder without permission of the Court, auction sale be set aside. The order dated 04.12.1992 passed by the executing court noted the said aspect as under:-

04.12.92	वाद पुकारा गया। पक्षकार हाजिर आये। 34 क कालू जे०डी० की ओर से प्रार्थना पत्र प्रस्तुत हुआ कि क्योंकि डी०एच० ने बिना न्यायालय की इजाजत के नीलाम की सम्पत्ति खरीदी हैं अतः नीलाम मंसूख किया जाये। डी०एच० एतराज प्रस्तुत करना चाहता है। दिनांक 1.1.93 को वास्ते एतराज व समान हेतु पेश हो। ह०अपठनीय

30. The executing court accepted the objections raised on behalf of the judgment debtors and, by order dated 05.02.1993, having found the sale in breach of Order XXI Rule 72 CPC, set aside

the same. Then the matter was posted for consideration of objections under Section 47 CPC. The order dated 05.02.1993 reads as under:-

05.02.1993	वाद पुकारा गया। पक्षकार हाजिर आये। दोनो पक्षों को 34क प्रार्थना पत्र पर सुना। जे०डी० की ओर से प्रार्थना पत्र प्रस्तुत किया गया है कि क्योकि डी०एच० को बिना न्यायालय की इजाजत के सम्पत्ति क्रम की है। अतः नीलाम मंसूख किया जाये डी०एच० की ओर से माननीय उच्चतम न्यायालय द्वारा गनपत वचन द्वितीय अतिरिक्त जिला जज बलिया आल एल० जे० 1986 पेज 271 का हवाला दिया गया। उपरोक्त दृष्टान्त के आधार पर क्योकि डी०एच० द्वारा बिना न्यायालय की अनुपस्थित आदेश **21** नियम **72** में लिये नीलाम में सम्पति क्रय की है जो अवैधानिक है अतः अमीन द्वारा डी०एच० के हक में किया गया नीलाम मंसूख किया जाता है। पत्रावली धारा **47** सी०पी०सी० के एतराज के साथ दिनांक **12.3.93** को पेश हो। ह०अपठनीय

31. As far as the permission of Court to purchase property in auction is concerned, specific order was passed on 13.08.1999 indicating that permission was granted by the executing court. The order reads as under:-

13.8.1999	पत्रावली प्रस्तुत हुई। डिक्रीदार मय विद्वान अधिवक्ता के उपस्थित आया। मदयून की ओर से कोई उपस्थित नही आया है।दिनांक **11.9.98** को डिक्रीदार द्वारा नीलाम के समय बोली लगाने की अनुमति न्यायालय से प्राप्त की गयी। जिसके अनुसार दिनांक**28.5.99** को अमीन अदालत द्वारा मदयूनान की सम्पत्ति की नीलामी की गयी। नीलाम में अन्तिम बोली दस हजार रूपये की डिक्रीदार द्वारा बोली गयी जो स्वीकार की गयी।डिक्रीदार द्वारा प्रा०पत्र 107ग 2 इस आशय का प्रस्तुत किया गया है कि उसने नीलाम के समय कोई रकम जमा नहीं की है।बल्कि उसका रूपया मदयूनान की ओर बाकी है जिसकी उसने मौजूदा इजराय की कार्यवाही दायर की हुई है। इजराय की रकम नीलामी में बोली गयी। बोली यानी 10 हजार रूपये से अधिक है। उसे आदेश 21 नियम 72 (2) सी पी सी के अंतर्गत बोली की रकम में मुजरा की जाये। डिक्रीदार का प्रा०पत्र 107ग2 न्यायहित में स्वीकार किया जाता है। चूंकि नीलामी की कार्यवाही को 30 दिन से अधिक हो चुके है। और कोई आपत्ति मदयूनान की तरफ से प्राप्त नहींहुयी है। इसलिये नीलाम यानि विक्रय पुष्ट किया जाता है। पत्रावली अग्रिम आदेश हेतु दिंनाक 17.9.99 को पेश हो। ह० अपठनीय सि० जज (जू०डि०) देवबन्द

32. Further order sheet refers to finalization of auction proceedings and issuance of sale certificate. The same is reproduced as under:-

17.09.1999	पत्रावली प्रस्तुत हुई। डिकीदार मय विद्वान अधिवक्ता उपस्थित आया। डिकीदार की ओर से प्रा०पत्र इस आशय का प्रस्तुत किया गया है। कि इजराय में दिनांक 13.8.99 को नीलाम पुष्ट किया जा चुका है इसलिये क्रेता के नाम नीलाम व विक्रय मांग पत्र जारी किया जाना आवश्यक है। क्रेता/डिकीदार नियत स्टाम्प आदि प्रमाण पत्र जारी किये जाने दाखिल करेन के लिये तैयार है। अतः स्टाम्प दाखिल करने के लिये अनुमति प्रदान कीजावे। सुना एवं पत्रावली का अवलोकन किया। **पत्रावली के अवलोकन से स्पष्ट है कि 13.8.99 को नीलाम पुष्ट किया जा चुका है। नीलाम पुष्ट किये हुए तीस दिन से अधिक हो गये। अतः नीलामी विक्रय का प्रमाण पत्र जारी किये जाने हेतु डिक्रीदार नियमानुसार दिनांक 30.9.99 तक स्टाम्प दाखिल करे।**

	ह० अपठनीय सि० जज (जू०डि०) देवबन्द
20.09.1999	आज इस वाद में डी०एच० द्वारा मु० **800**/- रूपये का स्टाम्प विक्रय प्रमाण पत्र जारी करने हेतु दाखिल कर दिया गया है। पेश होकर आदेश हुआ कि भूमि के विक्रय का प्रमाण पत्र का प्रारूप दाखिल करें।पत्रावली वास्ते अग्रिम आदेश दिनाक 28.10.99 को पेश होवे। ह० अपठनीय
28.10.1999	**आज इस वाद में भूमि के विक्रय का प्रमाण पत्र (सनद नीलाम) रजिस्ट्री कार्यालय से रजिस्ट्री होकर प्राप्त हो गया है।नियत दिनांक पर पत्रावली पेश होवे।** ह० अपठनीय

33. In view of above discussion and record of execution proceedings, it cannot be said that sale was hit by any provision of law. All arguments questioning the validity of auction sale are, therefore, discarded. The Court is satisfied that due procedure of law was followed and, further, whatever objections the petitioners could take in execution proceedings, they did take and once the same were decided without any further challenge, necessary consequences were bound to follow and had rightly followed. As far as submissions that the plaint did not comply with the requirements of Order VII Rule 14 CPC or that the suit was wrongly decreed for one or the other reasons including the plea that the plaintiff was not a money lender, in the opinion of the Court, the decree drawn in 1985 having attained finality in view of no challenge laid to the same either by filing any statutory application or appeal, in a petition arising out of execution proceedings, direct or indirect challenge to the validity of the decree cannot be made.

34. It is well-settled that even executing court cannot go behind the decree and once the remedy available to the petitioners in terms of Section 47 CPC also stood exhausted in the year 1993 with no further challenge to the same, the validity of the decree cannot be reopened in a Matter U/A 227 of the Constitution of India after three (3)decades. In **Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman: (1970) 1 SCC 670**, a three Judge Bench of the Hon′ble Supreme Court has held that Court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.

35. Judgment in the case of **Om Sakthi Sekar (supra)**, as relied by learned counsel for the petitioners, so as to contend that when credible issues are raised regarding adequacy of valuation or fairness of process and leading to fixation of reserve price, supervisory jurisdiction of the Court may be invoked, is clearly distinguishable on facts. The controversy before the Hon′ble Supreme Court in that case had arisen from the proceedings held at Debts Recovery Tribunal (‘DRT′) and Debts Recovery Appellate Tribunal (‘DRAT′). In that case, auction was conducted by Recovery Officer in 2010 pursuant to order passed by the DRT in 2010; an appeal was filed before the DRAT in which an interim order was passed in 2010 itself, later on, after certain proceedings, the matter was remitted by the High Court to the DRAT in 2017 and, on remand, the DRAT further affirmed the order of DRT. The entire controversy was in relation to fixation of reserve price, auction held,

irregularities therein, interim order and its effect and action in furtherance of order of remand. In the present case, no such controversy exists and the matter has simply arisen out of a decree drawn in 1985, which has throughout remained unchallenged for the last 40 years and execution proceedings closed in full satisfaction have already been found as lawful.

36. Alleged infirmities pointed out in the auction sale in the present case are not found to exist and, even otherwise, the same having been held as per the procedure prescribed in CPC and, whatever objections the petitioners could raise were raised under Section 47 CPC and once finality stands attached to the auction sale and delivery of possession as well as consequential mutation entries, invoking supervisory jurisdiction to set aside the decree drawn 40 years ago and all consequential proceedings under the garb of supervisory jurisdiction under Article 227 of the Constitution of India would not at all be proper, otherwise it would make a mockery of civil proceedings and, under such circumstances, the ratio in **Virudhunagar (supra)**, applies in full force against the petitioners.

37. Another judgment in the case of **M/s Godrej Sara Lee Ltd.** is on the point that alternative remedy is not an absolute bar in entertaining the writ petition under Article 226. The present petition has been filed under Article 227 and even if, the principle laid down in **M/s Godrej Sara Lee Ltd. (supra)** is applied, this Court would be required to examine the pleas raised and not to dismiss the petition remitting the matter back for availing alternate remedy. This Court has already examined the merits of the contentions raised in the light of record of proceedings and, therefore, the ratio laid down in the said judgment has been followed.

38. The judgment in the case of **Pramod Shroff (supra)** is also distinguishable on facts. In the said case, the Hon′ble Supreme Court had tested validity of judgment passed by High Court of Calcutta in a first appeal wherein the High Court had simply affirmed the trial court′s judgment although the judgment was not found satisfying the requirements of Section 2(9), Order XIV Rule 1 and Order XX Rule 4 CPC. It was held that even if written statement is not filed, requirement to frame points for determination remains and the Hon′ble Supreme Court, after setting aside the order of High Court and that of the trial court, remanded the matter to the trial court for fresh consideration.

39. The present case does not arise out of an appeal against decree and, as noted above, no appeal was ever filed against the decree drawn in 1985. The decree was put into execution and execution proceedings stood culminated after disposal of all objections raised by the judgment debtors. A belated challenge laid after more than 10,000 days in consequential proceedings and under garb of decree, which was finalized more than 13,500 days ago when the petitioners had knowledge and had also participated, would not at all be permissible and, therefore, the judgment cited is of no help to the petitioners.

40. The last judgment relied upon by the petitioners′ counsel in the case of **Vindhayachal (supra)**, had arisen from a case where a recovery certificate was issued on default of refunding the amount of loan taken for purchase of tractor. Certain money was deposited by the borrower and, for outstanding dues, property was auctioned. There was a determination of market value of the property, auction was approved by the Collector and objections were filed under Rule 285(I) of

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952. The same were rejected by the Commissioner against which order writ petition was filed. This Court, after dealing with the Rules, interfered with the matter and set aside the auction holding that the entire loan stood paid. The facts of the present case, being altogether different and arising out of proceedings of a civil suit, decree drawn therein and execution proceedings, the judgment is of no help to the petitioners.

(f) Allegations against the Court

41. The Court, with great pains, is constrained to deal with a piercing submission raised in written arguments that the petitioners were not granted time to file rejoinder affidavit and their counsel had to argue the matter. The tenor of the said statement raises a question on the dignity of this Court itself, therefore the Court deems it appropriate to deal with the said submission also.

42. The order sheet of the present petition reflects that over a number of years, the case was being continuously got adjourned either on the request of counsel for the petitioners or on her illness slip probably on account of an interim order passed therein and when it was going to be finally heard on 16.02.2026 as a mentioned matter, learned counsel for the petitioners, except denying the respondents plea qua possession, was not at all inclined to advance any arguments on merits and submitted that she would explain everything on the next date. Based upon the submissions made, it was understood between the three, i.e., counsel for the petitioners, counsel for the respondents and the Court that the matter shall not be adjourned on the next date and, with this understanding, the case was fixed peremptorily in top ten cases to be heard on 17.03.2026 with a clear indication that the same shall not be adjourned on the next date. The order dated 16.02.2026 is reproduced hereunder:-

"**1. Supplementary affidavit filed by the petitioner is taken on record.**

2. Vehement submissions have been made by learned Counsel for the respondent that this petition is not maintainable as, under the garb of challenging a parvana only issued on 08.08.1993 in execution proceedings, an ex parte decree passed in the year 1985 has also been challenged.

3. An interim order restraining eviction of the petitioners was passed in the year 2022 in this petition.

4. It is submitted that the said interim order has not been extended since the year 2022 and, in the meantime, the respondent, who is an auction purchaser, has already come in possession and relevant document is also in his favour. Therefore, the very cause pressed through the present petition does not survive.

5. **Learned Counsel for the respondent further submits that though the supplementary affidavit is of the year 2025, the same has been served upon him today in Court to delay the proceedings.**

6. The statement regarding possession has been denied by Ms. Usha Kiran, learned Counsel for the petitioner and she submits that she will explain the situation on the next date fixed and that possession of the property is with her client.

7. List in top ten cases peremptorily on 17.03.2026.

8. In the meantime, if the respondents so desire, counter affidavit may be filed.

9. **The case shall not be adjourned on the next date.** "

43. The matter could not be taken up on 17.03.2026 due to paucity of time and when it came up for disposal on 22.04.2026, the Court proceeded to hear the arguments, as per previous understanding. At this juncture, learned counsel for the petitioners adopted all means and ways to avoid hearing of the matter and started seeking time to file rejoinder affidavit, however also made submissions based upon the material that was available on record. It is to observe that counter affidavit was served upon counsel for the petitioners on 11.03.2026, much before which date on 16.02.2026, the order was already passed indicating that the matter shall not be adjourned on the next date. As to what prevented the petitioners or their counsel from filing rejoinder affidavit over a period of 40 days since after service of counter affidavit on them, is not understandable and it is thus clear that under the garb of seeking time to file rejoinder affidavit when 40 days time available to the petitioners for that purpose was not deliberately utilized by them, gives a clear picture that the attempt of the petitioners was only and only to somehow not allow the Court to hear and decide the matter on merits despite clear indications made earlier. Therefore, instead of putting a blame on the Court, the petitioners represented by their learned counsel should have introspected themselves and should not have taken Court proceedings for granted.

44. Even otherwise, it is observed that while counsel for both sides were heard at length on 22.04.2026, request made by counsel for the petitioners to file rejoinder affidavit was certainly accepted by the Court but in terms of granting her permission to file written submissions for saying whatever she wanted to say in the rejoinder, for which purpose she prayed three weeks time which was granted and the judgment was reserved. For a ready reference, order dated 22.04.2026 is reproduced as under:-

Heard Ms. Usha Kiran, learned Counsel for the petitioners, Sri. Sumit Daga, learned counsel for respondent nos. 4 to 8 and learned Standing Counsel on behalf of respondent nos. 1 and 2.**After advancing arguments at length, Ms. Usha Kiran seeks time to file written submissions. She is granted three weeks' time to do so.**

Judgment reserved.

45. Learned counsel filed written submissions within the fixed timeline and the pleas raised therein have been taken into consideration herein-above. The stand taken in written submissions has been treated as submissions in opposition to the stand taken in the counter affidavit and, thus, no prejudice is caused to the petitioners. It is, thus, clear that every attempt was made on behalf of the petitioners to keep the petition pending and the conduct of the petitioners′ side is found highly objectionable and is condemned.

CONCLUSION

(g) No interference:

46. In view of above discussion, it is found that the decree drawn in the year 1985 became final 37 years prior to filing of the petition and whatever objections the petitioners being legal representatives of judgment debtor could take in execution proceedings, they had taken but remained unsuccessful. There was no factual or legal impediment in auctioning the property in the course of execution of a money decree and no error is found in auction sale and closure of

execution proceedings in full satisfaction of the decree in terms of mutation, delivery of actual possession, confirmation of sale and registration of sale certificate/sale deed. Hence, no interference is warranted in the orders impugned.

(h) Abuse of process:

47. It is also clear that submissions based upon absolutely false pleadings somehow persuaded this Court to pass ex-parte interim order to the effect that the petitioners shall not be evicted from the property in dispute although they were not in possession even on the date of passing of interim order. It is also found that when the interim order was passed in the year 2022, incomplete copy of order sheet only upto 17.08.1992 was annexed along with the petition. Supplementary affidavit annexing further order sheet of the execution proceedings upto 04.12.2002 was brought on record very recently only on 16.02.2026, which fact was indicated in the order passed on that date, as already reproduced hereinabove.

48. The petitioners have taken somersault insofar as knowledge of the proceedings culminating into auction sale is concerned. Whereas in the petition it is stated that, for the first time, they came to know about proceedings on 20.11.2012, in the written submissions they have taken a contrary stand that they acquired knowledge in 2021 and have also taken aid of certain objections filed by them during the course of proceedings and result thereof. The Court is of the firm opinion that the petitioners selectively chose documents for filing and raised absolute false and misleading pleas to obtain interim order from this Court and succeeded in their nefarious design and by misleading this Court at the first instance as if they were unaware of everything. They succeeded to obtain an interim order restraining their eviction from the property although possession was already delivered to the decree holder/his legal representatives and their names were also mutated in the revenue records.

(i) Cost:

49. The petition, as initially filed, was not only barred by laches of 10274 days, as reported, but was also not maintainable and filing of the petition was gross abuse and misuse of the process of law and even when the merits of the case have been dealt with by this Court, the petition deserves dismissal with costs. The cost could be exemplary and huge for falsehood and conduct of the petitioners but considering the segment they belong to, as reflected from the record, the Court is not inclined to impose heavy cost; however, the manner in which the proceedings have been conducted throughout, the Court deems it appropriate to impose cost of **Rs 2/- (two)** on the petitioners so as to convey them worth of their objections and conduct in the eyes of this Court.

50. The petition is, accordingly, **DISMISSED with cost of Rs. 2/- (two).**

51. The petitioners are directed to deposit cost in the form of cash/coin before the **Registrar General** of this Court by **07.07.2026** failing which the Registrar General shall send a copy of this order to the District Magistrate, Saharanpur, who shall ensure that the amount of cost is recovered from the petitioners as arrears of land revenue by adopting all measures including coercive measures, positively **by the end of July, 2026.**

52. **Registrar (Compliance)** shall submit a compliance report as regards deposit/realization/payment of cost, as directed hereinabove, on or before **12.08.2026**.

(j). Possession:

53. Since, despite culmination of proceedings in favour of the respondents decades ago, assertions have been made on behalf of the petitioners before this Court that actual and physical possession of the property still lies with them, though such plea has been denied by the respondents and otherwise found untenable, it is hereby provided that the administration shall ensure no hindrance in securing and protecting actual and physical possession of the contesting respondents over the property in dispute.

54. To record compliance of this order, the case shall be listed before appropriate bench as a 'decided matter' on **12.08.2026 under the caption: FOR COMPLIANCE REPORT FOR PERUSAL OF THE COURT.**

(2026) 5 ILRA 1409
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.05.2026

BEFORE

THE HON'BLE VIKRAM D. CHAUHAN, J.

Matters Under Article 227 No. 5746 of 2026

Dr. Ashish Shakya **...Petitioner**
Versus
C.B.I. & Anr. **...Respondents**

Issue for Consideration

Whether the remand order dated 16.4.2026 extending judicial custody of petitioner from 16.4.2026 to 30.4.2026 is bad in the eyes of law as the judicial remand of petitioner has been extended without appearance of petitioner-accused, either personally or through video-conference

Head Notes

The Constitution of India, 1950-Article 22(2) & 227; The Bharatiya Nagarik Suraksha Sanhita, 2023- Section 187(4)- Lex non cogit ad impossibilia gausa ommiss gausa ommiss (that a statute does not envisage doing anything which is impossible to be done)

Non-production of accused before court concerned on date of passing of impugned order dated 16.4.2026 is non-availability of police force on account of prevailing law and order situation- The court concerned has also reported that communication with regard to non-availability of the police force was received by District Judge, Ghaziabad from the police authorities- That in respect of appearance of the accused-petitioner through video conference is concerned, stand of respondents as well as the report of court concerned would indicate that due to technical error connection with the jail authorities through video and audio could not be made.

Held- Once counsel for petitioner-accused was present before court concerned and have already opposed extension of remand as has been recorded in the impugned order, then it is imperative to show that prejudice is caused to the petitioner-accused or there is infringement of any right of petitioner-accused- No such prejudice to the accused-petitioner has been shown by the petitioner except that Section 187(4) of BNSS, 2023 has been violated- The violation is excusable in terms of Doctrine of Impossibility and as such may not vitiate remand extension order. **Petition dismissed**. (E-15)

(Para 42, 46 & 48)

Case Law Cited

Jigar Alias Jimmy Pravinchandra Adatiya Vs. State of Gujarat, (2023) 6 SCC 484; Binani Zinc Limited Vs. Kerala State Electricity Board and others, (2009) 11 SCC 244; Raj Narain Vs. Superintendent, Central Jail, New Delhi, AIR 1971 SC 178; State of Madhya Pradesh Vs. Narmada Bachao Andolan and another, (2011) 7 SCC 639

List of Acts

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

List of Keywords

Doctrine of Impossibility;Lex non cogit ad impossibilia gausa ommiss gausa ommiss; Non-production of accused; due to unavoidable circumstances; Remand order; Section 187(4)

Case Arising From

Remand order dated 16.4.2026 passed by Special Judge, Anti Corruption, C.B.I., Ghaziabad in First Information Report dated 15.3.2026 (bearing number RC2182026A0005), under Section 61(2) of B.N.S, 2023 read with Sections 7, 8, 9, 10 & 12 of Prevention of Corruption Act, 1988, Police Station C.B.I., AC-III, New Delhi

Appearances for Parties

Counsel for Petitioner(s) : Ashvani Tripathi
Counsel for Respondent(s) : G.A., Rahul Srivastava

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

1. Heard Sri Nitesh Rana, Advocate assisted by Ms. Zainab Khan and Sri Ashvani Tripathi, learned counsels for petitioner, Sri Rahul Srivastava, learned counsel for Central Bureau of Investigation and Sri Om Prakash Dwivedi, learned A.G.A. for State.

2. The present petition under Article 227 of Constitution is preferred challenging the remand order dated 16.4.2026 passed by Special Judge, Anti Corruption, C.B.I., Ghaziabad in First Information Report dated 15.3.2026 (bearing number RC2182026A0005), under Section 61(2) of B.N.S, 2023 read with Sections 7, 8, 9, 10 & 12 of Prevention of Corruption Act, 1988, Police Station C.B.I., AC-III, New Delhi.

3. The petitioner was arrested on 15.3.2026 from the Conference Room of Felix Hospital, Sector-137, Noida (U.P.) in respect of abovementioned offence. The Central Bureau of Investigation thereafter produced the petitioner before trial court on 16.3.2026 seeking police custody of petitioner. The court concerned by order dated 16.3.2026 granted police custody of petitioner for four days from 16.3.2026 to 19.3.2026. Thereafter, Central Bureau of Investigation further submitted an application for remand of petitioner to judicial custody, which was granted

from 19.3.2026 to 2.4.2026 and thereafter judicial custody was further extended till 16.4.2026. It is alleged that on 16.4.2026, petitioner was not produced before court concerned neither physically or through video conference. However, court concerned by impugned order dated 16.4.2026 has extended judicial custody of petitioner from 16.4.2026 to 30.4.2026.

4. A perusal of aforementioned order dated 16.4.2026 passed by court concerned would go to show that aforesaid court has recorded specific finding that petitioner is not presented before the court concerned from jail.

5. It is submitted by learned counsel for petitioner that by impugned order dated 16.4.2026, judicial remand of petitioner has been extended without appearance of petitioner-accused, either personally or through video-conference. Learned counsel for petitioner further submits that as per Section 187(4) of Bharatiya Nagarik Suraksha Sanhita, 2023 it was mandatory for respondents to have produced petitioner before court concerned at the time of extension of remand on 16.4.2026. Learned counsel for petitioner has referred judgment of Hon'ble Supreme Court in **Jigar Alias Jimmy Pravinchandra Adatiya Vs. State of Gujarat, (2023) 6 SCC 484** and submits that production of accused before court concerned at the time of extension of judicial custody is mandatory. It is further submitted that accused has right to oppose the remand and impugned order is in violation of Section 187(4) of Bharatiya Nagarik Suraksha Sanhita, 2023. It is further submitted that statutory compliances are not empty formality and any deviation from express procedural mandates cannot be condoned under the pretext of subsequent validation. It is submitted that impugned order does not specify reason as to why accused-petitioner was not produced before court concerned at the time of passing of impugned order of extension of judicial custody. He further submits that subsequent order dated 30.4.2026 of court concerned explaining non-presence of petitioner-accused, after filing of present petition is of no consequence. It is further submitted that order impugned has been passed in a mechanical manner.

6. Learned counsel for Central Bureau of Investigation has opposed the petition and submits that petitioner-accused was arrested on 15.3.2026 in respect of above-mentioned offence and was produced before court concerned at Ghaziabad on 16.3.2026 and an application was filed seeking the petitioner's police custody/remand for five days. The court concerned by order dated 16.3.2026 was pleased to grant police custody of both accused for four days up to 19.3.2026. Further, the court concerned by order dated 19.3.2026 was further pleased to grant judicial custody of 14 days of petitioner up to 2.4.2026. It is further submitted that on 2.4.2026 the court concerned was further pleased to extend the remand of petitioner-accused to judicial custody till 16.4.2026. On 16.4.2026 the court concerned has further extended judicial custody of petitioner-accused till 30.4.2026. It is further submitted that counsel for petitioner-accused was present before court concerned when impugned order of extension of judicial custody was passed and as such there was sufficient opportunity to petitioner to oppose the extension of judicial custody before the court concerned on 16.4.2026. It is further submitted that jail authorities have duly informed court concerned regarding their inability to produce accused person on 16.4.2026 physically due to law and order situation and sought exemption for physical production. It is further submitted that court officials have also tried to secure the appearance/production of accused-petitioner through audio-video conferencing, however, due to technical error, appearance/production of accused-petitioner could not be secured. It is further submitted by learned counsel for Central Bureau of Investigation that judgement of

Supreme Court in **Jigar Alias Jimmy (supra)** is not applicable in the facts and circumstances of present case. It is submitted that basis of aforesaid judgment is that accused may have opportunity to object to judicial custody or its extension and in the present case, counsel for accused-petitioner was present before the court concerned on 16.4.2026 and therefore no prejudice has been caused to petitioner. It is further submitted that on account of circumstances beyond control of authorities, petitioner-accused could not be produced before the court concerned. Learned counsel for Central Bureau of Investigation further submits that on account of impossibility of production of petitioner-accused before court concerned, impugned order of remand cannot be vitiated. In this reference, learned counsel for Central Bureau of Investigation has relied upon the judgments **in Gouri Shankar Jha Vs. The State of Bihar and Ors., AIR 1972 SC 711, Sandip Kumar Dey Vs. The Officer-in-charge, Sakchi P.S., Jamshedpur and Ors., AIR 1974 SC 871, Ramesh Kumar Ravi Alias Ram Prasad And Vs. State of Bihar And Ors. Etc., 1987 CrLJ 1489 (Patna) (Full Bench), Kurra Dasaratha Ramaiah and Ors. Vs. State of Andhra Pradesh, 1992 CrLJ 3485 (AP-FB)** and **Suraj Chokhani Vs. Directorate of Enforcement, 2024 CGHC 39410.**

7. Sri O.P. Dwivedi, learned A.G.A. for State submits that due to prevailing law and order situation in Commissionerate, Ghaziabad on 16.4.2026, information regarding non-availability of police force for Sadar lockup and command duty for prisoners lodged in District-Jail was sent to learned District Judge/learned Chief Judicial Magistrate/District Magistrate, Ghaziabad/Police Commissioner, Ghaziabad and Jail Superintendent, Ghaziabad. It is further submitted that on account of protest of factory workers in Sector 62, Gautam Budh Nagar, a large number of police personnels from reserved police line were deployed in Quick Response Team and Escorts. It is submitted that on account of prevailing law and order situation it was not possible to present the prisoners detained in District Jail, District Ghaziabad before learned court in full security. In this respect, learned A.G.A. for the State has relied upon letter dated 16.4.2026 sent to District Judge, Ghaziabad, annexed at page no. 14 of the counter affidavit, which contains endorsement of District Judge as 'Seen and Circulate'. It is submitted that on account of the prevailing law and order situation no accused could be produced before the learned court on the aforesaid date.

8. The issue in present case pertains to non-production of accused before court concerned at the time of extension of judicial custody. Article 21 of Constitution provides fundamental right of life and personal liberty. The aforesaid Article provides that no person shall be deprived of his life and liberty except according to procedure established by law. The aforesaid provision is an essential provision guaranteeing against arbitrary deprivation of liberty of an individual. The Constitution provides safeguards to a person who has been arrested under Article 22 of Constitution. The aforesaid Article provides that person arrested or detained in custody shall be informed of grounds of arrest and right to consult legal practitioner. Further, Article 22(2) of Constitution provides that person who is arrested or detained in custody shall be produced before nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for journey from place of occurrence to the court of Magistrate and no such person shall be detained in custody beyond said period without authority of Magistrate. Article 22(2) of Constitution envisage that arrested person is produced before the Magistrate within 24 hours and further such accused person shall be detained in custody beyond 24 hours only with authority of Magistrate. The primary objective of Article 22(2) of Constitution of India is to protect personal liberty of individuals by preventing arbitrary detention. By requiring production before a Magistrate, said provision ensures

that detention is reviewed by a judicial authority, thereby acting as a check and balance on the powers of police.

9. The Constitution therefore provides that police or executive can arrest an individual up to twenty-four hours without authority of Magistrate and thereafter said person is to be produced before a Magistrate and custody of individual beyond twenty-four hours would vest only with authority of Magistrate. The aforesaid safeguard has been made integral part of fundamental right under the Constitution. In view of aforesaid, the two safeguards provided under Article 22(2) of Constitution of India are as follows:-

a) The arrested person be produced before Magistrate within twenty-four hours.

b) The custody of individual beyond twenty-four hours would be permissible only with authority of Magistrate.

10. The Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter for brevity referred as "BNSS, 2023") provides for power of arrest by police. Under Section 35 of BNSS, 2023, police are authorised to arrest without warrant in respect of a person who has committed cognizable offence. However, in respect of non-cognizable offence, police are only authorized to arrest with warrant or order of Magistrate in terms of Section 35 (2) of BNSS, 2023.

11. Further, Section 187(1) of BNSS, 2023 provides that whenever any person is arrested and detained in custody, and it appears that investigation cannot be completed within the period of twenty-four hours and there are grounds for believing that accusation or information is well-founded, the officer in charge of police station or police officer making investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter specified relating to the case, and shall at the same time forward the accused to such Magistrate.

12. The object of producing accused before Magistrate for the purpose of remand is to enable the Magistrate to find out whether remand is necessary. The said provision curtails police overreach, enables Magistrates to assess legality of arrest, and facilitates decisions on bail or remand, upholding due process of law. The said provision further provides an opportunity to accused to raise objection to arrest and remand.

13. Further, Section 187 (1) of BNSS, 2023 is related to Article 22(2) of Constitution requiring arrested person to be produced before Magistrate within a period of twenty-four hours of such arrest. The arrest by police therefore mandatory requires [in view of Article 22(2) of Constitution as well as Section 187(1) of BNSS, 2023] that accused is produced before Magistrate within twenty-four hours. In this respect, Section 187 (1) of BNSS, 2023 is quoted herein below:-

***"187. Procedure when investigation cannot be completed in twenty-four hours**.-(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 58, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of*

the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter specified relating to the case, and shall at the same time forward the accused to such Magistrate.″

14. Once accused is arrested and produced before the Magistrate in compliance of Article 22 (2) of Constitution read with Section 187 (1) of BNSS, 2023, Magistrate may authorise, from time to time, detention of accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole in terms of Section 187(2) of BNSS, 2023.

15. Under Section 187(3) of BNSS, 2023, Magistrate may authorize detention of accused person, beyond period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise detention of accused person in custody under this sub-section for a total period exceeding-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXV for the purposes of that Chapter.

16. It is to be noted that Section 187(4) of BNSS, 2023 further provides that no Magistrate shall authorise detention of accused in custody of police under this section unless accused is produced before him in person for first time and subsequently every time till accused remains in the custody of police, but the Magistrate may extend further detention in judicial custody on production of accused either in person or through audio-video electronic means. A perusal of said provision would show that insofar as police custody is concerned, provision employs negative language creating a protective bar against arbitrary arrest or detention by police. However, insofar as judicial custody of accused is concerned, the language under Section 187(4) of BNSS, 2023 is in nature of empowering Magistrate to extend judicial custody of accused on production in person or through the audio-video electronic means.

17. In respect of provisions of Criminal Procedure Code, 1973, by Act No. 5 of 2009, the proviso (b) to Section 167(2) of Criminal Procedure Code, 1973 was inserted and the same is quoted hereinbelow:-

"(b) No Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;″

18. Prior to above-mentioned amendment in Criminal Procedure Code, 1973, the provision of Section 167(2)(b) stood as under:-

"(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him."

19. A perusal of unamended provision (prior to Act No. 5 of 2009) it was mandate that Magistrate could not authorise detention in any custody unless the accused is produced before the Magistrate. The provision of Section 167(2)(b) of Criminal Procedure Code, 1973 stood amended and the negative language (as existed prior to amendment) continued in respect of first time production of accused as well as extension of custody of police. However, in respect of judicial custody the negative language of extension, stood changed to positive power of Magistrate to grant extension of judicial remand on production of accused either in person or through the medium of electronic video linkage. The aforesaid amended provision stood extended in subsequent legislation under Section 187(4) of BNSS, 2023.

20. Section 187(4) of BNSS, 2023 provides for production of accused before Magistrate at the first time after arrest and for extending further custody of police and for extending judicial custody. The custody of an accused after arrest may either be police custody or judicial custody. Section 187(4) of BNSS, 2023 is quoted hereinbelow:-

"(4) No Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the audio-video electronic means."

21. The provision of Section 187(4) of BNSS, 2023 envisages three eventualities in respect of custody of accused which are as follows:-

a) When the accused is produced before the Magistrate for the first time after arrest.

b) When the accused is produced for further or extension of police custody.

c) When the accused is produced for further or extension of judicial custody.

22. In respect of eventuality where accused is produced before the Magistrate for first time after arrest, Section 187 (4) of BNSS, 2023 is couched in negative term that no Magistrate shall authorise detention of accused in custody of police under this section unless the accused is produced before him in person for the first time. The said section mandatorily provides for presence of accused before the Magistrate for first time after arrest. The aforesaid is also in consonance with mandate of Article 22(2) of Constitution.

23. Where police custody of accused is required to be extended (after accused is already produced after arrest before Magistrate and police custody is granted), in this respect, Section

187(4) of BNSS, 2023 mandatorily provides for presence of accused before the Magistrate. The presence of the accused before the Magistrate is mandatorily required in respect where the accused is in police custody and extension of police custody is required. In this respect, aforesaid provision is couched in negative terms that no Magistrate shall authorise detention of accused in custody of police under this section unless accused is produced before Magistrate in person.

24. Where the judicial custody of accused is to be extended, Section 187(4) of BNSS, 2023 states that Magistrate may extend further detention in judicial custody on production of the accused either in person or through the audio-video electronic means. The provision is in respect of enabling terms or positive term providing the procedure for exercise of power.

25. The purpose of remand order by Magistrate is to prevent arbitrary detention. The purpose of an order of Magistrate to authorise detention is further desired as accused should be produced before Magistrate so that he may, if he so chooses, make a representation against his remand and for his release on bail. Further, presence of accused is also desirable so that Magistrate can ascertain the fact that accused is in custody and custody is in accordance with law.

26. Where accused is not produced before Magistrate concerned at the time of extension of judicial custody, the reasons for non-production of accused before Magistrate concerned, may have an important bearing on the question whether remand order would be vitiated on non-production of accused.

27. Learned counsel for petitioner has relied upon judgment of Hon'ble Supreme Court in **Jigar Alias Jimmy (supra)** with regard to nature of mandate for production of accused before the court concerned at the time of remand of accused. In this respect, paragraph no. 41 of **Jigar Alias Jimmy (supra)** is quoted herein below.

*"**41**. Clause (b) of sub-section (2) of Section 167CrPC lays down that no Magistrate shall authorise the detention of the accused in the custody of the police unless the accused is produced before him in person. It also provides that judicial custody can be extended on the production of the accused either in person or through the medium of electronic video linkage. Thus, the requirement of the law is that while extending the remand to judicial custody, the presence of the accused has to be procured either physically or virtually. This is the mandatory requirement of law. This requirement is sine qua non for the exercise of the power to extend the judicial custody remand. The reason is that the accused has a right to oppose the prayer for the extension of the remand."*

28. The production of accused before court concerned is a statutory requirement under Section 187(4) of BNSS, 2023. The respondent-State has taken a stand that due to prevailing law and order situation on 16.4.2026, information regarding non-availability of police force was sent to the District Judge/Chief Judicial Magistrate/District Magistrate, Ghaziabad/Police Commissioner, Ghaziabad and Jail Superintendent, Ghaziabad. The respondent-State has submitted that on account of protest of factory workers in Sector 62, Gautam Buddh Nagar a large number of police personnels from the reserve police line were deployed in Quick Response Team and Escorts. On

account of prevailing law and order situation it was not possible to present prisoners detained in District Jail, District Ghaziabad before the court in full security.

29. Further, respondent-CBI has also taken a stand that inability to produce the accused before the court concerned physically due to law and order situation which was duly informed by the State to the learned District Judge. Respondent-CBI has also stated that appearance of accused through audio-video conference could not be made due to technical error at the end of court concerned.

30. Further, this Court by order dated 6.5.2026, called for report from court concerned with regard to non-appearance of petitioner-accused before the court concerned through video conference. The court concerned in compliance of above-mentioned order dated 6.5.2026 has submitted a report before this Court through the Registry reporting that on 16.4.2026 the Court of Special Judge, Anti Corruption, C.B.I, Court No. 1, Ghaziabad fell vacant due to transfer of the presiding officers. The petitioner-accused was to be brought before the court for judicial remand under the direction of the Court but on 16.4.2026 due to letter from D.C.P. Lines, Commissionerate, Ghaziabad that police force cannot be provided and due to lack of police force attempts were made to connect jail through video conference but unfortunately due to technical glitches, the VC connection to jail could not be established.

31. The respondents therefore has taken stand that due to non-availability of police force and prevailing law and order situation, where reserve police were assigned quick reaction duties and fact that video conference system of court could not be connected to the Jail for appearing through audio video means, respondents have taken a stand that on account of these unforeseen circumstances, it was not possible to produce accused-petitioner before court concerned and therefore non-production of accused by itself would not vitiate impugned order of remand to judicial custody.

32. It is true that the legislative mandate under Section 187(4) of BNSS, 2023 requires that accused will be produced before court concerned at the time of extension of judicial custody through personal appearance or audio-video means. The law does not contemplate all eventualities is a foundational legal recognition, acknowledging the inherent limitations of legislative foresight. No system of rules can accurately anticipate future contingency. Courts rely on principle of interpretation, judicial discretion, doctrines and legal maxims to address impossibility or unforeseen circumstances. Legislation is prepared based on known facts and anticipated possibilities but dynamic nature of events may result in that law shortfall of covering every unique set of circumstances.

33. Legal maxims such as Lex non cogit ad impossibilia the law does not compel the doing of impossibilities, recognize that where strict compliance becomes factually or legally impossible, the law provides a measure of excuse rather than rigid adherence. Courts and legal framework use interpretation as a tool to apply the law to new facts, ensuring that the spirit of legislation remains relevant despite the absence of explicit statutory language for every eventuality. In **Binani Zinc Limited Vs. Kerala State Electricity Board and others, (2009) 11 SCC 244**, Hon′ble Supreme Court in paragraph no. 35 has observed that it is also a well-settled principle of law that a statute

does not envisage doing anything which is impossible to be done. Lex non cogit ad impossibilia gausa ommiss gausa ommiss is a well-known principle.

34. Therefore, when law imposes a duty, it will not insist on performance if compliance has become objectively impossible rather than merely difficulty or inconvenience. Impossibility here may be physical (for example, destruction of subject matter), legal (a subsequent change in law making performance unlawful), or factual to such a degree that a reasonable person in the same situation could not perform the obligation. The burden to show that impossibility arose, is on the person who seeks benefit of said legal maxim.

35. The law does not require an impossibility, for instance the accused cannot be produced before Magistrate if he is seriously ill and not in a position to be produced before Magistrate or where accused is required to be produced before two courts at the same time at different places or where curfew is imposed and accused person cannot be produced without infraction of law or where the accused refuse to go to the court. There may be other instances where the accused cannot be produced for reasonable cause.

36. In **Raj Narain Vs. Superintendent, Central Jail, New Delhi, AIR 1971 SC 178** a Constitutional Bench of Seven Judges of Hon′ble Supreme Court by majority held that law does not contemplate an impossibility and as such non production of accused in the event of impossibility will not vitiate the remand order. In this respect, paragraph no. 8 of the said judgment is quoted hereunder:-

*"**8** ....To expect the Magistrate to do more under Sec. 344 of the Code in such circumstances is to expect an impossibility from him and the law does not contemplate an impossibility. Indeed, similarly courts trying cases may find it necessary to order a remand in the absence of an accused, e. g. when an accused is so seriously ill that the trial has to be adjourned and he cannot be brought to court and in such case the order made without production of accused in court will not be invalid.″*

37. In **Gouri Shankar Jha (supra)**, Hon′ble Supreme Court while referring to **Raj Narain (supra)** has held that where in the circumstances it is not possible to produce accused before Magistrate, order of remand will not be vitiated. In this respect, paragraph no. 7 of **Gouri Shankar Jha (supra)** is quoted hereinbelow: -

"7. The report, which was before the High Court, clearly pointed out that the appellant was remanded to jail custody, on February 21, 1968 by the Sub-Divisional Magistrate, Sadar in the case under Section 395 of the Penal Code. The next date for his appearance was fixed on March 5, 1968, but the appellant refused to go to the Magistrate's Court on that day as also on March 20, 1968 and April 4, 1968, on the ground that the identification parade for him had not yet been held and his going to and appearing in the Court would expose him to possible witnesses. The Magistrate, therefore, had to postpone his production before him to April 18, 1968 when the appellant was produced and once again remanded to jail custody till the next date, that is, May 2, 1968. The report of the jail Superintendent, thus, frankly conceded mat that the appellant could not be produced on the dates above, stated and that the Magistrate, therefore, had to pass remand

orders in his absence. It is clear from the report that the appellant himself had refused to appear and be present before the Magistrate when he heard the remand applications. He, therefore, cannot legitimately make a grievance that those orders were passed in his absence. Those orders could be passed validly in his absence if his presence at the time could not be secured. This has been held by the majority judgment of this court recently in Raj Narain v. Superintendent, Central Jail, New Delhi. Writ Petition No. 330 of 1970, dec. on September 1, 1970.″

38. In **Sandip Kumar Dey (supra)** the Hon′ble Supreme Court has held that non-production of accused will not vitiate an order of remand, the Magistrate passing an order of remand ought, as far as possible, to see that the accused is produced in the court when the order of remand is passed. In this respect, paragraph no. 4 of said judgment is quoted hereinbelow:-

*"**4**. The counter affidavit filed on behalf of the respondents is not clear on the question whether the petitioner was produced before the Magistrate when the various orders of remand were passed and therefore we asked the respondents' counsel to furnish to us a copy of the proceedings of the Magistrate's court at Jamshedpur. Those proceedings also do not indicate clearly whether the petitioner was produced before the Magistrate when the remand orders were passed. This is a highly unsatisfactory state of affairs and must be deprecated. Orders of remand ought not to be passed mechanically and even though this Court has ruled that the non-production of the accused will not vitiate an order of remand, the Magistrate passing an order of remand ought, as far as possible, to see that the accused is produced in the court when the order of remand is passed. It appears from the proceedings that the accused was transferred to Gaya jail partly for reasons of security and that is why he could not be produced in the Jamshedpur court which passed the various orders of remand.″*

39. In **Ramesh Kumar Ravi (supra)**, the Full Bench of Hon′ble Patna High Court has held that if it is impossible to produce the accused, the non-production of accused will not invalidate the remand order. In this respect, paragraph nos.14, 17 and 19 of the aforesaid judgment is quoted hereinbelow:-

"14. However, whilst holding so one cannot possibly go to the other extreme and accept the doctrinaire stand that the absence of the physical production of an accused person would vitiate the order of remand incurably. If it is physically impossible to produce the accused in person then his mere non-production would not render his remand to further custody illegal. The wholesome provisions of the Code requiring physical production have to be viewed reasonably and not to an impossibly logical extreme. One example which inevitably comes to one's mind is where the accused person himself may be not in a position to be produced before the Magistrate-he may be mortally injured or grievously ill and lying in hospital. The law would not and cannot possibly require that he must nevertheless be produced in person before the Magistrate even to his detriment and danger to his very life. Cases are not lacking where an accused person charged with many offences may have to be produced on a particular date in two different courts at two different places. It is obvious that by no magic can he be physically produced at both the places at the same time. There may be many other factors which may hinder or even bar the actual physical production of the accused. In the somewhat turbulent times through which we are passing a patent one is where a curfew is imposed and the accused person cannot possibly be carried to the venue of

the Magistrate's Court without infracting the law Examples of this nature can be multiplied ad infinitum and it is somewhat unnecessary to labour the obvious.

17. It is true that the aforesaid binding decisions of their Lordships were rendered under the old Code and the provisions of the present Section 167 are not in pari materia with Section 167 of the old Code. However, this, to my mind is a distinction without any difference. The core of the rationale of the judgments aforesaid is that the law does not contemplate an impossibility and it is vain to expect the impossible from the police or the prosecution by producing the accused in person if the circumstances for his non-production are beyond their control. That logic and reasoning, to my mind, is equally applicable and attracted to the provisions of Section 167 of the present Code. Equally it has to be borne in mind that some, if not all, of the aforesaid judgments were rendered under Section 344 of the old Code which corresponds to Section 309 of the present one. Therein no significant change, has been made with regard to this issue in the law. I am, therefore, of the view that the judgments of the Supreme Court rendered under the old Code on this point continue to be applicable mutatis mutandis under the present Code as well and the attempt to distinguish them is vain and untenable. It must also be recalled that within this jurisdiction the Division Bench in 1986 Pat LJR 854, (Mishri Singh v. The State of Bihar) had already taken the same view. It is true that the specific point regarding the provisions of the old Code was not raised and considered but the ratio of the said judgment was applied in the context of the new Code and the same is hereby affirmed.

19. To finally concludeon this aspect the answer under question No. (ii) is rendered in the negative. It is held that though physical production of the accused before the Magistrate is desirable, yet the failure to do so would not per se vitiate the order of remand if the circumstances for non-production were beyond the control of the prosecution or the police.″

40. It is further to be noted that law does not contemplate default bail or release of accused in the event of non-production of accused before the court concerned (as is the case under Section 187(3) of BNSS, 2023) at the time of extension of judicial custody. The question of validity of remand (to judicial custody) of accused by court concerned without production of accused is to be examined in facts and circumstances of each case in the light of impossibility.

41. In **Kurra Dasaratha Ramaiah (supra)**, the Full Bench of Andhra Pradesh High Court has examined the question whether non availability of police escort constitutes a valid ground for extending the period of remand of an accused person by a Magistrate. The learned Full Bench of Andhra Pradesh High Court has observed and held as under:-

*"**16**. The change brought about in the new Code by the incorporation of Proviso (b) to S. 167 obligating that no Magistrate shall authorise detention in any custody under S. 167 unless the accused is produced before him, in our view, does not automatically empower the Magistrate to release the accused in bail. Despite the mandatory language in which S. 167 is couched, the Section does not direct the Magistrate to release the accused with or without conditions, unlike the mandate contained in Proviso (a) under which the failure of the police to complete the investigation within sixty days or ninety days, as the case may be, imposes an obligation on the Magistrate to release the accused on bail if the accused is, "prepared to and does not furnish bail," with a consequential declaration that such release shall be deemed to be a release under the provisions of Chapter XXXIII for the purposes of that Chapter.*

17. The absence of a mandatory requirement obligating the Magistrate to release the accused for non-compliance of S. 167 cannot be overlooked. If an enactment imposes conditions which are to be construed as conditions precedent for the exercise of power, if compliance with these conditions is impossible, the enactment has to be construed as dispensing with compliance with such conditions. (see Maxwell on Interpretation of Statutes XII Edition, p. 326). The negative languageemployed in S. 167 coupled with the absence of conferral of a right on the accused to seek release for non-compliance with the condition, will not in all circumstances invalidate the order passed by the Magistrate in breach of S. 167.

22. We agree with the view of the Division Bench in Dharman case 1991 (1) Andh LT 315 (supra) to the extent it held :

"……. It is always open to either the prosecuting agency or the jail authority to put forward a plea of impossibility of production of an accused person before the learned Magistrate and if the learned Magistrate is satisfied that the plea is well founded, he may, for special reasons to be recorded in writing, extend the remand or the accused person even without his production. (p. 333)

With great respect to the learned judges, we express our inability, for the reasons already stated, to agree with the view that:
Non-availability of escorts for non-production of the accused person hardly constitutes a ground for infraction of the mandatory requirement of section 167 of the Code of Criminal Procedure". (p 333)

Our disagreement does not mean, as we have already explained, that the prosecution can always take the plea of nonavailability of escort for non production of the accused and the Magistrate is bound to accept that plea and pass an order extending the period of remand. The Magistrate must be satisfied that as a fact escort personnel were not available and so could not be provided for reasons beyond the control of the police or jail authorities. There may be cases where it may not be possible for the police or jail authorities to spare escort personnel for production of the accused; grave law and order situations necessitating diversion of the entire police force for that purpose are not uncommon contemporary phenomena. Natural disasters may some times compel the Government or District Administration to divert the police force to render help to the victims or to engage in salvaging operations. Communal riots, group clashes and intercaste feuds threatening the even tempo of the society are no longer rare occurences. It is not possible to enumerate instances or causes resulting in non-availability of escort personnel for production of the accused before a Magistrate under S 167. Therefore non-availability of police escort is a valid ground for non-production of the accused before the Magistrate for extending remand under S 167, CrPC, provided there are justifiable causes for such non-availability of escort.

23. Whenever it is not possible to produce an accused before the Magistrate, the concerned Investigating Officer or any other responsible Police Officer in charge of the case or the jail Superintendent shall file a detailed report before the Magistrate explaining the circumstances under which it was not possible to produce the accused on that particular day. If the Magistrate is satisfied after going through the report, he may dispense with the production of the accused and pass appropriate orders under S 167, CrPC, as to the detention of the accused. The Magistrate should not pass an order in this regard mechanically in a routine manner: the order should be a well considered reasoned one. If the Magistrate has reason to believe that the report filed as to the

non-availability of the police escort contains incorrect facts, he shall initiate action in accordance with law against the officer who filed the report."

42. The reason assigned by the respondents for non-production of accused before court concerned on date of passing of impugned order dated 16.4.2026 is non-availability of police force on account of prevailing law and order situation. Further, court concerned has also reported that communication with regard to non-availability of the police force was received by District Judge, Ghaziabad from the police authorities. It is further to be noted that in respect of appearance of the accused-petitioner through video conference is concerned, stand of respondents as well as the report of court concerned would indicate that due to technical error connection with the jail authorities through video and audio could not be made. The aforesaid reasons have been stated in the counter affidavit and in the report of court concerned. The report of court concerned was read-over by learned counsel for petitioner with permission of this Court at the time of hearing. Learned counsel for petitioner has not factually disputed the reasons assigned by respondents and report of court concerned. The submission of learned counsel for petitioner-accused is to the effect that since production of accused before court concerned is mandatory in view of law laid down by Hon'ble Supreme Court in Jigar Alias Jimmy (supra) and as such impugned order of extension of remand of petitioner-accused stands vitiated and as such petitioner is entitled to be released under law.

43. The law of impossibility is rooted in justice, encircled by maxims "lex non cogit ad impossibilla" meaning the law does not compel a man to do what he cannot possibly perform and "impossibilium nulla obligatio est" - there is no obligation to do the impossible.

44. The Hon'ble Supreme Court **in State of Madhya Pradesh Vs. Narmada Bachao Andolan and another, (2011) 7 SCC 639**, a Three Judges Bench has considered the effect of Doctrine of Impossibility in respect of duty imposed by statue law and has observed as under:-

"39. The court has to consider and understand the scope of application of the doctrines of lex non cogit ad impossibilia (the law does not compel a man to do what he cannot possibly perform); impossibilium nulla obligatio est (the law does not expect a party to do the impossible); and impotentia excusat legem in the qualified sense that there is a necessary or invincible disability to perform the mandatory part of the law or to forbear the prohibitory. These maxims are akin to the maxim of Roman law nemo tenetur ad impossibilia (no one is bound to do an impossibility) which is derived from common sense and natural equity and has been adopted and applied in law from time immemorial. Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. (Vide Chandra Kishore Jha v. Mahavir Prasad [(1999) 8 SCC 266 : AIR 1999 SC 3558] , Hira Tikkoo v. UT, Chandigarh [(2004) 6 SCC 765 : AIR 2004 SC 3649] and HUDA v. Dr. Babeswar Kanhar [(2005) 1 SCC 191 : AIR 2005 SC 1491] .)

40. Thus, where the law creates a duty or charge, and the party is disabled to perform it, without any fault on his part, and has no control over it, the law will in general excuse him. Even in such a circumstance, the statutory provision is not denuded of its mandatory character because of the supervening impossibility caused therein."

45. It is submitted by learned counsel for petitioner that even otherwise, explanation or excuse offered by respondents in counter affidavit for non-production of petitioner-accused before court concerned on the date of passing of impugned order dated 16.4.2026 (extension of judicial remand of petitioner), said reasons/excuse does not find mentioned in the impugned order and as such any external explanation that is subsequently introduced would not in any manner revive an illegal remand order. Section 187(4) of BNSS, 2023 does not address the eventuality which has arisen in the present case nor there is any provision in BNSS, 2023 which provides for submission of report before court concerned for non-production of accused, the law is silent on this aspect. The State has submitted letter dated 16.4.2026 before the learned District Judge, Ghaziabad with regard to non-availability of police force, aforesaid letter has been directed to be circulated as per order of District Judge, Ghaziabad. The reference of letter of D.C.P. Lines also find reference in the report dated 11.5.2026 of court concerned submitted before this Court. In view of aforesaid, factual foundation for non-production of accused before court concerned was available at the time of passing of impugned order. The court concerned has also recorded in the impugned order that accused is not present. It is true that impugned order does not record reasons for non-production of petitioner-accused before the court concerned, however, this Court is of considered view that if the impugned order does not record reason for non-production, although reason were communicated to court concerned at the time of passing of impugned order, then impugned order cannot be said to be vitiated and this Court can always examine the sufficiency of reasons in exercise of supervisory jurisdiction.

46. It is not in dispute between the parties that learned counsel for petitioner-accused was present before court concerned on 16.4.2026. The purpose of presence of accused before court at the time of extension of judicial custody is that the accused has a right to oppose the extension of remand. Once counsel for petitioner-accused was present before court concerned and have already opposed extension of remand as has been recorded in the impugned order, then it is imperative to show that prejudice is caused to the petitioner-accused or there is infringement of any right of petitioner-accused. Before this Court no such prejudice to the accused-petitioner has been shown by learned counsel for petitioner except that Section 187(4) of BNSS, 2023 has been violated. The aforesaid violation is excusable in terms of Doctrine of Impossibility and as such may not vitiate remand extension order.

47. The reliance placed by learned counsel for petitioner upon judgment of Hon′ble Supreme Court in **Jigar Alias Jimmy (supra)** may not be applicable in the facts and circumstances of present case. In **Jigar Alias Jimmy (supra)** in paragraph nos. 48 and 49, Hon′ble Supreme Court has noticed that due to Covid-19 accused in that case could not be produced physically before the Court. However, the Hon′ble Supreme Court in said case found that there was no material to show that there was any technical difficulty/reasons which prevented the prosecution from producing the accused through video conference. Further, in the aforesaid case, Hon′ble Supreme Court found that right of accused to default bail after completion of 90 days was violated. In the present case, the question of default bail has not arisen as 60 days have not been completed in the present case on the date when impugned order was passed. Further, counsel for petitioner-accused was present before court concerned at the time of passing of impugned order and aforesaid counsel has objected to extension of judicial custody of petitioner-accused. It has not been shown before this Court that any right of petitioner-accused including right for default bail has been infringed on the date of

passing of impugned order. It is further to be noted as per learned AGA for the State on account of prevailing circumstances on the date of impugned order, no prisoner could be produced before the District Court, Ghaziabad.

48. In view of the fact that police force was not available with respondents in order to produce the accused in person before the court concerned on the date when the impugned order was passed coupled with the fact that as per learned AGA for the State that no accused person could be produced on 16.4.2026 before the court at Ghaziabad on account of circumstances hereinabove narrated, non-availability of police escort is therefore a valid ground for non-production of petitioner-accused before court concerned while extending judicial custody of petitioner-accused. Further, a report dated 11.5.2026 of court concerned also states that connectivity through video-conference also could not be made on account of technical error which learned counsel for petitioner could not dispute.

49. The aforesaid facts and circumstances come within the Doctrine of Impossibility and as such non-presence of accused can be stated to be sufficient ground.

50. In view of the facts, circumstances and reasoning stated hereinabove, the present petition under Article 227 of Constitution lacks merit and is hereby **dismissed**.

(2026) 5 ILRA 1424
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.05.2026

BEFORE

THE HON'BLE KSHITIJ SHAILENDRA, J.

Matters Under Article 227 No. 6472 of 2023

Kamlesh Singh **...Petitioner**
Versus
Pushpendra Singh & Ors. **...Respondents**

Issue for Consideration

Engrossment of final decree of partition on stamp papers

Head Notes

The Constitution of India, 1950-Article 227; The Code of Civil Procedure, 1908- Order XXVI Rule 14(3); The Indian Stamp Act, 1899- Sections 2 (15), 3(a), 29(g) & 35; The Limitation Act, 1963- Article 136 & 137- The obligation to engross a final decree for partition on non-judicial stamp paper is a post-adjudicatory fiscal incident arising from the transformation of a declaratory decree into an executable instrument of partition and bears no juristic or fiscal correlation with the levy or sufficiency of court fees at any stage of the suit or its execution. In partition suits, when a preliminary decree is passed declaring shares of parties, no instrument of partition comes into existence at that stage, hence no stamp duty is attracted. The final decree effecting actual division, embodies partition and has been treated in law as akin to an "instrument of partition". Consequently, it may require stamp duty under the Stamp Act at the stage of

engrossment. Therefore, if any one or more of the defendants whose shares have been declared, seek to have their respective portions separated on the spot, they are under statutory obligation to deposit the requisite court fees in accordance with law. The requirement of engrossment on stamp paper being a separate and independent aspect, cannot be intermixed or confused with the issue of deposit or non-deposit of court fees.

The Court may go even to the extent where the limitation of execution of the decree expires and the application for engrossment is moved thereafter. In that event, the executing court may be within its competence to dismiss the execution application as barred by limitation, however, in so far as the application for engrossment of the decree on stamp paper is concerned, the same being an independent aspect, the application can still be allowed and the decree can be engrossed. In such an event, execution may not materialize on account of it having become barred by limitation, nevertheless, for the purposes of admissibility of a partition decree in evidence as per Section 35 of the Act, 1899 read with any other provision of law, an engrossed decree would become admissible in evidence and the parties may utilize it for any purpose.

Held- That shares of the parties other than plaintiff and defendant no. 1, were also declared under the final decree as per the Commissioner's report 11-Ga that was made part thereof, and their attempt to get the decree engrossed on stamp papers did not suffer from any factual or legal bar and the application moved for that purpose was well within limitation. **Petition dismissed**. (E-15)

(Para 25, 35 & 37)

Case Law Cited

Chiranji Lal (D) by L.R's Vs. Hari Das (D) by L.R's: (2005) 10 SCC 746; The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma: (1976) 4 SCC 634;

List of Acts

The Constitution of India, 1950; The Code of Civil Procedure, 1908; The Limitation Act, 1963; The Indian Stamp Act, 1899

List of Keywords

Engrossment of decree; On Stamp Paper; Separate Issue; Cannot be intermixed with deposit or non-deposit of court fees; Transformation; Declaratory decree into an executable instrument

Case Arising From

This petition under Article 227 of the Constitution of India raises challenge to an order dated 05.05.2023, whereby the learned Additional District and Sessions Judge, Court No. 1, Mainpuri, (A.D.J.) has allowed an application filed by the respondents seeking engrossment of a final decree dated 23.04.1984 on non-judicial stamp papers.

Appearances for Parties

Counsel for Petitioner(s) : Atul Kumar Srivastava, Ramendra Asthana, Shreyas Srivastava
Counsel for Respondent(s) : Abhijit Mishra, Abhishek Kumar, Akhilesh Tripathi, Kalpana Sinha

(Delivered by Hon'ble Kshitij Shailendra, J.)

ISSUE INVOLVED: ENGROSSMENT OF FINAL DECREE OF PARTITION ON STAMP PAPERS: CONCEPT, APPLICABILITY AND LIMITATION

1. Heard Shri Shreyas Srivastava, learned counsel for the petitioner and Shri Abhishek Kumar, learned counsel for the contesting respondents.

2. This petition under Article 227 of the Constitution of India raises challenge to an order dated 05.05.2023, whereby the learned Additional District and Sessions Judge, Court No. 1, Mainpuri, (A.D.J.) has allowed an application filed by the respondents seeking engrossment of a final decree dated 23.04.1984 on non-judicial stamp papers.

BRIEF FACTS

3. In a suit for partition, being O.S. No. 68 of 1972, parties entered into a compromise and, based thereupon, a preliminary decree was drawn on 16.07.1980. Thereafter, the plaintiff and defendant no. 1 applied for preparation of joint Kurra and paid requisite court fees. Final decree was drawn on 23.04.1984 wherein the share of plaintiff and defendant no. 1 was determined as 11/24 and collective share of remaining defendants No. 2 and 4 to 9 was determined as 13/24.

4. Pursuant to an application filed by some of the defendants other than the defendant no. 1, the order impugned dated 05.05.2023 was passed permitting engrossment of final decree on non-judicial stamp papers.

SUBMISSIONS ON BEHALF OF THE PETITIONER

5. Learned counsel for the petitioner has advanced following submissions:-

(i) The final decree was drawn only in relation to plaintiff and defendant no. 1, no decree was drawn in favour of remaining defendants and, therefore, they had no right to get engrossment of the decree on stamp papers.

(ii) The First Appeal No. 407 of 1982 filed by the remaining defendants challenging the final decree was dismissed by this Court on merits by order dated 14.12.2012 and, therefore, non-declaration of their shares attained finality, however, the said aspect has been ignored by the learned A.D.J.

(iii) A Commissioner was appointed by the trial court and, in terms of Order XXVI Rule 14 CPC, a report was prepared by him proposing a partition scheme wherein only two kurras had been carved out, first, pink kurra (wrongly mentioned as red colour in first appellate court′s judgment) belonging to the plaintiff and the defendant no. 1 and, second, green kurra (jointly co-owned) belonging to remaining non-desirous defendants no. 2 and 4 to 9 and once the final decree was drawn solely and explicitly in favour of the plaintiff and defendant no. 1, the same has to be read as it is and, therefore, permitting engrossment of the said decree at the instance of third parties, was not permissible.

(iv) There was no mention of the joint green kurra of other non-desirous defendants in the decree and this Court, while dismissing the first appeal, had considered specific objections of the defendants no. 6 to 9 under issue/point No. 1 holding that there is no principle in law that there could be only one final decree of partition amongst co-sharers, rather there may be more than one final decree depending upon the facts and circumstances of each case.

(v) It is indicated in the Commissioner's report that only plaintiff and defendant no. 1 had demanded partition and paid requisite court fees and, therefore, the other lot of remaining 13/24 share was to be demarcated, prepared and left out for non-desirous co-owners, i.e. defendants no. 2 and 4 to 9.

(vi) The indication made in the final decree that the same had been *'made final in terms of the Commissioner's report (11-Ga) and was made part of the said decree'*, would be read only in relation to plaintiff and defendant no. 1 qua their kurras of pink colour and not beyond that.

(vii) The remaining part of the Commissioner's report pertaining to green kurra only reported the 'proposed partition scheme' which is yet to be endorsed and converted into final decree.

(viii) The trial court had varied the Commissioner's report under Order XXVI Rule 14 (3) CPC by only handing over the pink kurra to the original plaintiff and defendant no. 1 and no other share to any other person.

(ix) Execution application filed by the non-desirous defendants seeking execution of the final decree, was not maintainable as the execution applicants are not the decree holders.

(x) The execution application was barred by limitation under Article 136 of the Schedule contained in the Limitation Act, 1963 and, as no specific period of limitation is prescribed for an application seeking engrossment of a decree on non-judicial stamp papers, Article 137 would apply to such applications and once the application was filed after seven years from the date of final decree, the same was barred by limitation.

(xi) Article 136 of the Schedule would not apply in relation to the application since the starting point of limitation is the date when the decree becomes enforceable, i.e. on the date of its passing.

(xii) The case of the contesting respondents is still at stage one, i.e. the stage of preliminary decree, as there is no final decree in their favour.

(xiii) Mere passing of a decree does not render it executable straightaway and in case of partition decree, it has to be engrossed on a non-judicial stamp paper as required under Section 29(g) read with Section 3(a) of the Indian Stamp Act, 1899 ('Stamp Act') to make it executable.

(xiv) The act of getting a final decree engrossed is an independent act solely in the control of the decree holder and the requirement of engrossment flows/arises from the Stamp Act and is not in continuation of the adjudicatory process in the partition suit.

(xv) Though engrossment is a pre-requisite for getting a decree executable, the same arises on account of distinct cause of action, i.e. for crystallizing and granting recognition to the rights, as determined.

(xvi) Though the learned A.D.J. passed an order dated 23.04.1981 that a separate misc. case be registered, the same was never filed by the non-desirous defendants and even the liberty granted by the High Court in the judgment dismissing the First Appeal No. 407 of 1982 whereby it was left open to the appellants (non-desirous defendants) to pursue their applications for separation of their kurras, was not availed by them.

6. In support of his submissions, he has placed reliance on **Shankar Balwant Lokhande (Dead) by LR′s Vs. Chandrakant Shankar Lokhande: (1995) 3 SCC 413; Hameed Joharan (D) and others Vs. Abdul Salam (D) by L.R′s and others: (2001) 7 SCC 573; Chiranji Lal (D) by L.R′s Vs. Hari Das (D) by L.R′s: (2005) 10 SCC 746;** and **The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma: (1976) 4 SCC 634.**

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

7. Per contra, learned counsel for the respondents has advanced following submissions:-

(i) Once the final decree dated 23.04.1982 indicates that the decree be made final in terms of the Commissioner′s report (11- Ga), which shall form part of the decree and, in the said report, shares of other defendants were also declared vide paragraphs no. 6 to 27 and 30, it cannot be said that the decree was drawn only in favour of plaintiff and defendant no. 1 to the exclusion of remaining defendants.

(ii) The engrossment of a decree on non-judicial stamp papers, being in furtherance of the decree and forming part of its executability, limitation would be 12 years as per Article 136 of the Schedule contained in the Limitation Act and since the decree was drawn in the year 2012, limitation would be available till 2024 and, therefore, the application having been moved in 2019 was well within the period of limitation.

(iii) Non-payment of court fees by the defendants other than plaintiff and defendant no. 1, cannot be fatal to the claim of the respondents as they can always pay court fees upto final stage of execution as and when an order to that effect is passed by the Executing Court and, therefore, mere indication in Commissioner′s report that only plaintiff and defendant no. 1 had paid court fees, would not mean that the remaining defendants have lost their claim under the decree.

(iv) The liberty granted under the order passed by this Court in First Appeal, was availed in terms of filing of Misc. Case No. 41 of 2019 whereby prayer to draw final decree and its engrossment on stamp papers was made after depositing the stamp according to their share and, therefore, all the requirements, either factual or legal, stood fulfilled.

8. In support of his submissions, he has placed reliance on Gajanan Vs. Pralhad: Civil Appeal No. 3524 of 2026 arising out of SLP (Civil) No. 20405 of 2025), decided on 18.03.2026; and Hameed Joharan (D) and others Vs. Abdul Salam (D) by L.R′s and others: (2001) 7 SCC 573;

DISCUSSION

9. I have considered the submissions made and have perused the material available on record.

(a) The application:

10. First of all, the Court deems it appropriate to refer to the very nature of Misc. Application No. 41 of 2019 filed on behalf of the respondents. The entire application reads as under:-

"1- That OS No. 68/1972 Kunwar Pushpendra Singh Kama (Dead) Vs. Kunwar Harnam Singh Moti Singh Moti Sing (Dead) Others was filed for partition of immovable properties lying in Mumbai & Mainpuri. It was decided and Preliminary decree was passed.

2-That after passing of Preliminary decree the plaintiff decree the plaintiff applied for final decree and a commissioner was appointed to divide the disputed properties by metes and bounds and two Kura were made. One Kura was given to the applicants and the other one was given to opposite parties. On the bases of the said commissioner report a final decree was passed on 23.04.1982.

3- That against the said final decree dated 23.04.1982, first appeal bearing No. 407/1982 Ishwar Singh and others Vs. Pushpendra Singh and others was filed before Hon'ble Allahabad High Court, which was finally decided on 14.12.2012 and the appeal was dismissed.

4- That the against the order dated 14.12.2012 pass by Hon'ble Allahabad High Court, the appellant filed Special Leave Petition bearing no. 19626 of 2013 Ishwar Singh and others Vs. Pushpendra Singh Kama and others before Hon'ble Supreme Court of India, which decided on 15.11.2016. Hence the final decree became final on 15.11.2016.

5- That the trial court or any other court has not passed any order regarding the stamping of final decree, hence the final decree passed in favour of the applicant's could not be stamped nor was the final decree drawn up and engrossed on stamp papers.

6- That the applicants are having 54.4% share in the disputed properties as per the Preliminary as well as final decree. As per the valuation of plaintiff applicants are submitting the stamp according to their share is 54.4% is valuations of disputed property in the plaint is Rs. 74000/- hence the valid applicants share in 54.4% is 42256/-. The applicants are submit the stamp of 1/4th amount of their share as per court fees act i.e. Rs. 1195/-.

7- That now the applicant's have deposited the stamp, hence the final decree made in favour of applicants and it be drawn up on stamp papers. ON the Hon'ble Court may assess the assessment of stamp and order accordingly. The applicants are ready and willing to depositing the stamp as ordered by the court.

It is, therefore, prayed that final decree be made in favour of applicants and it be drawn up and engrossed on the stamp papers submitted by the applicants or the amount of stamp on which final decree in favour of applicant be ascertained and the applicants be allowed to submit the ascertained stamps and thereafter, the final decree in favour of the applicant's be drawn up and engrossed on stamp papers."

(b) The decree :

11. The nature of partition decree passed and determination or non-determination of shares of the parties, being of significance, it would also be appropriate to make reference of the operative portion of the final decree, which reads as under:-

"Let the decree be made final in terms of Commissioner's report (11 Ga) which shall form part of the decree,

Plaintiff and Defendant No. 1 will get Qura of Pink Colour as shown in Maps No. 1 to 5 and plaintiff and Defendant No. 1 will get following Compensation as under:-

Rs. 43000/- vide para 23, 24, & 29 and Chart No. 3 of report commission
Rs. 5500/- Vide para No. 35 of Shri M.C. Jain Adv.
Rs. 23000/- Vide para No. 36,
Rs. 5361/- Vide para No. 38
Rs. 1000/- Vide para No. 39

Rs. 77861/-

(c) Commissioner's report (11-Ga)

…….

6. It may be mentioned here that the plff. Kr. Pushpendra Singh and Kr. Harnam Singh deft. No. 1 had only demanded partition and said requisite court fee for preparation of their loss. In view of their aforesaid statement recorded on paper marked Annexure 1 one combined lot of 11/24 share was to be prepared for them **and the other lot of remaining 13/24 share was to be demarcated, prepared and left out for other Non-desirous remaining co-owners deftts. 2, 4 5 and 6 to 9** moreover, only two immovable properties described in item No. I of schedule A of the plaint (vide statement recorded in Annexure 2) and **schedule B of the plaint were to be considered for such a partition.**

25. Thus finally the following scheme for partition of Immovable and Movable Properties is submitted in the above noted case:

Immovable Properties

26. That the Lal Singh building Bombay be divided into two lots or parts or sub-divisions 'G' and 'P' as shown in my sub-division plans map No.1 to 4 attached herewith. The southern sub-division 'G' shown by green colouring in map No. 2 to 4 south of the dividing red line will be given to Kr. Ganga Singh & others defendants No. 2, 4, 5 and 6 to 9 and they shall be entitled to get exclusive possession over the 16 shops, 1 Godown, 4 wooden stalls, 51 rooms, 15 W.Cs. 10 Bathrooms, 1 stair one lift, one well with water pump as detailed in Chart II. The dividing red line shown by JKLMNR in my Map No. 2 has been so selected it passes in such a way just at the places where generally the walls exist. It also divides the building vertically upwards as is clear from map No.2 to 4.

27. Similarly the Northern sub-division 'P' shown by pink colouring in my maps No. 2 to 4 north of the red dividing line will be given to Kr. Harnam Singh Deft. No. 1 and Kr. Pushpendra Singh Plff. and they shall be entitled to get exclusive possession over 11 Shops, 4 Godowns, 31 Rooms, 15W.Cs. 10 Bathrooms and one stair case as detailed in Chart II. This

lot or sub-plot P or sub-divided Pink coloured portion will be owned and possessed by Kr. Harnam Singh Deft. No. 1 and Kr. Pushpendra Singh plff.

30. That the immovable property situated at Gola Bazar Mainpuri Civil Lines, Mainpuri detailed in item No. 1 of Schedule A of the plaint has also been divided into two sub-divided into two sub-divisions of 11/24 and 13/24 shares. The green coloured portion situated towards the north of the dividing red lines X Y in Map No. 5 will be given to Kr. Ganga Singh & others Deft. No. 2,4,5 and 6 to 9 and they will be entitled to get exclusive possession over the green coloured portion. The building and trees standing on this portion shall go with the land and green coloured portion. The valuation given in Chart IV is inclusive of the values of building and trees. The area and valuation of this green coloured portion according to chart IV works out to be the same as 13/24 share of the whole area and valuation of the whole plot.

12. Since learned counsel for the petitioner has argued that making Commissioner's report (11-Ga) as part of the decree would fall within the contours of Order XXVI Rule 14 (3) CPC where the Court can vary the decree in terms of the report, the provision is reproduced as under:-

"14. Procedure of Commissioner.- (1) ...

(2) ……...

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit."

13. In view of the very fact that Commissioner's report (11-Ga) describes shares of not only the plaintiff and defendant no. 1 but also of remaining defendants, submissions made that shares of no other party except plaintiff and defendant no. 1 was declared, runs contrary to the stipulations made in the Commissioner's report (11-Ga) and, hence, the arguments on that line fall. The indications made are actual determination of the shares, may be termed as scheme for partition and cannot be ignored after reading the entire report. As a matter of fact, the entire report (11-Ga) could not be quoted in the decree, hence it was made part thereof and the indications made therein as regards court fees etc have their own significance independent of declaration of shares which has to be read as it is. As to other aspects, law would take its own recourse.

(d) Stamp Act:

14. Now the question falls for consideration is as to what is the significance of stamping a partition decree and, if not stamped, what is its status. For the said purpose, reference of certain provisions of the Stamp Act is required to be made. Sections 2(15), 3(a) and 29 (g) of the same provide as under:-

"2(15) "Instrument of partition".- "instrument of partition" means any instrument where by co-owners of any property divide or agree to divide such property in severalty, **and includes also a final order for effecting a partition passed by any Revenue-authority or any Civil Court** and an award by an arbitrator directing a partition:"

3. Instruments chargeable with duty. -Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore respectively, that is to say-

(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;

"29. Duties by whom payable. -In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne –

.....

by the person drawing, making or executing such instrument:

……

(g) **in the case of an instrument of partition**-by the parties thereto in proportion to their respective shares in the whole property partitioned, or, **when the partition is made in execution of an order passed by a Revenue-authority or Civil Court or arbitrator, in such proportion as such authority, Court or arbitrator directs."**

15. From the above-referred provisions, it can safely be understood that a final decree of partition is an instrument chargeable with stamp duty and liability to pay the stamp duty lies on the parties in proportion to their respective shares as determined by the Civil Court. Therefore, once this Court has found that shares of various parties were determined under the final decree, the Commissioner′s report (11-Ga) was part whereof, if the application for engrossment of the partition decree was moved by anyone or more of the parties to the suit, no error is found in the said action and it cannot be accepted that it was the decree drawn only in favour of the parties other than those who had applied for its engrossment on stamp papers. The Court may also observe that had the application for engrossment of the decree not been moved or had the decree not been engrossed thereon, it would have become inadmissible in evidence and, in this regard, reference can be made to Section 35 of the Act, 1899, which reads as under:-

"35. Instruments not duly stamped inadmissible in evidence, etc. - No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, **unless such instrument is duly stamped :**

.....

(e) Effect of dismissal of First Appeal:

16. Now arises the question as to what would be the effect of dismissal of First Appeal by this Court against the final decree. Much emphasis has been laid on the findings recorded by this Court while dismissing the First Appeal. Relevant portions of the order referred to by learned counsel for the petitioner read as under:-

"No principle of law or precedent was placed before me to show that it necessarily requires that there can only be one final decree of partition amongst the co sharers. On the contrary, law is that there may be more than one final decrees of partition, depending upon the facts and

circumstances of each case. It was plaintiff Kunwar Pushpendra Singh who insisted for carving out of his share separately, it is he who filed the suit for partition. It is true that in a suit for partition, everybody is plaintiff and defendant but the fact remains that every possible attempt was made by Ganga Singh (defendant no. 2) and his sons who are appellants herein to forestall the partition proceedings. It is matter of record. The court below has committed no error if the share of the plaintiff with the consent of the defendant no. I have been jointly carved out to the exclusion of other co sharers.

……...

Strangely enough, he went a step ahead in advancing the argument while criticizing the Commissioner's report that the Commissioner should have carved out the quras of the plaintiff and defendant no.1 also. The said argument was advanced with a view to confuse the issue and is not available to him in view of the fact that the defendant no.1 and the plaintiff consciously agreed that they may be allotted a joint qura. What possible objection could the appellants have to such arrangement, it is difficult to understand.

To conclude, there is no merit in the aforesaid submissions of the learned counsel for the appellants. **It shall be open to the appellants who have already applied for separation of their quras to pursue their applications, filed earlier, for carvation of their quras which will be done, by the court below.**

17. In the opinion of the Court, the observations made by this Court cannot be read in the manner so as to oust the respondents from the scene and once observation was made that there may be more than one final decree of partition and the share of the plaintiff with the consent of defendant no. 1 was jointly carved out to the exclusion of other co-sharers, the same does not mean that no share at all of remaining defendants was declared. The finding has to be read only as regards jointness of the shares of plaintiff and defendant no. 1 to the exclusion of other co-sharers and the same does not mean that other stipulations qua determination of shares of remaining defendants can be ignored, particularly when paragraphs no. 25, 26, 27 and 30 of the Commissioner′s report (11-Ga) clearly indicate the shares of the remaining defendants.

18. Further, once this Court, while deciding the First Appeal, left it open to the appellants, to pursue their applications for separation of their kurras, it would not mean that they have lost their claims to get their kurras separated. As to whether the parties other than the plaintiff and defendant no. 1 took any steps either during the course of preparation of decree or thereafter, it would be appropriate to refer an application 195-C filed by defendant no. 9 to get a separate lot on 30.11.1981 that was allowed by the learned trial court by order dated 02.12.1981 granting 15 days′ further time for depositing court fees. It is necessary to quote the application paper no. 195-C which reads under:-

प्रार्थना पत्र बाबत मुतरिब कराने कुरा मिनजानिब प्रतिवादी संख्या 9

श्रीमान् जी,

निवेदन है कि प्रार्थी को विवादित जायदाद में २/८ भाग मिला है। प्रार्थी तसफिया के आधार पर अपना कुरा अलग बनवाना चाहता है। अतः प्रार्थना है कि प्रार्थी का २/८ भाग का कुरा अलहदा बनाये आने का आदेश प्रदान किया जावे।

प्राथी कोर्ट फीस अपने कुरा की अदा करने को तैयार है।

Sd-/Illegible,
श्री ईश्वरसिंह गंगासिंह प्रतिवादी सं०9
द्वारा भी प्रेम चन्द दुबे एडवोकेट
३०-११-८१
३०-११-८१"

19. Following orders were passed on the aforesaid application:-

"It is declaratory Court fee sought to have been deposited alongwith the application.

Sd-Illegible.
30/11/81.

Heard, Allowed. Court fee may filed by 15 days further fixed.

Sd-Illegible.
2/12/81."

20. In view of the above, it can safely be observed that the defendant no. 9 not only attempted to get his share separated but he also was ready to deposit the court fees, for which, time was also granted by the Court to him and whether granting such time and availing or not availing the same would at all be relevant for the purposes of the present case, is not to be discussed as the said aspect of the matter is beyond the scope of the preset petition. However, the misc. application No. 41 of 2019 referred in paragraph No. 10 of this judgment containing composite prayer(s) is also on the same/similar lines and could not be rejected, hence, rightly allowed by the order impugned.

(f) Stamp Duty and Court fees- the conceptual distinction:

21. Learned counsel for both sides have emphasized upon deposit or non-deposit of court fees by desirous or alleged non-desirous parties to the suit and arguments were attempted to be co-related to the requirement of the engrossment of partition decree on stamp papers. It was also argued on behalf of the petitioner that since the decree was endorsed on non-judicial stamp papers, the same would not amount to deposit of court fees by all non-desirous defendants and, for this reason also, they should not have been permitted to get the decree engrossed on stamp papers. In light of such submissions, the Court deems it appropriate to articulate distinction in between the concept of stamp duty and court fees.

22. The Court ought not to conflate the requirement of engrossment of a decree on non-judicial stamp paper with the obligation to deposit court fees in a suit for partition or in any other proceeding. In fact, the requirement of engrossment under the Stamp Act emanates from the applicability of Section 3(a) read with Section 29(g) and the use of non-judicial stamp papers is entirely distinct from the use of judicial stamp papers used for payment of court fees. The two concepts, i.e., (i) stamping of an instrument under the Indian Stamp Act, 1899 and (ii) payment of court fees under the Court Fees Act, 1870 operate in distinct legal domains, serve different fiscal purposes and are governed by separate statutory schemes. Any attempt to conflate them, particularly in the context of partition decrees, leads to doctrinal error.

23. Stamp duty is a tax on instruments. Its incidence arises upon the execution of an instrument specified in Schedule I (or IA as amended by States). The charging provision is Section 3 and the liability is attracted irrespective of litigation, i.e., even outside court proceedings. It is transaction-oriented as the duty is levied on the instrument embodying a transaction (e.g., conveyance, lease, partition, settlement etc). It is concerned with validity for evidentiary and enforceability purposes. Under Section 35, as noted above, an instrument, not duly stamped, is inadmissible in evidence.

24. On the other hand, Court fee is a fee on the institution and prosecution of proceedings in a court of law. It is process-oriented, levied on plaints, written statements, appeals, applications, etc. It is a condition precedent for the court to entertain a proceeding. Its measure depends upon the nature of relief claimed (ad valorem or fixed) and not upon execution of any instrument. It has no bearing on the intrinsic validity or admissibility of a document as an "instrument." There is no statutory interdependence between the adequacy of stamp duty on an instrument and the liability to pay court fees in a civil proceeding. A document may be duly stamped but insufficiently court fee paid and another situation can be that proper court fee has been paid in litigation but instrument is unstamped/insufficiently stamped.

25. The obligation to engross a final decree for partition on non-judicial stamp paper is a post-adjudicatory fiscal incident arising from the transformation of a declaratory decree into an executable instrument of partition and bears no juristic or fiscal correlation with the levy or sufficiency of court fees at any stage of the suit or its execution. In partition suits, when a preliminary decree is passed declaring shares of parties, no instrument of partition comes into existence at that stage, hence no stamp duty is attracted. The final decree effecting actual division, embodies partition and has been treated in law as akin to an "instrument of partition". Consequently, it may require stamp duty under the Stamp Act at the stage of engrossment. Therefore, if any one or more of the defendants whose shares have been declared, seek to have their respective portions (kurras) separated on the spot, they are under statutory obligation to deposit the requisite court fees in accordance with law. The requirement of engrossment on stamp paper being a separate and independent aspect, cannot be intermixed or confused with the issue of deposit or non-deposit of court fees.

26. Accordingly, the submission that the petitioners or other alleged non-desirous defendants, having not paid the requisite court fees, would not derive any advantage out of the engrossment of the decree on non-judicial stamp papers, is not acceptable. Nothing has been brought to the notice

of the Court to suggest that the right to deposit court fees, whether during the course of execution or in exercise of the Court's power to grant further time, stands extinguished at any stage. In other words, there is no legal bar preventing the payment of deficient court fees during execution proceedings.

(g) On the question of limitation:

27. The learned A.D.J., in the order impugned, has observed that after the First Appeal was dismissed by the High Court on 14.12.2012, Special Leave Petition was filed before the Hon'ble Supreme Court that was dismissed on 15.11.2016; the application seeking engrossment was filed on 15.10.2019 and, therefore, even if three years period is computed as per Article 137 of the Schedule, the application was filed within three years from the dismissal of Special Leave Petition and, thus, was within time. As regards right of the respondents to get the decree engrossed, observation was made that since every party in a suit for partition is plaintiff and defendant, the respondents being parties to the suit and the Commissioner's report having been made part of the decree, they be allowed to get the decree engrossed.

28. As to whether the finding of the learned A.D.J. on question of limitation is correct or not, it would be appropriate to refer Articles 136 and 137 of the Schedule contained in the Limitation Act, which provide as under:-

Article 136

Description of suit	Period of limitation	Time from which period begins to run
For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.	Twelve years.	When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

Article 137

Description of suit	Period of limitation	Time from which period begins to run
Any other application for which no period of limitation is provided elsewhere in this Division.	Three years	When the right to apply accrues.

29. Article 136 of the Act of 1963 prescribes twelve years period for execution of a partition decree and arguments were also advanced as to when the decree becomes enforceable or executable. The Calcutta High Court, in the case of **Biswapati's case (supra)**, has laid down that the word **"enforceable"** should be read in its literal sense, furnishing of stamp paper is an act entirely within the domain and control of the appellant and any delay in the matter of furnishing of the same cannot possibly be said to be putting a stop to the period of limitation being run and no one can take advantage of his own wrong and that engrossment of stamp paper would undoubtedly render the decree executable but that does not mean and imply that the enforceability of the decree would remain suspended until furnishing of the stamp paper.

30. In the case of **Kerala State Electricity Board (Supra)**, it was held that the words "any other application" under Article 137 cannot be said on the principle of ejusdem generis to the applications under the Civil Procedure Code and that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court and is not confined to applications contemplated by or under the CPC.

31. In the case of **Chiranji Lal (supra)**, the Hon'ble Supreme Court has held that the engrossment of the final decree in a suit for partition would relate back to the date of the decree. The beginning of the period of limitation for executing such a decree cannot be made to depend upon date of the engrossment of such a decree on the stamp paper. The date of furnishing of stamp paper is an uncertain act within the domain, purview and control of a party.

32. It is not to be forgotten that this Court, in the present petition, is not examining the period of limitation qua execution of the final decree, rather the scope is confined to examine limited challenge to the correctness of the order on an application seeking engrossment of decree on stamp papers and, therefore, following the decision in the case of Chiranji Lal (supra), the Court finds that no date or period is fixed for furnishing stamped papers and it cannot be said that the period of limitation would begin from the date of engrossment of a decree on stamped paper.

33. Now, even if the argument of the petitioners based upon Article 137 of the Schedule is accepted as it is, words **'when the right to apply accrues'** appearing in the said Article would be of quite significance. As to when would such right to apply for engrossment of a final decree on stamp paper would arise, the Court holds that since executability/enforceability of a partition

decree is not dependent upon its engrossment on stamp papers and wherever the decree attains finality, the period of limitation for its execution starts independent of engrossment. The limitation for execution being 12 years as per Article 136, if any party moves an application at any time during subsistence of period of limitation for execution, the application would remain within time, inasmuch as **'right to apply'** would accrue and continue to remain alive at any point of time during the said period of limitation.

34. Let us consideration a hypothetical situation where, just before the end of period of limitation for execution of the decree, any party applies for engrossment of the decree on stamp papers, say for example after 11 years and 11 months of the finality attached to the decree. In such a situation, the application would still remain within time and, as soon as the said application is allowed and the decree is engrossed on stamp papers, it would become admissible in evidence as per Section 35 of the Act, 1899. As to whether engrossment would be a pre-requisite for execution or not, is totally an independent aspect of the matter as neither under the Stamp Act nor under C.P.C., it is provided that it is only when a decree is engrossed on stamp papers, the same would become executable.

35. The Court may go even to the extent where the limitation of execution of the decree expires and the application for engrossment is moved thereafter. In that event, the executing court may be within its competence to dismiss the execution application as barred by limitation, however, in so far as the application for engrossment of the decree on stamp paper is concerned, the same being an independent aspect, the application can still be allowed and the decree can be engrossed. In such an event, execution may not materialize on account of it having become barred by limitation, nevertheless, for the purposes of admissibility of a partition decree in evidence as per Section 35 of the Act, 1899 read with any other provision of law, an engrossed decree would become admissible in evidence and the parties may utilize it for any purpose. The Court need not enter into further discussion as to whether without engrossment, the decree would or would not be accepted by the executing court as admissible for the purposes of execution also and the Court, in the present case, confines its discussion mainly on the limitation of moving application for engrossment.

36. In view of the above discussion, though the learned A.D.J. has assigned different reason for holding the application within the period of limitation, this Court otherwise holds the application as within limitation and discards contrary submissions advanced on behalf of the petitioner.

CONCLUSION

37. In view of the above discussion, this Court is of the considered opinion that shares of the parties other than plaintiff and defendant no. 1, were also declared under the final decree as per the Commissioner's report 11-Ga that was made part thereof, and their attempt to get the decree engrossed on stamp papers did not suffer from any factual or legal bar and the application moved for that purpose was well within limitation.

38. At the same time, it is also observed as to what would be the fate of execution proceedings or any other proceedings pending or that may be instituted by any of the parties in furtherance of the partition decree, is altogether a different aspect and determination of issues involved in the present petition would not affect consideration of those separate proceedings by the courts concerned in accordance with law. The discussion made hereinabove is restricted and confined to the issues raised qua engrossment of final decree of partition on stamp papers and no error is found therein.

39. The present petition is, accordingly, **DISMISSED**.

Appreciation for lawyers:

40. The Court would fail in its duty if it does not place on record its deep appreciation for the remarkable assistance rendered by learned counsel for both sides. Submissions advanced by them on typical and rare issues of civil law were exhibited with precision and had great persuasive value. The arguments were based upon deep study of the factual and legal issues involved and projected in multidimensional form and, therefore, the Court records all its appreciation for Shri Shreyas Srivastava and Shri Abhishek Kumar Advocates.

(2026) 5 ILRA 1439
REVISIONAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.05.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

SCC Revision No. 52 of 2026

Shriram & Anr. **...Revisionists**
Versus
Shivsevak Sharma & Ors. **...Respondents**

Issue for Consideration

Whether the learned District Judge, Hathras rightly rejected the application under Order VII Rule 11 CPC seeking rejection of the plaint on the ground that the suit was barred by law, by virtue of the express ouster of civil court jurisdiction contained in Section 38(1) of the Act, 2021

Head Notes

The Provincial Small Cause Courts Act, 1887- Section 25; The Code of Civil Procedure, 1908- Order VII Rule 11; The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021- Section 1(3), 4, 9 & 38(1)- The plaint, on a plain reading of its own averments, acknowledges the applicability of U.P. Act No.16 of 2021 to the subject premises. The respondent-landlords have themselves invoked Sections 4 and 9 of the Act and have grounded their claim for enhanced rent thereon. These are not averments which can be disregarded or read in isolation; they represent a deliberate and unambiguous invocation of the statutory framework governing the tenancy.

Held- Once the plaint itself discloses that the dispute is governed by the Act, 2021, as it plainly does in the present case, the bar contained under Section 38(1) thereof operates with full force and the jurisdiction of the civil court stands excluded. The SCC Court, being a civil court within the meaning of the Act, lacks jurisdiction to entertain the suit- The application under Order VII Rule 11 CPC stands allowed. **Revision allowed**. (E-15)

(Para 14, 15 & 16)

Case Law Cited

Akhilesh Kumar vs. Sanjay Sahgal (Matters Under Article 227 No. 5153 of 2026), decided on 19.05.2026;

List of Acts

The Provincial Small Cause Courts Act, 1887; The Code of Civil Procedure, 1908; The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021

List of Keywords

Order VII Rule 11; Plaint discloses; Dispute governed by Act 16 of 2021; Jurisdiction of the civil court stands excluded; SCC Court lacks jurisdiction.

Case Arising From

Order dated 19.03.2026 passed by the District Judge, Hathras in SCC Case No.03 of 2025, whereby the application filed by the defendant-tenants under Order VII Rule 11 of the Code of Civil Procedure, 1908, on the ground that the plaint disclosed a suit barred by law, was rejected.

Appearances for Parties

Counsel for Revisionist(s) : Surendra Tiwari
Counsel for Opposite Party(s) : Abhishek Mishra, Anil Kumar, Ashok Kumar Yadav

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

Heard Sri Surendra Tiwari, learned counsel for the revisionists and Sri Abhishek Mishra and Sri Anil Kumar, learned counsel appearing for the respondents.

2. The present SCC Revision under Section 25 of the Provincial Small Cause Courts Act, 1887 is directed against the order dated 19.03.2026 passed by the District Judge, Hathras in SCC Case No.03 of 2025 (Shivsevak Sharma and Others vs. Shriram and Others), whereby the application filed by the defendant-tenants under Order VII Rule 11 of the Code of Civil Procedure, 1908, on the ground that the plaint disclosed a suit barred by law, was rejected.

3. The undisputed facts emerging from the plaint, as averred by the respondent-landlords, are as follows. The parties stand in the relationship of landlord and tenant in respect of the premises in question; this relationship is admitted and is not in dispute between the parties.

4. The plaint contains categorical averments acknowledging that U.P. Act No. 16 of 2021 (the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021, hereinafter 'the Act, 2021') is applicable to the subject premises, and that the said premises fall within the ambit of Section 1(3) of the Act and are not excluded from its operation.

5. The respondent-landlords have specifically pleaded that a tenancy agreement was required to be executed in terms of Section 4 of the Act, 2021, and that despite requests, the defendant-tenants failed to cooperate in the execution of such agreement. The plaint further invokes Section 9

of the Act and claims arrears of rent for the period from 01.12.1999 to 31.05.2025 at an enhanced rate computed in accordance therewith.

6. The defendant-tenants filed an application under Order VII Rule 11 CPC seeking rejection of the plaint on the ground that the suit was barred by law, by virtue of the express ouster of civil court jurisdiction contained in Section 38(1) of the Act, 2021. The learned District Judge, Hathras rejected the said application vide the impugned order dated 19.03.2026, which gives rise to the present revision.

7. Learned counsel appearing for the revisionists-tenants submits that the plaint itself contains categorical averments acknowledging the applicability of U.P. Act No.16 of 2021 to the premises in question. It is pointed out that the plaintiffs have pleaded that a tenancy agreement was required to be executed in terms of Section 4 of the Act and that despite requests, the defendants failed to cooperate. It is further submitted that the plaint contains pleadings invoking Section 9 of the Act, on the basis whereof arrears of rent from 01.12.1999 to 31.05.2025 at an enhanced rate have been claimed.

8. It is further urged that the relationship of landlord and tenant between the parties is admitted and undisputed, and the premises fall within the ambit of Section 1(3) of the Act and are not excluded from its operation, so that the dispute is wholly governed by U.P. Act No. 16 of 2021. Consequently, in view of the express bar contained under Section 38(1) of the Act, 2021, it is submitted that the civil court lacks jurisdiction and the SCC suit itself is not maintainable.

9. Reliance is placed upon the decision of this Court in **Akhilesh Kumar vs. Sanjay Sahgal** (Matters Under Article 227 No. 5153 of 2026), decided on 19.05.2026. In the said decision, this Court, while examining the scheme of the Act, 2021, particularly Sections 4, 21 and 38 thereof, held that the Act constitutes a complete code governing landlord-tenant disputes and creates a specialised adjudicatory mechanism for their resolution.

10. In **Akhilesh Kumar** (supra), it was further held that the absence of a written tenancy agreement is not determinative where the landlord-tenant relationship is admitted or is otherwise established on the basis of the pleadings. The Court clarified that once a dispute falls within the ambit of the Act, 2021, the jurisdiction of the civil court stands excluded by virtue of Section 38(1), and such disputes lie exclusively before the Rent Authority. The said decision also reiterates that the Act is a self-contained statutory framework intended to channelise landlord-tenant disputes before a specialised forum, and that procedural deficiencies cannot defeat the substantive operation of the statute where the foundational relationship is not in dispute.

11. Learned counsel appearing for the respondent-landlords does not dispute the existence of a landlord-tenant relationship between the parties or the applicability of U.P. Act No. 16 of 2021 to the premises in question. The legal position that such disputes, where the relationship is admitted, are governed exclusively by the Act, 2021 is also not disputed. The learned counsel states that the respondents shall avail themselves of such remedies as may be available to them under the provisions of the Act.

12. It is well settled that while considering an application under Order VII Rule 11 CPC, the Court must confine itself to the averments in the plaint and the documents relied upon therein, and no defence set up by the defendant can be taken into consideration. The test is whether the plaint, on a meaningful reading, discloses a cause of action or reveals that the suit is barred by law, and if the latter, the plaint is liable to be rejected at the threshold.

13. It is equally well settled that where a statute expressly excludes the jurisdiction of the civil court, such bar goes to the root of the matter and can be examined at the stage of Order VII Rule 11 CPC itself. The jurisdictional facts determining the competence of the Court must be gathered from the averments contained in the plaint alone, and no amount of clever drafting can confer jurisdiction upon a court otherwise barred by statute. Continuation of proceedings in such circumstances would be an exercise in futility and contrary to law.

14. In the present case, the plaint, on a plain and meaningful reading of its own averments, acknowledges the applicability of U.P. Act No.16 of 2021 to the subject premises. The respondent-landlords have themselves invoked Sections 4 and 9 of the Act and have grounded their claim for enhanced rent thereon. These are not averments which can be disregarded or read in isolation; they represent a deliberate and unambiguous invocation of the statutory framework governing the tenancy.

15. The landlord-tenant relationship between the parties is admitted. The premises fall within the ambit of Section 1(3) of the Act and are not excluded from its operation. There is thus no dispute on the foundational facts necessary to attract the jurisdiction of the Rent Authority under the Act, 2021. The question of whether a formal written tenancy agreement exists is immaterial; as held in Akhilesh Kumar (supra), the Act operates on the substance of the relationship, not merely on the existence of a formal written instrument.

16. Once the plaint itself discloses that the dispute is governed by the Act, 2021, as it plainly does in the present case, the bar contained under Section 38(1) thereof operates with full force and the jurisdiction of the civil court stands excluded. The SCC Court, being a civil court within the meaning of the Act, lacks jurisdiction to entertain the suit.

17. The learned District Judge, Hathras, in rejecting the application under Order VII Rule 11 CPC, failed to consider and give effect to the express statutory bar, the admitted landlord-tenant relationship, and the authoritative pronouncement of this Court in **Akhilesh Kumar** (supra). The impugned order is, accordingly, unsustainable in law and is liable to be set aside.

18. In view of the foregoing, the present SCC Revision succeeds and is **allowed**. The impugned order dated 19.03.2026 passed by the learned District Judge, Hathras, rejecting the application filed by the defendant-tenants under Order VII Rule 11 CPC, is hereby set aside. The application under Order VII Rule 11 CPC stands allowed and the plaint in SCC Case No. 03 of 2025 (Shivsevak Sharma and Others vs. Shriram and Others) is rejected as being barred by law in view of the express bar contained under Section 38(1) of U.P. Act No. 16 of 2021.

19. The respondents are at liberty to pursue such remedies as may be available to them under the provisions of U.P. Act No. 16 of 2021. It is made clear that this Court has not expressed any opinion on the merits of the respondents' claims, which shall be considered afresh by the competent authority in accordance with law and on its own merits.

20. In the event the respondents approach the Rent Authority under the provisions of the Act, 2021, the said Authority shall endeavour to conclude the proceedings expeditiously and, where possible, within the period prescribed under the statute.

21. There shall be no order as to costs.

(2026) 5 ILRA 1443
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.05.2026

BEFORE

THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE KSHITIJ SHAILENDRA, J.

Special Appeal No. 371 of 2026 alongwith
Special Appeal Defective No. 337 of 2026

Dr. Keshbhan Singh & Anr. ...Appellants
Versus
State of U.P. & Ors. ...Respondents

Issue(s) for consideration

(a) Is a Special Appeal maintainable against a Single Judge's order when the underlying tribunal/authority (Commissioner) lacked statutory jurisdiction to entertain the appeal in the first place?
(b) Does an order passed by an appellate authority without statutory jurisdiction fall under the "purported exercise of appellate jurisdiction," thereby barring a Special Appeal?
(c) Does the Societies Registration Act, 1860 (as amended in U.P.) provide a right of appeal to the Commissioner against orders passed by the Assistant Registrar u/s 25(2) or Section 4-B?

Headnotes

A. Societies Law – Societies Registration Act, 1860: Section 4-B, 25(2); Allahabad High Court Rules, 1952: Chapter VIII Rule 5 - The Assistant Registrar, Jhansi Division, passed a composite order u/s 25(2) and Section 4-B of the Societies Registration Act, 1860 (the Act). He declared the Society defunct/time-barred (u/s 25(2)) and validated a list of 20 General Body members (u/s 4-B). Contesting respondents filed an appeal before the Commissioner, Jhansi Division. The Commissioner allowed the appeal, set aside the Assistant Registrar's order, declared a 10-member list valid, and directed steps for holding fresh elections.

Dr. Keshbhan Singh challenged the Commissioner's order via Writ – C No. 8732 of 2026. The Single Judge set aside the Commissioner's order and remitted the matter back to the Commissioner to decide the appeal *only qua* Section 25(2), while holding that no appeal lay regarding the Section 4-B/4-A determination.
Both sides challenged the Single Judge's decision:

- SPLA No. 371 of 2026 (Dr.Keshbhan Singh): Argued that since no statutory appeal exists u/s 25(2), remanding the matter back to the Commissioner was illegal.

- SPLA Def. No. 337 of 2026 (Management Committee): Argued that appeals against orders u/s 4-B are maintainable before the Commissioner following the 2021 U.P. Amendments (U.P. Act No. 8 of 2022).

B. Chapter VIII Rule 5 - Right to appeal is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi-judicial adjudications and the right is a statutory right and it can be circumscribed by the conditions in the grant. (Para 22)

Since the Commissioner had no jurisdiction to entertain and decide the appeal against an order passed either u/s 25(2) or Section 4-B of the Act, 1860, the mere fact that the order had been passed in an appeal which was otherwise not maintainable and was not provided under the Act itself, the present special appeal raising a challenge to the order passed by the learned Single Judge in a writ petition assailing the validity of the order passed by the Commissioner, is maintainable. (Para 25)

C. In Rule 5 of Chapter VIII of the High Court Rules, the language used is plain and simple and words "purported to be exercised under any U.P. Act or Central Act" are not qualified by any further stipulations or explanatory clarification of any nature so as to make further interpretation. (Para 21)

The word 'purport' has many shades of meaning, it means fictitious, what appears on the face of the instruments; the apparent and not the legal import and, therefore any act which purports to be done in exercise of a power is to be deemed to be done within that power notwithstanding that the power is not exercisable. (Para 18)

A special appeal arising out of judgment passed by learned Single Judge in a writ petition u/Article 226 of Constitution, wherein challenge was laid to an appellate order passed by the Government or any officer or authority, made or purported to be made in the exercise of or purported exercise of appellate jurisdiction under any U.P. Act/Central Act with respect to any of the matters enumerated in the State List or the Concurrent List in the VII Schedule to the Constitution, would be maintainable if the appeal itself was not provided under the statute but was entertained or decided either way and the power exercised by the appellate authority would not be treated as 'purported exercise of power'. (Para 26)

D. Mainly three kinds of jurisdiction are recognized under the law; pecuniary, territorial and inherent. If any Court/authority lacks any of such jurisdictions, the order passed by it would be a nullity. Further, jurisdiction cannot be conferred upon the Court/authority in any manner even based upon consent or acquiescence. (Para 29)

Examining nature of the order passed by the learned Single Judge wherein, after setting aside the order passed by the Commissioner, the matter has been remitted back to him to decide the appeal only qua order passed u/s 25(2) of the Act – Once a conclusion has been arrived at that the appeal against the order dated 13.06.2025, compositely passed u/s 25(2) and 4-B of the Act, did not lie before the Commissioner, direction for remand to the Commissioner to decide the same qua Section 25(2) of the Act, is not proper. As a matter of fact, learned Single Judge has conferred jurisdiction upon the Commissioner to examine challenge to the order passed by the Assistant Registrar u/s 25(2) of the Act, although the Commissioner otherwise has no jurisdiction under the statute to entertain the appeal. (Para 28)

Special appeal No. 371 of 2026 allowed.

E. Challenge to the same order to the extent of conclusion drawn and observations made regarding appellate power of the Commissioner to examine validity of the order passed by the Assistant Registrar u/s 4-B of the Act - Once Section 4(1-A) clearly provides for an appeal against an order u/s 4, the said appeal is confined to an order passed in relation to accepting the Committee of Management etc. by the Registrar u/s 4(1). Section 4-B is totally independent of Section 4 as the same deals with the list of members of General Body and has nothing to do with the

Committee of Management and once the statute does not provide any appeal qua the order passed u/s 4-B of the Act, the provision as contained u/s 4(1-A) cannot by any stretch of imagination be used for the purpose of maintaining the appeal against an order passed u/s 4-B of the Act. (Para 34 to 39)

Appeal does not lie against an order u/s 4-B when there is no such provision in the Statute - A bare perusal of the provisions of the Amendment Act makes it clear that sub-Section (1-A) was added just after Section 4 and the place of insertion clearly indicates the legislative intent to provide an appeal only against an order passed u/s. 4 after its renumbering as Section 4(1) and not against Section 4-B which is altogether a separate and distinct Section. (Para 39)

The challenge laid to part of the order impugned, whereby learned Single Judge has held the appeal against order passed u/s 4-B of the Act as not maintainable, does not call for any interference.

Special appeal Defective No. 337 of 2026 dismissed. (E-4)

Case Law Cited

1. Sheet Gupta Vs. State of U.P. and others, 2009 (4) ADJ 183 (Para 10)
2. Kamleshwar Singh Vs. District Inspector of Schools and another, 1997 AWC (Supp) 206 (Para 10)
3. Mahendra Pratap Bhatt 76 (Clmc) 2015 Vs. Saroj Mahana, 2016 (5) ADJ 282 (Para 10)
4. Sardar Mohammad Ansar Khan Vs. State of U.P. and others, 1995 All L.J. 317, (Para 17)
5. Azimunnisa Vs. Deputy Custodian, AIR 1961 SC 365 (Para 18)
6. Municipal Committee/ Council, Balaghat Vs. Meghraj Phojraj Baghrecha and another, AIR 1966 Madh 104 (Para 18)
7. Vajara Yojna Seed Farm, Kalyanpur (M/s) and others Vs. Presiding Officer, Labour Court II, U.P., Kanpur and another, 2003 (1) UPLBEC 496 (Para 22)
8. Vijay Prakash D. Mehta and Jawahar D. Mehta Vs. Collector of Customs (Preventive), Bombay, AIR 1988 SC 2010 (Para 22)
9. United Commercial Bank Limited Vs. Their Workmen, AIR 1951 SC 230 (Para 29)
10. Kiran Singh Vs. Chaman Paswan, AIR 1954 SC 340 (Para 29)
11. Benarsi Silk Palace Vs. Commissioner of Income Tax, (1964) 52 ITR 220 (All) (Para 29)
12. Kali Das Wadhwani & Another Vs. Jagjiwan Das and another, 1985 (2) ARC 533 (Para 29)
13. Sardar Hasan Siddique Vs. State Transport Appellate Tribunal, AIR 1986 Allahabad 132 (Para 29)
14. Karnal Improvement Trust Vs. Prakashwati, (1995) 5 SCC 159 (Para 29)
15. U.P. Rajkiya Nirman Nigam Ltd. Vs. Indudre Pvt. Ltd., AIR 1996 SC 1373 (Para 29)
16. S. Sethuraman Vs. R. Venkataraman and others, AIR 2007 SC 2499 (Para 29)
17. Collector, Distt. Gwalior and another Vs. Cine Exhibitors P. Ltd. and another, AIR 2012 SC 1239 (Para 29)
18. Abhishek Pandey Vs. State of U.P. and others, 2025:AHC:213663-DB (Para 39)

List of Acts

Societies Registration Act, 1860; Allahabad High Court Rules, 1952.

List of Keywords

legislative intent, amendment, jurisdiction, commissioner, single judge, appeal, validity, purport.

Appearances for Parties

For Appellant(s): Gajendra Pratap Singh (Sr. Adv.) with Jai Singh Parihar
For Respondent(s): Anil Bhushan (Sr. Adv.) with Manish Kumar Pandey, Rajiv Singh (S.C.)

(Delivered by Hon'ble Kshitij Shailendra, J.)

1. Heard Shri Gajendra Pratap Singh, learned Senior Advocate assisted by Shri Jai Singh Parihar for the appellants, learned Standing Counsel for respondents no. 1 to 3 and Shri Anil

Bhushan, learned Senior Advocate assisted by Shri Manish Kumar Pandey for respondents no. 4 to 8 in Special Appeal No. 371 of 2026. Same learned Senior Advocates have been heard in the connected Special Appeal Defective No. 337 of 2026, but from reverse side.

2. These two special appeals raise challenge to the order dated 13.03.2026 whereby the learned Single Judge has disposed of Writ - C No. 8732 of 2026 (Dr. Keshbhan Singh and another vs. State of U.P. and 7 others) setting aside the order dated 13.02.2026 impugned therein and remitting the matter to the Commissioner, Jhansi Division, Jhansi ('Commissioner') to decide an appeal only qua order passed under Section 25(2) of the Societies Registration Act, 1860 ('the Act'). The learned Single Judge has further observed that so far as order passed by the Commissioner under Section 4-A of the Act is concerned, the private respondents will have liberty to avail legally available remedy.

3. Since the order passed by the learned Single Judge has been challenged by both sides to the extent they feel aggrieved of the same, both the appeals are being decided by a common order.

SPECIAL APPEAL No. - 371 of 2026

4. The memo of present appeal contains solitary ground of challenge to the order passed by the learned Single Judge to the effect that there being no provision for appeal against the order dated 13.06.2025 passed by the Assistant Registrar under Section 25(2) of the Act, the order of remand to the Commissioner for deciding the appeal could not have been passed.

5. The facts of the matter for the purpose of decision in these two appeals are not in dispute. The Assistant Registrar, Jhansi Division, Jhansi, passed a composite order dated 13.06.2025 under Section 25(2) and Section 4-B of the Act. He declared the Society as defunct/time barred under Section 25(2) and also declared a list of 20 members of the General Body under Section 4-B as valid.

6. Challenging the said order, an appeal was filed on behalf of respondents no. 5 to 8 before the Commissioner, which was admitted by him by order dated 19.07.2025. Later on, the same was allowed on 13.02.2026 setting aside the order dated 13.06.2025 and a list of 10 members, as submitted by the contesting respondents (appellants in appeal before the Commissioner), was declared as valid. Further, the Assistant Registrar was directed to ensure further proceedings for the purposes of holding elections of the Society based upon the determination made. It is against the said order dated 13.02.2026 passed by the Commissioner that the writ petition giving rise to these two special appeals was filed.

Preliminary Objection

7. Shri Anil Bhushan appearing for the private respondents has raised a preliminary objection as regards maintainability of the present special appeal on the ground that the writ petition had arisen out of an appellate order passed by the Commissioner in exercise of powers under Societies Registration Act, 1860 and, therefore, the present special appeal is not maintainable and the same is barred as per the provisions of Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952.

8. Refuting the submissions made, Shri Gajendra Pratap Singh has made submissions that special appeal is not barred as the Commissioner had wrongly entertained the appeal against composite order dated 13.06.2025 passed by the Assistant Registrar exercising his power under Section 25(2) and Section 4-B of the Act. Submission is that appeal against the order passed under either of the two provisions does not lie under the Act itself and, therefore, once the Commissioner had no jurisdiction to entertain the appeal, the special appeal arising out of order passed by the learned Single Judge raising a challenge to the order which was without jurisdiction, is very much maintainable.

9. Elaborating his submissions, it is contended by Shri Singh that an appeal is always a creation of statute and the language used in Rule 5 of Chapter VIII makes it clear that the appeal would not be maintainable only when 'appellate jurisdiction is or purported to be exercised under any U.P. Act or Central Act with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution'. Submission is that since the U.P. Act, i.e. Act of 1860, itself does not provide an appeal against an order passed either under Section 25(2) or Section 4-B, the exercise undertaken by the Commissioner while passing the order impugned in the writ petition, could not be said to be 'in the exercise or purported exercise of jurisdiction, i.e. the appellate jurisdiction'.

10. In support of his submissions, reliance has been placed by Shri Singh on **Sheet Gupta vs. State of U.P. and others : 2009 (4) ADJ 183, Kamleshwar Singh vs. District Inspector of Schools and another: 1997 AWC (Supp) 206 and Mahendra Pratap Bhatt 76 (Clmc) 2015 vs. Saroj Mahana : 2016 (5) ADJ 282.**

11. We have considered the submissions made on maintainability of special appeal and have perused the material available on record.

Maintainability of Special Appeal

12. There being no dispute about the fact that the Assistant Registrar had passed a composite order under Section 25(2) and 4-B of the Act, it would be appropriate to reproduce Section 4-B and 25(2) of the Act, 1860. The same are quoted as under:-

"4-B. (1) At the time of registration/renewal of a society, list of members of General Body of that society shall be filed with the Registrar mentioning the name, father's name, address and occupation of the members. The Registrar shall examine the correctness of the list of members of the General Body of such society on the basis of the register of members of the General Body and minutes book thereof, cash book, receipt book of membership fee and bank pass book of the society.

2) If there is any change in the list of members of the General Body of the society referred to in sub-section (1), on account of induction, removal, resignation or death of any member, a modified list of members of General Body, shall be filed with the Registrar, within one month from the date of change.

(3) The list of members of the General Body to be filed with the Registrar under this section shall be signed by two office-bearers and two executive members of the society. - Vide U.P. Act No. 23 of 2013, Section 2 (w.e.f. 9.10.2013).″

Section 25. Disputes regarding election of office-bearers.

(1) .....

2) Where by an order made under sub-section (1), an election is set aside or an office-bearer is held no longer entitled to continue in office or where the Registrar is satisfied that any election of office-bearers of a Society has not been held within the time specified in the rules of that Society, (he may call a meeting of the general body of such Society for electing such office-bearer or office-bearers, and such meeting shall be presided over and be conducted by the Registrar or by any officer authorised by him in this behalf, and the provisions in the rules of the Society relating to meetings and elections shall apply to such meeting and election with necessary modifications.″

13. There is no provision of appeal in the Act,1860 against the order passed under any of the aforesaid two provisions, rather an appeal lies under Section 25(1)(d) against an order passed under sub-Section (1) of Section 25 of the Act which is reproduced as under:-

“Section 25. Dispute regarding election of office-bearers.-(1) The prescribed authority may, on a reference made to it by the Registrar or by at least one-fourth of the members of a society registered in Uttar Pradesh, hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of an office-bearers of such society, and may pass such orders in respect thereof as it deems fit:

Provided that the election of an office-bearer shall be set aside where the prescribed authority is satisfied –

a) that any corrupt practice has been committed by such office-bearer; or

(b) that the nomination of any candidate has been improperly rejected; or

(c) that the result of the election in so far as it concerns such office-bearer has been materially affected by the improper acceptance of any nomination or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with the provisions of any rules of the society.

After clause (c), the following clause shall be inserted, namely –

"(d) An appeal against an order made under this sub-section may be preferred to the Commissioner of the Division in whose jurisdiction the headquarter of the Society lies, within one month from the date of communication of such order:

Provided that the appellate authority may admit an appeal after the expiry of such period if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within such period.″

14. Although, in the present case, title of the appeal preferred before the Commissioner, as reflected from his order, indicates Section 25 (d), mere such indication does not make it a competent appeal under the said provision keeping in view the nature of order which was assailed

before the Commissioner. Apparently, the order dated 13.06.2025 passed by the Assistant Registrar was not appealable under Section 25(1)(d) and, hence, indication made by the Commissioner to that effect cannot be treated as decisive.

15. As far as Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 is concerned, words **'in the exercise or purported exercise of appellate or revisional jurisdiction under any U.P. Act/Central Act with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, any such Act'** would mean that such appellate or revisional jurisdiction is available to the concerned authority. Meaning thereby, if, in a given case, the appeal is not provided by the statute itself, it would not clothe the appellate authority with power to entertain and decide the appeal on merits. If the decision on merits, either correct or incorrect, right or wrong, is passed by the appellate authority in an appeal which is not provided by the statute, it would not fall within the meaning and import of **'exercise or purported exercise of appellate jurisdiction'**.

16. Words **'purported exercise'** appearing in Rule 5 of Chapter VIII are of quite significance, particularly when contention has been raised that even if an authority sitting in appellate/revisional jurisdiction, does not have power/jurisdiction to pass any order, the exercise undertaken by it would be covered by 'purported exercise' of power and, therefore, the special appeal would not be maintainable.

17. In this regard, we may refer to a judgment of Co-ordinate Bench of this Court in **Sardar Mohammad Ansar Khan vs. State of U.P. and others : 1995 All L.J. 317**, wherein question of maintainability of special appeal had arisen from a situation where an order passed by District Inspector of Schools (D.I.O.S.) as an appellate authority was assailed in writ petition and order of the writ Court was challenged in special appeal. The Co-ordinate Bench found that the D.I.O.S. had exercised power under Regulation 3(1)(b) of Chapter II of Regulations framed under U.P. Intermediate Education Act and though the said provision relates to determination of seniority etc. of 'teachers', the D.I.O.S. exercised such power in respect of 'clerks'. It was held that the order passed by the D.I.O.S. being without jurisdiction and outside the purview of the Act and the Regulations, the exercise of power by him cannot be said to be 'purported exercise' of appellate jurisdiction. The special appeal was thus found maintainable.

18. We may, however, observe that in the case of **Sardar Mohammad Ansar Khan** (supra), reference was made to a judgment of Hon'ble Supreme Court in **Azimunnisa vs. Deputy Custodian : AIR 1961 SC 365**, wherein the Hon'ble Supreme Court had indicated that the word **'purport'** has many shades of meaning, it means fictitious, what appears on the face of the instruments; the apparent and not the legal import and, therefore any act which purports to be done in exercise of a power is to be deemed to be done within that power notwithstanding that the power is not exercisable. From reading of the above observations of Hon'ble Supreme Court, it may, at the first instance, appear that an order without jurisdiction also falls within the meaning of the words 'purported exercise of power', however, the Co-ordinate Bench in the case of **Sardar Mohammad Ansar Khan** (supra), took note of the fact that the decision in the case of Azimunnisa (supra) was distinguished by the Madhya Pradesh High Court in **Municipal Committee/ Council, Balaghat**

vs. Meghraj Phojraj Baghrecha and another : AIR 1966 Madh 104, wherein it was held that imposition of a tax by Municipal Board being beyond its jurisdiction and power is not an Act 'purporting to be done under the Act'.

19. With reference to the judgment in the case of Azimunnisa (supra), it was also indicated that the observations were made while considering the effect of Section 8 (2-A) of the Administration of Evacuee Property Act, 1950 (in short 'Evacuee Act'), there was detailed discussion regarding pre-amendment and post-amendment status of the Evacuee Act and the Hon'ble Supreme Court had discussed newly inserted sub-Section (2-A) added to Section 8, which reads as under:-

2-A) "Without prejudice to the generality of the provisions contained in sub-section (2) all property which under any law repealed hereby **purports to have vested as evacuee property in any person exercising the powers of Custodian in any State shall, notwithstanding any defect in or the invalidity of, such law or any judgment, decree, order of any Court, be deemed for all purposes to have validly vested in that person, as if the provisions of such law had been enacted by Parliament and such property shall, on the commencement of this Act, be deemed to have been evacuee property declared as such within the meaning of this Act and accordingly, any order made or other action taken by the Custodian or any other authority in relation to such property shall be deemed to have been validly and lawfully made or taken."**

20. It was in the light of the aforesaid provision that occasion to interpret word **'purport'** had arisen before the Hon'ble Supreme Court however, language incorporated under sub-Section (2-A) of Section 8 of the Evacuee Act is altogether different from the language incorporated in Rule 5 of Chapter VIII of the Allahabad High Court Rule, 1952. Apparently, in the Evacuee Act, the word **'purport'** was used as regards deemed vesting of a property as evacuee property in any person exercising the powers of custodian, notwithstanding any defect in or the invalidity of law, judgment, decree or order and the deeming provision was emphasized so as to validate such vesting as if the provisions of such law had been enacted by Parliament.

21. Contrarily, in Rule 5 of Chapter VIII of the High Court Rules, the language used is plain and simple and words "purported to be exercised under any U.P. Act or Central Act" are not qualified by any further stipulations or explanatory clarification of any nature so as to make further interpretation and, therefore, we take the same view that has been taken by Madhya Pradesh High Court in the case of **Meghraj Phojraj Baghrecha** (supra), while explaining the judgment in the case of **Azimunnisa** (supra) and also fully endorse the view taken by the co-ordinate Bench of this Court in the case of **Sardar Mohammad Ansar Khan** (supra).

22. In the case of **Sheet Gupta** (supra), a Full Bench of this Court, while dealing with the provisions of Chapter VIII Rule 5 and a previous decision in **Vajara Yojna Seed Farm, Kalyanpur (M/s) and others vs. Presiding Officer, Labour Court II, U.P., Kanpur and another: 2003 (1) UPLBEC 496**, has laid down that special appeal against an order passed by the writ Court arising out of an appellate order passed under paragraph 28 of the Essential Commodities Distribution Order, 2004 would not be maintainable. In the said case, statutory appeal was itself provided under paragraph 28 of the Distribution Order. The Full Bench took note of a

judgment of Hon'ble Supreme Court in **Vijay Prakash D. Mehta and Jawahar D. Mehta vs. Collector of Customs (Preventive), Bombay : AIR 1988 SC 2010** wherein observation was made that right to appeal is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi-judicial adjudications and the right is a statutory right and it can be circumscribed by the conditions in the grant.

23. In the case of **Kamleshwar Singh** (supra), writ petition was filed against an order passed by the D.I.O.S. exercising appellate power. The learned Single Judge allowed the writ petition setting aside the order and remanded the matter to the D.I.O.S. for deciding the dispute. On challenge laid to the order of learned Single Judge, the Division Bench found that the D.I.O.S. earlier happened to be appellate authority but, by virtue of a notification dated 22.08.1992, the said power had been taken away from him and the same was entrusted with Regional Deputy Director of Education, consequently, the D.I.O.S. had ceased to be an appellate authority. Under such circumstances, it was held that the D.I.O.S., not being an appellate authority, his order would not be treated as an order passed in an appeal and, therefore, special appeal raising a challenge to the order passed by the learned Single Judge in writ petition against the order of the D.I.O.S., would be maintainable.

24. In the case of **Mahendra Pratap Bhatt** (supra), special appeal had arisen out of an order passed by the learned Single Judge on an application under Section 24 C.P.C. and, having found that the learned Single Judge had no territorial jurisdiction to entertain the application and pass order thereon, the special appeal was held maintainable and the order passed by the learned Single Judge was set aside.

25. In view of above discussion, we are of the considered opinion that since the Commissioner had no jurisdiction to entertain and decide the appeal against an order passed either under Section 25(2) or Section 4-B of the Act, 1860, the mere fact that the order had been passed in an appeal which was otherwise not maintainable and was not provided under the Act itself, the present special appeal raising a challenge to the order passed by the learned Single Judge in a writ petition assailing the validity of the order passed by the Commissioner, is maintainable.

Conclusion on maintainability of special appeal:

26. We, accordingly, hold that a special appeal arising out of judgment passed by learned Single Judge in a writ petition under Article 226 of Constitution of India, wherein challenge was laid to an appellate order passed by the Government or any officer or authority, made or purported to be made in the exercise of or purported exercise of appellate jurisdiction under any U.P. Act/Central Act with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, **would be maintainable if the appeal itself was not provided under the statute but was entertained or decided either way and the power exercised by the appellate authority would not be treated as 'purported exercise of power'.**

On Merits:

27. The Court now proceeds to examine the nature of the order passed by the learned Single Judge wherein, after setting aside the order passed by the Commissioner, the matter has been remitted back to him to decide the appeal only *qua* order passed under Section 25(2) of the Act.

28. Once we have arrived at a conclusion that the appeal against the order dated 13.06.2025, compositely passed under Section 25(2) and 4-B of the Act, did not lie before the Commissioner, direction for remand to the Commissioner to decide the same qua Section 25(2) of the Act, is not proper. As a matter of fact, learned Single Judge has conferred jurisdiction upon the Commissioner to examine challenge to the order passed by the Assistant Registrar under Section 25(2) of the Act, although the Commissioner otherwise has no jurisdiction under the statute to entertain the appeal.

29. We may observe here that mainly three kinds of jurisdiction are recognized under the law; pecuniary, territorial and inherent. If any Court/authority lacks any of such jurisdictions, the order passed by it would be a nullity. Further, jurisdiction cannot be conferred upon the Court/authority in any manner even based upon consent or acquiescence. Reference in this regard can be made to **United Commercial Bank Limited vs. Their Workmen** : AIR 1951 SC 230, **Kiran Singh vs. Chaman Paswan** : AIR 1954 SC 340, **Benarsi Silk Palace vs. Commissioner of Income Tax** : (1964) 52 ITR 220 (All), **Kali Das Wadhwani & Another vs. Jagjiwan Das and another** : 1985 (2) ARC 533, **Sardar Hasan Siddique vs. State Transport Appellate Tribunal :** AIR 1986 Allahabad 132, **Karnal Improvement Trust vs. Prakashwati : (1995) 5 SCC** 159, **U.P. Rajkiya Nirman Nigam Ltd. vs. Indudre Pvt. Ltd**. : AIR 1996 SC 1373, **S. Sethuraman vs. R. Venkataraman and others**: AIR 2007 SC 2499, **Collector, Distt. Gwalior and another vs. Cine Exhibitors P. Ltd. and another** : AIR 2012 SC 1239.

30. In view of above discussion, the Special Appeal No. 371 of 2026 is **allowed**.

31. The order dated 13.03.2026 passed by the learned Single Judge to the extent of remanding the matter to Commissioner is hereby set aside.

32. The order dated 13.02.2026 passed by the Commissioner, impugned in the writ petition, being without jurisdiction, is also **set aside**.

SPECIAL APPEAL DEFECTIVE No. - 337 of 2026

33. This Special Appeal has been reported to be beyond time by six days. An application seeking condonation of delay has been filed. For the reasons stated in the affidavit supporting the application, the same is allowed. Delay in filing the appeal is hereby condoned.

34. This appeal raises a challenge to the same order passed by the learned Single Judge to the extent of conclusion drawn and observations made regarding appellate power of the Commissioner to examine validity of the order passed by the Assistant Registrar under Section 4-B of the Act.

35. Submission has been made by Shri Anil Bhushan that by virtue of amendments made in the Act by the Societies Registration (U.P. Amendment) Act, 2021, (U.P. Act No. 8 of 2022), appeal against any order passed under Sections 4, 4-A and 4-B would be maintainable before the

Commissioner. It is contended that appeal lies under Section 4(1-A) against an order made under Section 4 and Section 4-B being part of Section 4, appeal would be maintainable and, therefore, the learned Single Judge has wrongly held the appeal to that extent as not maintainable.

36. Per contra, Shri Gajendra Pratap Singh has made submissions that provision of appeal was added by way of insertion of sub-Section (1-A) after Section 4 and there being no insertion/addition/substitution etc. in other provisions, i.e. Section 4-A or 4-B, appeal against the order passed under Section 4-B does not lie.

37. We have considered the submissions made and have perused the material available on record.

38. It would be appropriate to quote relevant portions of the U.P. Act No. 8 of 2022, by which amendments were made in the Principal Act, w.e.f. 18.07.2022. The same reads as under:-

"**3. Amendment of Section 4**.-In Section 4 of the principal Act, after sub-section (1), the following sub-section and the proviso shall be inserted, namely:

(1-A) An appeal against an order made under this section may be preferred to the Commissioner of the Division in whose jurisdiction the headquarter of the Society lies, within one month from the date of communication of such order:

Provided that the appellate authority may admit an appeal after the expiry of such period if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within such period.

4. Amendment of Section 4-B.-For sub-section (2) of Section 4-B of the principal Act, the following sub-section shall be substituted, namely:

(2) If there is any change in the list of members of the General Body of the society referred to in sub-section (1), on account of induction, removal, registration or death of any member, a modified list of members of General Body, shall be filed with the Registrar, within one month from the date of change. Any change in the list of General Body shall not be valid unless it is approved by the Managing Body."

39. A bare perusal of the aforesaid provisions of the Amendment Act makes it clear that sub-Section (1-A) was added just after Section 4 and the place of insertion clearly indicates the legislative intent to provide an appeal only against an order passed under Section 4 after its renumbering as Section 4(1) and not against Section 4-B which is altogether a separate and distinct Section. This Court, in **Abhishek Pandey vs. State of U.P. and others, 2025 : AHC:213663-DB**, has already dealt with the same issue in detail and it has been held as under: -

"10. Once Section 4(1-A) clearly provides for an appeal against an order under Section 4, the said appeal is confined to an order passed in relation to accepting the Committee of Management etc. by the Registrar under Section 4(1). Section 4-B is totally independent of Section 4 as the same deals with the list of members of General Body and has nothing to do with the Committee of Management and once the statute does not provide any appeal qua the order passed under Section 4-B of the Act, **the provision as contained under sub-section (1-A) of Section 4**

cannot by any stretch of imagination be used for the purpose of maintaining the appeal against an order passed under Section 4-B of the Act."

40. In view of above discussion, we do no find any force in the submissions advanced by Shri Anil Bhushan that appeal also lies against an order under Section 4-B when we find no such provision in the Statute.

41. Accordingly, the challenge laid to part of the order impugned, whereby learned Single Judge has held the appeal against order passed under Section 4-B of the Act as not maintainable, does not call for any interference.

42. Consequently, the Special Appeal Defective No. 337 of 2026 is hereby **dismissed.**

Liberty to the aggrieved parties

43. We, however, leave it open for the parties aggrieved of the order dated 13.06.2025 passed by the Assistant Registrar to the extent the same is against them, to avail remedy before appropriate forum.

(2026) 5 ILRA 1454
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 19.05.2026

BEFORE

THE HON'BLE KARUNESH SINGH PAWAR, J.

Writ A No. 6502 of 2022

Anurag Mehrotra **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue(s) for consideration

Whether a retired government employee is entitled to interest on post-retiral benefits (pension, gratuity, and commutation) when the payment is delayed solely due to administrative and procedural lapses by the State?

Headnotes

A. Service Law – Petitioner retired as Administrative Officer from State Tax Headquarters, Uttar Pradesh, on 20.09.2019, with an unblemished service record. Minor amounts (Group Insurance, 90% GPF, leave encashment, and pay fixation arrears) were released near or shortly after retirement. Substantial post-retiral benefits—including regular pension, gratuity, and commutation—were sanctioned only on 27.06.2020, and released on 05.07.2020 (a delay of approximately 9 months and 4 days). On 08.07.2022, Respondent No. 3 rejected the petitioner's representation requesting interest for the delayed payment period.

B. Pensionary benefits are not a bounty but a valuable right of a retired employee and that the State authorities are under a statutory obligation to ensure timely processing and release of pensionary dues. All necessary steps regarding preparation of pension papers, verification of service records

and completion of procedural formalities are required to be completed well before retirement and that administrative inefficiency or procedural delay cannot be permitted to prejudice a retired employee. Once the period is close to retirement, omissions, imperfections or deficiencies in records are required to be ignored and pensionary benefits are to be processed on the basis of available service records. (Para 12)

C. Uttar Pradesh Pension Cases (Submission, Disposal and Avoidance of Delay) Rules, 1995 cast a mandatory obligation upon the authorities concerned to ensure that the pension and retiral dues are released immediately upon retirement and, in case finalization is not possible, provisional pension is required to be sanctioned without delay. (Para 16)

In the present case, no material has been brought on record to demonstrate that the respondents complied with the aforesaid statutory obligations. The record clearly reflects administrative lapses, procedural delay and lack of timely action on the part of the authorities concerned. Despite the petitioner having retired on 30.09.2019, his regular pension and substantial retiral dues were released only on 05.07.2020 and even according to the respondents themselves, the delay occurred due to procedural formalities relating to issuance of non-payment/no-dues certificates. (Para 17)

No material whatsoever has been brought on record to establish that the petitioner was ever informed regarding any alleged deficiency or pending formality prior to retirement. On the contrary, the respondents themselves have admitted that deductions towards repayment of advances had regularly been made from the salary of the petitioner. Thus, the delay cannot be attributed to the petitioner in any manner whatsoever. (Para 18)

D. The impugned rejection order dated 08.07.2022 is liable to be quashed for the reason that the same is a non-speaking and arbitrary order passed without consideration of the admitted factual position on record. (Para 19)

The petitioner cannot be made to suffer on account of administrative lapses, procedural delays or inter-departmental correspondence attributable entirely to the respondents-State. Pension and retiral benefits constitute valuable rights of a retired employee and delayed payment thereof entitles the employee to grant of reasonable interest. (Para 20)

Writ petition allowed. (E-4)

Case Law Cited

1. Dr. Uma Agrawal Vs. State of U.P., (1999) 3 SCC 438 (Para 6)
2. Indrajeet Singh Vs. State of U.P., 2008 SCC OnLine All 2738 (Para 6)

List of Acts

Uttar Pradesh Pension Cases (Submission, Disposal and Avoidance of Delay) Rules, 1995.

List of Keywords

service, pension, post-retiral benefits, gratuity, interest, delayed payment, administrative lapses.

Appearances for Parties

For Petitioner(s): In Person, Alina Masoodi, Alina Masoodi (A/C)
For Respondent(s): C.S.C.

(Delivered by Hon'ble Karunesh Singh Pawar, J.)

1. Heard Ms. Alina Masoodi, learned Amicus Curiae, and Shri Sandeep Sharma, learned Standing Counsel appearing for the respondent-State.

Reliefs Claimed in the Writ Petition

2. The petitioner, by means of the present petition, has prayed for the following reliefs:-

"1. यह कि याची के प्रत्यावेदन निस्तारण उपरोक्त माननीय न्यायालय के आदेश दिनॉक 21.3.2022 (अनेक्जर-3) के अनुपालन में वर्तमान विपक्षी संख्या-3 को प्रेषित विस्तृत प्रत्यावेदन दिनाँक 25.3.2022 (अनेक्जर-4) के निस्तारण की सूचना उपलब्ध करवाये जाने सम्बन्धी अनाधिकृत अधिकारी के सूक्ष्म एवं मौन आदेश दिनाँक 08.07.2022 मौन आदेश (Non speaking and scandy order) (अनेक्जर-01) को न्याय के हित में निरस्त/अपास्त करने की कृपा करें।

2. यह कि उपरोक्त सशक्त विधिक आधारों पर माननीय न्यायालय के समक्ष प्रस्तुत/योजित की जा रही प्रश्नगत रिट याचिका को सव्यय स्वीकार करते हुए याची के दिनॉक 30.9.2019 को अधिवर्षता आयु पूर्ण करके सेवानिवृत्त हो जाने के फलस्वरूप उसके सेवानिवृत्त लाभ (Retirement Dues) जैसे ग्रेच्युटी (उपादान) Gratuity पेन्शन एवं पेन्शन का राशिकरण (Commutation) एवं उसकी मासिक पेन्शन (शासन द्वारा स्वीकृत मंहगाई राहत की धनराशि सहित) का भुगतान 9 माह पश्चात् अत्यधिक विलम्ब से दिनॉक 5.7.2020 (अनेक्जर-02) को जवाहर भवन कोषागार, लखनऊ के माध्यम से करवाये जाने के फलस्वरूप विलम्ब अवधि अर्थात् दिनाँक 01.10.2019 से दिनाँक 04.07.2020 (लगभग 9 माह 4 दिन) की अवधि से सम्बन्धित चालू बाजार दर (Current Market Rate) अर्थात् 18 प्रतिशत की दर से चकवृद्धि ब्याज की धनराशि का भुगतान याची को करवाये जाने के सम्बन्ध में विपक्षीगणों को परमादेश (Mandamus) जारी करने की कृपा करें।

3. यह कि प्रश्नगत प्रकरण में विपक्षी संख्या-2, 3 एवं 4 द्वारा अपने पदीय दायित्वों के निर्वहन में बरती गई उदासीनता के सम्बन्ध में ऊपर अंकित विपक्षीगणों के विरूद्ध उत्तर प्रदेश सरकारी सेवक अनुशासन एवं अपील नियमावली 1999 में विधायिका द्वारा अंकित निर्देशों के कम में प्रश्नगत प्रकरण के निस्तारण हेतु उदासीन अधिकारियों के विरूद्ध विभागीय कार्यवाही संस्थित किये जाने के सम्बन्ध में सक्षम सम्बन्धित अधिकारी अर्थात् विपक्षी सं0-1 को तद्नुसार निर्देशित करने की कृपा करें।

4. यह कि उक्त के अतिरिक्त कोई अन्य उपचार / अनुतोष जो माननीय न्याालय प्रश्नगत रिट याचिका के तथ्यों के परिपेक्ष्य में उचित समझें, तो याची के पक्ष में स्वतः दिये जाने हेतु विपक्षीगणों को निर्देश देने की कृपा करें।."

Facts of the Case

3. The undisputed facts of the present case are that the petitioner retired from service on 30.09.2019 after attaining the age of superannuation from the post of Administrative Officer, State Tax Headquarters, Uttar Pradesh. Certain amounts relating to Group Insurance, G.P.F., leave encashment and arrears were released through separate orders from time to time. The payment of

Rs.94,204/- towards Group Insurance was made vide Office Order No.974 dated 27.10.2019. The amount of Rs.1,18,840/- towards 90% G.P.F. was released vide Order No.335 dated 16.09.2019. Earned leave encashment amounting to Rs.6,76,480/- was also paid to the petitioner. In addition thereto, arrears on pay fixation amounting to Rs.1,11,179/- were paid vide Order No.2882 dated 17.09.2019 and an amount of Rs.30,200/- towards arrears of earned leave due to enhancement in the rate of dearness allowance from 12% to 17% was paid vide Order No.3834 dated 15.11.2019. However, despite retirement on 30.09.2019, the petitioner's regular pension, gratuity, commutation and other substantial retiral dues were sanctioned only vide order dated 27.06.2020 passed by the Additional Director, Pension and Treasury, Lucknow and were ultimately released on 05.07.2020 after an inordinate delay of more than nine months.

Submissions on Behalf of the Petitioner

4. Learned counsel for the petitioner has invited attention of this Court towards paragraph-9 of the counter affidavit filed on behalf of the respondents-State wherein it has been specifically admitted that the delay in payment of post-retiral dues occurred due to procedural formalities and administrative reasons. It has further been submitted that even in the impugned rejection order dated 08.07.2022, it has specifically been admitted that due to delay in issuance of non-payment/no-dues certificates by the office of the Accountant General, Uttar Pradesh, Prayagraj, the retiral dues of the petitioner could not be released within time and were consequently paid after considerable delay.

5. Learned counsel for the petitioner has further submitted that no disciplinary proceedings or departmental enquiry were ever initiated or contemplated against the petitioner during his entire service tenure and the petitioner possessed an unblemished service record. It is thus argued that there existed absolutely no justification whatsoever for withholding the retiral dues of the petitioner and releasing the same after an inordinate delay of more than nine months.

6. In support of the aforesaid submissions, reliance has been placed upon the judgment rendered by the Hon'ble Supreme Court in **Dr. Uma Agrawal vs. State of U.P., reported in (1999) 3 SCC 438**, as well as the Division Bench judgment of this Court in **Indrajeet Singh vs. State of U.P., reported in 2008 SCC OnLine All 2738**.

Submissions on Behalf of the Respondents

7. Per contra, Shri Sandeep Sharma, learned Standing Counsel appearing for the respondents-State, has opposed the submissions advanced on behalf of the petitioner. It has been submitted that the petitioner himself was responsible for the delay in release of retiral dues inasmuch as the petitioner had availed vehicle/moped advances amounting to Rs.4,500/- and Rs.6,000/- respectively while posted at the Training Centre, Lucknow and had also availed house building advance during service tenure. It has further been argued that the petitioner had not furnished requisite particulars relating to repayment and deductions in time and only after the petitioner furnished necessary details regarding deductions made from his salary towards repayment of the aforesaid advances, correspondence was undertaken with the office of the Accountant General, Uttar Pradesh,

Prayagraj and thereafter non-payment/no-dues certificates were issued. Accordingly, it has been contended that the department cannot be held responsible for the delay in release of retiral dues.

Consideration by the Court

8. Perused the record.

9. A perusal of the counter affidavit filed on behalf of the respondents clearly demonstrates that it is not disputed that delay in payment of post-retiral dues to the petitioner occurred on account of procedural formalities and administrative reasons. Even the impugned rejection order itself records that the delay was procedural and not deliberate.

10. So far as the submissions advanced by learned Standing Counsel are concerned, this Court finds that it is not the case of the respondents that the petitioner was ever a defaulter in repayment of loans or advances availed by him during service tenure. On the contrary, the material brought on record clearly establishes that deductions towards repayment of the aforesaid advances were regularly being made from the salary of the petitioner from time to time.

11. Further, at no point of time does it appear from the record that any notice, communication or correspondence was ever made by the respondents requiring the petitioner to complete any alleged deficiency or pending formality relating to the aforesaid advances prior to retirement. No material has been brought on record to demonstrate that the petitioner was ever put to notice regarding any deficiency in records or that despite such notice he failed to complete the required formalities. Thus, the entire stand taken by the respondents in the impugned order appears to be wholly arbitrary, unsupported by record and contrary to the admitted factual position.

Law Laid Down by the Apex Court and Division Bench of this Court

12. The Hon’ble Supreme Court in Dr. Uma Agrawal vs. State of U.P. (supra) has categorically held that pensionary benefits are not a bounty but a valuable right of a retired employee and that the State authorities are under a statutory obligation to ensure timely processing and release of pensionary dues. The Hon'ble Supreme Court further observed that all necessary steps regarding preparation of pension papers, verification of service records and completion of procedural formalities are required to be completed well before retirement and that administrative inefficiency or procedural delay cannot be permitted to prejudice a retired employee. The Hon’ble Supreme Court also emphasized that once the period is close to retirement, omissions, imperfections or deficiencies in records are required to be ignored and pensionary benefits are to be processed on the basis of available service records. For convenience, relevant paragraphs 3, 4 and 5 from the judgment of Dr. Uma Agrawal (supra) is reproduced as under:-

"3. As these delays have increased in the last few years, it has become necessary to refer to the Rules and Departmental instructions which do contain adequate provisions for compilation of all the necessary data and preparation of the necessary documents for disbursement of retiral benefits, well in advance. The present case arises from Uttar Pradesh and we find that the Government of Uttar Pradesh has issued instructions to the effect that "the Head Office, or other

authority responsible for preparing the pension papers should initiate the pension case, two years before retirement of the Government servant. At that stage, the essential information necessary for working out the qualifying service should be collected, and the entire service book and other service records should be examined and completed with a view to remove deficiencies andimperfections, if any, in the service book/records. This process should be completed" at least eight months in advance of the date of retirement of the Government servant. The actual computation and preparation of the pension papers should then start and "any deficiency or imperfection, omission which still remains in the service records should be ignored, and the determination of qualifying service should be proceeded with on the basis of entries in the service records, whatever the degree of imperfection to which it might have been possible to bring them by that time". "The process of determining the qualifying service and the average emoluments and the admissible pension and gratuity should be positively completed within a period of 2 months and the pension papers sent to the Accountant-General not later than 6 months before the date of retirement. The said office is to issue the pension payment order (including the order for the payment of the Death-cum-retirement gratuity) one month in advance of the date of retirement". "It should be ensured that the payment of superannuation pension commences on the first of the month following the month in which the government servant retires". This appears to be the clear position in Uttar Pradesh.

4. We may in this connection also refer to F.R. 58 which relates to "preparation of pension papers". It states that "every Head of Office shall undertake the work of preparation of pension papers in Form 7 two years before the date on which the Government servant is due to retire on superannuation or on the date on which he proceeds on leave preparatory to retirement whichever is earlier". F.R. 59 deals with the 'stages for the completion of pension papers'. Sub-clause (1)(a) bears the heading, the first stage, and refers to the verification of service details. There are five parts in this sub-clause. Sub-clause (1)(b) refers to the second stage, namely, making good the omissions in the service book. Sub-clause 1(b) (ii) is important and it states very clearly as follows:

"Every effort shall be made to complete the verification of service, as in clause (a) and to make good omissions, imperfections or deficiencies referred to sub-clause (i) of this clause. Any omission, imperfections or deficiencies including the portion of service shown as unverified in the service book which it has not been possible to verify in accordance with the procedure laid down in clause (a) shall be ignored and service qualifying for pension shall be determined on the basis of the entries in the book,"

This directive in the rules is obviously intended to see that once the period is quite close to 10 months before the retirement of an employee, further time is not to be wasted in verifying data which it has not been possible to verify by following the procedure in sub-clause (1)(a) of F.R. 59. Sub-clause (1) (c) refers to the third stage and it says that at least 10 months before the date of retirement, the Head office shall take various steps by issuing a Certificate to the government servant and the officer can offer his remarks and thereafter, he shall be furnished Form 4 and Form 5 which he has to fill-up and send to the Head Office at least 8 months before the date of retirement. F.R. 60 refers to 'completion of pension papers' in Part -1 of Form 7 at least 6 months before the date of retirement of the government servant. F.R. 61 deals with the 'Forwarding of Pension Papers to Accounts Officer', in Form 5 and Form 7 with a covering letter in Form 8 along with service book duly completed, up to date. and other documents. This has to be done at least 6 months before the date of retirement. Rule 63 refers to recovery of amounts due by the government

servant and the particulars in this behalf are to be sent at least 2 months before the date of retirement, so that the same could be recovered from the gratuity. F.R. 64 deals with provisional pension. F.R. 65 requires the Accounts Officer to assess the amount of pension and gratuity at least one month before the date of retirement. F.R. 68 requires interest to be paid on delayed payment of gratuity. As already stated, in cases of delayed payment of pension, this Court has levied interest at 12% per annum in several cases.

5. We have referred in sufficient detail to the Rules and instructions which prescribe the time-schedule for the various steps. to be taken in regard to the payment of pension and other retiral benefits. This we have done to remind the various governmental departments of their duties in initiating various steps at least two years in advance of the date of retirement. If the rules/instructions are followed strictly much of the litigation can be avoided and retired government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the government servant. Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the rules/instructions apart from other relevant factors applicable to each case."

13. Similarly, the Division Bench judgment of this Court in **Indrajeet Singh vs. State of U.P.** (supra) has reiterated that retiral benefits cannot be withheld on account of administrative lapses or inter-departmental correspondence and that a retired employee is entitled to interest upon delayed payment of pensionary dues.

Statutory Scheme Governing Pensionary Benefits.

14. This Court further finds that the State of Uttar Pradesh has framed the Uttar Pradesh Pension Cases (Submission, Disposal and Avoidance of Delay) Rules, 1995, wherein a detailed statutory time schedule has been prescribed for completion of pension formalities, verification of service records, issuance of no-dues certificates and forwarding of pension papers well prior to the date of retirement. The object behind the aforesaid statutory framework is to ensure that a retired employee is not compelled to suffer financial hardship after retirement on account of administrative lapses or procedural delays attributable to the authorities.

15. The relevant chart prescribed under the **Uttar Pradesh Pension Cases (Submission, Disposal and Avoidance of Delay) Rules, 1995** is reproduced below:-

TIME SCHEDULE

[See Rule 3(b) and 3(k)]

Sl. No.	Description of work	Time within which work is to be done	Person responsible for the work
(1)	Completion and verification of Service Book	Month of June every year.	1. Concerned clerk of

			concerned establishment of the department. 2. Office Superintendent. 3. Head of Office.
(2)	Review of Service Book and completion of deficiency, if any.	08 months before retirement	1. Concerned establishment clerk. 2. Office Superintendent. 3. Head Office.
(3)	Issue of 'No dues Certificate' (In service period).	Two months before retirement.	Head of Office.
(4)(a)	Providing of pension form to retiring official	08 months before retirement.	Head of Office.
(4)(b)	Filling of Pension-Form	06 months before retirement.	Retiring Government Servant.
(5)	Completion of forms in death cases.	one month after death.	1. Pension clerk. 2. Office Superintendent. 3. Head of Office.
(6)	Enquiries from the Appointing Authority as to whether any departmental proceeding is under consideration or not.	08 months before retirement	1. Office Superintendent. 2. Head of Office.
(7)	Supply of above information by the Appointing Authority.	Appointing Authority	_
(8)(a)	Forwarding of pension papers: Service Pension	Five months before retirement	Head of Office/Head of Department.
(8)(b)	Family Pension	one month after death	Head of Office/Head of Department.
(9)	Examination and scrutiny of pension papers etc, and writing to the department, if there is any objection or short coming to remove that.	Two months of receipt of pension papers.	1. Accountant. 2. Assistant Accounts Officer. 3. Pension Payment Order issuing officer.
(10)	Removing of objection.	One month after receiving the objection	Departmental Head of office.
(11)	Re-examination/disposal of pension case.	One month after receiving the corrected papers.	1. Accountant. 2. Assistant Accounts Officer. 3. Pension Payment Order issuing officer.
(12)	Forwarding of No-dues Certificate on Form-2 for release of withheld gratuity	Two months after retirement.	Head of Office.
(13)	Issue of Payment Order (Pension/Gratuity/Commutation of pension).	Upto or on the eve of retirement.	1. Accountant. 2. Assistant Accounts Officer. 3. Pension Payment Order issuing officer.
(14)	Sanction of Provisional Pension (if finalization is not possible).	One month after retirement/death.	1. Pension clerk. 2. Office Superintendent. 3. Head of Office.
(15)	Payment of Provisional Pension.	By seventh day of every month.	Drawing and Disbursing Officer.
(16)	Payment of Pension.	One month from the date of receipt of payment order	Treasury Officer/Drawing and Disbursing Officer.
(17)	Departmental proceeding against retired employee.	As per procedure laid down in CSR Article 351-A and decision to be taken within three months after receipt of Government order. If departmental proceeding has been instituted before	Administrative Department and the Government/Appointing Authority.

		retirement, it must be completed within six months after retirement.	
(18)	Contest of the legal suits filed in connection with pension matters.	Counter-affidavit should be submitted as per order of the Court or within two months from the date of receipt of writ petition, whichever is earlier.	Defendant of the department concerned.

16. The statutory schedule prescribed under the aforesaid Rules clearly mandates that completion and verification of service book, review of deficiencies, issuance of no-dues certificates, forwarding of pension papers and issuance of pension payment orders are all required to be completed well before the date of retirement. The Rules further cast a mandatory obligation upon the authorities concerned to ensure that pension and retiral dues are released immediately upon retirement and, in case finalization is not possible, provisional pension is required to be sanctioned without delay.

Findings

17. In the present case, no material has been brought on record to demonstrate that the respondents complied with the aforesaid statutory obligations. The record clearly reflects administrative lapses, procedural delay and lack of timely action on the part of the authorities concerned. Despite the petitioner having retired on 30.09.2019, his regular pension and substantial retiral dues were released only on 05.07.2020 and even according to the respondents themselves, the delay occurred due to procedural formalities relating to issuance of non-payment/no-dues certificates.

18. This Court further finds that no material whatsoever has been brought on record to establish that the petitioner was ever informed regarding any alleged deficiency or pending formality prior to retirement. On the contrary, the respondents themselves have admitted that deductions towards repayment of advances had regularly been made from the salary of the petitioner. Thus, the delay cannot be attributed to the petitioner in any manner whatsoever.

19. The impugned rejection order dated 08.07.2022 as contained in Annexure-1 to the writ petition is liable to be quashed for the reason that the same is a non-speaking and arbitrary order passed without consideration of the admitted factual position on record. The impugned order completely fails to consider that the respondents themselves have admitted that the delay occurred due to procedural and administrative reasons attributable to the authorities concerned. The impugned order further fails to record any finding whatsoever demonstrating that the petitioner was guilty of suppression of facts, non-cooperation or default in repayment of advances. No material has been referred to in the impugned order to establish that any notice was ever issued to the petitioner regarding alleged deficiencies prior to retirement. The reasoning assigned in the impugned order is therefore wholly unsustainable in law and contrary to the statutory Rules governing pensionary benefits as well as the law laid down by the Hon'ble Supreme Court in Dr. Uma Agrawal vs. State of U.P. and by the Division Bench of this Court in Indrajeet Singh vs. State of U.P.

20. This Court is therefore of the considered opinion that the petitioner cannot be made to suffer on account of administrative lapses, procedural delays or inter-departmental correspondence attributable entirely to the respondents-State. Pension and retiral benefits constitute valuable rights of a retired employee and delayed payment thereof entitles the employee to grant of reasonable interest.

21. In view of the facts and circumstances of the case and having regard to the law laid down by the Hon'ble Supreme Court as well as this Court, the petitioner is legally entitled to payment of interest upon delayed disbursement of post-retiral dues.

Conclusion

22. Accordingly, the writ petition succeeds and is allowed.

23. The impugned rejection order dated 08.07.2022 passed by respondent no.3 is hereby quashed.

24. A writ in the nature of Mandamus is issued commanding the respondents to calculate and pay interest at the rate of 8% per annum upon delayed payment of retiral dues including pension, gratuity and commutation for the period from 01.10.2019 to 04.07.2020.

25. The aforesaid exercise shall be completed within a period of three months from the date of production of a certified copy of this order before the competent authority.

26. In case the aforesaid amount is not paid within the stipulated period, the petitioner shall also be entitled to additional interest at the rate of 10% per annum from the date of default till actual payment.

(2026) 5 ILRA 1463
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 15.05.2026

BEFORE

THE HON'BLE AMITABH KUMAR RAI, J.

Writ A No. 7331 of 2007

Dileep Kumar Jaiswal **...Petitioner**

Versus

State of U.P. & Ors. **...Respondents**

Issue(s) for consideration

Whether a dependent family member of a deceased employee, having accepted and joined a post on compassionate grounds based on their initial qualifications, can subsequently claim appointment to a higher post on compassionate grounds after acquiring higher educational qualifications?

Headnotes

A. Education/Service Law - Uttar Pradesh Secondary Education Services Selection Board Act, 1982: Section 3, 16; U.P. Intermediate Education Act, 1921: Regulations 103 to 107 of Chapter III - The petitioner's father died in harness while working as an Assistant Teacher on 26.05.2003. Applying for compassionate appointment, the petitioner (then holding a B.A. degree) was appointed to a Class IV (Peon) post on 24.01.2004, which he joined on 30.01.2004. After joining, the petitioner acquired higher qualifications (B.Ed. and M.A. in English).

In 2007, upon a vacancy arising due to a promotion in the institution, the petitioner applied through the Management Committee/Principal for appointment to the higher post of Assistant Teacher (L.T. Grade) on compassionate grounds. The DIOS, Sultanpur, rejected the petitioner's representation on 17.10.2007. The petitioner challenged this rejection in the writ petition.

B. Compassionate appointment is a relief against immense financial hardship caused by the sudden and unforeseen loss of the earning member of a family. In such event, when a dependant family member of the deceased employee is provided appointment on compassionate basis, it is done in order to ensure that the family members are not subjected to impoverishment. Therefore, **such appointment which is arising out of exceptional circumstances, cannot be used as a ladder to climb up in seniority by claiming a higher post merely on the basis that he/she is eligible for such post.** (Para 25)

Once a dependent of a deceased employee is granted compassionate appointment, there cannot be second/further consideration for appointment to a higher post on compassionate ground. Accordingly, the order dated 17.10.2007 passed by the DIOS, Sultanpur does not suffer from any infirmity or illegality and hence no interference is called for. (Para 26)

Writ petition allowed. (E-4)

Case Law Cited

1. Umesh Kumar Nagpal Vs. State of Haryana and Others, (1994) 4 SCC 138 (Para 18)
2. State of Rajasthan Vs. Umrao Singh, (1994) 6 SCC 560 (Para 19)
3. Anjani Pratap Singh v. State of U.P. and Others, Special Appeal No.955 of 2007, Judgment and order dated 28.11.2007 (Para 21)
4. The Director of Town Panchayat and Others Vs. M. Jayabal and Another, Civil Appeal No.12640–12643 of 2025, decided on 12.12.2025 (Para 25)

List of Acts

Uttar Pradesh Secondary Education Services Selection Board Act, 1982; U.P. Intermediate Education Act, 1921.

List of Keywords

compassionate, appointment, higher post, financial hardship, service, infirmity, illegality.

Appearances for Parties

For Petitioner(s): Pt. S. Chandra
For Respondent(s): C.S.C.

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

1. Heard Shailesh Kumar, learned counsel for the petitioner and learned Standing Counsel for the State.

2. By means of the present writ petition, the petitioner has prayed for the following reliefs :

"(i) Issue a Writ, Order, or, Direction in the nature of the Certiorari thereby quashing the impugned order dated 17.10.2007 passed by the District Inspector of Schools District Sultanpur [the opposite party no. 03] and as contained in Annexure No. 11 accompanying the instant Writ Petition.

(ii) Issue a Writ, Order or Direction in the nature of the Mandamus thereby commanding and directing to the Opposite Parties to appoint the petitioner on the post Assistant Teacher L.T. Grade cadre on compassionate ground and allow the petitioner to work as the Assistant Teacher L.T. Grade cadre in the Ramkali Balika Inter College, District Sultanpur and pay salary.

(iii) Issue a Writ, Order or Direction in the nature of Mandamus thereby commanding and directing to the Opposite Parties to pay salary to the petitioner as the Assistant Teacher L.T. Grade cadre and the Opposite Party No. 03 [the District Inspector of Schools Sultanpur] kindly be directed to accept the Resolution dated 16.07.2007 of the Committee of Management of the Ramkali Balika Inter College, District Sultanpur."

3. The brief facts of the present case are that the father of the petitioner, namely, late Raja Ram Jaiswal, while working as an Assistant Teacher at Mustquim Inter College, Gyanipur, Sultanpur, died on 26.05.2003. On account of his death, the petitioner applied for compassionate appointment, pursuant to which he was appointed to the post of Peon at Ramkali Balika Inter College, Sultanpur, vide order dated 24.01.2004 passed by the District Inspector of Schools, Sultanpur (hereinafter referred to as "DIOS").

4. The petitioner joined the post of Peon in the said institution on 30.01.2004. However, prior thereto, he had submitted a letter dated 29.01.2004 addressed to the DIOS, Sultanpur, wherein he claimed appointment to the post of Assistant Teacher, being duly qualified for the said post. Thereafter, on 10.07.2007, the petitioner submitted an application to the Manager of the Institution through the Principal, claiming appointment as an Assistant Teacher on compassionate grounds as per his qualifications. The said application was forwarded by the Principal of the Institution with no objection. Thereafter, the Committee of Management took a decision to appoint the petitioner to the post of Assistant Teacher and referred the matter to the DIOS, Sultanpur for appointment under Section 16 of the Uttar Pradesh Secondary Education Services Selection Board Act, 1982 (hereinafter referred to as "the Act, 1982"). Subsequently, the petitioner submitted a representation dated 19.09.2007 to the DIOS, Sultanpur, which was rejected vide order dated 17.10.2007, which is under challenge in the present writ petition.

5. Learned counsel for the petitioner, assailing the order dated 17.10.2007, has submitted that Regulations 103 to 107 of Chapter III framed under U.P. Intermediate Education Act, 1921 read with section 3 of the Act, 1982 provide for compassionate appointment to the post of Assistant Teacher. Referring particularly to Regulation 103, it has been contended that a family member of a deceased teacher is entitled to be appointed to the post of Assistant Teacher in the Trained Graduate Grade, provided he possesses the prescribed requisite academic qualifications along with the requisite training eligibility and is otherwise fit for appointment.

6. It has further been submitted that under Regulation 105, the District Committee is the authority competent to deal with the selection for compassionate appointments. However, in the case of the petitioner, the representation has been rejected by the DIOS, Sultanpur. Hence, the decision taken by the DIOS, Sultanpur is without jurisdiction and is non est in the eyes of law.

7. It has further been submitted that after the promotion of one Smt. Girish Kumari Jaiswal, who was working as an L.T. Grade Teacher to the post of Lecturer in Sociology, a vacancy arose on the post of Assistant Teacher. As such, the petitioner ought to have been appointed to the post of Assistant Teacher against the said vacant post. However, while passing the impugned order dated 17.10.2007, the DIOS, Sultanpur failed to take into consideration the relevant material facts and as such, the order dated 17.10.2007 is liable to be set aside and an appropriate direction should be issued for appointing the petitioner to the post of Assistant Teacher on compassionate grounds.

8. Reliance has also been placed on the order dated 22.03.1996 issued by the Director of Education (Madhyamik), Lucknow, which provide for appointment to the post of Assistant Teacher in the L.T. Grade, as per the candidate′s qualifications on compassionate grounds. Reference has also been made to the letter dated 22.09.1997, which is a reminder issued by the Director of Education (Madhyamik), Lucknow to all the DIOSs, whereby certain information was sought in respect of compassionate appointments.

9. Learned Standing Counsel, on the other hand, has submitted that the petitioner was appointed on compassionate grounds vide office order dated 24.01.2004 to a Class IV post and at that point of time, the petitioner possessed the educational qualification of B.A. At that stage, the petitioner was not qualified for appointment to the post of Assistant Teacher, as he was merely a graduate. Subsequently, petitioner acquired the qualification of B.Ed. and also completed his M.A. (English) and thereafter submitted a representation dated 19.09.2007 seeking appointment to the post of Assistant Teacher in the L.T. Grade.

10. It has been submitted by the learned Standing Counsel that the provisions of Regulation 103 would have applied to the petitioner at the relevant point of time for appointment to the post of Assistant Teacher subject to the availability of the post. However, in the case of the petitioner, he lacked qualification for appointment to the post of Assistant Teacher at the relevant time. As such, he was granted appointment to a Class IV post and that too in a different institution from the one in which his father was employed as a Teacher under Regulation 106 of Chapter III of the Regulations framed under the U.P. Intermediate Education Act, 1921 as no post was available in the institution where his father was working. The said regulation amended vide notification dated 02.02.1995 provides for grant of compassionate appointment in any another institution of the district, if no post is available in the institution where the deceased employee had been working.

11. It has further been submitted that the petitioner was granted appointment vide order dated 24.01.2004 as per his qualifications at the relevant point of time and therefore, he cannot subsequently claim appointment to a higher post after acquiring higher qualifications.

12. The stand of the respondents is that, once the benefit of compassionate appointment has been granted to the petitioner on a Class IV post, he is not entitled to claim compassionate appointment for a second time on a higher post.

13. Having heard learned counsel for the parties and perused the record, the moot question which arises for consideration is whether the petitioner is entitled to grant of compassionate appointment on the post of Assistant Teacher after acquiring higher qualification subsequent to his appointment on compassionate grounds.

14. Compassionate appointment is a concept which has evolved in our service jurisprudence to meet situations where an employee dies while in service. Appointment on compassionate grounds recognizes that the family of an employee who dies in harness is left to fend for itself without the support of the wage earner upon whom it was dependent. It is an exception to the principle of equality of opportunity in matters of public employment, guaranteed under Article 16 of the Constitution, which requires a level playing field for all prospective applicants seeking employment. Appointing a person to public employment under the State or its instrumentalities merely on the basis of relationship with a deceased government servant would violate Articles 14 and 16 of the Constitution, as it would deprive society at large of an equal opportunity to apply for and seek selection to the post in question.

15. Compassionate appointment is, however, accepted as a valid exception to the general rule because its rationale is founded on the principle that there is an inherent public interest in protecting the dependents of employees from the financial destitution which may result from the untimely death of the employee while in service. The exception is, therefore, founded not merely on the existence of a family relationship, but on dependency and financial need arising from the death of the wage earner during service.

16. Being an exception, its contours and ambit are precisely defined and tailored so as to maintain proportionality between the reason for the exception and the means adopted to achieve its purpose.

17. A claim for compassionate appointment can be made only where a policy has been laid down for that purpose and in the absence of any such policy, there can be no right or claim to compassionate appointment. A person appointed on compassionate grounds does not, in that sense, step into the shoes of the deceased employee; rather, he or she is a fresh appointee through direct recruitment, to whom employment is granted on a post or position for which compassionate appointment is available.

18. Hon'ble the Supreme Court, in the case of **Umesh Kumar Nagpal v. State of Haryana and Others** reported in **(1994) 4 SCC 138** opined that the whole object of granting compassionate appointment is to enable the family to tide over the sudden financial crisis and such relief is granted to the dependent family members of the deceased employee to save them from destitution. Paragraph 2 of the said judgment is reproduced hereinbelow:

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

19. The issue which requires consideration in the present case is whether a dependent family member of a deceased employee, after having been appointed to a post on compassionate grounds, can subsequently seek appointment from the employer to a higher post. In this regard, the issue as to whether a second option can be exercised by the dependent family member of a deceased employee, after the first option for compassionate appointment has already been exercised and the dependent has joined the post to which such appointment was granted, was considered in the case of **State of Rajasthan v. Umrao Singh** reported in **(1994) 6 SCC 560**.

20. Hon'ble the Supreme Court, in the case of **Umrao Singh (supra)** has held that once the right to be considered for appointment on compassionate grounds has been consummated, any further or second consideration for appointment to a higher post on compassionate grounds would not arise. Paragraph 8 of the said judgment is reproduced hereinbelow:

"Admittedly the respondent's father died in harness while working as Sub-Inspector, CID (Special Branch) on 16-3-1988. The respondent filed an application on 8-4-1988 for his appointment on compassionate ground as Sub-Inspector or LDC according to the availability of vacancy. On a consideration of his plea, he was appointed to the post of LDC by order dated 14-12-1989. He accepted the appointment as LDC. Therefore, the right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise. Otherwise, it would be a case of "endless compassion". Eligibility to be appointed as Sub-Inspector of Police is one thing, the process of selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High Court was persuaded to the view that direction be issued under proviso to Rule 5 of Rules which has no application to the facts of this case.

(Emphasis supplied)

21. During the course of arguments, learned counsel for the petitioner referred to the judgment passed in **Special Appeal No.955 of 2007 "Anjani Pratap Singh v. State of U.P. and Others"**, decided by a Division Bench of this Court vide judgment and order dated 28.11.2007.

22. The reliance placed by learned counsel for the petitioner is misconceived, as the facts and circumstances of the present case are quite distinct. In the case of **Anjani Pratap Singh (supra)**, a recommendation had been made for appointment to a Class III post at the time of compassionate appointment. However, instead of granting appointment to a Class III post, the appointment was made to a Class IV post. In those circumstances, the Division Bench interfered and directed that the appointment be given on a Class III post.

23. In the present case, the petitioner was granted compassionate appointment to a Class IV post in a different college, as there was no vacant post available in the institution where the petitioner's father was working at the time of his death. The compassionate appointment was granted to the petitioner in accordance with his qualifications and he was not qualified at the relevant point of time for appointment to the post of Assistant Teacher. This fact is not in dispute.

24. It is the petitioner's own case that after being granted compassionate appointment in 2004, he acquired additional qualifications of B.Ed. and M.A. (English) and subsequently made a representation seeking compassionate appointment to the higher post of Assistant Teacher. Thus, the benefit of the judgment rendered in the case of **Anjani Pratap Singh (supra)**, which is based on a different set of facts, cannot be extended to the case of the petitioner.

25. Recently, the issue also came up for consideration before the Hon'ble Supreme Court in **Civil Appeal No.12640-12643 of 2025, titled The Director of Town Panchayat and Others v. M. Jayabal and Another**, decided on 12.12.2025. In the aforesaid case, compassionate appointment was initially granted on the post of Sweeper and thereafter a claim was made for appointment to a higher post, which was allowed by the High Court directing the department to grant appointment to the higher post of Junior Assistant. The judgment was challenged before a Division Bench, which also affirmed the order of the learned Single Judge and thereafter the matter

was challenged before the Hon'ble Supreme Court. Paragraph 12 of the said judgment is reproduced hereinbelow:

"Keeping in view the core objective behind appointment on compassionate basis, as has been discussed in a catena of judgments of this Court, it is well settled that compassionate appointment is a relief against immense financial hardship caused by the sudden and unforeseen loss of the earning member of a family. In such event, when a dependant family member of the deceased employee is provided appointment on compassionate basis, it is done in order to ensure that the family members are not subjected to impoverishment. Therefore, such appointment which is arising out of exceptional circumstances, cannot be used as a ladder to climb up in seniority by claiming a higher post merely on the basis that he/she is eligible for such post."

(Emphasis supplied)

26. In view of the aforesaid settled position of law as indicated hereinabove, this Court is of the considered view that once a dependent of a deceased employee is granted compassionate appointment, there cannot be second/further consideration for appointment to a higher post on compassionate ground. Accordingly, the order dated 17.10.2007 passed by the District Inspector of Schools, Sultanpur does not suffer from any infirmity or illegality and hence no interference is called for and the instant writ petition is **dismissed**.

27. No order as to costs.

(2026) 5 ILRA 1470
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.05.2026

BEFORE

THE HON'BLE ANISH KUMAR GUPTA, J.

Writ A No. 9485 of 2023

Shripal **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue(s) for consideration

(a) Whether the petitioner was eligible for regularization under the 2016 Rules?
(b) Whether the state is justified in fixing an artificial cutoff date (09.11.2023) to deny the minimum pay scale to daily-wage workers who complete 10 years of continuous service *after* that date?

Headnotes

A. Labour Law - The petitioner was engaged as a daily-wage worker by the Forest Department in February 2015 and has been continuously working since then. The petitioner previously filed Writ-A No. 20449 of 2022, where the court directed the respondents to consider his claim for minimum pay scale. On 21.01.2023,

Respondent No. 3 (Prabhagiya Vanadhikari, Pilibhit Tiger Reserve) rejected his claim for regularization, stating he did not meet the eligibility cutoffs under the Rules, 2016.

The Forest Department issued guidelines granting the minimum of the pay scale (₹18,000/- per month) to daily wagers who completed 10 years of continuous service. However, the memo restricted this benefit strictly to workers who had completed 10 years on or before an artificial cutoff date of 09.11.2023 (the date of an interim order in a lead case).

The petitioner challenged the rejection order and sought: Quashing of the order dated 21.01.2023, Grant of minimum pay scale as he approached/completed 10 years of continuous service, Directions for regularization and decision on his representation.

B. The rationale behind the office memo dated 24.09.2024 appears to be reasonable enough to grant the minimum pay scale to each and every person who has completed 10-20 years of continuous service. From the cumulative understanding of 2001 rules, 2016 Rules and directions issued by the Apex Court in *Putti Lal's case* and the office memo dated 24.09.2024, the rationale behind grant of minimum pay scale is that the persons, who are continuously working since long period and were eligible for regularization, the direction is to grant minimum pay scale to them. However, **in the said Office Memo dated 24.09.2024, the cutoff date of 09.11.2023 appears to have been fixed without any rationale behind it as it was issued to fill up the gap till the policy is framed by the State.** (Para 9, 11)

The Apex Court has directed that all such candidates, who are eligible for regularization in terms of 2001 Rules and their claim for regularization could not be considered and will take time to get finalized, would be entitled for grant of minimum pay scale instead of the minimum wages, which were being paid to them. 2001 Regularization Rules had provided the cutoff date from 29.06.1991 till 21.12.2001. Likewise 2016 Rules provided the cutoff dates of 31.12.2001 and 12.09.2016 between which, if any candidate is continuously working, then they would become eligible for regularization. In 2001 Rules, approximately ten years' period and in 2016 Rules, approximately 15 years' period has been considered to make a person eligible for regularization. (Para 13, 14)

As per the directions of the Apex Court in *Putti Lal (infra)*, the grant of minimum pay scale is subject to the eligibility of the candidate for regularization and consequently the period more than ten years of continuous service has been considered appropriate and likewise in the office memo dated 29.04.2024 also, the respondents have taken into consideration the ten years' continuous service to make a person eligible for grant of minimum pay scale. (Para 14)

Therefore, it is provided that each and every person, who has completed 10 years continuous service as daily wager/Class-IV employee as on 09.11.2023 as provided in office memo dated 24.09.2024 or would complete 10 years service subsequently, shall be entitled for grant of minimum pay scale and while calculating the continuous service, the respondent shall also ignore the artificial breaks, if any, not exceeding one year at a time and the office memo dated 24.09.2024, is modified accordingly. (Para 15)

Writ petition disposed of with a direction to the respondents to verify whether the petitioner has completed 10 years continuous service and if yes, the petitioner shall be granted minimum pay scale. (E-4)

Case Law Cited

State of U.P. Vs. Putti Lal, 2006 (9) SCC 337 (Para 9)

List of Acts

Uttar Pradesh Regularisation of Daily Wages Appointments on Group 'D' Posts Rules, 2001; Uttar Pradesh Regularization of Persons Working on Daily Wages, Work Charge, or Contract in Government Departments (Group C & D Posts) Rules, 2016.

List of Keywords

regularization, minimum, pay scale, daily, wage, appointment, work, charge, contract, continuous, service.

Appearances for Parties

For Petitioner(s): Ramendra Kumar Shukla
For Respondent(s): C.S.C.

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

1. Supplementary affidavit filed on behalf of the petitioner today in Court, is taken on record.

2. Heard Sri Ramendra Kumar Shukla, learned counsel for petitioner, Sri Pradeept Kumar Shahi, learned Additional Chief Standing Counsel assisted by Sri Pradeep Singh, learned Standing Counsel for the State.

3. The instant petition has been filed with the following prayer:

"I. Issue a writ order of direction in the nature of certiorari to quash the order dated 21.01.2023 passed by Office of Prabhagiya Vanadhikari, Pilibhit Tiger Riserve Pilibhit i.e. respondent no.3,

II. Issue a writ order of direction in the nature of mandamus commanding to the respondents to pay minimum of the pay scale to the petitioner in the light of Judgment passed by the Hon'ble Supreme Court in Shobha Shanker Dubey and Mohan Swaroop and others cases bearing no. Civil appeal no. 10956 of 2018 and Civil misc. writ petition no.11964 of 2018 order dated 14.11.2018 and 17.11.2018.

III. Issue a writ order of direction in the nature of mandamus commanding the respondent no.3 to regularized the petitioner in the aforesaid post.IV. Issue a writ order of direction in the nature of mandamus commanding to the respondents to consider and decide the representation dated 22.03.2023 filed by the petitioner within specific time granted by this Hon'ble Court (Annexure no2) to this writ petition."

4. In the instant petition, the petitioner has claimed that he was engaged on daily wages by the Forest Department from February 2015 and since then, he is continuously working. Previously, the petitioner had filed Writ-A No. 20449 of 2022 (Shri Pal vs. State of UP and 3 others), which was disposed of by order dated 08.12.2022 directing the respondents to consider the claim of the petitioner for grant of minimum pay scale within a period of three months. Thereafter, vide order dated 21.01.2023, the claim for regularization of the petitioner was rejected as he was not eligible in terms of Uttar Pradesh Regularization of Persons Working on Daily Wages, Work Charge, or Contract in Government Departments (Group C & D Posts) Rules, 2016 (in short, 'Rules, 2016') for regularization.

5. So far as the prayer of the petitioner with regard to regularization is concerned, from the admitted facts, the petitioner is not eligible for regularization in terms of 2016 Rules. Accordingly, this Court do not find any illegality in the impugned order dated 21.01.2023.

6. However, the petitioner has also claimed that he should be granted the minimum pay scale as he has completed 10 years continuous service with the Forest Department. Though, he is not eligible for regularization but since the respondents have already granted the minimum pay scale to the persons, who have completed 10 years of continuous service vide office memo dated 24.09.2024. However, in that Office Memo, a cutoff date of 09.11.2023 has been fixed by the respondents.

7. Learned counsel for the petitioner further submits that the petitioner is also a similarly situated person and no artificial cutoff date can be fixed in such matters for grant of minimum pay scale to some individuals, who have completed 10 years service up to 09.11.2023, but the persons who are completing 10 years service after 09.11.2023 can be denied the grant of minimum pay scale. In such view of the matter, learned counsel for the petitioner submits that since the petitioner has completed the 10 years of continuous service, therefore, the minimum pay scale should be accorded to the petitioner.

8. Learned Additional Chief Standing Counsel for the State relies upon the office memo dated 24.09.2024 and submits that in the said office memo, the basis for grant of minimum pay scale is 10 years continuous service to the persons as daily wagers or Class IV employees. However, the said date 09.11.2023 was fixed in terms of the order dated 09.11.2023 passed by this Court in the lead matter being Writ-A No. 9383 of 2023 (Vijay Kumar Srivastava vs. State of UP and 2 others). However, the Additional Chief Standing Counsel submits that since the cutoff date has been fixed by the department, so every person who has completed 10 years continuous service on 09.11.2023 has been granted a minimum pay scale. Since the petitioner has not completed 10 years continuous service as on 09.11.2023, he is not eligible and entitled for grant of minimum pay scale.

9. Having heard the rival submissions so made by the learned counsel for the parties, this Court has carefully gone through the record of the case. From the perusal of the background of the instant cases, which has been previously settled by the Apex Court in **State of U.P. vs. Putti Lal, 2006 (9) SCC 337**, it is apparent that since there were no effective regularization rules and the candidates who were working since long and when the regularization rules were framed and implementation thereof was awaited, the Apex Court has provided vide its judgment dated 21.02.2002 that all such candidates who are eligible for regularization in terms of Uttar Pradesh Regularisation of Daily Wages Appointments on Group 'D' Posts Rules, 2001 (in short, 'Rules, 2001'), but could not be regularized or the regularization process is still incomplete, they shall be granted the minimum pay scale. Subsequently, 2016 Rules were also brought by the State Government, which provided the period of service from particular dates to make a person eligible for regularization and since thereafter, though no further rules with regard to regularization are available. In 2001 Rules, the provision was that a person who is working since prior to 29.06.1991 and continuously working till 21.12.2001, is eligible for regularization and in terms of judgment of **Putti Lal (supra)**, till the consideration of his claim for regularization, he is entitled for minimum pay scale.

10. Likewise it is provided in the 2016 Rules that a person who is working prior to 31.12.2001 till 12.09.2016, he is eligible for regularization in terms of 2016 Rules. Due to various directions passed in the lead matter i.e. Writ-A No. 9383 of 2023 (Vijay Kumar Srivastava vs. State of UP and 2 others), repeatedly this Court has asked the State Government to frame the policy with regard to the grant of minimum pay scale as well.

11. In terms of the aforesaid directions, the respondents have come up with the office memo dated 24.09.2024 and has provided that any candidate who has continuously worked for 10 years or 20 years as on 09.11.2023, the cutoff date, he would be entitled for grant of minimum pay scale. Thus, from the cumulative understanding of 2001 rules, 2016 Rules and directions issued by the Apex Court in Putti Lal's case and the office memo dated 24.09.2024, the rationale behind grant of minimum pay scale is that the persons, who are continuously working since long period and were eligible for regularization, the direction is to grant minimum pay scale to them. The rationale behind the office memo dated 24.09.2024 appears to be reasonable enough to grant the minimum pay scale to each and every person who has completed 10-20 years of continuous service. However, in the said Office Memo dated 24.09.2024, the cutoff date of 09.11.2023 appears to have been fixed without any rationale behind it as it was issued to fill up the gap till the policy is framed by the State. For ready reference, the office memo dated 24.09.2024 is being reproduced herein under:

"मा० सर्वोच्च न्यायालय एवं उच न्यायालय के विभिन्न रिट याचिकाओं में पारित आदेशों के अनुपालन में वन विभाग, उत्तर प्रदेश में कार्यरत दैनिक श्रमिकों को वेतनमान का न्यूनतम अनुमन्य करने सम्बन्धी दिशा-निर्देश (Guidelines).

मा० सर्वोच न्यायालय एवं मा० उच्च न्यायालय, इलाहाबाद के आदेशों के समादर में प्रधान मुख्य वन संरक्षक एवं विभागाध्यक्ष से हुए विचारोपरान्त, दैनिक श्रमिक जो 10 वर्षों से अधिक समय से कार्यरत है, को वेतनमान का न्यूनतम दिये जाने के सम्बन्ध में, चूंकि नीति बनने में समस्त विभागों से विचार विर्मश करने में समय लगने की संभावना है, अतः मा० सर्वोच्च न्यायालय/उच्च न्यायालय के आदेश के क्रम में नीति के सम्बन्ध में निर्णय लिये जाने/निर्गत होने तक वन विभाग निम्नवत एक गाइड लाइन्स निर्गत करता है, जिससे मा० न्यायालय के आदेशों की अवहेलना न हो ।

2- उपरोक्त के दृष्टिगत वन विभाग में 10 से 20 या अधिक वर्षों से कार्यरत श्रमिकों को वेतनमान का न्यूनतम अनुमन्य किये जाने के सम्बन्ध में निम्न दिशा-निर्देश निर्गत किये जा रहे है

1. मा० उच्च न्यायालय, इलाहाबाद में रिट याचिका संख्या-ए 9383/2023 विजय कुमार श्रीवास्तव बनाम उ०प्र० राज्यादि में पारित आदेश के दिनांक 09.11.2023 से 10 वर्ष या इससे पूर्व से कार्यरत तथा उक्त तिथि 09.11.2023 के उपरान्त भी कार्यरत रहे, ऐसे समस्त (वन विभाग द्वारा लगभग 3209 की संख्या बतायी गयी है) समान स्थिति वाले दैनिक श्रमिकों को वेतनमान का न्यूनतम वेतन (minimum of the pay scale) रूपया 18,000/- (रूपया अठारह हजार केवल) की धनराशि दिया जाय। सम्वन्धित प्रभागीय

वनाधिकारी अपने स्तर से तत्काल उक्त धनराशि दिया जाना सुनिश्चित करेंगे, जो कि इसके लिये अधिकृत है।

2. दैनिक श्रमिको को कार्य एवं बजट के आधार पर प्रभागीय वनाधिकारी/प्रभागीय निदेशक द्वारा रखा जाता है। अतः उनके द्वारा किसी प्रकार की पक्षपातपूर्ण (Pick and choose)" कार्यवाही नहीं की जाय। ऐसे सभी मामलों में Equal Treatment दिया जाय और मा० न्यायालयों के आदेशों की अवमानना की स्थिति नहीं आनी चाहिए।

3. प्रभागीय वनाधिकारी/प्रभागीय निदेशक ऐसे सम्बन्धित श्रमिक की कार्यरत रहने की अवधि की सत्यापन उपरान्त न्यूनतम वेतन के समतुल्य धनराशि अनुमन्य/भुगतान किया जाना सुनिधित करेंगे।

4. मा० न्यायालय के आदेशों की अवमानना की स्थिति में सम्बन्धित प्रभागीय वनाधिकारी/प्रभागीय निदेशक स्वयं व्यक्तिगत रूप से जिम्मेदार होंगे।

उपरोक्त गाइड लाइन्स (दिशा निर्देश) तात्कालिक प्रभाव से लागू होंगे।"

12. In ***Putti Lal (supra)***, the Apex Court has made the following observations with regard to payment of minimum pay scale :

"3. On behalf of the employees an IA had been filed claiming that they should at least be allowed their regular wages during the pendency of the appeals, but by order dated 27-9-1999 that prayer was rejected and it was held that the persons working will be paid only the amount payable to a daily-wager. When these matters had been posted for hearing before the Court on 1-5-2001, after hearing the parties for a considerable length of time, the Court felt that the impugned direction of the High Court for providing a scheme for regularisation of all the daily-wage workers/muster-roll employees under the Forest Department who have rendered 10 years of service or more, should be regularised by making appropriate scheme. The Court directed that the scheme should be framed within three months from the date of the order. As the State of U.P. was bifurcated into two States and the State of Uttaranchal had come into existence, by a subsequent order the State of Uttaranchal was also impleaded as a party and it had been granted time to file its response. Pursuant to the aforesaid direction of the Court dated 1-5-2001 the State of U.P. has framed a set of rules in exercise of power conferred under the proviso to Article 309 of the Constitution called ?the Uttar Pradesh Regularisation of Daily Wagers (Appointment on Group ?D? Posts) Rules, 2001?. It appears that a similar rule has been framed for regularisation of Group ?C? daily-wage employees. Both these statutory rules would govern the case of all daily-wagers appointed in any department including the Forest Department, which Department was before us pursuant to the direction of the Division Bench of the Allahabad High Court. Since a statutory rule has been framed indicating the manner in which the daily-wagers can be regularised, question of framing any further scheme by the State of Uttar Pradesh does not arise.

4. Mr Bahuguna, learned Senior Counsel appearing for the employees, made a grievance with regard to some of the provisions of the aforesaid Rules but we are not inclined to entertain that grievance and issue any direction in this case inasmuch as grievance, if any, emanating from the aforesaid statutory rules would be on a fresh cause of action which could be assailed before an appropriate forum by the aggrieved party. Mr Bahuguna, however, contended that so far as the

entitlement of these daily-wagers until they are regularised in accordance with the statutory rule to get minimum of the pay scale is concerned, should be granted by this Court which is not being given because of the interim order of stay that had been passed by this Court and the dismissal of the IA filed by the employees. According to him, a judgment of a learned Single Judge in respect of the Forest Department employees unequivocally held that the daily-wagers should be paid in the minimum of the pay scale as is available to a regularly employed worker in the corresponding cadre.

5. In several cases this Court applying the principle of equal pay for equal work has held that a daily-wager, if he is discharging the similar duties as those in the regular employment of the Government, should at least be entitled to receive the minimum of the pay scale though he might not be entitled to any increment or any other allowance that is permissible to his counterpart in the Government. In our opinion that would be the correct position and we, therefore, direct that these daily-wagers would be entitled to draw at the minimum of the pay scale being received by their counterparts in the Government and would not be entitled to any other allowances or increment so long as they continue as daily-wagers. The question of their regular absorption will obviously be dealt with in accordance with the statutory rules already referred to.

6. So far as the State of Uttaranchal is concerned, a scheme for regularisation of daily workers has been produced before us which prima facie does not appear to be objectionable excepting the provision regarding qualification for regularisation. Be it stated that the qualification essential for being regularised would be the qualification as was relevant on the date a particular employee was taken in as a daily-wager and not the qualification which is being fixed under the scheme. The fact that the employees have been allowed to continue for so many years indicates the existence or the necessity for having such posts. But still it would not be open for the Court to b indicate as to how many posts would be created for the absorption of these daily-wage workers. Needless to mention that the appropriate authority will consider the case of these daily-wagers sympathetically who have discharged the duties for all these years to the satisfaction of their authority concerned. So far as the salary is concerned, as we have stated in the case of the State of Uttar Pradesh, a daily-wager in the State of Uttaranchal would be also entitled to the minimum of the pay scale as is available to his counterpart in the Government until his services are regularised and he is given regular scale of pay."

13. From the aforesaid observations as made in Putti Lal (supra), it is apparent that the persons who are eligible for regularization in terms of 2001 Rules and their claim for regularization could not be considered and it will take some time to finalize the claim for regularization.In such circumstances, the Apex Court has directed that all such candidates would be entitled for grant of minimum pay scale instead of the minimum wages, which were being paid to such candidates. 2001 Regularization Rules had provided the cutoff date from 29.06.1991 till 21.12.2001. Likewise 2016 Rules provided the cutoff dates of 31.12.2001 and 12.09.2016 between which, if any candidate is continuously working, then they would become eligible for regularization in 2001 Rules and approximately ten years period has been considered to make a person eligible for regularization. In 2016 Rules, approximately 15 years period has been considered to make a person eligible for regularization.

14. In the considered opinion of this Court as per the directions of the Apex Court in Putti Lal (supra), the grant of minimum pay scale is subject to the eligibility of the candidate for

regularization and consequently the period more than ten years continuous service has been considered appropriate to make a person eligible for grant of minimum pay scale and likewise in the office memo dated 29.04.2024 also, the respondents has also taken into consideration the ten years continuous service to make a person eligible for grant of minimum pay scale.

15. In view of the above, it is provided that each and every person, who has completed 10 years continuous service as daily wager/Class-IV employee as on 09.11.2023 as provided in office memo dated 24.09.2024 or would complete 10 years service subsequently, shall be entitled for grant of minimum pay scale and while calculating the continuous service, the respondent shall also ignore the artificial breaks, if any, not exceeding one year at a time and the office memo dated 24.09.2024, is modified accordingly.

16. In such view of the matter, the instant petition is **disposed of** with a direction to the respondents to verify whether the petitioner has completed 10 years continuous service and if yes, the petitioner shall be granted minimum pay scale, within a period of eight weeks from the date of production of certified copy of this order.

17. Let this case be de-linked from the bunch matters and should not be shown in the cause list.

(2026) 5 ILRA 1477
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 15.05.2026

BEFORE

THE HON'BLE AMITABH KUMAR RAI, J.

Writ A No. 10936 of 2025

Shekhar **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue(s) for consideration

Whether an appointing authority can declare a candidate unsuitable for appointment to a disciplined force (Police) due to the pendency of serious criminal charges, even when the candidate truthfully disclosed the cases and trial has not yet concluded?

Headnotes

A. Service Law – U.P. Civil Police Constable & Head Constable Service Rules, 2015: Rule 16 - The petitioner applied for the post of Constable (Civil Police) under a 2023 recruitment advertisement and was recommended for appointment by the Recruitment Board. In his application form, he truthfully disclosed the pendency of two criminal cases against him.

Case Crime No. 0018 of 2021: Sections 392 (Robbery), 411 (Receiving stolen property), 34, and 201 IPC (Charge Sheet filed).

Case Crime No. 0156 of 2021: Sections 2/3 of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986.

Pursuant to Rule 16 of Rules, 2015, and the G.O. dated 28.04.1958, character verification was conducted. The Superintendent of Police, Pratapgarh sought the opinion of the District Magistrate (DM), Pratapgarh. After affording a hearing to the petitioner, the DM opined on 09.06.2025 that due to the serious nature of the pending charges, appointing the petitioner would be inappropriate. Relying on the DM's report, the Appointing Authority (SP Ghazipur) issued an order dated 10.07.2025 cancelling the petitioner's selection/candidature.

B. If a person is acquitted giving him the benefit of doubt, from the charge of an offence involving moral turpitude or because the witnesses turned hostile, it would not automatically entitle him for the employment, that too in disciplined force. The employer is having a right to consider his candidature in terms of the circulars issued by the Screening Committee. **The mere disclosure of the offences alleged and the result of the trial is not sufficient.** In the said situation, **the employer cannot be compelled to give appointment to the candidate.** (Para 16)

In the present case, charge sheet has been filed against the petitioner in respect of a case relating to serious charges and the petitioner has yet to be tried for the said offences. The post in question pertains to a disciplined force and therefore, a candidate facing serious criminal charges cannot be considered suitable for such appointment. The DM, Pratapgarh, while forming his opinion, had also afforded opportunity of hearing to the petitioner before arriving to the conclusion that he was involved in serious offences, hence, he is not suitable for appointment. Therefore, it cannot be said that the appointing authority has acted illegally in cancelling the selection/candidature of the petitioner (Para 17, 18, 20)

Even if the petitioner is acquitted or discharged after the conclusion of trial, it cannot be presumed at this stage that he would be honourably acquitted. The Superintendent of Police, Ghazipur, being the appointing authority, has rightly concurred with the recommendation of the DM in terms of the GO dated 28.04.1958 while passing the order dated 10.07.2025 cancelling the selection/candidature of the petitioner. (Para 20)

C. Clause 3.5 of the notification No. PRPB: E-1(150)/2023 dated 23.12.2023, inviting applications for recruitment to the post of Constable (Civil Police), specifically provides that the character of a candidate must be such that he is suitable in all respects for appointment and the appointing authority must be satisfied in this regard. (Para 21)

The order dated 10.07.2025 cancelling the candidature of the petitioner reflects that the procedure prescribed u/GO dated 28.04.1958 has been duly followed in letter and spirit. The appointing authority, having considered the opinion of the DM dated 09.06.2025, arrived to the conclusion that the petitioner is not suitable for appointment to the post of Constable (Civil Police). The said decision cannot be faulted, having been taken in accordance with due process of law. (Para 22)

Writ petition dismissed. (E-4)

Case Law Cited

1. Avtar Singh Vs. Union of India, (2016) 8 SCC 471 (Para 7)
2. Ravindra Kumar Vs. State of U.P. and others, Civil Appeal No. 5902 of 2012, decided on 22.02.2024 (Para 7)
3. Ram Kumar Vs. State of U.P. and Others, (2011) 14 SCC 709 (Para 10)
4. Satish Chandra Yadav Vs. Union of India, (2023) 7 SCC 536 (Para 15)
5. Union of India Vs. Methu Meda, (2022) 1 SCC 1 (Para 16)

List of Acts

Uttar Pradesh Civil Police Constable & Head Constable Service Rules, 2015.

List of Keywords

service, criminal, charge, appointment, pendency, police, authority, selection, candidature, due process of law, character.

Appearances for Parties

For Petitioner(s): Dinesh Pratap Singh, Armaan Surendra Tiwari
For Respondent(s): C.S.C.

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

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State.

2. The instant writ petition has been filed seeking quashing of the order dated 10.07.2025, whereby the selection/candidature of the petitioner for appointment to the post of Constable (Civil Police) has been rejected on the ground of pendency of criminal cases registered as Case Crime No. 0018 of 2021, under Sections 392/411/34/201 I.P.C., Police Station Kandhai, District Pratapgarh, registered on 13.01.2021 as well as Case Crime No. 0156 of 2021 under Sections 2/3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986.

3. The brief facts of the case, shorn of unnecessary details, are that the petitioner applied for selection to the post of Constable (Civil Police) pursuant to an advertisement issued by the Uttar Pradesh Police Recruitment and Promotion Board (hereinafter referred to as **"Recruitment Board"**). The petitioner, after undergoing the selection process, was selected and recommended by the Recruitment Board for appointment to the said post. However, during the course of police verification, it was found that Charge Sheet No.140 of 2021 had been filed under Sections 392/411/34/201 I.P.C. arising out of FIR lodged on 13.01.2021, registered as Case Crime No. 0018 of 2021 at Police Station Kandhai, District Pratapgarh.

4. It is the case of the petitioner that he had already disclosed the pendency of the aforesaid two criminal cases while filling up the application form and merely on account of such pendency, he cannot be denied appointment to the post of Constable (Civil Police), especially after having been selected and recommended by the Recruitment Board.

5. The Recruitment Board, in its counter affidavit, has stated that after completion of the selection process and forwarding of the recommendation, the role of the Board comes to an end and it is for the appointing authority to take a decision regarding appointment. It has further been stated that the selections were conducted in accordance with the provisions contained in the Uttar Pradesh Civil Police Constable & Head Constable Service Rules, 2015 (as amended in 2017). Rule 16 of the said Rules provides for character verification and stipulates that before issuance of the appointment order, the appointing authority must obtain a verification report, and upon disclosure of any adverse material, the candidate may be declared unfit for appointment and the vacancy has to be carried forward to the next selection. It is further stated that the final result was declared on 13.03.2025 and the select list was forwarded to the Director General of Police, Uttar Pradesh, Lucknow, for further necessary action, whereafter the Recruitment Board ceased to have any role in the matter of appointment.

6. In the separate counter affidavit filed on behalf of respondent no. 5, it is stated that while filling up the application form, the petitioner had disclosed the pendency of two criminal cases, however, there was no reference to the nature of charges, which, upon police verification, were found to relate to serious offences. It is further stated that a letter dated 21.05.2025 was sent by the Superintendent of Police, Pratapgarh, to the District Magistrate, Pratapgarh, seeking opinion regarding the suitability/unsuitability of the petitioner in light of Government Order No. 4694/1-B-321-1947 dated 28.04.1958. In response, the District Magistrate, Pratapgarh, vide letter no.37/50 JA-2025 dated 09.06.2025, opined that since serious charges were levelled against the petitioner and charge sheets had already been filed, it would not be appropriate to appoint him in service. Accordingly, by office letter no. M-129/2024 dated 10.07.2025, the selection of the petitioner was cancelled on the ground that he was found unsuitable for appointment.

7. Learned counsel for the petitioner submits that mere pendency of criminal cases cannot be a ground to deny appointment, particularly when the petitioner had disclosed the same at the time of application. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in **Avtar Singh v. Union of India, (2016) 8 SCC 471,** as well as **Civil Appeal No. 5902 of 2012, Ravindra Kumar vs State of U.P. and others, decided on 22.02.2024.**

8. On the other hand, learned Standing Counsel appearing for the respondents has also relied upon **Avtar Singh (supra**), particularly paragraph 38, to contend that in view of the serious nature of offences involved, the petitioner was rightly declared unsuitable for appointment to the disciplined force of Constable (Civil Police).

9. Having heard learned counsel for the parties, the moot question that arises for consideration is whether the petitioner can be held unsuitable for appointment due to pendency of criminal cases, though serious in nature, but yet to be proved in trial.

10. The Hon'ble Supreme Court in **Ram Kumar vs. State of U.P. and Others, (2011) 14 SCC 709**, while considering the Government Order dated 28.04.1958, has held that the character of a candidate for direct appointment must be such as to render him suitable in all respects for employment in the service or post to which he is to be appointed. It is the duty of the appointing authority to satisfy itself regarding the suitability of the candidate and to apply its independent mind in that regard. The scanned copy of Government Order dated 28.04.1958 as available in the book "Uttar Pradesh Police Regulations" by Ali Kabir and R.N. Mishra published by Hind Publishing House is reproduced hereinbelow :-

portant Government Orders & Notifications

1

G.O. 4694-II-B-321-1947

Dated April 28, 1958

विषय : प्रथम नियुक्ति के समय चरित्र सत्यापन की प्रक्रिया।

Subject : Verification of Character at first appointment.

I am directed to refer to Appointment (B) Department secret G. O. No. 2712/II-B-321-1947 dated November 9, 1953 in which detailed instructions were issued regarding the method of verifications of character and antecedents of candidates for appointment under the State Government. These instructions were later on revised in this Department secret G. O. No. 4637/II-B-321-47; dated December 4, 1957. It has been noticed that difficulty is being experienced by some appointing authorities in correctly interpreting the instructions issued in the Government Order dated December 4, 1957. It has also been found that these instructions are not fully comprehensive to cover all the cases. The Governor has therefore been pleased to lay down the following instructions in supersession of all the previous orders on the subject.

2. The rule regarding character of candidates for appointment under the State Government shall continue to be as follows :

"The character of candidate for direct appointment must be such as to render him suitable in all respects for employment in the service or post to which he is to be appointed. It would be the duty of the appointing authority to satisfy itself on the point."

3. (a) Every direct recruit to any service under the Uttar Pradesh Government will be required to produce:

(i) A certificate of conduct and character from the head of the educational institution where he last studied (if he went to such an institution).

(ii) Certificates of character from two persons. The appointing authority will lay down requirements as to kind of persons from whom it desires these certificates.

(b) In cases of doubt, the appointing authority may either ask for further references, or may refer the case to the District Magistrate concerned. The District Magistrate may then make further enquiries as he considers necessary.

Note—(a) A conviction need not of itself involve the refusal of a certificate of good character. The circumstances of the conviction should be taken into account and if they involve on moral turpitude or association with crimes of violence or with a movement which has its object to overthrow by violent means of Government as by law now established in free India the mere conviction need not be regarded as

disqualification.[1] (Conviction of a person during his childhood should not necessarily operate as a bar to his entering Government service. The entire circumstances in which his conviction was recorded as well as the circumstances in which he is now placed should be taken into consideration. If he has completely reformed himself on attaining the age of understanding and discretion, mere conviction in childhood should not operate as a bar to his entering Government service).

(b) While no person should be considered unfit for appointment solely because of his political opinions, care should be taken not to employ persons who are likely to be disloyal and to abuse the confidence placed in them by virtue of their appointment. Ordinarily, persons who are actively engaged in subversive activities including members of any organization the avowed object of which is to change the existing order of society by violent means should be considered unfit for appointment under Government. Participation in such activities at any time after attaining the age of 21 years and within three years of the date of enquiry should be considered as evidence that the person is still actively engaged in such activities unless in the interval there is positive evidence of change of attitude.

(c) Persons dismissed by the Central Government or by a State Government will also be deemed to be unfit for appointment to any service under this Government.

[2][(d) In the case of direct recruits to the State Services under the Uttar Pradesh Government includes requiring the candidates to submit the certificates mentioned in paragraph 3 (a) above. The appointing authority shall refer all cases simultaneously to Deputy Inspector General of Police, intelligence and the District Magistrate [3][of the home district and of the district(s) where the candidate has resided for more than a year within five years of the date of the inquiry] giving full particulars about the candidate. The District Magistrate shall get the reports in respect of the candidates from the Superintendent of Police who will consult District Police Records and records of the Local Intelligence Unit. The District Police or the District Intelligence Unit shall not make any enquiries on the spot, but shall report from their records whether there is anything against the candidate, but if in any specific case the District Magistrate at the instance of the appointing authority ask for an enquiry on the spot the Local Police or the Local Intelligence Units will do so and report the result to him. The District Magistrate shall then reports his own views to the appointing authority. Where the District Police or the Local Intelligence Units report adversely about a candidate the District Magistrate may give the candidate a hearing before sending his report.

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1. Added vide G. O. No. O--2239/II-B-212-1960, dated December 24, 1965.
2. Substituted vide G. O. No. 3780/II-B-321-1947, dated June 11, 1959.
3. Added vide G. O. No. 57/II-B-212-1960, dated May 22,1961.

(e) In the case of direct recruits (who are lower in rank than that of a State Service Officer) of :

(i) the police [1](including ministerial staff of Police Officers).

(ii) the Secretariat.

(iii) the staff employed in the government factories.

(iv) power houses and dams.

besides requiring the candidates to submit the certificates mentioned in paragraph 3 (a) above, the appointing authorities shall refer all cases simultaneously to the Deputy Inspector General, C.I.D. and the District Superintendent of Police [2][of the home district and of the district(s) where the candidate has resided for more than a year within five year of the date of the inquiry] giving full particulars about the candidate. The Superintendents of Police will send his report direct to the appointing authority if there is nothing adverse against the candidate. In cases where the report is unfavourable the Superintendent of Police will forward it to the District Magistrate who will send for the candidate concerned, give him a hearing and then, form his own opinion. All the necessary papers (the Superintendent of Police's report the candidate's statement and the District Magistrate's finding) will there after be sent to the appointing authority.

4. It will be seen that in cases of direct recruit to services other than those mentioned in paragraphs 3 (c) and 3 (d) above, verification shall not be necessary as a matter of routine except in cases of doubt when the procedure mentioned in paragraph 3 (b) shall be followed.

5. In the case of a candidate for services mentioned in paragraphs 3 (c) and 3 (d) above—

(i) if at the time of enquiry the candidate is residing in a locality situated outside Uttar Pradesh or if he has resided in such a locality at any time within five years of the date of enquiry for a period of one year or more it shall be the duty of the deputy Inspector General, C.I.D. to consult also the C.I.D.D. of the State concerned in which the locality is situated before making his verification report.

(ii) if the candidate was residing before partition in area now comprising Pakistan the Deputy Inspector General, C.I.D. shall also make a reference to the Director of Intelligence Bureau, Ministry of Home Affairs, Government of India, in addition to the usual enquires as indicated above.

6. It has also been observed that where the District Magistrates are required to send the attestation forms they sometimes do not sign the forms themselves, Government consider it very desirable that the attestation forms should invariably be signed by the District Magistrates them selves in all such cases.

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1. Added *vide* G. O. No. 4951/II-B-212-1962, dated January 16, 1963.
2. Added *vide* G. O. No. 57/II-B-212-1960 dated May 22 1963

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7. Other State Governments and Administrations are being informed separately that the verification of character and antecedents of recruits to their services from this State will henceforth be done according to the procedure adopted in the cases of recruits to different categories of services under the State Government.

8. In order to prevent a candidate, who has been disqualified for Government Employment from securing employment in a sub-ordinate or inferior service other than those mentioned in paragraph 3 (d), every person, recruited to these services should be required at the time of joining his appointment to fill up the form appended as Annexure 111 to this letter. If he is found to have made a false statement in this connection, he should be discharged forthwith, without prejudice to any other action that may be considered necessary.

9. All questions arising from there order shall be referred to Government in the appointment (B) Department for decision.

10. A form each of (i) particular about the candidate (ii) character certificate and (iii) statement of candidate to be used by the enquiring officers is annexed to the later.

11. It is not the case of the petitioner that the said Government Order dated 28.04.1958 is not in existence or has been superseded by any subsequent Government Order.

12. The para no.2 of the Government Order dated 28.04.1958, in clear terms, provides that it is the duty of the appointing authority to satisfy itself regarding suitability of a candidate with respect to his character. The para no.3(d) mandates that the appointing authority shall refer all cases simultaneously to District Magistrate alongwith police authorities. It further provides that where the District Police or the local intelligence submits report adversely about a candidate, then the District Magistrate may give the candidate a hearing before sending his report.

13. The Rule 11 of Uttar Pradesh Civil Police Constable & Head Constable Service Rules, 2015 also mandates that the appointing authority shall satisfy himself about the character of a candidate for direct recruitment. The Rule 11 is reproduced hereinbelow :-

11. Character-The character of a candidate for direct recruitment to a post in the service must be such as to render him suitable in all respect for employment in Government Service. The appointing authority shall satisfy itself on this point.

Note-Persons dismissed by the Union Government or any State Government or by a Local Authority or by a Corporation or Body owned or controlled by the Union Government or any State Government shall be ineligible for appointment to the service. Persons convicted of an offence involving moral turpitude shall also be ineligible.

14. The Hon'ble Supreme Court in **Avtar Singh (supra)**, in paragraph 38, has laid down following guidelines with regard to verification of the character antecedents of a candidate for appointment in the service:-

38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information. the employer may take notice of special circumstances of the case, if any, while giving such information.

`38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

(Emphasis supplied)

15. The Hon'ble Supreme Court in the case of **Satish Chandra Yadav v. Union of India : (2023) 7 SCC 536**, after taking into consideration the judgments passed subsequent to **Avtar Singh (supra)**, has held as follows in paragraph 93, which is reproduced hereinbelow along with paragraph 92 :-

92. The only reason to refer to and look into the various decisions rendered by this Court as above over a period of time is that the principles of law laid therein governing the subject are bit inconsistent. Even after the larger Bench decision in Avtar Singh [Avtar Singh v. Union of India, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425] different courts have enunciated different principles.

93. In such circumstances, we undertook some exercise to shortlist the broad principles of law which should be made applicable to the litigations of the present nature. The principles are as follows:

93.1. Each case should be scrutinised thoroughly by the public employer concerned, through its designated officials - more so, in the case of recruitment for the Police Force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security. (See Raj Kumar [State v. Raj Kumar, (2021) 8 SCC 347 : (2021) 2 SCC (L&S) 745])

93.2. Even in a case where the employee has made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to consider the antecedents, and cannot be compelled to appoint the candidate. The acquittal in a criminal case would not automatically entitle a candidate for appointment to the post. It would be still open to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post.

93.3. The suppression of material information and making a false statement in the verification form relating to arrest, prosecution, conviction, etc. has a clear bearing on the character, conduct and antecedents of the employee. If it is found that the employee had suppressed or given false information in regard to the matters having a bearing on his fitness or suitability to the post, he can be terminated from service.

93.5. The Court should inquire whether the authority concerned whose action is being challenged acted mala fide.

93.6. Is there any element of bias in the decision of the authority?
93.7. Whether the procedure of inquiry adopted by the authority concerned was fair and reasonable?

(Emphasis supplied)

16. In the case of Union of **Union of India v. Methu Meda, (2022) 1 SCC 1** the respondent was selected for the post of Constable in the Central Industrial Security Force and he disclosed a criminal case in which he was acquitted. Despite his acquittal and his disclosure of the criminal case, the selection was cancelled, which was challenged before the High Court and was allowed. However, the Hon'ble Supreme Court held otherwise and allowed the appeal, discussing the consequences of acquittal in a criminal case. The Hon'ble Supreme Court reiterated that a person joining a police force must be of impeccable character and must not have any criminal antecedents. The relevant paragraphs 17, 20 and 21 are quoted hereinbelow :-

"17. In view of the above, in the facts of the present case, as per paras 38.3, 38.4.3 and 38.5 of Avtar Singh case [Avtar Singh v. Union of India, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425] , it is clear that the employer is having right to consider the suitability of the candidate as per government orders/instructions/rules at the time of taking the decision for induction of the candidate in employment. Acquittal on technical ground in respect of the offences of heinous/serious nature, which is not a clean acquittal, the employer may have a right to consider all relevant facts available as to the antecedents, and may take appropriate decision as to the continuance of the employee. Even in case, truthful declaration regarding concluded trial has been made by the employee, still the employer has the right to consider antecedents and cannot be compelled to appoint the candidate.

***

20. In view of the aforesaid, it is clear the respondent who wishes to join the police force must be a person of utmost rectitude and have impeccable character and integrity. A person having criminal antecedents would not be fit in this category. The employer is having right to consider the nature of acquittal or decide until he is completely exonerated because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee and the decision of the Committee would be final unless mala fide.

21. As discussed hereinabove, the law is well settled. If a person is acquitted giving him the benefit of doubt, from the charge of an offence involving moral turpitude or because the witnesses turned hostile, it would not automatically entitle him for the employment, that too in disciplined force. The employer is having a right to consider his candidature in terms of the circulars issued by the Screening Committee. The mere disclosure of the offences alleged and the result of the trial is not sufficient. In the said situation, the employer cannot be compelled to give appointment to the candidate."

(Emphasis supplied)

17. Coming to the facts of the present case, it is noticed that the charges against the petitioner are of serious in nature and charge sheet has already been filed in the said cases. The post in question pertains to a disciplined force and therefore, a candidate facing serious criminal charges cannot be considered suitable for such appointment. The District Magistrate, Pratapgarh, while

forming his opinion, had also afforded opportunity of hearing to the petitioner before arriving to the conclusion that he was involved in serious offences.

18. The paragraph 38.6 of **Avtar Singh (supra)** specifically provides that the appointing authority may, in its discretion, appoint a candidate even during the pendency of a criminal case of trivial nature, subject to the outcome of such case. However, in the present case, the allegations are of serious nature, hence, it cannot be said that the appointing authority has acted illegally in cancelling the selection/candidature of the petitioner.

19. In the case of **Satish Chandra Yadav (supra)** the Hon'ble Supreme Court in para no.93.2 has specifically held that even in a case where a declaration has been made truthfully and correctly of a concluded criminal case, the employer has still the right to consider the antecedents and cannot be compelled to appoint the candidate. It has further been held that the acquittal in a criminal case do not automatically entitle a candidate for appointment to the post and it remains open for the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post.

20. In the present case, charge sheet has been filed against the petitioner in respect of a case relating to serious charges and the petitioner has yet to be tried for the said offences. Hence, this Court is of the view that the appointing authority, under such circumstances, cannot be compelled to appoint such a candidate who is facing trial in an offence relating to serious charges. The petitioner has to be appointed on the post of Constable (Civil Police) and he should carry with him impeccable character and integrity. A person having criminal antecedents relating to serious charges cannot fit in this category. Even if the petitioner is acquitted or discharged after the conclusion of trial, it cannot be presumed at this stage that he would be honourably acquitted. The District Magistrate, Pratapgarh in terms of the Government Order dated 28.04.1958, has specifically opined that the nature of offence alleged against the petitioner are serious in nature and hence, he is not suitable for appointment. The Superintendent of Police, Ghazipur, being the appointing authority, has rightly concurred with the recommendation of the District Magistrate in terms of the Government Order dated 28.04.1958 while passing the order dated 10.07.2025 cancelling the selection/candidature of the petitioner.

21. It is also noticed that the clause 3.5 of the notification No. PRPB: E-1(150)/2023 dated 23.12.2023, inviting applications for recruitment to the post of Constable (Civil Police), specifically provides that the character of a candidate must be such that he is suitable in all respects for appointment and the appointing authority must be satisfied in this regard.

22. The order dated 10.07.2025 cancelling the candidature of the petitioner reflects that the procedure prescribed under the Government Order dated 28.04.1958 has been duly followed in letter and spirit. The appointing authority, having considered the opinion of the District Magistrate dated 09.06.2025, arrived to the conclusion that the petitioner is not suitable for appointment to the post of Constable (Civil Police). The said decision cannot be faulted, having been taken in accordance with due process of law. The material available before the Superintendent of Police, Ghazipur (appointing authority) while passing the order dated 10.07.2025 was the opinion of the District Magistrate, Pratapgarh contained in letter dated 09.06.2025 disclosing the criminal

antecedents of the petitioner which is serious in nature and a candidate with such serious charges of criminal antecedents can by no stretch of imagination be held suitable for appointment in a disciplined force. Thus, this Court is of the considered view that the Superintendent of Police, Ghazipur (appointing authority) has rightly cancelled the candidature/selection of the petitioner while passing the order dated 10.07.2025.

23. In view of the aforesaid discussion, the present writ petition lacks merit and is accordingly **dismissed**. No order as to costs.

(2026) 5 ILRA 1489
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 08.05.2026

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Writ A No. 12286 of 2025

Dr. Gyanvati Dixit **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue(s) for consideration

Whether a departmental proceeding or suspension approval passed by an administrative authority beyond a court-mandated deadline automatically becomes a nullity or abates, especially when no extension application was filed before the expiry of the deadline.

Headnotes

A. Education/Service Law – The petitioner was appointed Principal in 2011. In 2019, an Authorized Controller was appointed due to management disputes. Between July and August 2024, the petitioner wrote several official letters regarding severe understaffing (teaching posts dropped from 58 to 31/33). Annoyed by this, the Authorized Controller placed her under suspension on 04.10.2024 on the grounds that she had not reinstated a staff member (Smt. Rajrani), even though Rajrani had failed to submit verification documents despite multiple reminders.

The High Court quashed the initial suspension on 05.11.2024 (Writ-A No. 9746 of 2024). A fresh suspension order was again quashed on 11.04.2025 (Writ-A No. 1059 of 2025), with directions to the Committee of Management and DIOS to finalize the proceedings within 51 days. The DIOS passed a fresh suspension approval order on 23.06.2025 (taking 71 days instead of 51 days). The petitioner challenged this order in the current writ petition.

B. The ultimate purpose of the disciplinary proceeding should not be held up because of the time limit framed by the court, without there being any statutory time limit and therefore, the discretion has been opened to be exercised by the tribunals/courts concerned to apply its mind to reconcile the issues in the facts and circumstances of the case. It is not always possible for the disciplinary authority to follow the stipulated period to conclude the proceedings and therefore, it can seek for extension of time before expiry of such time limit. Stretching the consideration zone, it has also been held that in exceptional cases, after the expiry of the time limit, the application can be moved, but, that will depend on the discretion of the court concerned to accept or reject the request of extension of time in facts and

circumstances of the case and at the same time, it has been provided that continuance of any disciplinary proceeding out of the stipulated period of time, can invite interdiction if there is no bonafide attempt made for seeking the extension of the time limit. (Para 39)

In the present case, the matter admittedly could not be concluded within fifty one days rather the same has been concluded within seventy one days. It is noticed that no application for extension of time limit, prescribed by the court, has been moved, by the authority concerned, prior passing the order impugned dated 23.06.2025. (Para 37, 40)

In absence of any application for extension of time period, prior to passing the order impugned, the said order stands vitiated. Consequently, the order impugned dated 23.06.2025 is unsustainable in the eyes of law and is hereby quashed. (Para 41)

C. There can be no ultimate bar for extension of time limit, fixed by the court or the tribunal and therefore, the authority concerned is given liberty to proceed from the stage of filing of the fresh reply by the petitioner as well the other stakeholders in the matter. The proceeding shall be concluded within the period of two months, from the date a certified copy of this order is produced before the authority concerned. (Para 42, 43)

Writ petition allowed. (E-4)

Case Law Cited

1. State of U.P. Vs. Ram Prakash Singh, 2025 SCC Online SC 891 (Para 9)
2. Union of India (UOI) and Ors Vs. Sharvan Kumar, Civil Appeal No. 1942 of 2014, 06.07.2022 (Para 11)
3. Abhishek Prabhakar Awasthi Vs. New India Assurance Company Limited & Others, 2014 (6) All LJ 662(FB) (Para 13)
4. A.P. Electrical equipment corporation Vs. Tehsildar and others, 2025 SCC OnLine SC 447 (Para 20)
5. Union of India Vs. Major Bahadur Singh, (2006) 1 SCC 368 (Para 32)

List of Acts

Uttar Pradesh Intermediate Education Act, 1921.

List of Keywords

management dispute, suspension, reinstatement, approval, committee, extension of time limit, disciplinary proceeding.

Appearances for Parties

For Petitioner(s): Avdhesh Kumar Pandey, Radhika Varma, Shreshth Srivastava, Siddhartha Kumar
For Respondent(s): C.S.C., Ashutosh Singh

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

1. Heard Mr. Shreshth Srivastava and Mr. Ashutosh Kumar Shukla, learned counsels for the petitioner, Mr. Apoorva Tewari, learned Amicus Curiae, Mr. Brijendra Singh and Mr. Pradeep Kumar Singh, learned Additional Chief Standing Counsel for the State and Mr. Ashutosh Singh, learned counsel for the opposite party no. 5.

2. By means of the present writ petition, the petitioner has assailed the order dated 23-06-2025, whereby the District Inspector of Schools has approved the recommendation of the suspension of the petitioner made by the Committee of Management concerned.

3.Briefly stated facts are that the petitioner was appointed on the post of Lecturer(Hindi) in L.R.N.S. Inter College, Naimisharan, on 23-01-1993 and thereafter, on 22-08-2011, she was appointed as Principal at Shri Dayanand Rameshwar Prasad Hansrani Arya Kanya Inter College, Sitapur, in furtherance to the recommendation of the U.P. Secondary Education Service Selection Board, whereafter on 04-01-2019, the District Inspector of Schools passed an order for single hand operation in the college because of claim of rival groups of Committee of Management and Mr. J.P. Mishra, Principal, District Institute of Education & Training was appointed as Authorized Controller and subsequently, Mr. Anil Kumar was inducted after the retirement of Mr. J.P.Mishra. The opposite party no. 5 recommended for several transfers of the teaching staff and since the strength had fallen down upto 33 from 58 sanctioned posts, therefore, the petitioner being the Principal came forward and written several letters i.e. on 03-07-2024, 25-07-2024 and 16-08-2024, with the request of indulgence in the matter by the opposite parties no. 2 to 4. In such scenario, the opposite party no. 5 under the state of annoyance, recommended the suspension, under section 16 (G) of the Uttar Pradesh Intermediate Education Act, 1921(hereinafter referred to as 'Act,1921'). While suspending the petitioner from the post of Principal, the instant reason was shown that one Smt. Rajrani was not reinstated in the service by the petitioner, whereas the fact is stated otherwise, as even after several communications given to Smt. Rajrani, she did not provide the requisite documents for verification.

4. The suspension order passed by the opposite party no. 5, was assailed by the petitioner before this court in Writ A No. 9746 of 2024, wherein this court vide Judgment and Order dated 05-11-2024, quashed the order of suspension dated 04-10-2024, impugned therein and the liberty was given to the competent authority to pass the fresh order.

5. The District Inspector of Schools, in compliance of the order aforesaid, has again issued the suspension order invoking the power under section 16(G) of the 'Act,1921' while suspending the petitioner from the post of Principal, which was again challenged by the petitioner before this court by instituting Writ A No. 11061 of 2024, whereupon vide Judgment and Order dated 27-11-2024, the same was dismissed and subsequently, on 20-12-2024, the District Inspector of Schools confirmed the suspension order, which was challenged in Writ-A No. 1059 of 2025, which was decided by the coordinate Bench of this court, by the final Judgment and Order dated 11-04-2025. The operative portion of the Judgment and Order dated 11-04-2025 is reproduced as under :-

"43. The Committee of Management is directed to supply all requisite documents including copy of the charge sheet dated 08.01.2025, which was served upon the petitioner on 15.01.2025, and also all the relevant documents in support of the charge sheet to the District Inspector of Schools, Sitapur, within three weeks from today. The District Inspector of Schools shall thereafter fix date providing an opportunity of hearing to the petitioner as well as the Committee of Management within fifteen days and shall proceed to pass a fresh order within further period of fifteen days."

6. Vide the aforesaid Judgment and Order, the suspension order dated 20-12-2024 has been quashed and matter was remitted back to the competent authority concerned to conclude the enquiry proceedings within fifty one days, whereafter, the impugned order dated 23-06-2025 was passed in seventy one days.

7. Contention put forth by the learned counsel for the petitioner is that the order impugned is arbitrary and unlawful. He submitted that vide Judgment and Order dated 11-04-2025, the particular period of time was fixed by this court, but, the competent authority has violated the time period prescribed and decided it within seventy one days, on place of fifty one days, which is impermissible as per the settled proposition of law.

8. Further submission is that without reaching to the exact determination, on the basis of presumptions only, the order impugned has been passed. He added that the charges levelled against the petitioner are prima-facie vague.

9. Concluding his arguments, he submitted that the opposite party no. 5 initiated the proceedings against the petitioner, being annoyed with the letters written by her, regarding repeated orders passed while giving consent for transfer of the teaching staff from the college, resulted into the scarcity of the staff, which came down from fifty eight to thirty one. He submits that the case of the petitioner is squarely covered with the ratio of Judgment and Order passed by the Hon'ble Apex Court in the case of **State of U.P. Versus Ram Prakash Singh,** reported in **2025 SCC Online SC 891** and more so, till date no subsistence allowance has been paid to the petitioner, which also vitiates the order impugned. Therefore, submission is that the order impugned is unsustainable in the eyes of law and the same is liable to be quashed.

10. Per contra, Sri Ashutosh Singh, learned counsel appearing for the opposite party no. 5 has opposed the contentions aforesaid and submitted that after the Judgment and Order dated 11-04-2025 passed by this court in Writ Petition No. 1059 of 2025, the opposite party no. 5 has rightly proceeded in the matter and passed the order impugned. He argued that infact the proceeding has been concluded, after the period of time prescribed, without submitting an application for extension of time limit, but, that would not vitiate the proceedings automatically.

11. In support of his contentions, he has placed reliance on the Judgment and Order dated 06-07-2022 passed by the Hon'ble Apex Court in the case of **Union of India (UOI) and Ors Vs Sharvan Kumar,** (Civil Appeal No. 1942 of 2014 decided on 06-07-2022) and has referred paragraph nos. 9.1 to 11 of the said Judgment, which are quoted hereinunder :-

"9.1. It needs hardly any elaboration to say that fixing of the period of two months by the Tribunal in this case had only been to ensure expeditious proceedings because the matter was being restored for reconsideration in the year 2010, though the disciplinary proceedings related with the incident dated 09.01.2005. However, the said period of two months did not acquire any status akin to that of a statutory mandate that the disciplinary proceedings would have automatically come to an end with its expiry. It remains trite that if an Adjudicating Authority in exercise of its jurisdiction could grant or fix a time period to do a particular thing, in the absence of a specific statutory provision to the contrary, the jurisdiction to fix such a time period inhers the jurisdiction to extend the time initially fixed. Such conditional orders have regularly been construed by this Court to be in terrorem so as to put a check on the dilatory tactics by any litigant or to guard against any laxity on the part of the Adjucating Authority but, the Court is not powerless to enlarge the time even though it had peremptorily fixed the period at any earlier stage. In the case of Mahanth Ram Das v. Ganga Das MANU/SC/0027/1961: (1961) 3 SCR, this court

examined the peremptory order of the Court fixing the period of payment of deficit court fees in the backdrop of the fact that the application for extension of time came up for hearing only after the time fixed by the Court had expired and the application was rejected. This Court put the things in perspective while observing, inter alia, as under:-

5....Such orders are not like the law of the Medes and the Persians. Cases are this and to have restored a suit or proceeding, even though a final order had been passed...

9.2. We may elaborate a little. When a conditional order is passed by the Court/Tribunal to do a particular act or thing within a particular period but the order does not provide anything as to the consequence of default, the Court/Tribunal fixing the time for doing a particular thing obviously retains the power to enlarge such time. As a corollary, even the Appellate Court/Tribunal or any higher forum would also be having the power to enlarge such time, if so required. In any case, it cannot be said that the proceedings would come to an end immediately after the expiry of the time fixed.

9.3. In the present case, even the order dismissing the application for enlargement of time on a technical ground of not placing before the Tribunal instructions of the Railway Board, had again been not of giving any such status of mandatory and rigid character to the period originally fixed that the proceedings would have abated.

10. We are Impelled to observe that while treating the proceedings as having abated and as nullity, the High Court has ignored the fundamental principles that fixing of such time period was only a matter of procedure with an expectation of conclusion of the proceedings in an expeditious manner. This period of two months had not acquired any such mandatory statutory character so as to nullify the entire of the disciplinary proceedings with its expiry.

10.1. Moreover, when no consequence of default was stated in the order dated 03.09.2010, the period as stated therein was only of expectations and not of mandate. We may also observe that very many times, such fixing of time period causes more complications and harm rather than serving the cause of justice. Fixing of such period could only be justified if there are strong and compelling reasons for the same; and if at all such period is proposed to be fixed, not only the reasons for the same but, even the consequences of default are also required to be stated if such period is, for any valid reason, expected to operate with adverse consequences on the defaulter.

11. The upshot of the discussion foregoing is that the proceedings in question neither abated nor could have been considered nullity only because of passage of the expected time period stated in the order of the Tribunal dated 03.09.2010. There was no reason or justification for the High Court to interfere with the just and proper order passed by the Tribunal on 21.06.2013, which deserves to be restored with necessary consequential directions."

12. Referring the aforesaid, he submits that it has been held by the Hon'ble Apex Court, while dealing with an identical issue that when the conditional order is passed, with the direction, to do a thing, in a particular manner or within the particular period, but, the consequences of default is not provided, the same would not have created the nullity of the proceeding or would have abated automatically.

13. He has also placed reliance on the Judgment rendered by the Full Bench of this court in the case of **Abhishek Prabhakar Awasthi Vs New India Assurance Company Limited & Others,**

reported in **2014 (6) All LJ 662(FB)** and has referred paragraph no. 13, which is quoted hereinunder :-

"13. Undoubtedly, where the Court has stipulated a period of time by which a departmental enquiry has to be concluded, the stipulation as to time has to be observed. But it must be emphasized that the failure on the part of the employer to conclude the enquiry within the period so stipulated will not result in a situation where the enquiry must, in all cases, and for whatever reason, be regarded as being rendered without jurisdiction or a nullity upon the expiry of that period. The court which fixes time for completion of an enquiry equally has Jurisdiction to extend time for compliance. A stipulation of time in an order of the Court is not akin to a statute of limitation. In each case, it is for the court to determine as to whether the facts and circumstances are such as would warrant the grant of a further extension of time. The circumstances which would weigh with the Court would include the nature and complexity of the charge, the efforts which have been made for the conclusion of the enquiry, the reasons for the delay and the conduct of the parties in the course of the disciplinary proceedings. In Suresh Chandra v. State of M.P., a Special Leave Petition was filed before the Supreme Court against a judgment of the High Court setting aside an order of the Administrative Tribunal. The High Court had held that the disciplinary authority could not proceed with the enquiry after the lapse of the period granted to it by the Tribunal and that period having expired on 15 May 1999, the disciplinary authority could not proceed further with the enquiry. The Supreme Court set aside the judgment of the High Court and held that it was only fair to remand the matter to the Inquiry Officer to resume the disciplinary proceedings from the stage which was reached on 15 May 1999. The Supreme Court clarified that all proceedings taken before that date shall remain as they are and the disciplinary authority will proceed further to examine evidence and submit its report within the extended period as stipulated in the order of the Supreme Court. Thereafter, a period was fixed for the disciplinary authority to pass its orders from the date of submission of the enquiry report. The judgment of the Supreme Court in Suresh Chandra's case recognizes the power which inheres in the court to extend the time which has been fixed for the completion of an enquiry for valid and cogent reasons."

14. Emphasizing the above, he submits that the failure on the part of the employer to conclude the enquiry within the stipulated time period, would not render the enquiry proceedings nullity, upon expiry of the period, unless the consequences are provided.

15. He argued that so far as the Judgment and Order rendered in the case of **Ram Prakash Singh(Supra)** is concerned, there is no ultimate impediment for proceeding with the enquiry, as even then, the enuqiry could be proceeded after obtaining the permission from the court concerned. Therefore, submission is that there is no illegality or ambiguity in the order impugned, thus, no interference is warranted.

16. Mr. Apoorva Tewari, learned Amicus Curiae appearing herein submits that in the case of Sharvan Kumar (Supra), it is held by the Hon'ble Apex Court that after fixing of period of time, where no statutory time period is prescribed under the statute, after the lapse of the time period, the disciplinary proceedings would not lapse automatically as the fixing of such time period is only expectations and not the mandate, except the consequences are provided of the default for any valid reason. He added that in the case of Ram Prakash Singh (Supra), the Hon'ble Apex Court has

expressed it's opinion that no strait-jacket formula can be laid down for each case rather on the basis of gravity of the slackness for reaching the time, the suitable direction can be passed. He submitted that much emphasis has been drawn by the Hon'ble Apex Court in the case of Ram Prakash Singh(Supra) on dealing with the application for extension of time and the effect of non filing of the same. He contends that there is nothing contrary in the Judgment of Ram Prakash Singh (Supra) to the ratio of the Judgment of Sharvan Kumar (Supra), rather it is in furtherance to the earlier Judgment, while dealing with more issues.

17. Upon considering the submissions of learned counsels for the parties and after perusal of the records, it is apparent that the petitioner after her appointment in the year 1993, on the post of Lecturer(Hindi), kept on working till the year 2024 without any complaint and her work and conduct was above board and her career was unblemished. The problem started when the college was put under the single hand operation in the year 2023 and the opposite party no. 5, Mr. Anil Kumar was appointed as Authorized Controller. The petitioner started writing letters since 03-07-2024 and she has been put under suspension on 04-10-2024. Repeatedly, this court has passed the order while quashing the order of suspension passed by the opposite party no. 5 with the direction to consider the matter afresh and ultimately, vide Judgment and Order dated 11-04-2025 passed in Writ A No. 1059 of 2025, the order was passed that the Committee of Management shall supply the requisite documents including the copy of the chargesheet within the period of three weeks and subsequent thereof, within further period of thirty days, the proceeding will be concluded and in furtherance thereof, the District Inspector of Schools proceeded in the matter and passed the order on 23-06-2025, which is impugned herein.

18. It is borne out from the submissions of learned counsel for the petitioner that the petitioner has challenged the order impugned mainly on the following three grounds:-

(i) First, that in the order impugned, it has been observed that the petitioner seems to be guilty ('दोष सिद्ध होना प्रतीत होता है') which itself enough to show that the order impugned has been passed on conjuncture and surmises;

(ii) Secondly, that the charges levelled against the petitioner are vague and therefore, the petitioner could not have been placed under suspension.

(iii) And the third ground taken is, that the case of the petitioner is covered with the ratio of Judgment rendered by the Full Bench of this court in the case of **Abhishek Prabhakar Awasthi (Supra)** as well as the law held by the Hon'ble Apex Court in the case of **Ram Prakash Singh(Supra)** as the order dated 23-06-2025 has not been passed within the time stipulated by this court and even at the time of passing of the order, no application was moved for extension of time.

19. In view of the above, the following issues emerges for consideration :-

a. Whether there is any conflict in the ratio of the judgments of the Hon'ble Supreme Court in Union of India vs. Sharvan Kumar reported in 2022 SCC OnLine SC 2032 and State of U.P. vs.

Ram Prakash Singh reported in 2025 SCC OnLine SC 891, in so far as it pertains to the effect of violation of a time limit prescribed by a judicial order is concerned?

b. If there is any conflict in the aforementioned two judgments which judgment should be taken as a binding precedent and followed by this Hon'ble Court?

20. The Hon'ble Supreme Court in the case of A.P. Electrical equipment corporation vs. Tehsildar and others reported in 2025 SCC OnLine SC 447 provides necessary guidance to deal with the situation where two decisions of the Hon'ble Supreme Court appear to lay down conflicting propositions. Para 35 of the report reads as under:

"*35. If two decisions of this Court appear inconsistent with each other, the High Courts are not to follow one and overlook the other, but should try to reconcile and respect them both and the only way to do so is to adopt the wise suggestion of Lord Halsbury given in Quinn v. Leathern, [1901] A.C. 495 and reiterated by the Privy Council in Punjab Cooperative Bank Ltd. v. Commr. of Income Tax, Lahore AIR 1940 PC 230:*

"..... every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions, which may be found there, are not intended to be expositions of the whole law, but governed or qualified by the particular facts of the case in which such expressions are to be found." and follow that decision whose facts appear more in accord with those of the case at hand."

21. It is thus apparent that in order to determine any conflict in the two decisions of the Hon'ble Supreme Court, their factual matrix is required to be considered.

22. Now coming to the case in hand, the brief factual matrix in the case of Union of India vs. Sharvan Kumar(supra) can be summarised as under:

a. Sharvan Kumar was removed from service of the railways vide punishment order dated 23.02.2006;

b. The appellate authority by order date 23.08.2006 modified the penalty to that of downgrading the pay of Sharvan Kumar to the lowest stage, in the scale;

c. The revisional authority vide order dated 14.03.2007 declined to interfere with the appellate order;

d. Sharvan Kumar filed OA No. 373 of 2007 before the Central Administrative Tribunal, challenging the orders passed against him;

e. The Central Administrative Tribunal allowed OA No. 373 of 2007, vide judgment dated 03.09.2010 and set aside the punishment order, appellate order and the revisional order. The disciplinary authority was directed to hold the proceedings de-novo from the stage of consideration of the representation against the report of the enquiry officer. The exercise was to be completed within two months of receipt of the judgment;

f. The disciplinary authority moved an application for extension of time before the Central Administrative Tribunal which was dismissed on 03.01.2011, for the reason that the same was lacking in material particulars;

g. The disciplinary authority vide order dated 17.02.2011, imposed major penalty of removal from the railway service, upon Sharvan Kumar;

h. Sharvan Kumar filed OA No. 293 of 2011 before the Central Administrative Tribunal challenging punishment order dated 17.02.2011 inter alia contending that the proceedings had abated for having not been completed within the prescribed time limit of two months;

i. The Central Administrative Tribunal vide order dated 21.06.2013 dismissed the OA, filed by Sharvan Kumar, while holding that the proceedings would have abated only if it were so directed in specific terms. However, no such direction was made in the previous judgment;

j. Order dated 21.06.2013 passed by the Central Administrative Tribunal in OA No. 293 of 2011 was challenged in WPCT No. 330 of 2013 before the High Court, which was allowed by the Hon'ble High Court vide judgment and order dated 30.08.2013;

k. The Hon'ble High Court observed that the disciplinary authority had no jurisdiction to complete the proceeding beyond the period prescribed by the Central Administrative Tribunal. The proceedings seeking enlargement of time were nullity in the eyes of law.

23. The judgment of the High Court dated 30.08.2013 was challenged before the Hon'ble Supreme Court and in the aforesaid factual background, the Hon'ble Supreme Court returned the following findings in its judgment in the case of Sharvan Kumar(supra):

"28. Having given thoughtful consideration to the rival submissions and having examined the record, we are clearly of the view that neither the approach of the High Court nor its conclusion could be endorsed. In other words, the propositions of the High Court, treating the proceedings in question as having abated or having been rendered nullity cannot be approved from any standpoint.

29. It appears that the High Court has taken the period of two months for completion of the proceedings, as stated in the order of the Tribunal dated 03.09.2010, to be an inflexible mandate as also of fatal consequence in the manner that after its expiry, the department could not have taken the disciplinary proceedings to their logical conclusion. This approach of the High Court cannot be supported even from a technical standpoint and obviously stands af conflict with the substance of the matter.

30. As noticed, after the respondent was awarded the penalty of removal from service by the order dated 23.02.2006 in conclusion of the disciplinary proceedings, he challenged the same and the Appellate Authority, by its order dated 23.08.2006, altered the penalty to that of downgrading his pay. The Revisional Authority by its order dated 14.03.2007 held that the negligence on the part of the respondent was established and found no reason to interfere. However, the Tribunal, in the earlier round of litigation, while dealing with OA No. 373 of 2007, chose not to examine the other material questions involved in the matter but, disapproved the

imposition of penalty on the respondent for the reason that the person acting as the Disciplinary Authority had been one of the members who had earlier submitted the joint enquiry report. In this view of the matter, the Tribunal quashed the orders passed against the respondent but, being conscious of the fact that the disciplinary proceedings were otherwise required to be taken to the logical conclusion, issued directions to ensure that the matter be dealt with by the Disciplinary Authority other than the person who had been a member of the joint enquiry team and the proceedings be taken up from the stage of consideration of representation of the respondent against the report of the Enquiry Officer. While concluding on the matter, the Tribunal also expected that such afresh exercise be completed within two months of the receipt of the order, after leaving all other contentions open. As noticed, the appellants attempted to seek enlargement of time in view of the fact that the exercise could not be completed within the said period of two months but, this prayer for enlargement was declined by the Tribunal not on its merits but, for a different reason that the particulars like the time-frame laid down by the Railway Board for taking the decision on the enquiry report was not stated before it. The said order expecting conclusion of the proceedings within two months from the date of receipt of copy of the order was passed on 03.09.2010: the application seeking enlargement was dismissed on 03.01.2011, and the Disciplinary Authority passed its order on 17.02.2011. Thus, the question was about the status of such order so passed by the Disciplinary Authority beyond the period fixed by the Tribunal which had not been enlarged. The Tribunal in its order dated 21.06.2013 held that the proceedings pursuant to the order dated 03.09.2010 would have abated only if it was so directed in specific terms and not otherwise. The Tribunal had been correct in this approach and, in our view, the High Court has unjustifiably interfered with the just and proper order passed by the Tribunal.

31. It needs hardly any elaboration to say that fixing of the period of two months by the Tribunal in this case had only been to ensure expeditious proceedings because the matter was being restored for reconsideration in the year 2010, though the disciplinary proceedings related with the incident dated 09.01.2005. However, the said period of two months did not acquire any status akin to that of a statutory mandate that the disciplinary proceedings would have automatically come to an end with its expiry. It remains trite that if an Adjudicating Authority in exercise of its jurisdiction could grant or fix a time period to do a particular thing, in the absence of a specific statutory provision to the contrary, the jurisdiction to fix such a time period inheres the jurisdiction to extend the time initially fixed. Such conditional orders have regularly been construed by this Court to be in terrorem so as to put a check on the dilatory tactics by any litigant or to guard against any laxity on the part of the Adjudicating Authority but, the Court is not powerless to enlarge the time even though it had peremptorily fixed the period at any earlier stage. In the case of Mahanth Ram Das v. Ganga Das, (1961) 3 SCR 763, this Court examined the peremptory order of the Court fixing the period of payment of deficit court fees in the backdrop of the fact that the application for extension of time came up for hearing only after the time fixed by the Court had expired and the application was rejected. This Court put the things in perspective while observing, inter alia, as under 5 Such orders are not like the law of the Medes and the Persians. Cases are known in which Courts have moulded their practice to meet a situation such as this and to have restored a suit or proceeding, even though a final order had been passed."

32. We may elaborate a little. When a conditional order is passed by the Court/Tribunal to do a particular act or thing within a particular period but the order does not provide anything as to the consequence of default, the Court/Tribunal fixing the time for doing a particular thing obviously retains the power to enlarge such time. As a corollary, even the Appellate Court/Tribunal

or any higher forum would also be having the power to enlarge such time, if so required. In any case, it cannot be said that the proceedings would come to an end immediately after the expiry of the time fixed.

33. In the present case, even the order dismissing the application for enlargement of time on a technical ground of not placing before the Tribunal instructions of the Railway Board, had again been not of giving any such status of mandatory and rigid character to the period originally fixed that the proceedings would have abated.

34. We are impelled to observe that while treating the proceedings as having abated and as nullity, the High Court has ignored the fundamental principles that fixing of such time period was only a matter of procedure with an expectation of conclusion of the proceedings in an expeditious manner. This period of two months had not acquired any such mandatory statutory character so as to nullify the entire of the disciplinary proceedings with its expiry.

35. Moreover, when no consequence of default was stated in the order dated 03.09.2010, the period as stated therein was only of expectations and not of mandate. We may also observe that very many times, such fixing of time period causes more complications and harm rather than serving the cause of justice. Fixing of such period could only be justified if there are strong and compelling reasons for the same, and if at all such period is proposed to be fixed, not only the reasons for the same but, even the consequences of default are also required to be stafed if such period is, for any valid reason, expected to operate with adverse consequences on the defaulter.

36. The upshot of the discussion foregoing is that the proceedings in question neither abated nor could have been considered nullity only because of passage of the expected time period stated in the order of the Tribunal dated 03.09.2010 There was no reason or justification for the High Court to interfere with the just and proper order passed by the Tribunal on 21.06.2013, which deserves to be restored with necessary consequential directions."

(emphasis supplied)

24. The factual matrix in the case of State of U.P. vs. Ram Prakash Singh(supra) can be summarised as under:

a. Ram Prakash Singh was dismissed from service vide order dated 26.07.2010, passed by the Government of U.P..

b. Ram Prakash Singh challenged the dismissal order dated 26.07.2010 before the U.P. Public Service Tribunal;

c. The Tribunal set aside the dismissal order dated 26.07.2010 and directed de-novo enquiry from the stage of submission of the reply to the chargesheet. The de-novo enquiry was directed to be completed within a period of three months:

d. The three months period stipulated by the tribunal for conducting the enquiry expired in April, 2014;

e. The enquiry officer vide letter dated 16.05.2014 afforded Ram Prakash Singh to present any additional evidence within 15 days of receiving the said letter;

f. On 23.05.2014, Ram Prakash Singh replied to the letter dated 16.05.2014, stating that due to the expiration of the time period stipulated by the Tribunal and no extension of time being prayed, the proceeding against him lapsed;

g. Ram Prakash Singh vide letter dated 13.06.2014 reiterated that the enquiry officer had become functus officio and, in the absence of any extension granted by the Tribunal, had no authority to proceed;

h. Enquiry officer submitted an enquiry report dated 15.09 2014, holding Ram Prakash Singh guilty of all the charges;

i. The Government of U.P. issued a fresh order of punishment dated 24.03.2015 which reduced the pension of Ram Prakash Singh;

J. Ram Prakash Singh challenged the punishment order dated 24.03.2015 before the U.P. Public Service Tribunal;

k. The Tribunal vide judgement dated 12.11.2018 set aside the impugned order dated 24.03.2015, on various grounds, one of which was that before passing the final order of punishment permission should have been sought from the Tribunal. The Tribunal in support of the said finding placed reliance upon the full bench judgment of this Hon'ble Court in the case of Abhishek Prabhakar Awasthy vs. New India Assurance Co. Ltd. reported in 2013 SCC OnLine All 14267;

l. The State of U.P. challenged judgment dated 12.11.2018 of the Tribunal in a writ petition which was dismissed vide judgment dated 19.10.2019.

25. The judgment dated 19.10.2019 was assailed before the Hon'ble Supreme Court and the appeal came to be decided vide the judgment in the case of Ram Prakash Singh (supra). The Hon'ble Supreme Court framed five issues for consideration of which the issue relevant for the present case is as under: -

"(iv) whether the inquiry not having been completed within the time stipulated by the tribunal in its order dated 23rd January 2014, the disciplinary proceedings could have been continued beyond May, 2014?"

26. In the aforesaid factual background and while addressing relevant issue, the Hon'ble Supreme Court returned the following findings in its judgment in the case of Ram Prakash Singh(supra):

"62. While affirming the aforesaid view of the Full Bench, we would like to provide clarification on certain points not touched by such bench. First, in view of unseen institutional hurdles that can slow down swift action, it may not always be possible for the disciplinary authority in each such case where a fixed time has been stipulated by a tribunal/court to conclude the proceedings to apply and seek extension of time before expiry of such time although there can be no gainsaying that applying and obtaining an extension before expiry is eminently desirable. In

exceptional cases, even after expiry of the stipulated time, such an application can be moved; and, depending on the cause shown for inability or failure to conclude the proceedings within the time stipulated and also for not applying for extension before expiry, the tribunal/court may, in its discretion, allow or reject the prayer for extension. If the application is rejected, the proceedings cannot be carried forward unless a superior court, reversing the order of rejection, permits the disciplinary authority to so proceed. Secondly, if the delinquent employee objects to continuation of proceedings beyond the time stipulated, the disciplinary authority without proceeding further ought to apply for extension of time and may not go ahead till such time its prayer for extension is granted on such application. Proceeding despite objection and without there being an extension could give rise to apprehensions of bias. Therefore, applying for extension upon halting the proceedings awaiting order on the application would be an advisable course of action to balance the interests of both the employer and the employee. Thirdly, even if the delinquent employee has not objected to continuation of proceedings beyond the time stipulated by the tribunal/court but before the final order is passed in the proceedings, the disciplinary authority would be bound to seek and obtain extension of time. This is for the simple reason that the sanctity of the orders of tribunals/courts cannot be disrespected by errant parties. The dignity of the judicial process would be seriously eroded and there would be nothing left of the rule of law if orders of tribunals/courts, validly made, are disobeyed and the disobedience is encouraged by being indulgent. Finally, we hasten to add that if tribunal/court stipulates a fixed time by which an enquiry or proceedings for disciplinary action ought to be concluded coupled with a rider that, in default, the enquiry/proceedings will stand lapsed, disciplinary authority in such a case would cease to have the jurisdiction to proceed further unless, of course, citing genuine grounds, a recall of such default clause is sought and obtained to proceed further in accordance with law.

63. We also hold that continuation of disciplinary proceedings beyond the time stipulated by a tribunal/court could invite interdiction if no bona fide attempt is shown to have been made to seek an extension of time. However, much would depend on the facts of each case and it may not be possible to lay down a common formula applicable to each case. In an exceptional case, the tribunal/court would have the discretion to overlook the laxity and make such direction as it deems fit in the circumstances."

27. In order to answer the first question for consideration, in the present case is, as to whether there is any conflict in the ratios of the judgements in the case of Sharvan Kumar (supra) and Ram Prakash Singh (supra).

28. The ratio of the decision in Sharvan Kumar(supra) can be culled out in the following terms:

a. When a conditional order is passed by the Court/Tribunal to do any particular act but the order does not provide consequences in case of default, the Court/Tribunal not only has the power to fix the time to do any particular thing but also retains the power to enlarge such time.

b. As a result, even the Appellate Court/Tribunal or any higher forum would have the similar power to enlarge the time.

c. The proceedings under any circumstance would not come an end immediately after the expiry of the time fixed.

d. The period of time fixed by a Court or Tribunal does not acquire any mandatory statutory character so as to nullify the entire proceedings on its expiry.

29. The ratio of Ram Prakash Singh (supra) is in two parts. The judgement in the case Ram Prakash Singh (supra) vide paragraph 62 of the report approves the decision of the full bench of this court in the case of Abhishek Prabhakar Awasthy (supra). The full bench while answering Question no. (b) returned the following findings:-

a. The court which has fixed a stipulation of time has jurisdiction to extend the time and it is open to the court, while exercising that jurisdiction, to consider whether the delay has been satisfactorily explained.

b. The Court can suitably extend time for conclusion of the enquiry either in a proceeding instituted by the employee challenging the enquiry on the ground that it was not completed within the stipulated period or even upon an independent application moved by the employer.

c. The Court has the inherent jurisdiction to grant an extension of time; the original stipulation of time having been fixed by the Court itself.

d. The extension of time has to be considered in the interests of justice balancing both the need for expeditious conclusion of the enquiry in the interests of fairness and an honest administration.

e. It would be open to the Court to extend time suo motu in order to ensure that a serious charge of misconduct does not go unpunished leading to a serious detriment to the public interest.

f. The Court has sufficient powers to grant an extension of time both before and after the period stipulated by the Court has come to an end.

30. The aforesaid findings of the full bench have been specifically approved by the Hon'ble Supreme Court in Ram Prakash Singh(supra). There is no discordance in the findings of full bench as approved in Ram Prakash Singh (supra) and the ratio of Sharvan Kumar (supra).

31. The Hon'ble Supreme Court in the case Ram Prakash Singh (supra) vide paragraph 62, has framed the following additional principles:

a. It may not always be possible for the disciplinary authority where a fixed time has been stipulated by a tribunal/court to conclude the proceedings to apply and seek extension of time. before expiry of such time although there can be no gainsaying that applying and obtaining an extension before expiry is eminently desirable.

b. In exceptional cases, even after expiry of the stipulated time, such an application can be moved; and, depending on the cause shown for inability or failure to conclude the proceedings

within the time stipulated and also for not applying for extension before expiry, the tribunal/court may, in its discretion, allow or reject the prayer for extension.

c. If the application is rejected, the proceedings cannot be carried forward unless a superior court, reversing the order of rejection, permits the disciplinary authority to so proceed.

d. If the delinquent employee objects to continuation of proceedings beyond the time stipulated, the disciplinary authority without proceeding further ought to apply for extension of time and may not go ahead till such time and its prayer for extension is granted.

e. Proceeding despite objection and without there being an extension could give rise to apprehensions of bias. Therefore, applying for extension upon halting the proceedings awaiting order on the application would be an advisable course of action to balance the interests of both the employer and the employee.

f. Even if the delinquent employee has not objected to continuation of proceedings beyond the time stipulated by the tribunal/court but before the final order is passed in the proceedings, the disciplinary authority would be bound to seek and obtain extension of time.

g. This is for the simple reason that the sanctity of the orders of tribunals/courts cannot be disrespected by errant parties. The dignity of the judicial process would be seriously eroded and there would be nothing left of the rule of law if orders of tribunals/courts, validly made, are disobeyed and the disobedience is encouraged by being indulgent.

h. If a tribunal/court stipulates a fixed time by which an enquiry or proceedings for disciplinary action ought to be concluded coupled with a condition that in default, the enquiry/proceedings will stand lapsed, the disciplinary authority in such a case would cease to have the jurisdiction to proceed further unless, genuine grounds are cited.

i. If no bona fide attempt is shown to seek an extension of time the continuation of disciplinary proceedings beyond the time stipulated by a tribunal/court could invite interdiction. However, much would depend on the facts of each case and it may not be possible to lay down a common formula applicable to each case.

j. In exceptional cases, the tribunal/court would exercise its discretion to overlook the laxity and make such direction as it deems fit in the circumstances.

32. It is settled law that judgments have to be understood in light of the peculiar facts of each case. The Hon'ble Supreme Court in the case Union of India vs. Major Bahadur Singh [(2006) 1 SCC 368] has laid down the following principles:

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

which they appear to have been stated. Judgments of the courts are not to be construed as statutes. To interpret words. phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define Judges interpret statutes, they do not interpret judgments. They interpret words of statutes: their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton3 Lord MacDermott observed (All ER p. 14 C-D)

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

10. In Home Office v. Dorset Yacht Co.4 Lord Reid said: (All ER p. 297g-h)

"Lord Atkin's speech... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances."

Megarry, J. in Shepherd Homes Ltd. v. Sandham (No. 2)5 observed (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament;" and, in Herrington v. British Railways Board6 Lord Morris said: (All ER p. 761c)

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

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

12. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus (Abdul Kayoom v CITZ, AIR p. 688, para 19)

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

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches, else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

33. A meaningful reading of the ratio of Sharvan Kumar (supra) and the ratio of the full bench Judgment in Abhishek Prabhakar Awasthi(supra) as approved in Ram Prakash Singh(supra), would show that there is no inconsistency in the ratios of both the judgments. The findings of Sharvan Kumar (supra) are limited to the facts of that case, whereas, in Ram Prakash Singh (supra) the same principle is accepted, however additional principles have been laid down. The Hon'ble Supreme Court in Ram Prakash Singh(supra) has not returned any finding which can be said to be contradictory to the ratio of Sharvan Kumar(supra). As a matter of fact Ram Prakash Singh (supra) recognizes that no inflexible principle can be laid down for each case.

34. Thus, the issues (a) and (b) as framed above, are answered as under.

35. In case of Ram Prakash Singh(supra), it has been elaborated on the aspect of, how an application for extension of time is to be dealt with and the consequence of non-filing of the application for extension of time. Whereas in the case of Sharvan Kumar (supra), the findings were recorded in peculiar facts and circumstances as the application for extension of time was rejected on account of insufficient particulars. It?s discernible that in the case of Ram Prakash Singh(supra), the court has taken into account a situation where no bona fide attempt is shown to have been made to seek an extension of time and vide paragraph 63 it has been made open for the courts to overlook the laxity in an exceptional case and make directions as it deems fit in the circumstances. There is no inconsistency between the aforenoted two ratios. The judgment of Ram Prakash Singh (supra) recognizes the same aspect but elaborates on further principles, as regard grant of extension of time and the consequences of, not seeking extension, by showing sufficient cause, therefore the law laid down in the case of Ram Prakash Singh (Supra) is in conspectus of the Judgment of Sharvan Kumar(Supra).

36. So long as the issue in the present case is concerned, is that what would be the impact of the non adhering of the direction of the writ court dated 11-04-2025, passed in Writ A No. 1059 of 2025, whereby the time limit of fifty one days was fixed for taking the decision by the District Inspector of Schools.

37. As is borne out from the factual matrix and submissions of the leaned counsels for the parties that the matter admittedly could not be concluded within fifty one days rather the same has been concluded within seventy one days. It is noticed that no application for extension of time limit, prescribed by the court, has been moved, by the authority concerned, prior passing the order impugned dated 23-06-2025.

38. When this court examines the aforesaid issue in facts and law, the law laid by the Hon’ble Apex Court, in the case of Ram Prakash Singh (Supra) covers the field of the present case.

39. In the case of Ram Prakash Singh(Supra), while affirming the view rendered by the Full Bench in Abhishek Prabhakar Awasthi(Supra), of the Allahabad High Court, it is provided that it is not always possible for the disciplinary authority to follow the stipulated period to conclude the proceedings and therefore, it can seek for extension of time before expiry of such time limit. Stretching the consideration zone, it has also been held that in exceptional cases, after the expiry of the time limit, the application can be moved, but, that will depend on the discretion of the court concerned to accept or reject the request of extension of time in facts and circumstances of the case and at the same time, it has been provided that continuance of any disciplinary proceeding out of the stipulated period of time, can invite interdiction if there is no bonafide attempt made for seeking the extension of the time limit. The gist of the ratio is that the ultimate purpose of the disciplinary proceeding should not be held up because of the time limit framed by the court, without there being any statutory time limit and therefore, the discretion has been opened to be exercised by the tribunals/courts concerned to apply it’s mind to reconcile the issues in the facts and circumstances of the case.

40. In the instant matter, admittedly, the time period has become over than that of fixed by this court and no effort has been made to place any application before the court concerned for extension of the time limit prescribed.

41. I am of the considered opinion that so far as the factual matrix of the present case are concerned, in absence of any application for extension of time period, prior passing the order impugned, the said order stands vitiated. Consequently, the order impugned dated 23-06-2025 is unsustainable in the eyes of law, resultantly, the same is hereby quashed.

42. Since, it is well settled law that there can be no ultimate bar for extension of time limit, fixed by the court or the tribunal and therefore, the authority concerned is given liberty to proceed from the stage of filing of the fresh reply by the petitioner as well the other stakeholders in the matter.

43. The proceeding shall be concluded within the period of two months, from the date a certified copy of this order is produced before the authority concerned.

44. The writ petition is **allowed accordingly**.

(2026) 5 ILRA 1506
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.05.2026

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ B No. 4404 of 2025

Chandrapal Singh & Ors. **...Petitioners**
Versus
D.D.C. & Ors. **...Respondents**

Issue(s) for consideration

(a) Whether a title revision proceeding u/s 48 of the U.P.C.H. Act can be abated/closed simply because original records are lost, destroyed, or weeded out?
(b) What procedure must consolidation authorities follow to reconstruct records and decide title disputes when files are unavailable?

Headnotes

A. Land Reform Law – U.P. Consolidation of Holdings Act, 1953: Section 9-A(2), 11(1), 48 - Allotment of Chaks – Revisional Jurisdiction of D.D.C. – Interference with Concurrent Findings - The dispute concerns title rights over plot numbers (including Gata No. 27/plots 25, 34, 86, 90, 91/1) in Village Takipur, Tehsil Koil, District Aligarh. Consolidation operations commenced in the village in 1973.

An objection filed by Respondent No. 7 (Bhagwat Swaroop) was rejected by the Consolidation Officer (CO) in 1974, and the appeal was dismissed by the Settlement Officer of Consolidation (SOC) in 1975. Concurrently, the petitioners' predecessor (Atar Singh) filed an objection u/s 9-A(2) of the U.P.C.H. Act, 1953, claiming title

by adverse possession over Gata No. 27 for more than 12 years. This was rejected by the CO and SOC. On revision u/s 48 of the Act, the Deputy Director of Consolidation (DDC) initially allowed the revision in favor of the petitioners' predecessor on 24.10.1979.

Om Prakash (predecessor of Respondent Nos. 4 to 6) challenged the 1979 revisional order via Writ-B No. 710 of 1980. On 05.07.2023, the High Court allowed the writ petition, set aside the 1979 order, and remitted the matter back to the DDC, Aligarh to decide the title revision afresh. On remand, the DDC/ADM (Judicial), Aligarh issued an order abating ("awaiting"/closing) the title revision proceeding on the ground that the original case files from the lower courts had been weeded out/were missing and the parties had not supplied complete documents to enable on-merit disposal.

The petitioners filed the present writ petition challenging the DDC's abatement order dated 03.02.2025.

B. Proceeding of title revision filed by predecessor of petitioner cannot be abated on the ground that the records are not available. The proper opportunity be afforded to the parties to supply document/evidence which are available so that the record can be reconstructed and matter can be decided by the consolidation authorities on merit in respect to the title proceeding. (Para 12)

C. Litigation under the U.P.C.H. Act is not a voluntarily litigation but is litigation, forced upon a chak holder by law. (Para 13)

The impugned order dated 03.02.2025 passed by respondent no.1/ Deputy Director of Consolidation / Additional District Magistrate (Judicial), Aligarh abating the title proceeding under U.P.C.H. Act is hereby set aside. (Para 14)

The matter is remitted back before respondent no.1/ DDC, Aligarh or any other authority exercising the revisional jurisdiction to restore the revision on its original number. The revisional Court shall reconstruct the record of the proceeding in accordance with law after giving opportunity to both parties to bring on record the documents / evidence which are available and decide the revision in accordance with law after reconstruction of the record... (Para 15)

Writ petition allowed. (E-4)

Case Law Cited

1. Ram Khelawan Vs. Deputy Director of Consolidation and others, 1987 RD 350 (Para 11)
2. Lochan Vs. D.D.C., Mathura & Others, 2015 (128) RD 381 (Para 13)

List of Acts

U.P. Consolidation of Holdings Act, 1953.

List of Keywords

Consolidation of holdings, Revisional jurisdiction, Section 48, Allotment of chaks, Revision, abate, reconstruct, evidence.

Appearances for Parties

For Petitioner(s): Salilendu Kumar Upadhyay
For Respondent(s): C.S.C., Mahendra Kumar Tripathi

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

1. Heard Mr. H.N. Singh, learned Senior Counsel assisted by Mr. Salilendu Kumar Upadhyay, learned counsel for the petitioners, Mr. Mahendra Kumar Tripathi, learned counsel for respondent nos.4 & 6 and learned Standing Counsel for the State-respondents.

2. Brief facts of the case are that the dispute relates to plot nos. 25, 34, 86, 90, 91/1 situated in Village - Takipur, Pargana - Morthal, Tahsil- Koil, District - Aligarh. Consolidation operation started in the village in question in the year 1973. Against the basic year entry of the plot in question one objection was filed by respondent no.7 - Bhagwat Swaroop, which was rejected by the Consolidation Officer vide order dated 30.11.1974. Against the order of Consolidation Officer, appeal under Section 11 (1) of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "U.P.C.H. Act") was filed by respondent no. 4, which was dismissed vide order dated 20.9.1975. Revision under Section 48 of U.P.C.H. Act filed by respondent no. 7 was allowed by Deputy Director of Consolidation vide order dated 27.5.1978. Against the order dated 27.5.1978 passed by Deputy Director of Consolidation, the Writ Petition No. 6442 of 1978, which is stated to be pending before this Court, was filed by Om Prakash (father of respondent nos.4 to 6). Father of petitioner nos.1 to 5 and grand father of petitioner nos.7 & 8 also filed an objection under Section 9-A (2) of U.P.C.H. Act claiming right on the basis of adverse possession over gata no. 27 for more than 12 years. The objection of petitioners' predecessor was contested by the father of respondent nos.4 to 6. Consolidation Officer rejected the objection vide order dated 30.11.1974, appeal filed by predecessor of petitioners was dismissed vide order dated 20.9.1975. Revision under Section 48 of U.P.C.H. Act filed by predecessor of petitioners was allowed vide order dated 24.10.1979. In the aforementioned revision petitioner nos.1 to 8 were substituted as heirs and legal representative of Atar Singh. Against the revisional order dated 24.10.1979, Om Prakash (father of respondent nos.4 to 6) filed a Writ-B No.710 of 1980. The aforementioned writ petition was decided vide judgement dated 5.7.2023 setting aside the revisional order dated 24.10.1979 and remanded the matter back before Deputy Director of Consolidation to decide the revision afresh. Against the final judgement dated 5.7.2023 passed by this Court, a restoration application dated 14.8.2023 was filed before this Court which was rejected vide order dated 12.5.2025. In pursuance of the remand order of this Court matter was proceeded before Deputy Director of Consolidation, Aligarh and vide order dated 3.2.2025 the proceeding of revision was abated by Deputy Director of Consolidation / Additional District Magistrate (judicial), Aligarh on the ground that original records are not available as well as the parties have not produced the documents / record, which are in their possession so that the record of the proceeding can be reconstructed. Hence this writ petition on behalf of the petitioners for the following reliefs:

"i. Issue a writ, order or direction in the nature of CERTIORARI quashing the impugned order dated 03.02.2025 passed by the Deputy Director of Consolidation, Aligarh, District-Aligarh.

ii. Issue a writ, order or direction in thenature of CERTIORARI quashing the proceeding of the Case No.RST/0087/2025, pending before the Deputy Director of Consolidation, Aligarh, District-Aligarh.

iii. Issue a writ, order or direction in the nature of MANDAMUS commanding/directing to Deputy Director of Consolidation, Aligarh, District-Aligarh to allow the revision filed by petitioner nos.1 to 5 alongwith Late Mahendra Pal Singh."

3. This Court entertained the matter on 2.12.2025 and passed the following order:-

"1. Stamp reporter has reported laches of 176 days in filing the writ petition, which has been properly explained.

2. Heard learned counsel for the petitioners and Mr. Om Anand, learned Standing Counsel for the State-respondents.

3. Learned counsel for the petitioners submitted that writ petition filed by private respondents was allowed and matter was remitted back before revisional Court to decide the title revision on merit in accordance with law. He submitted that after remand order, the proceeding of title revision has been abated on the misconceived ground. He submitted that even notice was not issued to the petitioners, who were revisionists in the title revision. He submitted that after passing of the order of abatement, private respondents have filed an application for deciding the revision on merit.

4. Matter requires consideration.

5. Issue notice to respondent Nos.4 to 7 returnable at an early date.

6. Steps be taken within ten days.

7. Respondent Nos.4 to 7 shall file counter affidavit within six weeks.

8. Rejoinder affidavit can be filed within two weeks thereafter.

9. List this matter on 06.02.2026."

4. In pursuance of the order of this Court dated 2.12.2025, respondent no. 4, 5 & 6 have put in appearance through counsel on 5.2.2026.

5. Learned Senior Counsel for the petitioners submitted that against the basic year entry one set of objection was filed by respondent no.7/ Bhagwat Swaroop, which was rejected and the order was maintained in appeal. He furthers submitted that the revision filed by respondent no.7/ Bhagwat Swaroop was allowed in arbitrary manner. He further submitted that the predecessor of the petitioners also filed an objection under Section 9-A (2) of U.P.C.H. Act claiming right on the basis of adverse possession over Khata No.27 which was ultimately dismissed by Deputy Director of Consolidation. He further submitted that the writ petition filed by father of respondent nos.4 to 6 was allowed by this Court and matter was remitted back before Deputy Director of Consolidation to decide the revision afresh but Deputy Director of Consolidation has abated the proceeding of title revision on the ground that the records are not available. He further submitted that no opportunity was afforded to petitioners before passing the order dated 3.2.2025, as such, the order dated 3.2.2025 passed by Deputy Director of Consolidation / Additional District Magistrate (Judicial), Aligarh cannot be sustained in the eye of law. He further submitted that the record of the proceeding is to be re-constructed after affording opportunity of hearing to the parties to bring on

record the document / evidence which are in their possession so that reconstruction can be made and matter can be decided on merit in accordance with law. He further submitted that the impugned order should be set aside and necessary direction be issued to respondent no.1/ Deputy Director of Consolidation, Aligarh to proceed in accordance with law.

6. On the other hand, Mr. M.K. Tripathi, learned counsel for respondent nos.4 to 6 submitted that revision filed by predecessor of petitioners has been dismissed under the impugned order as the records are not available. He further submitted that in absence of the record, the matter cannot be proceed, as such, the order passed by Settlement Officer of Consolidation in favour of respondent nos.4 to 6 should be given finality between the parties. He further submitted that the claim of adverse possession setup by the predecessor of petitioners has not been proved, as such, no right will accrue in favour of petitioners.

7. I have considered the argument advanced by learned counsel for the parties and perused the records.

8. There is no dispute about the fact that Writ-B No.710 of 1980, Om Prakash Vs. Deputy Director of Consolidation and another was decided finally vide judgment / order dated 5.7.2023 setting aside the revisional order dated 24.10.1979 and matter was remitted back before Deputy Director of Consolidation to decide the revision under Section 48 of U.P.C.H. Act afresh. There is also no dispute about the fact that restoration application filed on behalf of Kharag Singh against the final judgement/ order dated 5.7.2023 has been rejected by this Court vide order dated 12.5.2025. There is also no dispute about the fact that proceeding of title revision under Section 48 of U.P.C.H. Act filed by predecessor of petitioners has been abated under the impugned order dated 3.2.2025.

9. In order to appreciate the controversy involved in the matter, perusal of the revisional order dated 3.2.2025 abating the proceeding of title revision will be necessary, which is as under:

"आदेश पत्रक

न्यायालय : उप संचालक चकबन्दी

मण्डल : अलीगढ़, जनपदः, तहसीलः वाद संख्या :-RST/0067/2024

कंप्यूटरीकृत वाद्र संख्या:-20245418200000067

अंतर सिंह बनाम ओम प्रकाश

अंतर्गत धारा:- 48(1), अधिनियम: उ०प्र० जोत चकबन्दी अधिनियम, 1953

प्रस्तुत प्रार्थना पत्र दिनांक 14.08.2023 श्री अजय कुमार सिंघल पुत्र श्री ओम प्रकाश निवासी हाल एल 4 शताब्दी नगर शहर कोल, अलीगढ़। कास्ताकार मौजा तकीपुर परगना, मोरथल, तहसील कोल, जिला अलीगढ का निस्तारण।

प्रार्थना पत्र दाता श्री अजय कुमार सिंघल पुत्र श्री ओम प्रकाश निवासी हाल एल 4 शताब्दी नगर शहर कोल, अलीगढ़। कास्ताकार मौजा तकीपुर परगना, मोरथल, तहसील कोल, जिला अलीगढ ने दिनांक 14.08.2023 को प्रार्थना पत्र प्रस्तुत कर मांग की है कि उक्त रिवीजन संयुक्त संचालक आगरा कैम्प अलीगढ़ आदेश दिनांक 24.10.1979 प्रार्थी के पिता ओमप्रकाश पुत्र श्री विहारीलाल के विरुद्ध उक्त रिवीजन स्वीकार किया गया था। आदेश दिनांक 24.10.1979 के बिरुद्ध मा० उच्च न्यायालय इलाहाबाद में रिट संख्या बी-710/1980 ओमप्रकाश बनाम डी०डी०सी० आदि योजित हुई। दौरान विचाराधीन रिट ओमप्रकाश पुत्र श्री विहारीलाल की मृत्यु हो चुकी थी उनके स्थान पर विजय कुमार सिंघल व अजय कुमार सिंघल व संजय कुमार सिंघल पुत्रगण श्री ओमप्रकाश विधिक वारिस कायम हुए। मा० उच्च न्यायालय इलाहाबाद में उक्त पत्रावली में पारित आदेश दिनांक 24.10.1979 को निरस्त करते हुए आदेश दिनांक 05.07.2023 में पुनः सुनवाई हेतु पत्रावली को निर्णीत करने हेतु आदेश पारित किये हैं। न्यायहित में रिट संख्या बी-710/1980 ओमप्रकाश बनाम डी०डी०सी० आदि में माननीय उच्च न्यायालय इलाहाबाद के अनुपालन में उक्त पत्रावली को तलब कर पक्षों को सुनकर उक्त रिवीजन को निर्णीत किया जाये और अन्त में प्रार्थना की है कि उपरोक्त तथ्यों के आधार पर रिट संख्या बी-710/1980 ओमप्रकाश बनाम डी०डी०सी० आदि में मा० उच्च न्यायालय इलाहाबाद के अनुपालन में उक्त पत्रावली को तलब कर पक्षों को सुनकर उक्त रिवीजन को निर्णीत किया जाये।

उक्त के कम में इस न्यायालय द्वारा उप संचालक चकबन्दी, अलीगढ़ द्वारा पारित आदेश दिनांक 24.10.1979, बन्दोबस्त अधिकारी चकबन्दी, अलीगढ़ द्वारा पारित आदेश दिनांक 20.08.1975, चकबन्दी अधिकारी द्वारा पारित आदेश दिनांक 30.11.1974 की पत्रावलियों को न्यायालय में तलब करने हेतु 03 मांग पत्र भेजे गये जिस पर अरेंन्जर मोरथल द्वारा उप संचालक चकबन्दी, अलीगढ़ की पत्रावली के मांग पत्र पर दिनांक 16.08.2023, बन्दोबस्त अधिकारी चकबन्दी, अलीगढ़ की पत्रावली के मांग पत्र पर 08.09.2023 तथा चकबन्दी अधिकारी, अलीगढ़ के मांग पत्र पर दिनांक 08.09.2023 को आख्या प्रस्तुत कर उल्लेख किया है कि उक्त पत्रावलियां तलफ हो चुकी है तथा न्यायालय में दिनांक 04.09.2023 को अजय कुमार सिंघल के द्वारा प्रार्थना पत्र प्रस्तुत किया गया। प्रार्थना पत्र के कम में दिनांक 06.10.2023 को फर्द अहकाम पर आदेश पारित किया गया कि उभय पक्ष वादों से सम्बन्धित सक्ष्य एवं प्रतिलिपयां न्यायालय में प्रस्तुत करें, किन्तुं उनके द्वारा कोई ऐसा साक्ष्य एवं प्रतिलिपयां प्रस्तुत नहीं की गयी जिससे वाद का निस्तारण गुणदोष पर किया जा सके। तदोपरान्त इस कार्यालय के पत्र संख्या 645/ रीडर दिनांक 16.08.2024 के द्वारा प्रभारी अधिकारी राजस्व अभिलेखागार, अलीगढ़ हेतु उक्त तीनों पत्रावलियों को तलफ किये जाने की कार्यवाही में निर्धारित मानक प्रक्रिया का अनुपालन किये जाने के सम्बन्ध में विधि सम्मत आख्या हेतु पत्र भेजा गया। उक्त पत्र के कम में प्रभारी अधिकारी राजस्व अभिलेखागार के पत्र संख्या 736 / आर0आर0के0-2024 दिनांक 29.08.2024 के द्वारा अवगत कराया गया कि उक्त तीनों पत्रावलियों को सचिव, राजस्व परिषद उ०प्र०

अनुभाग-लखनऊ के पत्र संख्या 129/ जी0-5-560/1959 दिनांक 24.12.1959 जो शासनादेश वीडिंग के सम्बन्ध में दिये निर्देश का अनुपालन करते हुए प्रश्नगत तीनों पत्रावलियों की बीडिंग की गयी है।

चूंकि उपरोक्त प्रकरण में पक्षों को साक्ष्य एवं प्रतिलिपयां प्रस्तुत करने का अवसर दिया गया था। उक्त के कम में बादी अजय कुमार सिंघल की ओर से मा० उच्च न्यायालय में पोजित रिट की प्रमाणित प्रति के साथ चकबन्दी अधिकारी के आदेश दिनांक 30.11.1974, बन्दोबस्त चकबन्दी अधिकारी का आदेश दिनांक 20.09.1975, संयुक्त संचालक चकबन्दी का आदेश दिनांक 24.10.1979 की प्रतिलिपियां प्रस्तुत की गयी है। प्रश्नगत निगरानी की कार्यवाही स्वत्व से सम्बन्धित है। अतः किसी भी न्यायालय की मूल पत्रावली उपलब्ध न होने के कारण साक्ष्य के अभाव में पत्रावली पर गुणदोष पर आदेश पारित किया जाना सम्भव नहीं है। ऐसी स्थिति में उचित होगा कि बाद की कार्यवाही अवेट की जाये। वाद आवश्यक कार्यवाही पत्रावली दाखिल दफ्तर हो।

उप संचालक चकबन्दी
अपर जिलाधिकारी (न्यायिक) / अलीगढ़।"

10. The argument advanced by learned Senior Counsel for the petitioners as well as the averment made in the writ petition demonstrates that the impugned order has been passed by Deputy Director of Consolidation abating the proceeding of revision without affording proper opportunity of hearing to the petitioners.

11. This Court in the case reported in ***1987 RD 350, Ram Khelawan vs. Deputy Director of Consolidation and others*** has laid down the principle for reconstruction of the record of the proceeding in case the record is lost, burnt or misplaced. Paragraph nos.6 to 8 of the judgement rendered by this Court in ***Ram Khelawan (supra)***, will be relevant for perusal which are as under:

"6. The principle of reconstruction of document whether it is lost, burnt or misplaced not on account of fault of either parties is clearly covered under the courts inherent power under Section 151 Code of Civil Procedure However, this power has to be exercised with great care and circumvention to see that in reconstruction of file no party is getting favourable gains from the position what it was prior to the reconstructions. One of the principles which is to be kept in mind is that the party should be given fullest opportunity first to file such certified copies which are in their possession of those records which are now not available to the court. In doing so the court need not confine itself to the certified copies but even copies which are not certified if either party did not object and accept the said document, it may be accepted as a part of the record of the then existing document. No fixed principle or criterion could be laid down to the court in deciding as to in what manner the record is to be reconstructed.

7. However it is very significant in the reconstruction of the file, when a document not being certified copy sought to be filed is objected to at the stage . of

reconstruction, the principle which normally would have been followed for its admissibility earlier should be adhered to. Some times even statement recorded in the judgment of the various authorities, the certified copy of which is available, will also be strong circumstance to be kept in mind in accepting or rejecting any document which is not a certified copy of the then existing record if such document is contrary to what is recorded therein. There are also rules in the General Rules (Civil Rules) and the circular issued by the High Court from time to time to the courts below for guidance about the reconstruction of the record.

8. It is relevant here to refer to a case of Division Bench of this High Court reported in 1983 AllCJ 49 (Uttar Pradesh State Road Transport Corporation v. Smt. Geeta Devi and others). In this case strong reliance was placed on the Full Bench decision of Madras High Court reported in Markkarutti v. Veeran Kutti : AIR 1923 Mad 647 [LQ/MadHC/1923/101] . In this case also material evidence required to be brought on the record were the statements of two witnesses. Counsel for the parties there were entitled to file the copies of the statements of witnesses. On the fact of that case our Court held that it is apparently clear to give another opportunity to the parties to produce the same before the Claims Tribunal. It was further held, in case even after giving fresh opportunity, the parties failed to do the same, then the Tribunal may ask for reproduction of the witnesses for making the statement and in doing so the Tribunal shall afford opportunity to cross examine each of those witnesses."

12. It is material to mention that proceeding of title revision filed by predecessor of petitioner cannot be abated on the ground that the records are not available. The proper opportunity be afforded to the parties to supply document / evidence which are available so that the record can be reconstructed and matter can be decided by the consolidation authorities on merit in respect to the title proceeding.

13. It is also material to mention that this court in the case reported in **2015 (128) RD 381 Lochan Versus D.D.C., Mathura & Others** has held that litigation under the U.P.C.H. Act is not a voluntarily litigation but is litigation, forced upon a chak holder by law.

14. Considering the entire facts and circumstances of the case as well as ratio of law laid down by this Court in ***Ram Khelawan (supra)*** as well as ***Lochan (Supra)***, the impugned order dated 3.2.2025 passed by respondent no.1/ Deputy Director of Consolidation / Additional District Magistrate (Judicial), Aligarh abating the title proceeding under U.P.C.H. Act is liable to be set aside and the same is hereby set aside.

15. The writ petition stands ***allowed***. The matter is remitted back before respondent no.1/ Deputy Director of Consolidation, Aligarh or any other authority exercising the revisional jurisdiction to restore the revision on its original number. The revisional Court shall reconstruct the record of the proceeding in accordance with law after giving opportunity to both parties to bring on record the documents / evidence which are available and decide the revision in accordance with law after reconstruction of the record of the

proceeding, expeditiously preferably within a period of three months from the date of production of certified copy of this order.

(2026) 5 ILRA 1514
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.05.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ B No. 5784 of 1981

Ramnath & Anr. **...Petitioners**
Versus
D.D.C. & Ors. **...Respondents**

Issue(s) for consideration

(a) Whether the land in dispute was joint family property or the self-acquired property of the petitioners' predecessors?
(b) Whether the High Court should interfere with findings of fact recorded by the DDC u/Article 226 of the Constitution of India?

Headnotes

A. Land Reform Law - Common ancestor Fakir had four sons: Birja, Bihari, Dasrath, and Mahaveer. Bihari and Dasrath died issueless. Birja was the eldest/Karta of the family and Mahaveer was the younger brother. The petitioners (Ram Nath and Kripa Nath) are descendants of Birja (through Ram Sumer and Bujhawan), while the contesting respondents (Ram Naresh and Ram Suresh) are sons of Mahaveer.

During basic consolidation operations, the disputed land (Khata Nos. 112 and 338/334) in the revenue records was recorded in the names of the original petitioners. Contesting respondents filed an objection under the U.P.C.H. Act, 1953, claiming to be co-tenure holders on the ground that the land was joint family ancestral property acquired when the family was undivided.

On 15.03.1965, the Consolidation Officer (CO) allowed the objection of the respondents based on joint statements/admissions (including that of Bujhawan, Karta/predecessor of the petitioners), recording the respondents as co-tenure holders. The petitioners took no action for 10 years during Bujhawan's lifetime. Following Bujhawan's death in 1975, the petitioners filed a belated appeal u/s 11(1) of the Act challenging the 1965 order. On 11.10.1976, the Settlement Officer of Consolidation (SOC) condoned the delay and remitted the matter back to the CO for a fresh decision on merits.

- CO Order (13.12.1978): After examining oral and documentary evidence (including 1323 Fasli and 1359 Fasli Khataunis, pedigree, and past admissions), the CO held that the property was ancestral/joint family property. The CO rejected the petitioners' claim of self-acquisition and declared the respondents to have a 1/2 share as co-tenure holders.
- SOC Order (28.02.1979): The petitioners appealed, and the SOC allowed the appeal, holding that the land was self-acquired by the petitioners' predecessors and setting aside the CO's order.
- DDC Revisional Order (05.12.1980): The respondents filed a revision u/s 48 of the Act. The DDC, Basti, set aside the SOC's order and restored the CO's order dated 13.12.1978.

B. Presumption of Joint Family & Burden of Proof – The pedigree of present judgment is not under dispute. Therefore, the family remained a joint family and entire property come from ancestors remain joint property of an undivided joint family, except a land if acquired independently from own source by any member of joint family. (Para 14)

The burden to prove that land in dispute was a joint property was on contesting respondents, whereas burden to prove that land in dispute was self acquired was on original petitioners. The contesting respondents have been able to show that property in question always remained a joint property and their names were wrongly deleted despite they belong to common ancestors. Petitioners absolutely failed to show that how and under what manner, they have self acquired the property in dispute. Their claim remains unsupported by any pleading i.e. documentary and oral. (Para 16, 17, 19, 20)

There are multiple evidences on record that parties remained a joint family that they resided in one house and there is no specific finding on record that any partition took place, therefore, land in dispute always remained a part of joint property and accordingly all parties remained co-tenure holders. Petitioners here have also not taken any step for partition. There was no evidence of any act or clear intention of partition. (Para 21)

C. After the CO passed order dated 15.03.1965, the land in dispute remained in name of petitioners as well as contesting respondents being co-tenure holders. Petitioners have never taken any steps for a decade to challenge it and have filed an appeal after a decade, which was allowed and matter was remitted back to the Consolidation Officer to pass a fresh order. Their chak were also remained undivided, which shows land remained a part of joint family. Birja had taken advantage of position of Karta after his two brothers died issueless and third brother Mahaveer was not active and recorded name of his son solely without adding name of contesting respondents. (Para 18)

D. Scope of Writ Jurisdiction - A well reasoned order passed by CO upheld by DDC by another reasoned order, cannot be interfered since there is no perversity. The Appellate Authority has wrongly traveled beyond the evidence and recorded finding of partition and self acquired property without any evidence, only on basis of revenue entry, without any consideration, whether such entries were supported by any evidence i.e. documentary or oral and therefore, has recorded a perverse finding. (Para 22)

Writ petition dismissed. (E-4)

Case Law Cited

Dorairaj Vs. Doraisamy (Dead) Through Lrs and others, 2026 INSC 126 (Para 19)

List of Acts

U.P. Consolidation of Holdings (U.P.C.H.) Act, 1953.

List of Keywords

perversity, interfere, chak, joint, family, evidence, partition, self acquired, co-tenure holder.

Appearances for Parties

For Petitioner(s): Rakesh Pathak, S.D. Pathak
For Respondent(s): Jagdish Mishra, Sabhapati Tiwari, Shashi Prakash Misra, Sunil Kumar Singh

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

1. Parties to the litigation belongs to common ancestors. In basic consolidation records names of original petitioners, i.e., Ram Nath and Kripa Nath sons of Ram Sumer and Bujhawan, were

recorded probably on a ground being Karta of a joint Hindu family, parties were member of it and land in dispute (Khata No. 112 and 338) was ancestral land, whereas original petitioners claimed ownership on land in dispute being self acquired.

2. An objection was filed by contesting-respondents that on above ground their names be recorded as co-tenure and on basis of statement of Bujhawan and Ram Naresh, objection was allowed vide an order dated 15.03.1965 passed by the Consolidation Officer.

3. Above order was challenged by way of filing a belated appeal at behest of petitioners that decision was wrongly passed on basis of statements only, whereas it ought to have been considered on merit. Delay of about 10 years was condoned and belated appeal was allowed vide order dated 11.10.1976 and matter was remitted to the Consolidation Officer to pass a fresh order on merit. Relevant part of said order is reproduced hereinafter:

"आदेश

यह अपील चकबंदी अधिकारी के आदेश दिनांक 15.03.65 के विरूद्ध धारा 11(1) जोत० अधिनियम के अन्तर्गत प्रस्तुत की गई है। खाता के 112, 334 आधार वर्ष की खतौनी से रामनाथ कृपानाथ राम सुमेर, बुझावन पुत्र गिरजा के नाम आधार वर्ष में दर् है रामनरेश, रामसुरेश पुत्र महाबीर का भी नाम तसदीक खतौनी के समय और सहखातेदार दर्ज किया जाना गया। स०स० ने साक्ष्य लेने के पश्चात् रामनरेश, रामसुरेश पुत्रान महावीर का नाम बतौर सहखातेदार खाता सं 112, 334, पर दर्ज करने का आदेश पारित किया। इस आदेश के विरुद्ध यह अपील प्रस्तुत की गई है।

अपीलान्ट के विद्वान अधिवक्ता की बहस सुनी गई। किन्तु रेस्पान्डेन्ट की ओर से बावजूद गजट कराने कोई हाजिर नहीं आया। अतएव रेस्पान्टेन्ट के विरुद्ध एकतरफा आदेश हुआ गुण दोष के आधार पर किया जाता है।

अपीलान्ट के विद्वान अधिवक्ता ने बहस की रामनरेश, राम सुरेश पुत्रान महावीर न ही उनके परिवार के संबंधित हैं और न उनका कब्जा दखल आराजी निजाई पर है तथा अधीनस्थ न्यायालय को धोखा देकर दोनों खातों पर रेस्पान्टेन्ट ने अपना नाम दर्ज करा लिया है तथा वास्तव में अधीनस्थ न्यायालय द्वारा नोटिस नहीं जारी की थी जो नोटिसें अधीनस्थ न्यायालय की पत्रावली पर संलग्न है वह फर्जी है तथा केवल रामनरेश रेस्पान्टेन्ट ने लिखित खातेदारान को नोटिस विधिवत् दाखिल होने नहीं दिया तथा सभी नोटिसें मुख्तार दीनानाथ के हस्ताक्षर बनवा लिये हैं तथा अधीन न्यायालय के समक्ष अपीलान्ट रामनाथ कृपानाथ पुत्रान रामसुमेर को उक्त मुकदमें की जानकारी नहीं होने दी तथा स०च० द्वारा जो तामीलात में बयान दिया गया तामीलात में रामनरेश, पुत्रान का बयान दिया गया प्रतीत होता है । जबकि दो पक्षों का शामीलात के बयान होने का कोई प्राविधान नहीं है तथा यह बयान भी दोषपूर्ण है क्योंकि इस बयान में आराजी निजाई का

खाता संख्या गाटा सं कोई जिक्र नहीं गया है तथा च०अ० ने अपने आदेश में यह अंकित किया कि फरीकैन के बयान लिये गये जो सत्य है तथा च०अ० ने आदेश में स्वीकृत के अंश निर्धारित नहीं किये थे। चूंकि रेस्पान्डेंट्स के कोई कोई अंश निर्धारित नहीं किये गये हैं। चूंकि रेस्पान्डेंट्स के कोई अंश निर्धारित नहीं किये गये थे इसलिये अपीलान्ट को च०अ० के आदेश की जानकारी नहीं हो पाई। रेस्पान्डेंट्स रामनरेश, रामसुरेश पुत्रान महाबीर ने जो० च० अधिनियम की धारा 48(3) के अन्तर्गत उप संचालक चकबंदी के न्यायालय में बटवारे की दरख्वास्त दिनांक 13-12-74 को प्रस्तुत की जिसकी जानकारी अपीलान्ट को दिनांक 30-12-75 को हुई तथा जानकारी के प्राप्त होने के जवाब तुरन्त यह अपील दाखिल कर दी गई तथा उप संचालक चकबंदी द्वारा रामनरेश रामसुरेश की दरख्वास्त खारिज कर दी गई। अतएव अपीलान्ट को धारा 5 कानूनी म्याद का लाभ दिये जाने तथा साक्ष्य लिये जाने के पश्चात् वाद का निस्तारण गुण व दोष के आधार पर किया जाना। वास्तव में शामीलात शपथ पत्र का बयान लेने का कोई प्राविधान नहीं है तथा इस बयान में आराजी निजाई का भी कोई उल्लेख नहीं किया गया है इसलिये साक्ष्य लेने के पश्चात् गुण व दोष के आधार पर निर्णय किया जाना ही न्याय संगत प्रतीत होता है। यह अपील म्याद बाहर है इसलिये धारा 5 कानूनी म्याद का लाभ दिया जाना उचित प्रतीत होता है व उपरोक्त विवेचन के आधार पर मैं निम्न आदेश देता हूँ।

अपील स्वीकार की जाती है । चकबंदी अधिकारी का आदेश निरस्त किया जाता है। तथा वाद च०अ० को इस निर्देश के साथ प्रत्यावर्तित किया जाता है कि फरीकैन का साक्ष्य लेने के पश्चात् वाद का निस्तारण गुण व दोष के आधार पर करें। अपीलान्ट को चकबंदी अधिकारी के न्यायालय में दिनांक 30-12-76 को उपस्थित होने के लिये सूचित किया गया । च०अ० अपने न्यायालय में अन्य भी फरीकैन को नोटिस जारी करायें तथा वाद का निस्तारण गुण व दोष के आधार पर करें।"
(Emphasis supplied)

4. In pursuance of above, the Consolidation Officer on basis of oral and documentary evidence passed a fresh order dated 13.12.1978, whereby it was held that property in dispute was ancestral and contesting respondent were co tenure. Claim of original petitioners of self acquisition was rejected. Relevant part of order is reproduced hereinafter:

"प्रस्तुत वाद विद्वान न्यायालय अपील के आदेश दिनांक 11.10.76 अपील संख्या 7950 द्वारा गुण दोष के आधार पर पुनः निर्णय हेतु प्रत्यावर्तित किया गया है। वाद प्रत्यावर्तित पक्षो को सबूत व शहादत का समुचित अवसर के बाद विस्तार पूर्वक सुना गया।

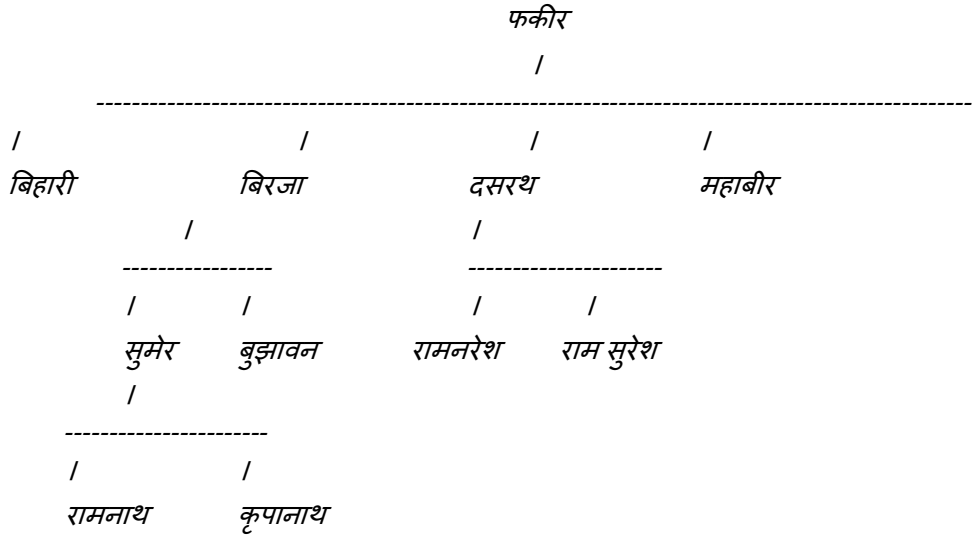
विवाद खाता नम्बरान 112ब व 334 से संबंधित है। जो कागजात आधार वर्ष में रामनाथ व कृपानाथ पुत्रगण रामसुमेरन व बुझावन पुत्र बिराज के नाम वर्ग 1 व 2 अंकित है। उक्त खाते में रामनरेश व रामसुरेश का नाम शामिल है। चकबंदी पड़ताल व खतौनी तस्दीक के समय बताया गया। वाद का निर्णय फरीकैन की उपस्थिति में दिनांक 15-3-65 को किया गया। जिसके विरुद्ध रामनाथ आदि अपील प्रस्तुत किया। पत्रावली

गुण दोष के आधार पर निर्णय हेतु प्रत्यावर्तित की गई। पक्ष एक दूसरे के हक को स्वीकार नहीं करते। बुझावन सहमत है कि उनके वारिस मुकदमा फरीक है।

फरीकैन के कथन पर निम्न तनकीह निर्णयार्थ कायम हो गई है।

क्या रामसुरेश व रामनरेश खाता निजाई के सहखातेदार है। यदि हां तो उनका अंश क्या है?

रामनरेश आदि ने अपने हक को साबित करने के लिये कोई कागजी सबूत दाखिल नहीं किया है। उन्होंने एक उजदुारी दिनांक 3-12-77 को दाखिल किया है। जिसके पैरा 7 में निम्न खानदान शजरा दिया है ।



उजुरदारोह के पेरा 2 में कहा गया कि फरीकैन मुस्तर्का हिन्दू खानदान के है विवादित भूमि मुस्तर्का पैदा को गई है। पैरा 3 में कहा गया कि आराजी निजाई फरीकैन के पूर्वजो को मुस्तर्का पैदा करदा है। जिस पर फरीकैन मुस्तर्का काबिज दाखिल है पैरा 4 में यह कहा गया है कि रामनाथ व कृपानाथ का तनहा कब्जा नहीं है। पैरा 5 में कहा गया है कि विवादित भूमि के संबंध में वाद चकबंदी अधिकारी के न्यायालय में चल चुका है जिसमें बुझावन शपथ पूर्वक बयान देकर उनका कब्जा व सहखातेदारी तस्दीक किया है। पैरा 6 में कहा गया है कि प्रतिवादीगण ने असलियत को छिपाया है। अतः निवेदन किया गया है कि आराजियात निजाई के नाम रामनरेश आदि बतौर सहखातेदार दर्ज करके खाता चकबंदी अलग किया गया है।

रामनाथ व कृपानाथ ने उक्त उजुरदारी के खिलाफ कोई बयान तहरीरी दाखिल नहीं किया है।

रामनरेश के बयान मजीद मे उक्त खानदान सजरा दिया है जिसके खिलाफ कृपानाथ ने कोई बात अपने बयान मजीद में नही कहा है जब कि उनका बयान राम नरेश और उनके गवाह के बाद हुआ इस प्रकार इस प्रकार रामनरेश द्वारा दिया गया खानदान शजरा प्रमाणित है। इससे स्पष्ट है कि फरीकैन एक ही मूरिस फकीर की औलाद है। रामनरेश ने बयान मजीद में यह कहा है कि बिहारी व दसरथ लावल्द मर गये उनके पिता बूजा मुस्तर्का रहते थे। अगुवा व पेशवाकार घर के बिरजा थे। अब जायदाद मुस्तर्का है आराजी निजाई गल्ती से बिरजा के खानदान में तनहा चली आई। चकबंदी में उज़रदारी किया। बुझावन आदि ने सुलह कर लिया। इस बयान के खिलाफ भी कृपानाथ ने कोई बात बयान मजीद में नहीं कहा है। इससे यह साबित होता है कि बिहारी व दसरथ लावलद मर गये।

महावीर व विरजा शामिल शरीक रहे और विरजा घर के अगुवा तथा खानदान कर्ता रहे। जायदाद निजाई मुस्तर्का है जो विरजा के खानदान तनहा चली गयी। चकबंदी मे बुझावन आदि में उनका हक सहखातेदारो तस्दीक किया गया। इस संबंध में बयान रामनरेश काविले विश्वासनीय है। कृपानाथ ने बयान आदि में कहा है कि विवादित भूमि उनका कब्जा बापदादा के जमाने से चला आ रहा है। तथा विवादित भूमि को उनके पिता ने अर्जित किया है कानून की दृष्टि में हिन्दू परिवार का संयुक्त रहना माना जाता है। जब तक बंटवारा न साबित हो। कृपानाथ ने बयान मजकूर आदि में कहीं नहीं कहा है कि बंटवारा कब हुआ। बंदोबस्त सन् 1323 फ० में जिसकी नकल रामनरेश ने दाखिल किया है।

खाता 111 फरीकैन के नाम मुस्तर्का दर्ज है। विवादित भूमि के अलावा अन्य जमीन गैर विवादित चकबंदी की क्रियाओं तक संयुक्त रही है। जैसा कि नकल खतौनी आकार पत्र 23 व अन्य कागजात के अवलोकन से स्पष्ट है बयान मजीद मे कहा गया है कि फरीकैन मुस्तर्का तौर पर है। और मकान को एक ही है। इसका खण्डन कृपानाथ ने अपने बयान मजीद में नहीं किया है। जिरह में रामनरेश ने कहा है कि बंटवारा हुये 10-12 साल हुआ। 10-12 साल के बाद से उसे तीन नम्बर अलग से मिला। 10-12 साल के पहले उनके पास तनहा नम्बर नही था। रामनरेश ने कहा है कि विवादित भूमि मे उनका हिस्सा होता है लेकिन कृपानाथ ने बयान मजीद में कहा है कि रामनरेश को तनहा जमीन में उनका हिस्सा नहीं होता। कृपानाथ की ओर से जिरह मे यह पूछा गया है कि बंटवारा हुये 50-55 साल हुआ उत्तर सो साल हुआ होगा फिर खुद कहा कि 10-11 साल हो गया है" इसके उत्तर में यह कहा जाता है कि बंटवारा पुराना है और राम नरेश को विवादित भूमि मे हक नहीं मिलना चाहिये। यह बहस उचित व न्याय संगत नहीं प्रतीत होती। इसका कारण यह है कि बयान मजीद मे कृपानाथ के बंटवारे के संबंध में कुछ नही कहा है बंटवारे के संबंध में सही स्थिति को छिपाने की गरज से वे मौन रहे है। स्वयं जिरह दिनांक 16.08.78 के कृपानाथ द्वारा यह पूछा गया है कि बंटवारा हुये 50-55 साल हुआ इससे यह जाहिर होता है। कि बंटवारा हुये 50-55 साल यदि माना जाय तब फरीकैन में बंटवारा सन् 1938 या 1933 वाली है। इस आधार पर विवादित भूमि का मुख्तारी होना ही साबित होता है। उत्तरा में

100 साल से के बाद सदिग्ध व नाजायज तौर में कहा गई प्रतीत होती है। पूरे बयान से यह जाहिर होता है कि बंटवारा हुये 10-12 साल हुआ। रामनरेश ने बयान मजकूर में यह कहा है कि 7-8 साल से फरीकैन में बीच नामहककी हो गई है और यही साक्ष्य हेतु वकील द्वारा मुकदमें को कहा दिया गया है। नकल आकार पत्र 23 से फरीकैन की जायदाद भी मुख्तारी तथा खेती बारी का मुख्तारी अब तक रहना प्रमाणित है। बुधावन ने 1965 में ही उनका अंश तस्लीम कर चुके हैं। रामनरेश के कथन में दखल प्रतीत होती है। क्योंकि बुधावन के जीवन काल में उनके बयान से विवादित बाद को कहा करने का साहस नहीं किया गया। आदेश तथा कब्जा परिवर्तन के बहुत दिन बाद नामहककी के कारण वाद बढ़ा दिया गया प्रतीत होता है। यह कोरी क्षति तथा बयान मजकूर में कूपा नाथ द्वारा इसका खण्डन न करना रामनरेश के हक को साबित करने में बढ़ावा देता है। चकबंदी में खाते का विभाजन न करा कर चक्र एक में ही रखना यह साबित करता है कि चकबंदी क्रियाओं तक फरीकैन संयुक्त रहे हैं और प्रतिवादी में संयुक्त रही है।

रामनरेश के विद्वान वकील ने बुझावन मृतक के बयान दिनांक 15-3-65 को और ध्यान आकर्षित करते हुये यह बहस किया कि उक्त बयान धारा 32 कानून सहादत में पढा जायेगा और तथा स्वीकारोक्ति के कारण विवादित भूमि में रामनरेश आदि को हक मिलना चाहिये । इस पर यह बहस किया गया कि उक्त बयान की कोई कीमत नहीं है। यह कथन उचित व न्याय संगत नहीं प्रतीत होता है। हालाकि बयान बिना हलक है। जो आर्डर 10 नियम 2 यदि माना जाय तब भी सहखातेदारों को स्वीकारोक्ति से इंकार नहीं किया जा सकता। इसके अलावा स्वयं बुझावन ने उक्त बयान के खिलाफ कोई भी कार्यवाही नहीं किया कृपानाथ ने दिनांक 15-3-65 के बयान व आदेश के के फलस्वरूप कब्जा परिवर्तन के बहुत दिन बाद तक मौन बैठे रहे इसके विपरीत कोई कार्यवाही नहीं किया। कृपानाथ कब्जा परिवर्तन के बहुत दिन बाद न्यायालय अपील में इस आज्ञा के साथ बहस व फैसला कराया गया कि रामनरेश उनके खानदान के नहीं है। जैसा कि रिमाण्ड आदेश से स्पष्ट है।

उक्त परिस्थितियाँ कृपानाथ के हक में प्रतिकूल तथा रामनरेश आदि के हक के पक्ष में प्रभाव डालती है। खानदान का एक होना तथा संयुक्त रहना रामनरेश के मजकूर बयान से साबित है। बयान बुझावन अतयंत रेलवेंट( ) है तथा सबूत में पढा जायेगा। यह एक हक की स्वीकारोक्ति है जो मुकदमें की वर्तमान परिस्थितियों व शहादत सबूत पर विशेष असर डालता है दोनो खाता निजाई के विवादित नम्बरान 281/ 119-7, 413/ 112-13, 731/ 0-10- है। गा०सं० 281/ 0-14-2 , व 413/ 0-7-03 जमन 8 रामसुमेरन व बुझावन के नाम कागजात सन् 1323 फ० में दर्ज है। सन् 1359 फ० गाटा सं० 281,413, 731, रामनाथ व कृपानाथ पुत्रगण रामसुमेर व बुझावन के नाम मुद्दत 42 साल पहले नहीं लिखी गई है। सन् 1359 फ० 296, 297, 444 जमन 7 रामनरेश व सुरेश के नाम दर्ज है। रामनरेश द्वारा दाखिल किये गये खतौनी सन् 1323 फ० में खाता 111 में 7 नम्बरान गा०सं० 76, 514 मुस्तर्का फरीकैन के नाम दर्ज है। इसी में गा० सं० 413 रामसुमेर बुझावन

के नाम गा०सं० 413 मुद्दत 7 साल से जमन 8 दर्ज है। रामनरेश व रामसुरेश की उजूरदारी का पैरा 3 अखण्डित है जिसमें कहा गया है कि आराजीयत्मनिजाई पूर्वजों के समय की मुस्तर्का पैदा करदा है। विस्तृत बयान जिसकी विवेचना फैसले में की गई है से साबित होता है कि वि० भू मुस्तर्का हालत में मुख्तविदा किया गया है। बंटवारे का हक यह बाद बंटवारा पैदा करने का कोई केस भी रामनाथ व कृष्णनाथ का नहीं है। रामनरेश व सुरेश का हक बुझावन जो तस्लीम था कि जिससे उनके हक को बल मिलता है। प्रस्तुत बाद को वर्तमान परिस्थितियों में आर०डी० 1867 पृष्ठ सं० 226 पर दी गई व्यवस्था का कोई लाभ कृपानाथ आदि को नहीं मिल सकता । न तो उक्त व्यवस्था फरीकैन बीच लागू होती है। आर०डी० 1976 (वा०1 पृष्ठ सं 277 पर यह व्यवस्था दी गई है कि ज्वाइन्ट हिन्दू प्रापर्टी और ज्वाइंट हिन्दू टेनेंसी में अंतर है इसमें यह भी व्यवस्था दी गई है कि वि० भू० के मुस्तर्का अर्जित करने को साबित करने की जिम्मेदारी उस पर है ता ऐस कहता है। वर्तमान वाद के यह तथ्य रामनरेश व रामसुरेश के अखण्डित बयान से साबित है जिससे उक्त व्यवस्था का कोई लाभ रामनाथ व कृपानाथ को नहीं मिल सकता। उक्त मिसिल में वादी उक्त तथ्य को साबित करने में बिल्कुल असफल रहा है। दोनो बात की परिस्थितियां भिन्न है। रामनाथ कृपानाथ द्वारा दिये गये प्रार्थना पत्र दिनांक 13.11.78 के तहत में ए०डब्लू०सी० 1977 पृष्ठ सं० 418 पेश नहीं किया गया। आर०डी० 1970 दिया गया है जिसमें कुल पृष्ठ 566 है। इस किताब में स्लिप रखी गई है जिसमें आर०डी० 1970 पृष्ठ 218 अंकित है। यह फरीकैन के केस से संबंधित नहीं है।

पक्षों के सबूत शहादत के अध्ययन के पश्चात् मैं इस निष्कर्ष पर पहुँचता हूँ कि विवादित भूमि में रामसुरेश व रामनरेश सहखातेदार हैं तथा उनका अंश 1/2 है। 1/2 अंश रामनाथ व कृपानाथ का है। वैसे बंटवारा की आवश्यकता नहीं है। क्योंकि फरीकैन का अंश आज भी चकबंदी में मुश्तर्का है। तनकीह इस प्रकार निर्णीत की गई।

उपर्युक्त विवेचन के आधार पर निम्न आदेश पारित किये जाते हैं।

विवादित भूमि खाता नम्बर 112 व 334 में दर्ज खातेदारी के साथ रामनरेश व रामसुरेश पुत्रगण महावीर सा० देह का नाम बतौर सहखातेदार दर्ज है। बुझावन मृतक का नाम खारिज हो। दूधनाथ व रामनाथ पुत्रगण रामसुमेर का नाम बतौर वारिस दर्ज हो। आपत्ति रामनाथ कृपानाथ खारिज हो।

पत्रावली बाद अमलदरामद दाखिल दफ्तर हो।"

(Emphasis supplied)

5. Original petitioners being aggrieved by aforesaid order filed an appeal before Settlement Officer of Consolidation, which was allowed vide order dated 28.02.1979, whereby the order passed by the Consolidation Officer was set aside. It was directed that on Khata No. 112 and 334

name of appellants Kripanath and Ramnath (petitioners herein) be recorded and that their of self acquisition of land in dispute was accepted. Relevant part of order dated 28.02.1979 is reproduced hereinafter:

"पक्षों के विद्वान अधिवक्ता की बहस सुनी गई तथा अधीनस्थ न्यायालय की पत्रावली का अवलोकन ध्यानपूर्वक किया गया।

अपीलांट के विद्वान ने बहस की कि नकल खतौनी 1323 फ० दाखिल की गयी है। जिसमें रामनाथ कृपानाथ के पिता राम सुमेर बुझावन पुत्र बृजा का नाम दर्ज है। नकल खतौनी 1359 फ० दाखिल की गई है। इसमें भी रामनाथ कृपानाथ पुत्रान सुमेर बुझावन नकल बृजा का नाम दर्ज है। यह भी उल्लेखनीय है कि गा० सं० 413, 431 1359 फ० की खतौनी में रामनाथ , कृपानाथ पुत्रान रामसुमेर बुझावन वल्द बृजा के नाम विभाग 7 व 17 में दर्ज है। तथा रामनरेश रामसुमेर पुत्रान महावीर के नाम भी अलग खाते में गाटा सं० 296 , 397, 444 मुद्दत 8 साल से दर्ज है। अधीनस्थ न्यायालय के समक्ष रामनरेश रामसुरेश पुत्रान महावीर ने आपत्ति की थी कि आराजी निजाई मुस्तर्का तौर पर पैदा की हुई सम्पति है किन्तु नकल खतौनी 1323 फ० तथा 1359 फ० से यह स्पष्ट है कि आराजी निजाई तनहा रामसुमेर बुधावन पुत्रान बृजा द्वारा पैदा की गई थी क्या रामसुरेश रामनरेश के पिता ने आराजी निजाई अर्जित नहीं की थी । नकल खतौनी 1359 फ० से यह भी स्पष्ट है कि रामनरेश , रामसुरेश द्वारा भी तनहा कुछ आराजी अर्जित की गई थी जिसमें रामनाथ कृपानाथ तथा बुझावन आदि का नाम दर्ज नहीं है। तथा इस आराजी पर उन्होंने सहखातेदारी दर्ज किये जाने का दावा नहीं किया है। इस संबंध में अपीलान्ट के विद्वान अधिवक्ता ने 1976 आर०डी० पृष्ठ संख्या 210 , 1970 आर०डी० पृष्ठ सं 198 तथा ए०डब्ल्यू० सी० 1977 पृष्ठ सं० 418 का भी हवाला देते हुये यह भी बहस की कि शामिलात में रहते हुये उमरा सभी द्वारा भी अलग अलग भूमि अर्जित (सेपरेट एक्वीजन) की सकती है। रेस्पान्टेन्ट के विद्वान अधिवक्ता ने बहस को कि जब भी उभयपक्षो के नाम कुछ आराजी शामिलात में है तथा बुझावन पुत्र बृजा का बयान अधीनस्थ न्यायालय के समक्ष हुआ था जिसमें उसने रामनरेश व रामसुरेश पुत्रान महावीर का नाम बतौर सहखातेदार दर्ज होने की स्वीकृत दी थी।

इसलिये संयुक्त हिन्दू परिवार का प्रिजम्पसन होना चाहिये तथा विवादित भूमि पर भी रेस्पान्डेन्ट का नाम दर्ज किया जाना चाहिये।

किन्तु मैं रेस्पान्डेन्ट के विद्वान अधिवक्ता से सहमत नहीं हूँ। क्योंकि बुझावन, रामनरेश का बयान शामिलात में दर्ज किया गया था जिसमें विवादित भूमि का कोई उल्लेख भी नहीं है। तथा इस प्रकार का बयान कानून की दृष्टि में कोई बयान नहीं है तथा उभय पक्षों शामिल शरीक रहते हुये भी अलग अलग आराजी अर्जित कर सकते हैं।

विवादित भूमि तनहा कृपा नाथ रामनाथ के पिता रामसुमेर व बुझावन द्वारा आदेश से अर्जित की गई थी । इसलिये रामनरेश , रामसुरेश पुत्रान महावीर का नाम बतौर सहखातेदार दर्ज किये जाने का कोई औचित्य नहीं है। उपरोक्त विवेचन के आधार पर निम्न आदेश देता हूँ।

अपील स्वीकार की जाती है। च०अ० का आदेश निरस्त किया जाता है तथा आदेश दिया जाता है कि खाता संख्या 112 व 334 तनहा अपीलान्ट कृपानाथ व रामनाथ पुत्रान रामसुमेर के नाम पूर्ववत् दर्ज रखा जावे। पत्रावली बाद अमलदरामद संचित हो।" *(Emphasis supplied)*

6. Aforesaid order was thereafter challenged by contesting respondents by way of filing a revision before Deputy Director of Consolidation, which was allowed vide order dated 05.12.1980 and order passed by Settlement Officer of Consolidation was set aside and order passed by Consolidation Officer was affirmed. Relevant part of order is reproduced hereinafter:

मैने पक्षों की बहस सुनी है तथा अभिलेखों का अवलोकन किया है

पक्षो की स्वीकृत वंशावली निम्न लिखित है:-

फकीर

बिहारी बिरजा दसरथ महाबीर

सुमेर बुझावन रामनरेश राम सुरेश

रामनाथ कृपानाथ

क्षत्रधारी जोखन बलराम सर्वजीत इन्द्रजीत

पुनरीक्षण कर्तागण का केस यह है कि बिरजा और महावीर का परिवार संयुक्त था और विवादित भूमि संयुक्त परिवार की उपार्जित भूमि थी और बिरजा सबसे बड़े भाई थे और परिवार के कर्ता थे। अतः विवादित भूमि उनके नाम प्रतिनिधि रूप में दर्ज थी और वास्तव में यह बिरजा और महावीर की संयुक्त रूप से उपार्जित भूमि थी। उनका कहना है कि इसलिये चकबंदी में विवाद उठाने पर बुझावन ने उस समय परिवार के कर्ता होने के नाते विद्वान चकबंदी अधिकारी के समक्ष दिनांक 15/3/65 को बयान देकर यह स्वीकार कर लिया कि भूमि में महावीर के पुत्रों रामनरेश आदि का भी हिस्सा है और वे सहखातेदार हैं उनका यह कहना है कि जब तक बुझावन जीवित रहे और परिवार के कर्ता के रूप में थे तब तक रामनाथ और कृपानाथ चुप रहे और 1975 में जब बुझावन की मृत्यु हो गई तब रामनाथ और कृपानाथ ने पहले से स्थिति को उलटने का प्रयत्न चलाया। 1325 फ० की खतौनी के अनुसार भूखण्ड संख्या 281 और 413 रामसुमेर और बुझावन को दखीलकारी और गैर दखील कारी काश्त दर्ज है। 1359 फ० की खतौनी में तीनों भूखण्ड रामनाथ कृपानाथ और बुझावन को जमन 6, जमन 7 और 17 की आराजी दर्ज है उसी आधार पर विद्वान चकबंदी अधिकारी ने यह निर्णय दिया है कि यह भूमि रामसुमेर और बुझावन द्वारा तनहा पैदा की गई थी उन्होंने बुझावन और रामनरेश दोनों के इकट्ठा बयान दर्ज करने को गैर कानूनी बताया है। किन्तु विद्वान सहायक बंदोबस्त अधिकारी चकबंदी का उक्त निर्णय सही नहीं है । कानून में ऐसी कोई मुमानियत नहीं है कि दो व्यक्तियों का बयान एक साथ दर्ज न किया जाय। ऐसी दशा में यदि दिनांक 13/3/65 को विद्वान च०अ० ने रामनाथ और बुझावन दो नों का इकट्ठा एक बयान दर्ज किया तो उसमें कोई अनुचित बात नहीं है यदि दो आदमी एक ही बात सहमति पूर्वक कहते हैं तो समय बचाने के लिये यदि दोनों का बयान अलग दर्ज न करके एक में ही दर्ज किया गया तो उसमें कोई अनुचित बात नहीं है, उक्त बयान के संबंध में विशेष बात यह है कि पुनर्नीरीक्षण की सुनवाई के पहले उक्त बयान का मुख्य पन्ना पड लिया गया है और इस प्रकार उक्त बयान के प्रभाव की समाप्ति करने की चेष्टा की गई है। किन्तु उक्त बयान को अस्तित्वहीन इसलिये नहीं माना जा सकता क्योंकि विद्वान चकबंदी अधिकारी ने उक्त बयान का संदर्भ देते हुये आदेश दिनांक 15/3/65 को जो आदेश पारित किया है। उस पर बुझावन और रामनरेश दोनों ने हस्ताक्षर किये हैं और दोनों का हस्ताक्षर अभी उनको भी मौजूद है। दूसरी बात यह है कि दोनों अधीनस्थ न्यायालयों ने उक्त बयान के अस्तित्व को स्वीकार किया है और इस प्रकार उक्त बयान एक वास्तविकता है तीसरी बात यह है कि उक्त बयान के आधार पर पारित आदेश दिनांक 15/3/65 के द्वारा विवादित भूमि 11 वर्षों तक दोनों पक्षों को सहखातेदार अंकित रही वस्तुतः इस तथ्य को केवल बयान फट जाने से मिटाया नहीं जा सकता इस प्रकार यह तथ्य अंतिम रूप से सिद्ध है कि बुझावन और रामनाथ ने दिनांक 15/3/65 को विद्वान चकबंदी के समक्ष उपस्थित होकर संयुक्त रूप से बयान दिया था कि विवादित भूमि में रामनरेश आदि सहखातेदार हैं और तदनुसार रामनरेश आदि का भी नाम विवादित भूमि सहखातेदारों के रूप में दर्ज किया गया था।

विपक्षीगण की ओर से कहा गया है कि रामनाथ आदि के नाम कुछ भूमि तनहा है कि उन्हें हिस्सा नहीं लिया है किन्तु इसके विपरीत रामनरेश आदि की ओर से यह कहा गया है कि चकबंदी प्रक्रिया तक अधिकाँश भूमि दोनों पक्षों के नाम संयुक्त रूप में ही थी और दोनों परिवार संयुक्त रूप से रहते थे कृपानाथ ने अपने बयान में स्वीकार किया है कि दोनों पक्षकार एक ही घर में रहते हैं। कृपानाथ ने इस बयान में यह भी कहा है कि उनका बुझावन रामनरेश और रामसुरेश सबका चक मुश्तर्का बना हुआ है। पत्रावली में चक संख्या 321 का जो विवरण आया हुआ है उससे भी स्पष्ट होता है कि मार्च 77 तक दोनों पक्षों का सम्मिलित चक बना हुआ था यह इस बात का प्रमाण है कि 1965 में उक्त आदेश जब हुआ था तो दोनों पक्ष संयुक्त परिवार में रहे हैं। कृपानाथ ने अपने बयान में यह नहीं बताया कि उनका संयुक्त परिवार कब विभक्त हुआ किन्तु उन्होंने अपने बयान में स्वीकार किया है कि उन लोगों ने कोई खेत तनहा पैदा नहीं किया है और विवादित भूमि बाप दादा के समय की है। इसमें यह बात भलीभाँति स्पष्ट है कि कृपानाथ और रामनाथ की विवादित भूमि के उपार्जन के संबंध में कोई धन नहीं है और जो भी धन था उनके बाबा बुझावन का था और चूंकि भूमि संयुक्त रूप से उपार्जित थी अतः बुझावन ने उसमें रामनरेश आदि का हिस्सा स्वीकार किया रामनरेश ने अपने बयान में बताया है कि 10 साल पहले सारी खेती बारी संयुक्त रूप से होती थी । एक बार प्रश्न न के कारण रामनरेश ने " बंटवारा हुये 10 साल हुआ " यह कह दिया किन्तु तुरन्त उन्होंने इस बात को स्पष्ट रूप करते हुये बटवारा होने की अवधि 10-12 साल बताई यह देखते- हुये कि अधिकांश भूमि दोनों पक्षों के साथ थी और चकबंदी में भी दोनों पक्षों के नाम संयुक्त चक बने , यही बात सिद्ध होता है कि चकबंदी के प्रारंभिक दिनों में दोनों पक्ष संयुक्त परिवार में ही रहते थे ए०डब्ल्यू० सी० 1937 पृष्ठ 418 , आर०डी० 1970 पृष्ठ 198 आर०डी० 1976 (2) पृष्ठ 226 की व्यवस्थाओं का संदर्भ देकर यह कहा गया है कि संयुक्त परिवार में भी कोई भी व्यक्ति अलग से भूमि उपार्जित कर सकता है और चूंकि खतौनी में यह भूमि अकेले बुझावन व राम सुमेर के मध्य थी अतः उसमें महावीर के लड़कों का हिस्सा नहीं माना चाहिये । इस बात में संदेह नहीं है कि संयुक्त परिवार में रहते हुये भी कोई सदस्य अपने नाम से अलग भूमि उपार्जित कर सकता है । किन्तु जब परिवार संयुक्त हो तो यह सिद्ध करना भी आवश्यक है कि अपने लिये अलग आय के साधन से इस सदस्य ने यह भूमि उपार्जित की । इस बात का कोई साक्ष्य नहीं दिया गया है कि संयुक्त परिवार की खेती बारी के अतिरिक्त बिरजा के पास आय का कोई तनहा साधन भी था ऐसी दशा में विवादित भूमि को तनहा बिरजा को मानने का कोई औचित्य नहीं है विशेष रूप में जब कि वह सबसे बड़े भाई थे और परिवार के कर्ता थे आर०डी० 1976 पृष्ठ 271 , आर०डी० 1975 पृष्ठ 218 की व्यवस्थाओं से स्पष्ट है कि जब तक परिवार संयुक्त हो तब तक किसी भी भूमि को तनहा सिद्ध करने के लिये अलग साक्ष्य आवश्यक है जो नहीं दिया गया है ।

इस मामले में कुछ विशेष परिस्थितियाँ ऐसी हैं जिनके कारण विवादित भूमि को संयुक्त परिवार की भूमि मानने का बहुत बड़ा औचित्य है । पहली बात तो बुझावन का स्वीकृत मृतक बयान दिनांक 15/3/65 है जिसके द्वारा उन्होंने विवादित भूमि में रामनरेश आदि को सहखातेदार स्वीकार किया और यदि रामनरेश

आदि के नाम तनहा दर्ज भूमि की संयुक्त परिवार की सम्पत्ति होती तो बिना उसमें हिस्सा दिये हुये बुझावन ऐसा बयान न देते किन्तु जब उसमें उनका हिस्सा नहीं था तभी उन्होंने ऐसा बयान न देते किन्तु जब उसमें उनका हिस्सा नहीं था तभी उन्होंने ऐसा बयान दिया अतः यह नहीं कहा जा सकता कि रामनरेश आदि के नाम तनहा दर्ज भूमि में हिस्सा पाने के कारण विवादित भूमि में रामनरेश आदि को भी सहखातेदार न माना जाय । दूसरी परिस्थिति यह है कि रामनाथ और कृपानाथ ने भी बुझावन के जीवन काल में उपर्युक्त सहखातेदारी को स्वीकार किया और 1965 से 1976 तक दोनों पक्ष सहखातेदार दर्ज रहे । दोनों का चक संयुक्त रहा और रामनाथ और कृपानाथ ने इस पर कोई आपत्ति प्रस्तुत नहीं की कृपानाथ के बयान के अनुसार बुझावन 26/8/75 को मरे और उनकी मृत्यु के बाद कृपानाथ और रामनाथ ने इस पूर्णतया तयशुदा मामले को फिर से उलटने का यह प्रयास किया है किसी भी व्यक्ति को यह अनुमति नहीं दी जा सकती कि यह एक तथ्य स्वीकार कर ले और कि एक पीढी बीत जाने पर उसे फिर से उलट कर दूसरा तथ्य प्रतिष्ठित करे । रामनाथ और कृपानाथ की ओर से यह भी कहा गया है कि दिनांक 15/3/65 के सुलहनामें का बयान में वह पक्ष नहीं था अतः यह उन पर बाध्यकारी नहीं है । किन्तु यह तर्क भी गलत है ए०आई० आर० 1975 पंजाब परिभाषा-12 में माननीय पंजाब उच्च न्यायालय ने यह निर्णय दिया है कि जहाँ दोनों पक्षों का नाम बहुत दिनों तक सहखातेदार के रूप में दर्ज रहा हो। वहाँ एक पक्ष बहुत दिनों के बाद यह चुनौती देने से बाधित है कि इसमें दूसरे पक्ष का हिस्सा नहीं है इस प्रकार बुझावन बयान और स्वीकारोक्ति दिनांक 15/5/65 उनके लिये एस्टापेल उत्पन्न करती है और रामनाथ और कृपानाथ का उक्त निर्णय को स्वीकार कर के 15 वर्ष तक रामनरेश को सहखातेदार के रूप में स्वीकार करना कनडक्ट और एक्वासेस के द्वारा उनके विरुद्ध एस्टापेल उत्पन्न करते हैं और वे अब यह चुनौती देने से बाधित हैं कि उसमें रामनरेश आदि सहखातेदार नहीं हैं अतः विद्वान सहायक बंदोबस्त अधिकारी चकबंदी ने विद्वान चकबंदी अधिकारी के आदेश को उलट कर उचित नहीं किया है।

आदेश

पुनरीक्षण स्वीकार किया जाता है तथा सहायक ब०अ०च० का आदेश दिनांक 28/3/79 निरस्त किया जाता है और विद्वान चकबंदी अधिकारी का आदेश दिनांक 13/12/78 पुनरप्रतिष्ठित किया जाता है और यह निर्णय दिया जाता है कि विवादित भूमि में रामनरेश आदि पुनरीक्षण कर्ता सहखातेदार हैं तदनुसार अमलदरामद की जाय।" (Emphasis supplied)

7. Aforesaid order dated 05.12.1980 is challenged before this Court at behest of original petitioners by means of present writ petition filed in 1981, which is finally heard and decided after about 45 years.

8. Sri Rakesh Pathak, learned counsel for petitioners, submitted that when matter was remitted back by Appellate Authority it has to be decided on merit, however, on remand the Consolidation

Officer has erroneously relied on statements recorded earlier and allowed objections of contesting respondents, whereas the Appellate Authority has rightly considered all aspects of case and on basis of revenue record returned a specific finding that on basis of Khatauni 1323 Fasli and 1359 Fasli respondents have also individually acquired some property whereon original petitioners were not recorded as co-tenure holders.

9. Similarly so far as land in dispute is concerned, i.e., Khata No. 112 and 334, it was solely acquired by original petitioners and, therefore, appeal was rightly allowed on basis of revenue record of 1323 Fasli that it was not acquired by Ram Sumer and Bujawan sons of Birja. Learned counsel further submitted that even a member of joint Hindu family can acquire independent property.

10. Learned counsel further submitted that aforesaid findings returned by Appellate Authority was wrongly interfered by Revisional Authority and by erroneously placing reliance on statements recorded in first round of litigation, without taking note that when matter was remitted in earlier round of litigation by Appellate Authority, it was directed that matter be decided on merit. He further submitted that only on ground that name of all respondents were recorded as co-tenure for about a decade after first order was passed by Consolidation Officer, cannot be considered an adverse factor since subsequently order of Consolidation Officer was set aside, therefore, adverse effect, if any was no longer exist.

11. Per contra, Sri Sunil Kumar Singh, learned counsel appearing for contesting respondents, has supported the impugned order that when matter was remitted back to Consolidation Officer to consider it on merit, the effect of statements recorded earlier were not set aside. Therefore, it was not legally incorrect when Consolidation Officer as well as Revisional Authority has also taken note of said statements alongwith statements recorded subsequently.

12. Learned counsel for respondents further submitted that Revisional Authority has considered case in a very detail manner and returned findings on each issues involved, which does not require any interference being not shown perverse.

13. I have considered the aforesaid submissions and perused the material available on record.

14. The pedigree, as mentioned in para 4 of present judgment is not under dispute that original petitioners, i.e., Ram Nath and Kripa Nath and contesting respondent, Ram Naresh, belonged to common ancestors as well as that jointness of family was not much disputed even by petitioners. Therefore, the family remained a joint family and entire property come from ancestors remain joint property of an undivided joint family, except a land if acquired independently from own source by any member of join family.

15. According to Sijra, Fakir has 4 sons namely Bihari, Birja, Dasrath and Mahaveer. Bihari and Dasrath died issueless. Mahaveer was younger, therefore, Birja was acting as Karta and therefore his name was recorded and consequently name of his son, Bujhawan was recorded in Revenue records. However, the dispute arose when land in question, i.e., Khata No. 112 and 334 was recorded in revenue record solely in the name of petitioners, i.e., Ram Nath and Kripa Nath

sons of Bujhawan, whereas contesting respondents filed objections that it being a joint property, their names may also be recorded as co-tenures being sons of Mahaveer, brother of Birja.

16. The burden to prove that land in dispute was a joint property was on contesting respondents, whereas burden to prove that land in dispute was self acquired was on original petitioners. On basis of record, it could conclusively be concluded that original petitioners have not come up with any material that land in dispute was self acquired by them except their names were recorded. How property in dispute was self acquired by Birja, when undisputedly he was part of Joint family and evidence of partition was very weak. Therefore, from the evidence of contesting respondents as well as statements recorded in first round of litigation as well as statements recorded after remand, it would be evident that claim of respondents of co-tenure was accepted as well as that statements recorded earlier were remained relevant. Even after matter was remitted by Appellate Authority in first round of litigation. Therefore, there was no legal error when same was considered by Consolidation Officer as well as Revisional Authority alongwith other statements and documentary evidence.

17. A plea that there was a partition in joint family was not sustainable since evidence in this regard on basis of statements of witnesses appears to be very vague and weak as witnesses were not able to state, when partition took place. Some have said about 15-20 years ago and some have said that partition took place about 100 years ago, however, it being not supported by any document, therefore, it was rightly rejected by Consolidation Officer as well as Deputy Director of Consolidation.

18. Another factor which is also relevant is that after the Consolidation Officer passed order dated 15.03.1965, the land in dispute remained in name of petitioners as well as contesting respondents being co-tenure holders. Petitioners have never taken any steps for a decade to challenge it and have filed an appeal after a decade, which was allowed and matter was remitted back to the Consolidation Officer to pass a fresh order. Their chak were also remained undivided, which shows land remained a part of joint family. Birja had taken advantage of position of Karta after his two brothers died issueless and third brother Mahaveer was not active and recorded name of his son solely without adding name of contesting respondents.

19. At this juncture it would be appropriate to reproduce some paragraphs of a recent judgment passed by Supreme Court in the case of **Dorairaj vs. Doraisamy (Dead) Through Lrs and others, 2026 INSC 126** as under:

"32. *On the plea of prior partition or division in status, the High Court recognised that separate enjoyment of portions, installation of irrigation facilities, or even obtaining borrowings individually, do not by themselves establish partition in law. What is required is a clear and unequivocal intention to sever the joint status. The High Court correctly emphasized that all relevant conveyances described the interests conveyed as undivided shares, that there was no mutation evidencing division, and that there was no separate payment towards borrowings. In the absence of any declaration or conduct evidencing an intention to divide, the inference of continued joint family status was inevitable.*"

20. The outcome of above discussion, on facts as well as on law, is that contesting respondents have able to show that property in question always remained a joint property and their names were wrongly deleted despite they belong to common ancestors. Petitioners were absolutely failed to show that how and under what manner, they have self acquired the property in dispute. Their claim remain unsupported by any pleading i.e. documentary and oral.

21. There are multiple evidence on record that parties remained a joint family that they resided in one house and there is no specific finding on record that any partition took place, therefore, land in dispute always remained a part of joint property and accordingly all parties remained co-tenure holders. Petitioners here have also not taken any step for partition. There was no evidence of any act or clear intention of partition.

22. A well reasoned order passed by Consolidation Officer upheld by Deputy Director of Consolidation by another reasoned order, cannot be interfered since there is no perversity. The Appellate Authority has wrongly traveled beyond the evidence and recorded finding of partition and self acquired property without any evidence, only on basis of revenue entry, without any consideration, whether such entries were supported by any evidence i.e. documentary or oral and therefore, has recorded a perverse finding.

23. The writ petition has no force and is accordingly dismissed.

24. Interim order, if any, stands vacated.

(2026) 5 ILRA 1529
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 14.05.2026

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ B No. 27869 of 2001

Triveni Lal **...Petitioner**

Versus

Board of Revenue & Ors. **...Respondents**

Issue(s) for consideration

Whether an entry under Class-IX (adverse occupant) recorded in the revenue records without following the mandatory procedure, such as issuance and service of P.A.-10 notice to the chief tenant, can confer valid rights or title upon the occupant?

Headnotes

A. Land Reform Law - U.P. Zamindari Abolition and Land Reforms Act: Section 229-B - Declaratory Suit – Class-IX Entry & Adverse Possession – Procedure for Recording Possession – Benefit of class IX entry of land record manual cannot be given, if there is non-compliance of mandatory provision contained under Para A-81, A-82, 102-A of land record manual. (Para 13)

To claim bhumidhari or possessory rights on the basis of a Class-IX entry (unauthorized occupation), it is mandatory that the prescribed procedure under the U.P. Land Records Manual is strictly followed. In the absence of proof regarding the issuance and service of P.A.-10 notice to the recorded chief tenant, a mere entry in Class-IX carries no evidentiary value and cannot form the basis for declaring title or rights by adverse possession.

B. Exercise of second appellate jurisdiction by the board of revenue - Second appellate court cannot set aside the finding of fact-recorded by trial court/ first appellate court in proper manner. In the instant matter, trial court and first appellate court have examined the matter in detail and found that suit for declaration filed by plaintiffs cannot be decreed in any manner. (Para 14)

If the suit u/s 229-B of U.P.Z.A. & L.R. Act filed on the plea of adverse possession/bataidar will be decreed in exercise of second appellate jurisdiction as well as against the ratio of law laid down by this Court in *Mangu* (*infra*) then it will be very difficult for the bhumidhar/owner of the agricultural plot to manage their agriculture land. (Para 15)

Impugned judgments/ order dated 13.2.2001 as well as order dated 18.6.2001 passed by respondent no.1-Board of Revenue, U.P. Allahabad are liable to be set aside and the same are hereby set aside. (Para 16)

Writ petition allowed. (E-4)

Case Law Cited

1. Mangu Vs. Deputy Director of Consolidation and others, 2010 (111) RD 379 (Para 13)
2. Sharda Devi Vs. Board of Revenue U.P., 1985 RD 93 (Para 14)

List of Acts

U.P. Zamindari Abolition and Land Reforms Act; U.P. Land Records Manual.

List of Keywords

Declaratory suit, Section 229-B, Class-IX entry, P.A.-10 notice, Adverse possession, Revenue entries.

Appearances for Parties

For Petitioner(s): Rajesh Kumar
For Respondent(s): Rameshwar Prasad Shukla, Anuj Kumar, Arun Kumar, C.N. Saroj, C.S.C.

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

1. Vakalatnama filed on behalf of respondent nos.3, 4/1 to 4/3 is taken on record.

2. Heard Mr. Rajesh Kumar, learned counsel for the petitioner, Sri Aniruddha Chaturvedi, learned cousnel for private respondent nos.3, 4/1 to 4/3, Sri Ashuthhosh Kumar Rai, learned Additional Chief Standing Counsel for the State-respondents and Sri Rameshwar Prasad Shukla, learned cousnel for the respondent-gaon sabha.

3. Brief facts of the case are that dispute relates to plot no.223 area 2.42 decimal situated in village-Bishunpura, Mutalike Karnai, Pargana and District-Ballia. A suit under Section 229-B of U.P.Zamindari Abolition and Land Reforms Act (hereinafter referred to as the U.P.Z.A.& L.R. Act) was filed on behalf of respondent nos.2 and 3 for declaration of bhumidhari right in respect to plot no.223 area 2.42 decimal. In the plaint, it has been alleged that in the year 1970 father of the petitioner has given disputed plot to the contesting respondents for looking after the same and after

the death of petitioner's father, the respondents are in continuous possession over the plot in question. Written statement was filed on behalf of the defendant-petitioner denying the plaint allegation. It has been alleged in the written statement that defendant no.1, Triveni Lal (Petitioner of the instant petition) is the recorded bhumidhar in possession of the plot in question, as such no right will accrue in favour of the plaintiffs. It has also been alleged in the written statement that during consolidation operation, the plot in dispute was allotted in the chak of the defendant no.1 and no dispute was raised during consolidation operation in respect to the plot in question. Issue were framed before the trial court and the parties had adduced evidence in support of their cases. Trial Court/ Sub Divisional Officer vide judgment and decree dated 26.7.1999 dismissed plaintiffs' suit recording finding that plaintiffs have no right to claim declaration in respect to the plot in question, which is recorded in the name of defendant no.1 as bhumidhar. The finding has also been recorded by the trial court that no dispute was raised during consolidation operation regarding plot in question, as such suit under section 229-B of U.P.Z.A.& L.R.Act for declaration by the plaintiffs cannot be entertained. An appeal filed by plaintiffs before Commissioner was also dismissed by judgment and decree dated 1.9.2000. Second appeal filed by the plaintiffs-respondents before the board of revenue has been allowed vide judgement and decree dated 13.2.2001 dismissing plaintiffs' suit. Restoration application filed on behalf of the petitioner before the board of revenue has been rejected vide order dated 18.6.2001. Hence this writ petition on behalf of petitoenr for the following relief:-

"(i). To issue a writ, order in the nature of certiorari quashing the impugned order dated 13.2.2001 and 18.6.2001 passed by Hon'ble Board of Revenue, the respondent no.1."

4. This court entertained the matter on 30.7.2001 and stayed the execution of decree in pursuance of the judgment dated 13.2.2001 and 18.6.2001.

5. In pursuance of the order of this Court dated 30.7.2001, the parties have exchanged their pleadings.

6. Learned counsel for the petitioner submitted that petitioner's ancestor were recorded as bhumidhar of the plot in question and petitioner is also recorded over the plot in question as well as in possession of the same. He further submitted that suit under Section 229-B of U.P.Z.A. & L.R.Act filed by plaintiffs-respondents for declaration with the allegation that they are in possession with the permission of recorded owner, as such they should be declared bhumidhar of the plot in question cannot be entertained. He submitted that suit was dismissed by the trial court recording categorical finding of fact that no dispute was raised during consolidation operation in respect to the plot in question as well as the case set up by the plaintiffs-respondents for declaration of his right in respect to the bhumidhari land of the tenure holder cannot be decreed in any manner. He submitted that plaintiffs were bataidar of the plot in question with the permission of the father of defendant no.1/petitioner as such no right will accrue in favour of plaintiffs-respondents in any manner. He further submitted that commissioner has dismissed the plaintiffs' appeal maintaining the judgement/ decree of the trial court but board of revenue has exceeded his second appellate jurisdiction while allowing the second appeal as well as decreeing the plaintiffs' suit without reversing the finding of fact recorded by the trial court and first appellate court in proper manner. He submitted that bhumidhari right of the tenure holder cannot be taken away in any manner. He

submitted that the suit under Section 229-B of U.P.Z.A.& L.R. Act filed by the plaintiffs-respondents has been decreed in exercise of second appellate jurisdiction in illegal and arbitrary manner. He submitted that judgment/ decree passed by the Board of Revenue should be set aside and the judgment/ decree passed by the trial court as well as first appellate court should be affirmed.

7. On the other hand, learned counsel for the private respondents submitted that board of revenue has rightly allowed the second appeal recording finding in support of the judgment to the effect that Sukhdev Shukla acquired right in respect to the plot in question being in possession for statutory period of 12 years with the permission of the defendant's father. He submitted that board of revenue has also taken into consideration the oral evidence adduced by the parties and held that plaintiffs are entitled for declaration in respect to the plot in question to be recorded as bhumidhar. He submitted that restoration application filed by petitioner before the Board of Revenue was dismissed in proper manner, as such no interference is required against the impugned judgment passed by Board of Revenue. He further submitted that after dismissal of the restoration application by the order of respondent no.1 dated 18.6.2001 the petitioner filed a Review Application No.110 of 2000-2001, for reviewing the order dated 18.6.2001 and 13.2.2001 and the aforesaid Review Application was rejected by the order of respondent no.1 dated 28.09.2011, which has attained finality in absence of any further challenge. He submitted that the counsel of the petitioner in the present writ petition had also filed an application in the Review Application No.110 of 2001, on 16.7.2001, however, the facts regarding filing of the Review Application has not been disclosed in the above-mentioned writ petition, as such writ petition filed by petitioner should be dismissed.

8. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

9. There is no dispute about the fact that suit under Section 229-B of U.P.Z.A.& L.R.Act filed by respondent nos.2 and 3 was dismissed on 26.7.1999 by the trial court. There is also no dispute about the fact that appeal filed by plaintiffs-respondents before the Commissioner was dismissed by the Commissioner vide judgment and decree dated 1.9.2000. There is also no dispute about the fact that second appeal filed by the plaintiffs-respondents was allowed by the board of revenue vide judgment dated 13.2.2001 decreeing the plaintiff suit. There is also no dispute about the fact that restoration application filed by defendant-petitioner has been rejected by the board of revenue vide order dated 18.6.2001.

10. In order to appreciate the controversy involved in the matter, perusal of the issues framed before the trial court will be necessary, which are as under:-

"उक्त वाद मे निम्न वाद विन्दु बनाये गये :-

1. क्या वादी विवादित भूमि के साधिपत्य भूमिधार मय बाग के है?

2. क्या विवादित भूमि वर्ष 1970 मे रामदीन लाल ने वादी को बटाई पर दिया था या नहीं ? यदि हो तो उसका प्रभाव ?

3. क्या जुलाई 1972 मे वादी ने रामदीन लाल की अनुमति से विवादित आराजी पर पेड़ लगाये ? यदि हां तो उसका प्रभाव ।

4. क्या त्रिवेणी लाल प्रतिवादी विवादित भूमि का तनहा भूमिधार है और उनका इसी भांति तनहा भूमिहार काविज दाखिल है ?

5. क्या विवादित भूमि मे आम, अमरूद, आंवला नीबू आदि के पेड़ है और वादी प्रतिवादी नं0-4 व 5 के साथ विवादित भूमि पर बागदार भूमिहार है व काविज है ?

6. क्या शोकहरण शुक्ल, ऋषिकेश शुक्ल प्रतिवादी विवादित भूमि के सह - बागदार भूमिधार साथ वादी के है तथा उनका कब्जा दाखिल है ?

7. क्या प्रतिवादी ने नवम्बर 1987 में विवादित भूमि मे पेड़ लगाया और बतौर काश्तकार भूमिधार काविज है ?

8. क्या दावा वादी मे दफा-14 कानून दादरसी का दोष है ?

9. क्या दावा वादी 80 सीपी.सी. का दोष है?

10. क्या दावा वादी फाल्स, फ्रीवोलेस एंव वेक्सेसियस है और प्रतिवादी विशेष कास्ट पाने का अधिकारी है।

11. क्या दावा वादी नियमानुसार तसदीक्सदा एंव हस्ताक्षरित है।

12. क्या दावा वादी मे दफा-229 बी ज०बी० अधि० चलने योग्य है ?

अतिरिक्त वाद विन्दु

1- क्या दावा वादीगण दफा-49 चकबन्दी कानून से बाधित है।"

11. The trial court while deciding the aforementioned 13 issues has taken into consideration various documentary evidence filed by the parties as well as oral evidence adduced by the parties. The finding of fact has been recorded by the trial court while deciding the issues to the effect that no claim was raised during consolidation operation, during which the chak was carved out in the name of defendant no.1. The finding of fact has also been recorded that even possession of plaintiffs has not been proved over the plot in question rather for some time, the plaintiffs were the bataidar of the defendant no.1, as such no right will accrue in favour of the plaintiffs. The judgment and decree passed by the trial court has been maintained by first appellate court/Commissioner considering the each and every aspect of the matter.

12. The board of revenue in exercise of second appellate jurisdiction has allowed the second appeal and decreed the plaintiffs' suit by passing cryptic judgment. The judgment of the board of revenue can be a judgment of affirmance but the same cannot be judgment of reversal specially when plaintiffs are claiming right on the basis of adverse possession.

13. So far as plea of adverse possession or benefit of class IX entry of land record manual (Possession without title) is concerned, this Court in the case report in **2010 (111) RD 379 Mangu Vs. Deputy Director of Consolidation and others** has held that benefit of class IX entry of land

record manual cannot be given, if there is non compliance of mandatory provision contained under Para-A-81, A-81, A-82, 102-A of land record manual. Paragraph no.12 of the judgment rendered in will be relevant for perusal which is as under;-

"12. This court while examining an identical issue in the case of Sadhu Saran (supra) again held that entries of clause IX made without following the procedure prescribed under paragraphs Nos. A 80, A-81, A-82 amd 102 and without issuing P.A. 10 notice to the chief tenant do not confer any title.

Thus in view of the above I am of the considered view that the respondent no. 2 and 1 did not commit any illegality in holding that the entries of clause IX made in favour of the petitioner and the respondent no. 8 were illegal as the same were made in contravention of and against the provisions of U.P. Land Record Manual and the first contention raised by the learned counsel for the petitioner has no force."

14. In the instant matter, trial court and first appellate court have examined the matter in detail and found that suit for declaration filed by plaintiffs cannot be decreed in any manner. So far as the exercise of second appellate jurisdiction by the board of revenue is concerned, this court in case reported in **1985 RD 93 Sharda Devi Vs. Board of Revenue U.P.** has held that second appellate court cannot set aside the finding of fact-recorded by trial court/ first appellate court in proper manner. Perusal of paragraph no.24 of the judgment rendered in **Sharda Devi (supra)** will be relevant , which is as under:

"24. In view of the discussion herein-before, I am of the view that the Board of Revenue has clearly exceeded jurisdiction under Section 100 C,P.C. read with Section 331(4) of the Act. There was no scope of the second appellate court to set aside the findings of fact recorded by the Additional Commissioner about the fraudulent or collusive nature of the decree. The findings of fact were also based on evidence and law soever grossly erroneous they may appear to be, when in fact they were not erroneous, much less grossly erroneous, the second appellate court had no jurisdiction to interfere with the same. The vendors, respondents Nos. 7 and 8 had no right, title or interest left in the plots in dispute after admitting the claim of the petitioner in the compromise decree, so as to be able to transfer any interest by the sale deed dated July 11, 1966 in favour of vendees. Hence the vendees did not derive any title out of the sale deed."

15. It is material to mention that if the suit under Section 229-B of U.P.Z.A. & L.R. Act filed on the plea of adverse possession/ bataidar will be decreed in exercise of second appellate jurisdiction as well as against the ratio of law laid down by this Court in **Mangu (Supra)** then it will be very difficult for the bhumidhar/owner of the agricultural plot to manage their agriculture land.

16. Considering the entire facts and circumstances of the case, the impugned judgments/ order dated 13.2.2001 as well as order dated 18.6.2001 passed by respondent no.1-Board of Revenue, U.P. Allahabad are liable to be set aside and the same are hereby set aside.

17. The writ petiton stands allowed. The judgment of trial court dated 26.7.1999 as well as judgment of first appellate court dated 1.9.2000 are hereby affirmed.

18. No orders as to costs.

(2026) 5 ILRA 1535
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.05.2026

BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE KUNAL RAVI SINGH, J.

Writ C No. 6524 of 2008

M/s Designer Park Sahkari Awas Samiti Ltd. ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

(I) Whether the amounts deposited by the petitioner on 08.01.2002 (Rs. 5,56,700/-) and 21.02.2002 (Rs. 55,67,000/-) can be treated as a one-time lease rent deposit or not ?

(II) Whether the petitioner is entitled to any refund with regard to the Rs. 29,22,675/- deposited by the petitioner on 28.06.2006?

Headnotes

Constitution of India, Art. 14 – Lease rent – Allotment of Group Housing Plot by NOIDA – Allotment letter – Clause 3 – Annual lease rent payable in advance @ 1% p.a. of total premium of plot – Option to pay 11 years' lease rent as one-time lease rent at the time of execution of lease deed – Petitioner deposited Rs. 5,56,700/- on 08.01.2002 and Rs. 55,67,000/- on 21.02.2002, aggregating to Rs. 61,23,700/-, i.e. 11 times the yearly lease rent, before execution of lease deed on 28.02.2002 – Lease deed recorded that lessee had made full payment of plot premium, interest and one-time lease rent – Authority subsequently treated amount deposited on 08.01.2002 as yearly lease rent and amount deposited on 21.02.2002 as ten years' lease rent and raised demand of Rs. 29,22,675/- towards alleged balance one-time lease rent – Whether deposits made on two different dates could be treated as one-time lease rent.

Held:

Terms of contract have to be strictly read and the natural meaning given to them – No outside aid should be sought unless the meaning is ambiguous – Implied terms should not be read into the contract and a contract should be read as it reads, as per its express terms – Authority expected to deal with fairness and non-arbitrariness as enshrined under Art. 14 of the Constitution – Principles of good administration required decisions of Authority to withstand test of consistency, transparency and predictability. Allotment letter did not specify that lump sum payment had to be made before availing one-time lease rent option – Terms of concluded contract clear – On plain reading of contract, one-time lease rent had to be deposited before execution of lease deed, which was done by petitioner – Lease deed specifically mentioned that one-time lease rent had been paid in full – Lease deed not disputed or rescinded by Authority – Conclusion drawn that Authority was satisfied that one-time lease rent stood paid at time of execution of lease deed – Authority's own RTI calculation dated 26.12.2006 showed balance of Rs. 1,39,175/- towards lease rent for period

08.01.2002 to 31.03.2002 – Rs. 29,22,675/- demanded towards alleged balance one-time lease rent – Demand and subsequent calculations held fallacious, having been raised without considering lease deed recording full payment of one-time lease rent and Authority's own calculation showing balance of Rs. 1,39,175/- – Office Orders dated 17.10.1998 and 27.05.2000 could not override specific terms of concluded contract and could not be impliedly or otherwise included in contract terms – Allotment letter and lease deed contained no reference to such Office Orders – Accordingly, one-time lease rent stood deposited before execution of lease deed and nothing remained payable towards one-time lease rent – Petitioner held liable to pay Rs. 1,39,175/- as lease rent for period 08.01.2002 to 31.03.2002, petitioner having been put in possession on 08.01.2002 – Petitioner held entitled to refund of Rs. 29,22,675/- after adjustment of Rs. 1,39,175/- – Writ petition partially allowed. [Paras 21-29, 31, 33-35] (E-5)

Case Law Cited

United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal, (2004) 8 SCC 644;
Nabha Power Ltd. v. Punjab State Power Corporation Ltd., (2018) 1 SCC 1.

List of Acts

Constitution of India.

List of Keywords

Lease rent; One-time lease rent; Group Housing Plot; NOIDA; Allotment letter; Lease deed; Concluded contract; Contractual terms; Annual lease rent; Refund; Demand notice; Contract interpretation; Express terms of contract; Implied terms; Article 14; Fairness; Non-arbitrariness; Consistency; Transparency; Predictability; Good administration; Partial refund.

Case Arising From

Petition under Article 226 of the Constitution seeking refund of Rs. 29,22,675/- allegedly wrongly realised towards one-time lease rent and issuance of a No Dues Certificate in respect of Group Housing Plot

Appearances for Parties

Advs. for the Petitioner: Praveen Kumar, Puran Nath Shukla, Sarita Dwivedi
Advs. for the Respondents: A. Khanna, C.S.C., Pranjal Mehrotra

(Delivered by Hon'ble Mahesh Chandra Tripathi, J.
& Hon'ble Kunal Ravi Singh, J.)

1. Heard Sri P.N. Shukla, learned counsel for the petitioner, Sri Suresh Singh Addl. Chief Standing Counsel for respondent No. 1 and Shri Pranjal Mehrotra for respondent nos. 2 and 3.

2. The present writ petition has been filed for the following reliefs :

"(a) Issue a writ, order or direction in the nature of mandamus commanding the respondent No. 2 to refund the wrongly realized amount of Rs. 29,22,675.00 with interest to the petitioner's Society.

(b) Issue a writ, order or direction in the nature of mandamus commanding the respondent No. 2 to issue a 'Non Dues Certificate' in favour of the petitioner's Society at an early date, which may be fixed by this Hon'ble Court.

(c) Issue any other writ, order or direction in favour of the petitioner, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

(d) Award the costs of the petition in favour of the petitioner."

FACTS:

3. The present dispute relates to Group Housing Plot No. B-009/1A, Sector 62, NOIDA (*hereinafter referred to as "the leased plot"*) and the payment of one-time lease rent paid by the petitioner to NOIDA (*hereinafter referred to as "the Authority"*). The petitioner contends that the one-time lease rent was paid before the execution of the lease deed, whereas the Authority contends that the one-time lease rent was not paid in full, thus resulting in the issuance of a demand notice for the balance amount.

4. The petitioner was allotted a Group Housing plot, namely, Group Housing Plot No. B-9/1-A, Sector 62, Noida, under the Group Housing Scheme No. GHP/01/2001 (1). The allotment letter was issued on 19.05.2001. Clause 3 of the allotment letter provided for payment on lease rent either on a yearly basis or by way of one-time lease rent equivalent to 11 times the yearly lease rent payable at the time of execution of the lease deed. The possession of the plot was handed over to the petitioner through a possession letter dated 08.01.2002.

5. The petitioner, by means of challan no. 14940 dated 08.01.2002 deposited Rs. 5,56,700/- and by means of challan No. 14943 dated 21.02.2002 deposited Rs. 55,67,000/-. It is averred by the petitioner that the aggregate amount of Rs. 61,23,700/- constituted one-time lease rent payable prior to the execution of the lease deed. Thereafter, the lease deed was executed between the petitioner and Noida on 28.02.2002. Clause II (a) of the lease deed records that the petitioner has made full payment of one-time lease rent.

6. On 09.01.2004, the Authority issued a letter to the petitioner stating that the sum of Rs. 17,64,605/- was due towards the leased plot and directing the petitioner to deposit the same in the designated bank account of the Authority. Subsequently, on 13.03.2006, another letter was issued by the Authority to the petitioner stating that after adjustment of records, a sum of Rs. 2,552/- remains due till 30.08.2006. The letter further stated that *"the amount due towards Lease rent at the time of the lease deed is being adjusted towards Lease rent on an annual basis"*. The petitioner replied by stating that an amount of Rs. 2600/- has been deposited vide receipt no. 1430 on 27.02.2006. It was further asserted that the one-time lease rent had already been deposited, and the matter stood settled. A request was also made for the issuance of a No Dues Certificate from the Authority.

7. Thereafter, on 24.04.2006, a demand notice was issued stating that in response to the letter of the petitioner dated 23.03.2006, an outstanding payment of Rs. 29,22,675/- is due towards one-time lease rent. The petitioner was directed to deposit the same in the account of the Authority.

8. An office order dated 17.05.2006 was issued by the Chief Finance and Accounts Officer, NOIDA, stating that if the accounts office found any shortfall in the total amount of lease rent deposited, then only the balance amount, along with simple interest, will be recovered by treating the same as payment under the one-time lease rent payment.

9. On 17.05.2006, the petitioner submitted a representation to the Chief Accounts Officer, Noida, requesting that the issue regarding one-time lease rent be treated as settled, as the entire

amount had already been deposited before execution of the lease deed. Thereafter, another letter dated 19.05.2006 was sent to the Authority by the petitioner with regard to the demand raised by the Authority.

10. On 23.05.2006, the Authority, in its weekly meeting, passed a resolution holding that the petitioner had initially obtained possession by depositing one year's lease rent. Thereafter, at the time of execution of the lease deed, i.e. 28.02.2002, only "Ten years lease rent" was deposited instead of "Eleven years lease rent" Consequently, the Committee resolved that the amount deposited would be adjusted and a demand would be raised for the balance towards one-time lease rent.

11. On 13.06.2006, a fresh demand notice reiterating the earlier demand of Rs. 29,22,675/- was issued to the petitioner. In pursuance of the demand so raised, the petitioner deposited Rs. 29,22,675/- under protest vide challan no. 010546 on 28.06.2006. Thereafter, a letter was sent to the Authority on 29.06.2006 stating that the amount had been deposited under protest while reserving the right to challenge the demand and requesting confirmation that no further dues remained outstanding.

12. Subsequently, another demand notice dated 03.07.2006 was issued to the petitioner reiterating the same demand of Rs. 29, 22,675/. A reply dated 14.07.2006 to the demand letter dated was sent to the Authority seeking a review of the amount deposited earlier under protest. Further prayer was made for the issuance of a no dues certificate.

13. Ultimately, on 15.12.2006, the Authority issued the no dues certificate to the petitioner. Since the petitioner remained aggrieved by the demand and recovery of Rs. 29,22,675/-, the petitioner filed the present writ petition seeking a refund of the amount deposited under protest.

PETITIONER'S SUBMISSION:

14. Learned Counsel on behalf of the petitioner has made the following submissions:

(i) It was contended that the petitioner had deposited the entire one-time lease rent prior to the execution of the lease deed. The deposit of Rs. 5,56,700/- on 08.01.2002 and the deposit of Rs. 55,67,000 on 21.02.2002. Both the deposits were towards the one-time lease rent payment. There was no default in the payment of one-time lease rent and hence the subsequent demand of Rs. 29,22,675/- was illegal and arbitrary. Thus, the amount so deposited under protest is liable to be refunded.

(ii) Learned counsel submitted that the allotment letter specifically provided two alternative remedies, namely payment of yearly lease rent or payment of one-time lease rent, with an option of paying a yearly lease rent or a one-time lease rent equivalent to 11 times the lease rent. The petitioner exercised the option of payment of one-time lease rent payment and deposited the entire amount of Rs. 61,23,700/- by 21.02.2001. Thus, as per the conditions of the allotment letter, the one-time lease rent was paid before the execution of the lease deed.

(iii) It was further submitted that the lease deed also confirmed that the one-time lease rent had been paid. Reliance was placed upon Clause III (a) of the lease deed, which specifically records that the lessee has made full payment of the one-time lease rent.

(iv) Learned counsel also submitted that the petitioner participated in a special camp organised by the Authority to clear the dues, if any, of the petitioner with regard to the lease. After due verification of the documents at the special camp, it was found that only Rs. 2,552/- remained due from the petitioner, which was duly deposited vide receipt no. 1430 on 27.02.2006.

(v) It was argued that the subsequent demand of Rs. 29,22,675/- towards the alleged balance amount of one-time lease rent is patently illegal, particularly when the entire one-time rent had already been deposited prior to the execution of the lease deed. It was further submitted, in the letter dated 24.04.2006,no calculations were provided to show as to how the amount was being demanded. The impugned demand was also perverse with the earlier letter issued after the special camp, only Rs. 2,552/- had been shown as outstanding and which amount was already deposited by the petitioner.

(vi) Learned counsel further contented that the calculations furnished in the supplementary counter affidavit are illegal and arbitrary. According to the petitioner, the calculations do not take into account the payment of one-time lease rent as categorically stated in the lease deed. It was submitted that such an admission in the lease deed cannot subsequently be superseded by any calculation to the contrary.

(vii) It was next argued that the office order dated 17.10.1998 is not applicable as the allotment conditions did not specify any such condition. The allotment letter provided an option of yearly rent or an option of one-time lease rent @ 11 times the yearly lease rent. Since the petitioner had exercised the option of one-time lease rent in accordance with the allotment conditions, the petitioner could not subsequently be subjected to conditions contained in office orders which were never communicated or made part of the contract.

(viii) Learned counsel also submitted that, the resolution passed by the Committee as patently illegal and arbitrary. It was submitted that the resolution was passed ex parte, as the petitioner was never heard before the passing of the resolution, which inflicted civil consequences upon the petitioner. It was further contended that the resolution was also never communicated to the petitioner, and therefore, it does not bind the petitioner in any manner. The illegality is further compounded by the fact that the lease deed mentioned that there are no dues towards one-time lease rent.

(ix) Reliance was also placed upon the RTI reply dated 26.12.2006, wherein the Authority itself accepted that only an amount of Rs. 1,39,175/- remained payable. Learned counsel pointed out that the Chief Accounts and Finance Officer had specifically endorsed the remark "one-time accepted". Therefore, the subsequent demand of a substantially higher amount was wholly perverse, arbitrary, and contrary to the Authority's own records.

(x) Lastly, it was submitted that the office order dated 27.05.2000 is not applicable to the petitioner's case, as it only applied to cases where the lessee wished to transfer from a yearly mode of payment to one-time lease rent. Since the petitioner had opted for one-time lease rent from the very inception, the said office order has no relevance to the present dispute.

RESPONDENT Nos. 2 and 3 SUBMISSIONS :

15. Per contra, learned counsel on behalf of respondent nos. 2 and 3 made the following submission to refute the arguments advanced by the petitioner′s counsel:

(i) It was submitted that the petitioner never deposited one-time lease rent in one go. As per the respondents, at the time of execution of getting the license agreement on 08.01.2002, only one year′s rent was deposited, whereas on 21.02.2002, ten years' lease rent was deposited. Thus, at no point of time, the lease rent for eleven years deposited. As per the policy of the Authority, one-time lease rent was required to be deposited either at the time of the license agreement or at the time of execution of the lease deed, whichever is earlier.

(ii) Learned counsel further relied upon the office order dated 17.10.1998, which clearly states that the lease rent shall be deposited either on the date of possession or at the time of execution of the lease deed, whichever is earlier. Therefore, the petitioner should have deposited one-time lease rent for 11 years at the time of getting possession, i.e. on 08.01.2001 itself. Since only ten years′ lease rent was deposited on 21.02.2002, the payment could not be treated as one-time lease rent.

(iii) It was further argued that the lease rent was deposited on two different dates; it cannot be assumed that the one-time lease rent has been deposited.

(iv) Learned counsel submitted that the Committee resolved that the petitioner had deposited lease rent on two different dates, which cannot be treated as one-time lease rent. Consequently, the Committee resolved that the amounts already deposited be adjusted and the balance amount be recovered from the petitioner, pursuant to which the demand of Rs. 29,22,675/- was raised. It was thus contended that the demand represented the legitimate balance amount payable towards one-time lease rent.

(v) It was also argued that the petitioner cannot derive any benefit from the letter dated 17.05.2006, as the petitioner never deposited one-time lease rent in one go. The benefit could only be given if the rent was deposited for 11 years in one go. The deposit of 10 years' rent cannot be treated as one-time lease rent.

(vi) Learned counsel further submitted that the subsequent letter dated 03.07.2006 was issued by mistake due to some miscommunication between different departments of the authorities, and therefore, the letter does not create any right in favour of the petitioner.

(vii) It was next contended that since no dues certificate had been issued to the petitioner on 15.12.2006, the grievance raised in the writ petition is liable to be dismissed as such.

(viii) Learned counsel further submitted that an amount of Rs. 1,39,175/- was payable by the petitioner towards the lease rent which was due from 08.01.2001 till 31.03.2001. Therefore, the calculation given in the RTI reply was only with regard to the said period. Reliance was placed upon the office order dated 27.05.2000, which states that for calculating lease rent, financial years shall be considered from April 1st to March 31st. Accordingly the rent payable from 08.01.2001 till 31.03.2001 would be Rs. 1,39,175 *(Rs. 5,56,700 * 3/12 = Rs. 1,39,175)*

(ix) It was also contended that, as per the office order dated 27.05.2000, if the allottee wishes to make a one-time lease rent, then the earlier deposited lease rent shall not be adjusted for calculating the one-time settlement amount. Therefore, the earlier amount deposited on 08.01.2002 cannot be adjusted as one-time lease rent.

(x) Lastly, it was argued that the amount of Rs. 29,22,675/- represented the balance amount remaining after deducting the earlier amount deposited as yearly rent. Since the petitioner had not opted for a one-time lease rent, the deposit of Rs. 61,23,700/- was adjusted towards yearly rent, and the demand of Rs. 29,22,675 was the balance amount left, which the society had to pay as a one-time settlement amount as per the resolution of the Committee.

16. Mr. Suresh Singh learned Addl. Chief Standing Counsel appearing on behalf of respondent no. 1 adopted the arguments made on behalf of respondents nos 2 and 3. He has further submitted that once the no dues certificate was issued in favor of the petitioner, the grievance raised in the writ petition stood redressed and the writ petition deserve to be dismissed. It was further submitted that as per the calculations attached in the supplementary counter affidavit, it is clear that the petitioner never deposited once time lease rent in accordance with the policy and as per the resolution passed by the Committee, the balance amount of Rs. 29,22,675/- was lawfully demanded from the petitioner, which amount has already been deposited by the petitioner. Accordingly, it was contended that the writ petition is liable to be dismissed on this ground as well.

17. We have heard the rival submissions submitted by the learned counsel for the parties and perused the records of the case. On the basis of the submission and records annexed, the following points of determination are framed for adjudication of the dispute.

POINTS OF DETERMINATION:

18. The points of determination are as follows :-

(I) Whether the amounts deposited by the petitioner on 08.01.2002 (Rs. 5,56,700/-) and 21.02.2001 (Rs. 55,67,000/-) can be treated as a one-time lease rent deposit or not?

(II) Whether the petitioner is entitled to any refund with regard to the Rs. 29,22,675/- deposited by the petitioner on 28.06.2006?

DISCUSSION:

19. It is the admitted case of the parties that the petitioner was allotted the leased plot upon payment of certain consideration. The consideration paid before the allotment is not the subject matter of the present dispute. The present dispute is confined to the deposit of two amounts on 08.01.2002 and 21.02.2002, which the petitioner treats as one-time lease rent as the same were deposited before the execution of the lease deed on 28.02.2002. However, the Authority does not treat the same as one-time lease rent and categorically maintains the view that since rent was deposited on two different dates therefore the first date i.e. 08.01.2002 was for the yearly rent due till 31.03.2002 while the amount deposited on 21.02.2002 represented lease rent for only ten years and, therefore, did not satisfy the requirement of payment of eleven years′ lease rent .

20. Before adverting to the rival contention advanced by the parties, it is necessary to keep in mind that the parties to the present dispute are governed by the contract entered into between the parties. More specifically, the allotment deed was issued in favour of the petitioner and the lease deed was executed between the parties. These two documents would govern the respective merits of the arguments advanced by the parties as the parties with consent have entered into the same.

21. The allotment letter was issued to the petition on 19.05.2001. The allotment letter, amongst other clauses, contained a clause with regard to payment of lease rent. Clause 3 of the allotment letter is reproduced below:

"3. LEASE RENT: The annual lease rent shall be payable in advance every year @ 1% p.a. of the total premium of the plot. This lease rent shall be enhanced after every 10 years, and this enhancement will not exceed 50% of the lease rent last thus fixed. First such payment shall fall due at the time of execution of the lease deed. Delay in payment of the advance lease rent will be subject to payment of interest @ 18% p.a. compounded every half-yearly. The onus of payment of lease rent would remain with the allottee/lessee.

OR

You also have the option to pay 11 years' lease rent @ 1% p.a. of total premium as one-time lease rent at the time of execution of the lease deed of the plot.″

*Thus, the allotment letter firstly specified the agreed lease rent, which is 1% of the total premium of the plot as specified in the allotment letter. Secondly, the allotment letter gave two options to the allottee for payment of annual lease rent. The first option available to the allottee was to pay yearly lease rent throughout the subsistence of the lease, subject to enhancement after every ten years, provided that such enhancement would not exceed 50% of the lease rent previously fixed. The second option was to pay @ 11 years lease rent (Rs. 5,56,700/- * 11 times = Rs. 61,23,700/-) in one go at the time of the execution of the lease deed.*

It is significant to note that the allotment letter does not mention any other condition with regard to payment of lease rent. It is noteworthy that the allotment letter does not mention the office orders dated 13.10.1998 and 27.05.2000, relied upon by the Authority with regard to payment of annual lease rent.

22. Subsequently, possession of the plot was handed over to the petitioner on 08.01.2002, and thereafter, the lease deed was executed between the parties on 28.02.2002. The lease deed also contains the installments due from the petitioner with regard to the total consideration of the plot and the agreed lease rent. The lease rent payable as per the lease deed is given in clause II (a), which is reproduced below:

"a) Yielding and paying therefore yearly in advance during the said term unto the lessor in the month of September for each year the yearly lease rent indicated below :-

1% of the total premium for the first 10 years, and after 10 years, the lease rent may be enhanced by the Authority from time to time whenever the Authority deems necessary. This extent of enhancement shall not be called in question by the lessee. In case of default in payment of advance lease rent, the interest @ 18% per annum compounded at every half year on the overdue amount shall also be payable. The lessee may exercise the option for depositing a lump sum one-time lease rent equivalent to 11 times the present amount of lease rent."

Thus, the lease deed also contained the condition with regard to payment of one-time lease rent calculated @ 1% of the total premium of the plot.

23. The lease deed also contained a clause which clearly stated that the lessee had made full payment of plot premium, interest and one-time lease rent (emphasis supplied). Clause III (a) of the lease deed is reproduced below:

"III…..

(a) The lease Deed of the plot has been executed, and the Lessee has made full payment of the plot premium, interest and one-time lease rent."

Thus, the lease deed contains a categorical admission by the Authority that the one-time lease rent has been paid in full.

24. The petitioner deposited Rs. 5,56,700/- on 08.01.2002 and thereafter made a deposit of Rs. 55,67,000/- on 21.02.2002. Prior to execution of the lease deed dated 28.02.2002, the petitioner had deposited an aggregate amount of Rs. 61,23,700/-, which exactly corresponds to eleven times the yearly lease rent payable under the allotment conditions. The total amount on one-time lease rent as per the Authority is also Rs. 61,23,700/- but the Authority in reply has contended that the deposit on 08.01.2002 was towards yearly lease rent and cannot be adjusted towards one-time lease rent deposit. The amount deposited on 21.02.2002 for an amount of Rs. 55,67,000 was only 10 time of the annual lease rent and therefore did not constitute the one-time lease rent payment.

25. The allotment letter executed between the parties contained a specific condition with regard to payment of lease rent. The allottee either had the option of making yearly lease rent or could make a one-time lease rent payment equivalent to 11 times the yearly rent. It is well settled position of law that the contract has to be read as a whole, and there can be no deviation from the terms of the concluded contract. Since the payment was to be done under the conditions mentioned in the allotment letter, including the lease rent, the conditions mentioned in the allotment letter would be binding upon the parties. The Authority has also not averred that the terms of the allotment letter are not binding.

26. The principal question that therefore arises is whether the payment made on two different dates can be treated as a one-time lease rent payment or not? Clause 3 of the allotment letter does not specify that a lump sum payment has to be made before availing the one-time lease rent option. The allotment letter is silent in this regard. However, when the lease deed was executed on 28.02.2002, the lease deed specifically mentioned in Clause III (a) that one-time lease rent has been paid in full. This clause of the lease deed has not been disputed by the Authority in any of its pleadings. Since the lease deed is a concluded contract between the parties and the allotment has never been rescinded for any violation of the lease deed, therefore, a conclusion can be drawn that the Authority was satisfied that the one-time lease rent stood paid at the time of execution of the lease deed. In *United India Insurance Co. Ltd. vs. Harchand Rai Chandan Lal*, the Supreme Court held that:

"14. Therefore, it is settled law that the terms of the contract have to be strictly read and the natural meaning given to it. No outside aid should be sought unless the meaning is ambiguous."

In Nabha Power Vs. Punjab SPCL, the Supreme Court, while dealing with contractual terms clear sounded a word of caution that implied terms should not be read in the terms of the contract, and a contract should be read as it reads, as per its express terms. The Supreme Court held that:

"72. We may, however, in the end, extend a word of caution. It should certainly not be an endeavour of commercial courts to look to the implied terms of a contract. In the current day and age, making of contracts is a matter of high technical expertise, with legal brains from all sides involved in the process of drafting a contract. It is even preceded by opportunities of seeking clarifications and doubts so that the parties know what they are getting into. Thus, normally, a contract should be read as it reads, as per its express terms. The implied terms are a concept which is necessitated only when the Penta test referred to aforesaid comes into play. There has to be a strict necessity for it. In the present case, we have really only read the contract in the manner it reads. We have not really read into it any "implied term", but from the collection of clauses, we come to a conclusion as to what the contract says. The formula for energy charges, to our mind, was quite clear. We have only expounded it in accordance with its natural grammatical contour, keeping in mind the nature of the contract."

In the present case, the terms of the concluded contract are clear. The allottee had the option to pay one-time lease rent before the execution of the lease deed. The terms did not specify a lump sum lease rent, and the other clauses of the allotment letter, as well as the lease deed, do not imply such a condition. Therefore, on plain reading of the contract, the one-time lease rent had to be deposited before the execution of the lease deed, which was done by the petitioner.

27. The issue of whether the one-time lease rent stood deposited can also be examined from another angle. In the special camp held between 20.02.2006 and 25.02.2006 by the Authority for clearing dues, the petitioner, with the intention to get the no dues certificate, participated with all the records. Ultimately, a letter dated 13.03.2006 came to be issued in favour of the petitioner stating that Rs. 2,552/- remained to be paid by the petitioner. It would be relevant to note that before this letter, the Authority submits that another demand letter dated 09.01.2004 for Rs. 17,62,805/- was issued to the petitioner but receipt of the same has categorically been denied by the

petitioner. Even otherwise, the Authority did not pursue the said letter as the records do not indicate that any follow up was made on the demand made by the Authority. The demand of Rs. 2,552/- was deposited by the petitioner on 27.02.2006. This letter is not disputed by the Authority; therefore, the conclusion that can be drawn is that the Authority had settled the one-time lease rent issue by issuing the letter dated 13.03.2006.

28. Apart from the aforesaid circumstance, another indicator of payment of one-time lease rent by the petitioner is the calculations appended in the reply dated 26.12.2006 to RTI Application No. 912 of the petitioner. In the said calculations, the Authority has calculated that the balance amount of Rs. 1,39,175/- remained to be paid, which was the lease rent for the period of 08.01.2002 to 31.03.2002 *(wrongly mentioned as 31.03.2003 in the calculation*). Even in the supplementary counter affidavit, the Authority has accepted the same. The calculation, which incidentally has been approved by the Chief Accounts and Finance Officer of the Authority, is reproduced below:

"Lease rent will commence from 08.01.2002
Lease rent - 08.01.2002 →31.01.2003 (3 months)
= 5,56,69,345.0 X 1/100 X 3/12
= 556693 X 3/12
= 5,56,700 X 3/12
= 1,39,175/-
Due as on 08.01.2002 = 1,39,175/-
Paid = 5,56,700/- Balance on 08.01.2002
= (-) 4,17,525
Due on Feb → Nil: Balance on Feb (-) 4,17,525/-
One-time Due = 5,56,700 X 11 = 61,23,700 - 4,17,525
= 57,06,175/-
Paid → 55,67,000/- Balance 1,39,175/-"

Thus, if the remaining balance on 26.12.2006 was Rs. 1,39,175/- which is accepted by the Authority to be the lease rent due from 08.01.2002 to 31.03.2002, then the payment of Rs. 5,56,700 on 08.01.2002 and payment of Rs. 55,67,000/- on 21.02.2002 (*Rs. 5,56,700 + Rs. 55,67,000/- = Rs. 61,23,700/-*), which is equivalent to 11 times the lease rent, would be considered as irrefutable evidence that the entire one-time lease rent had been paid by the petitioner before the execution of the lease deed. Thus, nothing remained to be paid by the petitioner towards the one-time lease rent. However, a sum of Rs. 1,39,175/- remained to be paid by the petitioner as lease rent for the period of 08.01.2002 to 31.03.2002. Even though the lease deed in clause III (g) specifically mentions that the date of execution of the lease deed shall be treated as the date of handing over possession, it is an undisputed fact that the petitioner was put in possession on 08.01.2002. Thus, there is no error in the lease rent calculation for the period of 08.01.2002 to 31.03.2002, and the petitioner is bound to pay the same.

29. Keeping in mind the above findings, we are of the considered view that the petitioner had deposited the one-time lease rent before the execution of the lease deed. Furthermore, the petitioner is bound to pay the lease rent calculated for the period of 08.01.2002 to 31.03.2002, as the petitioner was put in possession on 08.01.2002.

30. The Authority, in their submissions, had relied upon certain calculations which were stated in the supplementary counter affidavit. The calculations were based on the fact that the petitioner had only deposited one year's lease rent on 08.01.2002 and thereafter deposited 10 years' lease rent on 21.02.2002. As 11 years lease rent was not deposited therefore the Authority, by resolution, decided to accept the earlier payment as a one-time settlement and demand the rest of the balance. This balance has been justified to be Rs. 29,22,675/- as was initially intimated to the petitioner by letters dated 24.04.2006 and 13.06.2006. However, in both the demand letters, only the demand is stated without stating the actual calculation as to how the figure was arrived at. It goes without saying that the Authority is expected to deal with fairness and non-arbitrariness as enshrined under Article 14 of the Constitution of India. Principles of good administration would require that the decisions of the Authority must withstand the test of consistency, transparency and predictability to avoid of being termed as arbitrary and violative of Article 14 of the Constitution of India. In the considered view of this Court, the demand and the subsequent calculations to justify the demand are fallacious. The reason being that the said demand was raised without considering the clause in the lease deed which stated that one-time lease rent was paid in full and the calculations showing the balance payment which was approved by the Chief Accounts and Finance Officer in the RTI reply. The Authority has also admitted that a balance of Rs. 1,39,175/- was due towards lease rent for a period of 08.01.2002 to 31.03.2002, leading to the conclusion that the two deposits were towards one-time lease rent.

31. As to the applicability of the Office orders dated 17.10.1998 and 27.05.2000, suffice to say that such orders cannot override the specific terms of the concluded contract executed between the parties. The allotment letter and the lease deed contains no reference to such office orders, and therefore, they cannot be impliedly or otherwise be included in the contract terms.

32. Once this Court is of the view that one-time lease rent stood deposited before the execution of the lease deed, the question that remains to be answered is whether the petitioner is entitled to any refund of Rs. 29,22,675/- deposited by the petitioner on 28.02.2006. As already held above, the one-time lease rent stood deposited, but the petitioner was liable to pay the lease rent from 08.01.2002 till 31.03.2002, as the petitioner was put in possession from 08.01.2002. Therefore, the amount of Rs. 1,39,175/- as rent towards the period of 08.01.2002 till 31.03.2002 is liable to be deducted from the amount of Rs. 29,22,675/-. Consequently, the petitioner would be entitled to a refund after adjusting the amount of lease rent of Rs. 1,39,175/- from Rs. 29,22,675/- already deposited by the petitioner.

ANSWERS TO THE POINTS OF DETERMINATION :

33. Regarding issue no. 1 as to whether the amounts deposited by the petitioner on 08.01.2002 (Rs. 5,56,700/-) and 21.02.2001 (Rs. 55,67,000/-) can be treated as a one-time lease rent deposit or not, the issue is answered in the affirmative, holding that the petitioner had deposited the entire one-time lease rent before the execution of the lease deed.

34. Regarding Issue no. 2 as to whether the petitioner is entitled to any refund with regard to the Rs. 29,22,675/- deposited by the petitioner on 28.06.2006, the issue is answered in the

affirmative, holding that the petitioner is entitled to a partial refund after deducting the lease rent of Rs. 1,39,175/- for a period of 08.01.2002 to 31.03.2002.

CONCLUSIONS:

35. In light of the findings and the observations given above, the writ petition is partially allowed with regard to the prayer of refund of Rs. 29,22,675/- deposited by the petitioner. The net amount to be refunded shall be calculated in terms of the findings given above, and the balance amount shall be paid to the petitioner within a period of three months from today. In case of failure to pay the same within three months, an interest of 6% on the balance amount to be refunded shall be added till the date of actual payment. There shall be no order as to cost.

(2026) 5 ILRA 1547
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.05.2026

BEFORE

THE HON'BLE SARAL SRIVASTAVA, J.
THE HON'BLE GARIMA PRASHAD, J.

Writ C No. 17910 of 2026

Smt. Urmila Devi ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

(i) Whether non-submission of documents contemplated under the Government Order dated 28.02.2020, including postmortem report or panchanama, is fatal to a claim under the scheme, or whether such requirements are procedural and cannot be enforced so rigidly as to defeat the object of the scheme, particularly where other material indicates accidental death?
(ii) Whether, in cases where the competent authority entertains doubt regarding genuineness of the accident or eligibility of the claimant and proceeds to conduct an inquiry under the scheme, such inquiry can be conducted ex parte and behind the back of the claimant without affording notice and opportunity of hearing, despite rejection of the claim entailing serious civil and pecuniary consequences?

Headnotes

Constitution of India – Art. 226 – Mukhyamantri Krishak Durghatna Kalyan Yojna – Claim for compensation by widow of agriculturist who died in road accident – Claim rejected by District Magistrate on ground that postmortem report or panchanama was not available on record as required under Government Order dated 28.02.2020 – Procedural requirements contemplated under Government Order cannot be elevated to a position where they defeat the very object and intent of the scheme itself – Documents required under the scheme cannot be treated as ends in themselves – They are only means to achieve the larger purpose of the scheme, namely, grant of compensation to genuine dependents of deceased agriculturists – Competent authority not expected to reject claim mechanically where postmortem report or panchanama is not available – Duty of competent authority to conduct or cause to be conducted proper inquiry regarding

genuineness of accident, status of deceased as agriculturist and other relevant facts – FIR, site plan, injury report, police investigation, chargesheet and other contemporaneous records required to be duly considered while arriving at satisfaction regarding the claim – Before rejecting claim, District Magistrate ought to have issued notice to petitioner, granted opportunity to produce additional materials and thereafter conducted proper inquiry regarding genuineness of claim – Principles of natural justice required to be observed before rejecting claim – Audi alteram partem must ordinarily be read into every State action which entails civil consequences unless specifically excluded by law – Minor procedural deficiencies cannot become grounds to deny substantive benefits under welfare scheme where genuineness of claim can otherwise be verified through inquiry – Claims under scheme required expeditious and time-bound consideration – District Magistrate, having rejected claim solely on ground that postmortem report and panchanama were not available despite FIR, chargesheet, injury report and other contemporaneous evidence on record, held to have acted mechanically and with complete non-application of mind in disregard of object of scheme and relevant material on record – Death of petitioner's husband held accidental in nature and claim held genuine and covered under scheme – Impugned order dated 12.03.2026 quashed – Writ petition allowed – District Magistrates and all authorities implementing scheme directed to follow aforesaid principles for effective implementation of scheme in furtherance of its true object and purpose.

Held:

(i) The competent authority shall not reject claims under the scheme mechanically merely on account of absence of documents such as postmortem report, panchanama or other records contemplated under the Government Order dated 28.02.2020, where other reliable contemporaneous material exists indicating accidental death, entitlement under the scheme and genuineness of the claim.

(ii) The procedural requirements contemplated under the Government Order shall be treated as facilitative in nature and not as rigid technical conditions so as to defeat genuine claims under the welfare scheme.

(iii) The competent authority shall duly consider contemporaneous materials including FIR, site plan, injury report, medical records, police papers, chargesheet, CCTV footage and other relevant evidence while determining genuineness of the claim.

(iv) Claims under the scheme shall not be rejected solely on the ground of delay in submission of application, lodging of FIR or production of documents, without examining the attending facts and circumstances of the case, including the date of availability of death certificate, prevailing family circumstances, practical difficulties in procuring documents and other relevant considerations.

(v) Where the competent authority entertains any doubt regarding genuineness of the accident, eligibility of the claimant or entitlement under the scheme and proceeds to conduct an inquiry, the claimant shall necessarily be associated with such inquiry.

(vi) Prior notice of inquiry shall be furnished to the claimant indicating the deficiencies noticed, the issues requiring clarification and the materials proposed to be relied upon by the authority.

(vii) If statements of any person are recorded during inquiry, the identity of such persons shall be disclosed to the claimant and, such statements shall be recorded after due notice to and in the presence of the claimant.

(viii) Claims under the scheme shall not be rejected solely on technical or procedural deficiencies without making reasonable efforts to verify the genuineness of the claim through proper inquiry.

(ix) Since the scheme is intended to provide immediate financial assistance and urgent relief to bereaved agriculturist families, all applications under the scheme shall ordinarily be decided expeditiously and preferably within a period of three months from the date of submission of the application. (E-5)

Case Law Cited

Regional Provident Fund Commissioner v. Shiv Kumar Joshi, (2000) 1 SCC 98;
B.D. Shetty v. CEAT Ltd., (2002) 1 SCC 193;
State of Orissa v. Dr. (Miss) Binapani Dei, AIR 1967 SC 1269;
Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405;
Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, (2015) 8 SCC 519;
State of Uttar Pradesh v. Sudhir Kumar Singh, (2020) 10 SCC 492.

List of Acts

Constitution of India;
Mukhyamantri Krishak Durghatna Kalyan Yojna framed under Government Order dated 28.02.2020

List of Keywords

Mukhyamantri Krishak Durghatna Kalyan Yojna; Beneficial Scheme; Agriculturist; Accidental Death; Compensation; Financial Assistance; Government Order dated 28.02.2020; Postmortem Report; Panchanama; Inquest Report; FIR; Site Plan; Injury Report; Chargesheet; CCTV Footage; Procedural Requirements; Natural Justice; Audi Alteram Partem; Opportunity of Hearing; Civil Consequences; Pecuniary Consequences; Administrative Action; Ex Parte Inquiry; Beneficial Interpretation; Liberal Interpretation; Purposive Interpretation; Hyper-technical Approach; Procedural Deficiency; Genuine Claim; Delay in Filing Claim; Attending Facts and Circumstances; Fair Inquiry; Time-bound Consideration; Article 14; Non-arbitrariness.

Case Arising From

Petitioner assailed the order dated 12.03.2026 passed by District Magistrate, Prayagraj, whereby the claim of the petitioner under the Mukhyamantri Krishak Durghatna Kalyan Yojna has been rejected.

Appearances for Parties

Advs. for the Petitioner: Neelabh Srivastava, Uma Shanker, Vijay Shankar Yadav
Advs. for the Respondents: C.S.C.

(Delivered by Hon'ble Garima Prashad, J.)

1. Heard learned counsel for the petitioner and Sri J.N. Maurya, learned Chief Standing Counsel for the State.

2. The petitioner, by means of the present writ petition, has assailed the order dated 12.03.2026 passed by the respondent No.2/District Magistrate, Prayagraj, whereby the claim of the petitioner under the Mukhyamantri Krishak Durghatna Kalyan Yojna has been rejected.

3. The case of the petitioner is that her husband, namely Vinay Yadav, was an agriculturist who died in a road accident involving a motorcycle on 03.06.2025. After his death, the petitioner applied for compensation under the Mukhyamantri Krishak Durghatna Kalyan Yojna framed under the Government Order dated 28.02.2020. During consideration of the claim, an inquiry was conducted at the level of the District Magistrate through subordinate authorities; however, no notice or opportunity of hearing was afforded to the petitioner in the course of such inquiry.

4. The impugned order reflects that since neither postmortem report nor panchanama was available on record before the District Magistrate, the claim was rejected on the ground that under the Government Order dated 28.02.2020, submission of postmortem report or panchanama was mandatory to establish accidental death and, in absence thereof, the claim was not covered under the scheme.

5. Learned counsel for the petitioner, while challenging the impugned order, contended that sufficient material existed on record to establish that the death of the deceased was accidental in nature. It has been submitted that an FIR was lodged on 16.07.2025 against vehicle No. UP70 HK 5914. The police also prepared the site plan regarding the accident and after investigation submitted

chargesheet against the owner of the said vehicle. It has been further submitted that the status of the deceased as an agriculturist has never been disputed and the claim of the petitioner has been rejected solely on the ground that postmortem report and panchanama were not available on record.

6. Learned counsel for the petitioner further submits that the right to seek compensation under the scheme flows from the Government Order itself and is a beneficial right. It is contended that if the District Magistrate had any doubt regarding the cause of death of the deceased, he ought to have issued notice and afforded an opportunity to the petitioner to establish that the death was accidental and that she fulfilled the conditions of the scheme. It is further contended that rejection of such claim entails serious civil and pecuniary consequences and, therefore, compliance with the principles of natural justice was mandatory before passing the impugned order. It is also argued that the FIR, injury report and other materials on record clearly establish accidental death and that the impugned order reflects complete non-application of mind.

7. Per contra, learned Chief Standing Counsel submits that under the Government Order, either a postmortem report or panchanama is required to be furnished to establish accidental death and, since neither of the said documents was available on record, the District Magistrate has committed no illegality in rejecting the claim of the petitioner. It is, however, fairly admitted that there is no other ineligibility or impediment in allowing the claim.

8. We have heard learned counsel for the parties and perused the record. Upon consideration of the pleadings and submissions, the following issues arise for determination:

(i) Whether non-submission of documents contemplated under the Government Order dated 28.02.2020, including postmortem report or panchanama, is fatal to a claim under the scheme, or whether such requirements are procedural and cannot be enforced so rigidly as to defeat the object of the scheme, particularly where other material indicates accidental death?

(ii) Whether, in cases where the competent authority entertains doubt regarding genuineness of the accident or eligibility of the claimant and proceeds to conduct an inquiry under the scheme, such inquiry can be conducted ex parte and behind the back of the claimant without affording notice and opportunity of hearing, despite rejection of the claim entailing serious civil and pecuniary consequences?

9. Before adverting to the aforesaid issues, this Court may note that the scheme in question is a beneficial and benevolent welfare scheme framed by the State Government for providing financial assistance to the families of agriculturists who suffer due to accidental death of the sole bread earner of the family. The scheme has been introduced keeping in view the agricultural character of the country and the hardships faced by agriculturist families upon sudden accidental death of the earning member. The object of the scheme is clearly remedial and welfare oriented.

10. It is well settled that beneficial and welfare schemes framed by the State, even if not statutory in nature, must receive a liberal and purposive interpretation so as to advance their object rather than frustrate it by adopting a hyper-technical approach. The Hon'ble Supreme Court ***in Regional Provident Fund Commissioner v. Shiv Kumar Joshi,*** **(2000) 1 SCC 98**, held that beneficial provisions are required to be construed liberally in favour of the beneficiaries (the class

of persons they are meant to protect) rather than adopting a restrictive interpretation that defeats the statutory objective. Similarly, in ***B.D. Shetty v. CEAT Ltd., (2002) 1 SCC 193***, it was observed that welfare-oriented provisions must be interpreted in a manner which furthers their object. The Court ruled that if two views are possible, the view that furthers and advances the legislative intent must be preferred over one that thwarts it.

11. At the same time, there can be no dispute that the authorities are required to ensure genuineness of claims and prevent fraudulent claims under the scheme. It is for such purpose that documents such as postmortem report or panchanama have been contemplated under the Government Order. However, such procedural requirements cannot be elevated to a position where they defeat the very object and intent of the scheme itself. The requirement of such documents is intended to aid and facilitate the competent authority in arriving at satisfaction regarding the genuineness of the claim and not to frustrate the claim itself where other reliable materials are available on record.

12. In the considered opinion of this Court, the documents required under the scheme cannot be treated as ends in themselves. They are only means to achieve the larger purpose of the scheme, namely grant of compensation to genuine dependents of deceased agriculturists. The procedural requirements under a beneficial scheme cannot be placed above the substantive object sought to be achieved by the scheme.

13. In cases where postmortem report or panchanama is not available, the competent authority, namely the District Magistrate, is not expected to reject the claim mechanically. Rather, it becomes the duty of the authority to conduct or cause to be conducted a proper inquiry regarding the genuineness of the accident, the status of the deceased as an agriculturist and other relevant facts. If materials such as FIR, site plan, injury report, police investigation, chargesheet or other contemporaneous records exist on record, the same are required to be duly considered while arriving at satisfaction regarding the claim.

14. This Court is constrained to observe that such a benevolent scheme appears to have been reduced into a mere technical exercise by the executive authorities. Repeated writ petitions coming before this Court reveal that claims under the scheme are being rejected mechanically without conducting proper inquiry and without appreciating the welfare nature and object of the scheme. Such recurring matters reflect a pattern of hyper-technical application of the scheme by the authorities, thereby defeating the very object of the scheme, which is intended to provide immediate relief to families of deceased agriculturists, and reducing the scheme itself to a mere procedural formality.

15. The principles of natural justice are firmly ingrained in administrative law. It is well settled that even where a statute or scheme is silent regarding grant of opportunity of hearing, the requirement of observing audi alteram partem must ordinarily be read into every State action which entails civil consequences unless specifically excluded by law.

16. The Hon?ble Supreme Court in ***State of Orissa v. Dr. (Miss) Binapani Dei, AIR 1967 SC 1269***, held that even administrative orders involving civil consequences must conform to the

principles of natural justice. In ***Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405***, the Supreme Court observed that fair hearing is an essential component of every decision-making process which visits a person with adverse civil consequences.

17. The aforesaid principle has been consistently reaffirmed in subsequent decisions. In ***Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, (2015) 8 SCC 519***, the Hon?ble Supreme Court held that even in the absence of an express statutory requirement, compliance with the principles of natural justice must ordinarily be read into administrative actions having adverse consequences. Similarly, in ***State of Uttar Pradesh v. Sudhir Kumar Singh,*** **(2020) 10 SCC 492**, the Supreme Court, upon an exhaustive survey of the earlier jurisprudence, formulated a structured approach to the application of natural justice, including the "prejudice test", and reaffirmed that procedural fairness is an essential facet of State action. It was further held that denial of an opportunity of hearing, where an adverse conclusion is reached, would vitiate the action.

18. In the present case, rejection of the petitioner's claim deprives the petitioner and her family of financial assistance intended for dependents of the deceased agriculturist and undoubtedly entails serious civil and pecuniary consequences. Therefore, before rejecting the claim, the District Magistrate ought to have issued notice to the petitioner, granted opportunity to produce additional materials and thereafter conducted proper inquiry regarding genuineness of the claim.

19. This Court further finds that the Government Order dated 28.02.2020 does not prescribe any specific time frame for consideration of claims under the scheme. Consequently, applications are often kept pending for months and, in several cases, for years together, thereby defeating the very object of the scheme, which is to provide immediate financial assistance to bereaved agriculturist families. Delayed disbursement under such a welfare scheme frustrates its remedial purpose and renders the assistance meaningless at the stage when the family is in greatest financial distress. Claims under the scheme, therefore, require expeditious and time-bound consideration consistent with the object sought to be achieved by the State Government.

20. This Court further finds it necessary to observe that the Government Order dated 28.02.2020 does not prescribe any specific outer time limit for consideration and disposal of claims under the scheme. As a consequence thereof, applications are often kept pending for months and, in several cases, even for years together. Such delays substantially defeat the very purpose and object of the scheme, which has been framed to provide immediate financial assistance and urgent economic relief to poor agriculturist families who suddenly lose the sole earning member due to accidental death. The welfare character of the scheme necessarily requires expeditious consideration of claims. Delayed disbursement of compensation in such cases frustrates the remedial intent of the policy and renders the assistance illusory at the stage when the family is in greatest financial distress. It is therefore necessary that claims under the scheme be processed and decided within a reasonable and time-bound framework consistent with the object sought to be achieved by the State Government.

21. In the facts of the present case, it has come on record that an FIR regarding the accidental death of the petitioner?s husband was lodged. The police prepared a site plan and after investigation submitted a chargesheet. The injury report was also available on record. The FIR and accompanying material also refer to contemporaneous evidence such as CCTV footage of the accident, etc. Despite the existence of such materials, the District Magistrate rejected the claim solely on the ground that postmortem report and panchanama were not available. The impugned order reflects complete non-application of mind and mechanical exercise of power in disregard of the object of the scheme and relevant material on record.

22. While considering such applications, the competent authority is expected to keep in mind that the claimants are poor persons, not literate and they also do not know the intricacies of law and, therefore, if there was some shortcomings or infirmities in the applications filed by the claimants, the authorities should have taken due care and should have made every endeavor to inquire into the cause of death so that if the dependents of the deceased family are entitled to compensation, the same shall be provided to them in order to fulfill the spirit of the scheme. Minor procedural deficiencies cannot become grounds to deny substantive benefits under a welfare scheme where the genuineness of the claim can otherwise be verified through inquiry.

23. This Court further observes that several decisions of this Court have consistently emphasized that authorities implementing welfare schemes must remain conscious of the ground realities faced by beneficiaries and cannot adopt a rigid or hyper-technical approach while dealing with claims involving poor and distressed families. Though the scheme prescribes a period of 180 days for submission of claims, this Court has repeatedly held that such limitation under beneficial schemes cannot be applied with such rigidity so as to defeat genuine claims, particularly where delay is sufficiently explained from the attending circumstances of the case. In the present case, the District Magistrate has not even examined the circumstances leading to the delay of merely 14 days in submission of the claim. Such mechanical exercise of power defeats the very object of the scheme.

24. It is not disputed that the scheme requires the claimant to procure and furnish several documents including death certificate, postmortem report/inquest report, proof of agricultural status, land details, bank documents and other records. Procurement of such documents inevitably takes time, particularly where the claimant is a bereaved widow facing financial hardship and administrative difficulties immediately after the death of the sole earning member. Delay in such matters cannot be viewed mechanically divorced from the surrounding circumstances of the claimant.

25. Accordingly, the issues framed by this Court are answered in the following terms and the following directions/guiding principles are issued for implementation of the scheme in its true spirit and object:

(i) The competent authority shall not reject claims under the scheme mechanically merely on account of absence of documents such as postmortem report, panchanama or other records contemplated under the Government Order dated 28.02.2020, where other reliable

contemporaneous material exists indicating accidental death, entitlement under the scheme and genuineness of the claim.

(ii) The procedural requirements contemplated under the Government Order shall be treated as facilitative in nature and not as rigid technical conditions so as to defeat genuine claims under the welfare scheme.

(iii) The competent authority shall duly consider contemporaneous materials including FIR, site plan, injury report, medical records, police papers, chargesheet, CCTV footage and other relevant evidence while determining genuineness of the claim.

(iv) Claims under the scheme shall not be rejected solely on the ground of delay in submission of application, lodging of FIR or production of documents, without examining the attending facts and circumstances of the case, including the date of availability of death certificate, prevailing family circumstances, practical difficulties in procuring documents and other relevant considerations.

(v) Where the competent authority entertains any doubt regarding genuineness of the accident, eligibility of the claimant or entitlement under the scheme and proceeds to conduct an inquiry, the claimant shall necessarily be associated with such inquiry.

(vi) Prior notice of inquiry shall be furnished to the claimant indicating the deficiencies noticed, the issues requiring clarification and the materials proposed to be relied upon by the authority.

(vii) If statements of any person are recorded during inquiry, the identity of such persons shall be disclosed to the claimant and, such statements shall be recorded after due notice to and in the presence of the claimant.

(viii) Claims under the scheme shall not be rejected solely on technical or procedural deficiencies without making reasonable efforts to verify the genuineness of the claim through proper inquiry.

(ix) Since the scheme is intended to provide immediate financial assistance and urgent relief to bereaved agriculturist families, all applications under the scheme shall ordinarily be decided expeditiously and preferably within a period of three months from the date of submission of the application.

26. The District Magistrates and all authorities implementing the scheme shall follow the aforesaid principles in addition to the procedure prescribed under the Government Order dated 28.02.2020 so as to ensure effective implementation of the scheme in furtherance of its true object and purpose.

27. Coming to the facts of the present case, this Court, upon perusal of the material available on record, including the FIR, chargesheet and other other contemporaneous evidence such as injury reports, is satisfied that the death of the petitioner's husband was accidental in nature and that the claim of the petitioner is genuine and covered under the scheme. Consequently, the impugned order dated 12.03.2026 passed by the District Magistrate, Prayagraj cannot be sustained in law and is accordingly quashed. The writ petition is, accordingly, allowed.

28. Registrar (Compliance) of this Court is directed to communicate a copy of this order to the Chief Secretary, Government of Uttar Pradesh, Lucknow so that appropriate circulars/instructions

may be issued to all District Magistrates for effective implementation of the scheme in its true spirit and object.

(2026) 5 ILRA 1555
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.05.2026

BEFORE

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

Writ C No. 23827 of 2010

Ram Autar & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

Whether the respondents had been able to prove their de facto possession over the land in dispute at the time of enforcement of the Urban Land (Ceiling and Regulation) Repeal Act, 1999; whether, in the absence of actual possession having been taken by the respondents in accordance with Section 10 of the Urban Land (Ceiling and Regulation) Act, 1976, the petitioners were entitled to the benefit of Section 4 of the Repeal Act, 1999; and whether the writ petition was liable to be dismissed on the ground of delay and laches.

Headnotes

Urban Land (Ceiling and Regulation) Act, 1976, ss.10(5), 10(6) – Urban Land (Ceiling and Regulation) Repeal Act, 1999, s. 4 – Writ petition challenging ceiling proceedings – Land declared vacant surplus – Respondents claimed to have taken possession on 27.08.1984 – Petitioners contended that they continued in possession and that no proceedings under s.10(6) were ever undertaken – Possession memo not bearing signature of petitioners or their predecessors :

Held: Requirement of delivery of notice under s.10(5) mandatory – No forceful dispossession under s.10(6) in present case – Notice under s.10(5) not shown to have been received by landholders or any person on their behalf – Possession memo dated 27.08.1984 not served on landholders – Revenue entries continued in name of petitioners or their predecessors for substantial period even after enforcement of Repeal Act, 1999 and were mutated in name of State only in 2018 during pendency of writ petition – Presumption drawn that possession continued with petitioners, burden being upon respondents to rebut such presumption – Private abadi found existing over Gata No. 773 and agricultural activities being carried out over Gata No. 789 – Respondents failed to establish that they were in possession of land in dispute and failed to establish voluntary surrender of vacant land – Even after issuance of notice under Section 11 (8) there is nothing on record to demonstrate that payment of Sandeya Dhanrashi/ compensation has been made to the petitioners – Even if the petitioners were aware of the proceedings under the Act, 1976 the same would not absolve the State of its obligation to have taken the de facto possession of the land in dispute in due accordance with the provisions of the Act, 1976 and to prove the same in the present proceedings – Burden lay upon respondents to prove that they had taken possession in accordance with provisions of Act, 1976 – Respondents failed to discharge burden – Mere vesting of land under Act, 1976 did not establish de facto possession – No payment of Sandeya Dhanrashi/compensation made to petitioners – Petitioners continued to remain in possession prior to and after enforcement of Repeal Act, 1999 and revenue entries remained in their name – Petitioners entitled to benefit of s.4 of Repeal Act, 1999 – Delay and laches – Petitioners approached Court when

respondents started interfering with their possession – Writ petition not liable to be dismissed on ground of delay – Ceiling proceedings stood abated . Writ petition allowed. (E-5)

[Paras 21, 22, 27, 28, 30, 39-47, 50-52, 57, 58]

Case Law Cited

State of U.P. v. Hariram, (2013) 4 SCC 280;
A.P. Electrical Equipment Corporation v. Tehsildar and Others, 2025 SCC OnLine SC 447;
Dalsukhbhai Bachubhai Satasia and Others v. State of Gujarat and Others, 2026 SCC OnLine SC 25;
State of Assam v. Bhaskar Jyoti Sarma, (2015) 5 SCC 321;
State of Haryana and Another v. Amin Lal (since deceased) through LRs and Others, decided on 19.11.2024;
Babu and Others v. State of U.P. and Others, Writ-C No. 758850 of 2013, decided on 21.12.2016;

List of Acts

Constitution of India;
Urban Land (Ceiling and Regulation) Act, 1976;
Urban Land (Ceiling and Regulation) Repeal Act, 1999
U.P. Urban Land Ceiling (Taking of Possession, Payment of Amount and Allied Matters), Directions, 1983

List of Keywords

Urban Land Ceiling; Urban Land (Ceiling and Regulation) Act, 1976; Urban Land (Ceiling and Regulation) Repeal Act, 1999; Section 10(5); Section 10(6); Section 10(3); Section 4 of Repeal Act; Surplus Land; Vacant Land; Possession; De facto Possession; De jure Possession; Physical Possession; Vesting; Peaceful Dispossession; Forceful Dispossession; Notice; Mandatory Notice; Service of Notice; Possession Memo; Voluntary Surrender; Revenue Entries; Mutation; Presumption of Possession; Burden of Proof; Actual Possession; Urban Agglomeration; Ceiling Proceedings; Abatement; Delay and Laches; Article 226; Mixed Question of Law and Fact; Moradabad Development Authority; Sonakpur Awasiya Yojana.

Case Arising From

Petition filed challenging the proceedings initiated against the petitioners under the Urban Land (Ceiling and Regulation) Act, 1976, and seeking a direction restraining the respondents from interfering with the petitioners' peaceful possession over Gata Nos. 773 and 789, situated in Village Sonakpur, Tehsil and District Moradabad.

Appearances for Parties

Advs. for the Petitioner: A.K. Pandey, J.J. Munir, Pooja Agarwal, R P Rajan
Advs. for the Respondents: Abhinava Krishna Srivastava, Arun K. Singh Deshwal, C.S.C., Dharmendra Singh Chauhan, P.k. Singh, Pradeep Kumar Singh

(Delivered by Hon'ble Sudhanshu Chauhan, J.)

1. Heard Ms. Pooja Agarwal, learned counsel for the petitioners and Sri M.C. Chaturvedi, learned Additional Advocate General, assisted by Sri Mohan Srivastava, learned Standing Counsel and Sri Abhinava Krishna Srivastava, learned counsel for the respondent Development Authority.

2. The present writ petition has been filed challenging the proceedings initiated against the petitioners under the Urban Land (Ceiling and Regulation) Act, 1976 and also seeking a direction to restrain the respondents from interfering with the peaceful possession of the petitioners over the land being Gata Nos. 773 and 789 situated in Village Sonakpur, Tehsil and District-Moradabad.

3. Case of the petitioners is that Gokul was the original tenure holder of the land in dispute being part of Gata Nos. 773 and 789 having an area of 7114.40 sq. meters situated in Village Sonakpur, Tehsil and District-Moradabad. Gokul was succeeded by four sons namely, Chhokhelal, Sohan Lal, Dalpat and Ramgopal. The petitioner nos. 1 to 9 are the descendants of sons of late Gokul and the petitioner no. 10 is the son of late Gokul. It is stated that the order under Section 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the Act, 1976") was passed behind the back of predecessor of the petitioners. Further the order under Section 8(4) was communicated vide notice dated 26.07.1980.

4. It is stated that the predecessors of the petitioners were in possession of the land in dispute and continue to remain in possession thereof. In this regard, the petitioners have relied upon the khatauni of the Fasli year 1382-87 as well as khatauni of the Fasli year 1414-1419, wherein the land in dispute is recorded in the name of petitioners and their predecessors.

5. The petitioners further state that the alleged possession memo dated 27.08.1984 does not bear signature of the land owners and the independent witnesses and as such is a bogus document. The name of the petitioners and their predecessors have continued to be recorded in the revenue records and as such it is beyond doubt that the petitioners are in possession of the land in dispute. It is also the case of the petitioners that the provisions of the U.P. Urban Land Ceiling (Taking of Possession, Payment of Amount and Allied Matters), Directions, 1983 issued under Section 35 of the Act, 1976 have not been complied with.

6. The petitioners also state that when the authorities started interfering in the possession of the petitioners, it was only thereafter that the petitioners came to know about the orders passed under the Act, 1976. The petitioners in this regard had also filed a representation dated 05.02.2010 before the competent authority-respondent no. 2 for abatement of the proceedings of the ceiling case. However, as no action was taken, hence, the petitioners were compelled to file the present writ petition.

7. One of the submissions made by the petitioners is that the land in dispute lies beyond the perimeter of 1 km from the erstwhile Nagar Palika, Moradabad and as such does not fall within the limits of the urban agglomeration. In this regard, the petitioners have relied upon the report of the Naib Tehsildar dated 08.02.1979 in Case No. 978/4248 (State vs. Ratan Lal), wherein Gata Nos. 612 to 882 of Village Sonakpur, District Moradabad, were held to be beyond the perimeter of 1 km of the erstwhile Nagar Palika, Moradabad. A similar report dated 10.05.1979 of the Naib Tehsildar had also been filed in Case No. 305/944 (State Vs. Jathu). It is submitted that it was only on the basis of the report of the Naib Tehsildar that Gata Nos. 612 to 882, situated in Village Sonakpur District Moradabad were exempted under the Act, 1976.

8. It is also stated that respondent no. 2 in Case No. 234/1250/3050 (State vs. Fakhira) vide letter dated 06.04.1992 had held the land in the said case to be exempted under the Act, 1976 as it fell beyond the perimeter of 1 km of Nagar Palika, Moradabad. Hence, it is stated that the land in dispute should be exempted from proceedings under the Act, 1976. Further the District Magistrate vide order dated 04.08.2016 had exempted a similarly situated land comprised in Gata No. 798 from the Act, 1976.

9. Besides, the petitioners also rely upon a map of delimitation of Nagar Palika Moradabad prepared in the year 1967, which shows that the Village Sonakpur was beyond the perimeter of 1.5km from the outer limits of Nagar Palika. In this regard the petitioners have also relied upon the scheme of delimitation of Nagar Nigam Moradabad, 2017 wherein the Village Sonakpur does not fall within the limits of Nagar Nigam Moradabad. The petitioners state that Village Sonakpur falls under Gram Panchayat Sonakpur Dehat and as such no proceedings could have been taken place in respect of land in dispute of the petitioners under the Act, 1976.

10. Per contra, it is the case of the State-respondents that in Ceiling Case No. 2770/3627 (State Vs. Gokul) notice under Section 8(3) was issued on 14.04.1980 and served upon Sohan Lal, son of Gokul. However, as no objections were filed, order under Section 8(4) was passed on 24.06.1980 declaring 7114.40 sq. meters of land as vacant surplus. Final statement under Section 9 was issued on 26.07.1980. Thereafter notification under Sections 10(1) and 10(3) were published in the State Gazette on 29.08.1981 and 10.03.1984 respectively. Notice under Section 10(5) was issued on 11.04.1984 and served upon the wife of the original land holder, Smt. Leelawati on 16.04.1984. Subsequent thereto the possession of the land was taken vide order dated 27.08.1984 and the land was recorded in the name of State in the revenue records. Thereafter the possession of the land was transferred to Moradabad Development Authority-respondent no. 3 vide transfer memo dated 18.01.1990.

11. It is stated that the alleged report of the Naib Tehsildar dated 08.02.1979 was never accepted by competent authority and was not taken into cognizance by the competent authority while passing the order dated 15.02.1979 under Section 8(4) of the Act, 1976 in the concerned ceiling case. Moreover, the authenticity of the alleged report dated 08.02.1979 is extremely doubtful as the report is cryptic and runs only in a few lines yet suggests that as many as 271 plots (Gata Nos. 612 to 882) have been exempted from the Act, 1976. Similarly, the report dated 10.05.1979 was also not accepted by the competent authority in the order dated 10.04.1992 passed in Ceiling Case No. 305/994 (State Vs. Jathu) wherein the competent authority had relied upon the report dated 07.04.1992 prepared by the draftsman.

12. In respect of the letter dated 06.04.1992 relied by upon the petitioners, it is contended that the same was never dispatched and the authenticity of the said letter is doubtful. Further, there was no occasion for exempting Gata Nos. 612 to 882 from urban ceiling and no order has been passed by the respondent no. 2 while taking into consideration the said reports of Naib Tehsildar as relied on by the petitioners.

13. As far as the order dated 04.08.2016 passed by the District Magistrate, Moradabad is concerned, it is contended that in three ceiling cases the land holders were recorded tenure holders of Gata No. 798 while the ceiling proceedings inadvertently had taken place in respect of Gata No. 792, which was not the land of the land owners, it is under the said circumstances that Gata No. 798 was exempted from proceeding under the Act, 1976 as no proceedings had taken place in respect of the same.

14. It is also stated that in Ceiling Case No. 234/1250/3050 (State Vs. Fakira), it was held by the competent authority that Gata Nos. 867 and 845 were found to be beyond the urban

agglomeration and as such the land was exempted from the Act, 1976, which is not so in the case of the petitioners where the land is situated within 1km of urban agglomeration. Further the Gazette notification under Section 2(n) of the Act, 1976 was published on 30.09.1978, in pursuance thereof the concerned authorities at Bareilly got a map prepared of the urban agglomeration area of Moradabad wherein Village Sonakpur was shown to be included in the urban agglomeration and the rate of compensation payable was also determined. Besides, the respondents also rely upon the report of Tehsildar Sadar, Moradabad to show that Gata Nos. 612 to 882 fall within the perimeter of 1km of Nagar Nigam, Moradabad. It is categorically stated that only the land falling under the Gata Nos. 845, 847, 866 and 867 in Village Sonakpur, District Moradabad had been exempted from the Act, 1976.

15. Besides attention is also drawn to the fact that the petitioners in response to the notice dated 22.03.1997 under Section 11(7) had sought time to file objections vide application dated 05.04.1997. Besides, legal heirs of the original tenure holder had filed Writ Petition No. 62393 of 2013 (Gokul and others Vs. State of U.P. and others) with regard to land in Ceiling Case No. 2770/3627 and the same was dismissed as infructuous.

16. Further the revenue entries in the name of the State were duly recorded in the mutation register (R-6) on 09.02.1996 at serial no. 26. Besides, the respondents have also filed the photographs of the land in dispute to show their possession over the land.

17. The respondent no. 3-Mordadabad Development Authority has supported the stand taken by the State and has further stated that the ceiling land in Village Sonakpur and adjoining areas fall under a residential scheme Sonakpur Awasiya Yojana. For this purpose, respondent no. 3 has also acquired and taken possession of the adjoining land (not covered under the Act, 1976) measuring 20.75 hectares through acquisition and transfer.

18. It is stated that respondent no. 3 has spent an amount of about Rs. 84 crores for the development of the said residential scheme. The respondent no. 3 has filed the summary of expenditure incurred and the lay out plan of the scheme to show that the land in dispute falls under the said residential scheme, which was advertised on 24.01.2013 thereby inviting applications for allotment of plots.

19. It is also stated that the fact regarding taking over possession of the land in dispute has duly been recorded in ULC Form-1 under the Directions, 1983. Besides, judgment of Coordinate Benches arising out of proceedings under the Act, 1976 in respect of Village Sonakpur and adjoining areas wherein the writ petitions have been dismissed have also been relied upon by the respondent no. 3-Moradabad Development Authority.

20. Lastly, it is contended that the present writ petition has been filed after a delay of 30-35 years after the land in dispute was declared vacant surplus and as such is liable to be dismissed only on the ground of delay and laches.

21. It is the contention of the petitioners that the petitioners have continued to remain in possession of the land in dispute and in view of the provisions of the Urban Land (Ceiling and

Regulation) Repeal Act, 1999 the proceedings of ceiling case stand abated and the petitioners are entitled to remain in possession of the land in dispute. It is further contended that no proceedings under Section 10 (6) of the Act, 1976, ever took place and the petitioners or their predecessors at no point of time had handed over the possession of the land in dispute to the respondent. The aforesaid fact is evident from the perusal of the possession memo, which does not bear the signature of the petitioners or their predecessors and as such it is evident that de facto possession of the land was never taken by the respondent.

22. On the other hand the contention of the respondents is that the proceedings under the Act, 1976 stood concluded with the taking over of the possession of the land in dispute on 27.08.1984 and apparently the possession of the land is with the respondent no.3-authority and the same falls under a residential scheme, hence, proceedings under the Act, 1976 stood concluded prior to the enforcement of the Repeal Act, 1999. Further the present writ petition is bound to be dismissed solely on the ground of delay and laches having been filed after a lapse of about 26 years after taking possession of the land in dispute.

23. It is evident from the records that the land holder Gokul passed away after filing of the ceiling return under Section 6(1) of the Act,1976. Subsequently the name of his son Sonhal Lal, Dalpat and Ramgopal were substituted in his place. The perusal of the order dated 24.06.1980 passed under Section 8(4) further reveals that the notice under Section 8(3) was sent through registered post but was returned unserved and was subsequently served personally on 23.04.1980. The petitioners on the other hand state that the order under Section 8(4) was passed behind the back of the petitioners. Further the petitioners have themselves relied upon the notice under Section 9 dated 26.07.1980. It is not disclosed by the petitioners as to how and when the petitioners came to know about the final statement prepared under Section 9.

24. It has been contended on behalf of the respondents that the notice under Section 10(5) dated 11.04.1984 was served personally on Leelawati, the wife of the original land holder on 16.04.1984. However, the perusal of notice under Section 10(5) reveals that it has not been signed / received. by any of the land holders or any person on their behalf. Further the possession memo dated 27.08.1984 bears the signature of two witnesses but has not been signed by the land holder or any person on their behalf. It is admitted by the parties that no proceedings under Section 10(6) of the Act, 1976 had ever taken place. Thereafter the notice under Section 11 (8) dated 22.03.1997 was served upon Chokhe, son of Gokul on 29.03.1997 and the petitioners vide the letter dated 12.04.1997 had sought time to file objections to the notice under Section 11 (8). The service report dated 19.03.1997 and the copy of the objection dated 05.04.1997 have duly been brought on record. The petitioners have denied the service of notice under Section 11 (8) and the application seeking time to file objections.

25. As far as the revenue records are concerned, the petitioners claim that their names continued to be recorded in the revenue records for a substantial passage of time even after the enforcement of the Repeal Act, 1999. Although it is the stand of the respondent that the land in dispute comprised in Gata No. 789 and Gata No. 773 was duly recorded in the mutation register (R-6) in the name of the State as, "Competent Authority, Urban Ceiling" at serial no. 26 on 09.12.1996. However, neither of the parties from the records have been able to demonstrate as to

when the revenue entries were recorded in the name of the State in the revenue records in respect of the land in dispute.

26. Be that as it may the respondents in the supplementary counter affidavit dated 19.06.2023 in respect of recording the name of the State Government in the revenue records have stated as under:

"3. That in the case of Ram Autar being writ petition no. 23827 of 2010 the name of the State Government was recorded in the Revenue records pertaining to the land in question, in the year 2018. In support thereto the Khatoni fasli year 1426-1431 are being enclosed herewith and marked as ***Annexure No. SCA-1*** *to this affidavit.*

4. That the Khasra for the aforesaid land in question was also rectified. A copy of the Khasra fasli year 1427 showing the name of urban ceiling duly recorded over the land in question is being enclosed herewith and marked as Annexure No. SCA-2 to this affidavit."

27. Hence, as per own showing of the respondents, the revenue entries were mutated in the name of the State in respect the land in dispute in the year 2018, while the present writ petition was pending. Hence, in view of the above admission on behalf of the respondents, it is beyond doubt that the revenue entries continued in the name of the petitioners or their predecessors for a substantial passage of time even after coming into force of the Repeal Act, 1999.

28. As far as the question of possession is concerned, the respondents in the site plan Sonakpur Awasiya Yojna have tried to demonstrate open land and nala are existing over Gata No. 789 and school is shown to be situated over Gata no. 773. The respondents in this regard have also relied upon a report of the Advocate Commissioner filed in Writ C No. 758850 of 2013 (Babu and others v. State of U.P. and others) on the directions of this Court wherein a mention of Gata No. 773 and Gata No. 789 is also made. The report in respect of two gatas is reproduced herein below:

773	The total area of plot No. 773 is 0.223 hectare and the surplus declared area is 0.043 hectare. This plot is also covered with private abadi as shown in Enclosure No.1 to this report.
789	The total area of plot no. 789 is 0.559 hectare and the whole land declared as surplus. The 24 meter wide Moradabad Delhi bye-pass passes through the said plot. The plot contains chambers of sewer line and high tension line passes over it.

Thus as per own showing of the respondents a private abadi was situated over gata no. 773 in December, 2014 when the inspection was carried out and 24 meters wide Moradabad bypass was to pass through Gata No. 789 besides the chambers of sewer line and high tension lines were also situated over the aforesaid gata.

29. In this regard a report dated 28.11.2022 prepared by Secretary, respondent no. 3-authority is also relevant and has been relied upon by the respondents and the same reads as under:

"गाटा सं0-773-

गाटा सं0-773 का कुल रकबा राजस्व अभिलेखों के अनुसार 0.3640 हैक्टे० है, जसमें अर्बन सीलिंग की 3642.30 वर्ग मी० अर्थात गाटे की सम्पूर्ण भूमि प्राधिकरण की कब्जा प्राप्त भूमि है, जिसका

कब्जा प्राधिकरण को दिनांक 18.01.1990 को हस्तान्तरित किया गया है। जिसमें कुछ भाग पर प्राधिकरण द्वारा सोनकपुर आवासीय योजना के अन्तर्गत नाली, सड़क आदि का निर्माण कराया गया है तथा कुछ भाग पर अवैध रूप ने प्राइवेट आबादी बनी हुई है।

गाटा सं0-789-

गाटा सं0-789 का कुल रकबा राजस्व अभिलेखों के अनुसार 0.5590 हैक्टे० है, जिसमें अर्बन सीलिंग की 5584.86 वर्ग मी० अर्थात गाटे की सम्पूर्ण भूमि प्राधिकरण की कब्जा प्राप्त भूमि है, जिसका कब्जा प्राधिकरण को दिनांक 18.01.1990 को हस्तान्तरित किया गया है। जिस पर प्राधिकरण द्वारा सोनकपुर आवासीय योजना के अन्तर्गत नियोजित करते हुए नाली, सड़क आदि विकास कार्य कराये गये है।"

Thus, as far as Gata No. 773 is concerned there was private abadi existing over the said gata and on Gata 789 it is alleged that development works in the shape of drains, roads, etc had been carried out.

30. Interestingly, the respondent no.3 authority in its counter affidavit apparently seems to admit the possession of the petitioners over Gata No. 773 although it is alleged that the construction so raised is nothing but a trespass. The relevant part of paragraph 10 of the counter affidavit filed on behalf of respondent no.3 is reads as under:

"10. That accordingly it is not open to the original land holder or his successor petitioners to claim any advantage of the provisions of the Urban Land Ceiling (Repeal Act 1999) or claim a writ of mandamus from this Hon'ble High Court against the respondents for not interfering with their possession by challenging part of the proceedings of Ceiling Case No. 2770/3627 in as far as it relates to plot no. 773-A. It is further submitted that some times after the conclusion of the aforesaid proceedings, the petitioners appear to have encroached upon the aforesaid land by raising some unauthorized construction without the knowledge of the respondent's authorities and have now come up in the present writ petition to claim advantage of the Repeal Act 1999. Thus on the date of the writ petition the status of the petitioner is that of a rank trespasser over the stretch land and hence the petitioners do not deserve any sympathy from this Hon'ble Court and the above noted writ petition being misconceived deserves to be dismissed."

Under the circumstances, it is evident that construction has been raised by the petitioner over the said plot, even though allegedly unauthorised.

31. Besides both the parties have also filed the photographs of the land in dispute claiming that they are in possession of the land in dispute. We are well aware of the fact that usually photographs should not be relied upon as an evidence of possession of a particular party over the land, however, in the present case both the parties have relied upon a similar set of photographs in respect of Gata No. 789 and as such there can be no controversy that the photographs filed by the respective parties pertain to the same piece of land. The photographs of Gata No. 789 relied upon by the petitioners

shows that there is a bridge in the background and crop is standing over the vacant land. The respondents on the other hand have filed the photographs of Gata no. 789 with the supplementary counter affidavit dated 29.11.2022 sworn by the then Principal Secretary, Housing and Urban Planning Department, Government of Uttar Pradesh wherein the same bridge is shown in the background and the land is lying vacant with no crop standing over it, the photograph is dated 24.11.2022. Besides there are no signs of any development having taken place over the said piece of land or in the vicinity thereof be it in the shape of drains, road, residential plots etc. other than the electricity lines running over the same, which are also existing in the photograph of Gata no. 789 relied upon by the petitioners.

32. In the photograph of Gata no. 773 relied upon by the respondents filed with the above said supplementary counter affidavit dated 29.11.2022 shows that houses and shops/ abadi along with road are existing over the said plot, the photograph is dated 24.11.2022. Thus, it is apparent from the photograph of Gata No. 773 relied upon by the respondents that a private abadi along with road exist over the said plot.

33. Before we advert to the law in respect of taking over of possession by the State under the Act, 1976, and the effect of Repeal Act, 1999, we would like to consider to another question raised by the petitioner regarding the land in dispute being situated beyond the urban agglomeration. In this regard the petitioner has relied upon the reports of Naib Tehsildar dated 08.02.1979 and 10.05.1979 filed in two ceiling cases as well as letter dated 06.04.1992 issued by the competent authority besides the map of Nagar Palika, Moradabad prepared in the year 1967 and the map of delimitation of Nagar Nigam, Moradabad of the year 2017.

34. On the contrary the respondents state that none of the reports dated 08.02.1979 and 15.02.1979 of the Naib Tehsildar have been relied upon by the Competent Authority while deciding the two ceiling cases. Besides the respondent have also relied upon the gazette notification dated 30.09.1978 to show that Village Sonakpur is within urban agglomeration of district Moradabad. Moreover we are of the view that the said pleas have been raised by the petitioner rather belatedly and ought to have been raised at the relevant point of time during the proceedings under the Act,1976, moreover, the pleas so raised involve disputed questions of fact which we do not need to decide in proceedings under Article 226 of the Constitution of India.

`35. As far as the contention of the respondents that the petitioners had filed Writ Petition No. 62393 of 2013 (Gokul and others Vs. State of U.P. and others) is concerned, the petitioners have refuted the same. The respondents have also not brought the memo of the aforesaid writ petition on record. Moreover, the records reveal that Gokul had passed away shortly after the commencement of proceedings under the Act, 1976 and as such could not have filed a writ petition in the year, 2013. Hence, the aforesaid contention of the respondents is of no consequence as far as outcome of the present writ petition is concerned.

36. We now advert to the law laid down by the Apex Court in respect of the transfer of possession to the State under the Act, 1976 and the effect of the Repeal Act, on the proceedings so initiated. The Apex Court in the case of State of U.P. v. Hariram, 2013 (4) SCC 280 has held as under:

''Peaceful Dispossession

34 Sub-section (5) of Section 10, for the first time, speaks of "possession" which says that where any land is vested in the State Government under sub-section (3) of Section 10, the competent authority may, by notice in writing, order any person, who may be in possession of it to surrender or transfer possession to the State Government or to any other person, duly authorised by the State Government.

35. If de facto possession has already passed on to the State Government by the two deeming provisions under sub-section (3) of Section 10, there is no necessity of using the expression "where any land is vested" under sub-section (5) of Section 10. Surrendering or transfer of possession under sub-section (3) of Section 10 can be voluntary so that the person may get the compensation as provided under Section 11 of the Act early. Once there is no voluntary surrender or delivery of possession, necessarily the State Government has to issue notice in writing under sub-section (5) of Section 10 to surrender or deliver possession. Sub-section (5) of Section 10 visualises a situation of surrendering and delivering possession, peacefully while sub-section (6) of Section 10 contemplates a situation of forceful dispossession.

Forceful dispossession

36. The Act provides for forceful dispossession but only when a person refuses or fails to comply with an order under sub-section (5) of Section 10. Sub-section (6) of Section 10 again speaks of "possession" which says, if any person refuses or fails to comply with the order made under sub-section (5) the competent authority may take possession of the vacant land to be given to the State Government and for that purpose, force-as may be necessary-can be used. Sub-section (6), therefore, contemplates a situation of a person refusing or fails to comply with the order under sub-section (5), in the event of which the competent authority may take possession by use of force. Forcible dispossession of the land, therefore, is being resorted to only in a situation which falls under sub-section (6) and not under sub-section (5) of Section 10. Sub-sections (5) and (6), therefore, take care of both the situations i.e. taking possession by giving notice, that is, "peaceful dispossession" and on failure to surrender or give delivery of possession under Section 10(5), then "forceful dispossession" under sub-section (6) of Section 10.

37. <u>The requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory.</u> Though the word "may" has been used therein, the word "may" in both the sub-sections has to be understood as "shall" because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-section(5) or sub-section (6) of Section 10 is that it might result in the landholder being dispossessed without notice, therefore, the word "may" has to be read as "shall".

42 The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18-3-1999. <u>The State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10</u> or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the landowner or holder can claim the benefit of Section 4 of the Repeal Act. The State Government in this appeal could not establish any of those situations

and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 4 of the Repeal Act.

43. We, therefore, find no infirmity in the judgment of the High Court and the appeal is, accordingly, dismissed so also the other appeals. No documents have been produced by the State to show that the respondents had been dispossessed before coming into force of the Repeal Act and hence, the respondents are entitled to get the benefit of Section 4 of the Repeal Act. However, there will be no order as to costs.″

(emphasis added)

37. Further the Apex Court in the case of **A.P. Electrical Equipment Corporation v. Tehsildar and others, 2025 SCC Online SC 447** while relying upon the law laid down in the case of Hari Ram (supra) has held as under:

"20. Thus, by virtue of the provisions of Section 3 of the Repeal Act, 1999, if possession of vacant land has been taken over on behalf of the State Government before the coming into force of the Repeal Act, 1999, the repeal of the Principal Act would not affect the vesting of such land under sub-section (3) of Section 10 of Act, 1976. Hence, the issue as to whether actual possession of land declared excess under the Act has been taken over or not assumes great significance after the coming into force of the Repeal Act, 1999 inasmuch as if possession has not been taken over, the proceedings would abate under Section 4 of the Repeal Act, 1999 and the ownership of the land, if vested in the State Government under Section 10 (3) of the Act, 1976 would be required to be restored to the original land-holder subject to repayment of any amount that has been paid by the State Government with respect to such land

25. Thus, applying the principle of strict construction as explained in the aforesaid two decisions, the authorities are required to act strictly in accordance with the statutory provisions. Thus, when sub-section (5) of Section 10 mandates giving notice of an order under the said sub-section to the person in possession, the same is required to be complied with in its true letter and spirit. Considering the nature of rights involved, mere issuance of notice without service thereof, cannot be said to be due compliance with the provisions of the statute. Besides, the provisions of subsection (6) of Section 10 can be resorted to only if the person fails to comply with an order under sub-section (5) thereof, within a period of thirty days of service of notice. Hence, possession cannot be taken over under Section 10(6) of the Act, 1976 unless a period of thirty days from the date of service of notice has elapsed. In absence of service of notice under sub-section (5) of Section 10, there will be no starting point for calculating the period of thirty days. In other words, time will not start running, hence the question of taking over possession under sub-section (6) of Section 10 of the Act, 1976 will not arise at all. In this view of the matter, in the case on hand, it was not open to the respondent authorities to resort to the provisions of sub-section (6) of Section 10 of the Act, 1976 without first strictly complying with the provisions of sub-section (5) thereof. Hence, such action being in contravention of the statutory provisions cannot be sustained and deserves to be struck down.

41 The propositions of law governing the issue of possession in context with Sections 10(5) and 10(6) respectively of the Act, 1976 read with Section 3 of the Repeal Act, 1999 may be summed up thus:

[1] The Repeal Act, 1999 clearly talks about the possession being taken under Section 10(5) or Section 10(6) of the Act, 1976, as the case may be.

[2] It is a statutory obligation on the part of the competent authority or the State to take possession strictly as permitted in law.

(3) In case the possession is purported to have been taken under Section 10(6) of the Act, 1976 the Court is still obliged to look into whether "taking of such possession is valid or invalidated on any of the considerations in law."

[4] The possession envisaged under Section 3 of the Repeal Act, 1999 is de facto and not de jure only.

[5] The mere vesting of "land declared surplus" under the Act without resuming "de facto possession" is of no consequence and the land holder is entitled to the benefit of the Repeal Act, 1999.

[6] The requirement of giving notice under sub-sections (5) and (6) of Section 10 respectively is mandatory. Although the word "may" has been used therein, yet the word "may" in both the sub-sections should be understood as "shall" because a Court is obliged to decide the consequences that the legislature intended to follow from the failure to implement the requirement.

[7] The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18th March 1999.

[8] The State has to establish by cogent evidence on record that there has been a voluntary surrender of vacant land or surrender land delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10.

53. Thus, it would all depend on the nature of the question of fact. In other words, what is exactly, that the writ court needs to determine so as to arrive at the right decision. If the only issue, that revolves around the entire debate is one relating to actual taking over of the physical possession of the excess land under the provisions of sub-sections (5) and (6) of Section 10 of the Act, 1976 respectively, then in such circumstances, the writ court has no other option but to go into the factual aspects and take an appropriate decision in that regard. The issue of possession, by itself, will not become a disputed question of fact. If all that has been said by the State is to be accepted as a gospel truth and nothing shown by the landowner is to be looked into on the ground that a writ court cannot go into disputed questions of fact, then the same may lead to a serious miscarriage of justice.

54 We are of the considered opinion that the issue as regards taking over of the actual physical possession of the excess land in accordance with the provisions of sub-sections (5) and (6) of Section 10 of the Act, 1976 could be said to be a mixed question of law and fact and not just a question of fact. Mixed question of law and fact refers to a question which depends on both law and fact for its solution. In resolving a mixed question of law and fact, a reviewing court must adjudicate the facts of the case and decide relevant legal issues at the same time. Mixed questions of law and fact are defined "as questions in which the historical facts are admitted or established, the rule of law is resolved and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated[Bausch & Lomb v. Unites States C.I.T. 166, 169 (Ct. Int'l Trade 1997]"

(emphasis added)

38. Recently the Apex Court in the case of **Dalsukhbhai Bachubhai Satasia and others v. State of Gujarat and others, 2026 SCC Online SC 25** while considering the provisions of the Act, 1976 and the Repeal Act, 1999 had held as under:

"18.1 We, therefore, see that the requirement of issuance of notice under Section 10(5) is mandatory and must be issued to the person(s) actually in possession of the concerned land. This is clear from the wording of the statute ("order any person who may be in possession of it"), which are Interpreted by this Court in Hari Ram. This Court opined that the importance of delivering notice lay in avoiding a situation where a person is "dispossessed" without notice which would be in violation of the principles of natural justice, thereby clearly envisioning that the possessor must be served with notice.

19.2 The delivery of notice to the person in possession was therefore unequivocally held to be mandatory. Indeed, the emphasis was on the service of notice on the possessor, as opposed to mere issuance of the same. In the absence of such service of notice, any attempt at forced dispossession was held to be contrary to the statute and hence illegal.

19.3. This Court reiterated the conclusion in Hari Ram, i.e., that if possession has not been taken over by the State Government, then the proceedings under the Act would abate under Section 4 of the Repealing Act. The "mere vesting of the vacant land with the State Government by operation of law, without actual possession, is not sufficient". This Court in AP Electrical phrased the conclusion of Hari Ram in the following manner:

……..

29....To put it in other words, the mere paper possession would not save the situation for the State Government unless the State is able to establish by cogent evidence that actual physical possession of the entire land was taken over by evicting each and every person from the land. The onus is on the State to establish that actual physical possession of the excess vacant land was taken over before the repeal."

22.4. Therefore, as per the provisions of Sections 10(3) and 10(5) of the ULC Act, the subject land, despite having 'vested' (along with acquisition of title or interests) in the State Government, was not in the possession of the Government. Further, possession was not taken by any of the three possible means, i.e., voluntary transfer by the appellants, issuance of notice under Section 10(5) to the appellants followed by peaceful transfer or forceful acquisition of possession under Section 10(6) of the ULC Act. The possession of the land continues with the appellants herein till date.

22.5. Such a scenario is clearly one where the provision of abatement under Section 4 of the Repealing Act applies. The proviso to Section 4 states that the section would not apply to proceedings under Sections 11, 12, 13 and 14 of the ULC Act relating to land that has already been taken possession of by the State Government. Therefore, the proviso has no applicability to the facts at hand and the benefit of abatement under the section would apply wholesale.

` 22.6 That the approach to be had with cases such as the present one is also evident upon a reading of Sections 3 and 4 of the Repealing Act. Clearly, the legislative intent is that in cases where lands were deemed to have been vested but possession was not yet transferred as on date of enforcement of the Repealing Act (such as the present case), the lands were to remain in possession of the private parties. Section 3 (2) of the Repealing Act prescribes the procedure to be followed in

specific types of situations, I.e., where amounts paid by the State Government must be refunded. This is not so in the present case. However, the underlying concepts are clear that vesting and possession are distinct and that without the latter, the private parties have a claim over continuing to be in possession. This is subsequently further emphasised in Section 4 of the Repealing Act, as explained earlier under which proceedings abate as a result."

39. Now if we advert to the facts of the present case on the touchstone of law laid down by the Apex Court, as discussed above, the requirement of giving notice under Section 10 (5) and Section 10 (6) is mandatory. Admittedly in the present case there has been no forceful dispossession under Section 10 (6). As far as the notice under Section 10 (5) is concerned, the respondents claim that the same was served upon Smt. Leelavati, wife of land holder and the petitioners have denied the receipt of the notice, however, the perusal of the notice, annexed as Annexure No C.A-3 to the counter affidavit of respondent no.3- authority reveals that it has not been received by the landholders or any other person on their behalf. It is not the case of either of the parties that the possession memo dated 27.08.1984 issued in pursuance to the notice under Section 10 (5) was served on the land holders although it has been endorsed by two witnesses. Thus, the mandatory requirement of delivery of notice under Section 10 (5) to the petitioners not not been complied with.

40. Although it is vehemently argued on behalf of the respondents that the petitioners and their predecessors were well aware of the proceedings under the Act, 1976 but had never objected to the same and reliance is also placed upon the fact that the notice under Section 11 (8) dated 12.03.1997 was served upon the land holders and time was sought to file objections. We are afraid, even if, the said contention is taken to be correct, the same would be of no assistance to the respondents on two counts; firstly the burden lay upon the respondents to prove that they had taken possession of the land in dispute in accordance with the provisions of the Act, 1976, which the respondents have failed to discharge for reasons above, and secondly even after issuance of notice under Section 11 (8) there is nothing on record to demonstrate that payment of Sandeya Dhanrashi/ compensation has been made to the petitioners. Hence, even if the petitioners were aware of the proceedings under the Act, 1976 the same would not absolve the State of its obligation to have taken the de facto possession of the land in dispute in due accordance with the provisions of the Act, 1976 and to prove the same in the present proceedings.

41. We also cannot lose sight of the fact that the entries in the revenue records were made in the name of the State admittedly sometime in the year 2018 as per own showing of the respondents. We are also aware of the fact that the mutation of entries in the revenue records do not create or extinguish the title over the land nor it has any presumptive value on the title and the revenue entries only enable the person in whose favour mutation is made to pay the land revenue. But at the same time entries in revenue records raise a presumption in regard to possession, but it is beyond any doubt or dispute that such a presumption is rebuttable. The Apex Court in this regard in the case of **State of Haryana & Anr. V. Amin Lal (since deceased) through his L.Rs& Ors.,** decided on 19.11.2024 had held as under:-

"8.2 The plaintiffs relied on jamabandi entries to establish their ownership. The jamabadi for the year 1969-70 (Exhibit P1) records the name of Shri Amil Lal as owner to the

extent of half share. Revenue records are public documents maintained by government officials in the regular course of duties and carry a presumption of correctness under Section 35 of the Indian Evidence Act, 1872. While it is true that revenue entries do not by themself confer title, they are admissible as evidence of possession and can support a claim of ownership when corroborated by other evidence.″

42. Further reliance is placed upon revenue entries being recorded in the name of the State in the mutation register (R-6) on 09.02.1996 is also of little consequence, as it is an outcome of internal papers work between two offices of the State. Further the petitioners or any prudent person would have come to know about the mutation of entries only when the same were recorded in the revenue records and the same was admittedly done in the year 2018.

43. Under the circumstances the revenue entries having continued in the name of petitioners upto the year 2018, a presumption may be drawn that the possession of the land in dispute continued with the petitioners and it is for the respondents to rebut the presumption so made by placing evidence that the possession is with the respondents.

44. In view of above the next question that follows to be decided is as to whether the respondents have been able to prove their possession over the land in dispute at the time of enforcement of the Repeal Act, 1999. Admittedly the land in dispute is comprised in two plots being Khasra No. 773 and Khasra No. 789.

45. As far as the Khasra No. 773 is concerned in the report of the Advocate Commissioner relied upon by the respondents private abadi existing over the same. In the report of the Secretary of the respondent no.3 authority it is stated that the construction of drain, road, etc has been carried out over the said plot and on a part thereof there is an illegal private abadi. The respondent authority in its counter affidavit has also admitted that the petitioner appears to have encroached upon the aforesaid land by raising some unauthorised constructions. We failed to understand as to how the petitioners would have raised constructions over the said plot after the enforcement of Repeal Act, 1999 when the same was in possession of the respondents-authority and a residential scheme was planned over it. Thus, the contention of the respondents holds little water, moreso when private abadi is situate over the said plot. Even in the photographs of the aforesaid plot relied upon by the respondents houses and shops along with road are shown to be existing over the same. Under the circumstances, it cannot be said that the respondents are in possession of the land comprised in Gata No. 773 and it is beyond doubt that private abadi is existing over the same.

46. As far as the Gata No. 789 is concerned in the report of the Advocate Commissioner relied upon by the respondents Moradabad Delhi Bypass, passes over the said plot, besides chambers of sewer line and high tension lines passing over the same. Further in the report of the Secretary of the respondent authority construction of drain, road, etc has been carried out over the said plot. Further in the photographs relied upon by the respondents vacant plot of land is shown to be existing over the said plot with high tension lines with no development work in the shape of roads, drain, etc existing over the same and in its vicinity. Further in the photographs relied upon by the petitioner of the very same plot, crops are shown to be standing over the same. Hence, it is beyond doubt that

no development has taken place over the Gata No. 789 as alleged by the respondents and agricultural activities are being carried out over the same.

47. Thus for the reasons detailed above, the respondents have failed to prove that they are in possession of the land in dispute, in fact the respondents have failed to establish a prima facie case to demonstrate that the are in possession of the land in dispute.

48. Another question raised before us and vehemently argued on behalf of the respondents that the present writ petition is liable to be dismissed solely on the ground of delay the petitioners having approached this Court after a delay of about 30 years after the land was declared to be vacant surplus and after about 25 years since the possession of the land was taken over by the respondents.

49. Before we consider the factual aspects of the controversy in respect to delay the respondents amongst others have heavily relied upon the law laid down by the Apex Court in the case of **State of Assam v. Bhaskar Jyoti Sarma 2015 (5) SCC 321** in that regard. The law laid down by the Apex Court in the said case came to be considered in the case of **Dalsukhbhai Bachubhai Satasia (supra)** wherein the Apex Court had held as under:-

19.5. This Court in AP Electrical examined a prior decision of this Court in State of Assam v. Bhaskar Jyoti Sarma, (2015) 5 SCC 321 ("Bhaskar Jyoti Sarma"), since it appeared to "at the first blush create an impression that the dictum as laid In Hari Ram has been diluted". It assessed the effect of Bhaskar Jyoti Sarma on the dictum on Hari Ram as follows.

"33. We quote few relevant paras of the said judgment as under:

XXX

15. The High Court has held that the alleged dispossession was not preceded by any notice under Section 10(5) of the Act. Assuming that to be the case all that it would mean is that on 7th December, 1991 when the erstwhile owner was dispossessed from the land in question, he could have made a grievance based on Section 10(S) and even sought restoration of possession to him no matter he would upon such restoration once again be liable to be evicted under Sections 10(5) and 10(6) of the Act upon his failure to deliver or surrender such possession. In reality therefore unless there was something that was inherently wrong so as to affect the very process of taking over such as the identity of the land or the boundaries thereof or any other circumstance of a similar nature going to the root of the matter hence requiring an adjudication, a person who had lost his land by reason of the same being declared surplus under Section 10(3) would not consider it worthwhile to agitate the violation of Section 10(5) for he can well understand that even when this Court may uphold his contention that the procedure ought to be followed as prescribed. It may still be not enough for him to retain the land for the authorities could the very next day dispossess him from the same by simply serving a notice under Section 10(5). It would, in that view, be an academic exercise for any owner or person in possession to find fault with his dispossession on the ground that no notice under Section 10(5) had been served upon him.

16. The issue can be viewed from another angle also. Assuming that a person in possession could make a grievance, no matter without much gain in the ultimate analysis, the question is whether such grievance could be made long after the alleged violation of Section 10 (5). If actual physical possession was taken over from the erstwhile land owner on 7th December, 1991 as is alleged in the present case any grievance based on Section 10 (5) ought to have been made within a reasonable time of such dispossession. If the owner did not do so, forcible taking over of possession would acquire legitimacy by sheer lapse of time. In any such situation ther owner or the person in possession must be deemed to have waived his right uner Section 10 (5) of the Act. Any other view would, in our opinion, give a license to a litigant to make a grievance not because he has suffered any real prejudice that needs to be redressed but only because the fortuitous circumstances of a Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure.

17. Reliance was placed by the respondents upon the decision of this Court in Hari Ram's Case (supra). That decision does not, in our view, lend much assistance to the respondents. We say so, because this Court was in Hari Ram's case (supra) considering whether the work 'may' appearing in Section 10 (5) gave to the competent authority the discretion to issue or not to issue a notice before taking physical possession of the land in question under Section 10 (6). The question whether breach of Section 10 (5) and possible dispossession itself or render it non est in the eyes of law did not fall for consideration in that case. In our opinion, what Section 10 (5) prescribed is an ordinary and logical course of action that ought tobe followed before the authorities decided to use force to dispossess the occupant under Section 10(6). In the case at hand if the appellant's version regarding dispossession of the erstwhiel owner in December 1991 is correct, the fact that such dispossession was without a notice under Section 10(5) will be of no consequence and would not vitiate or obliterate the act of taking possession for the purposes of Section 3 of the Repeal Act. That is because Bhabadeb Sharma-erstwhile owner had not make any grievance based on breach of Section 10 (5) at any stage during his lifetime implying thereby that he had waived hig right to do so.

(Emphasis supplied)

34. We have supplied emphasis on paras 15 and 17 of Bhaskar Jyoti Sharma (supra) referred to above, for the purpose of highlighting that Hari Ram (supra) has not been diluted in any manner. We are of the firm view that Hari Ram (supra) holds the field even as on date. The statements of law in Hari Ram (supra) are absolutely correct.

35. If two decisions of this Court appears inconsistent with each other, the High Courts are not to follow one and overlook the other, but should try to reconcile and respect them both and the only way to do so is to adopt the wise suggestion of Lord Halsbury given in Quinn v. Leathem,[1901] A.C. 495 and reiterated by the Privy Council in Punjab Cooperative Bank Ltd. v. Commr. of Income Tax, Lahore AIR 1940 PC 230:

"..... every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions, which may be found there, are not intended to be expositions of the whole law, but governed or qualified by the particular facts of the case in which such expressions are to be found. and follow that decision whose facts appear more in accord with those of the case at hand."

20. We are inclined to agree with this view of this Court in AP Elettrical regarding the effect of Bhaskar Jyoti Sarma on the dictum in Hari Ram. In the former, de facto possession had actually been transferred to the State Government. Albelt, this was done by force in contravention of the requirement to mandatorily issue notice under Section 10(5) of the ULC Act. In this regard, this Court held that if the objection regarding the non-compliance with Section 10(5) is not made within a "reasonable time", then the right to so object is "waived".

20.1. However, the facts of Hari Ram (and indeed, the present case) are different insofar as de facto possession was not transferred, by force or otherwise. Therefore, the question is not whether an actual transfer of possession by force is vitiated by a delay in raising objections to the transfer. Rather, the question is whether actual possession has been transferred at all, if no process of transfer has been conducted under the various provisions of Section 10 of the ULC Act. Therefore, the dictum in Hari Ram stands undisputed by the judgment in Bhaskar Jyoti Sarma.

20.4. We find that this view is in accordance with the prior dictum of this Court in Hari Ram, and agrees with the same. At this juncture, we find it appropriate to briefly go through certain other pronouncements of this Court, all of which are aligned on the necessity of serving notice on the possessor under Section 10(5); the difference between vesting and possession" the difference between de jure and de facto possession and the effect of the Repealing Act."

50. Now we advert to the question of delay in view of observations made above, for the reasons above we have already held that the notice under Section 10 (5) and the possession memo was not served upon the petitioners or his predecessors. Further even if the notice under Section 11 (8) was served upon the land holders on 22.03.1997, we cannot lose sight of the fact that the Act, 1976 was repealed in the State on 18.03.1999 and till then or thereafter no payment of Sandeya Dhanrashi/ compensation was made to the petitioners. It has also been concluded that the respondents have failed to prove their possession over the land in dispute. Further as per the own showing of the respondents entries in the revenue records were mutated in the name of the State in the year 2018.

51. Under the circumstances, there is no reason to disbelieve the contention of the petitioner that it was only when the respondents had started interfering in the possession of the petitioners that the petitioner had approached the Competent Authority-respondent no.2 and had subsequently filed the present writ petition in the year 2010.

52. Thus, in view of the above, it cannot be held that there has been delay on the part of the petitioners in approaching this Court in view of the fact that the petitioners continued to remain in possession of the land in dispute prior to and after the enforcement of the Repeal Act, 1999 and revenue entries also remained in the name of the petitioners and the petitioners approached this Court shortly after their possession was sought to be disturbed.

53. Further the respondents have placed reliance upon the judgment of Coordinate Benches of this Court where the land in question was similarly situated in village Sonakpur, District Moradabad and was transferred by the State to Moradabad Development Authority after culmination of proceedings under the Act, 1976. However, we find that the facts of the cases so relied upon by the respondents are clearly distinguishable.

54**. In Writ C No. 1106 of 2010 (Kailash and another Vs. State of U.P. and others)** decided on 01.06.2012, the descendants of the original land holder had sold their shares in the remaining land in question, which was left out of the proceedings under the Act, 1976 and in the sale deed it was clearly shown that ceiling land was situated adjoining the land so transferred and the aforesaid land admittedly belonged to the petitioners and was a subject matter of proceedings under the Act, 1976.

55. Similar was the case in **Writ -C No. 20035 of 2013 (Polu & 2 tohers V. State of U.p. & another)** decided on 03.11.2016 and Writ-C No. 20578 of 2013 (Naresh & another v. State of U.P. & another) decided on 17.1.2016, whereto, the descendants of the original tenure holder had transferred the remaining area of the land in question, left out of the proceedings under the Act, 1976 to Moradabad Development Authority.

56. Further, in **Writ-C No. 58850 of 2013 (Babu and others v. State of U.P and others)** decided on 21.12.2016, the remaining land of the petitioners, left out of the proceedings under the Act, 1976, was acquired by the Moradabad Development Authority under the provisions of Land Acquisition Act, 1894. In the said circumstances, this court was of the view that the possession of the land in question declared vacant surplus under the Act, 1976 had already been transferred to the State.

57. However, in the present case, we find that the remaining land of the petitioners left out of the proceedings under the Act, 1976 was neither purchased nor acquired by the respondent no. 3 authority. Moreover in the present case as duly admitted by the respondents the land in dispute was recorded in the name of State sometime in the year 2018 during the pendency of the present writ petition. Hence, we are of the view that the facts and circumstances of the present case are clearly distinguishable from those relied upon by the respondents and as such the respondents would not be entitled to any benefit of the judgments so relied upon.

58. Hence, in view of above as far as the question of the respondent having de facto possession of the land in dispute, the burden lay upon the respondent to prove the same. However, we are afraid that the respondents have utterly failed to discharge the burden. Besides the respondents have also failed to establish that there has been a voluntary surrender of vacant land, hence, under the circumstances, the petitioners are very well within their rights to claim the benefit of Section 4 of the Repeal Act, 1976.

59. The respondents have vehemently stressed upon the fact that the present writ petition is liable to be dismissed solely on the ground of delay in approaching this Court, however, we are of the view that the question involved in the present case is whether actual possession has been transferred at all to the respondents or not and if no process of transfer has been conducted under the various provisions of Section 10 of the Act, 1976 and the respondents have also failed to establish their possession over the land in dispute, then in such a case, the law relied upon by us in the case of **Hari Ram (supra), A.P. Electricial Equipment Corporation (supra) and Dabukhbahi Bachubhai Sateria (supra)** would be applicable in the present case.

60. Thus, in view of the above the present writ petition is allowed.

61. No order as to costs.

(2026) 5 ILRA 1574
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.05.2026

BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE KUNAL RAVI SINGH, J.

Writ C No. 36811 of 2024

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

Issue for Consideration

(I) Whether the writ petition is liable to be dismissed on the ground of alternate remedy of revision under Section 41(3) of the Act, 1973 ?
(II) Whether the impugned order dated 01.06.2024 and the report dated 16.08.2024 suffer from the vice of colourable exercise of power by the Authority which requires a judicial review by the Court ?
(III) Whether the permission granted to the respondent no. 6 is in accordance with the Building byelaws, the Zonal regulations and others laws/ regulations and needs no interference by this Court?

Headnotes

U.P. Urban Planning and Development Act, 1973 – ss.13, 14, 15, 41(3) – Constitution of India – Art.226 – Land use conversion – Residential land sought to be used for nursing home – Respondent no.6 applied for change of land use – Petitioner raised objection to the proposed conversion – Secretary, Meerut Development Authority, by order dated 01.06.2024, rejected petitioner's objection – Chief Town Planner submitted report dated 16.08.2024 regarding permission/compounding of construction – Constitution of India – Art.226 – Alternate remedy – Maintainability and entertainability of writ petition – Distinction between maintainability and entertainability – No colourable exercise of power by Authority – Impugned order dated 01.06.2024 and report dated 16.08.2024 did not suffer from any illegality requiring judicial review :

Held: Since the petitioner challenged the jurisdiction of the Authority to change the land use, the question involved a pure question of law – Writ petition held maintainable, despite the alternate remedy of revision u/s.41(3), for examining whether the Authority had committed any jurisdictional error – Pleadings having been exchanged and interim order having been granted in favour of the petitioner and continuing, the writ petition was entertainable and could not be dismissed on the ground of alternative remedy of revision under s.41(3) of the Act, 1973 – On merits, application for change in land use from residential to nursing home processed in accordance with law and Government Order dated 13.10.1998 – Meerut Master Plan 2031 permitted nursing homes in residential areas subject to prescribed conditions – Road being 36 metres wide against prescribed width of 12 metres and plot area being above minimum requirement of 300 sq. metres, conditions fulfilled – Building Byelaws, 2008 and Zoning Regulations permitted nursing home in residential areas subject to prescribed conditions – Petitioner failed to establish any prohibition against nursing home in the Zoning Regulations – Government Order dated 13.10.1998 not superseded by the 2014 Rules – Contention that

amendment of Master Plan or Zonal Plan was necessary rejected – No colourable exercise of power or illegality in the decision-making process requiring judicial review – Board resolution dated 10.06.2024 and subsequent permission dated 12.09.2024 having not been challenged, no interference warranted. Writ petition dismissed. (E-5)

[Paras 24-26, 40-47, 50-54]

Case Law Cited

Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others, (1998) 8 SCC 1;
M/s Radha Krishan Industries v. State of Himachal Pradesh and Others, AIR 2021 SC 2114;
M/s Godrej Sara Lee Ltd. v. Excise and Taxation Officer-Cum-Assessing Authority and Others, 2023 INSC 1992;
L. Hirday Narain v. Income-Tax Officer, Bareilly, AIR 1971 SC 33;
Durga Enterprises (P) Ltd. and Another v. Principal Secretary, Government of U.P. and Others, (2004) 13 SCC 665;
Roshan Lal v. State of Uttar Pradesh and Others, Special Appeal No. 1519 of 2009;
Anand Kumar Sharma v. State of U.P. and Others, (2014) 2 ADJ 742 (FB);
Ganga Charan Aryawardhan Hospital v. State of U.P. and Others, 2023 (1) ADJ 273;
R.K. Mittal v. State of U.P. and Others, (2012) 2 SCC 232;
Chairman and Chief Executive Officer, NOIDA Authority and Another v. Mange Ram Sharma (Dead) through LRs and Another, (2012) 7 SCC 65;
Rajendra Kumar Barjatya and Another v. U.P. Awas Evam Vikas Parishad and Others, 2024 INSC 990;
Bimalendu Pradhan v. State of Orissa, Contempt Petition (C) No. 595 of 2025 in Civil Appeal No. 14604 of 2024;

List of Acts

Constitution of India, 1950;
U.P. Urban Planning and Development Act, 1973;
U.P. Urban Planning and Development (Assessment, Levy and Collection of Land Use Conversion Charges) Rules, 2014;
U.P. Building Construction and Development Byelaws, 2008**, as amended in 2023;**
Compounding Byelaws, 2009;
Model Building Construction and Development Byelaws and Model Zoning Regulations for Development Authorities of Uttar Pradesh, 2025;
Meerut Master Plan, 2031 — Chapter XI (Zoning Regulations).

List of Keywords

Land use conversion — Residential to Nursing Home — U.P. Urban Planning and Development Act, 1973 — ss.13, 14, 15 and 41(3) — Alternative remedy — Maintainability — Entertainability — Jurisdictional error — Judicial review — Colourable exercise of power — Master Plan — Zonal Plan — Zoning Regulations — Building Byelaws — Nursing Home in residential area — Compounding of construction — Non-compoundable construction — Government Order dated 13.10.1998 — Land use conversion charges — Objections and hearing — Board approval — Meerut Master Plan 2031 — Article 226.

Case Arising From

Petition arising out of the orders dated 01.06.2024 passed by the Secretary, Meerut Development Authority, rejecting the petitioner's objection to conversion of land use from residential to Nursing Home, and dated 16.08.2024 passed by the Chief Town Planner, Meerut Development Authority.

Appearances for Parties

Advs. for the Petitioner: Vinod Singh
Advs. for the Respondents: Jagannath Maurya, Abhijit Chatterji, Aman Arya, Ashish Kumar Singh, C.S.C., Diptiman Singh, Manish Dubey, Shiv Prakash Gupta, Swetashwa Agarwal

(Delivered by Hon'ble Kunal Ravi Singh, J.)

[1] Heard Sri S.D. Singh and Sri Vinod Kumar Singh, learned counsels for the petitioner, Sri Ajit Singh Rana, Additional Chief Standing Counsel for respondent No. 1 and Sri Sri J.N. Maurya along with Sri Shiv Prakash Gupta, learned counsels for respondent No. 2 to 5 and Sri Ashish Kumar Singh, learned Senior Advocate assisted by Sri Diptiman Singh, learned counsel for respondent No. 6. Learned counsel for the respective parties have filed their written submissions, which are taken on record.

[2] The present writ petition has been filed for the following reliefs :-

(i) Issue a suitable writ, order or direction in the nature of certiorari quashing the impugned order dated 01.06.2024 passed by Secretary, Meerut Development Authority, Meerut and 16.08.2024 passed by Chief Town Planner, M.D.A., Meerut (Annexure No.1 to this writ petition).

(ii) Issue a suitable writ, order or direction in the nature of mandamus commanding the respondent authorities not to give effect to the impugned order referred to above and stay its effect and operation and all further proceedings consequent thereupon during the pendency of the writ petition.

(iii) Issue any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

(iv) Award cost of petition in favour of the petitioner."

FACTS :

[3] The present dispute relates to plot no. B-167 situated at Saket, District - Meerut admeasuring 1500 sqm whose owner is respondent no. 6. The genesis of the dispute is the construction permission granted by Meerut Development Authority from residential use to development of a Nursing Home.

[4] The land was initially acquired by The Meerut Housing Cooperative Society Ltd. by means of Gazette dated 12.02.1949. The Society thereafter converted the acquired land into plots for sale to its members. Ultimately the said plot came to be sold to the respondent no. 6 by means of a sale deed dated 24.01.1985.

[5] The respondent no. 6, who became the owner and in possession of the Plot No. B-167, made an online application dated 16.04.2019 for sanction of map for commercial/ Nursing Home over the said plot under Section 15(1) of the U.P. Urban Planning and Development Act, 1973 (*hereinafter referred to as 'the Act, 1973'*). The said application being registered as MAP20190416171344243, came to be rejected by the Authority on 20.07.2019 due to lack of essential No Objection Certificates. The rejection order was communicated to respondent no. 6 by means of letter dated 08.08.2023.

[6] Thereafter, the respondent no. 6 again filed an online application dated 01.10.2020 for sanction of map for the purpose of residential construction over the said plot. The said application

bearing no. MDA/BP/20-21/0076, was allowed on 28.01.2021 with certain conditions. Before the application was filed, the respondent no. 6 had obtained NOC from the Society on 17.07.2020.

[7] The petitioner thereafter made various complaints to different authorities with regard to violation of the sanctioned map. The initial grievance of the petitioner was mainly on the ground that the construction being carried out was in violation of the sanctioned map.

[8] In pursuance of the complaint filed by the petitioner that the construction, being carried out in violation of the sanctioned maps, the show cause notice under Section 26, 27 and 28 of the Act, 1973 was issued to respondent no. 6 and thereafter by means of an order dated 07.07.2023, the construction was sealed under the orders of the Authority.

[9] In the meantime, an application was filed by the son of the respondent no. 6 to the Additional Housing Commissioner, Lucknow on the ground that the NOC has not been provided by the Society despite the fact that several commercial activities were being carried out in the Society. The application came to be allowed by means of order dated 31.10.2023 granting NOC to the respondent no.6 for commercial activities. The order dated 31.10.2023 was challenged before co-ordinate Bench of this Court in Surendra Pal Singh vs. State of U.P. and others. The said writ petition was allowed by means of order dated 19.03.2024 and the order dated 31.10.2023 was set aside by this Court.

[10] The respondent no. 6 thereafter, filed an application dated 02.12.2023 for compounding the map sanctioned on 28.01.2021 from residential to nursing home. A reminder dated 19.12.2023 was also sent to the Authority with the same prayer.

[11] The respondent no. 6 on 14.02.2024 made another request for changing the land use from residential to nursing home on the basis of Government Order dated 13.10.1998. In the said application it was prayed that the land use be converted and thereafter the compounding with regard to the construction be done.

[12] In pursuance of the Government Order dated 13.10.1998, advertisements dated 09.03.2024 were made in the daily newspapers with regard to land use conversion from residential to nursing home. Objections were invited within a period of one month from the date of publication. In pursuance of the publications, a single objection of the petitioner was received by the Authority dated 23.03.2024. A notice dated 09.05.2024 was issued to the petitioner for a hearing on the objections.

[13] Ultimately by means of order dated 01.06.2024, the Authority rejected the objection of the petitioner. The relevant extract of the order dated 01.06.2024 is as follows :

"उभय पक्षों द्वारा प्रस्तुत अभिकथनों/ तर्कों/साक्ष्यों एवं पत्रावली पर उपलब्ध अभिलेखों का अनुशीलन किया गया एवं प्रकरण का गहनता से परीक्षण किया गया। प्रकरण में नगर नियोजक से विधिसंगत आख्या देने देने की अपेक्षा की गई। नगर नियोजक द्वारा दी गई आख्या दिनांक 01.06.2024 मे

उपबन्ध दर्शित करते हुए अंकित है कि भवन निर्माण एवं विकास उपविधि 2008 (यथा संशोधित 2023) के अध्याय-6 के अनुसार आवासीय क्षेत्र में नर्सिंग होम के लिए भूखण्ड का न्यूनतम क्षेत्रफल 300 वर्ग मी० होगा, जो न्यूनतम 12 मी० चौडे विद्यान मार्ग पर स्थित होगा, जिसका न्यूनतम फ्रन्टेज 12 मी० होगा। प्रश्नगत भूखण्ड का क्षेत्रफल 1284.00 वर्ग मी० में से 36.00 मी० मुख्य मार्ग के अन्तर्गत भूखण्ड हेतु रोड वाईडिंग एरिया छोडने के उपरान्त नेट भूखण्ड क्षेत्रफल 1229.07 वर्ग मी० है। प्रश्नगत भूखण्ड साकेत आवासीय कालोनी के स्वीकृत तलपट मानचित्र के अन्तर्गत 36.00 मी० चौडे मुख्य मार्ग पर स्थित है, जिससे स्पष्ट है कि प्रश्नगत भूखण्ड पर नर्सिंग होम किया अनुमन्य किया जाना नियमसंगत है। उक्त भूखण्ड पर नर्सिंग होम क्रिया अनुमन्य किये जाने से पूर्व उ०प्र० शासनादेश संख्या- 2438/9-आ-3-98-60 एल. यू. सी/96 दिनांक 13.10.1998 के प्राविधानों के अनुसार प्राधिकरण बोर्ड से प्रश्नगत भूखण्ड का भू-उपयोग परिवर्तन करते हुए नर्सिंग होम को अनुमन्य किये जाने से साकेत कालोनी के तलपट मानचित्र पर कोई विपरीत प्रभाव नही पडेगा तथा मानचित्र स्वीकृति हेतु सोसायटी से अनापत्ति प्राप्त करने का कोई प्राविधान नहीं है एवं कोई भी विधिक बाधा नही है तथा न ही नियमों के विपरीत है।"

[14] The order dated 01.06.2024 was sent to the Board of the Authority for approval and by means of resolution dated 10.06.2024, the conversion of usage of land was allowed from residential to nursing home. The records reflect that the resolution of the Board remained unchallenged in the writ petition.

[15] After the resolution of the Board, the petitioner filed a complaint dated 20.06.2024 to the Chairman, Meerut Development Authority with regard to the application filed by respondent no. 6 for land use conversion and compounding. A report was called from the Vice Chairman, MDA by the Chairman in pursuance of which a report was submitted by the Chief Town Planner to the Vice Chairman, MDA on 24.06.2024 which stated that the land use conversion was carried out as per the procedure detailed in Government Order dated 13.10.1998. The Vice Chairman, MDA replied to the Chairman on 04.07.2024 stating that the allegation made by the petitioner in the application are incorrect. The land use conversion was done in accordance with law. The record does not indicate that any order was passed by the Chairman in pursuance of the reports of the Vice Chairman, MDA.

[16] By means of order dated 16.08.2024, a relief was given to the respondent no. 6, who was directed to comply with certain conditions and also to demolish the non-compoundable area of 206.25 sqm. Thereafter the sealed premises were de-sealed by means of order dated 31.08.2024 of the Vice Chairman, MDA.

[17] Once the land use conversion was allowed, the application for compounding was processed and the compounding map was allowed by permission dated 12.09.2024 along with certain conditions. The Condition no. 3 specifically mention that uncompoundable part of 206.25 sqm. will be demolished by the respondent no. 6 at her own cost. The said demolition was ultimately carried out and a compliance affidavit was filed on behalf of the Authority with regard to the demolition.

[18] The petitioner being aggrieved by the order dated 01.06.2024 and the order dated 16.08.2024 filed the present writ petition. However, the petitioner did not challenge the permission granted by the Authority dated 12.09.2024 even though the writ petition was filed after the grant of permission.

PETITIONER'S SUBMISSION:

[19] Learned Counsel on behalf of the petitioner made the following submissions to challenge the impugned orders :

(i) The Authority has acted in contravention of the Act, 1973 under the garb of the Government Order dated 13.10.1998 which is inconsistent with the provision of change in land use under Section 13 of the Act, 1973.

(ii) The land use conversion in a development area is possible only after amendments in the Master and Zonal Plans of the area. The impugned order has been passed upon the misconstruction of Building Byelaws, 2008 keeping aside the procedure as envisaged in the Act, 1973.

(iii) The provision of chapter VI of the U.P. Building Construction and Development Byelaw-20086 have been misconstrued as the permission for the nursing home has to be in accordance Master Plan Zoning Regulations. Since the area is purely residential hence clause 6.1 of chapter 6 cannot be used for the purpose of construction of a nursing home.

(iv) The U.P. Urban Planning and Development (Assessment, Levy and Collection of Land Use Conversion Charges) Rules, 20147 supersede the Government Order dated 13.10.1998 and the procedure prescribed in the 2014 Rules states that land use conversion can only be made as a result of amendment of master Plan and Zonal Plan under Section 13 of the Act.

(v) Compounding is prohibited under clause 16.3.2 of the Building Construction and Development Byelaws, 2025 (Regulations, 2025).

RESPONDENT Nos. 2 to 5 SUBMISSIONS:

[20] Learned counsel on behalf of respondent 2 to 5 made the following submission to refute the arguments advanced by the petitioner's counsel:

(i) The impugned order is in accordance with law and the same was passed after applying the due process of law.

(ii) The first application of respondent no. 6 was rejected as the NOCs from various authorities were not produced with the application. Thereafter on the basis of a fresh application, sanction was granted for residential purpose. Once it was found that the construction was in violation of the sanctioned map, the construction was sealed after giving due notice.

(iii) The land use conversion and the compounding thereafter were done following the due process of law. The land use conversion was done as per the powers given in Government order dated 13.10.1998 and after following the due process given therein. There is no illegality in the same. The compounding was allowed after demolition of the non-compoundable area of the construction.

(iv) The sanction to construct the nursing home changing the land use from residential to nursing home is allowed as per the provisions of Chapter of the Building Byelaws. The Zoning regulations under chapter 11 of the Meerut Master Plan 2031 (revised), which came into force on 09.02.2026, permit the construction of a nursing home subject to the conditions imposed in the chapter.

(v) The Authority is well within its rights to change the land use as per the provisions of the Government Order dated 13.10.1998 and the Authority is well within its jurisdiction to change the land use of the plot in the approved colony without referring the matter to the Government.

(vi) The 2014 Rules do not supersede the Government order dated 13.10.1998 and the Government order still holds the field.

(vii) The land use conversion has not changed the layout plan of the Colony and hence the permission does not suffer from any illegality.

RESPONDENT No. 6 SUBMISSIONS:

[21] Learned Advocate on behalf of respondent no. 6 made the following submission to refute the arguments advanced by the petitioner′s counsel:

(i) The entire process of conversion of land use and then compounding of the map has been done in accordance with law and there is no illegality with the same.

(ii) The land use conversion and subsequent compounding were done on the basis of applications filed by respondent no. 6 in light of Government Order dated 13.10.1998. the Government order dated 13.10.1998 specifically allowed the Authority to carry out change in land use subject to the condition that there is no change in Master Plan or the Zonal Plan. The conversion of land use was allowed on the basis of Government Order No. 2438/9-A-3-98-60 LUC/96 dated 13.10.1998.

(iii) The map was sanctioned after inviting objections through publication in two national daily newspapers. The petitioner was the only Objector and his objections, were taken into consideration and examined before passing of the order dated 1.06.2024. Hence, the order dated 1.06.2024 is a reasoned and speaking order passed in accordance with law.

(iv) As per the Building Byelaws, 2008 Nursing home was permitted in residential areas subject to the condition that the minimum area is more than 300 sqm which is situated on a minimum 12-meter-wide road with 12 meter frontage. The plot of respondent no. 6 is 1229.07 sqm

after leaving the required frontage and is situated on a 36 meter wide road. Hence there is no violation of any condition of chapter 6 of the building Byelaws.

(v) The Uttar Pradesh Urban Planning and Development (Assessment, Levy and Collection of Land Use Conversion Charges) Rules, 2014 were made superseding six Government Orders. However, the G.O. No. 2438/9-A-3-98-60 LUC/96 dated 13.10.1998 has not been superseded by the aforesaid Rules and any subsequent Government Notification. Therefore, the Government Order dated 13.10.1998 still holds good and governs the field.

(vi) Meerut Development Authority in its 126th Board Meeting approved the proposal for conversion of land use from residential to Nursing home (Public Utility), after taking into consideration the only objection that was raised by the Petitioner. The same has not been challenged by the petitioner hence, the approval granted by the Board has attained finality. The petition is liable to be dismissed on this ground alone.

(vii) The permission granted by the Authority dated 12.09.2024 has not been challenged. Without challenge to the permission dated 12.09.2024, the earlier order dated 01.06.2024 cannot be challenged.

(viii) The construction of the concerned Nursing Home and sanction of map are in consonance with the Model Building Construction and Development Byelaws and Model Zoning Regulations for Development Authorities of Uttar Pradesh, 2025 (in short ‘2025 Regulations’). Construction of the Nursing home on the above-mentioned Plot is permissible under the Model Building Construction and Development Byelaws.

(ix) The orders dated 1.06.2024 and 16.08.2024 have two parts whereby not only the map has been sanctioned but the non-compoundable portion admeasuring 206.25 sq. mtrs was also directed to be demolished. Therefore, in compliance of the order passed by the Hon'ble Court vide its order dated 11.03.2025, the answering respondent has demolished the objectionable structure and removed it from the site which was evident from the copy of the certificate issued by the Enforcement Officer of the Development Authority dated 7.03.2025.

(x) The petitioner has an efficacious alternative remedy u/s 41(3) of the Uttar Pradesh Urban Planning and Development Act, 1973, therefore, the present writ petition deserves to be dismissed on the sole ground of alternative remedy. Serious disputed questions of facts are involved in the present matter, the same can be adjudicated in proceedings u/s 41(3) of The Uttar Pradesh Urban Planning and Development Act, 1973.

[21] Mr. Ajit Singh Rana, learned Additional Chief Standing Counsel appearing for respondent no. 1 has adopted the arguments made on behalf of respondent no. 2 to 6. He has submitted that the impugned order suffers from no illegality and as such, no interference is required in the impugned order.

[22] We have heard the rival submissions and perused the records of the case. On the basis of the submission and records annexed, the following points of determination are framed for adjudication of the dispute :

POINTS OF DETERMINATION :

[23] The points of determination are as follows :-

(I) Whether the writ petition is liable to be dismissed on the ground of alternate remedy of revision under Section 41(3) of the Act, 1973?

(II) Whether the impugned order dated 01.06.2024 and the report dated 16.08.2024 suffer from the vice of colourable exercise of power by the Authority which requires a judicial review by the Court?

(III) Whether the permission granted to the respondent no. 6 is in accordance with the Building byelaws, the Zonal regulations and others laws/ regulations and needs no interference by this Court?

DISCUSSION:

[24] Before proceeding further into the matter, it is necessary that the question of maintainability of the writ petition be addressed. The petitioner has challenged the order dated 01.06.2024 passed by the respondent no. 2 rejecting the objection to the sanction granted for conversion of land use and further directions for compounding of the construction. The Act, 1973 is a complete code in itself which provides exhaustive remedies against any order/ actions of the Authority. Section 14 and 15 of the Act, 1973 deal with development and usage of the land in notified/developed areas and applications for sanction of maps respectively. Though in the present case, the sanction for land use conversion has been done under the Government Order dated 13.10.1998, but further permission has to be obtained under the powers derived under Section 14 and 15 of the Act. Section 15(5) of the Act, 1973 provides for an appeal to the Chairman upon rejection of permission but does not provide any right of appeal to a third party upon sanction of the permission. However, Section 41 of the Act, 1973 gives power to the State Government to review the orders passed by the Authority. Section 41(3) empowers the State Government to call for the records on its own or on an application made by the aggrieved party for the purpose of satisfying itself as to the legality or propriety of any order or direction.

[25] It is apparent that the petitioner did not file any application for revision of the order dated 01.06.2024 before the State Government. The order dated 01.06.2024 has been challenged in the writ petition on the ground that the Authority did not have any jurisdiction to change the land use by placing reliance upon the Government order dated 13.10.1998. Further submission regarding lack of jurisdiction is on the basis of there being no change in the Master Plan or the Zonal Plan. It is to be kept in mind that the bar of alternate remedy is not an absolute bar. The Supreme Court in the case of ***Whirlpool Corporation vs Registrar Of Trade Marks, Mumbai & Ors***; held that the bar would not be applicable in the following cases:

(a) where the writ petition seeks enforcement of any of the fundamental rights,
(b) where there is a violation of principles of natural justice,
(c) where the order or the proceedings are wholly without jurisdiction;
(d) where the vires of an Act is challenged.

Thereafter in ***M/S Radha Krishan Industries vs The State of Himachal Pradesh***;, the Supreme Court held that:

"26.....
The principles of law which emerge are that:
(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;
(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;
(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;
(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;
(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and
(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

In ***M/S Godrej Sara Lee Ltd. v. The Excise and Taxation Officer-Cum-Assessing Authority & Ors***., the Supreme Court has again reiterated the above principles.

[26] In the present case, the petitioner has challenged the jurisdiction of the Authority to change the land use. Therefore, what was contented before us is that the entire proceeding stood vitiated as the order granting sanction was without jurisdiction. Before deciding the preliminary objection, what needs to be seen is the concept of 'maintainability' and 'entertainability' of the writ petition. Both the concepts are different. Even though a writ petition may be maintainable on the basis of the exceptions stated above, it may not be entertainable on various other grounds including a ground of disputed question of fact. Ordinarily when the question of jurisdiction is raised, it involves a pure question of law and the Courts ought not refuse to entertain the writ petition as the dispute with regard to the question of law would be an exception to the statutory remedy and its bar. In the present case the writ petition would be maintainable before this Court as a question of law with regard to jurisdiction of the Authority to change the land use has been raised. The writ

petition would be maintainable to see whether the Authority committed any jurisdictional error in its actions.

As to the question of entertainability of the writ petition, learned counsel for the respondents submitted that the petition involves questions of fact which the State Government in its revisional powers can look into and rectify, if need be. From a perusal of the records, it appears that this Court vide its order dated 21.11.2024 had granted time to the respondents to file their respective counter affidavit and also granted an interim order directing respondent no. 6 not to raise any construction. The order is reproduced below:

"1. In pursuance of previous order, Sri J.N. Maurya is in receipt of instructions from the Development Authority. He states that on the previous occasion the building plan was not approved as the required No Objection Certificate was not furnished. Since, respondent no. 6 had moved fresh application annexing therewith No Objection Certificate from all the authorities and therefore, the building plan was considered afresh, he therefore submits that there is no illegality in the impugned order.

2. Learned counsel for the petitioner vehemently submits that when the petitioner approached this Court by filing Writ C No. 3619 of 2024 in the past, a Co-ordinate Division Bench by order dated 19.03.2024 quashed the No Objection Certificate dated 31.10.2023 and returned the following finding:-

"10. Upon hearing learned counsel for the parties, we are satisfied that the No Objection Certificate is an attempt to circumvent the proceedings which are stated to be pending against the 6th respondent for having raised constructions contrary to the sanctioned map.

11. Moreover since no power whereunder the impugned No Objection Certificate would have been issued in the facts and circumstances of the case would be pointed out, we have no option but to allow this writ petition and quash the No Objection Certificate dated 31.10.2023. The No Objection Certificate is also liable to be quashed because it modifies/reviews an earlier No Objection Certificate granted by the 2nd respondent, in pursuance whereof, a map for construction of a residential building had been sanctioned by the Development Authority."

3. Sri Diptiman Singh, learned counsel appearing for the respondent no.6 submits that respondent no.6 is not raising any construction at the moment. He further states that respondent no.6 has already filed affidavit in compliance of the order of approval dated 12.09.2024, for undertaking demolition of non-compoundable part of the building measuring 206.25 sq. mtr. He submits that respondent no. 6 is in the process of demolishing the non-compoundable part of the building. He further submits that the petitioner has already deposited the compounding charges with the Development Authority.

4. He prays for and is granted a week's time to file counter affidavit.

5. Counsel for the Development Authority is also granted a week's time to file counter affidavit.

6. List this case as fresh on 03.12.2024.

7. In the meantime, no further construction shall be made by respondent no. 6 as is also the stand taken before this Court."

The Supreme Court in the case of ***L. Hirday Narain Vs. Income-Tax Officer, Bareilly 11and Durga Enterprises (P) Ltd. & Anr. Vs. Principal Secretary, Govt. of U.P. & Ors.*** as well as co-ordinate Bench of this Court in ***Roshan Lal Vs. State of Uttar Pradesh & Ors*** have consistently held that once pleadings have been exchanged then the writ petition should be decided on merits and not on the ground of alternate remedy. In the present case, the pleadings have been exchanged and an interim order has also been granted in favour of the petitioner which is continuing till date. Hence in light of the settled principles, we are of the considered view that the writ petition is entertainable and cannot be dismissed on the ground of alternative remedy of revision under Section 41(3) of the Act, 1973.

[27] The issue that now needs to be seen is whether the impugned order dated 01.06.2024 and the report dated 16.08.2024 suffer from the vice of colourable exercise of power by the Authority which requires a judicial review by the Court?

[28] It would be prudent to refer to the scheme of the Act with regard to sanction of applications. Section 13 of the Act, 1973 deals with powers of authority qua amendments to the Master Plan and the Zonal Development Plan. Section 13 of the Act, 1973 gives power to the Authority to change the Master Plan or the Zonal Development Plan which in its opinion do not affect important alternations in the character of the plan and which do not relate to extent of land uses or the standards of population density. In case any such amendment is required, publication in the newspaper inviting objections is a pre-requisite, followed by the decision over the objection, if any and thereafter the final map is to be published in the newspaper. Further when the Authority makes any amendment in plans, the amendments have to be referred to the State Government.

Section 14 of the Act, 1973 deals with development in the area notified for the Authority. Any development in the notified area has to be carried out in terms of the Master Plan or the Zonal Development Plan upon permission being received from the Vice Chairman. Without permission from Vice Chairman, no development activity can be carried out.

Section 15 of the Act makes it mandatory for any person(s) who intent(s) to carry out development as per Section 14 of the Act to file an application before the Vice Chairman. Thereafter the respondent no. 2, after making an enquiry, may grant the permission on such terms and conditions as may be specified in the order or the Vice Chairman may also refuse such a permission. In case of refusal, the applicant has a right to file an appeal before the Chairman of the Authority. The Authority can also levy appropriate charges/ cess upon the applicant for granting permission under this Section.

[29] Thus from the above, it is clear that the Authority has powers to change the Master Plan or the Zonal Development Plan upon certain conditions being fulfilled. However, such amendments shall be subjected to publication and reference to the State Government. Once the plans are in place, the Authority can then proceed to develop the development notified area on its own or on applications made by interested parties. The applications by person should be in consonance with the plans and only thereafter written

permission shall be granted by the Vice Chairman upon such terms and conditions as it may deem fit.

[30] However, as the petitioner's contention is based on the fact that the authority has surpassed its powers by passing an order on the sole basis of G.O. dated 13.10.1998, it would be relevant to refer to the Government Order dated 13.10.1998 on the basis of which the entire exercise has been carried out. The Government Order is as follows :-

"श्री अतुल कुमार गुप्ता,
उत्तर प्रदेश शासन।

सेवा मे,

1. उपाध्यक्षय
समस्त विकास प्राधिकरण उत्तर प्रदेश।

2. आयुका, उ.प्र. आवास एवं विकास परिषद लखनऊ।
आवास अनुभाग-3

लखनऊ। दिनांक 13 1998

विषय: विकास क्षेत्रों एवं उत्तर प्रदेश आवास एवं विकास परिषद की आवासीय कालोनियों / नियंत्रित क्षेत्रों के ले-आउट प्लान संशोधित किया जाना।

महोदय,

उपर्युका विषयक शासनादेश संख्या-4900/9-आ-3-36-60 एल.यू.सी./90 दिनांक 26.12.96 के अन्तिम प्रस्तर में यह निर्देश दिये गये हैं कि ले-आउट पान संशोधित कर भू-उपयोग परिवर्तन के लिए भी सम्पूर्ण प्रक्रिया उ.प्र. नगर योजना एवं विकास अधिनियम, 1973 की धारा-13 के अनुसार जनता से आपत्तियों एवं सुझाव आमंत्रित करने के उपराना शासन द्वारा गजट अधिसूचना जारी की पूर्ण की जाएगी। उल्लेखनीय है कि उ.प्र. नगर योजना एवं विकास अधिनियम 1973 की धारा-14 व 15 अन्तगत ले-आउट प्लान स्वीकृत करने व संशोधित करने का अधिकार विकास प्राधिकरण स्तर पर ही है। अतः लेआउट प्लान के संशोधन हेतु शासन स्तर से गजट अधिसूचना जारी करने की आवश्यकता पर पुर्नविचार किया गया।

2. अतएव इस सम्बन्ध में यह कहने का निर्देश हुआ है कि यदि महायोजना अथवा जोनल योजना में बिना कोई संशोधन किये हुए विकास प्राधिकरण व उत्तर प्रदेश आवास एवं विकास परिषद की

योजना के तलपट मानचित्रों में संशोधन भवन /भूखण्ड के भू-उपयोग परिवर्तन हेतु कार्यवाही की जानी हो तो तदविषयक कार्यवाही प्राधिकरण व उ. प्र. आवास विकास परिषद के स्तर पर ही सम्पादित की जाए परन्तु इस संशोधन की कार्यवाही उ.प्र. नगर योजना एवं विकास अधिनियम 1973 की धारा-13 में निहित प्रकिया के समान ही की जाए अर्थात ऐसे मामलों में आपत्तियां एवं सुझाव आमंत्रित करने हेतु कम से कम दो समाचार पत्रों विज्ञप्ति प्रकाशित की जाए तथा आपत्तिकर्ताओं को सुनवाई का अवसर देते हुए प्राप्त आपत्तियों का निस्तारण कर बोर्ड बैठक में प्रस्ताव की स्वीकृत उपरान्त अन्तिम विज्ञप्ति भी समाघार पत्रों में प्रकाशित की जाए। यह भी स्पष्ट किया जाता है कि उक्त संशोधन भू-उपयोग परिवर्तन के लिए भू-स्वामियों में भू-उपयोग परिवर्तन शुल्क निर्धारित दरों पर वसूल किया जाए। अन्तिम विज्ञप्ति समाचार पत्रों में प्रकाशित करने के पूर्व विकास प्राधिकरण व उ०प्र० आवास एवं विकास परिषद में भू-उपयोग धरिवर्तन शुल्क जमा कराया जाना सुनिश्चित किया जाएगा। उपरोक्त शासनादेश दिनांक 26.12.96 उक्त सीमा तक संशोधित किया जाता है।

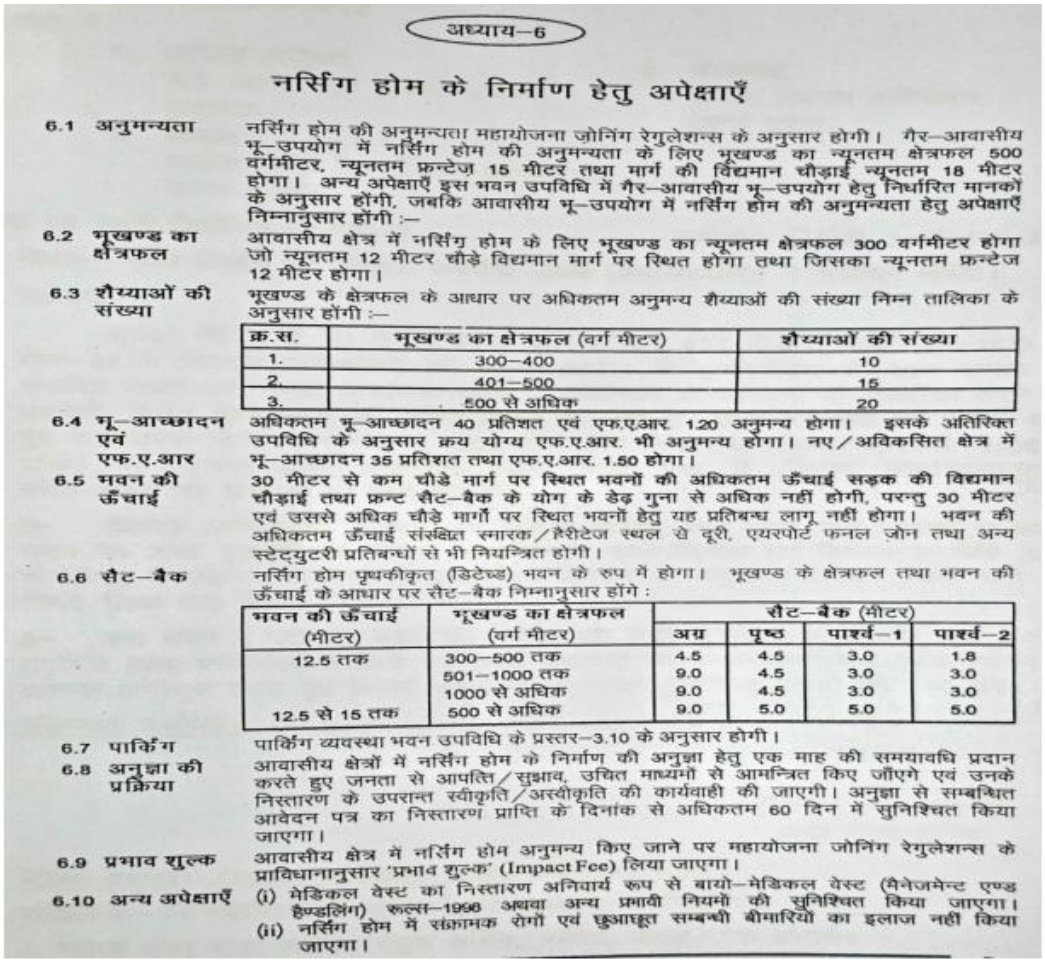
भवदीय

अतुल कुमार गुप्ता"

[31] A perusal of the above Government order would show that the power to amend the layout plan is vested with the Authority as per Section 14 and 15 of the Act. Therefore, the Government in its wisdom sought to amend the procedure which required permission from the State Government. The Government Order was issued to rectify this discrepancy which would result in long delay with regard to changes in layout plan. The Government order provided that in case layout plans have to be changed then the Authority would have the right to change the payout plan without sending a reference to the Government provided the publication with regard to the change was done in the newspaper and objections were invited. The decision on the objections would then be referred to the Board for its approval.

[32] The Authority and the respondent no. 6 have relied upon this government order to show that the land use conversion was done in accordance with law and the procedure as prescribed under the Government order was followed before sanction was granted by the respondent no. 2 to develop the plot as a nursing home.

[33] The learned counsel for the Authority as well as respondent no. 6 have also relied upon the Chapter 6 of the Building Byelaws 2008 to show that nursing home was permitted in residential areas. The relevant portion of Chapter 6 of the building byelaws is as follows :



अध्याय–6

नर्सिंग होम के निर्माण हेतु अपेक्षाएँ

6.1 अनुमन्यता नर्सिंग होम की अनुमन्यता महायोजना जोनिंग रेगुलेशन्स के अनुसार होगी। गैर–आवासीय भू–उपयोग में नर्सिंग होम की अनुमन्यता के लिए भूखण्ड का न्यूनतम क्षेत्रफल 500 वर्गमीटर, न्यूनतम फ्रन्टेज 15 मीटर तथा मार्ग की विद्यमान चौड़ाई न्यूनतम 18 मीटर होगा। अन्य अपेक्षाएँ इस भवन उपविधि में गैर–आवासीय भू–उपयोग हेतु निर्धारित मानकों के अनुसार होंगी, जबकि आवासीय भू–उपयोग में नर्सिंग होम की अनुमन्यता हेतु अपेक्षाएँ निम्नानुसार होंगी :–

6.2 भूखण्ड का क्षेत्रफल आवासीय क्षेत्र में नर्सिंग होम के लिए भूखण्ड का न्यूनतम क्षेत्रफल 300 वर्गमीटर होगा जो न्यूनतम 12 मीटर चौड़े विद्यमान मार्ग पर स्थित होगा तथा जिसका न्यूनतम फ्रन्टेज 12 मीटर होगा।

6.3 शैय्याओं की संख्या भूखण्ड के क्षेत्रफल के आधार पर अधिकतम अनुमन्य शैय्याओं की संख्या निम्न तालिका के अनुसार होंगी :–

क्र.स.	भूखण्ड का क्षेत्रफल (वर्ग मीटर)	शैय्याओं की संख्या
1.	300–400	10
2.	401–500	15
3.	500 से अधिक	20

6.4 भू–आच्छादन एवं एफ.ए.आर अधिकतम भू–आच्छादन 40 प्रतिशत एवं एफ.ए.आर. 1.20 अनुमन्य होगा। इसके अतिरिक्त उपविधि के अनुसार क्रय योग्य एफ.ए.आर. भी अनुमन्य होगा। नए/अविकसित क्षेत्र में भू–आच्छादन 35 प्रतिशत तथा एफ.ए.आर. 1.50 होगा।

6.5 भवन की ऊँचाई 30 मीटर से कम चौडे मार्ग पर स्थित भवनों की अधिकतम ऊँचाई सड़क की विद्यमान चौड़ाई तथा फ्रन्ट सैट–बैक के योग के डेढ़ गुना से अधिक नहीं होगी, परन्तु 30 मीटर एवं उससे अधिक चौड़े मार्गों पर स्थित भवनों हेतु यह प्रतिबन्ध लागू नहीं होगा। भवन की अधिकतम ऊँचाई संरक्षित स्मारक/हैरीटेज स्थल से दूरी, एयरपोर्ट फनल ज़ोन तथा अन्य स्टेट्युटरी प्रतिबन्धों से भी नियन्त्रित होगी।

6.6 सैट–बैक नर्सिंग होम पृथकीकृत (डिटेच्ड) भवन के रुप में होगा। भूखण्ड के क्षेत्रफल तथा भवन की ऊँचाई के आधार पर सैट–बैक निम्नानुसार होंगे :

भवन की ऊँचाई (मीटर)	भूखण्ड का क्षेत्रफल (वर्ग मीटर)	सैट–बैक (मीटर)			
		अग्र	पृष्ठ	पार्श्व–1	पार्श्व–2
12.5 तक	300–500 तक	4.5	4.5	3.0	1.8
	501–1000 तक	9.0	4.5	3.0	3.0
	1000 से अधिक	9.0	4.5	3.0	3.0
12.5 से 15 तक	500 से अधिक	9.0	5.0	5.0	5.0

6.7 पार्किंग पार्किंग व्यवस्था भवन उपविधि के प्रस्तर–3.10 के अनुसार होगी।

6.8 अनुज्ञा की प्रक्रिया आवासीय क्षेत्रों में नर्सिंग होम के निर्माण की अनुज्ञा हेतु एक माह की समयावधि प्रदान करते हुए जनता से आपत्ति/सुझाव, उचित माध्यमों से आमन्त्रित किए जाँएगे एवं उनके निस्तारण के उपरान्त स्वीकृति/अस्वीकृति की कार्यवाही की जाएगी। अनुज्ञा से सम्बन्धित आवेदन पत्र का निस्तारण प्राप्ति के दिनांक से अधिकतम 60 दिन में सुनिश्चित किया जाएगा।

6.9 प्रभाव शुल्क आवासीय क्षेत्र में नर्सिंग होम अनुमन्य किए जाने पर महायोजना जोनिंग रेगुलेशन्स के प्राविधानानुसार 'प्रभाव शुल्क' (Impact Fee) लिया जाएगा।

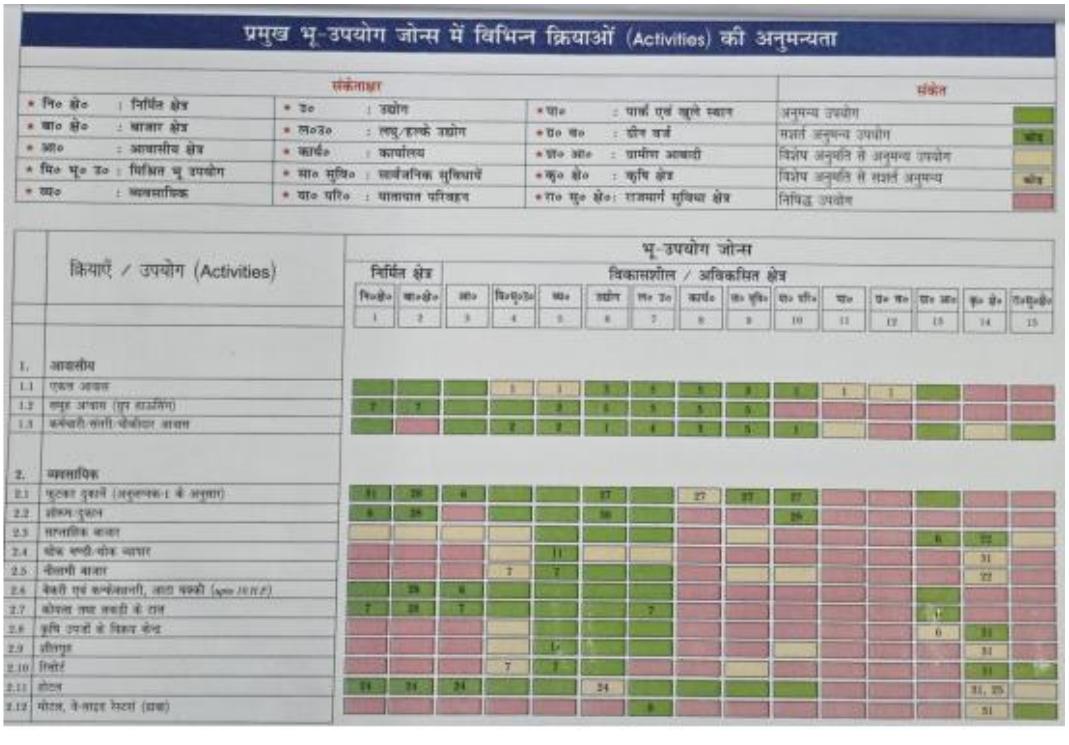
6.10 अन्य अपेक्षाएँ (i) मेडिकल वेस्ट का निस्तारण अनिवार्य रूप से बायो–मेडिकल वेस्ट (मैनेजमेन्ट एण्ड हैण्डलिंग) रूल्स–1998 अथवा अन्य प्रभावी नियमों की सुनिश्चित किया जाएगा।
(ii) नर्सिंग होम में संक्रामक रोगों एवं छुआछूत सम्बन्धी बीमारियों का इलाज नहीं किया जाएगा।

[34] Learned Counsel for the Authority has also relied upon the Meerut Master Plan 2031 to contend that the Zoning regulations as contained in the Master Plan 2031 were applicable. He submitted that Chapter-XI of Master Plan-2031 deals with Zoning Regulations. Master Plan-2031 was approved by the Government Vide Government Order dated 24.01.2024 and implemented by publication of notification since 09.02.2024. The Para No. 11.1 of Chapter XI, under heading 'Object of Zoning', clearly provides that in a Master Plan Map generally main land use such as Residential, Commercial, Industrial, Office, Public, Semipublic facilities, park etc. are shown however, in between main land use certain ancillary activities, which were not possible to be shown in the Master Plan Map separately are permissible as per Zoning Regulations. The object of Zoning Regulation as incorporated in Master Plan-2031 is extracted as under:-

महायोजना में सामान्यतः प्रमुख भू-उपयोगों तथा आवासीय वाणिज्यिक, औद्योगिक, कार्यालय, अर्द्ध-सार्वजनिक सुविधायें, पार्क एवं खुले स्थल, कृषि आदि को ही दर्शाया जाता है। प्रमुख भू-उपयोगों के अंतर्गत अनुमन्य आनुषांगिक क्रियायें (ACTIVITIES) जिन्हें महायोजना मानचित्र पर अलग से दर्शाया

जाना सम्भव नहीं है की अनुज्ञा जोर्निंग रेगुलेशन्स के आधार पर प्रदान की जाती है। सक्षम प्राधिकारी द्वारा नई योजनाओं भी विशेष आनुषंगिक में (ANCILLARY/INCIDENTAL) क्रियाओं / उपयोगों का प्राविधान जोर्निंग रेगुलेशन्स तथा प्रभावी भवन निर्माण एवं विकास उपविधि के अनुसार किया जाना अपेक्षित है ताकि जन स्वास्थ्य, कल्याण एवं सुरक्षा सुनिश्चित हो सके।"

[35] Furthermore, the main land use areas, ancillary/incidental activities are permissible with conditions and restrictions as well as with special permission. Para No. 11.13 of Chapter XI under heading 'प्रमुख भू-उपयोग जोन्स में सशर्त अनुमन्य क्रियाओं/उपयोगों हेतु अनिवार्य शर्ते एवं प्रतिबन्ध'. A total of 32 conditional activities/use with certain conditions and restrictions are permissible. Para No. 11.14 of Chapter XI under heading 'विशेष अनुमति से अनुमन्य क्रियाओं (Activities) हेतु अपेक्षाएं'. Zoning Matrix appended in Chapter XI of Plan-2031 depicts permissible ancillary/incidental activities on land use in main land use areas. In the given matrix under column activities at Serial no.5.21 heading 'Nursing Home/Clinic/Poly clinic' activities/use is permissible with certain conditions/restrictions in constructed area, market area, residential area without restriction/condition in mixed land use area. The matrix is depicted below :



प्रमुख भू-उपयोग जोन्स में विभिन्न क्रियाओं (Activities) की अनुमन्यता

संकेताक्षर

• नि० क्षे० : निर्धारित क्षेत्र	• उ० : उद्योग	• पा० : पार्क एवं खुले स्थान	संकेत		
• बा० क्षे० : बाजार क्षेत्र	• ल०उ० : लघु/हल्के उद्योग	• प० व० : प्रोन जोन	अनुमन्य उपयोग		
• आ० : आवासीय क्षेत्र	• कार्या० : कार्यालय	• ग्रा० आ० : ग्रामीण आबादी	सशर्त अनुमन्य उपयोग		
• मि० भू० उ० : मिश्रित भू उपयोग	• सा० सुवि० : सार्वजनिक सुविधायें	• कृ० क्षे० : कृषि क्षेत्र	विशेष अनुमति से सशर्त अनुमन्य		
• व्य० : व्यवसायिक	• या० परि० : यातायात परिवहन	• रा० मु० क्षे० : राजमार्ग सुविधा क्षेत्र	निषिद्ध उपयोग		

	क्रियाएँ / उपयोग (Activities)	भू-उपयोग जोन्स														
		निर्धारित क्षेत्र		विकासशील / अविकसित क्षेत्र												
		नि०क्षे०	बा०क्षे०	आ०	वि०मु०उ०	व्य०	उद्योग	ल० उ०	कार्या०	मि० भू०	सा० सुवि०	या० परि०	पा०	प० व०	ग्रा० आ०	कृ० क्षे०	रा०मु०क्षे०
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1.	आवासीय															
1.1	एकल आवास															
1.2	लघु आवास (पूर्व सर्वेक्षण)															
1.3	कर्मचारी-सर्वो-पीजीएटा आवास															
2.	व्यवसायिक															
2.1	फुटकर दुकानें (अनुलग्नक-I के अनुसार)															
2.2	शॉपिंग-दुकान															
2.3	सामाजिक बाजार															
2.4	थोक मण्डी-थोक व्यापार															
2.5	नीलामी बाजार															
2.6	बैंकों एवं कम्पनियाणी, जाती चक्की (Appx 10 H.P.)															
2.7	कोयला तथा लकड़ी के टाल															
2.8	कृषि उपजों के विक्रय केन्द्र															
2.9	होटल्स															
2.10	रिसोर्ट															
2.11	होटल															
2.12	मोटल, वे-साइड रेस्टां (ढाबा)															



[36] Learned counsel for the Authority submitted that as per the matrix, there are no purely residential areas in the Master Plan 2031. The residential area (आवासीय क्षेत्र) in column 3 of the matrix is the relevant category and under 5.21 (नर्सींग होम/ क्लिनिक/ पाली क्लिनिक) is allowed with code 10. Code 10 relates to Regulation 11.13 of the Zoning Regulations which is as follows:

"11.13 प्रमुख भू-उपयोग जोन्स में सशर्त अनुमन्य क्रियाओं / उपयोगों हेतु अनिवार्य शर्ते एवं प्रतिबन्ध :

10. न्यूनतम 12 मीटर चौड़े मार्ग पर अधिकतम 20 शैय्याओं तक। "

Furthermore since the nursing home is under "green" category which is a "permitted" category, therefore the same is permitted and the sanction granted for construction is in accordance with law.

[37] Learned Counsel for the Authority submitted that Master Plan 2031 permits nursing home with 20 beds in residential areas subject to the condition that it should be on a 12 meter wide road. In the present case, the respondent no. 6 satisfied all the conditions therefore as per Chapter 6 of the Building Byelaws, the change in land use was permitted. He submitted that from the perusal of the provisions of Zoning Regulation, it is evidently clear that the Authority had rightly sanctioned the map of nursing home by compounding of existing residential map strictly in accordance with provision of Meerut Master Plan-2031 and Building Construction and Development Bylaws, 2008 (as amended in 2023) as well as compounding Bylaws-2009.

[38] Learned counsel for the Authority as well as respondent no. 6 have also relied upon the Regulations, 2025 to show that nursing home is a permissible activity in a residential area. Relevant extract is as follows:

6 Institutional Buildings & Community Facilities

6.1 Hospitals and healthcare Buildings

6.1.1 Permissibility

Permission for construction of hospitals and healthcare buildings shall be provided as per the master plan/ zoning regulations.

6.1.2 Minimum Plot Size

The minimum plot area for construction of a hospital/healthcare buildings shall be as follows:

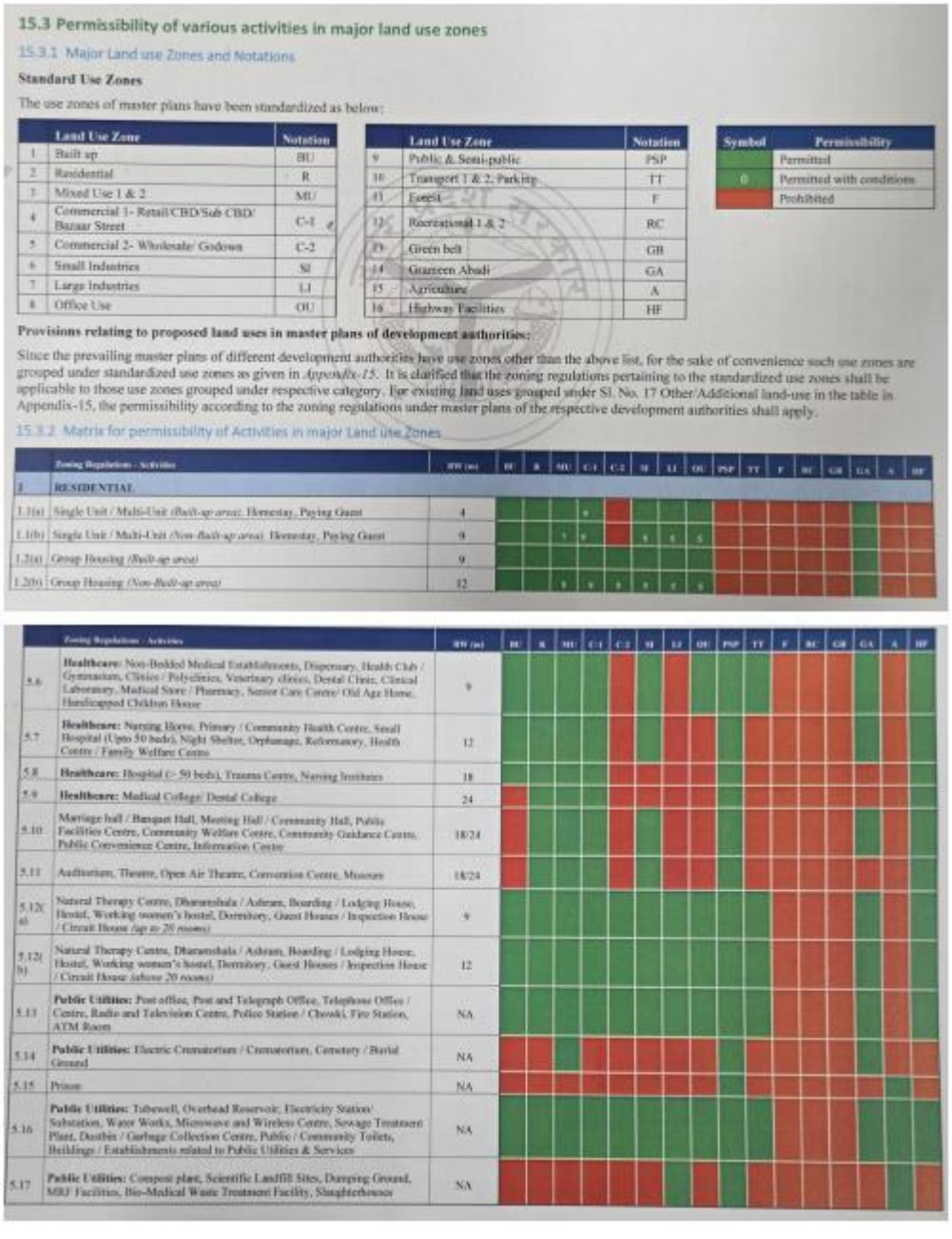
Sl.	Healthcare facility	Min. Plot area (sqm)
1	Non-Bedded Medical Establishments (Diagnostic Centre/ OPD clinics/ dispensary/ Pathology Lab/ Veterinary Clinics)	100
2	Nursing Homes / Veterinary Hospitals / Maternity Hospitals/ Small Hospitals (Up to 50 beds)	300
3	Hospitals (> 50 beds)	3000
4	Nursing Institutes	2000
5	Medical College	As per NMC / MCI norms

6.1.3 Means of Access

The minimum width of the existing approach road shall be as follows:

Sl.	Healthcare facility	Min. Road Width (m)
1	Non-Bedded Medical Establishments (Diagnostic Centre/ OPD clinics/ dispensary/ Pathology Lab/ Veterinary Clinics)	9
2	Nursing Homes / Veterinary Hospitals / Maternity Hospitals/ Small Hospitals (Up to 50 beds)	12
3	Hospitals (> 50 beds)	18
4	Nursing Institutes	18
5	Medical College	24

Learned counsel for respondents submitted that as per the Regulations, 2025 permission for construction of Nursing home can be provided as per the master plan or zoning regulations. The same is apparent from the above chart. However certain conditions with regard to plot size and road width has to be seen before grant of permission. The present case relates to a maximum of 20 beds for which a minimum 300 sqm plot size is required.



15.3 Permissibility of various activities in major land use zones

15.3.1 Major Land use Zones and Notations

Standard Use Zones

The use zones of master plans have been standardized as below:

	Land Use Zone	Notation
1	Built up	BU
2	Residential	R
3	Mixed Use 1 & 2	MU
4	Commercial 1- Retail/CBD/Sub CBD/ Bazaar Street	C-1
5	Commercial 2- Wholesale/ Godown	C-2
6	Small Industries	SI
7	Large Industries	LI
8	Office Use	OU

	Land Use Zone	Notation
9	Public & Semi-public	PSP
10	Transport 1 & 2, Parking	TT
11	Forest	F
12	Recreational 1 & 2	RC
13	Green belt	GB
14	Grameen Abadi	GA
15	Agriculture	A
16	Highway Facilities	HF

Symbol	Permissibility
	Permitted
0	Permitted with conditions
	Prohibited

Provisions relating to proposed land uses in master plans of development authorities:

Since the prevailing master plans of different development authorities have use zones other than the above list, for the sake of convenience such use zones are grouped under standardized use zones as given in *Appendix-15*. It is clarified that the zoning regulations pertaining to the standardized use zones shall be applicable to those use zones grouped under respective category. For existing land uses grouped under Sl. No. 17 Other/Additional land-use in the table in Appendix-15, the permissibility according to the zoning regulations under master plans of the respective development authorities shall apply.

15.3.2 Matrix for permissibility of Activities in major Land use Zones

	Zoning Regulations - Activities	FAR (in)	BU	R	MU	C-1	C-2	SI	LI	OU	PSP	TT	F	RC	GB	GA	A	HF
1	RESIDENTIAL																	
1.1(a)	Single Unit / Multi-Unit *(Built-up area)*: Homestay, Paying Guest	4				0												
1.1(b)	Single Unit / Multi-Unit *(Non-Built-up area)*: Homestay, Paying Guest	0			1	0		4	4	5								
1.2(a)	Group Housing *(Built-up area)*	9																
1.2(b)	Group Housing *(Non-Built-up area)*	12			9	9	9	9	5	5								

	Zoning Regulations - Activities	FAR (in)	BU	R	MU	C-1	C-2	SI	LI	OU	PSP	TT	F	RC	GB	GA	A	HF
5.6	**Healthcare:** Non-Bedded Medical Establishments, Dispensary, Health Club / Gymnasium, Clinics / Polyclinics, Veterinary clinics, Dental Clinic, Clinical Laboratory, Medical Store / Pharmacy, Senior Care Centre/ Old Age Home, Handicapped Children House	9																
5.7	**Healthcare:** Nursing Home, Primary / Community Health Centre, Small Hospital (Upto 50 beds), Night Shelter, Orphanage, Reformatory, Health Centre / Family Welfare Centre	12																
5.8	**Healthcare:** Hospital (> 50 beds), Trauma Centre, Nursing Institutes	18																
5.9	**Healthcare:** Medical College/ Dental College	24																
5.10	Marriage hall / Banquet Hall, Meeting Hall / Community Hall, Public Facilities Centre, Community Welfare Centre, Community Guidance Centre, Public Convenience Centre, Information Centre	18/24																
5.11	Auditorium, Theatre, Open Air Theatre, Convention Centre, Museum	18/24																
5.12(a)	Natural Therapy Centre, Dharamshala / Ashram, Boarding / Lodging House, Hostel, Working women's hostel, Dormitory, Guest Houses / Inspection House / Circuit House *(up to 20 rooms)*	9																
5.12(b)	Natural Therapy Centre, Dharamshala / Ashram, Boarding / Lodging House, Hostel, Working women's hostel, Dormitory, Guest Houses / Inspection House / Circuit House *(above 20 rooms)*	12																
5.13	**Public Utilities:** Post office, Post and Telegraph Office, Telephone Office / Centre, Radio and Television Centre, Police Station / Chowki, Fire Station, ATM Room	NA																
5.14	**Public Utilities:** Electric Crematorium / Crematorium, Cemetery / Burial Ground	NA																
5.15	Prison	NA																
5.16	**Public Utilities:** Tubewell, Overhead Reservoir, Electricity Station/ Substation, Water Works, Microwave and Wireless Centre, Sewage Treatment Plant, Dustbin / Garbage Collection Centre, Public / Community Toilets, Buildings / Establishments related to Public Utilities & Services	NA																
5.17	**Public Utilities:** Compost plant, Scientific Landfill Sites, Dumping Ground, MRF Facilities, Bio-Medical Waste Treatment Facility, Shuplterhouses	NA																

They have also relied upon Clause 15.3 of the Regulations, 2025 (the above chart) to show that under the Residential Category "R" (5th column) at serial 5.7, Healthcare facilities are provided and under the Column "R", an activity of nursing home can be carried out without any special conditions. Since the nursing home is under "green" category which is a "permitted"

category, therefore the same is permitted and the sanction granted for construction is in accordance with law.

[39] Learned Counsel for the petitioner submitted that the reliance placed by the learned counsel for the respondents on the Building Byelaws 2008 and the 2025 Regulations is misplaced as the same does not provide any power to amend the Master plan or the Zoning Plan. He submitted that the Saket area is a residential colony which was provided to the cooperative housing society for development. The layout plan of the society was sanctioned and on the basis of the layout plan, the plots were sold to different persons including the respondent no. 6. He further submitted that the change from residential to nursing home was not permissible as it would require the change in the Zonal plans which could be done only by the State Government under Section 13 of the Act. He further submitted that the reliance on the Government order dated 13.10.1998 is misplaced as firstly it did not give any power to the Authority to change any Zonal Plan which is required as Saket area is a residential area and secondly the 2014 Rules superseded the Government Order. He submitted that as such the exercise of power by the Authority in changing the land use is patently a colourable exercise of power and as such amenable to judicial review.

[40] When the Court is exercising the powers of judicial review, the judicial review has to be exercised with circumspect. The review is not of the final decision but the steps that were taken in reaching such a decision. We are primarily concerned with the legality of the decision-making process rather than the merits of the decision itself. In the present case, the start of the decision making process commenced from the date the application for change in land use was filed before the Authority i.e. 14.02.2024. This application came to be processed in light of the Government order dated 13.10.1998 by following all the steps detailed in the Government Order and the procedure laid down in Section 13 of the Act, 1973. Objections were invited after publication on 09.03.2024 and a single objection of the petitioner was received. The Society did not file any objection against the proposed change in land use and therefore it can be assumed that the Society did not have any objection to the change in land use. The objection of the petitioner was decided by means of order dated 01.06.2024 i.e. the impugned order.

[41] The application of respondent no. 6 was filed on 14.02.2024 i.e. after the enforcement of the Meerut Master Plan 2031. Therefore, what has to be seen is whether the Master Plan 2031 and the Zoning Regulations contained therein permitted using the land as nursing home. It is trite law that the relevant law applicable on an application is the law that is prevalent on the date the application was allowed as held in ***Anand Kumar Sharma vs. State of U.P. and others;***. Thus on the date the application was processed, the relevant Zoning Regulations were stated in Chapter XI of Master Plan 2031 which permitted for use of land as Nursing home subject to conditions contained in Regulation 11.13 (10) of Meerut Master Plan 2031. As indicated above, the Master Plan permitted Nursing homes in residential areas subject to the condition that the road must be 12 meters wide. In the present case, the road is 36 meters wide therefore the condition with regard to sanction is fulfilled. As to the condition in Chapter VI of the Building Byelaws, the plot area is far above the minimum required plot area of 300 sqm.

[42] Learned Counsel for the petitioner contented that the reliance on the Government order dated 13.10.1998 is misplaced as firstly it did not give any power to the Authority to change any

Zonal Plan which is required as Saket area is a residential area and secondly the 2014 Rules superseded the Government Order. We have examined the Government order as well as Chapter 6 of the Building Byelaws 2008. It is apparent that the Government order was with regard to a discrepancy between implementation of Section 13 and Section 14 and 15 of the 1973 Act. The Government was of the view that once the change in layout plans can be sanctioned by the Authority itself under Section 14 and 15 of the 1973 Act, then the need to refer the matter to the State government in absence of any change in the Master Plan or the Zonal plan is superfluous. Therefore, powers were given to the Authority to permit changes in the layout plans after complying with the procedure of publication for change in plans and with due approval of the Board of the Authority.

[43] In the present case, the Authority allowed the change in land use after due approval from the Board vide its resolution dated 10.06.2024 drawing its powers on the basis of the Government Order dated 13.10.1998. The Building Byelaws, 2008 (as amended in 2023) and the Zoning Regulations contained in Chapter XI in Master Plan 2031 permitted sanction for nursing home in residential areas subject to conditions of Chapter 6 of the Building Byelaws, 2008. It is clearly reflected that the Byelaws and the Zoning regulations permitted the use of land for nursing home and the application for change in land use was processed on the basis of the powers given in the Government order dated 13.10.1998. There is no challenge to the Government Order dated 13.10.1998.

[44] Learned Counsel for the petitioner submitted that the usage of land as nursing home is permitted, provided, the Master Plan Zoning Regulations permites. In support of his submission, learned counsel for the petitioner also filed a supplementary affidavit to impress upon the Court that the Zoning Regulations did not permit such an activity. We have perused the supplementary affidavit along with its annexures. The Zoning Regulations have also been filed in the written submission filed by the Authority and the same are also being relied upon as the Regulations in the supplementary affidavit do not appear to be complete. Upon perusal of supplementary affidavit and the written submission, we find that there is no restriction in the Zoning Regulations to support the contention of the petitioner. The Zoning regulations in Clause 11.10.5.23 define Nursing homes and matrix provided in the Zoning Regulations also permit the land use for a nursing home as is indicated above. Also, if the Zoning Regulations are compared with the Byelaws, 2008 it is apparent that Nursing home is permitted in residential areas subject to fulfillment of conditions mentioned in Chapter VI. We are of the considered view that the objection, that Zoning Regulations did not permit nursing home, is misplaced and is hereby rejected. Relying upon the above observations, we are also of the view that the application for change in land use was processed in accordance with law and the entire process suffers from no illegality which would require a judicial review. Thus, the answer to the second issue is also negative.

[45] As regarding the contention that the 2014 Rules superseded the Government Order dated 13.10.1998, we have examined the Rules in detail. It would be pertinent to note that the Rules itself provide a list of Government Orders that stood superseded by the implementation of he said Rules. The Government Order dated 13.10.1998 has not been superseded by the 2014 rules and as such still continues to hold the field. As we have observed above, the Government Order was only

issued to rectify an apparent discrepancy with regard to Section 13, 14 and 15 of Act and the power of the Authority to make changes in the layout plan.

[46] As regarding the contention that land use conversion would only be possible once the Master and the Zonal plans were amended, the same is liable to be rejected. The Building Byelaws, 2008 specifically provides that nursing home is permitted in a residential area. The reliance of the petitioner on the fact that Zoning Regulations also did not permit the nursing home is misconceived as observed above. The petitioner has been unable to prove that Zoning Regulations prohibited land use conversion from residential to nursing home. Nothing has been placed on record to prove otherwise.

[47] With regard to the applicability of the compounding laws as prescribed under the relevant Byelaws, it would be pertinent to note that while granting permission the Authority had intimated to respondent no. 6 as to the area which was non-compoundable and liable to be demolished. The said non-compoundable area has now been demolished as is evident from the compliance affidavit filed in this regard. As to the contention that compounding is not permissible as per chapter 16.3.2 of the 2025 Regulations, it would suffice to say that from the chart appended above, it is clear that nursing home is a permitted activity within residential zone. Furthermore, once the learned counsel for the petitioner has refuted the applicability of the 2025 Regulations to the present case, then the argument that compounding cannot be done in light of Chapter 16.3.2 is liable to be rejected as the petitioner cannot be permitted to approbate and reprobate. Nothing has been brought on record to show that compounding was not permissible under the 2008 Bylaws or that further area as stated in the permission dated 12.09.2024 was non-compoundable.

[48] Learned Counsel for the petitioner has relied upon the case of ***Ganga Charan Aryawardhan Hospital Vs. State of U.P. and others***; to content that the sanction given was illegal. We have perused the said judgment and find that the said judgment dealt with a case where there was no permission to run a nursing home and thus the compounding was not permitted. In the present case, sanction was granted for running a nursing home. Therefore, the said case law is not applicable in the present set of facts and circumstances.

[49] The learned Counsel for the Petitioner has placed reliance upon the judgment of ***R.K. Mittal vs. State of U.P. and others*** to contend that any land use contrary to the Master Plan or the zonal plan are illegal. However in the present case, the Zonal Plans allowed for certain activities to be carried subject to certain condition and therefore the said judgment is not applicable in the present set of facts and circumstances.

Reliance is also placed upon the order passed in ***Chairman and Chief Executive Officer, NOIDA Authority and another vs. Mange ram Sharma (dead) through Lrs. and another*** was with regard to applications filed by Doctors for running clinics in their residences. The applications were filled with regard to directions issued in ***R.K. Mittal (supra)***. The Supreme Court held that neither a poly clinic nor a nursing home can run in a residential area. The observations were based upon NOIDA Master Plan 2031. However in the present case, the issue at hand is governed by Meerut Master Plan 2031 which has allowed specific usage as per the matrix provided in the

Zoning Regulations under chapter XI. Thus the observations in the above case are not applicable in the present set of circumstances.

In ***Rajendra Kumar Barjatya and another vs. U.P. Award Evam Vikas Parishad and others*** the Supreme Court was dealing with an issue of unauthorized construction and its subsequent demolition. In the present case, the non-compoundable construction has been demolished and the remaining part compounded as per the policy of the Authority. The facts of the case are completely different to the present set of facts and circumstance.

However, the petitioners have also placed heavy reliance on the proceedings drawn before the Hon′ble Supreme Court in ***Bimalendu Pradhan vs. State of Orissa***. We are aware of the fact that in the aforesaid case, the Supreme Court is dealing with the issue of unauthorized construction without any sanctioned plans as well as demolishing illegal constructions in setbacks. However in the present case, the sanction has already been granted to the petitioner which remained unchallenged. Also the permission was granted as per the Meerut Master Plan 2031 which permits nursing home in residential areas subject to certain conditions. As those conditions were met, the sanction was granted and there is no illegality in the same as we have indicated above.

[50] In light of what has been observed and stated above, we are of the considered view that the order dated 01.06.2024 passed by the Secretary, Meerut Development Authority and the report dated 16.08.2024 sent by the Chief Town Planner, Meerut Development Authority do not suffer from the vice of colourable exercise of power which requires any judicial review by this Court. The records indicate that the entire process was carried out in accordance with law and as per the relevant Law/ regulations/ government order and the same suffers from no illegality.

[51] In reaching the above conclusion, we are also fortified from the fact that the Board resolution dated 10.06.2024 which allowed for conversion of land use and the subsequent permission under Section 15(1) of the Act, 1973 dated 12.09.2024 were never challenged. The omission to amend the pleadings by challenging the resolution and the permission leads us to the conclusion that the proceedings were initiated and culminated in accordance with law.

ANSWERS TO THE POINTS OF DETERMINATION:

[52] Regarding issue no. 1 as to whether the writ petition is liable to be dismissed on the ground of alternate remedy of revision under Section 41(3) of the Act, 1973 the issue is answered in the negative holding that the writ petition is maintainable.

[53] Regarding Issue no. 2 as to whether the impugned order dated 01.06.2024 and the report dated 16.08.2024 suffer from colourable exercise of power by the Authority which requires a judicial review by the Court the issue is answered in the negative holding that there is no illegality in the process adopted which requires any judicial review by this Court.

CONCLUSIONS:

[54] In the light of the findings and the observations given above, the writ petition is without merit and is hereby **dismissed**. There shall be no order as to cost.

[55] Even though the writ petition stands dismissed, we are not oblivious to the difficulties that may be faced by the residents of the colony with regard to the construction of a nursing home and their functioning, therefore, we deem it appropriate to issue certain directions to ensure that the lives of the residents are not affected adversely. The respondent no. 6 shall file an affidavit before the respondent no. 2 categorically stating the following:

(i) The construction to be carried out will be in compliance of the specific conditions given in the permission and there shall be no deviation from the same.

(ii) The parking of the vehicles shall be regulated by respondent no. 6 and the parking shall not overflow into the internal roads of the Society so as to cause any inconvenience to the residents of the Society.

(iii) In case of any violations with regard to parking, appropriate action will be initiated by respondent no. 2 in accordance with law.

(iv) Medical waste management regulations will be complied to the full extent. There shall be no throwing of garbage/ medical waste in the society and the respondent no. 6 shall enter into a contract with necessary medical waste disposal agencies to ensure hygiene levels.

The said affidavit is to be filed within one week from today before respondent no. 2 who shall ensure that there is no deviation from the undertakings given in the affidavit.

(2026) 5 ILRA 1597
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 22.05.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1001558 of 1997

Smt. Mayawati **...Petitioner**
Versus
S.D.O. & Ors. **...Respondents**

Issue for Consideration

Whether the Sub-Divisional Officer could have directed deletion of the petitioner's name from the revenue records without initiating any regular proceedings under the relevant provisions of law and without affording any opportunity of hearing to the petitioner.

Headnotes

U.P. Land Revenue Act – ss.33, 39 – Revenue records – Deletion of name of recorded tenure-holder – Petitioner's father's name recorded over disputed land pursuant to order dated 28.03.1967 passed by Consolidation Officer – Petitioner, being his daughter and sole legal heir, subsequently recorded in revenue records – Khatauni of Fasli years 1402 to 1407 reflecting petitioner's name as bhumidhar over plots in question – Entries continuing for considerable period – Gaon Sabha having already instituted Regular Suit No.421 of 1997 before competent civil court in respect of same dispute – Application for temporary injunction therein rejected – During pendency of suit, Sub-Divisional Officer directing expunction of petitioner's name from revenue records and recording land in name of Gaon Sabha – No regular proceedings for correction of revenue entries instituted – No notice issued to petitioner or opportunity of hearing afforded – Order passed merely on basis of ex parte report of Tehsildar – Justification:

Held :

A. Revenue authorities cannot expunge the name of a recorded tenure-holder from the revenue records without registering appropriate proceedings under ss.33 and 39 of the Land Revenue Act and without providing opportunity of hearing to the affected person – Any order adversely affecting civil rights of a person must conform to the principles of natural justice – Even in cases where allegations of irregularity or fraud are levelled, the person whose rights are sought to be affected is entitled to notice and opportunity of hearing before any adverse action is taken – Doctrine of *audi alteram partem* ingrained in constitutional and administrative jurisprudence cannot be dispensed with in a casual manner.

B. Entries in favour of petitioner's predecessor, having originated in consolidation proceedings and continued in revenue records for decades, could not have been annulled summarily by an executive fiat – Such long-standing entries affecting substantive rights could not be expunged merely on the basis of an administrative report – If respondents were of the opinion that the entries had been procured fraudulently or that the land belonged to the Gaon Sabha, the proper course was to initiate appropriate proceedings before the competent forum in accordance with law and establish their claim by leading evidence.

C. Allegations of fraud are serious in nature and require adjudication on the basis of cogent evidence in proceedings conducted in accordance with law – Fraud cannot be presumed merely on the basis of administrative suspicion or absence of old records – Dispute relating to nature of land and entitlement of parties involving questions of title could not have been conclusively determined by the Sub-Divisional Officer in summary proceedings conducted without notice – Such issues necessarily require adjudication before the competent authority/forum after giving due opportunity to all concerned parties.

D. In the present case, no regular proceedings for correction of revenue entries were ever instituted against the petitioner – Neither any case number was assigned nor any notice was issued requiring the petitioner to show cause against the proposed deletion of her name – Impugned order dated 24.05.1997 passed merely on basis of ex parte report submitted by Tehsildar on the same date and mechanically approved by Sub-Divisional Officer without recording any independent satisfaction or reasons – Exercise of power having drastic civil consequences affecting valuable rights recorded in favour of petitioner for decades could not have been undertaken in such a summary and clandestine manner – Mere assertion that petitioner had knowledge of proceedings or had submitted certain applications would not satisfy mandatory requirement of lawful hearing – Impugned order suffered from manifest illegality, arbitrariness and violation of principles of natural justice – Action undertaken to circumvent due process of law and to achieve indirectly what could not be obtained before competent court – Impugned order dated 24.05.1997 quashed – Respondents/Gaon Sabha left open to avail such remedy as may be available under law before the competent forum. (E-5)

[Paras 37–49, 52]

Case Law Cited

Gopal Das Jain v. Board of Revenue, Neutral Citation No. 2525:AHC-LKO; 38961;
Chandra Dutt v. State, A.W.C. [1992] Revenue Pg. 58;

List of Acts

U.P. Land Revenue Act, 1901;
U.P. Consolidation of Holdings Act, 1953;
U.P. Consolidation of Holdings Rules, 1954;
Constitution of India.

List of Keywords

Revenue records; Expunction of revenue entry; Deletion of name of recorded tenure-holder; Correction of revenue records; Sections 33 and 39, U.P. Land Revenue Act; Principles of natural justice; Audi alteram partem; Notice and opportunity of hearing; Ex parte enquiry; Fraudulent revenue entry; Cancellation of fraudulent entry; Long-standing revenue entries; Summary proceedings; Executive fiat; Disputed title; Nature of land; Gaon Sabha land; Consolidation proceedings; Bhumidhar; Revenue authorities; Jurisdiction; Due process of law; Quashing of revenue order.

Case Arising From

Writ petition filed challenging the order dated 24.05.1997 passed by respondent No.1 - Sub Divisional Officer, whereby the name of the petitioner was expunged from the revenue records and the land in dispute was ordered to be recorded in the name of the Gaon Sabha.

Appearances for Parties

Advs. for the Petitioner: H.s.sahai, A.r.khan, I.d.shukla, In Person, K.k.singh, Kamal Kant Singh, Mohammad Aslam Khan, Ravindra Nath Mishra, S.k.mehrotra
Advs. for the Respondents: C.S.C., Q.m.haq, R.n.gupta

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

1. Heard Sri Mohd. Arif Khan, learned Senior Counsel assisted by Sri Mohd. Aslam Khan, learned counsel for the petitioner and Sri Shatrughan Chaudhary, learned Additional CSC for the respondent - State.

2. The present writ petition has been filed challenging the order dated 24.05.1997 passed by respondent No.1 - Sub Divisional Officer contained a s Annexure-5 to the writ petition.

3. Factual matrix of the case is that the present writ petition arises out of the order dated 24.05.1997 passed by the Sub-Divisional Officer, Colonelganj, District Gonda, whereby without issuing any notice to the petitioner, without affording any opportunity of hearing and without registering any case for correction of revenue records or directing the parties to seek remedy before the competent court, the name of the petitioner was illegally expunged from the revenue records and the land in dispute was ordered to be recorded in the name of the Gaon Sabha.

4. The petitioner's father Yadunath was recorded as bhumidhar over plot Nos. 1092, 1249, 1254, 1250, 1251 and 1258 (hereinafter referred to as the land in dispute) and he remained in continuous possession over the said plots during his lifetime.

5. After the death of the petitioner's father Yadunath, mutation was effected in favour of the petitioner being his daughter and the sole legal heir and accordingly the petitioner's name came to be recorded in the revenue records. Name of the petitioner is recorded as bhumidhar in the

Khatauni of Fasli years 1402 to 1407, a photocopy whereof is annexed as Annexure No.2 to this writ petition.

6. During the lifetime of the petitioner's father he remained in possession over the land in dispute and after his death the petitioner continued in possession over the said land. The Gram Panchayat / Gaon Sabha, arrayed as opposite party No.3, has neither any title nor possession over the land in dispute.

7. During consolidation operations in village Ramapur, where the land in dispute is situated, the Consolidation Officer, Gonda vide order dated 28.03.1967 directed that the name of the petitioner's father be recorded over the land in dispute. A photocopy of the Amaldaramad order recording the name of the petitioner's father is annexed as Annexure No.3 to this writ petition.

8. The Gaon Sabha along with the State of U.P. instituted Regular Suit No.421 of 1997 before the Court of Civil Judge (Junior Division), Gonda and also moved an application for temporary injunction. The said application for injunction as well as the maintainability of the suit was opposed by the petitioner, who was arrayed as a defendant in the suit, and the learned trial court, after considering the matter, found that the suit before the civil court was not cognizable and therefore the application for injunction was rejected vide order dated 13.05.1997.

9. When the Gram Panchayat failed to get the petitioner's name deleted through lawful proceedings, it adopted an indirect method and obtained a report from the Tehsildar, Gonda dated 24.05.1997 and on the basis of the said report the Sub-Divisional Officer, Colonelganj passed the impugned order dated 24.05.1997 directing that the name of the petitioner be expunged from the revenue records and the land be recorded in the name of the Gaon Sabha. A true copy of the report of the Tehsildar along with the impugned order is annexed as Annexure No.5 to this writ petition.

10. The civil suit filed by the Gaon Sabha is still pending and the impugned order dated 24.05.1997 has been obtained by the Gaon Sabha during the pendency of the said proceedings. No show cause notice or opportunity of hearing was afforded to the petitioner before passing the impugned order and even the alleged enquiry conducted by the Tehsildar was made ex-parte, without giving any opportunity to the petitioner.

11. The petitioner subsequently approached the Collector, Gonda, seeking a directive for the issuance of certified copy of the order. While the Collector, Gonda, did direct the Sub-Divisional Officer to "do the needful," the petitioner claims that the copy has still not been provided. Hence, the present writ petition has been preferred before this Court.

12. Submission of learned Senior Counsel for the petitioner is that the impugned order is wholly arbitrary, illegal and liable to be quashed as the same has been passed in gross violation of the principles of natural justice, inasmuch as no notice whatsoever was issued to the petitioner, nor any opportunity of hearing was afforded before passing the said order.

13. He further submitted that it is a settled proposition of law that no adverse order affecting civil rights of a person can be passed without affording an opportunity of hearing and the impugned

order having been passed in complete breach of audi alteram partem is liable to be set aside on this ground alone.

14. He next submitted that the Sub-Divisional Officer has acted wholly without jurisdiction in directing expunction of the petitioner's name from the revenue records without initiating any proceedings in accordance with law, without registering any case for correction of revenue entries and without relegating the parties to a competent court of jurisdiction.

15. He submitted that the petitioner derives her title from her father, late Yadunath, who was admittedly recorded as bhumidhar over the land in dispute, namely plot Nos. 1092, 1249, 1254, 1250, 1251 and 1258, and remained in continuous possession thereof during his lifetime. After the death of the petitioner's father, the petitioner, being his sole legal heir and daughter, was duly mutated in the revenue records and her name has been recorded as bhumidhar in the Khatauni of Fasli years 1402 to 1407, thereby establishing her lawful title and possession over the land in dispute. The possession over the land in dispute has always remained with the petitioner's family; firstly with her father during his lifetime and thereafter with the petitioner and at no point of time has the Gaon Sabha ever been in possession or acquired any right, title or interest over the said land.

16. He submitted that during consolidation operations, the Consolidation Officer, Gonda, vide order dated 28.03.1967, had already adjudicated the rights of the parties and directed recording of the name of the petitioner's father over the land in dispute, which attained finality and continues to hold the field. The Gaon Sabha having failed to establish its claim through lawful means, instituted Regular Suit No.421 of 1997 before the Civil Judge (Junior Division), Gonda, which was opposed by the petitioner and the learned trial court, upon consideration, rejected the application for temporary injunction and also found that the suit was not cognizable by the civil court.

17. He submitted that during pendency of the said civil proceedings, the Gaon Sabha, in a mala fide and clandestine manner, procured a report from the Tehsildar dated 24.05.1997 and on the basis of the said ex-parte report, got the impugned order passed from the Sub-Divisional Officer on the very same date, thereby circumventing due process of law.

18. He next submitted that the alleged enquiry conducted by the Tehsildar was wholly ex-parte, without issuing any notice to the petitioner or affording her any opportunity to present her case, rendering the entire proceedings vitiated in law.

19. He submitted that the impugned order has been passed during the pendency of the civil suit and, therefore, the same is not only without jurisdiction but also amounts to interference with the judicial process, and is liable to be set aside on this ground as well.

20. He submitted that the action of the respondents is clearly arbitrary, mala fide and an abuse of process of law, undertaken with the sole intent to deprive the petitioner of her lawful rights over the land in dispute. The petitioner has further been prejudiced by the fact that despite approaching the Collector, Gonda for obtaining a certified copy of the impugned order, the same has not been supplied to her, thereby depriving her of an effective opportunity to seek appropriate legal

remedies. In view of the aforesaid facts and circumstances, the impugned order dated 24.05.1997 is unsustainable in the eyes of law and is liable to be quashed by this Hon'ble Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. In support of his submissions, he placed reliance in the case of **Gopal Das Jain Vs. Board of Revenue reported in Neutral Citation No.2525: : AHC-LKO; 38961.**

21. On the other hand, learned Additional CSC submitted that the basis of the petitioner's writ and the relief sought is absolutely baseless and fabricated. The petitioner has approached this Hon'ble Court with unclean hands, concealing the fact that the entries in the revenue records were obtained through a fraudulent process. Consequently, the writ petition is liable to be dismissed at the threshold.

22. He next submitted that the entry of the order of the Consolidation Officer dated 28.03.1967 (Case No. 2873/218/173) was made in the Mutation Register (R-6) of Tehsil Gonda on 20.08.1985. This execution was carried out after an unexplained delay of 18 years. Investigation reveals that no such file or record exists in the District Record Room, as confirmed by reports dated 05.05.1997 and 06.05.1997. The entry was obtained without relevant records by colluding with department employees.

23. He further submitted that the execution of the Parwana Amaldaramad (Warrant for Entry) was contrary to the U.P. Consolidation of Holdings Rules, 1954. Under Rule 109, the execution of an order must be carried out by the Assistant Consolidation Officer (A.C.O.) himself after due inspection and coming to the Tehsil. In the present case, no such procedure was followed, rendering the entry legally unsustainable and void ab initio.

24. He submitted that the disputed property, specifically Gata (plot) nos. 1092, 2449, 2254, 1250, 1251, and 1258, belongs to the Gram Sabha/Gram Samaj. These plots include areas recorded as "Banjar", "Pond/Talab", and a "Pathway". Under the law, no individual-including the petitioner or their father, Yadunath-can have legal possession or accrue any rights over such public utility land.

25. He submitted that the petitioner has attempted to deceive this Hon'ble Court by submitting a tampered photocopy of the execution order. It is submitted that the photocopy was prepared by taking the original document and pasting paper over a scribbled note on the lower right portion to hide adverse remarks. This constitutes direct evidence of forgery and a deliberate attempt to mislead the judicial process.

26. His submission is that based on complaints filed by a villager (Jaganmani) and the Gram Pradhan, a thorough inquiry was conducted. Legal opinion was obtained from the District Government Counsel (Civil) and the Sub-Divisional Officer (SDO), Colonelganj, passed the cancellation order on 24.05.1997. This order was issued only after due examination of evidence and recorded statements, ensuring the integrity of the revenue records.

27. He submitted that the petitioner's claim regarding the lack of notice is misleading. The petitioner had full knowledge of the investigation and submitted multiple objection letters and

applications (dated 05.05.1997 to 24.05.1997) during the process. Furthermore, as per settled law **(Ref: A.W.C. [1992] Revenue Pg 58 and Chandra Dutt vs. State)**, a fraudulent entry can be cancelled suo motu by the competent authority without the necessity of a formal hearing for the party benefiting from the fraud.

28. It is further submitted that the provisions of Section 33/39 of the Land Revenue Act, 1901, as cited by the petitioner, are inapplicable here. Those provisions relate only to the correction of minor errors or omissions in annual registers, whereas the present case involves a deep-rooted fraud and forgery affecting the title of Gram Sabha land. Therefore, his submission is that the impugned order does not suffer from any infirmity or illegality and is just and valid.

29. In rebuttal, learned Senior Counsel for the petitioner submitted that the respondent's challenge to the petitioner's title is barred by the principle of finality of judicial proceedings. The land in question was recorded in the name of the petitioner′s father, Yadunath, pursuant to a valid order dated 28.03.1967 passed by the Consolidation Officer in Case No. 2873/218/173 under Section 9-A (2) of the U.P. Consolidation of Holdings Act. This order was duly given effect in the revenue records under Rule 109-A of the Act. The respondent′s attempt to characterize this as a "suit" is factually incorrect as it was a registered case that has attained finality.

30. He further submitted that the order dated 04.05.1997, which cancelled the long-standing revenue entries in the name of the petitioner′s mother, Smt. Mayawati, is legally unsustainable as the entry was cancelled without affording the recorded tenure holder an opportunity of hearing or to lead evidence.

31. He next submitted that the Sub-Divisional Officer (SDO) passed a "cryptic order" by merely writing "Approved" on an ex-parte report submitted by the Tehsildar. Such a summary cancellation of a long-standing entry, based on a "legal opinion" from a District Government Counsel (Civil) rather than the DGC (Revenue), is without jurisdiction and contrary to the law laid down by this Hon′ble Court.

32. He further submitted that the respondents' claim that the entries were "forged and fictitious" is a bald allegation unsupported by record. He submitted that the original records (Case No. 2873/218/173) were weeded out after the requisite period, as evidenced by the question-answer submitted as Annexure SA-1. The petitioner has produced secondary evidence, including entries in Qaida 24, Volume No. 5, Page 174, Sl. No. 38 (Annexure S-3), which confirms the existence of the 1967 order.

33. He submitted that the respondents are estopped from claiming the land as "Gram Sabha" land due to previous failed litigations as a Civil Suit filed by the Gaon Sabha (Opposite Party No. 3) regarding this dispute was dismissed. The Gaon Sabha's application for stay (dated 13.05.1997) was rejected and the subsequent appeal was also dismissed by the Special Judge, Gonda on 29.11.1997. The respondents cannot now seek to achieve through a summary administrative order what they failed to achieve through a competent Civil Court.

34. He lastly submitted that the petitioner's title stems from a valid, decades-old consolidation order. The subsequent administrative action in 1997 to cancel these entries is a "misconceived" exercise of power, conducted in gross violation of the principles of natural justice and in defiance of the dismissal of the Gaon Sabha's own civil suit.

35. I have considered the submissions advanced by learned counsel for the parties and perused the material on record as well as judgment relied upon by learned Senior Counsel for the petitioner.

36. To resolve the controversy involved in the matter, relevant portion of the judgment relied upon by learned Senior Counsel for the petitioner is being quoted below:

"21. The order impugned has been passed without providing opportunity of hearing to the petitioner by the respondent No.1 and without issuing show cause notice to him. Respondent No.1 cannot expunge name of the petitioner from khatauni without registering a case for correction of records under Sections 33 & 39 of Land Revenue Act.

25. Hon'ble Supreme Court has followed the doctrine of principles of natural justice in the case reported in paragraph 19 of the judgment. The fact remains that without giving opportunity of hearing the order has been passed, therefore, there is clear violation of principles of natural justice, therefore, the orders impugned are liable to be set aside."

37. From perusal of the record, it transpires that the name of the petitioner's father, late Yadunath, had been recorded over the land in dispute pursuant to the order dated 28.03.1967 passed by the Consolidation Officer during consolidation proceedings and, after his death, the petitioner, being his daughter and sole legal heir, came to be recorded in the revenue records. The Khatauni of Fasli years 1402 to 1407 also reflects the petitioner's name as bhumidhar over the plots in question. The said entries admittedly continued for a considerable period and formed the basis of the petitioner's claim and possession over the land in dispute.

38. It further emerges from the record that the Gaon Sabha had already instituted Regular Suit No.421 of 1997 in respect of the same dispute before the competent civil court and the application for temporary injunction moved therein had been rejected on 13.05.1997. Thus, the dispute relating to the nature of the land and entitlement of the parties was already engaging consideration before a competent forum. During pendency of the said proceedings, the impugned order dated 24.05.1997 came to be passed by the Sub-Divisional Officer directing expunction of the petitioner's name from the revenue records and recording the land in the name of the Gaon Sabha.

39. The foremost issue which arises for consideration before this Court is as to whether the Sub-Divisional Officer could have directed deletion of the petitioner's name from the revenue records without initiating any regular proceedings under the relevant provisions of law and without affording any opportunity of hearing to the petitioner.

40. The record does not disclose that any regular proceedings for correction of revenue entries were ever instituted against the petitioner. Neither any case number was assigned nor any notice was issued requiring the petitioner to show cause against the proposed deletion of her name. The impugned order appears to have been passed merely on the basis of an ex-parte report submitted by

the Tehsildar on the same date i.e. 24.05.1997 and the Sub-Divisional Officer mechanically approved the same without recording any independent satisfaction or reasons. Such exercise of power, which has drastic civil consequences affecting valuable rights recorded in favour of the petitioner for decades, could not have been undertaken in such a summary and clandestine manner.

41. It is well settled that any order adversely affecting civil rights of a person must conform to the principles of natural justice. Even in cases where allegations of irregularity or fraud are levelled, the person whose rights are sought to be affected is entitled to notice and opportunity of hearing before any adverse action is taken. The doctrine of audi alteram partem is ingrained in our constitutional and administrative jurisprudence and cannot be dispensed with in a casual manner.

42. In the present case, the respondents have failed to place any material before this Court demonstrating issuance of notice to the petitioner or affording her opportunity to participate in the alleged enquiry conducted by the Tehsildar. Mere assertion that the petitioner had knowledge of the proceedings or had submitted certain applications would not satisfy the mandatory requirement of a lawful hearing contemplated under law. The impugned order, therefore, stands vitiated on account of gross violation of principles of natural justice.

43. This Court finds that the controversy involved in the present matter is squarely covered by the judgment relied upon by learned Senior Counsel for the petitioner in the case of **Gopal Das Jain Vs. Board of Revenue (Supra)**, wherein this Court categorically held that the revenue authorities cannot expunge the name of a recorded tenure holder from the revenue records without registering appropriate proceedings under Sections 33 and 39 of the Land Revenue Act and without providing opportunity of hearing to the affected person. The relevant observations extracted hereinabove clearly support the case of the petitioner. The ratio laid down therein fully applies to the facts of the present case, inasmuch as the petitioner′s name has been deleted from the revenue records behind her back without any regular proceedings and without affording any opportunity of hearing.

44. The submission advanced on behalf of the respondents that the entries were obtained fraudulently and, therefore, could be cancelled suo motu without hearing the petitioner, does not impress this Court. Allegations of fraud are serious in nature and require adjudication on the basis of cogent evidence in proceedings conducted in accordance with law. Fraud cannot be presumed merely on the basis of administrative suspicion or absence of old records from the record room, particularly when the petitioner has produced supporting revenue entries and secondary evidence indicating existence of the consolidation order.

45. Moreover, the respondents themselves admit that the entries in favour of the petitioner′s predecessor had continued in the revenue records for a long duration. Such long-standing entries affecting substantive rights could not have been annulled summarily by an executive fiat. If the respondents were of the opinion that the entries had been procured fraudulently or that the land belonged to the Gaon Sabha, the proper course available to them was to initiate appropriate proceedings before the competent forum in accordance with law and establish their claim by leading evidence.

46. The contention of learned Additional CSC that the land in dispute is recorded as pond, banjar or pathway and, therefore, no rights could accrue in favour of the petitioner also involves disputed questions relating to title and nature of land, which could not have been conclusively determined by the Sub-Divisional Officer in summary proceedings conducted without notice. Such issues necessarily require adjudication before the competent authority/forum after giving due opportunity to all concerned parties.

47. Equally untenable is the submission that the provisions relating to correction of revenue records were inapplicable in the present matter. Once the petitioner′s name stood recorded in the revenue records and the same was sought to be deleted, the authority was bound to proceed strictly in accordance with the prescribed statutory procedure. The respondents could not bypass the requirement of lawful proceedings by merely branding the entry as fraudulent.

48. This Court also cannot lose sight of the fact that the impugned order came to be passed during pendency of litigation initiated by the Gaon Sabha itself regarding the same property. The sequence of events, namely rejection of the injunction application on 13.05.1997 followed by the Tehsildar′s report and the impugned order dated 24.05.1997, lends credence to the petitioner′s contention that the impugned action was undertaken to circumvent due process of law and to achieve indirectly what could not be obtained before the competent court.

49. The judgments relied upon by learned counsel for the respondents relating to cancellation of fraudulent entries without hearing are clearly distinguishable on facts. In the present case, the entry in favour of the petitioner traces its origin to consolidation proceedings and remained in existence for decades. No categorical adjudication of fraud has ever been made by any competent court or authority after affording opportunity to the petitioner. Thus, the respondents cannot derive any benefit from the said judgments in absence of a duly established finding of fraud recorded in proceedings conducted in accordance with law.

50. This Court is of the considered opinion that the impugned order dated 24.05.1997 passed by the Sub-Divisional Officer, Colonelganj, District Gonda suffers from manifest illegality, arbitrariness and violation of principles of natural justice. The same has been passed without jurisdiction, without instituting any regular proceedings, without issuance of notice and without affording opportunity of hearing to the petitioner. The order further reflects complete non-application of mind, having been passed merely on the basis of an ex-parte report submitted by the Tehsildar.

51. Accordingly, the writ petition deserves to be allowed and is hereby **allowed**.

52. The impugned order dated 24.05.1997 passed by respondent No.1 - Sub-Divisional Officer, Colonelganj, District Gonda, contained as Annexure-5 to the writ petition, is hereby quashed.

53. It is, however, made clear that this Court has not adjudicated upon the inter se title of the parties over the land in dispute and it shall remain open to the respondents/Gaon Sabha to avail such remedy as may be available to them under law before the competent forum. In the event any

proceedings are initiated, the same shall be decided strictly in accordance with law after affording full opportunity of hearing to all concerned parties, without being influenced by any observation made hereinabove.

54. There shall be no order as to costs.

(2026) 5 ILRA 1607
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 22.05.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1005596 of 2012

Rajesh Kumar Singh ...Petitioner
Versus
Commissioner Lucknow & Anr. ...Respondents

Issue for Consideration

Whether mere pendency of criminal proceedings could constitute a ground for cancellation of an arms licence u/s.17(3) of the Arms Act, 1959; and whether the licensing and appellate authorities had recorded the requisite satisfaction that continuance of the licence was prejudicial to public peace or public safety or that the petitioner had misused the licensed weapon or violated any condition of the licence.

Headnotes

Arms Act, 1959 – s.17(3) – Cancellation of arms licence – Petitioner holding DBBL arms licence – Complaint made against petitioner – Show cause notice issued on ground of pendency of three criminal cases – Arms licence cancelled by licensing authority – Appeal dismissed ex parte – Review also rejected – Challenge thereto – Mere pendency of criminal cases – Whether sufficient ground for cancellation of arms licence.

Held: Mere pendency of criminal case cannot by itself be a ground for cancellation of fire arm's licence – Licensing authority cancelled licence solely on account of pendency of criminal cases and on basis of police report – No independent satisfaction recorded that continuance of arms licence was prejudicial to public peace or public safety – No finding that petitioner had ever misused licensed weapon or violated any condition of licence – Appellate authority mechanically affirmed order without recording independent reasons – Mandatory requirement of recording satisfaction about existence of circumstances affecting public peace and public safety clearly missing – "Public peace" or "public safety" u/s.17(3)(b) does not mean a simple law and order issue involving a few persons, but refers to a situation affecting public or society at large – In one criminal case petitioner already acquitted, in another final report submitted and in remaining case petitioner enlarged on bail – No allegation that petitioner had misused licensed firearm or that possession thereof endangered public peace or safety – Impugned orders passed mechanically and without due application of mind to statutory requirements – Impugned orders dated 22.12.2003 and 25.11.2008 quashed – Matter remitted to licensing authority for fresh consideration in accordance with law after affording due opportunity of hearing – Mere pendency of criminal proceedings, in absence of cogent material demonstrating threat to public peace or public safety or misuse of licensed weapon, shall not by itself constitute ground for revocation of arms licence. [Paras 15-24] (E-5)

Case Law Cited

Chhote Lal v. State of U.P. and Others, Miscellaneous Single No. 6011 of 2013;
Krishna Pratap Singh v. State of U.P. and Others, Writ-C No. 22561 of 2016.

List of Acts

Arms Act, 1959

List of Keywords

Cancellation of arms licence; DBBL arms licence; Section 17(3); Pendency of criminal case; Public peace; Public safety; Misuse of licensed weapon; Violation of conditions of licence; Police report; Independent satisfaction; Mechanical exercise of power; Application of mind; Licensing authority; Appellate authority; Revocation of arms licence; Threat to public peace or public safety; Criminal proceedings; Remand for fresh consideration.

Case Arising From

Petition arising out of the order dated 22.12.2003 passed by the licensing authority cancelling the petitioner's arms licence and the order dated 25.11.2008 passed by the appellate authority dismissing the petitioner's appeal ex parte.

Appearances for Parties

Advs. for the Petitioner: Upendra Singh, Vinay Misra
Advs. for the Respondents: C.S.C.

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

1. Heard Mr. Vinay Mishra, learned counsel for the petitioner learned Standing Counsel for the State-respondent.

2. By means of the present writ petition, the petitioner is challenging the orders dated 22.12.2003 (Annexure-1) and 25.11.2008 (Annexure-2). Further prayer has been made to issue direction to the respondents not to revoke the D.B.B.L. license of the petitioner due to mere pendency of a criminal case against the petitioner.

3. Factual matrix of the case is that the petitioner was issued Arms License No.5626/1998 bearing DBBL Gun No.99/73. One Neelam Srivastava, the then Gram Pradhan of Village Paharpur, P.S. Banthara, District Lucknow, due to some enmity, moved a complaint dated 19.7.2001 against the petitioner to the District Magistrate, Lucknow. The District Magistrate issued a show cause notice dated 5.9.2001 to the petitioner for suspending the said arms license of DBBL gun on the premise of pendency of three criminal cases being (i) Case Crime No.56/98 under Sections 147, 148, 149, 307/302 IPC, (ii) Case Crime No.147/93 under Section 3/25 of Arms Act and (iii) Case Crime No.8/2001 under Section 364 IPC.

4. Thereafter, the petitioner replied to the show cause notice and engaged a counsel to represent him on the dates fixed but the counsel failed to put in appearance and consequently, the arms license of the petitioner was cancelled vide order dated 22.12.2003.

5. Feeling aggrieved, the petitioner filed an appeal before the respondent No.1 against the order dated 22.12.2003, which has also been dismissed ex parte vide order dated 25.11.2008. The petitioner upon coming to know about the dismissal of the appeal, filed a review application and the same was also rejected vide order dated 25.7.2012.

6. Submission of learned counsel for the petitioner is that the the licensing authority who once granted the arms license cannot cancel the same casually and mechanically under Clause-A of Section 17 (3) of the Arms Act, the license can be cancelled if the licensing authority is satisfied that the holder of the license is prohibited by any other law for the time being in force, for acquiring/ having in his possession or carrying any arms or ammunition, or is of unsound mind, or is for any reason, unfit for a license under this Act. He submits that Clause-b provides that if the licensing authority deems it necessary for the security of the public peace or for public safety to revoke the license only then the license can be revoked. It is submitted that in the present case, the respondents have failed to record their satisfaction to the effect that the revocation of the petitioner's arms license is necessary for the security of the public peace and public safety.

7. Learned counsel for the petitioner stated that public peace and safety does not mean ordinary disturbance of law and order because public safety means safety of public at large. In the present case, the respondent Nos.1 and 2 failed to consider this mandatory provision because mere pendency of criminal case cannot be a ground for cancellation of arms license and more so when there was no allegation to the effect that the fire arm which was registered on the arms license of the petitioner was subjected to any kind of misuse.

8. Learned counsel for the petitioner submits that the arms license of the petitioner was cancelled on the premise of pendency of three criminal cases (mentioned in paragraph-3 above). He submits that in Case Crime No.56/98, the petitioner has been enlarged on bail, in Case Crime No.147/93, the petitioner was acquitted by the court below and in Case Crime No.8/2001, the Police had already filed a final report.

9. It is further submitted that in the counter affidavit, a stand was taken that on the basis of police report and due to pendency of criminal cases against the petitioner, the arms license of the petitioner was cancelled and the same is fully justifiable. He submits that in the rejoinder affidavit, the petitioner has strongly refuted the stand taken in the counter affidavit. He further took a stand in the rejoinder affidavit that there is no categorical finding to the effect that the petitioner misused the fire arm/ weapon and thereby violated the conditions of the license.

10. In support of the submissions advanced, he placed reliance upon the following judgments :-

(i) Chhote Lal Vs. State of U.P. and others (Miscellaneous Single No.6011 of 2013)

(ii) Krishna Pratap Singh Vs. State of U.P. and others (Writ-C No.22561 of 2016)

11. On the other hand, learned Standing Counsel submits that if the licensing authority is satisfied that it is necessary for security of public peace and safety to suspend or revoke the arms

license then the authority is competent to do the same. It is further submitted that on the basis of police report and due to pendency of criminal cases against the petitioner, the arms license of the petitioner was cancelled.

12. After having heard the rival submissions of learned counsel for the parties, I perused the material on record.

13. To resolve the controversy, relevant paragraphs of the judgment in the case of **Chhote Lal** (Supra) are being quoted hereunder :-

"Perusal of the record further reveals that on account of pendency of criminal cases the District Magistrate came to the conclusion that the petitioner is a person of criminal nature and is involved in criminal activities. However, mere involvement in a criminal case cannot, in any way, affect the public security or public interest.

In the case of Rama Kushwaha vs. State of U.P. & others , reported in 2011(29) LCD 1045 it has been held that a license cannot be refused/ suspended/ cancelled merely because there is an ordinary breach of law and order. The relevant paras of the aforesaid judgment are being reproduced herein under:-

8.Relying upon Ganesh Chandra Bhatt Vs. District Magistrate Almora; AIR 1993 All. 291, learned Counsel for the petitioner submits that this Court has held in clear words that a licence can not be refused/suspended/cancelled merely because there is an ordinary breach of law and order.

9.'Public peace' or 'public safety' do not mean ordinary disturbance of law and order, public safety means safety of the public at large and not safety of few persons only. Before passing of the order in exercise of power conferred under Section 17(3) of the Act the Licensing Authority is under an obligation to apply his mind to the question as to whether there was eminent danger to public peace and safety involved in the case.

10. In Ram Murli Madhukar Vs. District Magistrate, Sitapur [1998(16) LCD 905], this Court has held that licence can not be suspended or revoked on the ground of public interest (Janhit).

11.It is well settled in law that mere pendency of criminal case or apprehension of abuse of arms act are not sufficient grounds for passing the order of suspension or revocation of licence under Section 17 (3) of the Act. The question as to whether mere involvement in a criminal case or pendency of a criminal case can be a ground for revocation of license under Arms Act, has been dealt with by a Division Bench of this Court Sheo Prasad Misra Vs. The District Magistrate, Basti & others, wherein the Division Bench relying upon the earlier decision of Masiuddin Vs. Commissioner, Allahabad, found that mere involvement in criminal case cannot in any way affect the public security or public interest. The law propounded in the said decisions has been subsequently followed in Habib Vs. State of U.P. reported in 2002 ACC 783, Ram Sanehi Vs. Commissioner, Devi Patan Division, Gonda & another.

Further, in the case of Hiramani Singh vs. State of U.P. & others, reported in 2011(29)LCD 829 it has been held that mere pendency of criminal case cannot be a ground for cancellation of fire arm license. The relevant para 8 reads as under:

8. This Court in the case of Ashok Rao vs. State of U.P. and others, reported in 2010 (68) accused applicants. 441 while considering the authority to be exercised under section 17 of the

Indian Arms Act has taken the view that mere pendency of criminal case cannot be ground for cancellation of fire arm license unless and until finding is returned by the authority concerned that possession of fire arm has the tendency of threatening public peace and public safety.

In the case of Rajendra Singh vs. Commissioner, Lucknow Division, Lucknow and others, reported in 2011 (29) LCD 1041 'Public Peace' or 'Public Safety' has been defined. The relevant paras 6 & 7 read as under:

6. 'Public peace' or 'public safety' do not mean ordinary disturbance of law and order public safety means safety of the public at large and not safety of few persons only. Before passing of the order in exercise of power conferred under Section 17(3) of the Act the Licensing Authority is under an obligation to apply his mind to the question as to whether there was eminent danger to public peace and safety involved in the case.

7.It is well settled in law that mere pendency of criminal case or apprehension of abuse of arms act are not sufficient grounds for passing the order of suspension or revocation of licence under Section 17 (3) of the Act. The question as to whether mere involvement in a criminal case or pendency of a criminal case can be a ground for revocation of licence under Arms Act, has been dealt with by a Division Bench of this Court Sheo Prasad Misra Vs. The District Magistrate, Basti & others, wherein the Division Bench relying upon the earlier decision of Masiuddin Vs. Commissioner, Allahabad, found that mere involvement in criminal case cannot in any way affect the public security or public interest. The law propounded in the said decisions has been subsequently followed in Habib Vs. State of U.P. reported in 2002 ACC 783.

In view of the above, Writ Petition is allowed. The impugned orders dated 16.08.2013 passed by opposite party no.2 and the order dated 16.11.2012 passed by opposite party no.3, contained as Annexure Nos. 1 and 2 respectively to this writ petition, are hereby quashed. The matter is remanded back to the District Magistrate, Hardoi, to re-examine the issue and take a decision in accordance with law, within a period of three months, from the date of receipt of certified copy of this order."

14. Relevant paragraphs of the judgment in the case of **Krishna Pratap Singh** (Supra) are being quoted below :-

"6. In support of his submission, learned counsel for the petitioner has placed reliance on the judgments passed by this Court in the cases of Ram Murti Madhukar vs. District Magistrate, Sitapur [1998 (16) LCD-905] and Ram Prasad vs. Commissioner and Ors. decided on 07.02.2020 in Writ-C No. 56378 of 2006, wherein it has been held that mere pendency of criminal case or apprehension of misuse of arms are not sufficient grounds for passing the order of suspension or revocation of licence under Section 17 of the Act.

7. In Ram Murti Madhukar (supra), this Court has held in paragraph no. 8, is quoted as under :-

"(8) It is also well settled in law that mere pendency of criminal case or apprehension of abuse of Arms Act, are not sufficient ground for passing of the order of suspension or revocation of licence under Section 17 of the Act. A reference in this regard may be made to the decisions of this Court in Ganesh Chandra Bhatt v. D. M. Almora, AIR 1993 All 291"

8. This Court in the case of Ram Prasad (supra) has held as under. Relevant paragraphs of the said judgments i.e. 16, 22, 24, 32 and 36 are being quoted hereunder:-

"16. The matter which requires consideration is, whether on the ground of pendency of the criminal case the petitioner's fire arm licence could be cancelled and his appeal could be dismissed, notwithstanding his acquittal on 17.1.2003. It also requires consideration if the ground in the impugned orders that if the petitioner's fire arm licence remain with the petitioner, it would not be in the public interest and public security, are justified for cancellation and based on substantial material."

22. In Chhanga Prasad Sahu Vs. State of U.P. and others reported in 1984 AWC 145 (FB), after noticing the provisions of Section 17 (3) of the Arms Act the Full Bench in paragraph 5 held as follows:

"A perusal of abovementioned provisions indicates that the licensing authority has been given the power to suspend or revoe an arms licence only if any of the conditions mentioned in sub-clauses (a) to (e) of sub-section (3) of Section 17 of Act exists." sub section (5) of Section 17 makes it obligatory upon the licensing authority to, while passing the order revoking/suspending an arms licence, record in writing the reasons therefore and to, on demand, furnish a brief statement thereof to the holder of the license unless it considers that it will not be in the public interest to do so."

In paragraph-9 it has been emphasised as under:-

"it is true that in order to revoke/suspend an arms licence, the licensing authority has necessarily to come to the conclusion that the facts justifying revocation/suspension of licence mentioned in grounds (a) to (e) of section 17 exist"

24. In Habib v. State of U.P. and others [2002 (44) ACC 783] this Court held that mere involvement in a criminal case cannot in any way affect the public security or public interest and the order cancelling or revoking licence of fire arm was not justified. Paragraph 3 of this judgment reads as under:

"3. The question as to whether mere involvement in a criminal case or pendency of a criminal case can be a ground for revocation of the licence under Arms Act, has been dealt with by a Division Bench of this court reported in Sheo Prasad Misra Vs. The District Magistrate, Basti and others, wherein the Division Bench relying upon the earlier decision reported in Masi Uddin v. Commissioner, Allahabad, found that mere involvement in criminal case cannot in any way affect the public security or public interest and the order cancelling or revoking the licence of fire arm has been set aside."

32. In Ghanshyam Gupta v. State of U.P. and others [2016 (34) LCD 3035] this Court has again held that the necessary ingredients to invoke jurisdiction of the licencing authority in terms of Section 17 were clearly lacking and no finding had been returned on the basis of materials produced in that regard by the licencing authority, which must justify passing of the order of cancellation. Paragraph 9 of the said judgment is being quoted as under:

"9. In a recent decision of Lucknow Bench of this court in Surya Narain Mishra v. State of U.P. and others, reported in 2015 (7) ADJ 510, similar view has been taken by this Court relying upon subsequent decisions. Para-14 of the judgment is reproduced:

"14. In the case of Raj Kumar Verma v. State of U.P., 2013 (80) ACC 231 this court in paragraph No.3 held as under:-

"The ground for issue of show-cause notice, suspension and ultimately cancellation of the licence is that one and precisely one criminal case was registered against the petitioner. The District Magistrate has also held that the petitioner has been enlarged on bail. He has gone further to observe that if the licence remained intact, the petitioner, may disturb public peace and tranquility. The same findings have been given

by the Commissioner, Unmindful of the fact that this Court is repeating the law of the land, but the deaf ears of the administrative officers do not ready to succumb the law of the land. The settled law is that mere involvement in a criminal case without any finding that involvement in such criminal case shall be detrimental to public peace and tranqulity shall not create the ground for the cancellation of Armed Licence. In Ram Suchi v. Commissioner, Devipatan Division reported in 2004 (22) LCD 1643, it was held that this law was relied upon in Balram Singh Vs. Satate of U.P. 2006 (24) LCD 1359. Mere apprehension without substance is simply an opinion which has no legs to stand. Personal whims are not allowed to be reflected while acting as a public servant.

36. In the present case the petitioner's licence was cancelled by the District Magistrate on the ground of pendency of criminal case against him. The petitioner was later on acquitted of the criminal case by order dated 17.1.2003. A perusal of the order of acquittal does not show the use of fire arm. After acquittal the very basis of the order of cancellation vanished. The finding of the District Magistrate as affirmed by the Commissioner, that it was not in the interest of public peace and the public security that the licence remained with the petitioner/licencee, is not based on any evidence/material, except the police reports which in their turn were in view of the pendency of the criminal case against the petitioner. On mere apprehension expressed in the impugned orders that the petitioner would misuse the fire arm and would extend threat to the persons of the weaker section of the society, the arm licence could not be cancelled.

11. Public peace or public safety does not mean ordinary disturbance of law and order, public safety means safety of the public at large and not safety of few persons only and before passing of the order of cancellation of arm license as per Section 17 (3) of the Act, 1959, the licensing authority is under an obligation to apply his mind which is not present in the instant case."

15. The first question which arises for consideration before this Court is as to whether mere pendency of criminal case can be a ground for the respondents to cancel the arms license of the petitioner under the provisions of Arms Act ? A consistent view of this Court has been that merely on account of pendency of a criminal case fire arm's license cannot be cancelled.

16. The second aspect which requires consideration is whether the impugned orders satisfy the statutory mandate contained under Section 17(3) of the Arms Act. A perusal of the order dated 22.12.2003 passed by the licensing authority reveals that the arms licence of the petitioner has been cancelled solely on account of pendency of criminal cases and on the basis of police report. No independent satisfaction has been recorded by the licensing authority that continuance of the arms licence with the petitioner was prejudicial to public peace or public safety, nor any finding has been returned that the petitioner had ever misused the licensed weapon or violated any condition of the licence.

17. The appellate authority, while dismissing the appeal vide order dated 25.11.2008, has also failed to advert to the essential ingredients required under Section 17(3) of the Act and has mechanically affirmed the order passed by the licensing authority without recording any independent reasons. The mandatory requirement of recording satisfaction about the existence of circumstances affecting public peace and public safety, which is necessary before cancelling the licence, is clearly missing in both the impugned orders.

18. It is well settled that the term “public peace” or “public safety” under Section 17(3)(b) of the Arms Act does not mean a simple law and order issue involving a few persons, but refers to a situation affecting the public or society at large. Mere pendency of criminal cases, without any material showing misuse of the licensed weapon or any immediate threat to public peace and safety, by itself cannot be a valid ground for cancellation of an arms licence.

19. The judgments relied upon by learned counsel for the petitioner, in **Chhote Lal** and **Krishna Pratap Singh** (Supra), reiterate the settled proposition that cancellation of arms licence cannot rest merely upon pendency of criminal proceedings or a bald apprehension of misuse.

20. In the present case, it is not disputed that in one criminal case the petitioner has already been acquitted, in another final report has been submitted and in the remaining case the petitioner has been enlarged on bail. More importantly, there is no allegation either in the impugned orders or in the counter affidavit that the petitioner ever misused the licensed firearm or that possession thereof by the petitioner endangered public peace or safety. The impugned orders, therefore, appear to have been passed mechanically and without due application of mind to the statutory requirements.

21. In view of the aforesaid facts and circumstances of the case and the law laid down by this Court in the judgments referred to above, this Court is of the considered opinion that the impugned orders dated 22.12.2003 and 25.11.2008 cannot be sustained in the eyes of law.

22. Accordingly, the writ petition succeeds and is **allowed**. The impugned orders dated 22.12.2003 passed by the licensing authority and 25.11.2008 passed by the appellate authority are hereby quashed.

23. The matter is remitted to the licensing authority to reconsider the issue afresh strictly in accordance with law, after affording due opportunity of hearing to the petitioner and keeping in view the observations made hereinabove, expeditiously, preferably within a period of three months from the date of production of a certified copy of this order.

24. It is made clear that mere pendency of criminal proceedings, in absence of any cogent material demonstrating threat to public peace or public safety or misuse of the licensed weapon, shall not by itself constitute a ground for revocation of the arms licence.

25. There shall be no order as to costs.

(2026) 5 ILRA 1614
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 26.05.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Writ Tax No. 715 of 2026

M/S Mishra Security Services ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

ISSUE FOR CONSIDERATION

Whether a writ petition under Article 226 of the Constitution can be entertained to challenge a GST assessment order and show cause notice after expiry of the statutory limitation period prescribed under Section 107 of the GST Act, 2017.

HEADNOTES

Tax Law – Constitution of India - Article 226 – Goods and Services Tax Act, 2017 – Section 74, 107, - Limitation Act, 1963 – Section 5, 14: - Writ Petition under Article 226 - filed against assessment order and show cause notice - seeking quashing thereof and prohibition against coercive action - Petitioner had replied to SCN and was heard - earlier writ filed in Jan 2026 was withdrawn – statutory appeal under Section 107 GST Act not filed within limitation - Legal question - whether writ jurisdiction can be invoked to bypass limitation - Petitioner pleaded lack of jurisdiction and violation of Section 74 GST Act - Respondents objected citing delay and availability of remedy - Court finds that, no jurisdictional error or violation of natural justice - writ cannot be used to circumvent statutory appellate procedure – law does not help and/or come in rescue to a person, who sleep over his own rights - writ jurisdiction can certainly not be exercised when invoked to undermine or defeat the application of a statutory regime so as to render the provision of limitation provided in the statute otiose – *quando aliquid prohibetur ex directo, prohibetur et per obliquum* (One cannot do indirectly what cannot be done directly) - Held, entertaining writ petition would amount to allowing the petitioner to circumvent the statutory appellate procedure – accordingly, writ petition dismissed, with liberty to file appeal in accordance with law.

(Para – 9, 10, 11, 12)

Writ Petition Dismissed. (E-11)

CASE LAW CITED

Singh Enterprises v. C.C.E., Jamshedpur, (2008) 221 ELT 163 (SC),
Commissioner of Customs & Central Excise v. Hongo India Pvt. Ltd., (2009) 5 SCC 791,
Punjab Fibres Ltd. v. Commissioner of Customs, Central Excise, Noida, (2008) 3 SCC 73,
Atlantis Intelligence Ltd. v. Union of India, 2025 SCC OnLine All 5291.

LIST OF ACTS

Customs Act, 1962 – Income Tax Act, 1961 – Income Tax Act, 2025.

LIST OF KEYWORDS

GST Assessment, show Cause Notice, Article 226, question of Limitation, Writ Jurisdiction, Natural Justice, Appeal, Delay Condonation, Section 107 GST Act, Certiorari, Prohibition, Laches, authority, rescue, substantive statutory provision, stricto sensu, undermine or defeat, patent illegality, dismissed.

CASE ARISING FROM

Impugned Assessment Order dated 04.06.2025 and Show Cause Notice dated 17.03.2025 issued by UP GST Department.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Apoorv Dev, Prashant Kumar Singh.
Counsel for Respondent(s): C.S.C.

(Delivered by Hon'ble Shekhar B. Saraf, J.
&
Hon'ble Abdhesh Kumar Chaudhary, J.)

1. Heard learned counsel appearing on behalf of the parties.

2. This is a writ petition under Article 226 of the Constitution of India, wherein the writ petitioner has sought for the following substantial reliefs:-

" I. Issue a writ, order or direction in the nature of certiorari quashing the Impugned Assessment Order dated 04.06.2025 (ANNEXURE-1) passed by the Respondent No. 3, having been passed without jurisdiction;

II. Issue a writ, order or direction in the nature of certiorari quashing the Impugned Notice dated 17.03.2025 (ANNEXURE-2) having been passed/issued without jurisdiction.

III. Issue a writ, order or direction in the nature of prohibition restraining Respondents and/or officers of the UP GST department from taking any coercive action against the Petitioner, in any manner, in respect of the Impugned Order dated 04.06.2025(ANNEXURE-1)."

3. After hearing learned counsel appearing on behalf of the parties and upon perusal of the records, we are of the view that since the petitioner had filed a reply to the show cause notice dated 17.03.2025 and pursuant to the said reply was also granted an opportunity of hearing, therefore, there is no question of any interference by this Writ Court under Article 226 of the Constitution of India, as apparently neither any jurisdictional error nor violation of principles of natural justice has been substantiated by the learned counsel for the petitioner.

4. Further more, it is to be seen that the petitioner has come too late in the day before the Writ Court, as the show cause notice and the subsequent assessment order has been passed almost a year ago on 04.06.2025.

5. It is further seen that the petitioner had earlier filed a writ petition in January, 2026, which was also beyond time, wherein the writ petition was dismissed as withdrawn with liberty to file a fresh petition on the self same cause of action with better particulars. It is clear that the Court did not go into the merits of the case and/or the question of limitation in the first round of litigation.

6. We are rather surprised and are unable to countenance as to how can the petitioner file the present writ petition at this belated stage, merely to bypass the limitation prescribed for filing a statutory appeal under Section 107(1) of the GST Act. It is to be noted that the said Act provides for filing an Appeal within three months of communication of order sought to be challenged, with a further window of one month as per Section 107(4) of the Act, in case sufficient cause is shown to the satisfaction of the authority. We need not burden this order by the settled law that the prescribed limitation is to be strictly followed in Tax Laws, suffice to say that the Hon'ble Supreme Court in several judgments including the judgment in ***Singh Enterprises v. C.C.E., Jamshedpur, (2008) 221 ELT 163 (S.C.)*** has held that under Section 35 of the Central Excise Act, the delay cannot be condoned beyond what is prescribed under the Central Excise Act as the language of the said section specifically provides for condonation of delay of additional 30 days only. Section 85 of the Act is in pari materia with the above section. One may examine the Supreme Court judgment in ***Singh Enterprise's (supra)*** wherein the Supreme Court held as follows:-

"8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is

statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short 'the Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."

7. Furthermore, in ***Commissioner of Customs and Central Excise v. Hongo India Private Limited, (2009) 5 SCC 791***, the Supreme Court has held as under:-

"31. In this regard, it is useful to refer to a recent decision of this Court in Punjab Fibres Ltd. [(2008) 3 SCC 73] The Commissioner of Customs, Central Excise, Noida was the appellant in this case. While considering the very same question, namely, whether the High Court has power to condone the delay in presentation of the reference under Section 35-H(1) of the Act, the two-Judge Bench taking note of the said provision and the other related provisions following Singh Enterprises v. CCE [(2008) 3 SCC 70] concluded that: (Punjab Fibres Ltd. case [(2008) 3 SCC 73], SCC p. 75, para 8)

"8….. the High Court was justified in holding that there was no power for condonation of delay in filing reference application.?

32. As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days."

8. Apparently, the limitation for filing a statutory appeal having been lapsed, the petitioner has filed the present writ in the nature of Appeal, as the submission of the learned counsel for the petitioner has been camouflaged to agitate that ingredients of Section 74 of the GST Act has not been met in the show cause notice or the assessment order, which according to this Court is a ground, which was very much available to the petitioner immediately on the issuance of show cause notice on 04.06.2025. We may note that expeditious adjudication of issue is a hallmark of

Tax laws as we find that as per Section 107(12) of the Act, any appeal before the authority is to be decided within a period of one year.

9. However, we find that in the present matter the petitioner had been a fence sitter and has not been diligent in pursuing his rights and has filed the present writ petition after one year of the issuance of the show cause notice and most importantly when considerable time has lapsed for filing of an appeal as has been specifically prescribed under law. It is settled principles of law that one cannot do indirectly which one cannot do directly (quando aliquid prohibetur ex directo, prohibetur et per obliquum.) and in any case, law does not help and/or come in rescue to a person, who sleeps over his own rights.

10. We further note that a co-ordinate Bench of this Court in **Atlantis Intelligence Ltd. vs. Union of India and others** reported in **2025 SCC OnLine All 5291**, wherein one of us (Shekhar B. Saraf) upon sifting through the ratios laid down by the Supreme Court and High Courts in various judgments, has extracted the principles with regard to maintainability of the writ petitions after expiry of the time frame for filing appeal stipulated in the special statute. The said principles were summarized below:

"A. An order that this Court could make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution of India, but also be consistent with the substantive provisions of the relevant statutory laws.

B. In exercising powers under Article 226 of the Constitution of India and in assessing the needs of 'complete justice' of a cause or matter, the High Court should take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly.

C. The prescription of limitation when the statute commands that delay may be condoned to a maximum of one month further would come within the ambit and sweep of the policy of legislation. In such cases, Section 29(2) read with Section 3 of the Limitation Act would apply, and accordingly, the Courts shall have no power to condone the delay of any further period even in writ jurisdiction under Article 226 of the Constitution of India. D. The principle of Section 14 of the Limitation Act which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and with due diligence pursued, which ultimately end without a decision on the merits of the case."

11. In the present case, the petitioner has come to this writ Court after the limitation has expired for filing an appeal under Section 107 of the Act. Though, this Court is clear in its mind that limitation may not be stricto sensu applicable to this Court in writ jurisdiction, however, time and again the Courts have held that latches and diligence is something which has to be seen by this Court while exercising its extraordinary power under writ jurisdiction. In our view, no proper explanation has been provided by the petitioner for non-filing of the appeal within time and/or non-filing of the writ petition within the limitation period and/or any attempt to explain the latches as to why the writ petition has been filed at such a belated stage. Furthermore, writ jurisdiction can certainly not be exercised when invoked to undermine or defeat the application of a statutory

regime so as to render the provision of limitation provided in the statute otiose. In light of the same, we are of the view that entertaining this writ petition would amount to allowing the petitioner to circumvent the statutory appellate procedure.

12. As a sequel to the above discussion, this Court is of the view that this Court should not indulge the writ petitioner in condoning the delay as the present case is neither a case of gross violation of principles of natural justice nor patent illegality, the writ petition, is accordingly, **dismissed**, with no order as to cost.

13. We make it clear that the petitioner shall be at liberty to proceed in accordance with law and if the petitioner files an appeal, the order passed by this Court and the observations herein shall not affect the decision of the appellate forum.

(2026) 5 ILRA 1619
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 14.05.2026

BEFORE

THE HON'BLE SAUMITRA DAYAL SINGH, J.
THE HON'BLE MRS. SWARUPAMA CHATURVEDI, J.

Writ Tax No. 1423 of 2026 alongwith other connected cases

M/s Maruti Enterprises ...Petitioner
Versus
State of U.P. & Anr. ...Respondents

ISSUE FOR CONSIDERATION

Jurisdiction of U.P. GST authorities to detain and penalize goods transiting through the State under CGST/IGST/State GST Acts.
Scope of cross-empowerment under Sections 6 CGST/SGST Acts and Section 4 IGST Act.

HEADNOTES

Tax Law – Constitution of India - Article 226, 301 – Central Goods and Services Tax Act, 2017 (CGST Act) – Sections - 6, 68, 129 - State Goods and Services Tax Act, 2017 (U.P. GST Act) – Sections – 6, 68, 69, 129 - Integrated Goods and Services Tax Act, 2017 (IGST Act) – Sections – 4, 5, 5(1), 7, 7(1), 10, 20(xv), 20(3), - CGST Rules, 2017 (Central Rules) – Rule - 48(4), 48(5), 138, 138-A, 138-B, 138-C :- Writ Petitions under Article 226 - filed against penalty orders, passed under Section 129(1)(d) of GST Act, - consignments of Areca Nuts purchased inter-state (West Bengal/Assam/Bihar to Delhi/Nagpur) were intercepted in U.P. for lack of e-Tax Invoice under Rule 48(4) - Petitioners pleaded that U.P. GST authorities lacked jurisdiction as goods were only transiting, invoking Article 301 protection of free trade - The State countered citing Sections 6, 68, 129 CGST/SGST Acts, Section 4 IGST Act, and Rules 138A–138C, arguing cross-empowerment and mandatory compliance - Court finds that, that while transit State authorities may lawfully stop and inspect goods under reasonable restrictions, their jurisdiction to impose penalties does not extend to transactions where tax liability arises only in origin/destination States – the cross-empowerment is confined to States of tax incidence – court held that, U.P. GST authorities had no jurisdiction to penalize transit goods moving from West Bengal to Delhi, and hence, individual penalty orders passed against the petitioners are quashed – writ Petition allowed, direction issued accordingly.

(Para - 26, 30, 34, 44, 45, 46)

Writ Petition Allowed. (E-11)

CASE LAW CITED

M/s Armour Security (India) Ltd. v. Commissioner, CGST, Delhi East (2025 SCC OnLine SC 1700)
M/s ASP Traders v. State of U.P. (2026) 2 SCC 641
State of Bihar v. Harihar Prasad Debuka (1989) 2 SCC 192
State of Rajasthan v. D.P. Metals (2002) 1 SCC 279

LIST OF ACTS

Central Goods and Services Tax Act, 2017 - State Goods and Services Tax Act, 2017 (U.P.) - Integrated Goods and Services Tax Act, 2017 - CGST/SGST Rules.

LIST OF KEYWORDS

Jurisdiction, Transit State, Cross-empowerment, e-Tax Invoice, Detention, Penalty, Free Trade, Article 301, Reasonable Restrictions, GST Compliance.

CASE ARISING FROM

Penalty orders under Section 129(1)(d) GST Act against consignments of Areca Nuts transported inter-state (West Bengal/Assam/Bihar to Delhi/Nagpur) intercepted in U.P.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Sri Aditya Pandey, Sri Shubham Agrawal
Counsel for Respondent(s): Shri Sri Anoop Trivedi (AAG), Sri Ankur Agarwal (Standing Counsel).

(Delivered by Hon'ble Saumitra Dayal Singh, J.
&
Hon'ble Mrs. Swarupama Chaturvedi, J.)

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

2. The present petitions have been filed challenging the individual penalty orders passed against the petitioners, under Section 129(1)(d) of the GST Act, 2017 (hereinafter referred to as the "State Act"), read with the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") and the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act").

3. The brief details of the penalty orders impugned in the individual petitions, are as under:

Serial No.	Writ Tax No.	Party Name	Origin of Goods	Destination of Goods	Date of Impugned Penalty Order	Penalty Imposed (Rupees)
1.	1423 of 2026	M/s Maruti Enterprises	West Bengal	Delhi	04.02.2026	33,18,525/-
2.	2001 of 2026	M/s Praveen Supari Bhander	Assam	Nagpur	18.03.2026	40,30,299/-
3.	2451 of 2026	M/s Shiv Shanker Enterprises	Assam	Delhi	08.04.2026	40,38,458/-
4.	2445 of 2026	M/s Shiv Shanker Enterprises	Assam	Delhi	10.04.2026	40,71,675/-

5.	1573 of 2026	M/s Shiva Enterprises	Bhojpur, Bihar	New Delhi	22.02.2026	29,01,150/-

4. Facts are similar. Since, additional ground exists in Maruti Enterprises, facts relevant to that case are being noted below.

a. The petitioner, M/s Maruti Enterprises, is registered under the Delhi Goods and Services Tax Act, 2017 (hereinafter referred to as "Delhi Act") bearing GSTIN No. 07ACCFM9401F1ZF. The petitioner purchased 30,100 kgs of dried Areca nuts from *M/s A.K. Enterprises*, a person registered under the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "West Bengal Act"), bearing GSTIN No. 19FGDPR7364N1ZF.

b. The said transaction is covered by Tax Invoice-cum-Challan No. AKE/25-26/19. Those goods are described to have been dispatched by road, on truck bearing No. HR-61E-7511, against e-Way Bill No. 881632659464.

c. Thus, the goods started their journey from Falakata in West Bengal to New Delhi, accompanied with Tax Invoice and e-Way bill. When the goods reached District Gautam Buddh Nagar in the State of Uttar Pradesh, (which according to the petitioner was near the exit point in the State of U.P.), and were set to enter the State of Delhi, they were intercepted by respondent no. 2, on 24.01.2026. Against Interception Memo thus issued, physical verification was conducted on 26.01.2026. Thereafter, objection arose that the goods were not accompanied with e-Tax Invoice, as mandated under the Rule 48 of the CGST Rules, 2017 (hereinafter referred to as the Central Rules). It may be noted, parallel Rules exist in all the States including State of West Bengal, State of Uttar Pradesh and the State of Delhi.

d. Though, reply was submitted to the Show Cause Notice dated 29.01.2026 issued under section 129(3) of the GST Act, it remains admitted to the petitioner that the supplier *M/s A.K. Enterprises* had not issued e-Tax Invoice to the petitioner. The petitioner describes it as a technical defect. The detaining authority acquired further information through the Common Portal that the petitioner was not registered to trade in the commodity dried Areca Nuts. Also, its registration has been suspended after filing of the writ petition. Further, the supplier dealer M/s A.K. Enterprises has obtained supplies of dried Areca Nuts from such firms, whose registration had either been suspended or cancelled.

e. Thus, rejecting the explanation furnished by the petitioner the goods have been detained and penalties imposed as described above. In such facts, upon the writ petition being filed, affidavits have been exchanged and parties heard.

5. The issues to be considered at this stage are as under:

(i). Whether the State GST authorities of State of Uttar Pradesh have any jurisdiction vested in them, to detain goods and impose penalties referable to IGST Act, Central Act and the State Act, with respect to transaction of inter-state sale of goods, originating in one State and

terminating in another State, excluding the State of Uttar Pradesh, for the only reason that such goods are passing through, using the State of Uttar Pradesh as a transit State.

(ii) Whether provisions of sections 6, 68, 69, 129 of the State Act and Central Act read with Section 4 and 20(3) of the IGST Act, read with Rule 138A, 138B and 138C of the Central Rules confer jurisdiction on the GST authorities of the State of Uttar Pradesh to detain goods and impose penalties, above noted, on any anomaly in the transaction noted, though such goods are only transiting through the State of Uttar Pradesh.

6. Learned counsel for the petitioners would submit, freedom of inter-state trade is constitutionally protected under Article 301 of the Constitution of India. In the garb of power to impose reasonable restrictions, the Parliament and the State legislature may not have and at present, they have not enacted any provision of law, as may allow the authorities of the State of Uttar Pradesh, any jurisdiction to detain or confiscate such goods and/or penalise the traders who may have sold or purchased goods outside the State and who may in pursuance to such sale transaction be transporting the goods from one State to another, using the State of Uttar Pradesh as a transit State.

7. Referring to the position of the Central Act, the State Act and the IGST Act, 2017, it has been strenuously urged - present, there is absolutely no provision of enacted law to confer any jurisdiction on the State GST authorities of Uttar Pradesh, in this regard.

8. On the other hand, learned Additional Advocate General has heavily relied on the provisions of Section 68, read with Section 129 of the State Act read with Rule 138A, 138B and 138C of the Central Rules and the State Rules, read with Section 6 of the State Act and the Central Act, to submit that concept of cross empowerment exists in the scheme of the GST laws. Also, relying on Section 4 of the Act read with Section 20(xv) of the IGST Act, it has been submitted that the GST Authorities of the State of Uttar Pradesh are wholly empowered to detain goods that may be transported in contravention of the Central Act and the IGST Act. Once clear prescription of law exists that the goods such as those involved in this case must be accompanied with e-Tax Invoice, its absence leads to an unavoidable inference that the goods were being transported contrary to the mandatory provisions of law and to that extent, they were not covered by the statutory documents. Hence, goods have been rightly detained and the penalty proceedings are wholly valid.

9. Heavy reliance has been placed on decision of the Supreme Court in **M/s Armour Security (India) Ltd. Vs. Commissioner, CGST, Delhi East Commissionerate & Another, (2025) SCC OnLine SC 1700.** Also, relying on decision of the Supreme Court in **M/s ASP Traders Vs. State of U.P. and Others (2026) 2 SCC 641**, it has been contended, in similar facts, detention of goods in the course of inter-state trade involving State of Uttar Pradesh as a transit State, has been upheld by the Supreme Court.

10. Further, relying on **State of Bihar and Others Vs. Harihar Prasad Debuka and Others, 1989 (2) SCC 192**, it has been submitted that free trade guaranteed under Article 301 of the Constitution of India, does not extend to an injunction against imposition of reasonable restrictions through legislative measures.

11. Further, relying on **State of Rajasthan and Another Vs. D.P. Metals, 2002 (1) SCC 279**, it has been submitted, measures to check evasion of tax, fall within legislative competence of the States. Such measures may stand protected, by way of reasonable restrictions.

12. On facts, it has been stressed that the seller M/s A.K. Enterprises is a non-genuine dealer. It has disclosed purchase of Areca Nuts from persons whose registrations have either been cancelled, or suspended. Second, the goods were not loaded on the vehicle in issue, from the registered place of business of the supplier M/s A.K. Enterprises. Rather, they were loaded from another place described as Falakata. They were to be delivered at New Delhi on further telephonic instructions to be received by the driver/person in-charge of the vehicle in question. At the end of the recipient, the registration of the petitioner has been suspended, although during pendency of this writ petition. Therefore, the action taken by the State authorities is described to be wholly valid.

13. Having heard learned counsel for the parties and having perused the record, at the outset, we may clarify that we do not intend to test the constitutional validity of any of the provisions of any statutory law. For the purpose of the instant case and the two issues framed above, it is accepted that the State legislatures have competence to introduce reasonable restrictions to free trade, guaranteed under Article 301 of the Constitution. To that proposition, there is no quarrel. In fact, that proposition may be an absolute truth in the scheme of the constitutional law of the land. What, therefore, requires our consideration is that if the legislations relied by the parties provide for reasonable restrictions as may confer the GST authorities of the State of Uttar Pradesh, the jurisdiction to venture into an enquiry and to take consequential actions to detain/confiscate goods and/or to impose penalty on transactions of inter-state trade between two other States, where goods may originate in one State (here West Bengal), and may be meant for supply/receipt in another State (here New Delhi).

14. Thus, at present, we are not concerned with the inter-state transportation of goods where the supply of goods may originate or terminate in the State of Uttar Pradesh. The enquiry is confined to transaction of inter-state trades using the State of Uttar Pradesh as a transit State, only.

15. Section 68 of the State Act and the Central Act are pari materia, to each other. For ready reference, the said provision of law reads as below:-

"68. Inspection of goods in movement.

(1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

(2) The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

(3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods."

(emphasis supplied)

16. Section 129 of the State Act and the Central Act are also pari materia. It reads as below:-

"129. Detention, seizure and release of goods and conveyances in transit

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,-

[(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;

(b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;]

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

PROVIDED that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

[xxx]

(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).]

(4) [No penalty] shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):

PROVIDED that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:

PROVIDED FURTHER that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.]"

(emphasis supplied)

17. Thus, reasonable restriction has been imposed, both by the Parliament and the State legislature, obligating documents as prescribed, to accompany the goods, during their movement.

18. Insofar as the IGST Act is concerned, the levy of tax is created under Section 5 of the said Act. Section 5(1) of the IGST Act reads as below:-

"5. Levy and collection

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption [and undenatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption], on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person: PROVIDED that the integrated tax on goods [other than the goods as may be notified by the Government on the recommendations of the Council] imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962 (52 of 1962)."

(emphasis supplied)

19. Further, inter-state supply has been described under Section 7 of the IGST Act. Section 7(1) of the said Act reads as below:-

"7. Inter-State supply

(1) Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are-in-

(a) two different States;

(b) two different Union territories; or

(c) a State and a Union territory, shall be treated as a supply of goods in the course of inter-State trade or commerce."

(emphasis supplied)

20. Also, under Section 10 of the IGST Act, place of supply of goods has been described. Relevant to us, the said provision reads as below:-

"10. Place of supply of goods other than supply of goods imported into, or exported from India

(1) The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,-

(a) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;

(b) where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person;

(c) where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient,

[(ca) where the supply of goods is made to a person other than a registered person, the place of supply shall, notwithstanding anything contrary contained in clause (a) (a) or clause (c), be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice.

Explanation: For the purposes of this clause, recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person;]

(d) where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly;

(e) where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.

(2) Where the place of supply of goods cannot be determined, the place of supply shall be determined in such manner as may be prescribed."

(emphasis supplied)

21. Then, by way of prescriptions made, to give effect to the above noted provisions of the principal legislation, Rules 138A, 138B and 138C of the Rules framed under the State Act and the Central Act, read as below:-

"138A. Documents and devices to be carried by a person in-charge of a conveyance

(1) The person in-charge of a conveyance shall carry-

(a) the invoice or bill of supply or delivery challan, as the case may be; and

(b) a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.

(2) A registered person may obtain an Invoice Reference Number from the common portal by uploading, on the said portal, a tax invoice issued by him in FORM GST INV-1 and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of thirty days from the date of uploading.

(3) Where the registered person uploads the invoice under sub-rule (2), the information in Part A of FORM GST EWB-01 shall be auto-populated by the common portal on the basis of the information furnished in FORM GST INV-1.

(4) The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.

(5) Notwithstanding anything contained in clause (b) of sub-rule (1), where circumstances so warrant, the Commissioner may, by notification, require the person in-charge of the conveyance to carry the following documents instead of the e-way bill-

(a) tax invoice or bill of supply or bill of entry; or

(b) a delivery challan, where the goods are transported for reasons other than by way of supply.

138B. Verification of documents and conveyances

(1) The Commissioner or an officer empowered by him in this behalf may authorise the proper officer to intercept any conveyance to verify the e-way bill or the e-way bill number in physical form for all inter-State and intra-State movement of goods.

(2) The Commissioner shall get Radio Frequency Identification Device readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the e-way bill has been mapped with the said device.

(3) The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf:

PROVIDED that on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

138C. Inspection and verification of goods

(1) A summary report of every inspection of goods in transit shall be recorded online by the proper officer in Part A of FORM GST EWB-03 within twenty-four hours of inspection and the final report in Part B of FORM GST EWB-03 shall be recorded within three days of such inspection.

(2) Where the physical verification of goods being transported on any conveyance has been done during transit at one place within the State or in any other State, no further physical (2) Where the physical verification of goods being transported on any conveyance has been verification of the said conveyance shall be carried out again in the State, unless a specific information relating to evasion of tax is made available subsequently."

22. While Rule 138 provides for issuance of e-Way Bill for which there is no dispute between the parties, Rule 48(4) of the Central Rules and the State Rules, imposes another condition for issuance of e-Tax Invoice by such suppliers whose aggregate turnover for the preceding financial year exceeds Rs. 5 crores. At present, the revenue contends that the aggregate turnover of M/s A.K.

Enterprises for the previous tax period exceeds Rs. 5 crores. Yet no e-Tax Invoice was issued by it. Therefore, the prescribed document was not accompanying the goods that were in transit through the State of Uttar Pradesh. For ready reference Rule 48(4) and 48(5) of the Central Rules, reads as below:-

*"**48. Manner of issuing invoice***

(1)...

(2)...

(3)...

(4) The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in FORM GST INV-01 after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification:

[PROVIDED that the Commissioner may, on the recommendations of the Council, by notification, exempt a person or a class of registered persons from issuance of invoice under this sub-rule for a specified period, subject to such conditions and restrictions as may be specified in the said notification.]

(5) Every invoice issued by a person to whom sub-rule (4) applies in any manner other than the manner specified in the said sub-rule shall not be treated as an invoice.

(6)... "

23. There is also no dispute that by Section 20(xv) of the IGST Act, the provisions of Central GST Act has been made applicable, mutatis mutandis.

24. Before proceeding to consider the rival submissions, we may also take note of the provisions of Section 6 of the Central Act and the State Act as also Section 4 of the IGST Act. For ready reference, the provisions of Section 6 of the Central Act and the State Act read as below:-

*"6. **Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances***

(1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1),-

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax; (b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject-matter, no proceedings shall be initiated by the proper officer under this Act on the same subject-matter. (3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an

officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act."

(emphasis supplied)

25. Also, Section 4 of the IGST Act reads as below:-

"4. ***Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances***

Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council, by notification, specify."

(emphasis supplied)

26. In the context of the statutory provisions noted above, in the first place, it is true that the Central Act and the State Act read with the Rules, prescribe the documents that must accompany a valid transaction of inter-state supply of goods. It is equally true, though transaction of inter-state sale of any goods may involve two States excluding the transit State, such as the State of Uttar Pradesh, yet, on own force of law created by the statutory provisions, the GST Authorities of the transit State (here State of Uttar Pradesh), would be entitled to stop, inspect and conduct physical verification of goods in transit, even though no tax incidence may arise in that State. To that extent, the action taken by the GST authorities of State of Uttar Pradesh would be protected on the constitutional principle of 'reasonable restrictions'. That is also not an issue in the present case. The petitioners have not raised challenge to the fact that their goods in transit through the State of Uttar Pradesh, were stopped and checked by the GST authorities, of this State.

27. Then, the thrust of the submissions raised by the State, is based on the provisions of Section 6 of the State Act and the Central Act read with Section 4 of the IGST Act. Thus, the learned Additional Advocate General has strenuously urged that the authorities of the State GST Department of Uttar Pradesh, are cross-empowered, both under the Central Act and also by virtue of Section 4 of the IGST Act, to not only stop, inspect and physically verify the goods in transit, but also to impose penalty for any violation of the law including transportation without the goods being accompanied with prescribed documents.

28. Plainly, we find the submission of cross-empowerment is misconceived. Though that provision of law exists, and it must be given full play, the operation of that section and the scope of cross-empowerment arising thereunder must remain confined to transactions as may give rise to any tax liability under the State GST Act and/or under the Central GST Act, in that State. By way of example, in the present facts that cross-empowerment may arise in the State of West Bengal and also in the State of Delhi to which the transaction of inter-state sale of goods pertains. Further, by way of example, if M/s A.K. Enterprises is mapped to the Central GST authorities, in the State of West Bengal, that fact may itself not deprive the State GST authorities of the State of West Bengal, to proceed against M/s A.K. Enterprises with respect to a transaction in issue. Similarly, if the

petitioner no. 1 is mapped to the State GST authorities in the State of Delhi, that may not itself deprive the Central GST authorities in the State of Delhi, from proceeding against the petitioners. To that extent, and for that purpose, the statutory provision of cross-empowerment exists.

29. In the scheme of the GST laws, though harmony and synergy has been created in the legislative provisions, to provide for a homogeneous tax regime by allowing for pari materia legislations to arise, in all States, as are consistent to the Central Act, the cross-empowerment provision has been incorporated to cross-empower the authorities of the Union and the GST authorities of individual States - with respect to taxable transactions performed in such States. However, no cross-empowerment has been attempted or created under the GST laws between State GST authorities of all States.

30. The cross-empowerment is between the authorities of the Union and the individual States but not between authorities of two or more States. Thus, the State GST authorities of one State are not empowered or permitted to proceed against an assessee mapped to the State GST authority of another State. Such authority may only seek to act on the strength of cross-empowerment viz-a-viz an assessee falling in its territorial jurisdiction, but mapped to the central GST authority, in that State, viz-a-viz transactions in that State.

31. By virtue of Section 4 of the IGST Act, no different intent or purpose arises. In fact, it makes plain the above discussed position in law. Thus, with respect to inter-state trade, the IGST Act provides for cross-empowerment between the State GST authorities and the Central GST authorities, for the purpose of that transaction. The purpose being defined under section 5 of the IGST Act - to levy tax on inter-state supplies of goods, and inter-state supply of goods being self-defined under section 7 of the IGST Act with further provision of section 10 describing the place of supply of goods, the levy event under the IGST Act may not arise in a transit State, such as U.P., in the transit State. We may hasten to clarify that we are not discussing any fact issue where the revenue may allege, arising from individual facts of particular cases, that a transaction of inter-state sale/supply has been performed in the transit State, occasioned by any circumstance not disclosed in the documents such as the Tax Invoice or the e-Way Bill. Those cases would stand on a completely different footing. They may be tested on their own merits.

32. Thus, it is material, that in the course of transit of goods through the State of U.P., no levy may arise under the IGST Act, in U.P. For the reasons noted above and in the face of the categorical statutory provisions extracted above, no event may ever be experienced in a transit State, to allow for such a levy to arise.

33. In that light, Rule 138A, 138B and 138C may be examined. As opined above, by way of enforcement of a regulatory measure, the State GST authorities of a transit State may be well within their jurisdiction - to stop the conveyance, inspect and detain the goods and also physically verify the same as also the documents, even though such goods were in the course of transit through the State of U.P. Had the e-Tax Invoice accompanied the goods, all suspicions or doubts would have stood erased. However, for reason of absence of e-Tax Invoice, the State GST authority may not be faulted for having checked (on the Common Portal), the status of M/s AK Enterprise. Having discovered that the said registered person may have achieved turnover in excess of Rs.5

crores in the previous financial year, deficiency of e-Tax Invoice may have been rightly noted. Upto that point, we find no fault with the State GST authorities.

34. The fault lies in the consequential action taken. To the extent, it never came to be alleged either that goods different from the goods described in the Tax Invoice and the e-Way Bill were being transported by the petitioner, or that the goods being transported, were meant for supply inside the State of U.P., no levy of IGST or State GST or Central GST, would ever arise inside the State of U.P. It is also not the case that the Tax Invoice produced by the petitioner is a bogus document. True as it is, that the prescribed document may have been the e-Tax Invoice. However, that issue may be conclusively dealt with and decided not by the State GST authorities functioning inside the State of Uttar Pradesh but by the competent authority in the State of West Bengal, where the supplier dealer is registered. Therefore, the only action that may be permissible is - due information of the deficiency noticed by the State GST authority (inside the State of U.P.), may have been communicated to the competent authority in the State of West Bengal. However, after noting and reporting that deficiency, the goods ought to have been allowed to complete their journey, by passing through the State of U.P., without and further proceeding to detain, confiscate or impose penalty.

35. Section 129 of the State Act and the Central Acts, does not make any difference either. Primarily, it applies to 'transport' of any goods in transit, involving transaction, that may give rise to tax liability under the State Act or the Central Act. In transactions of inter-state trade, the 'transit state' such as Uttar Pradesh here, may draw jurisdiction if either the place of origin of the goods or their destination, outside the State of U.P., is doubted, by the State GST authorities. In such facts, absence of cross-empowerment, notwithstanding, those authorities may draw jurisdiction, independently. However, that enquiry would be then premised on the origin or destination of goods or both being inside the State of U.P. Here, on the contrary, it is an admitted fact that the goods originated from and are destined to a place, both outside U.P. It is so, because if there is no amount of "tax payable" on such goods (in the State of U.P.), there may not arise any levy of penalty inside the State of U.P. In absence of any allegation or finding of goods being different, and in absence of any doubt as to the e-Way Bill, it is undoubted that the goods originated from the State of West Bengal and were meant for supply in the State of Delhi. In absence of the levy provision (under IGST Act), being applicable to such transaction, (on admitted facts), no tax may become payable in the State of U.P. In **J.K. Synthetics Ltd. Vs. Commercial Taxes Officer, (1994) 4 SCC 276**, the Supreme Court observed as under:-

"17. Let us look at the question from a slightly different angle. Section 7(1) enjoins on every dealer that he shall furnish prescribed returns for the prescribed period within the prescribed time to the assessing authority. By the proviso the time can be extended by not more than 15 days. The requirement of Section 7(1) is undoubtedly a statutory requirement. The prescribed return must be accompanied by a receipt evidencing the deposit of full amount of 'tax due' in the State Government on the basis of the return. That is the requirement of Section 7(2). Section 7(2-A), no doubt, permits payment of tax at shorter intervals but the ultimate requirement is deposit of the full amount of 'tax due' shown in the return. When Section 11-B(a) uses the expression "tax payable under sub-sections (2) and (2-A) of Section 7", that must be understood in the context of the aforesaid expressions employed in the two sub-sections. Therefore, the expression 'tax payable'

under the said two sub-sections is the full amount of tax due and 'tax due' is that amount which becomes due ex hypothesi on the turnover and taxable turnover "shown in or based on the return". The word 'payable' is a descriptive word, which ordinarily means "that which must be paid or is due, or may be paid" but its correct meaning can only be determined if the context in which it is used is kept in view. The word has been frequently understood to mean that which may, can or should be paid and is held equivalent to 'due'. Therefore, the conjoint reading of Sections 7(1), (2) and (2-A) and 11-B of the Act leaves no room for doubt that the expression 'tax payable' in Section 11-B can only mean the full amount of tax which becomes due under sub-sections (2) and (2-A) of the Act when assessed on the basis of the information regarding turnover and taxable turnover furnished or shown in the return. Therefore, so long as the assessee pays the tax which according to him is due on the basis of information supplied in the return filed by him, there would be no default on his part to meet his statutory obligation under Section 7 of the Act and, therefore, it would be difficult to hold that the 'tax payable' by him 'is not paid' to visit him with the liability to pay interest under clause (a) of Section 11-B. It would be a different matter if the return is not approved by the authority but that is not the case here. It is difficult on the plain language of the section to hold that the law envisages the assessee to predicate the final assessment and expect him to pay the tax on that basis to avoid the liability to pay interest. That would be asking him to do the near impossible."

(emphasis supplied)

36. There are other reasons to reach this conclusion as well. First, if we were to allow State GST authorities of a transit State to do more than we are permitting under this order, it may lead to a situation where the goods that begin their journey say in the State of Kerala and are meant to be supplied in Jammu and Kashmir, may traverse the length and breadth of the country through the territories of different constituent States of the Union and be exposed to repeated penalties, by the State GST authorities of all or many such States though it may not be disputed that the transaction were performed in the State of Kerala for supply of goods in Jammu and Kashmir, in entirety. That would be a gross violation of the constitutional protection guaranteed under Article 301 of the Constitution of India. Unless the element of a levy of a tax in the State (where action is proposed to be taken), is established, such permission may never be constitutional, by way of enforcement of a regulatory law.

37. Also, we are not in a position to allow the purchaser to be prejudiced for no fault. Issuance of e-Tax Invoice is linked to turnover. That fact is in the special knowledge of the supplier. The purchase/recipient may neither have the means, nor he may be burdened to enquire about the same, before transacting a purchase. That may be a wholly unreasonable burden cast on the recipient/purchaser. To the extent the physical Tax Invoice is not bogus and its issuance is not doubted, the recipient/purchaser may not be penalised, for no fault.

38. In the decisions of Supreme Court in **M/s Armour Security (supra)**, following issues arose before the Supreme Court :

"I. Whether issuance of summons can be regarded as "initiation of proceedings" within the meaning of Section 6(2)(b) of the CGST Act."

39. Approving the co-ordinate bench decision of this Court, in **G.K. Trading v. Union of India & Ors. 2020 SCC OnLine All 1907**, the Supreme Court discussed the issue of cross-empowerment under section 6 of the CGST laws, as below :

"b. Framework of single interface and cross-empowerment of powers under Section 6 of the CGST Act

34. The unique scheme and framework of the Goods and Services Tax regime envisages two distinct concepts at its heart, the concept of a "single interface" as-well as the concept of "cross-empowerment". The former relates to doing away of dual administrative control over the collection as-well as assessment of tax returns by tax payers, that had existed previously, in the erstwhile scheme of indirect taxes in the form of value added tax or VAT. Whereas, the latter, pertains empowering both the Central and State tax administrations to simultaneously undertake enforcement actions against a tax-payer.

…….

39. At the 9th GST Council Meeting held on 16.01.2017, the Chairman of the Central Board of Excise & Customs stated that the States had agreed that both the Central and State tax administrations shall have jurisdiction over the entire taxpayer base. He further emphasized that neither administration should be completely excluded from any segment of the value chain, so as to ensure proper checks and balances. Towards the conclusion of the discussion on the agenda of cross-empowerment, the Chairman noted that enforcement functions would remain common to both administrations. The Council accordingly agreed that both Central and State tax authorities would be empowered to undertake intelligence-based enforcement actions across the entire value chain of a taxpayer.

40. With a view to ensure single interface under the GST regime and to avoid dual control over taxpayers, the GST Council, in its 9th Meeting, resolved that a clear division of taxpayers between the Central and State tax administrations be effected for all administrative purposes. Simultaneously, the Council recognized the necessity of empowering both the Central and State tax administrations to act on intelligence-based enforcement actions across the entire value chain, regardless of administrative allocation. This dual empowerment was intended to maintain robust enforcement capabilities and prevent evasion, while preserving the administrative clarity of the single interface system.

41. To ensure cross-empowerment across the CGST, SGST, and IGST Acts, Section 6 was incorporated into the statute. Sub-section (1) of Section 6 authorizes the officers appointed under the SGST Act or the Union Territory Goods and Services Tax Act (UTGST) to be "proper officer" for the purposes of the CGST Act. The State GST and Union Territory GST Acts also have similar provisions authorizing officers appointed under the CGST Act to be proper officers for the purposes of the respective State enactments. The provision reads thus:

"6. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.??(1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1),-

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act."

....

44. In furtherance of the Council's decision regarding the administrative division of taxpayer base, the Circular No. 01/2017 dated 20.09.2017 was issued, laying down the framework for allocation of taxpayer between the Centre and the States.

"Subject: Guidelines for division of taxpayer base between the Centre and States to ensure Single Interface under GST - regarding Based on the decisions taken in the 9th Meeting of the GST Council held on 16 January, 2017 and 21st Meeting of the GST Council held on 9 September, 2017, the following criteria should be followed for the division of taxpayer base between the Centre and the States to ensure single interface:

i. Of the total number of taxpayers below Rs. 1.5 crore turnover, all administrative control over 90% of the taxpayers shall vest with the state tax administration and 10% with the Central tax administration; the state

ii. In respect of the total number of taxpayers above Rs. 1.5 crore turnover, all administrative control shall be divided equally in the ratio of 50% each for the Central and the State tax administration;

iii. The division of taxpayers in each State shall be done by computer at the State level based on stratified random sampling and could also take into account the geographical location and type of the taxpayers, as may be mutually agreed;[?]"

45. While the latter decision that both the Central and State tax administrations shall have power to take intelligence-based enforcement action in respect of the entire value chain is reflected in the Circular dated 05.10.2018, as reproduced above, and Clarification F. No. CBEC-20/10/07/2019-GST dated 22.06.2020 by the Central Board of Indirect Taxes, GST Policy Wing, which reads thus:

"To
The Principal Director General,
Directorate Generalof GST Intelligence, 2nd Floor. Wing- VI, West Block- VIII
R.K. Puram, New Delhi- 110066

Sir,

Subject: Reference form DGGI on cross-empowerment under GST. reg. I am directed to refer to DGGI letter F.No.574/CE/66/2020/Inv./15308 dated 26.05.2020 on the issues related to cross-empowerment of officers in terms of provisions of section 6 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act").

2. Issue raised in the reference is whether intelligence based enforcement actions initiated by the Central Tax officers against those taxpayers which are assigned to the State Tax administration gets covered under section 6(1) of the CGST Act and the corresponding provisions of the SGST/UTGST Acts or whether a specific notification is required to be issued for cross-empowerment on the same lines as notification No. 39/2017-CT dated 13.10.2017 authorizing the State Officers for the purpose or refunds under section 54 and 55 of the CGST Act. 3.1 The issue has been examined in the light of relevant legal provisions under the CGST Act, 2017. It is observed that Section 6 of the CGST Act provides for cross-empowerment of State Tax officers and Central Tax officers and reads as:-

"6. (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes- of this Act, Subject to such conditions as the Government shall, on the recommendations of the Council, by Notification specify.

3.2. Thus in terms of sub-section (1) of section 6 of the CGST Act and sub-section (1) of section 6 of the respective State GST Acts respective State Tax officers and the Central Tax officers respectively are authorised to be the proper officers for the purposes of respective Acts and no separate notification is required for exercising the said powers in this case by the Central Tax Officers under the provisions of the State GST Act. It is noteworthy in this context that the registered person in GST are registered under both the CGST Act and the respective SGST/UTGST Act.

3.3 The confusion seems to be arising from the fact that, the said sub-section provides for notification by the Government if such cross-empowerment is to be subjected to conditions. It means that notification would be required only if any conditions are to be imposed. For example, Notification No. 39/2017-CT dated 13.10.2017 restricts powers of the State Tax officers for the purposes of refund and they have been specified as the proper officers only under section 54 and 55 of the CGST Act and not under rule 96 of the CGST Rules, 2017 (IGST Refund on exports).

If no notification is issued to impose any condition, it means that the officers of State and Centre have been appointed as proper officer for all the purpose of the CGST Act and SGST Acts.

4. Further, it may kindly be noted that a notification under section 6(1) of the CGST Act would be part of subordinate legislation which instead of empowering the officer under the Act, can only be used to impose conditions on the powers given to the officers by the section. In the absence or any such conditions, the power of Cross- empowerment under section 6(1) of the CGST Act is absolute and not conditional.

Yours faithfully,
(Sumit Bhatia)

Deputy Commissioner (GST)"

……

47. The concept of "cross-empowerment" has been retained within the GST framework in order to maintain a robust enforcement mechanism and prevent any scope of evasion of taxes. For this purpose, both the Central and State tax administrations have been armed with the power to initiate intelligence-based enforcement action i.e., an action that is predicated on information of tax evasion emanating from the value chain or chain of transactions rather than from any administrative scrutiny by way of audit of accounts or returns.

48. Such gathering of intelligence is intended to be a non-intrusive exercise. The Department relies on data analytics, validation with third-party data, and other methods to collect actionable intelligence via analytical tools, human intelligence, modus operandi alerts as well as information through past detections. Taxpayers must be mindful that intelligence about evasion of tax cannot be procured from them through issuance summons or other non-descript letters and correspondence.

49. Any action arising from the audit of accounts or detailed scrutiny of returns falls within the first category, and proceedings in such cases are to be initiated by the tax administration to which the taxpayer is assigned. In contrast, when proceedings are based on intelligence relating to tax evasion, they can be initiated by either the Central or the State tax administration.

50. To put simply, Section 6 of the CGST Act provides for the cross-empowerment of powers between the Central and State tax administrations. However, for the purpose of administrative convenience, the GST Council has sought to divide the taxpayer base between the two administrations through a circular. Nonetheless, with respect to intelligence-based enforcement actions, both the Central and the State tax authorities are empowered to act across the entire value chain."

40. Construction of the cross-empowerment provision made by the Supreme Court recognises existence of cross-empowerment between two different GST authorities, one working under the State Government and the other working under the Central Government, over the same tax payer. To that extent, neither the issue of cross-empowerment between two State Governments was considered nor it may arise in the statutory scheme discussed above. To that extent, we do not find our opinion inconsistent to the opinion of the Supreme Court.

41. Insofar as **M/s ASP Traders (supra)** is concerned, facts were different. In that case though the goods were in transit through the State of U.P., from Karnataka to Delhi, out of 278 bags dispatched from Karnataka, seven were found missing. It resulted in shortfall of about 500 kgs. Also, genuineness of the recipient firm was disbelieved and that of the consignor was doubted. In those facts the only issue that fell for consideration before the Supreme Court was with respect to generation of GST MOV 09 that may give rise to a right of appeal to the aggrieved person. The Supreme Court reasoned - merely because the assesse in that case had deposited the penalty amount to obtain release of the goods, it did not absolve the statutory authorities to pass a reasoned order on Form GST MOV 09 and to upload the corresponding summary on Form GST DRC 07.

42. However, the issue of validity of the action of the State GST authorities in detaining the goods while they were in transit through the State of U.P., neither arose in those facts (as noted above), nor the Supreme Court had the occasion to consider the said issue. Plainly, the said decision is wholly distinguishable on facts.

43. We are aware, in **Golden Traders and Ors. V. Deputy Asst. State Tax and Ors., 2026 SCC OnLine (AP) 803**, the Andhra Pradesh High Court has taken a view similar to ours. Paragraph 28, 29, 36 and 37 read as below :

"28. The purpose of Section 129 and 130, is to ensure compliance of the provisions of the GST Acts and for checking evasion of tax. In the normal course, evasion of tax, on intra state sales, would result in non payment of taxes, which are rightfully due to that State and the Union. Thus, the State or Central authority, assigned the functions of a "proper officer", would be recovering the penalty and other sums demanded, under these provisions, as the rightful dues of that State and the Union. In the case of IGST, no part of the taxes are due, to any intermediary state, through which the goods are passing. In such a situation, can the intermediary state, under Section 129 or 130, levy and collect penalties or fines?

29. An illustration is necessary, to understand this situation. There is an inter-state supply of goods, commencing from State A to State C. These goods have to move through State B, to reach State C from State A. The State officer, of State B, exercising powers under Section 129 or 130, seizes and subsequently confiscates the goods moving through State B and auctions the same or the owner of the goods pays a penalty or fine and gets his goods released. In such a case, State B is collecting penalties and fines or appropriating the sale price of the goods, in relation to transactions which are not taxable in State B. It may also be noted that there is no provision, under the GST Acts, for reimbursing the State share of penalty and/or fine, falling to State A or State C, collected by State B. Thus, amounts rightfully due to State A or State C are being appropriated, by State B. It is our view that Section 129 or 130 cannot be pressed to vindicate such appropriation.

……

36. We are also alive to the fact that, the proper officer, under the APGST Act, at the time of intercepting the conveyance or vehicle, would not be aware whether the consignment, is under the IGST Act or any of the other GST Acts, until the vehicle is stopped and the documents are verified. In a case where it is found that the consignment relates to an inter State supply, state officer would have to permit the vehicle to continue it's journey. However, if any discrepancies are found, it would be open to the state officer to forward the said discrepancies to the proper officer of the consignee as well as the consignor. If it is found that, the consignment is not accompanied by necessary way bills, it would be open to the state officer, to presume that the consignment is an intra state supply, unless that presumption is rebutted,

37. Accordingly, it would be appropriate to hold as follows:

A. An officer, appointed under the APGST Act, would be cross empowered, to exercise jurisdiction under the CGST or IGST Act, in relation to a tax payer, when such tax payer has been administratively allotted to the State and the State officer is the "proper officer", assigned to discharge the said function, by the Chief Commissioner and vice versa for Central officers.

B. A "proper officer' appointed under the APGST Act, and assigned the functions, under section 129 and/or 130, of the APGST Act, can discharge such functions, under the CGST Act also, in relation to intra state sales.

C. A "proper officer' appointed under the APGST Act, and assigned the functions, under section 129 and/or 130, of the APGST Act, can discharge such functions, under the IGST Act also, in relation to inter-state sales, only when the State of Andhra Pradesh is entitled to an allocation of a share of the tax, under section 17 of the IGST Act, in relation to such transaction.

D. A "proper officer' appointed under the APGST Act, and assigned the functions, under section 129 and/or 130, of the APGST Act, can not discharge such functions, under the IGST Act, in relation to inter state sales, which originate outside the State and culminate outside the State.

E. In the event of any discrepancies found, in any movement of goods, under the IGST Act, it would be open to the State officer, to forward the said discrepancies to the proper officer of the consignee and the proper officer of the consignor, to take further action."

(emphasis supplied)

44. To the extent, the transaction for supply of goods originates and is to terminate outside the State of U.P., involving zero tax incidence in the State of U.P., discrepancies noticed and doubts expressed - of e-Tax Invoice not issued; purchases made from unregistered persons (by the supplier), subsequent suspension of registration of the petitioner etc., are extraneous to the core issue.

45. Consequentially, we answer the two issued framed by us as below:-

(a) to the extent, the respondent GST authorities of the State of U.P. do not dispute that the goods/Areca nuts originated from the State of West Bengal and were being transported to the State of Delhi, as evidenced by a valid e-Way Bill and physical Tax Invoice, to the extent there is not an iota of allegation, either that the goods were different or that they either originated from or were meant for consumption inside the State of U.P. or that the documents produced are bogus, no jurisdiction arose to those authorities to penalise those goods, U.P. being a pure transit State.

(b) in view of complete lack of a foundation - to levy any tax in the State of U.P., on such transaction, on admitted facts, the lack of e-Tax Invoice remains an unexplained anomaly noticed by the GST authorities of the State of U.P., causing no tax effect in the State of U.P. At most, the same may be marked on the documents, produced before those authorities and such fact be communicated to the concerned authorities in the State of West Bengal and Delhi.

46. In view of the above, the writ petitions are **allowed**. For the reasons noted above, the goods and vehicles be released in favour of the petitioners, forthwith. The individual penalty orders passed against the petitioners are **quashed**.

47. No order as to costs.

(2026) 5 ILRA 1639
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.05.2026

BEFORE

THE HON'BLE SAUMITRA DAYAL SINGH, J.
THE HON'BLE INDRAJEET SHUKLA, J.

Writ Tax No. 2070 of 2026

Shalabh Agarwal & Anr. **...Petitioner**
Versus
A.D.G. & Anr. **...Respondents**

ISSUE FOR CONSIDERATION

Whether the retention of seized cash beyond six months without communication of extension order under Section 110(2) of the Customs Act, 1962 was lawful.

Whether subsequent transfer of the cash to Income Tax authorities was valid in law.

HEADNOTES

Tax Law – Constitution of India - Article 226 - Customs Act, 1962 – Sections - 110(2), 124, - Income Tax Act, 1961 – Section - 151 - Income Tax Act, 2025 – Section 248(1) :- Writ Petition under Article 226 - seeking mandamus for release of seized cash - seizure - six months expired, without issuance of SCN or communication of valid extension order – alleged extension order found mechanical, unreasoned and uncommunicated — petitioners pleaded violation of Section 110(2) Customs Act — respondents contended extension existed and later cash requisitioned by Income Tax authorities — Court finds, retention beyond six months illegal, extension order defective and uncommunicated, and transfer to Income Tax authorities an impermissible attempt to defeat judicial process — observations made on mechanical approvals and deliberate overreaching conduct of DRI — held, retention of seized cash beyond six months without communication of valid extension order is without jurisdiction – hence, petitioners are entitled to refund of seized money, though now recoverable from Income Tax authorities — costs of Rs. 10 lakhs imposed on DRI for obstructing justice, is modified to Rs. one lac — writ petition disposed of.

(Para – 24, 26, 27, 28, 33, 36)

Writ Petition Disposed of. (E-11)

CASE LAW CITED

Chhugamal Rajpal v. S.P. Chaliha (1971) 1 SCC 453
Union of India v. Rai Singh Dev Singh Bist (1973) 3 SCC 581
Sahara India (Firm) v. CIT (2008) 14 SCC 151
S. Ganga Saran & Sons (P) Ltd. v. ITO (1981) 3 SCC 143
Indra Prastha Chemicals Ltd. v. CIT (2004) 271 ITR 113

LIST OF ACTS

Customs Act, 1962 – Income Tax Act, 1961 – Income Tax Act, 2025.

LIST OF KEYWORDS

Seizure of cash, retention beyond six months, extension order, communication requirement, requisition by Income Tax, overreaching judicial process, costs imposed.

CASE ARISING FROM

Seizure of Rs. 25,20,000 cash by Customs/DRI during search at Bareilly on 20.08.2025.
Cash later handed over to Income Tax authorities on 20.05.2026 under requisition.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Shaikh Mohd Mujib Ur Rahman (through Mr. Vineet Kumar Singh).

Counsel for Respondent(s): Shri S.P. Singh learned A.S.G.I., Shri Krishna Agarwal, Anant Kumar Tiwari.

(Delivered by Hon'ble Saumitra Dayal Singh, J.
&
Hon'ble Indrajeet Shukla, J.)

1. Heard Sri Vineet Kumar Singh, Advocate holding brief of Shaikh Mohd Mujib Ur Rahman, learned counsel for the petitioners, Sri Krishna Agarawal and Sri Anant Kumar Tiwari, learned counsel for the respondents.

2. Present petition has been filed for the following relief:

"I. Issue a writ, order or direction in the nature of Mandamus commanding the respondents to forthwith release the seized cash amounting to Rs.25,20,000/-, seized vide Seizure memo dated 20.08.2025, to the petitioner, marked as Annexure No.1 to this writ petition."

3. From the first date itself, the petitioners have been relying on the fact that cash Rs.25,20,000/- had been seized from them, by the customs authorities, on 20.08.2025. Six months passed on 19.02.2026. Yet, neither any show cause notice was issued to the petitioner in terms of the provisions contained in The Customs Act, 1962 (hereinafter referred to as 'the Act'), nor any time extension order came to be passed and communicated to them before the end date. The writ petition itself was presented on 07.04.2026. On 10.04.2026 we passed the below quoted order:

"1. Petitioners claim the release of the cash seized more than six months ago.
2. Shri Krishna Agarwal, learned counsel for the revenue authorities prays for and is granted ten days time to obtain clear written instructions as to why the seized cash has not been released and if statutory proceeding has been drawn within limitation.
3. Put up as fresh on 24.04.2026 showing the name of Shri Krishna Agarwal and Shri Anant Kumar Tiwari both as counsel for the respondent".

4. On the next date, Sri Krishna Agarwal, learned counsel for the DRI relied upon a document dated 18.02.2026 described to be the order passed under Section 110(2) of the Act. Its copy was taken on record and learned counsel for the petitioners granted time to complete the instructions. For ready reference the said communication reads as below:

"A case was registered for seizure of 1497.3 gram of Gold on 13.08.2025. SCN on this case was issued on 12.02.2026, which was within the mandated timeline. In the follow up

investigation, searches were conducted in Bareilly at the premises of M/s. Sanklap Golds Pvt. Ltd. and M/s KB Gold & Bullions, Bareilly on 20 August, 2025 and 3-4 September 2025. The search details are as under;

1. During the search proceedings at the premises of M/s Sanklap Golds Pvt. Ltd. and M/s KB Gold & Bullions, Bareilly on 20 August, 2025 resulted in recovery of 25.2 lakhs cash from Chandra Kamal Bansal and his son Shri Salabh Bansal came inside the premises during search proceedings. The said cash was seized for further investigation under the provisions of Customs Act, 1962.

2. During the search proceedings at the premises of M/s. Sanklap Golds Pvt. Ltd. and M/s. KB Gold & Bullions, Bareilly on Sept, 2025 resulted recovery of 8 suspected to be Fake Indian Currency Notes (FICN) notes, each in denomination of Rs. 500/-, having total face value of Rs. 4,000/-, as they appeared to be counterfeit. For examination of the notes, an application has been submitted before CJM Customs Court requesting approval to send it to Currency Note Press in Nasik on 08 September 2025 with continuous follow up being conducted with SPP at regular intervals w.r.t. status of approval but court permission is still pending.

It is submitted that this case will require more time for proper investigation regarding the cash recovered and suspected to be FICN and issuance of SCN w.r.t. confiscation of cash and suspected to be FICN and consequent penalty due to following reasons:

Enquiry against the cash amounting Rs.25.20 Lakhs is still not completed and complete submission against the said seized cash is still pending from party end.

Approval to allow Forensic/testing the. "High quality of FICN notes rest with the Court.

Request/Prayer has been made to the court through SPP on 08.09.2025 and continuous follow up is being made for expediting the approval.

The testing by lab and communication of its result will further take time.

Investigation will then be conducted based on test results.

The time limitation for filing SCN wrt seizure of FICN under Section 124 of the Customs Act, 1965, is 6 months from the date of seizure under Section 110(2) which is getting over on 2 March 2026.

In this context, ***extension by further 6 months*** *may be granted for investigation and issuance of SCN under Section 124 based on reasons/cause mentioned above, may be granted, please.*

Sign. Illegible *Sign. Illegible*
18/02/26 *18/2/2026*

Sign. Illegible *Sign. Illegible*
18/02/26 *18/02/2026*

Sign Illegible
18/02/2026"

5. In such circumstances, upon the case being taken up on 08.05.2026, the following further order was passed:

"1. Today, first objection was raised that there is no order extending the limitation.

2. On that objection being raised by learned counsel for the petitioner, we had required Shri Krishna Agarwal to obtain further instructions. On further oral instructions, Shri Krishna Agarwal states that the single page order-sheet dated 18.02.2026 is the order passed by the ADG granting approval to extension for limitation.

3. In such circumstances, learned counsel for the petitioner prays for and is granted a weeks' time to file an appropriate application/affidavit.

4. Put up as fresh on 22.05.2026, by way of last opportunity."

6. In the meantime, the petitioners have formally brought on record the document relied by customs authorities by means of Supplementary Affidavit filed on 20.05.2026.

7. Upon the case being taken up today, first objection has been raised by learned counsel for the DRI that the single sheet order dated 18.02.2026 was passed well within time. However, on further query, it has been admitted that the said writing was never communicated to the petitioner before the end date i.e. six months from the detention. Also no show cause notice has been issued, till date with respect to the cash detained Rs. 25,20,000/-.

8. However, for the first time today, further objection has been raised that in the meantime, the customs authorities received a requisition dated 19.05.2026 issued by the Principal Director, Income Tax, Lucknow. On the receipt of the same by the customs authorities, on 20.05.2026, the cash Rs.25,20,000/- has been made over to the Income Tax Authorities. For ready reference the record of proceedings under Section 248(1) of the Income Tax Act, 2025 produced by learned counsel for the DRI, reads as below: "

ANNEXURE-51
SS (F)-21

Record of Proceedings Under Section 248(1) of the Income Tax Act, 2025

1. The authorized officer Shri/Smt./Kum Adarsh Kumar, DDIT(Inv.), Bareilly and Durgesh Mishra, ITO(OSD)(AIU)(Inv.), Lucknow showed to Shri/ Smt./ Kum Navneet Kumar the requisition under section 248(1) of the 1.T. Act, 2025, dated 19.05.2026 duly signed and sealed by Pr. Director of Income Tax/Commissioner of Income Tax, Lucknow issued in the case of Shallabh Agarwal, PAN: BHJPA7535D requiring the latter, being the authority who had taken into custody certain books of account/documents who jewellery/other assets in the said case, to deliver the same to the former, the officer authorised to take over the said books of account/documents/valuables u/s 248(1) of the Income Tax Act, 2025.

2. The said Shri/Smt/Kum Navneet Kumar after reading the said requisition U/s 248(1) of the I.T. Act, 2025 put his/her signature on it in token of having perused the same. The requisition proceedings then commenced:

3. The following books of accounts/documents/cash/jewellery/ other assets were delivered to the by the said Shri/Smt./Kum Navneet Kumar to the authorized officer Shri/Smt./Kum Durgesh Mishra, ITO(OSD) (AIU) (Inv.), Lucknow.

Documents as per Annexure	
Jewellery as per Annexure	
Cash as per Annexure	***25,20,000/-***
Other assets as per Annexure	

4. The proceeding commenced at..13.20 A.M./P.M. on 20.05.2026 and were concluded at..... A.M./P.M. on 20.05.2026.

Delivering Officer ***Receiving Officer***

Signature sign. illegible *Signature sign. Illegible*
Date 20/05/2026 *Date 20/5/2026*
Designation IO (INV) *Designation I.T.O C(OSD) (AIU)*
Seal: *Seal:*

(Navneet Kumar)
Intelligence Officer
Directorate of Revenue Intelligence
Zonal Unit, Lucknow

(Durgesh Mishra)
(Income Tax Officer (Inv.) (AIU) (OSD)
Lucknow

Recd.

Sign. illegible
20/05/2026"

9. Thus, though the customs authorities admit that no extension of time had been communicated to the petitioners before the expiry of six months from 20.08.2025, they now cite inability to return the cash to the petitioners for the reason of requisition made by the Income Tax authorities.

10. Having heard counsel for the parties and having perused the record, the stand taken by the customs authorities is an eye wash. Section 110 (2) of the Customs Act, 1962 reads as below:

"(2)Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

[Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:

Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.]"

11. In the first place, we are not satisfied that the note sheet dated 18.02.2026 contains the prior approval of the Principal Commissioner of Customs or Commissioner of Customs, to grant extension of time by six months. Though the order sheet notes that proposal made to the Additional Director General, only his signature is appended thereunder without any remark or note to evidence that at the time of such signature being placed by the said authority, he had applied his mind or recorded reasons or approved the proposal in entirety- to allow for extension of time, by six months. Mainly, the existence of the signature on the order sheet is nothing more than a rubber stamp, affixed without application of mind.

12. In **Chhugamal Rajpal vs S.P. Chaliha and Others, (1971) 1 SCC 453**, in the context of the prior approval required to be granted by the Commissioner in exercise of statutory power under Section 151 of the Income Tax Act, 1961 (to the reasons to believe recorded by the Assessing Officer to issue reassessment notice, under that Act), the Supreme Court made the following pertinent observation:

"5. In his report the Income Tax Officer does not set out any reason for coming to the conclusion that this is a fit case to issue notice under Section 148. The material that he had before him for issuing notice under Section 148 is not mentioned in the report. In his report he vaguely refers to certain communications received by him from the CIT, Bihar and Orissa. He does not mention the facts contained in those communications. All that he says is that from those communications ?it appears that these persons (alleged creditors) are name lenders and the transactions are bogus?. He has not even come to a prima facie conclusion that the transactions towhich he referred are not genuine transactions. He appears to have had only a vague feeling that they may be bogus transactions. Such a conclusion does not fulfil the requirements of Section 151(2). What that provision requires is that he must give reasons for issuing a notice under Section 148. In other words he must have some prima facie grounds before him for taking action under Section 148. further his report mentions: ?Hence proper investigation regarding these loans is necessary?. In other words his conclusion is that there is a case for investigating as to the truth of the alleged transactions. That is not the same thing as saying that there are reasons to issue notice under Section 148. Before issuing a notice under Section 148, the Income Tax Officer must have either reasons to believe that by reason of the omission or failure on the part of the assessee to make a return under Section 139 for any assessment year to the Income Tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year or alternatively notwithstanding that there has been no omission or failure as mentioned above on the part of the assessee, the Income Tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year. Unless the requirements of clause (a) or (b) of Section 147 are satisfied, the Income Tax Officer has no jurisdiction to issue a notice under Section 148. From the report submitted by the Income Tax Officer to the Commissioner, it is clear that he could not have had reasons to believe that by reason of the assessee's omission to disclose fully and truly all material facts necessary for his assessment for the accounting year in question, income chargeable to tax has escaped assessment for that year; nor could it be said that he as a consequence of information in his possession, had reasons to believe that the income chargeable to tax has escaped assessment for that year. We are not satisfied that the Income Tax Officer had any material before him which could satisfy the requirements of either clause (a) or (b) of Section 147.

Therefore he could not have issued a notice under Section 148. Further the report submitted by him under Section 151(2) does not mention any reason for coming to the conclusion that it is a fit case for the issue of a notice under Section 148. We are also of the opinion that the Commissioner has mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under Section 148. To Question 8 in the report which reads "whether the Commissioner is satisfied that it is a fit case for the issue of notice under Section 148", he just noted the word "yes" and affixed his signatures thereunder. We are of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that this is a fit case to issue notice under Section 148. The important safeguards provided in Sections 147 and 151 were lightly treated by the Income Tax Officer as well as by the Commissioner. Both of them appear to have taken the duty imposed on them under those provisions as of little importance. They have substituted the form for the substance."

(emphasis supplied)

13. That principle was followed and applied in **Union of India vs Rai Singh Dev Singh Bist, (1973) 3 SCC 581** and **Sahara India (Firm) (1) vs CIT, (2008) 14 SCC 151**. In both decisions, it was held that the approval order may not be passed mechanically and it must reflect that before reaching the required satisfaction, the higher authority had applied its mind and thus examined the fitness of the case for the purpose of grant of approval.

14. To the extent mandatorily no cash seized may be retained beyond a period of six months and further to the extent the Act prescribes that the extension of time may be granted for "reasons to be recorded in writing", the note sheet is a mute document. As to what may amount to "reasons to believe", the issue is no longer res integra.

15. Considering the law laid down by the Supreme Court, in the context of the Income Tax Act, a coordinate bench to which one of us (S.D. Singh, J.) was part, in **Mudra Exports vs Deputy Commissioner of Income Tax, 2024:AHC:59707-DB**, it was observed as below:

"16. As to what amounts to "reason to believe", the law has remained settled over long decades. In S Ganga Saran and Sons (P) Ltd. Vs. ITO (1981) 3 SCC 143, in the context of the then existing Section 147(a) of the Act, yet, in the context of initiation of reassessment proceedings upon recording of "reasons to believe", it was established in law that those words were stronger than "is satisfied"; the "belief" must be based on "reason" that are "relevant and material". For ready reference, it was held as below:-

"6. It is well settled as a result of several decisions of this Court that two distinct conditions must be satisfied before the Income Tax Officer can assume jurisdiction to issue notice under Section 147(a). First, he must have reason to believe that the income of the assessee has escaped assessment and secondly, he must have reason to believe that such escapement is by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. If either of these conditions is not fulfilled, the notice issued by the Income Tax Officer would be without jurisdiction. The important words under Section 147(a) are "has reason to believe" and these words are stronger than the words "is satisfied". The belief

entertained by the Income Tax Officer must not be arbitrary or irrational. It must be reasonable or in other words it must be based on reasons which are relevant and material. The court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the Income Tax Officer in coming to the belief, but the court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice under Section 147(a). If there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the Income Tax Officer could not have reason to believe that any part of the income of the assessee had escaped assessment and such escapement was by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts and the notice issued by him would be liable to be struck down as invalid."

17. Then, a co-ordinate bench decision of this Court in Indra Prastha Chemicals Ltd. Vs. CIT (2004) 271 ITR 113, applied that law and held as below:-

"11. The expression "reason to believe" in section 147 does not mean purely subjective satisfaction on the part of the Assessing Officer. The belief must be held in good faith; it cannot be merely a pretence. It is open to the court to examine whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent, the action of the Assessing Officer in starting proceedings under section 147 is open to challenge in a court of law as held in S. Narayanappa v. CIT, [1967] 63 ITR 219 (SC); Kantamani Venkata Narayana and Sons v. First Additional ITO, [1967] 63 ITR 638 (SC); Madhya Pradesh Industries Ltd. v. ITO, [1970] 77 ITR 268 (SC); Sowdagar Ahmed Khan v. ITO, [1968] 70 ITR 79 (SC); ITO v. Lakhmani Mewal Das, [1976] 103 ITR 437 (SC); ITO v. Nawab Mir Barkat Ali Khan Bahadur, [1974] 97 ITR 239 (SC); CST v. Bhagwan Industries (P.) Ltd.,[1973] 31 STC 293 (SC) and State of Punjab v. Balbir Singh, (1994) 3 SCC 299. 12. The formation of the required opinion and belief by the Assessing Officer is a condition precedent. Without such formation, he will not have jurisdiction to initiate proceedings under section 147. The fulfilment of this condition is not a mere formality but it is mandatory. The failure to fulfil that condition would vitiate the entire proceedings as held by the apex court in the case of Johri Lal (HUF) v. CIT, [1973] 88 ITR 439 (SC) and Sheo Nath Singh v. AAC of IT, [1971] 82 ITR 147 (SC). The reasons for the formation of the belief must have rational connection with or relevant bearing on the formation of belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Assessing Officer and the formation of his belief that there has been escapement of income of the assessee from assessment in the particular year. It is not any and every material, howsoever vague and indefinite or distant, remote and far fetched, which would warrant the formation of the belief relating to escapement of income of the assessee from assessment, as held by the hon'ble Supreme Court in the case of ITO v. Lakhmani Mewal Das, [1976] 103 ITR 437. If there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the Assessing Officer could not have reason to believe. In such a case, the notice issued by him would be liable to be struck down as invalid as held in the case of Ganga Saran and Sons P. Ltd. v. ITO, [1981] 130 ITR 1 (SC). 13. Thus, it is well settled that the "reason to believe" under section 147 must be held

in good faith and should have a rational connection and relevant bearing on the formation of the belief and should not be extraneous or irrelevant. Further, this court in proceedings under article 226 of the Constitution of India can scrutinize the reasons recorded by the Assessing Officer for Initiating the proceedings under section 147/148 of the Act. The sufficiency of the material cannot be gone into but relevancy certainly be gone into."

16. Therefore, we have no hesitation to reach the conclusion that there did not exist any prior approval by the competent authority to extend the period of limitation, to issue the show cause notice and thereby to further enable retention of cash Rs.25,20,000/- beyond the period of six months.

17. Second, even more vitally, on the statement made by Sri Krishna Agarwal, it is certainly not in dispute that the note sheet referred to above (described as the order by the DRI), was never issued to or served upon the petitioners, before expiry of six months. Thus, neither of the conditions prescribed under Section 110 of the Act was fulfilled.

18. Consequently, it has to be concluded that the petitioners had earned a right to be returned the entire cash Rs.25,20,000/- on expiry of six months. Till that date no requisition had been received by the DRI Authorities from the Income Tax Authorities, to hand over the cash to them.

19. Therefore, the retention of the money from 20.02.2026 to 20.05.2026 is wholly illegal and outside the procedure prescribed by the law. The cash ought to have been returned on the mandatory statutory condition not fulfilled, without any application by the petitioners. To retain it beyond the period of six months was without jurisdiction.

20. In that circumstance, the petitioners approached this Court for a mandamus upon the DRI authorities, on 07.04.2026. The petition was entertained against advance notice to the respondents. They have been represented on each of the three earlier dates. They were fully aware of the lack of jurisdiction to retain the cash beyond 19.02.2026, if not for absence of prior approval, certainly for reason of the order not communicated to the petitioners, before expiry of the mandatory six months period.

21. Still, without informing the Court, acting unilaterally, the DRI authorities have, without surviving jurisdiction, dealt with the valuable property of the petitioners, that was in their custody, in trust, held on behalf of the petitioners and not in any other capacity, after expiry of statutory period of six months. Yet, they made over that property, of the petitioners (though held in trust) to the income tax authorities, without informing the Court. Why and in what circumstance such facts were hidden from the Court or not disclosed to the Court, is not for us to go into, at this stage. Those may engage the scope of a disciplinary inquiry that may be initiated against the erring officials by the DRI authorities, themselves.

22. What is relevant to the Court is that the fact of non-communication of the order sheet dated 18.02.2026, to the petitioners, was well known to the DRI authorities, from before. Also, they were required to issue instructions to their counsel, in these proceedings. The order dated 20.04.2026 and 08.05.2026 leave no doubt that the issue was in the knowledge of the DRI authorities and they were

cognizant of the fact that the Writ Court had not only entertained the petition but release of the cash was under active consideration by the Court.

23. Also, it is stated by learned counsel for the DRI that the communication dated 07.05.2026 received by Deputy Director clearly informed him that the office note/order dated 18.02.2026 had not been received and therefore the DRI authorities had, informed the Income Tax authorities to requisition the money. However, on a pointed query, it is further stated that no requisition had been received by the DRI authorities till then, or till before 19/20.05.2026.

24. On the last date, Sri Krishna Agarwal had confirmed that other than the note sheet, there was no other document to justify the retention of cash beyond 19.02.2026 and it was also known that the communication dated 18.02.2026 had not been communicated to the petitioners. In that circumstance, only for the purposes of completion of record, we had required learned counsel for the petitioners to bring on record the said document, before the proceedings may be concluded. Thus, the matter was posted for today.

25. In that light of the proceedings and conduct of the DRI authorities, it is absolutely shocking and therefore, unacceptable that just two days prior to the date fixed in these proceedings, without taking leave of the Court, in a wholly hurried manner, the requisition that may have been received by the customs authorities (from the income tax authorities), was executed, practically the same day, if not within the same hour. Thus, requisition first issued by the Income Tax authorities on 19.05.2026 at Lucknow, has been given effect to at 13:20 pm on 20.05.2026, at Bareilly.

26. In view of above we are forced to reach a conclusion that DRI authorities have deliberately attempted to defeat the ends of justice and specifically the present petition. Their conduct appears to be directed not to participate in the proceedings, but to over reach and defeat the proceedings, by acting in a manner wholly impermissible in law and beyond their jurisdiction.

27. In view of above undisputed facts, specifically in face of the admission that the order sheet/order dated 18.02.2026 was never communicated to the petitioners within time, and further in view of satisfaction that the said order sheet does not fulfill the requirements of approval order, required to be recorded in terms of the first proviso under Section 110 of the Act, we conclude that the petitioners were entitled to refund of that amount Rs.25,20,000/-. However, that right of relief earned by the petitioners has been positively and unfairly obstructed by the DRI authorities, as recorded above.

28. Thus, we dispose of the writ petition with the observation that though the petitioners may now be entitled to return of the money from the Income Tax authorities, in accordance with law, for the reasons noted above, that proceedings have been thrust on the petitioners solely for reason of illegal actions performed by respondents. To that extent petitioners are found entitled to cost which is assessed Rs.10 lacs-for over reaching these proceedings and the judicial process and for deliberately defeating the ends of justice, for reasons not known to the Court.

29. Upto the last para, this order had been orally pronounced on 22.05.2026. Later, against oral mention made by Sri Krishna Agarwal on behalf of the ASGI, he was permitted to file appropriate application with respect to his prayer made to reduce the cost.

30. Civil Misc. Application No. 5 of 2026 came to be filed on behalf of respondent No. 1. It is supported by the affidavit of Sri Neeraj Kumar, Joint Director, DRI, Lucknow.

31. Today, Sri S.P. Singh, learned A.S.G.I. assisted by Sri Krishna Agarawal has referred to the contents of the affidavit of the Joint Director. He has also relied on the Office Order-01/2026 dated 24.05.2026 issued by the Additional Director General, DRI, Lucknow Zone, Lucknow. In paragraph 11, 12, 13 and 14 of the affidavit filed by Sri Neeraj Kumar, it has been stated as below:

"11. That it is humbly submitted that the actions undertaken by the officers were not with the deliberate intent to defeat the petition but undertaken under the belief of bonafide discharge of official duty. That there was never any intention, deliberate or otherwise, to disregard the dignity, authority, or directions of this Hon'ble Court. The circumstances leading to the present situation arose due to bona-fide understanding.

12. That it is most respectfully submitted before this Hon'ble Court that due diligence and due caution shall be exercised by this office in future in all the sub-judice matters.

13. That it is most respectfully submitted that the officer who had put up the proposal for extension of the period of issuance of Show Cause Notice under section 110(2) of the Customs Act 1962 had put up the reasons for seeking extension on the file and the competent authority, in agreement with those reasons, had put his dated signature on the Note Sheet. However, in further such extensions to be granted in such matters, independent reason will be recorded by the competent authority and the order of extension shall also be communicated to the concerned party in terms of Section 110(2) of the Customs Act, 1962.

14. That the present affidavit may kindly be taken on record in the interest of justice, this Hon'ble Court may graciously be pleased to accept the present unconditional apology, take a lenient view in the matter and pass such further order(s) as deemed fit and proper in the interest of justice."

32. Office Order-01/2026 dated 24.05.2026 relied by the learned A.S.G.I. reads as below:

"OFFICE ORDER-01/2026

It is hereby directed that no action in respect of matters sub judice before any court shall be taken without first verifying the status of the pending judicial proceedings and, interim order/stay/direction, if any. Officers shall exercise due caution in such matters and ensure that the pendency of the matter before Hon'ble Court/Tribunal is duly taken into account when any action is contemplated. Wherever required, leave/permission/clarification of the Hon'ble Court/Tribunal must be sought under the guidance of standing counsel. All the developments in such cases must be brought to the notice of the undersigned without delay.

These instructions shall be followed scrupulously by all officers/formations under DRI Lucknow Zonal Unit. Any deviation shall be viewed seriously.

Sd/-
25/05/2026
(Dr. Vidyut Vikash)
Additional Director General"

33. In view of such facts, learned A.S.G.I. assures the Court that in future the authorities of the DRI will act in accordance with law such that wherever any cash may be seized, it may be returned to the person from whom such seizure may have been affected, subject to any show cause notice issued to proceed against such cash and/or subject to time extension order that may be passed, in accordance with law, as discussed above, in the main part of the order.

34. In such facts, he further prays that the costs may be made easy.

35. On the other hand, learned counsel for the petitioners has opposed the prayer made. He would submit that loss has already been caused to the petitioners. Thus, impost of exemplary costs may be maintained.

36. In view of the assurance given by the learned A.S.G.I., while some relaxation in the award of costs may be made, at the same time, in view of the discussion contained in the main part of the order as also recognising the fact that the money was retained by the DRI for long duration of three months, after the expiry of the statutory period under Section 110(2) of the Customs Act, 1962, loss has been caused to the petitioners for act of deliberate omission and/or commission. Accordingly, the original proposal to impose costs Rs. Ten Lacs is modified to Rs. One Lac.

37. Civil Misc. Application No. 5 of 2026 is **disposed of**.

38.The writ petition is thus **disposed of**.

(2026) 5 ILRA 1650
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.05.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Matters Under Article 227 No. 2014 of 2026

Kush Saigal & Ors. **...Petitioners**
Versus
Gaurav Shukla & Anr. **...Respondents**

Issue for Consideration

Whether the legal heirs of the deceased could subsequently be brought on record only by way of impleadment and not by way of substitution as the proceedings before the Rent Authority had been initiated by impleading the respondent, who was already dead at that point of time

Head Notes

The Constitution of India, 1950-Article 227; The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021- Section 4(3)- Procedural rules are intended to advance the cause of justice and not to thwart it. Procedure is the handmaid of justice and cannot be permitted to defeat substantive rights where no prejudice is shown to have been caused to the opposite party. Hyper-technical objections with regard to nomenclature of an application, whether styled as substitution or impleadment, cannot override the substance of the matter once the necessary parties are before the authority and full opportunity of contest has been preserved.

Held-Mere impleadment of a deceased person at the institution of proceedings, when occasioned by bona fide mistake and subsequently corrected by bringing the legal heirs on record, does not by itself render the proceedings non est, particularly where other necessary or joint parties were already before the authority and no prejudice is shown- Courts must examine the substance of the proceedings rather than the form of the application- Procedural defect capable of rectification ought not to defeat adjudication on merits, nor can technical objections relating to nomenclature of the application override the ends of justice. **Petition dismissed.** (E-15)

(Para 7 & 8)

Case Law Cited

List of Acts

The Constitution of India, 1950; The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021

List of Keywords

Objections regarding nomenclature; Application whether styled as substitution or impleadment ; does not render the proceedings non est; when necessary parties are before the authority; bona fide mistake and subsequently corrected

Case Arising From

Order dated 10.09.2025 passed by the Rent Authority in Rent Case No. 376 of 2025 under Section 4(3) of U.P. Act No. 16 of 2021, as well as the subsequent order dated 20.12.2025 passed by the Rent Tribunal in Rent Appeal No. 225 of 2025, whereby the said order has been affirmed.

Appearances for Parties

Counsel for Petitioner(s) : Prateek Sinha
Counsel for Respondent(s) : Jitendra Pratap Singh

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

Heard Sri Prateek Sinha, learned counsel for the petitioners and Sri Jitendra Pratap Singh, learned counsel appearing for the respondents.

2. The present petition has been filed, seeking to assail the order dated 10.09.2025 passed by the Rent Authority in Rent Case No. 376 of 2025 (Gaurav Shukla and others vs. Divendra Kumar Saigal and others) under Section 4(3) of U.P. Act No. 16 of 2021, as well as the subsequent order dated 20.12.2025 passed by the Rent Tribunal in Rent Appeal No. 225 of 2025, whereby the said order has been affirmed.

3. It is sought to be contended that by means of the order dated 10.09.2025, an application seeking substitution of the legal heirs of deceased Divendra Kumar Saigal, respondent in the rent case, had been allowed and a direction was issued to substitute the legal heirs. Learned counsel for

the petitioners submits that the proceedings before the Rent Authority had been initiated by impleading the said respondent, who was already dead at that point of time. It is argued that the legal heirs of the deceased could subsequently be brought on record only by way of impleadment and not by way of substitution.

4. It is further contended that when the order permitting substitution was challenged in appeal, the Appellate Court, treating the same as a mere amendment in the array of parties, declined to interfere with the order passed by the Rent Authority.

5. Per contra, learned counsel appearing for the respondents submits that the impleadment of Divendra Kumar Saigal at the time of filing of the application before the Rent Authority was made under a misconception and, upon coming to know that he was no longer alive, an application was moved for substitution so as to bring on record the legal heirs of the deceased respondent. It is submitted that the respondents-landlords acted bona fide and the Rent Authority has rightly directed that the legal heirs be brought on record in the interest of justice.

6. It is not disputed that the other joint tenants were already parties to the proceedings. In such circumstances, even if all the legal heirs, who were joint tenants, had not initially been impleaded, the proceedings would not fail, inasmuch as it is not necessary to implead each and every joint tenant as a party in eviction proceedings. At best, such persons may be treated as proper parties. Furthermore, now that the legal heirs have already been brought on record, the mere fact that the application was filed subsequently would not make any substantial difference to the maintainability or validity of the proceedings.

7. The law is well settled that procedural rules are intended to advance the cause of justice and not to thwart it. Procedure is the handmaid of justice and cannot be permitted to defeat substantive rights where no prejudice is shown to have been caused to the opposite party. Hyper-technical objections with regard to nomenclature of an application, whether styled as substitution or impleadment, cannot override the substance of the matter once the necessary parties are before the authority and full opportunity of contest has been preserved.

8. The mere impleadment of a deceased person at the institution of proceedings, when occasioned by bona fide mistake and subsequently corrected by bringing the legal heirs on record, does not by itself render the proceedings non est, particularly where other necessary or joint parties were already before the authority and no prejudice is shown. Courts and tribunals must examine the substance of the proceedings rather than the form of the application. A procedural defect capable of rectification ought not to defeat adjudication on merits, nor can technical objections relating to nomenclature of the application override the ends of justice.

9. Learned counsel for the petitioners has not disputed the aforesaid legal position.

10. In view of the aforesaid facts and circumstances, this Court does not find any manifest illegality, jurisdictional error, or perversity in the orders impugned so as to warrant interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

11. The petition lacks merit and is, accordingly, **dismissed**.

(2026) 5 ILRA 1653
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.05.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Matters Under Article 227 No. 2312 of 2026

Mohammad Zaki Khan ...Petitioner
Versus
Gopal Krishna Gangal ...Respondent

Issue for Consideration

Whether the tenant is entitled to protection under the provisions of U.P. Act No. 13 of 1972, and exemption under Section 2(2) of the Act

Head Notes

The Constitution of India, 1950-Article 227; The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972- Section 2(2)- Where a tenant seeks protection under the provisions of U.P. Act No. 13 of 1972, the burden lies upon the party asserting applicability of the Act to establish the foundational facts attracting such protection, including the date of completion of construction where exemption under Section 2(2) is in issue. In the absence of cogent documentary or reliable oral evidence regarding completion, assessment, first occupation, or any other circumstance contemplated under Explanation I to the second proviso to Section 2(2), the benefit of the statute cannot be claimed merely on bald assertion.

Held- Except a bald plea regarding construction in the year 1991, no reliable material has been brought on record to establish completion, first assessment or first occupation in the manner contemplated under the statute. **Petition dismissed**. (E-15)

(Para 8 & 10)

Case Law Cited

Om Prakash Gupta vs. Dig Vijendra Pal Gupta (1982) 2 SCC 61

List of Acts

The Constitution of India, 1950; The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972

List of Keywords

Explianation I to the second proviso to Section 2(2); Burden upon party; Asserting the applicability of the Act; Benefit of section 2(2) cannot be given on bald assertion

Case Arising From

Order dated 17.02.2025 passed by the Judge, Small Causes Court, Aligarh, in S.C.C. Suit No. 27 of 2012, whereby the suit instituted by the respondent-landlord for ejectment and arrears of rent against the tenant came to be decreed. Challenge has also been laid to the subsequent order dated 03.10.2025 passed by the District Judge, Aligarh in S.C.C. Revision No. 42 of 2025 affirming the judgment of the trial court.

Appearances for Parties

Counsel for Petitioner(s) : Rajeshwari Prasad
Counsel for Respondent(s) : Ashish Agrawal, Shekhar Gangal

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1.Heard Sri Rajeshwari Prasad, learned counsel for the petitioner and Sri Ashish Agrawal, learned counsel appearing for the respondent.

2.The present petition has been filed seeking to assail the order dated 17.02.2025 passed by the Judge, Small Causes Court, Aligarh, in S.C.C. Suit No. 27 of 2012 *(Shri Gopal Krishna Gangal vs. Mohammad Zaki Khan)*, whereby the suit instituted by the respondent-landlord for ejectment and arrears of rent against the tenant came to be decreed. Challenge has also been laid to the subsequent order dated 03.10.2025 passed by the District Judge, Aligarh in S.C.C. Revision No. 42 of 2025 *(Mohammad Zaki Khan vs. Shri Gopal Krishna Gangal)*, affirming the judgment of the trial court.

3.The dispute arises out of S.C.C. Suit No. 27 of 2012 instituted by the respondent-landlord against the petitioner-tenant in respect of a shop situated at Battomal Market, Palval Road, Qasba Khair, District Aligarh. The petitioner claimed tenancy since the year 1987 at a monthly rent of Rs.400/-. Alleging default in payment of rent and termination of tenancy by notice dated 10.05.2012, the respondent instituted the suit for ejectment and arrears of rent. The suit came to be decreed by the trial court and the revision preferred thereagainst has also been dismissed, giving rise to the present petition.

4.The sole ground urged in challenge to the orders passed by the Small Causes Court and the revisional court pertains to the applicability of U.P. Act No. 13 of 1972. It is contended that in view of Explanation I(a) to the second proviso to sub-section (2) of Section 2 of the Act, the construction of a building is deemed to have been completed on the date on which completion thereof is reported to or otherwise recorded by the local authority having jurisdiction, and in the case of a building subject to assessment, the date on which the first assessment thereof comes into effect; where the said dates are different, the earliest of such dates, and in the absence of any such report, record or assessment, the date on which it is actually occupied (not including occupation merely for purposes of supervising the construction or guarding the building under construction) for the first time.

5.It is sought to be urged that in the present case none of the aforesaid dates were available and, according to the tenant, the building was constructed in the year 1991; hence, the Act would be applicable.

6.Learned counsel appearing for the respondent, however, has pointed out that as per the tenant's own stand before the trial court, he had been inducted as tenant in the year 1987 and, upon construction of the new shop in the year 1988, he was put in possession thereof. It is, therefore, submitted that the assertion regarding construction in the year 1991 is wholly baseless and cannot be accepted.

7.Learned counsel for the petitioner has not been able to substantiate the plea that the building had been constructed prior to 26th April, 1985, i.e. the cut-off date specified in the second proviso to sub-section (2) of Section 2, on the basis whereof alone the provisions of U.P. Act No. 13 of 1972 could be claimed to be applicable.

8.It is well settled that where a tenant seeks protection under the provisions of U.P. Act No. 13 of 1972, the burden lies upon the party asserting applicability of the Act to establish the foundational facts attracting such protection, including the date of completion of construction where exemption under Section 2(2) is in issue. In the absence of cogent documentary or reliable oral evidence regarding completion, assessment, first occupation, or any other circumstance contemplated under Explanation I to the second proviso to Section 2(2), the benefit of the statute cannot be claimed merely on bald assertions.

9.It is equally well settled that the question regarding applicability of U.P. Act No. 13 of 1972, where dependent upon the date of completion of construction, has to be determined strictly in accordance with the deeming provisions contained in Explanation I to the second proviso to Section 2(2) of the Act. The Supreme Court in ***Om Prakash Gupta vs. Dig Vijendra Pal Gupta (1982) 2 SCC 61*** has held that where the building is subject to municipal assessment, the date on which the first assessment comes into effect would be relevant, and only in the absence of such report, record or assessment, the date of first actual occupation can be taken into consideration.

10.In the present case, except a bald plea regarding construction in the year 1991, no reliable material has been brought on record to establish completion, first assessment or first occupation in the manner contemplated under the statute.

11.In view of the aforesaid, the findings concurrently recorded by the two courts below that U.P. Act No. 13 of 1972 is not applicable to the premises in question do not warrant interference.

12.No other ground has been urged in support of the challenge which may persuade this Court to exercise jurisdiction under Article 227 of the Constitution of India.

13.At this stage, learned counsel for the petitioners prays for indulgence by way of grant of nine months? time to vacate the premises in question. Learned counsel appearing for the respondent, on instructions, states that he has no objection to the prayer so made.

14.Accordingly, while dismissing the petition, this Court grants nine months' time to the petitioners to vacate and hand over peaceful possession of the premises in question to the respondent-landlord on or before 09.02.2027, subject to the following conditions:

(i) The petitioner-tenant shall file an undertaking before the Judge, Small Causes Court, Aligarh, stating that peaceful possession of the premises in question shall be handed over to the respondent-landlord on or before 09.02.2027;

(ii) The said undertaking shall be filed within a period of two weeks from today;

(iii) The petitioners shall also file an undertaking that the entire arrears, after adjusting the amount already deposited, shall be deposited within four weeks from today;

(iv) The petitioners shall further deposit monthly use and occupation charges at the rate of **Rs. 4,000/- per month** for future months commencing from June, 2026, by the 7th day of each succeeding month, as agreed between learned counsel for the parties.

15.It is made clear that in the event of default in compliance with any of the aforesaid conditions, the protection granted by this Court shall stand vacated automatically, and it shall be open to the respondent-landlord to seek enforcement of the decree passed in the S.C.C. Suit in accordance with law.

16.Subject to the aforesaid directions, the petition stands **dismissed**.

(2026) 5 ILRA 1656
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 08.05.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Matters Under Article 227 No. 2542 of 2026

Baburam & Ors. **...Petitioners**
Versus
State of U.P. & Anr. **...Respondents**

Issue for Consideration

Whether the learned trial court as well as the revisional court rejected the discharge application in a mechanical manner without examining whether even a prima facie case was made out against the petitioners on the basis of the material available on record

Head Notes

The Constitution of India, 1950-Article 227; The Code of Criminal Procedure, 1973-Section 227- It does not appeal to common sense that had the ladies of the house been involved in commission of the alleged offences, still they would not have been named in the application under Section 156 (3) Cr.P.C. and in the statement of the complainant's father, who claims to be an eye witness. There implication only through subsequent statements of alleged eyewitnesses, without they having been implicated in the application under Section 156(3) Cr.P.C. Or in the statement of the complainant's father raises a serious suspicion against the correctness of the statements of witnesses alleging their involvement and such statements cannot be taken as gospel truth.

Held- That petitioner Nos. 5, 6, 8 and 9, all of whom are ladies and whose names were not mentioned in the application under Section 156(3) Cr.P.C. or in the statement of the complainant's father, and nothing is said to have been recovered from whom, appear to have been implicated by including their names in the statements of witnesses later on as an afterthought and those ladies are entitled to be discharged- No good ground exists for discharge of the petitioner Nos. 1 to 4, as they were specifically named in the application under Section

156(3) Cr.P.C. and specific allegations were leveled against them or of the petitioner no. 7, from whom the stolen generator is said to have been recovered**. Petition partly allowed.** (E-15)

Case Law Cited

Tuhin Kumar Biswas versus State of West Bengal: 2025 SCC OnLine SC 2604;Neeraj and two others v. State of U.P. and another, reported in 2025 ASCLKO 45421;Sajjan Kumar v. CBI: (2010) 9 SCC 368;Ghulam Hassan Beigh v. Mohd. Maqbool Magrey: (2022) 12 SCC 657;Manjit Singh Virdi v. Hussain Mohammed Shattaf: (2023) 7 SCC 633;Ram Prakash Chadha v. State of U.P.: (2024) 10 SCC 651;Tuhin Kumar Biswas v. State of W.B.: 2025 SCC OnLine SC 2604;Indian Oil Corpn. v. NEPC India Ltd.: (2006) 6 SCC 736

List of Acts

The Constitution of India, 1950 & The Code of Criminal Procedure, 1973

List of Keywords

Discharge; Section 227; CrPC; Not named in the compliant; Statements of alleged eyewitnesses; Suspicion over correctness of statement

Case Arising From

Order dated 16.01.2024 passed by the learned Additional Chief Judicial Magistrate, Court No. 20, Sultanpur in Criminal Case No.7039 of 2023 arising out of Case Crime No.81 of 2019 under Section 457, 380 IPC, Police StationBaldirai, District- Sultanpur whereby an application filed by the petitioners under Section 227 Cr.P.C. seeking their discharge, has been rejected. The petitioners challenged the aforesaid order by filing Criminal Revision No. 43 of 2024, which too has been dismissed by means of a judgment and order dated 17.08.2024 passed by the learned Session Judge, Sultanpur and validity of the revisional order has also been assailed through the present petition.

Appearances for Parties

Counsel for Petitioner(s) : Shikhar Anand Counsel for
Respondent(s) : G.A., Dhirendra Kumar Mishra

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

1. Heard Shri Shikhar Anand, the learned counsel for the petitioners, Shri Jai Prakash, the learned A.G.A. and Sri. Dhirendra Kumar Mishra, the learned counsel for the opposite party No.2.

2. By means of the instant petition filed under Article 227 of the Constitution of India, the petitioners have challenged the validity of an order dated 16.01.2024 passed by the learned Additional Chief Judicial Magistrate, Court No. 20, Sultanpur in Criminal Case No.7039 of 2023 arising out of Case Crime No.81 of 2019 under Section 457, 380 IPC, Police Station- Baldirai, District- Sultanpur whereby an application filed by the petitioners under Section 227 Cr.P.C. seeking their discharge, has been rejected. The petitioners challenged the aforesaid order by filing Criminal Revision No. 43 of 2024, which too has been dismissed by means of a judgment and order dated 17.08.2024 passed by the learned Session Judge, Sultanpur and validity of the revisional order has also been assailed through the present petition.

3. The aforesaid case was instituted on the basis of an application under Section 156(3) Cr.P.C. filed by the opposite party No.2- Tejbahadur against (i) Baburam, aged about 58 years, (ii) Sant Ram, aged about 65 years, (both (i) and (ii) sons of Hublal), (iii) Rinku @ Ashwani, aged

about 20 years son of Baburam and (iv) Devendra @ Moti, aged about 25 years, son of Santram, the petitioner nos.1, 2, 3 and 4 respectively in the present petition.

4. It was stated in the application that the complainant is a permanent resident of House No. 162, Village- Lakehatamafi, Police Station and Tehsil -Baldirai, District- Sultanpur. The opposite party nos. 1 to 4 forcibly attempted to take possession of the house and they instituted Regular Suit No. 76 of 2006, wherein the trial Court passed an order directing the parties to maintain status-quo. On 26.12.2018 at about 7:00 p.m., when the complainant had gone out in connection of his treatment, the opposite party nos.1 to 4 broke open the lock of the house, entered into it and took away a generator along with its parts worth Rs. 80,000/-, three takhats, 50 sacks full of paddy, 40 sacks full of wheat, two benches, one table, a gas stove, a gas cylinder and some other household articles. Upon receiving information from some unnamed persons, the complainant dialed 100 and informed the police. By the time the police arrived, the accused persons had already taken away the articles.

5. The complainant reported the incident to the police but the police did not lodge a First Information Report. Thereafter, on 29.12.2018, he sent information of the incident to the Superintendent of Police, Sultanpur through registered post and when no action was taken on that application, he filed an application under Section 156(3) Cr.P.C. against the petitioner nos. 1 to 4. On the said application, the learned Additional Chief Judicial Magistrate, Court No.18, Sultanpur passed an order dated 15.03.2019 directing the police to register a case. In compliance thereof, FIR No.81 of 2019 was registered under Sections 457 and 380 IPC against petitioner nos.1 to 4, against whom allegations had been levelled in the application under Section 156(3) Cr.P.C.

6. During investigation, the Investigating Officer recorded statement of the complainant and he reiterated the allegations made in the application under Section 156(3) Cr.P.C. In his additional statement, the complainant stated that he had gone to some relative's place at about 6:00 p.m. on 25.12.2018. At about 5:00 a.m. on 26.12.2018, some unnamed villager telephonically informed him that the petitioner No.1 and his family members were taking possession of his house. Upon receiving this information, he dialed 100 and informed the police. The police reached the village and took the 'party' to the police station. Thereafter, he went to Sultanpur for taking medicine. He returned to his village at about 8:30 p.m. and found that the locks of his shop and house had been broken open and the petitioner No.1 and his family members were loading the goods from the shop and house on a four-wheeler pickup vehicle. The complainant stated that he again dialed 100, but the call could not be connected. He also attempted to contact the police outpost and the police station telephonically, but those calls too could not be connected. Thereafter, he went to the police station, where the police assured him that they would reach the spot. The complainant further stated that he waited at the police station for some time. When he eventually returned to the spot, he found that the accused persons had already removed all the articles and had taken possession of the shop and the house.

7. In his additional statement, the complainant stated that he had personally witnessed the accused persons removing the goods from his shop and house. The complainant further stated that besides himself, Devinder alias Moti, son of Sant Ram, Babu Ram son of Hublal, Santram son of Hublal and Rinku son of Baburam had witnessed the incident.

8. Learned counsel for opposite party No. 2 pointed out that a copy of the statement of the complainant's father Raghunath annexed with the petition is incomplete. He produced a complete photocopy of statement of Raghunath recorded by the Investigating Officer wherein he stated that he had retired from the post of Sub-Inspector of Police in the year 2001 while he was posted at Lucknow. He further stated that the petitioner No.1 belongs to his village and his caste and he had previously resided with Raghunath at Lucknow where he used to work as a Chowkidar in a hospital. Raghunath further stated that on 25.12.2018, his son Tejbahadur (the opposite party No. 2) had gone to the house of some relatives. Raghunath and his grandson Deepak were sleeping in the house. At about 5:00 a.m. on 26.12.2018, the petitioner No.1 arrived there and asked Raghunath to leave the house. His grandson Deepak got frightened. Thereafter, the police vehicle arrived and took Raghunath and his grandson Deepak with them. They went with the police after locking the house. One Jitendra Bahadur Singh resident of Sonbarsa reached there and he asked that the persons from the side of the petitioners should also be taken by the police. Thereupon, the police took along Rinku, Baburam and Devindra (the petitioner Nos. 1, 3, and 4 as well).

9. At the police station, Raghunath and his grandson Deepak were detained whereas Moti, Devindra and Rinku were released. Jitendra took them away and thereafter the police allegedly set them free at about 9:00 p.m. Upon returning home, the complainant found that the locks of the shop and the house had been broken. Persons of Baburam (the petitioner No.1) were loading the goods on a tractor and a pickup vehicle.

10. Raghunath stated that he owned certain land at Lucknow. He had executed a sale deed in respect of half of his land at Lucknow in favour of the petitioner No.1 on the condition that the petitioner No.1 will give him equal land in the village. The petitioner No.1 constructed a house on the land given by Raghunath at Lucknow and he had been residing there for the past 18-19 years. Raghunath constructed a house in the year 2001 on the land of petitioner No.1 in the village and had been residing there with his family. Subsequently, the petitioner No. 1 demanded an additional sum of Rs.50,000/- claiming that his land was situated on the roadside. Raghunath paid the amount on 10.12.2005 and the petitioner No.1 gave an acknowledgment written on a stamp paper. Thereafter, the petitioner No. 1 turned dishonest and he instituted Regular Suit No. 76 of 2006. Raghunath stated that there was an electricity connection in the name of the complainant Tejbahadur. He also alleged that the petitioner No.1 had obtained a stay order dated 12.07.2010 by concealing material facts.

11. The Investigating Officer recorded the statement of Deepak (son of the complainant and grandson of Raghunath). He stated that the Village Pradhan got him and his grandfather Raghunath released from the police station and brought them back to the village at about 9:00 p.m. He further stated that villagers have clicked some photographs of the incident. According to him, there was a photograph showing Devinder @ Moti breaking open the locks. He further stated that several villagers had witnessed the family members of petitioner No.1 forcibly entering the premises and looting the goods.

12. The Investigating Officer recorded the statements of independent witnesses Rakesh Yadav, Brijnath and Surendra Kumar, who stated that Baburam, Rinku, Kailashpati, Renu,

Santram, Rajendra, Jagram @ Sanjay, Sitaau Devi, Urmila etc. were taking out the goods hurriedly and were loading them on a pickup vehicle.

13.Although the application under Section 156 (3) Cr.P.C. was filed levelling allegations against 4 persons, the Investigating Officer submitted a charge-sheet dated 13.06.2019 against nine accused persons (the petitioners) for offences punishable under Sections 457 and 380 IPC. The trial Court thereafter took cognizance of the offences on 20.01.2021.

14. The charge-sheet was submitted for offences punishable under Sections 457 and 380 IPC. Thereafter, the Investigating Officer arrested two more persons - one of the named accused persons Devendra alias Moti (the petitioner no. 4) and Jagram (the petitioner No. 7, who was not named in the FIR) on 04.08.2019 and showed recovery of a generator from their possession. The Investigating Officer further showed recovery of an empty LPG cylinder of Indane Gas from Rajendra son of Santram.

15. The petitioners filed an application under Section 227 Cr.P.C. on 11.08.2020 seeking their discharge. It was stated therein that, although the application under Section 156(3) Cr.P.C. and the consequent FIR named only four persons (the petitioner nos. 1 to 4) and it did not allege involvement of any other named or unnamed persons, the Investigating Officer submitted a charge-sheet against three additional persons.

16. On 30.07.2019, the Investigating Officer showed recovery of a generator from a named accused Devendra @ Moti (the petitioner no. 4) and an unnamed person Jagram alias Sanjay (the petitioner no. 7), who was not named in the FIR. On the basis of the alleged recovery, Section 411 IPC was added in the case. The petitioners contended that after submission of the charge-sheet, the Investigating Officer had no authority to conduct further investigation in the manner adopted by him. It was also stated that the trial court had rejected the request for remand of the aforesaid accused persons under Section 411 IPC, but their remand was subsequently allowed.

17. The petitioners filed an application under Section 227 Cr.P.C. on 11.08.2020 seeking their discharge. It was stated therein that, although the application under Section 156(3) Cr.P.C. and the consequent FIR named only four persons, namely petitioner Nos. 1 to 4, and did not disclose the involvement of any other named or unnamed persons, the Investigating Officer had nevertheless submitted a charge-sheet against five additional persons.

18. It was further contended that, although the charge-sheet had already been submitted on 30.07.2019, the Investigating Officer subsequently arrested two accused persons, who were not named in the application under Section 156(3) Cr.P.C. or in the FIR, and thereafter showed recovery of a generator and a gas cylinder. On the basis of the alleged recovery, Section 411 IPC was added to the case.

19. The petitioners contended that after submission of the charge-sheet, the Investigating Officer had no authority to conduct further investigation in the manner adopted by him. It was also stated that the trial court had rejected the request for remand of the aforesaid accused persons under Section 411 IPC, though their remand was subsequently permitted.

20. It was further stated in the discharge application that the Investigating Officer had submitted a charge-sheet against Renu Kumari, petitioner No. 6, although she was employed at Chitrakoot with "Charcha Aaj Ki". The Editor of "Charcha Aaj Ki" had allegedly furnished a written statement certifying that Renu Kumari had continuously attended her duties at Chitrakoot till 25.05.2019.

21. The discharge application was rejected by the impugned order dated 16.01.2024. The trial court observed that from the material collected during investigation, offences under Sections 457 and 380 IPC were prima facie made out against all the accused persons and, therefore, no ground existed for discharging them. The revisional court affirmed the aforesaid order.

22. Challenging the validity of the aforesaid orders, learned counsel for the petitioners submitted that the learned Magistrate has rejected the discharge application in a mechanical manner without examining whether even a prima facie case was made out against the petitioners on the basis of the material available on record. In support of his submissions, learned counsel for the petitioners placed reliance upon the judgments of the Hon'ble Supreme Court reported in **Tuhin Kumar Biswas versus State of West Bengal:** 2025 SCC OnLine SC 2604 **and Ram Prakash Chadha versus State of Uttar Pradesh:** (2024) 10 SCC 651.

23. On the other hand, learned counsel for opposite party No. 2 placed reliance upon the decision of the Hon'ble Supreme Court in **Manjit Singh Virdi v. Hussain Mohammed Shattaf:** (2023) 7 SCC 633 and upon a judgment rendered by a Coordinate Bench of this Court in Neeraj and two others v. State of U.P. and another, reported in 2025 ASCLKO 45421, wherein the Coordinate Bench had referred to numerous precedents regarding the scope and ambit of Section 227 Cr.P.C.

24. Section 227 Cr.P.C. reads as follows: -

"227. Discharge- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

25. In **Sajjan Kumar v. CBI**: (2010) 9 SCC 368, the Hon'ble Supreme Court considered various precedents on the scope of Sections 227 and 228 Cr.P.C. and culled out the following principles:-

"Exercise of jurisdiction under Sections 227 and 228 CrPC

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding

out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) ***The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.***

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) ***At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.***

(vii) ***If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."***

(Emphasis added)

26. The aforesaid judgment has been followed by a Bench consisting of three Hon'ble Judges of the Hon'ble Supreme Court in **Ghulam Hassan Beigh v. Mohd. Maqbool Magrey:** (2022) 12 SCC 657.

27. In **Manjit Singh Virdi v. Hussain Mohammed Shattaf**: (2023) 7 SCC 633, the Hon'ble Supreme Court held that: -

"11. ...The settled proposition of law is that at the stage of hearing on the charges entire evidence produced by the prosecution is to be believed. In case no offence is made out then only an

accused can be discharged. Truthfulness, sufficiency and acceptability of the material produced can be done only at the stage of trial. At the stage of charge, the court has to satisfy that a prima facie case is made out against the accused persons. Interference of the Court at that stage is required only if there is strong reasons to hold that in case the trial is allowed to proceed, the same would amount to abuse of process of the court."

28. In **Ram Prakash Chadha v. State of U.P.:** (2024) 10 SCC 651, the Hon'ble Supreme Court held that: -

"27. ...in a case where an application is filed for discharge under Section 227CrPC, it is an irrecusable duty and obligation of the Court to apply its mind and answer to it regarding the existence of or otherwise, of ground for proceeding against the accused, by confining such consideration based only on the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in that behalf. To wit, such conclusion on existence or otherwise of ground to proceed against the accused concerned should not be and could not be based on mere suppositions or suspicions or conjectures, especially not founded upon material available before the Court...."

29. In **Tuhin Kumar Biswas v. State of W.B.:** 2025 SCC OnLine SC 2604, it was held that: -

"*28. ... where there is a pending civil dispute between the parties, the Police and the Criminal Courts must be circumspect in filing a chargesheet and framing charges respectively. In a society governed by rule of law, the decision to file a chargesheet should be based on the Investigating Officer's determination of whether the evidence collected provides a reasonable prospect of conviction. The Police at the stage of filing of Chargesheet and the Criminal Court at the stage of framing of Charge must act as initial filters ensuring that only cases with a strong suspicion should proceed to the formal trial stage to maintain the efficiency and integrity of the judicial system. The tendency of filing chargesheets in matters where no strong suspicion is made out clogs the judicial system. It forces Judges, court staff, and prosecutors to spend time on trials that are likely to result in an acquittal. This diverts limited judicial resources from handling stronger, more serious cases, contributing to massive case backlogs. Undoubtedly, there can be no analysis at the charge framing stage as to whether the case would end in conviction or acquittal, but the fundamental principle is that the State should not prosecute citizens without a reasonable prospect of conviction, as it compromises the right to a fair process."*

30. When the facts of the present case are examined in the light of the judgments of the Hon'ble Supreme Court in the aforesaid cases, it appears that while deciding an application for discharge, the Court is required to examine the material placed by the prosecution for the limited purpose of satisfying itself as to whether the material gives rise to a grave suspicion that the accused persons have committed the alleged offences.

31. In the present case, the incident is alleged to have taken place at about 7:00 p.m. on 26.12.2018. The complainant filed an application under Section 156(3) Cr.P.C. On 24.01.2019, i.e,

after about a month since the occurrence, against four persons only. In the application was filed about a month of the incident, the petitioner Nos. 5 to 9 were not named.

32. In the statement recorded under Section 161 Cr.P.C., the complainant reiterated the FIR version. In his additional statement, the informant stated that, upon receiving information, he reached his house and found that the petitioners had already established their possession over the shop and the house.

33. The complainant's father, Raghunath, stated that he had seen the men of Babu Ram (the petitioner no. 1) loading the goods on a tractor and a pickup vehicle. Although Raghunath claimed to have witnessed removal of goods by the associates of the petitioner No. 1, petitioner Nos. 5 to 9 were still not named in the application under Section 156(3) Cr.P.C., which had been filed after about one month from the date of the incident.

34. Petitioner Nos. 5 to 9 were subsequently implicated on the basis of the statements of certain independent witnesses, who stated that all the accused persons were seen loading the goods onto a four-wheeler pickup vehicle. However, even those witnesses did not state that the aforesaid persons had committed theft by breaking open the locks or had forcibly entered the house and shop or that the goods were being loaded onto a tractor, as alleged by the complainant's father, Raghunath.

35. Non-mention of the names of petitioner Nos. 5 to 9 in the application under Section 156(3) Cr.P.C., which was filed about one month after the incident, and the omission of their names in the statement of the complainant's father, Raghunath, who claimed to have seen the men of Babu Ram removing the goods, constituted relevant material which ought to have been taken into consideration by the trial court while deciding the application for discharge.

36. However, the trial court rejected the discharge application merely by observing in a single sentence that the material collected during investigation disclosed the involvement of the petitioners in the commission of the offence. The failure of the trial court to consider the aforesaid relevant material vitiates the impugned order.

37. The revisional court also failed to examine this aspect of the matter and affirmed the order of the trial court in a mechanical manner.

38. However, the case of the petitioner no. 7 Jagram is different from the petitioner nos. 5, 6, 8 and 9 and it is alleged that the stolen generator was recovered from him. In view of the prosecution's claim of recovery of a stolen article from the possession of the petitioner no. 7, he is not entitled to be discharged.

39. It does not appeal to common sense that had the ladies of the house been involved in commission of the alleged offences, still they would not have been named in the application under Section 156 (3) Cr.P.C. and in the statement of the complainant's father, who claims to be an eye witness. There implication only through subsequent statements of alleged eye-witnesses, without they having been implicated in the application

under Section 156(3) Cr.P.C. Or in the statement of the complainant's father raises a serious suspicion against the correctness of the statements of witnesses alleging their involvement in commission of the offence and such statements cannot be taken as gospel truth. The trial Court and the revisional Court have failed to evaluate the material available on record and consider the total effect of the basic infirmities in the prosecution evidence as noted above, whereas it was necessary to be done to ascertain the broad probabilities of the case. It appears that the trial court and the revisional court have acted merely as a post office or a mouthpiece of the prosecution. Upon sifting and weighing the evidence, it appears that even a prima facie case is not made out against the persons who had not been named in the FIR or the statement of Raghunath and from whom no recovery has been made.

40. In view of the aforesaid discussion, I am of the considered opinion that petitioner Nos. 5, 6, 8 and 9, all of whom are ladies and whose names were not mentioned in the application under Section 156(3) Cr.P.C. or in the statement of the complainant's father, and nothing is said to have been recovered from whom, appear to have been implicated by including their names in the statements of witnesses later on as an afterthought and those ladies are entitled to be discharged.

41. However, no good ground exists for discharge of the petitioner Nos. 1 to 4, as they were specifically named in the application under Section 156(3) Cr.P.C. and specific allegations were leveled against them or of the petitioner no. 7, from whom the stolen generator is said to have been recovered.

42. I do not find force submission in the learned Counsel for the petitioner that pendency of a civil dispute gives rise to a ground for discharge of all the petitioners**. In Indian Oil Corpn. v. NEPC India Ltd**.: (2006) 6 SCC 736, the Hon'ble Supreme Court held that: -

"A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. ***The test is whether the allegations in the complaint disclose a criminal offence or not."***

43. In the present case, the allegations clearly make out commission of offences punishable in criminal law. Merely because there is a civil dispute between the parties, it cannot be said that the petitioners cannot be prosecuted for the allegations of commission of offences.

44. Accordingly, the petition is partly allowed. The prayer for discharge of the petitioner no. 5 Kailashpati, the petitioner no. 6 Renu, the petitioner no. 8 Sitau Devi and

the petitioner no. 9 Urmila, is allowed, whereas the prayer for discharge of petitioner Nos. 1 to 4 and 7 is rejected.

(2026) 5 ILRA 1666
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.05.2026

BEFORE

THE HON'BLE DR. AJAY KUMAR -II, J.

Matters Under Article 227 No. 4842 of 2025

Shambhu Singh **...Petitioner**
Versus
State of U.P. & Anr. **...Respondents**

Issue for Consideration

Whether the impugned order passed by the SDM, is against the provisions of law and has been passed without complying the procedure prescribed under Sections, 133, 137, 138, 139, 140 Cr.P.C.

Head Notes

The Constitution of India, 1950-Article 227; The Code of Criminal Procedure, 1973-Section 133, 137, 138, 139 and 140- Petitioner himself has admitted in his petition the existence of two ft. wide street/gali on the spot- Admission of existence of public way- Executive Magistrate was not under obligation to hold an inquiry as required under section 137 Cr.P.C. Moreover, the Executive Magistrate, visited the spot and visit of Executive Magistrate is not in dispute, which has been recorded in the impugned order dated 12.11.2024. The aforesaid fact of visiting spot, is a factual recital as well as an observation made by him in it's order, which is taken to be correct, because the same is not rebutted at all by the petitioner. The site plan enclosed with the Revenue Report dated 17.11.2025, also make it clear that there is an illegal obstruction in the public way, which was required to be removed- Power under Article 227 is of the judicial superintendence, which cannot be used to up-set conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them.

Held- There was obstructions created by the petitioner over public way in dispute, which is admittedly, a street/gali between the houses of the petitioner and respondent no. 2, therefore, the impugned order dated 12.11.2024 passed by the Magistrate, does not suffer any perversity or illegality. **Petition dismissed**. (E-15)

(Para 18 to 20)

Case Law Cited

Municipal Council, Ratlam vs. Vardhichand and Ors.; Wali Uddin v. State of U.P., 1988 (12) ACR 1; Shri Ram Lal And Another Vs. Shri Dharam Vir, 2001 Cri.L.J., 4507; Admane Anita Moti, (1994) 6 SCC 109; Bhagwati Prasad v. Delhi State Mineral Development Corpn., (1990) 1 SCC 361; Jasbir Singh Vs. State of Punjab (2006) 8 SCC 294; Overseas Bank Vs. Indian Overseas Bank Staff Canteen Workers' Union (2000) 4 SCC 245; (Chandra Bhushan Vs. Beni Prasad & ors., (1999) 1 SCC 70; Savitrabai Bhausaheb Kevate & ors. Vs. Raichand Dhanraj Lunja, (1999) 2 SCC 171).

List of Acts

The Constitution of India, 1950 & The Code of Criminal Procedure, 1973

List of Keywords

Illegal obstruction in the public way; Public nuisance; Section 133 CrPC

Case Arising From

Order dated 19.03.2025, passed by Additional Session/Special Judge, SC/ST Act, Kushinagar at Padrauna, passed in Criminal Revision No. 200/2024, under Section 133 Cr.P.C., Police Station Kaptanganj, District Kushinagar

Appearances for Parties

Counsel for Petitioner(s) : Rajesh Kumar Singh
Counsel for Respondent(s) : Ashwani Kumar Singh, G.A.

(Delivered by Hon'ble Dr. Ajay Kumar-II, J.)

1. Heard Sri Rajesh Kumar Singh, learned counsel for the petitioner, learned A.G.A. for the State, Sri Ashwani Kumar Singh, learned counsel for the respondent no. 2 and perused the record.

2. The present petition under Article 227 of the Constitution of India has been filed with a prayer to set-aside the order dated 19.03.2025, passed by Additional Session/Special Judge, SC/ST Act, Kushinagar at Padrauna, passed in Criminal Revision No. 200/2024, under Section 133 Cr.P.C., Police Station Kaptanganj, District Kushinagar.

3. Learned counsel for the petitioner submitted that the respondent no. 2 filed a case under Section 133 Cr.P.C. against the petitioner on 4.6.2018 before Sub Divisional Magistrate, Hata, Kushinagar for removal of ladder in question. On direction of concerned SDM, SHO, Kaptanganj, Kushinagar submitted a report dated 13.9.2018 and SDM vide his preliminary order dated 22.10.2018 directed the petitioner to file his objection. Notice whatsoever, was not served upon the petitioner, Therefore, he could not file his objection in compliance of the order dated 22.10.2018. Therefore, SDM sought report from concerned Halka Lekhpal and he submitted his report dated 6.4.2022. SDM passed the order dated 11.4.2022 while confirming preliminary order dated 22.10.2018 and directed SHO, Kaptanganj to remove encroachment. The aforesaid order dated 22.10.2018 was challenged by the petitioner by way of filing Criminal Revision No. 111 of 2002 before the Sessions Judge, Kushinagar, which was allowed vide judgment and order dated 22.10.2022, while setting aside the impugned order dated 22.10.2022. Thereafter, the petitioner filed his objection in the said case. SDM Hata again sought report from the Revenue Inspector, who submitted his report on 14.10.2024. On receipt of aforesaid report, SDM, Hata passed impugned order dated 12.11.2024 directing the petitioner to remove the encroachment. The petitioner challenged the aforesaid order dated 12.11.2024 before the Sessions Judge, Kushi Nagar, however, his criminal revision was rejected vide judgment and order dated 19.3.2025.

4. It was strenuously argued by learned counsel for the petitioner that the ladder in question was constructed by the petitioner in his share (Sahan) 30 years ago. The disputed land was received by the petitioner in a family settlement and aforesaid construction has been made only in his share. There is no public pathway. Gram Pradhan has already given a certificate regarding the street in question that the same is not being used as a public pathway, but is used for flow of the rain water, while affirming stand of the petitioner that the said construction has been made by the petitioner in his own share (Sahan). Revenue authorities have submitted a false report in collusion with the

respondent no. 2. The nuisance, if any, is caused only to the family of the respondents, the proceeding under Section 133 Cr.P.C. cannot be invoked. The impugned order dated 12.11.2024 passed by the SDM, is against the provisions of law and has been passed without complying the procedure prescribed under Sections, 133, 137, 138, 139, 140 Cr.P.C. Both the Courts below have not considered the factual prospective in the light of statutory provisions and procedure prescribed under the law, therefore, both the impugned orders are bad in law.

5. Per contra, learned A.G.A. for the State and learned counsel for the respondent no. 2 have opposed the above submissions of the learned counsel for the petitioner by contending that the impugned orders are well reasoned and have been passed in accordance with law. Learned A.G.A. thus, urges for dismissal of the present petition.

6. The relevant statutory provisions of Sections 133, 137, 138, 139 and 140 Cr.P.C., are reproduced herein below:

Sec 133- Conditional order for removal of nuisance-

(1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c) that the construction of any building, or, the disposal of any substance, as is likely to occasion configuration or explosion, should be prevented or stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or

owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order"

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order, or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation.□A □public place□ includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

Sec 137- Procedure where existence of public right is denied-

(1) Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under section 138, inquire into the matter.

(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Court; and, if he finds that there is no such evidence, he shall proceed as laid down in section 138.

(3) A person who has, on being questioned by the Magistrate under sub-section (1), failed to deny the existence of a public right of the nature therein referred to, or who, having made such

denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial.

Sec 138- Procedure where he appears to show cause."

(1) If the person against whom an order under section 133 is made appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case.

(2) If the Magistrate is satisfied that the order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the order shall be made absolute without modification or, as the case may be, with such modification.

(3) If the Magistrate is not so satisfied, no further proceedings shall be taken in the case.

Sec 139- Power of Magistrate to direct local investigation and examination of an expert."

The Magistrate may, bfor the purposes of an inquiry under section 137 or section 138"

(a) direct a local investigation to be made by such person as he thinks fit; or

(b) summon and examine an expert.

Sec 140- Power of Magistrate to furnish written instructions, etc."

(1) Where the Magistrate directs a local investigation by any person under section 139, the Magistrate may"

(a) furnish such person with such written instructions as may seem necessary for his guidance;

(b) declare by whom the whole or any part of the necessary expenses of the local investigation shall be paid.

(2) The report of such person may be read as evidence in the case.

(3) Where the Magistrate summons and examines an expert under section 139, the Magistrate may direct by whom the costs of such summoning and examination shall be paid."

7. It would be relevant at this juncture to notice the Supreme Court"s observation in the case of **Municipal Council, Ratlam vs. Vardhichand and Ors. (supra),** wherein the Apex Court held that the provisions, embodied under Section 133 of the Code, must go into action, whenever there is public nuisance inasmuch as the public power of the Magistrate, as conferred upon him under Section 133 of the Code, is a public duty to the members of the public, who are victims of

the nuisance, and the Magistrate must, therefore, exercise his power under Section 133, when the jurisdictional facts are present. Paragraph 9 of the said decision is reproduced herein below:

"9. So the guns of Section 133 go into action wherever there is public nuisance. ***The public power of the Magistrate under the Code is a public duty to the members of the public who are victims of the nuisance, and so he shall exercise it when the jurisdictional facts are present as here****. "All power is a trust - that we are accountable for its exercise- that, from the people, and for the people, all springs, and all must exist." (1) Discretion becomes a duty when the beneficiary brings home the circumstances for its benign exercise."*

(Emphasis is added)

8. In **Wali Uddin v. State of U.P., 1988 (12) ACR 1,** this Court has elaborated the language of Section-137(1) of Cr.P.C. and concluded in following terms:-

"23. It is also to be noticed that under Section 137(1) the Legislature has used the word "that after the denial of such right by opposite party the Magistrate shall inquire into the matter" and not that the Magistrate shall adjudicate upon or decide the matter or controversy between the parties. The word 'inquire', means eager, to acquire information. The word 'inquire', according to Shorter Oxford English Dictionary means to search into, to seek knowledge, to make inquisition, to make investigation, to seek information by questioning, to seek or to try to find out. The word reliable evidence having been used and the Magistrate having been directed to inquire into the matter and not to decide or adjudicate upon, it is clear that the person denying the public right has to put forward a just and bonafide claim. In case the Magistrate finds that there is some reliable evidence and certainly not a conclusive evidence in support of the denial of any public right to get the matter decided by a competent Court. I am however, of the view that the Section does not make it clear as to who is the person as to whether first party or the second party, who has to approach the Civil Court. One thing more may be clarified that in case the Magistrate finds that there is no such reliable evidence in that event he shall proceed in view of the provisions of Section 138 of the Code. In the instant case what has been done is entirely different. Even though the Magistrate confirmed the conditional order but the revision has been disposed of by the learned Additional Sessions Judge in total disregard of the provisions of Section 133 read with Section 137 of the Code. The learned Sessions Judge was exercising the same jurisdiction as was to be exercised by the learned Magistrate. He must have also proceeded to decide the case just with a view to make an enquiry as to whether there was some reliable evidence led by the opposite party No. 2 who denied the existence of such right and in case he found that there was reliable evidence his jurisdiction ceases and it was for the civil Court to decide the same."

9. Therefore, the authority under section 133 of Cr.P.C. can be exercised by the executive magistrate, when any unlawful obstruction or nuisance is alleged on any public place or on any way, which is or may be lawfully used by the public. However, to ascertain the justification of such allegation, the executive magistrate is required to see as to whether the person against whom the show cause has been issued under Section 133(1) of Cr.P.C. has placed "any reliable evidence" in denial of such allegation or not. While doing so, the executive magistrate is not required to ask for any conclusive evidence and he has to consider the evidence brought on record by the person

denying existence of unlawful obstruction or nuisance with an understanding as to whether such evidence can be said to be reliable enough. If that is so, the executive magistrate should not proceed further in the matter and should relegate the parties to the competent civil court for determination of their rights.

10. The proceedings under section 133 of Cr.P.C. are summary in nature and are meant for the cases of imminent danger to the public tranquility and peace and the same should not be used or rather misused to scuttle the valuable right of owner of property and that is why, the legislature has in its wisdom used the words "any reliable evidence" in support of such denial, in the event and in case of which he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Court as provided under Section 137(2) of Cr.P.C., which is certainly having a different import and connotation than the word 'conclusive evidence'. This language used by the legislature has a limiting influence and works as a guideline while exercising authority under Section 133 of Cr.P.C.

11. When Section 133 and Section 137 of the Code are read together, the scheme becomes clear that when a District Magistrate or a Sub Divisional Magistrate or any other Executive Magistrate, specially empowered in this behalf by the State Government, on the basis of report of a police officer or on the basis of other information and on taking such evidence, if any, as the Magistrate thinks fit, considers that any unlawful obstruction or nuisance should be removed from any public place or any way, river or channel, which is or may be lawfully used by the public, the Magistrate may make a conditional order requiring the person, who is alleged to have caused obstruction or nuisance, to remove the obstruction or nuisance or to appear before the Magistrate at the time and place to be fixed by the conditional order and show cause as to why the conditional order should not be made absolute. On receiving the notice of the conditional order, the proceedee shall appear before the Magistrate, who shall question the proceedee as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if the proceedee so denies, the Magistrate shall hold an enquiry and, if the Magistrate finds, in the enquiry, that there is any reliable evidence in support of such denial, then, he shall stay the further proceedings until the matter is decided by a competent court. However, if the Magistrate finds that there is no reliable evidence in support of the proceedee"s denial as regards encroachment or obstruction in respect of any way, river, channel or place, he (Magistrate) shall proceed in the manner as provided in Section 138 of the Code, which provides that the Magistrate shall, in such a case, take evidence in the matter as in a summons-case and, if the Magistrate is satisfied that the conditional order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the conditional order shall be made absolute without modification or, as the case may be, with such modification as deemed necessary, but if the Magistrate is not so satisfied, no further proceedings shall be taken in the case.

12. Delhi High Court in the case of **Shri Ram Lal And Another Vs. Shri Dharam Vir, 2001 Cri.L.J., 4507** held:

"Law in this regard is well settled. Section 133 Cr.P.C. provides summary remedy for removal of specific public nuisances or obstructions etc. It is not intended to settle private dispute between the two members of the right of the public to approach a civil court for determining the

question of title. The Magistrate"s jurisdiction under this Section can be invoked even by a private individual despite availability of an alternative remedy. ***The encroachment on the public road, however small, would inevitably result in obstruction to the persons, who may have the occasion to use the same.*** *The expression in Section 133 Cr.P.C. "which is or may be lawfully used by the public" clearly shows that all that is required to be shown is that the land in dispute is the public way etc. which can be lawfully used by the public. The expression "public way" has not been defined in the Cr.P.C. or the Penal Code. Public way is the place where the public has a right to go or to which public can have an access by way of right either by admission, usage or otherwise. It is not necessary that the title of the place should be in the public. It would depend upon the character of the place and the usage actually made of it in the past or at a given point of time. These are all questions of fact which can only be determined after proper adjudication."*

13. The petitioner in present case has filed his objection dated 24.11.2023 in the Court of SDM, Hata, Kushinagar. In para-2 of his objection, he has specifically admitted the existence of 2 ft wide street/gali between the houses of petitioner and respondent no. 2. In para-3 of his objection, he has stated that he has not raised any stairs etc. and said street/gali is completely vacant. **In para-4 of his objection, he has stated that stairs in question were constructed by him 30 years ago in his courtyard. In para-5 of his objection, he has stated that the aforesaid street/gali is not used as a public pathway and is used for flowing rain water only.** Therefore, from the averments taken in his objection dated 24.01.2023, it is clear that existence of a street/gali is admitted by petitioner himself. However, he has denied that the aforesaid street/gali is being ever used as public pathway, but has admitted that the same is used for flowing of rain water. The admission of existence of 2 ft. wide street/gali between the houses of petitioner and respondent no. 2 is an admission of public pathway, more so, when the petitioner himself is admitted that from the aforesaid street/gali, rain water flows, therefore, same cannot be obstructed at all. The petitioner himself in para-6 has admitted that there is no stairs in the aforesaid street/gali and same is completely vacant, meaning thereby the aforesaid street/gali is being used as a public pathway and that is why the same is stated to be completely vacant. Moreover, it is the admission of petitioner that aforesaid street/gali is used for flowing of rain water and therefore, on this account also, the same cannot be obstructed being a channel for rain water drainage.

14. Revenue authorities in it's report dated 14.10.2024 has also found that stairs has been constructed by the petitioner in the street situated between the houses of petitioner and respondent no. 2. In the aforesaid report dated 14.10.2024, existence of a street is specifically found. A site plan was also prepared, which was annexed with the aforesaid report and a copy of which, is available in the paper-book as Paper No. 49. A perusal of the same reveals that the aforesaid street, which is a public pathway, has been blocked by constructing stairs and thereby the public pathway has been obstructed."

15. A perusal of the impugned order dated 12.11.2024 reveals that concerned SDM himself inspected the spot on 06.11.2024 and has found the existence of stair and therefore, he found that in view of the report of Tehsildar dated 14.10.2024, the aforesaid stair has obstructed the public pathway, i.e. street/gali in question and therefore, is required to be removed.

16. It would be apt to note that in the judgment passed in the case of State of Maharastra vs. **Admane Anita Moti,□(1994) 6 SCC 109,** the Hon'ble Apex Court observed that:

"It is well established that the factual recitals or observations made in a judgment or order are taken to be correct unless rebutted. The burden to rebut it is on the person who challenges it. One of the methods to rebut such observation is to file the affidavit of the person who was present in the Court and to produce such material which may satisfy the Court that the recital in the judgment crept in inadvertently or it was erroneous".

17. Further, in the case of Bhagwati Prasad v. Delhi State Mineral Development Corpn.,□**(1990) 1 SCC 361,** the Hon'ble Apex Court observed that:

"It is now settled law that the statement of facts recorded by a court or quasi-judicial tribunal in its proceedings as regards the matters which transpired during the hearing before it would not be permitted to be assailed as incorrect unless steps are taken before the same forum. It may be open to a party to bring such statement to the notice of the court/tribunal and to have it deleted or amended. It is not, therefore, open to the parties or the counsel to say that the proceedings recorded by the Tribunal are incorrect".

18. When the record of the present case is perused in the light of the above principles of law with respect to a petition instituted under section 133 Cr.P.C., it is clear that petitioner himself has admitted in his petition the existence of two ft. wide street/gali on the spot. Therefore, in the□ present case, in view of the above admission of existence of public way, the Executive Magistrate was not under obligation to hold an inquiry as required under section 137 Cr.P.C. Moreover, the Executive Magistrate, visited the spot and visit of Executive Magistrate is not in dispute, which has been recorded in the impugned order dated 12.11.2024. The aforesaid fact of visiting spot, is a factual recital as well as an observation made by him in it's order, which is taken to be correct, because the same is not rebutted at all by the petitioner. The site plan enclosed with the Revenue Report dated 17.11.2025, also make it clear that there is an illegal obstruction in the public way, which was required to be removed. For the aforesaid reasons, this Court is of the view that there was obstructions created by the petitioner over public way in dispute, which is admittedly, a street/gali between the houses of the petitioner and respondent no. 2, therefore, the impugned order dated 12.11.2024 passed by the Magistrate, does not suffer any perversity or illegality.

19. Learned Additional Sessions Judge/Special Judge, SC./S.T., Act, himself vide it's judgment and order dated 19.03.2025 has considered all the grounds taken by the petitioner in his criminal revision and has found that present impugned order dated 12.11.2024 has been passed on the basis of inspection report submitted by the Tehsildar and on the basis of inspection of concerned SDM, himself. Therefore, finding no illegality in the impugned order, the aforesaid criminal revision has been rightly dismissed by Revisional Court.□"

20.□□It is well settled that power under Article 227 is of the judicial superintendence, which cannot be used to up-set conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them.

(Chandra Bhushan Vs. Beni Prasad & ors., (1999) 1 SCC 70; Savitrabai Bhausaheb Kevate & ors. Vs. Raichand Dhanraj Lunja, (1999) 2 SCC 171).

21. In Indian **Overseas Bank Vs. Indian Overseas Bank Staff Canteen Workers' Union (2000) 4 SCC 245**, the Apex Court observed that it is impermissible for the Writ Court to re-appreciate evidence liberally and drawing conclusions on its own on pure questions of fact for the reason that it is not exercising appellate jurisdiction over the awards passed by Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose ordinarily should be considered to have become final. The same cannot be disturbed for the mere reason of having based on materials or evidence not sufficient or credible in the opinion of Writ Court to warrant those findings. At any rate, as long as they are based upon some material which are relevant for the purpose, no interference is called for. Even on the ground that there is yet another view which can reasonably and possibly be taken the High Court can not interfere.

22. In case of **Jasbir Singh Vs. State of Punjab (2006) 8 SCC 294**, it was held that while invoking the provisions of Article 227 of the Constitution, it is provided that the High Court would exercise such powers most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. The power of superintendence exercised over the subordinate courts and tribunals does not imply that the High Court can intervene in the judicial functions of the lower judiciary. The independence of the subordinate courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior courts in the discharge of their judicial functions.

23. In the light of above well settled principles of law and after having considered the rival submissions advanced by learned counsel for the petitioner, as well as upon careful perusal of the record, this Court finds that both the learned Additional Chief Judicial Magistrate and Revisional Court have passed reasoned and speaking orders, which reflect due application of judicial mind."

24. Thus, it is apparent that the power under article 227 of the Constitution is to be exercised sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. This Power is not in the nature of power of appellate authority enabling re-appreciation of evidence.

25. Thus, no prima facie, perversity or illegality is found in the impugned judgment of Revisional Court and impugned order of trial Court, so as to warrant interference by this Court. Therefore, no ground for interference by this Court in exercise of it's writ jurisdiction under Article 227 of the Constitution of India is made out."

26. Accordingly, the writ petition is found to be devoid of merit and is hereby **dismissed.**

(2026) 5 ILRA 1676
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.05.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Matters Under Article 227 No. 5600 of 2026

Sri Ajay Pal Rastogi ...Petitioner
Versus
Smt. Poonam Rastogi & Anr. ...Respondents

Issue for Consideration

Whether the petitioner is proper and necessary part in the proceedings and is directly affected by the outcome of the proceedings and in absence of his impleadment, effective adjudication cannot take place.

Head Notes

The Constitution of India, 1950-Article 227; The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972- Section 21 (1)(a); The petitioner is admittedly the husband of the tenant, and complete commonality of interest between them has not been disputed. No material has been brought on record to establish any independent or distinct right of the petitioner requiring separate adjudication in the pending appeal- Impleadment is not to be permitted merely because a person may be incidentally affected by the result of litigation. The applicant must establish that he is either a necessary party, in whose absence no effective order can be passed, or a proper party whose presence is indispensable for complete and effective adjudication- No such case made out.

Held- The petitioner neither constitutes a necessary nor a proper party to the proceedings and that the impleadment application appears to be a belated attempt to obstruct or delay adjudication of the appeal**. Petition dismissed**. (E-15)

(Para 13, 14, 15 & 16)

Case Law Cited

Shahnaj Begum v. Taj Mohammad 2019 (2) ARC 705; Kanaklata Das v. Naba Kumar Das (2018) 2 SCC 352;

List of Acts

The Constitution of India, 1950; The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972; The Code of Civil Procedure, 1908

List of Keywords

Impleadment; Order 1 rule 10; Proper and necessary party; Presence is indispensable for effective adjudication; and not only incidentally affected

Case Arising From

Order dated 18.03.2026 passed by the Additional District & Sessions Judge, Court No. 10, Meerut in Misc. Appeal No. 199 of 2018, whereby the application moved by the present petitioner seeking impleadment in the pending appeal has been rejected

Appearances for Parties

Counsel for Petitioner(s) : Dinkar Lal, Shreya Gupta
Counsel for Respondent(s) : Sumit Daga

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

Heard Ms. Shreya Gupta, learned counsel for the petitioner and Sri Sumit Daga, learned counsel for the respondents.

2. The present petition has been instituted questioning the order dated 18.03.2026 passed by the Additional District & Sessions Judge, Court No. 10, Meerut in Misc. Appeal No. 199 of 2018 (Smt. Chitra Rastogi Vs. Smt. Poonam Rastogi), whereby the application moved by the present petitioner seeking impleadment in the pending appeal has been rejected.

3. The record discloses that respondent-landlord, Smt. Poonam Rastogi, instituted P.A. Case No.69 of 2015 under Section 21 (1) (a) of the U P Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 against Smt. Chitra Rastogi for release of Shop No.5 situated at Abu Lane, Meerut Cantt., forming part of Bungalow No. 182, on the ground of bona fide requirement. The said release application came to be allowed by the Prescribed Authority/Judge Small Causes, Meerut vide judgment and order dated 11.09.2018, directing the tenant to vacate the premises within a period of thirty days.

4. Aggrieved thereby, the tenant preferred Misc. Appeal No. 199 of 2018. During pendency of the said appeal, the present petitioner, namely Ajay Pal Rastogi, moved an application seeking his impleadment as party respondent in the appellate proceedings.

5. By means of the order impugned herein, the appellate Court has rejected the said application upon recording a categorical finding that the present petitioner is the husband of the tenant, namely Smt. Chitra Rastogi, who is already contesting the proceedings as tenant-respondent. The appellate Court has further observed that the petitioner and the tenant are husband and wife residing together and, therefore, the plea that the petitioner had no knowledge whatsoever regarding the release proceedings initiated against his wife in respect of the premises in question does not merit acceptance.

6. The appellate Court has also noticed that if the petitioner genuinely considered himself to be either a necessary or proper party to the proceedings, he ought to have sought impleadment during pendency of the proceedings before the Prescribed Authority itself. The application having been moved for the first time at the appellate stage has, thus, been found to be highly belated and apparently intended to delay adjudication of the appeal.

7. Learned counsel for the petitioner has not disputed before this Court that the petitioner and respondent no. 1, namely the tenant already impleaded in the proceedings, have complete commonality of interest. It has, however, been contended that the petitioner is carrying on business from the disputed premises and is, therefore, directly affected by the outcome of the proceedings. According to learned counsel, in absence of his impleadment, effective adjudication cannot take place.

8. The aforesaid submission is liable to be tested in light of the settled legal principles governing impleadment in landlord-tenant disputes. In that regard, this Court in **Shahnaj Begum v. Taj Mohammad1** had occasion to consider an almost identical controversy where the wife of the tenant sought impleadment in SCC eviction proceedings instituted against her husband. In the said case also, the applicant seeking impleadment attempted to assert an independent right in respect of the tenanted premises despite the tenant already being on record and contesting the proceedings.

9. While affirming rejection of the impleadment application, this Court held that once the relationship of landlord and tenant stands admitted and the tenant is already contesting the proceedings, a third person claiming through or alongside the tenant cannot insist upon impleadment so as to enlarge the scope of eviction proceedings. It was further observed that in proceedings arising under rent laws, questions of title or ownership are not germane and cannot be permitted to become the subject matter of adjudication through an impleadment application.

10. This Court further observed in **Shahnaj Begum** that where the applicant and the tenant have commonality of interest, and particularly where the applicant is the spouse of the tenant residing together with the tenant, the proceedings can effectively continue in absence of such applicant and no prejudice can be said to be caused by rejection of the impleadment application. It was also emphasized that a belated impleadment application moved during pendency of appellate or revisional proceedings, despite full knowledge of the litigation, may legitimately be viewed as an attempt to delay adjudication of the eviction matter.

11. While arriving at the aforesaid conclusion, reliance was placed upon the judgment of the Supreme Court in **Kanaklata Das v. Naba Kumar Das2**, wherein it was held that in an eviction suit, the landlord and tenant are the only necessary parties and a third party cannot compel impleadment unless it is established that no effective adjudication is possible in absence of such person.

12. The principles aforesaid squarely apply to the facts of the present case. The release proceedings were admittedly instituted against the recorded tenant, namely Smt. Chitra Rastogi, who is already impleaded and contesting the appeal. The rights and obligations arising under tenancy law are required to be adjudicated primarily between the landlord and the tenant. A person claiming through or under the tenant, particularly a close family member residing with and associated in occupation of the premises, cannot claim an independent right to be impleaded as a matter of course when the tenant herself is already before the Court and adequately representing the tenancy interest.

13. In the present case, the petitioner is admittedly the husband of the tenant, and complete commonality of interest between them has not been disputed. No material has been brought on record to establish any independent or distinct right of the petitioner requiring separate adjudication in the pending appeal. The plea that the petitioner is carrying on business from the premises, even if accepted, would not by itself confer a right of impleadment when such occupation is traced through the tenant already on record.

14. Equally significant is the fact that the application for impleadment has been moved for the first time at the appellate stage despite the petitioner being fully aware of the proceedings pending before the Prescribed Authority. No cogent explanation for such belated intervention has been brought on record.

15. It is well settled that impleadment is not to be permitted merely because a person may be incidentally affected by the result of litigation. The applicant must establish that he is either a necessary party, in whose absence no effective order can be passed, or a proper party whose presence is indispensable for complete and effective adjudication. In the facts of the present case, no such case stands made out.

16. In view of the above, the appellate Court has rightly come to the conclusion that the petitioner neither constitutes a necessary nor a proper party to the proceedings and that the impleadment application appears to be a belated attempt to obstruct or delay adjudication of the appeal.

17. The findings recorded by the appellate Court are based upon due consideration of the material available on record and are in consonance with the settled principles of law laid down by the Supreme Court as well as this Court. The impugned order does not suffer from any manifest illegality, perversity or jurisdictional infirmity warranting interference under Article 227 of the Constitution of India.

18. It is equally well settled that supervisory jurisdiction under Article 227 of the Constitution of India is to be exercised sparingly and only in cases of patent perversity, manifest illegality or gross failure of justice. No such circumstance exists in the present case.

19. Accordingly, the petition lacks merit and is, accordingly, **dismissed.**

20. No order as to costs.

(2026) 5 ILRA 1679
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.05.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Matters Under Article 227 No. 6620 of 2026

Smt. Asha Devi Jeswani & Anr. ...Petitioners
Versus
Sri Sudeep Kumar Jain ...Respondent

Issue for Consideration

Whether the courts bellowed committed an error by not deciding the as a preliminary issue in isolation and whether the application regarding maintainability of the case and rightly deferred the issue for consideration at the time of final adjudication

Head Notes

The Constitution of India, 1950-Article 227; The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021- Section 10- Merely because a party raises an objection touching maintainability does not confer an indefeasible right to insist that such objection be tried as a preliminary issue in isolation. Unless the issue is one which can be decided purely on admitted facts and is capable of terminating the proceedings at the threshold, the forum is competent to defer its consideration and examine the same together with the remaining issues at the final stage, particularly where segregation of issues is likely to delay disposal of summary proceedings

No prejudice is caused to the tenant by adoption of such course, as the objection regarding maintainability has not been rejected on merits but has only been deferred for consideration at the time of final adjudication.

Held- No case for interference is otherwise made out, the present petition stands disposed of with liberty to the petitioner to raise and press all permissible objections before the Rent Authority at the time of final hearing, which shall be considered in accordance with law. (E-15)

(Para 7, 8 & 12)

Case Law Cited

List of Acts

The Constitution of India, 1950; The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021

List of Keywords

Objection touching maintainability; No indefeasible right; To be tried as a preliminary issue in isolation; Unless issue can be decided on admitted facts ; And capable of terminating the proceedings.

Case Arising From

Order dated 17.04.2026 passed by the Rent Authority, Agra in Case No. 475 of 2023, and also the subsequent order dated 22.04.2026 passed by the Rent Tribunal in Case No. Nil of 2026, arising out of proceedings under Section 10 of the U.P. Act No. 16 of 2021 instituted by the respondent-landlord.

Appearances for Parties

Counsel for Petitioner(s) : Ramesh Chandra Dwivedi
Counsel for Respondent(s) :

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1.Heard Sri Ramesh Chandra Dwivedi, learned counsel for the petitioner.

2.The present petition has been instituted assailing the order dated 17.04.2026 passed by the Rent Authority, Agra in Case No. 475 of 2023 (Sudeep Kumar Jain vs. Smt. Asha Devi and another), as also the subsequent order dated 22.04.2026 passed by the Rent Tribunal in Case No. Nil of 2026, arising out of proceedings under Section 10 of the U.P. Act No. 16 of 2021 instituted by the respondent-landlord.

3.It appears from the record that during pendency of the aforesaid proceedings, the tenant-petitioner moved an application on 19.11.2025 raising certain objections touching the maintainability of the case and prayed that the same be adjudicated as a preliminary issue before the matter proceeded further.

4.The Rent Authority, Agra, upon consideration of the said request, noticed that similar objections regarding maintainability had also been raised earlier by the tenant. It further took note of the fact that the proceedings had remained pending since 17.02.2023 and the matter had already reached the stage of hearing. In that backdrop, the authority found no justifiable reason to segregate the objections for separate adjudication as a preliminary issue and directed that the case be fixed for final hearing, where all questions raised by the parties would be considered together.

5.Aggrieved thereby, the petitioner preferred an appeal. The Rent Tribunal, by the order impugned dated 22.04.2026, held that the order passed by the Rent Authority was purely interlocutory in nature, did not finally determine any right of the parties, and therefore was not amenable to appellate challenge. The appeal was consequently dismissed at the admission stage.

6.The view taken by the Tribunal accords with settled principles. It is well settled that every procedural order passed during the pendency of proceedings does not attain the character of an appealable adjudication. An order merely declining to frame or decide an objection of maintainability as a preliminary issue, while keeping such objection open for consideration at the stage of final disposal, neither determines the substantive rights of the parties nor finally adjudicates any jurisdictional plea. It is, in essence, a matter concerning the mode and sequence of trial. In summary rent proceedings, where expeditious adjudication is the governing legislative object, the authority is vested with discretion to decide whether a particular objection ought to be tried separately or along with the merits. Refusal to postpone the main proceedings for separate determination of such objection, especially where the matter is ripe for final hearing, remains interlocutory in character and does not give rise to an independent statutory appeal unless the statute expressly provides otherwise. The aggrieved party suffers no irremediable prejudice, for the objection survives for consideration in the final decision and may thereafter be urged, if necessary, in challenge to the ultimate order.

7.Merely because a party raises an objection touching maintainability does not confer an indefeasible right to insist that such objection be tried as a preliminary issue in isolation. Unless the issue is one which can be decided purely on admitted facts and is capable of terminating the proceedings at the threshold, the forum is competent to defer its consideration and examine the same together with the remaining issues at the final stage, particularly where segregation of issues is likely to delay disposal of summary proceedings.

8.No prejudice is caused to the tenant by adoption of such course, inasmuch as the objection regarding maintainability has not been rejected on merits but has only been deferred for consideration at the time of final adjudication. All pleas remain open to be urged before the Rent Authority and, if occasion so arises, in challenge to the final order.

Having heard learned counsel for the petitioner and upon perusal of the material brought on record, this Court finds no manifest illegality, perversity, or jurisdictional error in either of the orders impugned so as to warrant interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

9.The supervisory jurisdiction of this Court under Article 227 of the Constitution is intended to keep subordinate courts and tribunals within bounds of their authority. It is not meant to correct every procedural order or to substitute this Court's view in matters resting within the discretion of the forum, unless patent perversity, gross failure of justice, or jurisdictional error is demonstrated.

10.It has not been disputed before this Court that proceedings under Section 10 of the U.P. Act No. 16 of 2021 are summary in character. It is also not disputed that the proceedings have remained pending since February, 2023 and are presently at the stage of final hearing. In such circumstances, the decision of the Rent Authority, Agra to consider all objections, including those relating to maintainability, at the stage of final adjudication cannot be said to suffer from any legal infirmity. Any interference at this stage would only frustrate the legislative objective of expeditious disposal underlying summary rent proceedings.

11.During the course of arguments, learned counsel for the petitioner submitted that he does not wish to press the petition any further and that the petitioner would pursue all objections available to him before the Rent Authority, Agra in the pending proceedings.

12.In view of the aforesaid statement, and as no case for interference is otherwise made out, the present petition stands disposed of with liberty to the petitioner to raise and press all permissible objections before the Rent Authority at the time of final hearing, which shall be considered in accordance with law. No order as to costs.

(2026) 5 ILRA 1682
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 04.05.2026

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Application U/S 482 No. 2255 of 2026

Smt. Damyanti Devi & Ors. **...Applicants**
Versus
State of U.P. & Anr. **...Opposite Parties**

ISSUE FOR CONSIDERATION

Whether the trial court and revisional court erred in rejecting the withdrawal application moved under Section 321 Cr.P.C. filed by the Assistant Public Prosecutor (A.P.P.) pursuant to State Government instructions, without considering the specific grounds mentioned therein?

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Sections 161, 321, 482 - Indian Penal Code, 1860 – Section 506 - Dowry Prohibition Act, 1961 – Sections 3, 4 - Application u/s 482 Cr.P.C. – seeking relief of quashing of 'rejection of withdrawal application' moved u/s 321 Cr.P.C. – FIR - alleging dowry demand after engagement – offence u/s 506 IPC & 3/4 D.P. Act – investigation conducted - statements recorded - charge-sheet filed – summoning order issued - Trial initiated - connected applications under Section 482 earlier dismissed and bail granted – Applicant pleaded, State Government permitted withdrawal – A.P.P. moved application citing political nature of allegations and absence of documentary evidence – Duty of Court to examine bona fides of withdrawal application - Role of Public Prosecutor as counsel for the State - Court finds that, trial court erred in assessing conviction or acquittal instead of considering bona fides of withdrawal – Public Prosecutor acts under State instructions, duty of court is to examine good faith, not merits of conviction – held, rejection unsustainable and hence, application allowed – impugned orders set aside – matter remitted back to the trial court for fresh consideration in light of observations – directions issued accordingly.

(Para – 14, 15, 17, 18, 19, 22)

Application Dismissed. (E-11)

CASE LAW CITED

Sheonandan Paswan vs. State of Bihar (1983) 1 SCC 438

LIST OF ACTS

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

LIST OF KEYWORDS

Application under section 482 – Withdrawal of prosecution, Section 321 Cr.P.C., political nature of allegations, dowry demand, engagement cancelled, trial court rejection, revisional court dismissal, quashing under Section 482 Cr.P.C.

CASE ARISING FROM

Case Crime No. 221/2020, P.S. Madiyanw, District Lucknow, registered under Section 506 IPC & Sections 3/4 Dowry Prohibition Act; proceedings in Case No. 33178/2021 before ACJM-VIII, Lucknow; orders dated 02.01.2025 (trial court) and 18.02.2026 (revisional court).

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Mr. Sunil Dixit, Mr. Sunil Kumar Awasthi.
Counsel for Respondent(s): - Mr. Nirmal Kumar Pandey, learned AGA, Mr. Sabih Ahmed.

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

1. Heard Mr. Sunil Dixit, learned counsel for the applicants, Mr. Sabih Ahmed, learned counsel for the opposite party no.2, and Mr. Nirmal Kumar Pandey, learned AGA for the State.

2. Present application has been filed with the prayer to quash the order dated 2.01.2025 passed by the learned Judicial Magistrate III Lucknow, arising out of Case Crime No. 221/2020, under Section 506 IPC & 3/4 D. P. Act, Case No. 33178/2021, (State Versus Damyanti & others), relating to Police Station Madiyanw, District Lucknow, pending in the court of Additional Chief Judicial Magistrate 8th Lucknow and order dated 18.02.2026 passed in Criminal Revision No. 702/2025 (Smt. Poonam Singh & others Versus State of U.P. & another). Further prayer is to quash the entire proceedings of Case No. 33178/2021, Case Crime No. 221/2020, under Section 506 IPC

& 3/4 D. P. Act, (State Versus Damyanti & others), relating to Police Station Madiyanw, District Lucknow, pending in the court of Additional Chief Judicial Magistrate 8th Lucknow.

3. The brief factual matrix of the case is that the FIR was instituted on 10.3.2020, against the petitioners, which was registered as FIR No.221 of 2020, under Section 506 IPC and 3/4 Dowry Prohibition Act, at Police Station Madiyanw, District Lucknow. The allegation in the FIR was that the marriage of the daughter of the opposite party no.2 was fixed with petitioner no.3 and thereafter, the engagement also took place on 19.6.2019, but the petitioners started demanding more dowry, and therefore, there was denial of performance of marriage. After the registration of the FIR, the Investigating Officer recorded the statement of the informant under Section 161 CrPC, and on the basis of the oral statement of the complainant and his family members, the charge sheet has been filed.

4. In the meantime, an application under section 482 CrPC bearing No.4958 of 2021 was also instituted on 2.12.2021 before this Court for quashing of the charge sheet and the summoning order, wherein this Court has passed the order dated 2.12.2021, with liberty to the petitioners to move discharge application before the trial court, which was instituted by the petitioners, but the same was rejected. The said order was challenged by the petitioners in application under section 482 CrPC bearing No.6710 of 2022, which was finally decided on 23.9.2022. The petitioners applied for bail, and they were released on bail.

5. During the pendency of the trial, the State Government had given consent to the Assistant Public Prosecutor to file an application under section 321 CrPC for withdrawal of the prosecution, vide its letter dated 4.1.2024, and in furtherance of the same, the Assistant Public Prosecutor filed an application on 12.3.2024 before the Judicial Magistrate-II, Lucknow, for withdrawal of the prosecution. The trial court allowed the application on 21.5.2024, moved by the Assistant Public Prosecutor under section 321 CrPC, which was assailed by the other side, while instituting a criminal revision bearing No.429 of 2024, before the Sessions Judge, Lucknow, which was allowed and the matter was remitted back to the Magistrate to rehear the application dated 12.3.2024 instituted by the Assistant Public Prosecutor.

6. The trial court reheard the application of the public prosecutor and rejected the same, vide order dated 2.1.2025, which was again challenged by the petitioners while instituting an application under section 482 CrPC, bearing No.5802 of 2025, which was dismissed by this Court, vide order dated 30.7.2025, while giving liberty to maintain the revision before the trial court concerned, whereafter the revision was filed. The order dated 2.12025 was challenged before the Sessions Judge in revision, and the same was also dismissed by the court of sessions, vide order dated 18.2.2026, and both the orders passed by the trial court as well as the revisional court are under challenge in the present application.

7. Submission of the learned counsel for the petitioners is that the State Government, with due diligence, has given permission to the Assistant Public Prosecutor to move an application under Section 321 of CrPC, for withdrawal of the prosecution against the petitioners, and in furtherance thereof, the Assistant Public Prosecutor moved an application, on 12.3.2024. He submits that the contents and grounds of the application are apparent from the letter dated 12.3.2024 itself, which

states that the allegation in the FIR is of political nature and only oral statements are available, and no documentary or scientific evidences are on record to allow the prosecution to get succeed the prosecution and with the aforesaid ground, the request is made that criminal prosecution against the petitioners may be withdrawn. He contends that the trial court, as well as the sessions court, never applied their mind to the grounds taken by the Assistant Public Prosecutor, in the application for withdrawal of the prosecution dated 12.3.2024 and, therefore, the orders impugned herein are erroneous and are liable to be set aside.

8. On the other hand, learned counsel appearing for the complainant/opposite party no.2 has opposed the aforesaid contentions vehemently. He submits that the trial court, as well as the revisional court, rightly passed the order rejecting the application of the Assistant Public Prosecutor instituted under section 321 of the CrPC. He added that the dispute is not of political nature and this is matrimonial dispute, as the marriage was proposed to be done with the petitioner no.3, namely Gaurav Pratap Singh, and thereafter the engagement was also done, but subsequent thereof, more money as dowry was demanded and when the complainant failed to give the same, there was denial of performing the marriage, thus, the allegation is not of political in nature.

9. In addition, he submits that the trial court had reached the conclusion that there were such materials available on record whereby the matter could lead to conviction as well as in acquittal. He added that it is not a case where in all the circumstances the trial would lead to acquittal.

10. Concluding his arguments, he submitted that the petitioners did not get any relief either from this Court while instituting several applications under section 482 CrPC nor at the level of the revisional court, and therefore, the petitioners are not entitled to any relief as sought, by instituting the present application.

11. Per contra, learned AGA, namely, Mr. Nirmal Kumar Pandey, appearing for the State has submitted that after instructions were given by the State Government, for withdrawal of the prosecution, against the petitioners, the Assistant Public Prosecutor moved the application for withdrawal under section 321 CrPC. He submitted that, in fact, there seems to be no error in the application moved by the Assistant Public Prosecutor, as the application finds ground for withdrawal of the prosecution, as itself appears in the application that the nature of the allegation is of political. He submitted that, in fact, the trial court did not consider the ground taken by the Assistant Public Prosecutor in any manner and, therefore, the trial court seems to be erroneous to that extent.

12. Having heard learned counsel for the parties and after perusal of the record, it transpires that initially, an FIR was lodged against the petitioners with the allegation that after fixing the marriage of the petitioner no.3 with the daughter of the opposite party no.2, and after completing the engagement ceremony, more money was demanded as dowry, and thereafter, the criminal prosecution has been instituted by the complainant. After the discharge application was rejected and the trial proceeded, the State Government took a decision for withdrawal of the prosecution. The Assistant Public Prosecutor was instructed to move an application under section 321 CrPC, for

withdrawal of the prosecution, and in furtherance thereof, the application dated 12.3.2024, was moved by the Assistant Public Prosecutor before the trial court.

13. After several sets of litigations between the parties, from this Court to the revisional court, the orders impugned herein dated 2.1.2025 and 18.2.2026 have been passed by the trial court and the revisional court respectively, which are under challenge.

14. When this Court examines the aforementioned orders, it is apparent that the learned trial court rejected the application dated 12.3.2024 under Section 321 CrPC, on the ground that there is a possibility of the trial leading to acquittal or conviction. The ground which was taken by the Assistant Public Prosecutor in its application that the case is of political nature, has not been considered, as is apparent from the bare perusal of the contents of the orders impugned. The matter might be one of the political nature or otherwise, but the question is that whether the ground, which has been taken by theAssistant Public Prosecutor, has been taken into consideration by the trial court or revisional court, or not?

15. From perusal of the order impugned, it is evident that there is not an iota of discussion or mentioning of the ground, in the order of the trial court dated 2.1.2025. This court is aware of that a dispute of marriage can be between two private parties, but there can be another aspect as well that if the marriage is not solemnized, and the allegation is that after engagement, dowry was demanded and, therefore, the marriage could not be performed, can be of the political nature, if that is motivated with political intent. The ground taken by the Assistant Public Prosecutor, may be correct or not but it was incumbent upon the trial court that once the State had taken a decision after due diligence that matter is one of political nature and, therefore, it should be withdrawn, the same should have been considered in the perspective the said ground, in accordance with law.

16. I have also considered the law rendered by the Apex Court in the case of **Sheonandan Paswan Vs. State of Bihar and others reported in (1983) 1 SCC 438,** wherein, in paragraph 73, it has been held as follows:

"73. Let us consider the point from the practical point of view. Unlike the Judge, the Public Prosecutor is not an absolutely independent officer. He is an appointee of the Government, Central or State (see Sections 24 and 25, CrPC), appointed for conducting in court any prosecution or other proceedings on behalf of the Govern ment concerned. So there is the relationship of counsel and client between the Public Prosecutor and the Government. A Public Pro-secutor cannot act without instructions of the Government; a Public Prosecutor cannot conduct a case absolutely on his own, or contrary to the instruction of his client, namely, the Government. Take an extreme hypothetical case, in which Government is the prosecutor, and in which there is a prima facie case against an accused, but the Government feels on the ground of public policy, or on the ground of law and order, or on the ground of social harmony, or on the ground of inexpediency of prosecution for reasons of State, the case should not be proceeded with the Government will be justified to express its desire to withdraw from the prosecution and instruct the Public Prosecutor to take necessary legal steps to withdraw from the prosecution. Section 321 of the Code does not lay any bar on the Public Prosecutor to receive any instruction from the Government before he files an application under that section. If the Public Pro-secutor receives such instructions, he

cannot be said to act under extraneous influence. On the contrary, the Public Prosecutor cannot file an application for withdrawal of a case on his own without instruction from the Government."

17. The Hon'ble Apex Court, while exhaustively dealing with the matter, held that Section 321 CrPC gives the Public Prosecutor, the power to withdraw any case at any stage, before the judgment is pronounced after he is directed/instructed by the State Government. Even if the discharge application is rejected and the trial proceeded and charges are framed, the application moved under Section 321 CrPC, does itself not become erroneous only because the same has been filed after the charges have been framed and the trial proceeded. Further, it is not necessary for the court to assess or discover whether the trial would end in conviction or in acquittal. So far as the present case is concerned, the trial court has entered into the question, whether the prosecution would lead to conviction or acquittal, which prima facie goes against the ratio of the judgment rendered in the case of Sheonandan Paswan **(supra).**

18. In fact, the law is that as soon as the application is instituted under section 321 CrPC, the trial court has to see that whether the same has been instituted in good faith or in order to stifle the process of law. In the case in hand, the Assistant Public Prosecutor had taken a specific ground for the withdrawal of the prosecution that the matter is of political nature, and only the oral evidence is available on record but, having at glanced over the orders passed by the trial court, there is no finding or discussion regarding the grounds mentioned by the Assistant Public Prosecutor in the application, under Section 321 CrPC.

19. Consequently, this Court finds merit in the application and therefore, I am not in agreement with the findings recorded by the trial court regarding rejection of application that the matter could lead to conviction or acquittal.

20. In view of the above, the present application is hereby **allowed**.

21. The orders impugned herein dated 2.1.2025 and 18.2.2026 are accordingly set aside.

22. The matter is remitted back to the trial court concerned to pass a fresh order, in light of the observations made hereinabove.

(2026) 5 ILRA 1687
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 22.05.2026

BEFORE
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Application U/S 482 No. 2390 of 2017

Janardan Prasad Shukla & Ors. ...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

ISSUE FOR CONSIDERATION

Whether the criminal proceedings initiated in Complaint Case under Sections 323, 452, 392, 506 IPC against the applicants/petitioners, arising out of matrimonial discord, disclose a prima facie case or amount to abuse of process warranting quashing under Section 482 CrPC.?

HEADNOTES

Criminal Law – Code of Criminal Procedure - Section - 200, 202, 482 - Indian Penal Code – Section - 323, 452, 392, 506 - Hindu Marriage Act, 1955 – Section - 13, 24: - Application u/s 482 CrPC – for quashing the Summoning Order and Revisional Order – matrimonial discord between opposite party no. 2 and daughter of petitioner - proceedings for dissolution of marriage initiated by husband – enmity developed between the parties – Complaint lodged by husband against in-laws alleging assault and snatching of – allegations of assault and snatching of money - statements recorded - recovery not proved – chargesheet not filed, only complaint – Summoning order – Criminal Revision dismissed – connected matrimonial proceedings pending – applicant pleaded that allegations are vague, omnibus, improbable, mala fide, witnesses partisan and the complaint is counterblast to matrimonial dispute – limitations on exercising jurisdiction under Section 482 Cr.P.C. - Court finds that, depositions contradictory, no specific role attributed, ingredients of offences absent, Magistrate's order mechanical, Revisional Court perfunctory – proceedings mala fide, manifestly vexatious, instituted to wreak vengeance – held, case falls within exceptional category contemplated under Sixth illustration in Bhajan Lal's Case justifying interference by this Court in the exercise of its inherent powers under section 482 Cr.P.C. – hence, no prima facie case for proceedings against the petitioners is made out – accordingly, Summoning Order and Revisional Order quashed – Application is allowed.

(Para – 29, 30, 31, 32, 41, 46, 47, 48, 49, 50, 51)

Application Allowed. (E-11)

CASE LAW CITED

State of Haryana v. Bhajan Lal, AIR 1992 SC 604
X v. State of Madhya Pradesh, 2025 INSC 1143
G.V. Rao v. L.H.V. Prasad, AIR 2000 SC 2474
Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749
Bhushan Kumar v. State (NCT of Delhi), (2012) 5 SCC 424
GHCL Employees Stock Options Trust v. India Infoline Ltd., (2013) 4 SCC 505
Achin Gupta v. State of Haryana, (2025) 3 SCC 756
Mahmood Ali v. State of U.P., (2023) 15 SCC 488
Chandralekha v. State of Rajasthan, (2013) 14 SCC 374
Dara Lakshmi Narayana v. State of Telangana, (2025) 3 SCC 735
Preeti Gupta v. State of Jharkhand, (2010) 7 SCC 667
Birla Corporation Ltd. v. Adventz Investments, MANU/SC/0714/2019

LIST OF ACTS

Indian Penal Code, 1860 – Code of Criminal Procedure, 1973 - POCSO Act - Hindu Marriage Act, 1955.

LIST OF KEYWORDS

Application under section 482, Quashing of proceedings, matrimonial discord, omnibus allegations, mala fide complaint, abuse of process, inherent jurisdiction, application of mind, summoning order, prima facie, cryptic order, application allowed.

CASE ARISING FROM

Complaint Case No. 545/2014 (*Manoj Kumar Tewari vs. Janardan Prasad Shukla and others*), P.S. Kotwali Nagar, District Balrampur.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Mr. Dinesh Kr. Chaudhary, .
Counsel for Respondent(s): - Mr. Vimal Shukla and A.G.A.

(Delivered by Hon'ble Abdhesh Kumar Chaudhary, J.)

1. Heard Shri Dinesh Kr. Chaudhary, learned Counsel for the applicants/petitioners, and Shri Vimal Shukla, learned Counsel for the Opposite party no.2, as well as learned A.G.A. appearing for the State, and perused the record.

2. The present application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."), has been filed assailing the Judgment and order dated 08.03.2017, passed in Criminal Revision No. 31/2017 by District Judge, Balrampur and the Summoning Order dated 20.01.2016, passed by the Judicial Magistrate-II, Balrampur by means of which the applicants/petitioners were summoned in Complaint Case No. 545/2014 under Sections 323,452,392,506 I.P.C., lodged at Police Station - Kotwali Nagar, District Balrampur, in the case of "Manoj Kumar Tewari versus Janardan Prasad Shukla and others".

3. The factual exposition, as set forth in the complaint filed by opposite party no. 2, is that due to matrimonial discord, particularly arising out of proceedings for dissolution of marriage initiated by opposite party no. 2 against the daughter of applicant/petitioner no. 1, enmity developed between the parties. On 12.05.2014, on account of the said animosity, the applicants/petitioners came to the residence of opposite party no. 2, assaulted him, and forcibly snatched a sum of Rs. 10,000/-. On the basis of these allegations, Complaint Case No. 545/2014 under Sections 323, 452, 392 and 506 I.P.C was instituted in May 2014 at Police Station - Kotwali Nagar, District Balrampur.

4. Subsequently, pursuant to the aforesaid complaint, the statement of the complainant was recorded under Section 200 Cr.P.C., followed by the statements of witnesses, namely, Jitendra Kumar Dubey, Vishnu Pal Singh, and Subham. Upon consideration of the material so collected, the Magistrate proceeded to pass the impugned Summoning Order dated 20.01.2016 against the applicants/petitioners, in the following words:

"दिनांक 20/01/2016

आज पत्रावली आदे□ा हेतु नियत है। तलवी के बिंदु पर परिवादी के विद्वान अधिवक्ता को सुना जा चुका है।
पत्रावली का अवलोकन किया।
परिवादी मनोज कुमार तिवारी द्वारा विपक्षीगण जनार्दन नर सिंह नरायण प्रहलाद मीना □ुक्ला व कोमल उर्फ प्रवीण के विरूद्ध परिवाद पत्र प्रस्तुत कर कथन किया गया है कि परिवादी का तलाक मुकदमा पूजा उर्फ रूबी के साथ चल रहा है। इसी रंजि□ा को लेकर परिवादी के ससुर जर्नादन नर सिंह नाराण प्रहलाद मीना □ुक्ला व कोमल उर्फ प्रवीण दिनांक 12/5/14 को दोपहर 2 बजे परिवादी के घर आये तथा दहेज में मिला सामान वापस मांगने लगे। परिवादी ने कहा कि उसके घर वालों ने उसे घर व सम्पत्ति से बेदखल कर दिया है अतः दहेज का सामान घर जा कर ले ले। इस पर उक्त विपक्षीगण परिवादी की मां बहन की गाली देते हुए मारने पीटने लगे। परिवादी भागकर अपने घर में घुस गया। विपक्षीगण परिवादी के घर मे घुस गये और लात मुक्का थप्पड़ से मारने पीटने लगे। विपक्षीगण ने परिवादी के मेज पर पड़ा मु0 दस हजार रूपया उठा लिया तथा जाते जाते धमकी दिया कि तलाक का मुकदमा नहीं उठाया तो जान से मार देंगे।

घटना के समर्थन में परिवादी द्वारा स्वयं का बयान अंतर्गत धारा 200 द.प्र.सं. तथा साक्षीगण पी डब्ल्यू 1 वि□णुपाल सिंह पी डब्ल्यू 2 □ुभम का बयान अं धारा 202 द.प्र.सं.0 अंकित कराया गया। साक्षीगण ने विपक्षीगण द्वारा घर में घुसकर मारपीट करने रूपये लेने व जान से मारने की धमकी देने के अपराध कारित करने का समर्थन किया है। विपक्षीगण के विरूद्ध

धारा 323, 452, 392 व 506 भा द सं के अपराध का प्रथम दृ□टया आधार प्रतीत होता है। विपक्षीगण आहुत किये जाने योग्य है।

आदे□ा

विपक्षीगण जर्नादन □ुक्ल, नर सिंह नरायण प्रहलाद मीना □ुक्ल व कोमल उर्फ प्रवीण को अपराध अन्तर्गत धारा 323, 452, 392 व 506 भा0 द0 सं0 के विचारण हेतु न्यायालय द्वारा आहुत किया जाता है। परिवादिनी पैरवी अन्दर 10 दिन में करें। सूची गवाहन दाखिल हो। तदनुसार न्यायालय द्वारा आदे□ाकाएं जारी हो। पत्रावली वास्ते हाजिर `मुल्जिम दिनांक 10/02/2016 को पे□ा हो।□

5. Being aggrieved of the aforesaid Summoning Order, the applicants/petitioners preferred a Criminal Revision before the District and Sessions Judge, Balrampur. However, the Revisional Court, vide its order dated 08.03.2017, dismissed the Revision petition without granting relief to the present applicants/petitioners. Therefore, the present application/petition has been filed assailing both the aforesaid impugned orders dated 20.01.2016 (passed by the Ld. Magistrate) and 08.03.2017 (passed by the Ld. Sessions Judge), respectively.

6. Mr. D.K. Chaudhary, learned Counsel for the applicants/petitioners, contends that in the present case, the complaint has been instituted with considerable delay without any plausible explanation for such delay. It has been further submitted that the allegations made in the complaint are inherently improbable, exaggerated, and devoid of substance, and do not disclose the commission of any cognizable offence. It has been strenuously submitted by the learned Counsel for the applicants/petitioners that the impugned complaint has been instituted by the husband (opposite party No.2) against his in-laws on account of matrimonial discord and is a counterblast to the pending matrimonial proceedings between the parties.

7. It is urged that the allegations made in the complaint are omnibus, inherently improbable, and do not disclose the essential ingredients of the offences alleged. Learned Counsel has submitted that even if the entire complaint is taken at its face value, no offence under Section 392 of the I.P.C. is made out, inasmuch as there is no clear allegation constituting robbery in the eyes of law. Similarly, the ingredients of house-trespass after preparation for hurt, assault, or wrongful restraint punishable under Section 452 I.P.C. are also not elucidated with the required specificity. So far as Section 323 I.P.C. is concerned, the complaint does not disclose any specific grievous hurt, much less material to show that the accused persons intended to cause, or knew themselves to be likely to cause, grievous hurt. It is lastly submitted that the allegations regarding criminal intimidation are vague and general in nature.

8. The learned Counsel for the applicants/petitioners has further submitted that the witnesses examined under Sections 200 and 202 Cr.P.C. are closely related and interested witnesses, whose statements are allegedly tutored and lack independent corroboration. Their testimonies do not inspire confidence and have been relied upon mechanically by the learned Magistrate. It has been vehemently submitted that the learned Magistrate passed the Summoning Order in a routine and mechanical manner, without due application of judicial mind and without recording any satisfaction as to the existence of a prima facie case. Similarly, the Revisional Court also failed to consider the grounds raised by the applicants/petitioners and dismissed the Revision petition in a cursory manner without proper reasoning.

9. Learned Counsel for the applicants/petitioners has lastly urged that the continuation of the criminal proceedings against the applicants/petitioners would amount to an abuse of the process of the Court, and therefore, the inherent jurisdiction of this Court under Section 482 Cr.P.C. deserves to be invoked for quashing the impugned orders. To buttress his arguments, learned Counsel for the applicants/petitioners has placed reliance upon the judgments of the Hon'ble Supreme Court rendered in the case of ***State Of Haryana And Ors vs Ch. Bhajan Lal And Ors, reported in AIR 1992 SC 604; □X□ vs State of Madhya Pradesh and Anr., reported as 2025 INSC 1143; and G.V. Rao vs L.H.V. Prasad and Ors, reported in AIR 2000 SC 2474.***

10. Per contra, learned Counsel appearing for the Opposite party no. 2, as well as the learned A.G.A. for the State, have submitted that the impugned orders do not suffer from any illegality or infirmity warranting interference by this Court in exercise of its inherent jurisdiction. It has been contended by both that the complaint filed in the present dispute discloses clear, specific and categorical allegations against the applicants/petitioners, that they trespassed into the house of the complainant, assaulted him, and forcibly snatched a sum of Rs. 10,000/-. The said allegations prima facie constitute offences under Sections 323, 452, 392 and 506 I.P.C., and, thus, the Summoning Order has been rightly passed by the learned Magistrate.

11. Learned A.G.A. has further submitted that at the stage of Summoning, the Magistrate is only required to ascertain whether a prima facie case is made out on the basis of the material available on record. It has been further submitted that the plea regarding delay in filing the complaint is a matter of trial and cannot be a ground for quashing the proceedings in limine. Similarly, the defence taken by the applicants/petitioners, including the plea of matrimonial dispute and alleged false implication, involves disputed questions of fact, which cannot be adjudicated in proceedings under Section 482 Cr.P.C.

12. Learned Counsel for the opposite parties has lastly submitted that the Revisional Court duly considered the material on record and has rightly affirmed the Summoning Order. No jurisdictional error or perversity has been demonstrated in the impugned orders. It has been vehemently submitted that the inherent powers under Section 482 Cr.P.C. are to be exercised sparingly and with great caution, and only in cases where no offence is made out or there is manifest abuse of the process of law. To buttress their arguments, learned Counsel for the opposite parties have placed reliance upon the judgments of the Hon'ble Supreme Court rendered in the case of ***Muskan v. Ishaan Khan (Sataniya),*** reported in ***2025 SCC OnLine SC 2355***; and judgment of this Court rendered in the case of ***Satish Singh v. State of U.P***., reported in ***2019 SCC OnLine All 4133***.

ANALYSIS OF THE COURT

13. Heard the learned Counsel appearing for both the parties and perused the documents available on record. On perusal of the materials on record, it appears that the complainant, who is the Opposite Party No.2 in the present case, has alleged that his father-in-law (petitioner No.1), his father-in-law□s brothers (petitioner No. 2 and petitioner No.3), his mother-in-law (petitioner No. 4) and his brother-in-law (petitioner No.5) came to his rented accommodation on the fateful day of 12th of May 2014 at about 2 PM and demanded the return of dowry articles retained by him during

an ensuing matrimonial dispute between him and his wife (who is not a party in the present Petition).

14. The story further unfolds through the statement of the complainant, wherein he requested these five people to go to his father□s house to seek the dowry articles, as he claimed to have been disowned by his father and was living separately in rented accommodation. According to the complainant, this justification/diversion infuriated all these five people, who hurled abuses at him. Further, the complainant alleges that he was beaten, and when he ran back to his house, these five people followed him and forcefully entered with the intention to cause him hurt. Owing to his shouting and/or raising of an alarm, four of his friends arrived at the scene and tried to save him from the assault. It has been further alleged that while receding from the crime-scene, these applicants/petitioners took away Rs. 10,000/-, from his house.

15. On a prima facie perusal of the complaint, the allegations appear to be serious in nature. However, the present applicants/petitioners have filed this application praying for quashing the criminal proceedings against them on the primary ground that the complaint is a counter-blast to the matrimonial proceedings pending between the complainant and his wife (not a party to the present Petition). According to the applicants/petitioners, the complaint has been lodged with mala fide intention to exert pressure due to the ongoing matrimonial dispute and is an outcome of vengeance, and they have heavily relied on clause (g) of para 102 of the Bhajan Lal Case (Supra).

16. It has also been highlighted that all the witnesses are friends of the complainant and are not independent. Further, it has been submitted that these people were not involved in the alleged occurrence, as there is no material on record to entangle them in the crime. Accordingly, the applicants/petitioners have prayed for quashing of the criminal proceeding against them.

17. It is in this factual and legal backdrop that this Court is called upon to scrutinize the applicants□/petitioners□ prayer on the touchstone of the inherent powers vested in it under Section 482 of the Criminal Procedure Code (corresponding to Section 528 of the B.N.S.S.), read with the established principles governing the quashing of criminal proceedings.

18. This Court is also reminded of the scope and extent of its consideration of the present application, as quashing proceedings ought not to be converted into a mini-trial. Further, this Court is also conscious of the limitations on exercising jurisdiction under Section 482 Cr.P.C., and of the principle that disputed questions of fact ordinarily ought not to be adjudicated at the threshold. However, where the allegations, even if accepted as they stand, fail to disclose the essential ingredients of the offences alleged, and where the criminal proceeding appears to be a device to give a criminal colour to a private matrimonial discord, the continuation of such proceedings would amount to an abuse of the process of the Court.

19. The principles governing the quashing of an F.I.R. or criminal proceedings are no longer res integra. As such, a detailed excursus is unnecessary, and it would suffice to make brief reference to the decision of the Hon'ble Supreme Court, wherein the scope of the High Court's inherent powers to quash an F.I.R. or criminal proceedings was delineated. The Hon'ble Apex Court, in para 102 of the celebrated judgment of□***State of Haryana v. Bhajan Lal***, reported in ***AIR***

1992 SC 604; laid down the following illustrative scenarios where the High Court may exercise its inherent powers to prevent abuse of the process of the Court or to secure the ends of justice:-

"(a) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(b) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(c) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(d) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(e) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(f) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(g) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

20. Having adverted to the time-tested and settled principles emanating from ***Bhajan Lal's case*** *(supra*), the enquiry of this Court must now shift to the governing touchstone for exercise of inherent jurisdiction. The power under Section 482 of the Criminal Procedure Code (corresponding to Section 528 of the B.N.S.S.) is intended to be invoked only where such exercise is necessary to give effect to orders under the Code, to prevent abuse of the process of Court, or to secure the ends of justice.

21. The aforesaid principles have been repeatedly reiterated by the Hon'ble Supreme Court in a catena of judgments, more recently, in the case ***of Ajay Malik v. State of Uttarakhand,*** reported in ***2025 SCC OnLine SC 185;*** wherein the Hon'ble Court held as follows :-

"8. It is well established that a High Court, in exercising its extraordinary powers under Section 482 of the CrPC, may issue orders to prevent the abuse of court processes or to secure the ends of justice. These inherent powers are neither controlled nor limited by any other statutory provision. However, given the broad and profound nature of this authority, the High Court must exercise it sparingly. The conditions for invoking such powers are embedded within Section 482 of the CrPC itself, allowing the High Court to act only in cases of clear abuse of process or where intervention is essential to uphold the ends of justice.

9. It is in this backdrop that this Court, over the course of several decades, has laid down the principles and guidelines that High Courts must follow before quashing criminal proceedings at the threshold, thereby pre-empting the Prosecution from building its case before the Trial Court. The grounds for quashing, inter alia, contemplate the following situations : (i) the criminal complaint has been filed with mala fides; (ii) the FIR represents an abuse of the legal process; (iii) no prima facie offence is made out; (iv) the dispute is civil in nature; (v.) the complaint contains vague and omnibus allegations; and (vi) the parties are willing to settle and compound the dispute amicably (State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335)."

22. Keeping the aforesaid axiom in mind, and since the hinge of the argument of the petitioners is that the complaint is mala fide and contains vague and omnibus allegations, this Court finds it profitable to quote a Judgment of the Hon ble Supreme Court, wherein, in addition to the aforesaid basic principles to be followed by this Court while evaluating whether a criminal proceeding is fit to be quashed, the Apex Court has provided certain additional clarifications/restrictions in the case of Mohd. Wajid Vs state of Uttar Pradesh, reported in **(2023) 20 SCC 219**; and has cast a duty on this Court to examine the complaint with care and a little more closely in the followings words:

"36. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely.

37. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.

38. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while

exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation....."

23. This Court, being empowered to take into account the overall circumstances leading to the initiation of the complaint by opposite party No.2 and to read between the lines, finds that the present complaint was filed on 19.05.2014, concerning an incident allegedly occurring on 14.05.2014. Prior to the said complaint, three proceedings have been pending between the complainant/ Opposite Party No.2 and his wife (who is not a party to the present proceedings). The first being a proceeding under Section 125 of the Criminal Procedure Code, filed against the Opposite Party No.2 seeking maintenance on 09.05.2012; the second being a divorce petition under Section 13 of the Hindu Marriage Act, filed by the Opposite Party No.2 on 26.03.2012; and the third being an application under Section 24 of the Hindu Marriage Act, filed in the divorce petition relating to grant of pendente-lite maintenance, filed against the Opposite Party no.2 by his wife, which, as per the records, had been allowed in her favour vide an order dated 17.09.2013. Thus, apparently, the present matter predominantly has its root cause to the matrimonial dispute between the Opposite Party no.2 and his wife, who is the daughter/niece of petitioner No.1 to 4 and the sister of petitioner No.5.

24. There can be no doubt whatsoever that cases of the present nature are sensitive and warrant a thorough trial before the competent Court. However, it must also be borne in mind that, while conducting such trial, the competent Court must exercise restraint in roping in innocent family members on the basis of general or omnibus allegations, which has been a growing trend, whether at the instance of a wife or a husband, as in the present case. The Apex Court in the case of ***G.V. Rao Vs L.H.V Prasad***, reported in ***2000(3) SCC 693***; some two and half decades ago observed as follows:

"12.There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their young days in chasing their cases in different courts."

25. The aforesaid Judgment is relevant to the present context, inasmuch as at least Petitioner nos.1 to 4, who are elders of the wife of Opposite Party no.2, would had been best positioned to act as counsellors between him and their daughter. However, apparently due to the filing of this kind of cases, obviously no elders come forward to offer any counselling, resulting in the flooding of matrimonial cases. This Court may not baulk to observe that one of the key reasons for today s ever-increasing matrimonial disputes among young couples is the lack of adequate and

fearless counselling by their own elders, who may understand the issues much better than professional counsellors available in the market.

26. Nevertheless, this Court, restricting itself to the determination of this application on the touchstone of evidence brought on record, would swiftly discuss the material brought on records and as to whether these materials were adequate for the learned Magistrate to issue summons to the applicants/petitioners.

27. It is well settled that the Trial Court is not to act merely on the version of the complainant but must objectively scrutinize the material brought on record before issuing process and setting the criminal proceedings in motion. The learned Trial Court is not only required to assess whether a prima-facie case exists against the accused proposed to be summoned, but must also weigh whether sufficient material has been brought on record through evidence led by the complainant or its witnesses.

28. It must be understood that the role assigned to the Trial Court is not to act mechanically but to form an opinion on the basis of material brought on record, bearing in mind that summoning of any accused in a criminal case is a serious matter. The law is settled that the issuance of summons is not merely a formality, but a serious business as it sets the criminal law into motion. The Hon'ble Supreme Court, in the celebrated judgment of ***Pepsi Foods Ltd. And Another Vs. Special Judicial Magistrate and Others***, reported in **(1998) 5 SCC 749**; at paragraph 28 of the said report, held as under :-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

29. Apparently, a facial reading of the depositions of the witnesses indicates that no specific role has been assigned to any of the five applicants/petitioners. There is no evidence from any of the four witnesses produced by the Opposite Party no.2 as to who has abused or who has beaten and how or as to who took the Rs. 10,000/- and from where. There is no evidence as to when the four witnesses arrived at the scene to save the complainant/Opposite Party no.2. The self-evidence led by the opposite party No.2 merely names four people who came to save him towards the end of his deposition, which obviously indicates the preparation of witnesses by the Opposite Party no.2.

30. Although assigning a role to each of the accused may not be fatal to the prosecution, however, in the present case, there are serious contradictions in the versions of the witnesses. For example, regarding the act of taking away of Rs. 10,000/-, Opposite Party no. 2 merely says that Rs. 10,000/- has been taken away, without naming any person or mentioning any place, whereas one of the witnesses- Jitendra, has deposed that the said money was lying in a polyethylene bag on the table. He also does not name any person as to who took away the said money. Further, P.W.-1 Vishun Pal Singh also deposes that the money was kept on the table and was taken away. He also does not name any particular person as to who did take the said money. As far as P.W.-2-Subham Dubey is concerned, he did not depose anything as to whether any money was taken away or as to who took the money.

31. Apparently, these three witnesses have been brought merely to support the version of the complaint, as is clear from the cyclostyled deposition of each of these witnesses. Interestingly, not a single document has been marked as an exhibit, and the entire case appears to be premised solely on the version of oral testimony. This court need not further burden this judgment by citing the binding precedents, as to when the case is purely based on oral evidence, the court has to tread a skeptical approach, rather than be liberal in initiating the criminal machinery.

32. Further, a plain reading of these testimonies brings to the fore that the ingredients of the offences under Sections 323, 392, 452 and 506 I.P.C. are not made out. Mere reproduction of penal Sections or use of criminal law phraseology, without foundational facts, cannot justify issuance of process.

33. Insofar as Section 323 I.P.C. is concerned, the offence relates to voluntarily causing grievous hurt, which requires not only hurt of a grievous nature but also the requisite intention or knowledge referable to such grievous hurt. The depositions of the witnesses, however, does not disclose any specific grievous injury answering the statutory requirement, nor does it contain allegations sufficient to prima facie establish the requisite mens rea for the said offence.

34. Similarly, the allegations under Section 392 I.P.C. are conspicuously deficient in material particulars. There is no specific assertion in the depositions before this Court showing the necessary ingredients of theft or extortion coupled with violence or fear of instant violence to bring the accusation within the fold of robbery. Likewise, to attract Section 452 I.P.C., there must be clear foundational allegations regarding house-trespass along with the statutory aggravating element; such particulars are missing in the present depositions. Even the allegations under Section 506 I.P.C. appear to be couched in vague and omnibus language. In criminal complaints arising out of strained matrimonial relationships, bald allegations of threat, in the absence of details such as date, time, place, words used, and surrounding circumstances, cannot by themselves furnish a legally sustainable basis for summoning all accused persons.

35. Having discussed the evidence, this Court will next examine the Summoning Order passed by the learned Magistrate, which was, in a way, a consequential effect of the material brought on record. The law is now well settled that, as far as the order of the Magistrate summoning the accused is concerned, it must reflect that the Magistrate has applied his mind to the facts of the case and the law applicable thereto.

36. Further, it is incumbent on the Magistrate to examine the nature of allegations made in the complaint, the evidence both oral and documentary in support thereof, and objectively examine as to whether the same would be sufficient for the complainant to succeed in bringing the charge home to the accused.

37. Further, as to the mandatory application of mind in the process of taking cognizance, the Apex Court in the case of **Bhushan Kumar and Another v. State (NCT of Delhi) and Another**, reported in **(2012) 5 SCC 424**; held as under :-

"11. In Chief Enforcement Officer v. Videocon International Ltd. [(2008) 2 SCC 492 : (2008) 1 SCC (Cri) 471] (SCC p. 499, para 19) the expression 'cognizance' was explained by this Court as 'it merely means 'become aware of' and when used with reference to a court or a Judge, it connotes 'to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.' It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code"

38. According to this Court, the best way to examine whether there has been any application of mind or not by the Magistrate is to search and examine as to whether any reasoning has been appended by the Magistrate for issuance of summons, for one cannot enter the mind of anyone to see its application. The applicability of mind is best reflected from the reasoning in the order itself. The Hon'ble Apex Court in the case of ***GHCL Employees Stock Options Trust Vs India Infoline Limited,*** reported in ***(2013)4 SCC 505***; observed as follows:

"14. Be that as it may, as held by this Court, summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record."

39. As far as the present case is concerned, this Court finds that the learned Trial Court, while considering the issuance of summons, relied on the depositions of Vishnu Pal and Subham dubey and did not even mention the deposition of Jitendra, although it is apparent from the records that his deposition was recorded. Further, the Magistrate has not offered any reason as to why the deposition of Jitendra was overlooked, whereas it is clear from deposition of each of the witness that Jitendra was also present on the scene when the alleged incident occurred.

40. Further, as far as taking away of Rs. 10,000/- is concerned, there is material contradiction. In any case, both witnesses relied upon by the Magistrate do not say that the money was taken forcefully or under a threat of death, hurt or wrongful restraint. This Court fails to understand as to how the learned Magistrate, by virtue of a cryptic order, which has been purposely quoted herein above, and without examining the ingredients of the Sections sought to be invoked, issued summons to the petitioners under Sections 323, 392, 452 and 506 I.P.C., on the mere askance of the Opposite Party no.2/ Complainant.

41. On a perusal of the complaint and the depositions brought on record, it is apparent that no specific role has been assigned to any of the applicants/petitioners. The allegations are most general and omnibus. They appear to be a product of implicating relatives in matrimonial disputes, for a change, this time initiated by the husband rather than the wife, which has been prevalent these days. The applicants/petitioners are made to face a criminal trial on general and sweeping allegations, without bringing on record, any specific instances of criminal conduct. The present proceedings appear to be manifestly vexatious and filed with the ulterior motive of wreaking vengeance on the applicants/petitioners, who are close relatives of the wife of the opposite party no.2. Recently, the Apex Court in Achin Gupta vs. State of Haryana and Anr., reported in (2025) 3 SCC 756; in somewhat similar situation held that :-

"24. If a person is made to face a criminal trial on some general and sweeping allegations without bringing on record any specific instances of criminal conduct, it is nothing but abuse of the process of the court. The court owes a duty to subject the allegations levelled in the complaint to a thorough scrutiny to find out, prima facie, whether there is any grain of truth in the allegations or whether they are made only with the sole object of involving certain individuals in a criminal charge, more particularly when a prosecution arises from a matrimonial dispute.

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35. In one of the recent pronouncements of this Court in Mahmood Ali v. State of U.P. [Mahmood Ali v. State of U.P., (2023) 15 SCC 488] , authored by one of us (J.B. Pardiwala, J.), the legal principle applicable apropos Section 482CrPC was examined. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482CrPC or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.

36. For the foregoing reasons, we have reached to the conclusion that if the criminal proceedings are allowed to continue against the appellant, the same will be nothing short of abuse

of process of law and travesty of justice. This is a fit case wherein, the High Court should have exercised its inherent power under Section 482CrPC for the purpose of quashing the criminal proceedings."

(Emphasis Supplied)

42. As to filing of a complaint without any specific allegations, in Chandralekha vs. State of Rajasthan, reported in (2013)14 SCC 374; the Apex Court held that vague, omnibus allegations without specific roles justify quashing of F.I.R. Recently, in Dara ***Lakshmi Narayana and Ors. v. State of Telengana and Anr.,*** reported ***in (2025) 3 SCC 735;*** the Hon'ble Supreme Court referring to its earlier decisions on the topic summarised the position as follows :-

"27. A mere reference to the names of family members in a criminal case arising out of a matrimonial dispute, without specific allegations indicating their active involvement should be nipped in the bud. It is a well- recognised fact, borne out of judicial experience, that there is often a tendency to implicate all the members of the husband's family when domestic disputes arise out of a matrimonial discord. Such generalised and sweeping accusations unsupported by concrete evidence or particularised allegations cannot form the basis for criminal prosecution. Courts must exercise caution in such cases to prevent misuse of legal provisions and the legal process and avoid unnecessary harassment of innocent family members. In the present case, Appellants 2 to 6, who are the members of the family of Appellant 1 have been living in different cities and have not resided in the matrimonial house of Appellant 1 and Respondent 2 herein. Hence, they cannot be dragged into criminal prosecution and the same would be an abuse of the process of the law in the absence of specific allegations made against each of them.

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33. Further, this Court in Preeti Gupta v. State of Jharkhand [Preeti Gupta v. State of Jharkhand, (2010) 7 SCC 667 : (2010) 3 SCC (Cri) 473] held that the courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realties into consideration while dealing with matrimonial cases. The allegations of harassment by the husband's close relatives who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complainant are required to be scrutinised with great care and circumspection."

(Emphasis supplied)

43. This Court finds that even the Revisional Court abdicated its duty, same as the learned Magistrate Trial Court. The Revisional Court merely scanned through the order of the Magistrate and decided the matter in a perfunctory manner, without even appreciating the basic foundational testimony, which, according to this Court, was the basis for issuance of the Summoning Order against the applicants/petitioners. Both the Revisional Court and the Trial Court failed to understand the adverse impact of the casual manner in which the matter was dealt with them. Both the Courts failed to appreciate that initiation of criminal proceedings against any person as a serious affair and may have grave adversarial impact on their status and personal liberty.

44. As to the grave eventuality and adverse impact on the reputation of a person, when a summon is issued for facing criminal trial, the Supreme Court held in the case of ***Birla Corporation Limited and Ors. vs. Adventz Investments and Holdings Limited and Ors.;*** reported in ***MANU/SC/0714/2019***; decided on ***09.05.2019*** as under :

"36. To be summoned/to appear before the Criminal Court as an Accused is a serious matter affecting one's dignity and reputation in the society. In taking recourse to such a serious matter in summoning the Accused in a case filed on a complaint otherwise than on a police report, there has to be application of mind as to whether the allegations in the complaint constitute essential ingredients of the offence and whether there are sufficient grounds for proceeding against the Accused. In Punjab National Bank and Ors. v. Surendra Prasad Sinha MANU/SC/0345/1992 : 1993 Supp (1) SCC 499, it was held that the issuance of process should not be mechanical nor should be made an instrument of oppression or needless harassment."

45. Further, so far as the decisions relied upon by the learned Counsel for the Opposite Parties are concerned, this Court is of the considered view that they pertain to a general clarification of the scope of exercise of the High Court's inherent powers. Additionally, in ***Muskaan's case*** *(supra),* the Hon'ble Supreme Court had set-aside the impugned order of the High Court, wherein the petition by the respondents under Section 482 of the Cr.P.C was allowed, resulting in the quashing of the criminal proceedings against them, primarily on the ground that the High Court had exceeded its scope while exercising its inherent powers and had conducted a 'mini-trial'.

46. In the present case, the core issue that falls for consideration is the sustainability of the applicants/petitioners implication, particularly in view of the conspicuous absence of any specific allegations against them. Therefore, it would appear that the decisions relied upon by the learned counsel for the Opposite Parties are of little assistance to their case.

47. Considering the overall attending factors of the present matter, it appears that the allegations levelled against the applicants are wholly false and mala fide, and that this case has been lodged by the opposite party No.2 to merely settle the score with his wife, with whom he is fighting various matrimonial litigations. The allegations levelled by the complainant and his witnesses are wholly improbable and do not inspire any confidence. The impugned proceedings are manifestly attended with mala fide intent and have been instituted with the ulterior motive for wreaking vengeance on the applicants due to personal grudges. The Trial Court has not considered the matter in the correct perspective, and the applicants have been summoned in a routine manner without examination of the merits of the case.

48. Further, a perusal of the impugned Summoning Order also indicates that the learned Magistrate has not discussed the ingredients of the offences alleged, nor recorded satisfaction based on specific material qua each accused. The order is cryptic and proceeds as if summoning must automatically follow upon filing of a complaint and recording of formal statements. Such an approach is contrary to the settled principle that a Summoning Order must itself disclose an application of mind and cannot be sustained when passed mechanically.

49. Having regard to the nature of accusations, the absence of specific averments constituting the offences under Sections 322, 392, 452 and 506 I.P.C., and the mechanical nature of the impugned Summoning Order, this Court is of the considered view that no prima facie case for proceeding against the applicants/petitioners is made out. The impugned order, therefore, cannot be sustained in the eyes of law.

50. Having heard the learned Counsel for the respective parties and upon careful examination of the complaint, the statements of witnesses recorded under Section 202 of Cr.P.C., and other materials placed on record, this Court is of the considered view that no specific role or overt act has been attributed to the applicants/petitioners in respect of the alleged offences. Even on a prima facie assessment of the material forming the basis of the complaint, the allegations do not disclose the commission of any offence under the I.P.C.

51. Therefore, this Court has no hesitation in arriving at the conclusion that the present case falls within the exceptional category contemplated under the Sixth illustration in ***Bhajan Lal's case*** *(supra),* justifying interference by this Court in the exercise of its inherent powers under Section 482 of the Cr.P.C. (corresponding to Section 528 of the B.N.S.S.) to prevent abuse of the process of Court and to secure the ends of justice.

52. Accordingly, for all the aforesaid reasons, the Judgment and Order dated 08.03.2017, passed in Criminal Revision No. 31/2017 by the District Judge, Balrampur and the Summoning Order dated 20.01.2016, passed by the Judicial Magistrate-II, Balrampur, by means of which the applicants/petitioners were summoned in Complaint Case No. 545/2014 under Sections 323,452,392,506 I.P.C., lodged at Police Station - Kotwali Nagar, District Balrampur, in the case of "*Manoj Kumar Tewari versus Janardan Prasad Shukla and others",* are hereby ***quashed.***

53. The Application is ***allowed***.

54. However, there shall be on order(s) as to costs.

(2026) 5 ILRA 1702
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 13.05.2026

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Application U/S 482 No. 2922 of 2026

Nanke @ Sahabuddin & Ors. ...Applicants
Versus
State of U.P. & Ors. ...Opposite Parties

ISSUE FOR CONSIDERATION

Whether, at the stage of proposed alteration of charges under Section 216 CrPC, the accused are required to surrender and obtain bail afresh?

HEADNOTES

Criminal Law – Code of Criminal Procedure - Section - 161, 164, 200, 216, 437, 439 - Indian Penal Code – Section - 354(ka), 506, 376-DA, - POCSO Act – Section - 5(g)/6, 7, 8: - Application u/s 482 CrPC - seeking quashing of order passed by Special Judge (POCSO) Court - whereby charges under Sections 376-DA IPC and 5(g)/6 of the POCSO Act were proposed to be framed and applicants were directed to appear and obtain bail – FIR – offence under Sections 354(ka), 506 IPC – investigation - charge sheet - applicants bailed out – PW1 statement later alleged rape – prosecutor moved under Section 216 CrPC for alteration of chargesheet – trial court suo-moto proposed alteration of charges – applicants pleaded direction to obtain bail erroneous without actual alteration – State relied on *Bijendra*, *Hamida*, *Pradeep Ram*, *Sumit* to argue fresh bail mandatory once graver charges added – Power of Court to alter charges - Bail jurisprudence - Custody as sine qua non - Distinction between proposed and final alteration of charges - Court finds that, charges only proposed, not yet altered – precedents apply only after charges are actually added, not at proposal stage – held, direction to surrender and obtain bail unsustainable – hence, order impugned is set aside to that extent – consequently, application partly allowed – direction issued to trial court to proceed in accordance with law.

(Para – 18, 19, 20, 24, 25, 27)

Application Partly Allowed. (E-11)

CASE LAW CITED

Bijendra v. State of U.P. (2006 SCC OnLine All 258)
Hamida v. Rashid (2008 (1) SCC 474)
Pradeep Ram v. State of Jharkhand (2019) 17 SCC 326)
Sumit v. State of U.P. (2026 SCC OnLine SC 186)
Govt. of Karnataka v. Gowramma (AIR 2008 SC 863)

LIST OF ACTS

Indian Penal Code, 1860 – Code of Criminal Procedure, 1973 - POCSO Act.

LIST OF KEYWORDS

Application under section 482 – Alteration of charges – Bail – Custody - Section 216 CrPC - POCSO, Non-bailable offence, Proposed charges, Judicial discretion, Precedent applicability.

CASE ARISING FROM

FIR No. 194/2020, Police Station Paraspur, District Gonda.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Mr. Amar Singh.
Counsel for Respondent(s): - Mr. Pawan Kumar Trivedi, Sushil Kumar Pandey, AGA.

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

1. Short counter affidavit filed today by Mr. Pawan Kumar Trivedi, counsel for opposite party no. 2 is taken on record.

2. Heard Mr. Amar Singh, learned counsel for the applicants, Mr. Pawan Kumar Trivedi, learned counsel for opposite party no. 2, Mr Sushil Kumar Pandey, learned A.G.A. for the State and perused the records.

3. The present application has been filed with the prayer, to quash the impugned order 23.02.2026, passed by Learned Additional Session Judge/Special Judge (POCSO Act), District-Gonda, in Session Case No. 412/2021, arising out of F.I.R No./Case Crime No. 194 of 2020, Police Station-Paraspur, District- Gonda, by means of which the charge for the offences punishable under section 376 DA I.P.C and 5 (g)/6 POCSO Act was proposed to be framed and further applicants were directed to appear before the Learned Trial Court and to obtain bail, as contained in Annexure No. 1 to this petition, in the interest of justice.

4. The contentions put forth by learned counsel appearing for the applicants is that the First Information Report (FIR) was lodged on 02/08/2020 by the opposite party no. 2, bearing FIR no. 0194/2020, under sections 354(ka) and 506 IPC at Police Station Paraspur District Gonda, whereafter, the statement of the alleged prosecutrix was recorded under section 161 of CrPC, wherein, no allegation of rape is raised by the prosecutrix and on 05/08/2020 she refused to undergo the medical examination. He submitted that the statement of the prosecutrix was recorded under section 164 of CrPC, on 20/08/2020, wherein, the opposite party no. 2 alleged that on 10/08/2020, the applicants had committed rape upon her, whereas, in the FIR which was lodged on 02/08/2020, showing the date of the incident as 02/08/2020, no such allegation of committing rape upon the applicants.

5. He argued that subsequent thereof on 13.08.2020, the father of the alleged prosecutrix, has also moved an application under section 156(3) of CrPC against the applicants, in the court of the Chief Judicial Magistrate, Gonda, alleging that on 10/08/2020, the applicants committed rape upon prosecutrix and prayed for direction to be issued for lodging the first information report. He submitted that the prosecutrix was called upon for getting her statement recorded under section 200 of CrPC, to which she did not respond, and as a result thereof, the complaint was dismissed for want of prosecution. He submitted that after the investigation in case crime number 0194 of 2020, the investigating officer filed the charge sheet on 14/09/2020, bearing charge sheet number 01/2020 under sections 354(ka) and 506 of IPC and 7/8 of the POCSO Act. He added that after the chargesheet was filed, the applicants appeared and they have been bailed out, whereafter, the statement of the PW1 was recorded on 04/09/2025 and the special prosecutor, after the statement was recorded, moved an application under section 216 of CrPC, requested for alteration of the charges, to which the trial court considered and rejected the application and proceeded suo moto in the matter and has passed the order dated 23/02/2026 impugned herein.

6. It is argued by counsel for the applicants that while passing the order, the trial court prima facie found from perusal of the statement of the victim that there are prima facie charges of offense under section 376 DA of IPC and under section 5 (g)/6 POCSO Act, therefore, the applicants were called upon to put their side on the proposed alteration of the charges and it was also opened in the order that the pleader of applicants be appeared for arguments. He submitted that up to this stage, the order might be correct, but so far as the direction that the applicants would appear and get themselves bailed out, is erroneous and is no way justified, more so, as the criminal procedure code is concerned, there is no such provision. Further submitted that there is no law settled by the court of record that in such circumstances, the proposed accused for altered charges, without adding of the offence, is required to appear and to get him bailed out.

7. Concluding his arguments, he submitted that unless the charge of offense are added or altered, there is no need for getting bail of the proposed accused. He added that it is an admitted position that if the charges are altered by adding the offenses/sections, such accused is required to get him bailed out, therefore, fresh bail bonds and sureties are required as per the gravity of nature of the offenses, therefore, submission is that the order dated 23/02/2026, impugned herein, is erroneous to the extent above.

8. On the other hand, learned counsel appearing for the State has opposed the contentions aforesaid and submitted that the trial court, while passing the order dated 23/02/2026, has prima facie reaches to the conclusion that the charges under section 376DA of IPC and 5 (g)/6 POCSO Act can be added, as there are sufficient evidence available. He submitted that the statement of PW1 is enough to show that the ingredients of sections 376DA and 5 (g)/6 POCSO Act are attracted in the present matter.

9. In support of his contention, he has placed reliance on the judgment rendered in the cases of ***Bijendra and Ors Vs. State of U.P. and Ors reported in 2006 SCC OnLine All 258*** and has referred paragraph 24 and 25, which are quoted hereinunder:-

"24. Learned AGA on the contrary submitted that since the offence is triable by the court of sessions and it has been held by the apex court in the aforesaid judgment of Prahlad Singh Bhati (supra) that it would be proper and appropriate that in such case the Magistrate directs the accused persons to approach court of sessions for purposes of detting relief of bail is the law laid down by the Supreme Court and therefore, anything Contrary to it will be illegal.

25. After hearing the learned Counsels for the both sides at a great length and after analyzing Section 437 Cr. P. C. it transpires that Section 437 relates with bail in cases of non-bailable offence by the magistrate. So far as the first contention which the learned Counsel for the applicants advanced, that because the bail has been granted in the same crime number and therefore by mere change of section accused cannot be sent to jail is concerned it is to be noted that case crime number is nowhere mentioned in the aforesaid section, which is the number of police for identification of the case and is a procedural number of the police station. Crime number has no relation with bail under Cr. P. C. In this view of the matter the contention of learned Counsel for the applicant cannot be accepted and is therefore rejected.

Coming to the second contention of the learned Counsel for the applicant that there is no bar for this Court to direct the Magistrate to accept fresh bail bonds for the newly added offence triable by Court of Session's it is noted that this direction will amount to asking the Magistrate to do something de-hors the law. The contention is devoid of merit. Section 437 Cr.P.C. relates to an offence, therefore, on addition of a new offence, the accused is required to appear before the court and seek bail. His bail cannot be considered unless and until he surrenders and is in custody in that offence. Any accused who is not in custody in an offence can not be granted bail. Custody is sine qua non for consideration of bail prayer. Consequently when the accused is guilty of an added offence and is not on bail, he cannot be allowed to furnish bond without being in Custody in that offence. For getting bail in newly added offences the accused has to surrendered in that offence. Thus asking the Magistrate to accept fresh bail bonds in newly added offence will mean granting of

bail to the accused in the newly added offences without he being taken into custody for the said offence and that is not permissible under the Moreover there is another difficulty, which cannot be alleviated by the counsel for the applicants. Under the IV provise to Section 437(1), which has been Inserted by the Code of Criminal Procedure (Amendment) Act No. 25 of 2005, the offence of under Section 325 and 308 IPC are punishable with seven years of imprisonment and consequently without giving an opportunity of hearing to the public prosecutor they cannot be allowed to furnish fresh bail bonds. The IV proviso, which has been inserted in the year 2005 now mandates that if a person is guilty of an offence punishable with imprisonment of seven years or more then, Public Prosecutor must be given an opportunity of being heard. If this Court, in exercise of its inherent jurisdiction Under Section 482 Cr. P. C. allows, to the accused to file fresh bail bonds for the offences punishable with seven years and triable by session's court then it takes away the right of the public prosecutor to oppose the bail, and the said order will be against the provisions of law."

10. Referring the aforesaid, he submitted that it has been held that any accused who is not in custody, cannot be granted bail and further submitted that fresh bail bonds are required, once the charges are added or altered. He again has placed reliance on the judgment rendered in the case of **Hamida Vs. Rashid and Ors**. reported in **2008 (1) SCC 474** and has referred to paragraphs 10 to 12 of the above-said judgment, which are quoted herein under:-

"10. In the case in hand, the accused respondents could apply for bail afresh after the offence had been converted into one under Section 304 IPC. They deliberately did not do so and filed a petition under Section 482 Cr.P.C. in order to circumvent the procedure whereunder they would have been required to surrender as the bail application could be entertained and heard only if the accused were in custody. It is important to note that no order adverse to the accused respondents had been passed by any Court nor there was any miscarriage of justice or any illegality. In such circumstances, the High Court committed manifest error of law in entertaining a petition under Section 482 Cr.P.C. and issuing a direction to the subordinate court to accept the sureties and bail bonds for the offence under Section 304 IPC. The effect of the order passed by the High Court is that the accused after getting bail in an offence under Section 324, 352 and 506 IPC on the very day on which they were taken into custody, got an order of bail in their favour even after the injured had succumbed to his injuries and the case had been converted into one under Section 304 IPC without any Court examining the case on merits, as it stood after conversion of the offence. The procedure laid down for grant of bail under Section 439 Cr.P.C., though available to the accused respondents, having not been availed of, the exercise of power by the High Court under Section 482 Cr.P.C. is clearly illegal and the impugned order passed by it has to be set aside.

11. learned Counsel for the appellant has submitted that charge under Section 302 IPC has been framed against the accused respondents by the trial court and some subsequent orders were passed by the High Court by which the accused were ordered to remain on bail for the offence under Section 302 read with Section 34 IPC on furnishing fresh sureties and bail bounds only on the ground that they were on bail in the offence under Section 304 IPC. These orders also deserve to be set aside on the same ground.

12. In the result, the appeal is allowed. The impugned order dated 1.7.2005 passed by the High Court and all other subsequent orders whereby the accused respondents were directed to remain on bail for the offence under Section 302 read with Section 34 IPC on furnishing fresh sureties and bail bonds are set aside. The accused respondents shall be taken into custody forthwith. It is, however, made clear that it will be open to the accused respondents to apply for bail for the offences for which they are charged before the appropriate Court and in accordance with law."

11. Placing reliance on the above-said judgment, he submits that it has been held in so many words, by the Hon'ble Apex Court that the accused has to apply for bail afresh, after the offense is converted into serious and higher nature. He submitted that, in fact, the order impugned dated 23/02/2026 reveals that the trial court has reached to the conclusion to alter/add the charges and that too is of serious in nature, therefore, the applicants are required to appear and get themselves bailed out, therefore, submission is that no interference is warranted, in order impugned.

12. Mr. Pawan Kumar Trivedi, learned counsel appearing for the opposite party no. 2 has also supported the version of counsel for the State and submitted that the statement of the victim was not properly recorded by the investigating officer and once the statement of the prosecutrix was recorded as PW1 before the trial court, the trial court proceeded to add/alter the charges. He next submitted that there is no ambiguity or erroneousness in the order passed by the trial court, as the trial court has gone through the statement of the alleged victim and then reached to the conclusion to convert the charges.

13. In support of his contentions, he has also placed reliance on the judgment rendered in the case of **Pradeep Ram Versus State of Jharkhand And Another** reported in **(2019) 17 SCC 326** and has referred to paragraphs 29 to 31, which are quoted herein under:-

"29. Relying on the abovesaid order, the learned counsel for the appellant submits that the respondent State ought to get first the order dated 10-3-20162 granting bail to the appellant cancelled before seeking custody of the appellant. It may be true that by mere addition of an offence in a criminal case, in which the accused is bailed out, investigating authorities itself may not proceed to arrest the accused and need to obtain an order from the court, which has released the accused on the bail. It is also open for the accused, who is already on bail and with regard to whom serious offences have been added to apply for bail in respect of new offences added and the court after applying the mind may either refuse the bail or grant the bail with regard to new offences. In a case, bail application of the accused for newly added offences is rejected, the accused can very well be arrested. In all cases, where the accused is bailed out under orders of the court and new offences are added including offences of serious nature, it is not necessary that in all cases earlier bail should be cancelled by the court before granting permission to arrest an accused on the basis of new offences. The powers under Sections 437(5) and 439(2) are wide powers granted to the court by the legislature under which the court can permit an accused to be arrested and commit him to custody without even cancelling the bail with regard to earlier offences. Sections 437(5) and 439(2) cannot be read into restricted manner that order for arresting the

accused and to commit him to custody can only be passed by the court after cancelling the earlier bail.

30. Coming back to the present case, the appellant was already into jail custody with regard to another case and the investigating agency applied before the Special Judge, NIA Court to grant production warrant to produce the accused before the Court. The Special Judge having accepted the prayer of grant of production warrant, the accused was produced before the Court on 26-6-2018 and remanded to custody. Thus, in the present case, production of the accused was with the permission of the Court. Thus, the present is not a case where investigating agency itself has taken into custody the appellant after addition of new offences rather the accused was produced in the Court in pursuance of production warrant obtained from the Court by the investigating agency. We. thus do not find any error in the procedure which was adopted by the Special Judge. NIA Court with regard to production of the appellant before the Court. In the facts of the present case, it was not necessary for the Special Judge to pass an order cancelling the bail dated 10-3-20162 granted to the appellant before permitting the appellant-accused to be produced before it or remanding him to the judicial custody.

31. In view of the foregoing discussions, we arrive at the following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:

31.1. The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

31.2. The investigating agency can seek order from the court under Section 437(5) or 439(2) CrPC for arrest of the accused and his custody.

31.3". The court, in exercise of power under Section 437(5) or 439(2) CrPC, can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-bailable offences which may not be necessary always with order of cancelling of earlier bail.

31.4. In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it needs to obtain an order to arrest the accused from the court which had granted the bail."

14. Referring the aforesaid, he submitted that the law has already been settled by the Apex Court that when there is reason to alter the charge to the serious offenses and subsequently the charges are added, such accused has to move bail application in respect of newly added offenses, in the court concerned.

15. He next has placed reliance on the judgment rendered in the case of **Sumit Versus State of U.P. and Anr** reported in **2026 SCC OnLine SC 186** and has referred paragraphs 31 & 34, which are read as under:-

"31. The aforesaid question was looked into and answered by this Court in Pradeep Ram vs. State of Jharkhand and another reported in 2019 Crl. L.J. 3801, wherein this Court after discussing various decisions, more particularly, the decision in Prahlad Singh Bhati vs. NCT Delhi and another reported in (2001) 4 SCC 280 held that with the addition of a new cognizable and nonbailable offence more particularly of a serious nature, the accused becomes disentitled to the liberty earlier granted to him in relation to the offences for which the FIR came to be registered.

34. In such circumstances referred to above, we arrive at following conclusions in respect of a circumstance whereafter the grant of bail to an accused, further cognizable and nonbailable offences are added: -

(i) The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In the event of refusal of bail, the accused can certainly be arrested. (ii) The investigating agency can seek order from the court under Sections 437(5) or 439(2) of Cr.P.C. respectively for arrest of the accused and his custody.

(iii) The Court, in exercise of its power under Sections 437(5) or 439(2) of Cr.P.C. respectively, can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of its power under Section 437(5) as well as Section 439(2) respectively can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier bail. (iv) In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it needs to obtain an order to arrest the accused from the Court which had granted the bail."

16. Placing reliance on the above-said judgment, he submitted that it has been held that in case of adding or altering the charges, of non-bailable and cognizable offenses or more serious offences, the accused has to move a bail application, therefore, the learned trial court has rightly considered the statement of PW1 and on the basis of said statement, the offenses under sections 376DA of IPC and 5 (g)/6 POCSO Act have been proposed to be altered, therefore, the applicants are not entitled for any relief.

17. Upon considering the submissions of counsel for the parties and after perusal of the material placed on record, it transpires that when the alleged prosecutrix has lodged the first information report, on 02.08.2020, there was no allegation regarding committal of rape upon her, whereas the story subsequently has been twisted. Fact remains that the father of the prosecutrix had also instituted an application under section 156(3) of CrPC, though the complainant never went to the court to get statement recorded, under Section 200 of CrPC, which resulted into the dismissal of the application for want of prosecution.

18. After the statement of the prosecutrix was recorded before the trial court, as PW1 and the allegation of the committal of rape was levelled, the public prosecutor moved an application, under Section 216 of CrPC, whereas the trial court while rejecting the application, has rightly proceeded suo moto, to consider the alteration of the charges.

19. The question herein is, that whether at the stage of proposed alteration/conversion of the charges under section 216 of CrPC, the accused has to apply for bail, while surrendering him before the trial court? When this court examines the aforesaid questions in facts and law, it is apparent that, undoubtedly, the trial court has the power to alter or convert the charge thereby invoking the powers under Section 216 of CrPC. The trial court, while passing the order impugned herein, has directed the applicant/accused persons so as to surrender them and get them bailed out.

20. From perusal of the impugned order, it is apparent that the proceeding of alteration/addition of the charges is underway. The charges has still not been altered, though, those are proposed of, under section 376DA of IPC and 5 (g)/6 POCSO Act. The order clearly discloses that the trial court has still not reached to the final conclusion that the charges would be altered and added under the aforementioned sections/offenses. Meaning thereby that there is no alteration of charges at this stage and the applicants are still the proposed accused persons, for the charges under sections 376DA of IPC and 5 (g)/6 POCSO Act.

21. The law relied upon by the counsel for the State in Hamida (supra) and Bijendra (supra) are very clear in its terms. The ratio is apparent that only those accused persons will apply for bail afresh, once the offenses/sections are converted into higher charges/offenses. It is not the ratio that prior addition or alteration of the charges, such accused are required to get him bailed out, therefore, the ratio of abovenoted judgments would not apply so far as the factual matrix of the present case is concerned.

22. Secondly, the law referred by counsel for opposite party no. 2, of Pradeep Ram (supra) and Sumit(supra), has also laid down that for the newly added offenses, such accused persons can be arrested and has to apply for bail. But the situation is all together different herein, as the procedure undertaken, invoking the provision of section 216 of CrPC, is not matured and is underway, therefore, the law cited by the counsel for the opposite party no. 2 also do not cover the field of the present case.

23. It is long settled law that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. In fact, those precedents should be followed if it marks the path of justice and, therefore, the Judgment of court should not be read mechanically. The ratio of any decision can be interpreted in the background of facts of the case. Hon'ble Apex Court has settled this issue in the case of **Government of Karnataka Vs. Gowramma** reported in **AIR 2008 SC 863.** Thus it is apt to say that the aforenoted laws, discussed above, are not applicable in the facts and circumstances of the present matter.

24. So long as the factual matrix of the present case is concerned, the trial court, vide the impugned order, has directed the applicants to appear and obtain bail though the charge under Section 376 (d) A of IPC and 5 (g) 6 of POCSO Act has still not been framed. The Court has

afforded the opportunity of hearing to the applicant on the proposed alteration of the charges, which infact mean that the charges may or may not be altered. Therefore, at this stage, there seems to be no justiciability or lawfulness for direction to the applicants to surrender and get them bailed out.

25. In the aforesaid background, this Court finds that the order impugned is erroneous and against the settled proposition of law, thus, the same is unsustainable.

26. Consequently, the order dated 23-02-2026 is hereby set aside, to the extent of the direction made to the applicants/accused persons, to get them bailed out.

27. It is clarified that the rest of the order shall remain intact and the trial court is directed to proceed in accordance with law.

28. With the aforesaid observations, the present application is hereby **partly allowed**, at the admission stage, as the question of law is hereby decided.

(2026) 5 ILRA 1711
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 27.05.2026

BEFORE

THE HON'BLE BRIJ RAJ SINGH, J.

Application U/S 482 No. 2994 of 2026

Anita Pandey **...Applicant**
Versus
State of U.P. & Anr. **...Opposite Parties**

ISSUE FOR CONSIDERATION

Whether the Chief Judicial Magistrate was justified in rejecting the applicant's plea for separation of Complaint Case from co-accused proceedings, despite earlier order allowing for joint trial, in light of Supreme Court's directions for expeditious conclusion of Sessions Trial?

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 - Sections 156(3), 169, 200, 202, 204(4), 223(d), 323, 82 - Indian Penal Code, 1860 - Sections 323, 325, 384, 504, 506, 307, 201, 419, 420, 471: - Application u/s 482 CrPC – against order of Chief Judicial Magistrate, in Complaint Case – seeking relief of separation of trial – rejected by CJM – FIR – crime under Sections 323, 384, 504, 506 IPC – investigation - final report filed u/s 169 CrPC – Statement recorded u/s 200 & 202 CrPC – recovery - injuries alleged – chargesheet: not filed - complaint case registered – summoning order issued – trial initiated - NBWs issued – connected case, status noted - Sessions Trial arising out of Case Crime under Sections 307, 504, 201, 419, 420, 471 IPC, monitored by Hon'ble Supreme Court – applicant pleaded that CJM impermissibly reviewed earlier order. allowing joint trial, reliance on *Nathi Lal* and *Sudhir* – Court finds that, co-accused absconding, applicant failed to pursue NBWs/82 CrPC compliance, and Supreme Court has directed expeditious conclusion of Sessions Trial – separation at this stage would interfere with Supreme Court's monitoring – held, no

illegality or infirmity in impugned order – hence, application devoid of merit – Accordingly, Application rejected – applicant to take steps for compliance of NBWs/82 CrPC, trial court to proceed in accordance with law.

(Para – 11, 15, 16, 17)

Application Rejected. (E-11)

CASE LAW CITED

Nathi Lal v. State of U.P., 1990 (Supp) SCC 145 (Para-2)
Sudhir v. State of M.P., (2001) 2 SCC 688 (Para-11)

LIST OF ACTS

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

LIST OF KEYWORDS

Application under section 482 – Cross-case, complaint case, separation of trial, review of order, absconding accused, Supreme Court monitoring, NBW, Section 82 CrPC, expeditious trial.

CASE ARISING FROM

Application under Section 482 CrPC No.2994 of 2026 (*Anita Pandey v. State of U.P. & another*), challenging order dated 11.12.2025 in Complaint Case No.3441 of 2015, arising out of Case Crime No.489 of 2013, P.S. Gomti Nagar, Lucknow.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Mr. Ayodhya Prasad Mishra, A.P. Mishra, Jaylaxmi Upadhyay, Rituraj Mishra, Shesh Ram Verma.
Counsel for Respondent(s): - Mr. A.G.A., Piyush Kumar Singh, Sushil Kumar Singh, Ayush Singh.

(Delivered by Hon'ble Brij Raj Singh, J.)

1. The present application has been filed seeking setting aside the order dated 11.12.2025 passed by the Chief Judicial Magistrate, Lucknow in Complaint Case No.3441 of 2015, arising out of Case Crime No.489 of 2013, Anita Vs. Satyendra Nath Shukla and others, under Sections 323, 384, 504 and 506 IPC, Police Station Gomti Nagar, District Lucknow.

2. It is the case of the applicant that on the basis of false and fabricated story an F.I.R. was lodged by opposite party no.2 in Case Crime No.416 of 2013, under Sections 307 and 504 IPC against the husband of the applicant showing the incident occurred at the house of the applicant i.e. 5/585, Vikas Khand, Gomti Nagar, Lucknow on 02.09.2013 and after investigation, charge-sheet has been filed under Sections 307, 504, 201, 419, 420 and 471 IPC against him on 17.09.2020 and the trial is continuing in Session Trial No.2707 of 2025 in the court of Additional Sessions Judge/Special Judge A.T.S., Lucknow. In fact, the applicant herself approached the police station concerned for registration of the FIR in respect of the incident occurred on 02.09.2013 at her house by opposite party no.2 with his associates, who had beaten brutally the applicant and her husband as well as caused injuries to the applicant and her mother-in-law, but the police did not lodge the FIR. Thereafter, the applicant having no other alternate, approached the court of Chief Judicial Magistrate, Lucknow by filing an application under Section 156(3) Cr.P.C, on which an order was passed for registration of the FIR.

3. In pursuance of the aforesaid order, an FIR was registered at Case Crime No.489 of 2013, under Sections 323, 383 and 506 IPC at Police Station Gomti Nagar, Lucknow against

opposite party no.2 and other accused persons making allegations that on 02.09.2013 at 12 Noon, opposite party no.2 along with one Anuj Bajpai and some unknown persons reached at her house situated at 5/585, Vikas Khand, Gomti Nagar, Lucknow and assaulted the applicant, her husband and her mother-in-law and caused injuries to them. It is alleged that after investigation, the Investigating Officer in collusion with opposite party no.2 and under his influence, filed final report under Section 169 Cr.P.C on 05.11.2014 before the Chief Judicial Magistrate, Lucknow, who was pleased to issue notice to the applicant and registered the as Misc. Case No.1139 of 2014.

4. Feeling aggrieved with the aforesaid, the applicant filed a protest application, on which the Chief Judicial Magistrate, Lucknow passed an order rejecting the final report and directing for registration of a complaint case, pursuant to which the same was registered as Complaint Case No.3441 of 2015 and the matter is pending for its adjudication in the court. After recording the statement of the applicant under Section 200 Cr.P.C. and the witnesses under Section 202 Cr.P.C, the trial court issued summons against opposite party no.2 and other accused persons vide order dated 06.05.2015. It is said that since opposite party no.2 and other co accused person were not appearing in the court after service of summons to face the trial proceeding, the Chief Judicial Magistrate, Lucknow issued non-bailable warrants against them vide order dated 15.09.2016.

5. It is further said that applicant filed an application under Section 223(d) Cr.P.C before the Chief Judicial Magistrate, Lucknow for transfer of the case to the court of Additional Sessions Judge/Special Judge A.T.S. Lucknow and be connected with Session Trial No.2707 of 2025, arising out of Case Crime No.416 of 2013 being a cross-case as the incident is the same, and the Chief Judicial Magistrate, Lucknow after considering the fact that both the cases viz. Case Crime No.416 of 2013 and Complaint Case No.3441 of 2015 relate with the same incident, allowed the application vide order dated 17.10.2025 and directed that both cases be tried together being a cross-case and the case was committed to the Court of Sessions in view of the provisions of Section 323 Cr.P.C. Thereafter, the case was transferred to the Court of Sessions, but the Sessions Judge returned the case to the court of Chief Judicial Magistrate on the ground that one of the co-accused, namely, Anuj Bajpai is still absconding and without ensuring the presence of all accused, the case could not be committed to the Court of Sessions. Thereafter, the applicant filed an application on 04.11.2025 for separation of Complaint Case No.3441 of 2015 from the case of co-accused Anuj Bajpai, but the learned Magistrate without considering the relevant facts and without application of mind, rejected the aforesaid application in a most illegal and arbitrary manner vide order dated 11.12.2025.

6. Sri Ayodhya Prasad Mishra, counsel for the applicant has submitted that the trial court cannot reject the application on the ground that co-accused Anuj Bajpai has not appeared in the case. Once an application for separation of case is filed, the same should have been allowed and the case should have been sent to the Sessions Court. It is submitted that vide order dated 11.12.2025, the Chief Judicial Magistrate, Lucknow has reviewed his earlier order dated 17.10.2025, which is not permissible in law. In support of his contention, counsel for the applicant has placed reliance upon the following judgements of the Hon?ble Supreme Court:-

i. ***Nathi Lal and others Vs. State of U.P. and another,*** 1990 (Supp) SCC 145 (Para-2)

ii. ***Sudhir and others Vs. State of M.P***. (2001) 2 SCC 688 (Para-11)

7. On the other hand, Sri Sushil Kumar Singh, counsel for opposite party no.2 by filing counter affidavit has submitted that applicant filed the present application with the prayer that Complaint Case No.344 of 2015, arising out of Crime No.489 of 2013, under Sections 323, 384, 504 and 506 IPC, Police Station Gomti Nagar, Lucknow pending in the court of Chief Judicial Magistrate, Lucknow be connected with Session Trial No.2707 of 2025, arising out of Crime No.416 of 2013, under Sections 307, 504, 201, 419, 420, 471 IPC, Police Station Gomti Nagar, Lucknow pending in the court of Additional Sessions Judge/Special Judge, ATS, Lucknow on the ground that it is a cross-case to the aforesaid Sessions Trial, wherein it is alleged that mother-in-law of the applicant called opposite party no.2, who is working as Librarian in the College, to her city office of the College, namely, Satyanand Uchch Shiksha Sansthan situated at 5/585, Vikas Khand, Gomti Nagar, Lucknow to get arrears of salary, where the husband of the applicant, namely, Anshuman Pandey made multiple fires on opposite party no.2. Thereafter, opposite party no.2 was rushed to Shyama Prasad Mukherjee Hospital, Hazratganj, Lucknow, from where he was referred to the King George Medical University, Lucknow.

8. Counsel for opposite party no.2 has further submitted that Anshuman Pandey, who is wanted in Crime No.416 of 2013, under Sections 307, 504, 201, 419, 420, 471 IPC, Police Station Gomti Nagar, Lucknow, absconded for seven years from date of the incident and later on he was arrested in the year 2020 at Varanasi. Thereafter, the case was committed to the Court of Sessions and the same was registered as Session Trial No.2707 of 2025, State Vs. Anshuman Pandey, and the trial is progressing in it. It is submitted that Anshuman Pandey was denied bail by the Sessions Court and thereafter the High Court also rejected the short term bail as well as the regular bail of Anshuman Pandey. Thereafter, Anshuman Pandey filed Special Leave Petition No.2005 of 2021 against the bail rejection orders by the High Court, Lucknow. Hon'ble Supreme Court vide order dated 05.05.2021 granted interim bail to Anshuman Pandey for a period of three months from the date of release with a direction that after the period of short term bail, he would surrender before concerned jail authorities.

9. Counsel for opposite party no.2 has further submitted that after release on short term bail, Anshuman Pandey jumped the interim bail and absconded for three and a half years and later on he was arrested by the U.P.S.T.F. from Chandigarh. Thereafter, Anshuman Pandey filed misc. application in Special Leave Petition No.2005 of 2021 before the Hon'ble Supreme Court and the Hon'ble Supreme Court directed him to file an application for bail before the Sessions Court, pursuant to which Anshuman Pandey filed the bail application before the Sessions Court Lucknow and the same was rejected by it. Thereafter, Anshuman Pandey filed Bail Application No.12858 of 2024 before this Court, which was allowed vide order dated 03.01.2025.

10. Counsel for opposite party no.2 has further submitted opposite party no.2, being the complainant/injured, filed Special Leave to Appeal (Crl) No.6991 of 2025 before the Hon?ble Supreme Court against the order dated 03.01.2025 granting bail to Anshuman Pandey by the High Court, Lucknow and the Hon'ble Supreme Court vide order dated 05.05.2025 directed the Commissioner of Police, Lucknow to arrest Anshuman Pandey and produce him before it. In pursuance of the aforesaid direction, Anshuman Pandey was produced before Hon'ble Supreme Court in custody on 09.05.2025. On 21.05.2025, Hon'ble

Supreme Court passed an order fixing the case for 24.07.2025 and also directed the police to produce the list of witnesses before the Sessions Court and the Session Court was directed to complete the evidence of vulnerable and vital witnesses listing the case at least twice in a month. Thereafter, Hon'ble Supreme Court disposed of Special Leave to Appeal (Crl) No.6991 of 2025 vide order dated 26.02.2026 making the interim bail dated 04.08.2025 to be absolute till conclusion of the trial with further direction to the Sessions Court, ATS. Lucknow to make an endeavour to conclude the trial within six months. It is submitted that the trial is at the stage of recording evidence.

11. Learned counsel for opposite party no.2 has further submitted that husband of the applicant, namely, Anshuman Pandey had evaded the trial court proceedings for many years and the Hon?ble Supreme Court has passed an order on 26.02.2026 directing the trial court to conclude the trial within six months. He has further submitted that as many as nine witnesses have been examined by the trial court in Session Trial No.2707 of 2025 and the trial is at the concluding stage and only less than three months left as per the timeline given by the Hon?ble Supreme Court. It is further submitted that the impugned order dated 11.12.2025 clearly indicates that applicant had not taken steps in pursuance of the orders passed by the Chief Judicial Magistrate, Lucknow for issuing non-bailable warrant and to initiate proceedings under Section 82 Cr.P.C. against co-accused Anuj Bajpai, therefore, the said orders could not have ben executed. The aforesaid order further indicates that applicant had taken steps only on 01.11.2025, pursuant to which the court issued process and the compliance report is awaited. Unless co-accused Anuj Bajpai appears before the trial court, the case cannot be tried together because it is a complaint case. He has also submitted that in view of Section 204(4) Cr.P.C. the complainant has to take steps and if she has not taken steps, then it is default on her part and the trial court is waiting for the compliance report. Once the compliance report comes, fresh order can be passed, but at this juncture, this Court cannot interfere in any manner. Further, Hon?ble Supreme Court is minutely observing the day-to-day progress of the trial in Session Trial No.2707 of 2025, therefore, any direction issued by this Court in this regard amounts to interference in the direction issued by the Hon?ble Supreme Court on 26.02.2026.

12. Sri Piyush Kumar Singh, learned AGA has submitted that after appearance of co-accused Anuj Bajpai, applicant may move an application before the Sessions Court and it can summon the complaint case and thereafter both the cases to be tried together.

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

14. On 26.02.2026, Hon?ble Supreme Court while disposing of Special Leave to Appeal (Crl) No.6991 of 2025 filed by opposite party no.2 against the husband of applicant and others regarding progress of Session Trial No.2707 of 2025, arising out of Case Crime No.416 of 2013, passed the following order:-

"1. We are informed by the learned State counsel as well as the learned counsel for the petitioner that the trial is ongoing and a substantial part of the prosecution evidence has been presented. Further, there is no incident of misuse of concession of bail by respondent no.1.

2. Mr. Manan Kumar Mishra, learned senior counsel representing respondent no.1 assures that he will fully cooperate with the ongoing trial and shall abide by the conditions imposed at the time interim bail was granted. Therefore, as of now, we see no reason The interim bail granted to to keep these proceedings pending. respondent No.1 is made absolute till the conclusion of trial subject to the conditions

that respondent No.1 and his counsel shall continue to cooperate with the ongoing trial and shall not violate the conditions imposed while granting interim bail. direct the trial court to make an endeavour to conclude the trial within six months.

3. The Special Leave Petition stands disposed of with pending application(s), if any."

15. The trial in the said case is at the final stage because as many as nine witnesses have been examined and the case is fixed for further evidence and six months timeline stipulated by the Hon?ble Supreme Court is going to expire on 26.08.2026.

16. The record reveals that in Complaint Case No.3441 of 2015 opposite party no.2 and Anuj Bajpai were summoned under Sections 325, 504, 506 and 384 IPC. Opposite party no.2 was bailed out and the case was sent to the Sessions Court vide order dated 17.10.2025, which was returned back with the observation that since co-accused Anuj Bajpai is absconding, the complaint case could not be clubbed and tried together with Session Trial No.2707 of 2025. The record further reveals that non-bailable warrant and the order under Section 82 Cr.P.C. were also passed against co-accused Anuj Bajpai in the case, but the applicant did not take steps. Thereafter, applicant had taken steps for execution of the non-bailable warrant and the order passed under Section 82 Cr.P.C. on 01.11.2025 and the compliance report is still awaited, therefore, the trial court rejected the application for separating the case and again issued non-bailable warrant and order under Section 82 Cr.P.C. on 11.12.2025 and the applicant has been directed to take steps for compliance of the order passed by the Chief Judicial Magistrate.

17. The complaint has been filed by the applicant against two accused i.e. opposite party no.2 and Anuj Bajpai and unless the compliance report is obtained by the Magistrate, he could not have passed the order for separating the case and as soon as compliance report is received, the trial court will proceed with the case. It is the applicant who had not taken steps, therefore, the Magistrate has passed a fresh order for taking steps so that compliance report can be obtained. Further, Hon?ble Supreme Court is minutely observing the day-to-day progress of the trial in Session Trial No.2707 of 2025, therefore, any direction issued by this Court at this stage amounts to interference in the direction issued by the Hon?ble Supreme Court on 26.02.2026. Therefore, there is no illegality or infirmity in the order passed by the trial court.

18. Application being devoid of merit, is ***rejected.***

(2026) 5 ILRA 1716
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 21.05.2026

BEFORE

THE HON'BLE BRIJ RAJ SINGH, J.

Application U/S 482 No. 6506 of 2023

Rudra Pratap Singh **...Applicants**
Versus
State of U.P. & Anr. **...Opposite Parties**

ISSUE FOR CONSIDERATION

Whether the recall application filed by the applicant is maintainable in view of Section 362 Cr.P.C., and whether the earlier order allowing the application can be recalled?

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 - Sections 362, 482 - Negotiable Instruments Act, 1881 - Section 138 - Application u/s 482 Cr.P.C. – entire proceedings have been quashed vide order dated 19.03.2026 – A Recall Application filed - seeking recall - FIR/complaint under Section 138 N.I. Act – conviction challenged – applicant pleaded that order was passed ex parte without hearing - cheques were for security and no enforceable debt existed – Distinction between clerical/arithmetical error and substantive review - Court finds that, applicant was served, represented, counter affidavit filed, and judgment delivered after considering evidence – Section 362 Cr.P.C. bars review and alteration except clerical or arithmetical error - recall amounts to substantive review – held, no fraud, no jurisdictional defect, no violation of natural justice – hence recall application devoid of merit – Application rejected - no directions issued.

(Para – 17, 18, 20, 21)

Application Dismissed. (E-11)

CASE LAW CITED

Ganesh Patel v. Umakant Rajoria, 2022 SCC OnLine SC 2050
Asit Kumar Kar v. State of West Bengal, (2009) 2 SCC 703
Vishnu Agarwal v. State of U.P., (2011) 14 SCC 813
Jaspreet Singh Garewal v. State of U.P., 2019 SCC OnLine All 3579
Vikram Bakshi v. R.P. Khosla, 2025 SCC OnLine SC 1783
T.C. Mathai v. District & Sessions Judge, (1999) 3 SCC 614
Samantha Christina Delfina Willis v. State of Karnataka, W.P. No.24602/2021
Muskan v. Ishaan Khan, 2025 SCC OnLine SC 2355
State of Odisha v. Pratima Mohanty, (2022) 16 SCC 703
State of M.P. v. Man Singh, (2019) 10 SCC 161
Smt. Sooraj Devi v. Pyare Lal, (1981) 1 SCC 500
State of Punjab v. Davinder Pal Singh Bhullar, (2011) 14 SCC 770
Narayan Prasad v. State of Bihar, 2017 SCC OnLine SC 1738
Mahesh v. State, 1971 ALJ 668 (FB)

LIST OF ACTS

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

LIST OF KEYWORDS

Application under section 482 – Recall Application - Quashing of proceedings, Section 482 Cr.P.C., Recall Application, Review, Section 362 Cr.P.C., Section 482 Cr.P.C., Procedural Review, Substantive Review, Functus Officio, Audi Alterum Partem, Clerical Error, Arithmetical Error, Fraud, Jurisdiction, Ex-parte Order.

CASE ARISING FROM

Recall Application (I.A. No.6 of 2026) against order dated 19.03.2026 passed in proceedings under Section 482 Cr.P.C.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Dhruv Mathur (Sr. Adv.), Inam Uddin Ahmed, Shubham Tripathi.
Counsel for Respondent(s): - G.A., Suresh Chandra Shukla, Rudra Pratap Singh, Rao Narendra Singh, AGA-I

(Delivered by Hon'ble Brij Raj Singh, J.)

(I.A. No.6 of 2026-Recall Application) (Krishna Lal Sharma vs. State of U.P. and another)

1. This is an application moved by the applicant-Krishna Lal Sharma for recall of the order dated 19.3.2026 passed by this Court.

2. Learned counsel for the applicant has submitted that the entire proceedings have been quashed by the judgment and order dated 19.3.2026 without hearing the applicant. It has been submitted by learned counsel for the applicant that the said case was listed on 19.03.2026 before this Court in Court No.16 at Serial No.3003, but mobile phone of applicant's counsel was out of order, therefore, he could not notice the said case and could not appear and the order was passed on 19.3.2026 without hearing him. It has been further submitted that on 19.03.2026 at 12:10 P.M. Mr. Inam Uddin Ahmed, Advocate i.e. counsel for applicant/opposite party no.2 called applicant's counsel and asked him about case, on which applicant's counsel told him that he is out of town, therefore, he could not appear in the case. It is further submitted that on the previous date i.e. 12.03.2026 when applicant's counsel was ready for argument, counsel for opposite party no.2 sought adjournment and same was granted by this Court, which shows the bonafide of applicant's counsel that he wanted to argue the case.

3. Learned counsel for the applicant further submits that he is pressing the averments made in the counter affidavit and this Court may consider the submissions as made in the counter affidavit and thereafter, by recalling the order dated 19.3.2026, a fresh judgment may be pronounced. It has been further submitted by learned counsel for the applicant that this Court has failed to consider that no offence under Section 138 of N.I. Act is made out against the applicant as the said cheques were forcibly taken for security purpose and not for the repayment of legally enforceable debt as there was no transaction between the applicant and opposite party no.2, which is admitted by Rudra Pratap Singh himself in his statement before the court below in complaint under Section 138 of N.I. Act but the court below overlooked the same and convicted the applicant in totally illegal and arbitrary manner. It has been submitted this Court has failed to consider that both offences are totally different in nature and applications given by applicant in the year 2017, WhatsApp chats, witnesses' statements are on record which show that opposite party no.2-Rudra Pratap Singh has committed the alleged offence but this Court has conducted a mini trial regarding the genuineness and reliability of evidence which is beyond the jurisdiction of this Court under Section 482 Cr.P.C.

4. To buttress his argument, learned counsel for the applicant has placed reliance upon the judgment in the cases of ***Ganesh Patel v. Umakant Rajoria*** 2022 SCC OnLine SC 2050; **Asit Kumar Kar v. State of West Bengal**, (2009) 2 SCC 703; ***Vishnu Agarwal v. State of U.P***., (2011) 14 SCC 813; ***Jaspreet Singh Garewal v. State of U.P.,*** 2019 SCC OnLine All 3579; ***Vikram Bakshi v. R.P. Khosla***, 2025 SCC OnLine SC 1783; ***T.C. Mathai v. District & Sessions Judge, Thiruvananthapuram,*** (1999) 3 SCC 614; ***Samantha Christina Delfina Willis v. State of Karnataka,*** WRIT Petition No.24602 of 2021 (GM-RES), decided on 01.06.2022; **Muskan v. Ishaan Khan (Sataniya),** 2025 SCC OnLine SC 2355; and ***State of Odisha v. Pratima Mohanty***, (2022) 16 SCC 703.

5. Learned counsel for the applicant submits that in the case of ***Ganesh Patel (supra)***, the Supreme Court in paragraphs 8 and 9 observed as under:-

"8. This application for recall of the order was maintainable as it was an application seeking a procedural review, and not a substantive review to which Section 362 of the Criminal Procedure Code, 1973, would be attracted.1 On the aspect of the difference between recall and review and when an order of recall can be passed reference can be made to Budhia Swain v. Gopinath Deb.

9. The High Court was therefore right in recalling the order and listing MCRC No. 6576/2017 for hearing and decision on merits."

6. Learned counsel for the applicant submits that in the case of ***Asit Kumar Kar*** (supra), it is provided by the Supreme Court that there is a distinction between a petition under Article 32, a review petition and a recall application. While in a review petition, the Court considers on merits where there is an error apparent on the face of the record, in a recall petition, the Court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected party. The Supreme Court in Paras 6 and 7 of the said case, observed as under:

"6. There is a distinction between a petition under Article 32, a review petition and a recall petition. While in a review petition the Court considers on merits where there is an error apparent on the face of the record, in a recall petition the Court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected party.

7. We are treating this petition under Article 32 as a recall petition because the order passed in the decision in All Bengal Excise Licensees' Assn. v. Raghabendra Singh [(2007) 11 SCC 374] cancelling certain licences was passed without giving an opportunity of hearing to the persons who had been granted licences. In these circumstances, we recall the directions in para 40 of the aforesaid judgment. However, if anybody has a grievance against the grant of licences or in the policy of the State Government, he will be at liberty to challenge it in appropriate proceedings before the appropriate court. The writ petitions are disposed of with these directions."

7. The Supreme Court in Para 6 of the judgment in ***Vishnu Agarwal*** (supra) observed:

"6. In our opinion, Section 362 cannot be considered in a rigid and overtechnical manner to defeat the ends of justice. As Brahaspati has observed:

"Kevalam shastram ashritya na kartavyo vinirnayah yuktiheeney vichare tu dharmahaani prajayate"

which means:

"The court should not give its decision based only on the letter of the law.

For if the decision is wholly unreasonable, injustice will follow."

8. Learned counsel for the applicant submits that in the case of **Jaspreet Singh Garewal** (supra), the opposite party no.2 was not represented by any counsel nor notices were issued to opposite party No.2 before finally deciding the application. The Supreme Court in Para 69 observed as under:

"69. I have perused the judgements relied upon by counsel for parties. It is an undisputed fact that present criminal misc. application was filed on 13.12.2015 in Registry of this Court. The application came up for admission on 15.12.2016 and this Court allowed the application on same day i.e. 15.12.2016. The opposite party No. 2 was not represented by any counsel nor notices were issued to opposite party No. 2 before finally deciding the application. As such, order dated 15.12.2016 is ex-parte against opposite party No. 2. Rule of audi alterem partem requires that opportunity of hearing should be afforded before an order is passed on judicial side. The aforesaid view has also been reiterated by Apex Court in the case of Makkapati Nagaswara Sastri (Supra). The order dated 2.12.2016 impugned in the application was in favour of opposite party No. 2 and therefore, the said order could not have been set aside without hearing opposite party No. 2. Consequently, prayer for recall made by opposite party No. 2 for recall of order dated 15.12.2016 on aforesaid grounds is perfectly just and legal. The Apex Court in case of Vishnu Agarwal (Supra) and judgement of learned Single Judge in Jawahar Lal (Supra) have reiterated that there is difference between recall and review. By seeking recall of order dated 15.12.2016, opposite party No. 2 is not seeking review of order dated 15.12.2016 and therefore bar contained in section 362 Cr.P.C. will not come in way. Consequently, I am of the considered opinion that order dated 15.12.2016, is liable to be recalled at the behest of opposite party No. 2, who admittedly was not afforded any notice or opportunity of hearing before order dated 15.12.2016 was passed."

9. Learned counsel for the applicant has further relied upon the judgment in ***Vikram Baksh***i (supra), and has submitted that in the said case the Supreme Court has considered that it is inherent or implied in a court to set aside a palpably erroneous order passed under misapprehension by it, however, a substantive review is when error sought to be corrected is one of law and is apparent on the face of record. In Paras 31 to 34, the Supreme Court observed:-

"31. This Court, however, in exceptional cases, has carved out limited scope for exercise of review power by criminal courts. In Grindlays Bank Ltd. (supra), it was observed that review can be distinguished between ?procedural review? and ?substantive review?. A ?procedural review? is inherent or implied in a court to set aside a palpably erroneous order passed under misapprehension by it, however, a ?substantive review? is when error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense, this Court, held that no review lies on merits unless specifically provided under a statute.

32. This distinction has been further clarified in Budhia Swain v. Gopinath Deb6, wherein this Court has laid down certain grounds on which a criminal court can review or recall its judgment or order i.e. when the proceedings before it itself suffers from an inherent lack of jurisdiction or, a fraud is played upon court to obtain the order or, a mistake of court causing prejudice to party or the order was in ignorance of non-serving of necessary party or party had died and estate was not represented. It was further clarified that these exceptions were subjected to

the limitation that such grounds cannot be raised to recall or review if they were available during the original action and was not availed.

33. In Ganesh Patel (supra) this Court held that application for recall seeking ?procedural review? and not ?substantive review? to which Section 362 of CrPC be attracted is permissible. This Court upheld the order of the High Court wherein it recalled the earlier order passed in the absence of the Respondent and based on false information.

34. A careful consideration of the statutory provisions and the aforesaid decisions of this Court clarify the now-well-settled position of jurisprudence of Section 362 of CrPC which when summarize would be that the criminal courts, as envisaged under the CrPC, are barred from altering or review their own judgments except for the exceptions which are explicitly provided by the statute, namely, correction of a clerical or an arithmetical error that might have been committed or the said power is provided under any other law for the time being in force. As the courts become functus officio the very moment a judgment or an order is signed, the bar of Section 362 CrPC becomes applicable, this, despite the powers provided under Section 482 CrPC which, this veil cannot allow the courts to step beyond or circumvent an explicit bar. It also stands clarified that it is only in situations wherein an application for recall of an order or judgment seeking a ?procedural review? that the bar would not apply and not a substantive review? where the bar as contained in Section ?362 CrPC is attracted. Numerous decisions of this Court have also elaborated that the bar under said provision is to be applied stricto sensu."

10. Learned counsel for the applicant has submitted that in ***Muskan*** (supra), the Supreme Court in Para 22 observed:-

" 22. On the aspect of the powers of the Courts under Section 482 of the Cr. P.C., it is settled that at the stage of quashing, the Court is not required to conduct a mini trial. Thus, the jurisdiction under Section 482 of the Cr. P.C. with respect to quashing is somewhat limited as the Court has to only consider whether any sufficient material is available to proceed against the accused or not. If sufficient material is available, the power under Section 482 should not be exercised."

11. Learned counsel for the applicant has further relied upon the judgment in the case of *Pratima Mohanty* (supra), and has submitted that in the said case, the Supreme Court has held that at the stage of discharge and/or considering the application under Section 482 Cr.P.C. the courts are not required to go into the merits of the allegations. In Para-8.2, it has been held as under:

" 8.2. It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per the settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section 482CrPC when after a thorough investigation the charge-sheet has been filed. At the stage of discharge and/or considering the application under Section 482CrPC the courts are not required to go into the merits of the allegations and/or

evidence in detail as if conducting the mini-trial. As held by this Court the powers under Section 482CrPC are very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court."

12. Learned counsel for the applicant has further relied upon paragraph-17 of the judgment in ***T.C. Mathai*** (supra), wherein the Supreme Court observed:-

"17. The aforesaid observations, though stated sixty years ago, would represent the correct legal position even now. Be that as it may, an agent cannot become a ?pleader? for the party in criminal proceedings, unless the party secures permission from the court to appoint him to act in such proceedings. The respondent-couple have not even moved for such a permission and hence no occasion has arisen so far to consider that aspect."

13. Learned counsel for the applicant has also relied upon paragraph-13 of the judgment in ***Samantha Christina Delfina Willis (***supra), wherein the Court has observed that power of attorney holder of an accused cannot maintain a petition be it under Article 226 or 227 of the Constitution of India read with Section 482 of the Cr.P.C. In Para-13, the Court observed:-

"13. On a coalesce of the judgments so rendered by the Constitutional Courts, what can be unmistakably gathered is that the power of attorney holder of an accused cannot maintain a petition be it under Article 226 or 227 of the Constitution of India read with Section 482 of the Cr.P.C. or Criminal Petition under Section 482 Cr.P.C. Therefore, I hold that the present petition filed by the power of attorney holder of the accused, without seeking any permission at the hands of this Court, and without even narrating in the petition that he is personally aware of the facts of the case, the writ petition filed under Articles 226 and 227 of the Constitution of India read with Section 482 of the Cr.P.C. is per se not maintainable, as the accused cannot be represented by a power of attorney holder and thus, maintain the subject petition."

14. On the other hand, Sri Dhruv Mathur, learned Senior Advocate, assisted by Sri Shubham Tripathi, appearing for opposite party no.2 herein, has submitted that in this case, the applicant herein had appeared through his counsel and counter affidavit dated 11.11.2025 was also filed on his behalf and he was adequately represented before this Court and also participated in the proceedings of 482 Cr.P.C. It has been submitted that the Court has passed the judgment on 19.3.2026 after going through the material available on record and accordingly found that the complaint instituted is the counterblast to the case instituted by the applicant under Section 138 of N.I. Act against opposite party no.2 and the case was decided on 19.3.2026 in revised call, but learned counsel for the applicant (opposite party no.2 in the application) was not present. It has been submitted by Sri Mathur that a bare perusal of the recall application dated 13.4.2026 would show that by means of the same, learned counsel for the applicant is trying to bring in certain new facts pertaining to the present case and as such, is trying to seek a substantive recall/review of the judgment and order dated 19.3.2026, and in view of Section 362 Cr.P.C., the Court cannot alter or review the judgment after signing it. He has relied upon the judgment of the Supreme Court in the cases of ***State of Madhya Pradesh vs. Man Singh (2019) 10 SCC 161 and Vikram Bakshi and others vs. R.P. Khosla and another, 2025 SCC OnLine SC 1783***. He has further submitted that when a procedural review of a judgment or final order is sought, the bar provided under Section

362 Cr.P.C. would not apply, whereas in the present case, the applicant is trying to seek a substantive review of the judgment and order dated 19.3.2026. He further submits that the Supreme Court has carved out an exception that where a judgment or final order is passed without serving all necessary parties or the order lacks inherent jurisdiction, the same can be recalled, but in the present case, no such contingency is visible.

15. I have heard Sri Suresh Chandra Shukla, learned counsel for the applicant, Sri Dhruv Mathur, learned Senior Advocate, assisted by Sri Shubham Tripathi, learned counsel for opposite party no.2, Sri Rao Narendra Singh, learned AGA-I for the State, and perused the record.

16. There is substantive provision in Cr.P.C. under Section 362, which prohibits that no Court can alter or review its judgment after signing the same, except to correct a clerical or arithmetical error. Section 362 of Cr.P.C. reads as under:

"362. Court not to alter judgment.- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error. "

17. In the case of ***Man Singh*** (supra), it has been held by the Supreme Court that after disposing of a case on merits, the Court becomes functus officio and Section 362 Cr.P.C. expressly bars review and specifically provides that no court after it has signed its judgment shall alter or review the same except to correct a clerical or arithmetical error. It further observed that recall of judgment would amount to alteration or review of judgment which is not permissible under Section 362 Cr.P.C. The Supreme Court in Paras 7 and 8 observed as under:

"7. It is well settled law that the High Court has no jurisdiction to review its order either under Section 362 or under Section 482 . The inherent power under Section 482 CrPC cannot be used by the High Court to reopen or alter an order disposing of a petition decided on merits. After disposing of a case on merits, the Court becomes functus officio and Section 362 CrPC expressly bars review and specifically provides that no court after it has signed its judgment shall alter or review the same except to correct a clerical or arithmetical error . Recall of judgment would amount to alteration or review of judgment which is not permissible under Section 362 CrPC. It cannot be validated by the High Court invoking its inherent powers.

8. We have, therefore, no doubt in our mind that the High Court had no power to entertain the petition under Section 482 CrPC and alter the sentence imposed by it. We may also add that the manner in which the probation has been granted is not at all legal. The trial court had given reasons for not giving benefit of probation. When the High Court was deciding the revision petition against the order of conviction, it could have, after calling for a report of the Probation Officer in terms of Section 4 of the Act, granted probation. Even in such a case it had to give reasons why it disagreed with the trial court and the first appellate court on the issue of sentence. The High Court, in fact, reduced the sentence to the period already undergone meaning thereby that the conviction was upheld and sentence was imposed. After sentence had been imposed and served and fine paid, there was no question of granting probation."

18. The issue of recall has been considered by the Supreme Court in its latest judgment of ***Vikram Bakshi*** (supra). In the said case, the Supreme Court has held that a ?procedural review? is inherent or implied in a court to set aside a palpably erroneous order passed under misapprehension by it, however, a ?substantive review? is when error sought to be corrected is one of law and is apparent on the face of the record. When there is an apparent error on the face of record, review can lie and if the proceedings suffer from inherent lack of jurisdiction or fraud, then the recall or review can be entertained. In Paras 31, 32, 33, 34 and 34A, the Supreme Court observed:

"31. This Court, however, in exceptional cases, has carved out limited scope for exercise of review power by criminal courts. In Grindlays Bank Ltd. (supra), it was observed that review can be distinguished between "procedural revie" and "substantive review". A "procedural review" is inherent or implied in a court to set aside a palpably erroneous order passed under misapprehension by it, however, a ?substantive review? is when error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense, this Court, held that no review lies on merits unless specifically provided under a statute.

32. This distinction has been further clarified in Budhia Swain v. Gopinath Deb6, wherein this Court has laid down certain grounds on which a criminal court can review or recall its judgment or order i.e. when the proceedings before it itself suffers from an inherent lack of jurisdiction or, a fraud is played upon court to obtain the order or, a mistake of court causing prejudice to party or the order was in ignorance of non-serving of necessary party or party had died and estate was not represented. It was further clarified that these exceptions were subjected to the limitation that such grounds cannot be raised to recall or review if they were available during the original action and was not availed.

33. In Ganesh Patel (supra) this Court held that application for recall seeking "procedural review" and not "substantive review" to which Section 362 of CrPC be attracted is permissible. This Court upheld the order of the High Court wherein it recalled the earlier order passed in the absence of the Respondent and based on false information.

34. A careful consideration of the statutory provisions and the aforesaid decisions of this Court clarify the now-well-settled position of jurisprudence of Section 362 *of CrPC which when summarize would be that the criminal courts, as envisaged under the CrPC, are barred from altering or review their own judgments except for the exceptions which are explicitly provided by the statute, namely, correction of a clerical or an arithmetical error that might have been committed or the said power is provided under any other law for the time being in force. As the courts become functus officio the very moment a judgment or an order is signed, the bar of Section 362 CrPC becomes applicable, this, despite the powers provided under Section 482 CrPC which, this veil cannot allow the courts to step beyond or circumvent an explicit bar. It also stands clarified that it is only in situations wherein an application for recall of an order or judgment seeking a ?procedural review? that the bar would not apply and not a substantive review? where the bar as contained in Section ?362 CrPC is attracted. Numerous decisions of this Court have also elaborated that the bar under said provision is to be applied stricto sensu.*

34A. Having said that, the following exceptional circumstances may be identified, wherein a criminal court is empowered to alter or review its own judgment or a final order under Section 362 CrPC:

a. Such power is expressly conferred upon court by CrPC or any other law for the time being in force or;

b. The court passing such a judgment or order lacked inherent jurisdiction to do so or;

c. A fraud or collusion is being played on court to obtain such judgment or order or;

d. A mistake on the part of court caused prejudice to a party or;

e. Fact relating to non-serving of necessary party or death leading to estate being non-represented, not brought to notice of court while passing such judgment or order.

It needs to be reiterated that all these exceptions are only exercisable for seeking a recall or review of an order or judgment, if a ground that is raised was not available or existent at the time of original proceedings before the Court. Mere fact that the said ground, although available, was not raised or pressed during the concerned proceedings, does not provide for an exemption to the parties to assert it as a ground. Moreover, the said power cannot be invoked as a means to circumvent the finality of the judicial process or mistakes and/or errors in the decision which are attributable to a conscious omission by the parties.

19. This Court, dealing with the similar issue, in the case of ***Javed Ahmad @ Javed and others vs. State of U.P. and another: 2025:AHC-LKO:25257***, in Paras 16, 18 and 20 observed as under:

"16. In the case of Smt. Sooraj Devi vs. Pyare Lal and another, (1981) 1 SCC 500, the Hon'ble Apex Court took note of the expression "clerical or arithmetical error" indicated under Section 362 Cr.P.C. and in regard to the same observed as under:-

"A clerical or arithmetical error is an error occasioned by an accidental slip or omission of the court. It represents that which the court never intended to say. It is an error apparent on the face of the record and does not depend for its discovery on argument or disputation. An arithmetical error is a mistake of calculation, and a clerical error is a mistake in writing or typing. Master Construction Co. (P) Ltd. v. State of Orissa [AIR 1966 SC 1047 : (1966) 3 SCR 99 : (1966) 17 STC 360]."

.....

18. In the case of State of Punjab vs. Davinder Pal Singh Bhullar (2011) 14 SCC 770, Hon'ble Apex Supreme Court observed and held that :-

"III. BAR TO REVIEW/ALTER- JUDGMENT

44. There is no power of review with the Criminal Court after judgment has been rendered. The High Court can alter or review its judgment before it is signed. When an order is passed, it cannot be reviewed. Section 362 Cr.P.C. is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes functus officio and is disentitled to entertain a fresh prayer for any relief unless the former order of final disposal is set aside by a Court of competent jurisdiction in a manner prescribed by law. The Court becomes functus officio the moment the order for disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. There is also no provision for modification of the judgment. (See: Hari Singh Mann v. Harbhajan Singh Bajwa & Ors., AIR 2001 SC 43; and Chhanni v. State of U.P., AIR 2006 SC 3051).

45. Moreover, the prohibition contained in Section 362 Cr.P.C. is absolute; after the judgment is signed, even the High Court in exercise of its inherent power under Section 482 Cr.P.C. has no authority or jurisdiction to alter/review the same. (See: Moti Lal v. State of M.P., (2012) 11 SCC 427: AIR 1994 SC 1544; Hari Singh Mann (2001) 1 SCC 169: 2001 SCC (Cri) 113; and State of Kerala v. M.M. Manikantan Nair, (2001) 4 SCC 752 : AIR 2001 SC 2145).

46. If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 Cr.P.C. would not operate. In such eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault. (Vide: Chitawan & Ors. v. Mahboob Ilahi, 1970 Crl.L.J. 378 (All); Deepak Thanwardas Balwani v. State of Maharashtra & Anr., 1985 Crl.L.J. 23 (Bom); Habu v. State of Rajasthan, AIR 1987 Raj. 83 (F.B.); Swarth Mahto & Anr. v. Dharmdeo Narain Singh, AIR 1972 SC 1300; Makkapati Nagaswara Sastri v. S.S. Satyanarayan, AIR 1981 SC 1156; Asit Kumar Kar v. State of West Bengal & Ors., (2009) 2 SCC 703; and Vishnu Agarwal v. State of U.P. & Anr., AIR 2011 SC 1232).

47. This Court by virtue of Article 137 of the Constitution has been invested with an express power to review any judgment in Criminal Law and while no such power has been conferred on the High Court, inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code itself. (Vide: State Represented by D.S.P., S.B.C.I.D., Chennai v. K.V. Rajendran & Ors., AIR 2009 SC 46).

48. In Smt. Sooraj Devi v. Pyare Lal & Anr., AIR 1981 SC 736, this Court held that the prohibition in Section 362 Cr.P.C. against the Court altering or reviewing its judgment, is subject to what is "otherwise provided by this Code or by any other law for the time being in force". Those words, however, refer to those provisions only where the Court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the Court is not

contemplated by the saving provision contained in Section 362 Cr.P.C. and, therefore, the attempt to invoke that power can be of no avail.

49. Thus, the law on the issue can be summarised to the effect that the criminal justice delivery system does not clothe the court to add or delete any words, except to correct the clerical or arithmetical error as specifically been provided under the statute itself after pronouncement of the judgment as the Judge becomes functus officio. Any mistake or glaring omission is left to be corrected only by the appropriate forum in accordance with law."

.....

20. In the case of Mukesh Updhyay vs. State of U.P. and another, 2019:AHC:42284, this Court at Allahabad observed as under :-

"This issue has been dealt by the Hon'ble Supreme Court in the following judgments :-

The Hon'ble Supreme Court in the matter of Soorja Devi vs. Pyare Lal and Another reported at (1981) 1 SCC 500 has held in paras No.4, 5, 6 and 7 that :-

"4. The sole question before us is whether the High Court was right in refusing to entertain Criminal Miscellaneous Application No. 5127 of 1978 on the ground that it had no power to review its order dated Ist September, 1970. Section 362 of the Code of Criminal Procedure declares :- "Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error". It is apparent that what the appellant seeks by the application is not the correction of a clerical or arithmetical error. What she desires is a declaration that the High Court order dated September 1, 1970 does not affect her rights in the house property and that the direction to restore possession to Pyare Lal is confined to that portion only of the house property respecting which the offence of trespass was committed so that she is not evicted from the portion in her possession. The appellant, in fact, asks for an adjudication that the right to possession alleged by her remains unaffected by the order dated September 1, 1970. Pyare Lal disputes that the order is not binding on her and that she is entitled to the right in the property claimed by her. Having considered the matter, we are not satisfied that the controversy can be brought within the description "clerical or arithmetical error". A clerical or arithmetical error is an error occasioned by an accidental slip or omission of the court. It represents that which the court never intended to say. It is an error apparent on the face of the record and does not depend for its discovery on argument or disputation. An arithmetical error is a mistake of calculation, and a clerical error is a mistake in writing or typing. Master Construction Co. (P) Ltd. v. State of Orissa.

5. The appellant points out that he invoked the inherent power of the High Court saved by Section 482 of the Code and that notwithstanding the prohibition imposed by Section 362 the High Court had power to grant relief. Now it is well settled that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code. Sankatha Singh v. State of U.P3. It is true that the prohibition in Section 362 against the Court altering or reviewing its

judgment is subject to what is "otherwise provided by this Code or by any other law for the time being in force". Those words, however, refer to those provisions only where the Court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the Court is not contemplated by the saving provision contained in Section 362 and, therefore, the attempt to invoke that power can be of no avail.

The Hon'ble Supreme Court in the matter of Narayan Prasad vs. State of Bihar reported at 2017 SCC Online SC 1738 has held that :-

6. In order to decide the controversy at hand, it would be useful to reproduce Sections 362 and 482 of The Code of Criminal Procedure, 1973 [hereinafter 'CrPC' for brevity]

362. Court not to alter judgment.- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

482. Saving of inherent powers of High Court.-Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

7. Plan reading of these Sections indicate that the prohibition under the Section 362 of Cr.P.C. is absolute; after the judgment is signed even the High Court in exercise of its inherent power under Section 482 of CrPC has no authority or jurisdiction to alter/review the same. The inherent power under Section 482 of CrPC was purported to avoid the abuse of the process of the Court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code.

8. If any consideration of the facts by way of review is not permissible under the Code and is expressly barred, it is not for the Court to exercise its inherent power to reconsider the matter."

Co-ordinate Bench of this Court in a judgment dated 30.5.2016 passed in Criminal Misc. Recall Application No.126367 of 2016 in Application u/s 482 No.5938 of 2016 has held that :-

"Full Bench of five Judges in Mahesh Vs. State, 1971 ALJ page 668 held, "the legal position can be summarized by laying down that the High Court is not possessed of general power to review, revise or reconsider the judgment or order duly pronounced in criminal appeal or a criminal revision, though the judgment or order can be so reviewed, revised or reconsidered in exceptional circumstances in exercise of the inherent power under Section 561-A (presently section 482), Cr.P.C, provided that the inherent power is so exercised for one of the three purposes detailed therein".

There is no power of review with the criminal court after the judgment has been rendered. The High Court can alter or review its judgment before it is signed. When an order is

passed, it cannot be reviewed. Section 362 Cr.P.C is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes functus officio and is dis-entitled to entertain a fresh prayer for any relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the order for disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. There is also no provision for modification of the judgment. (Vide Hari singh Mann Vs. Harbhajan Singh Bajwa, 2001 (1) SCC 169).

Moreover the prohibition contained in Section 362 Cr.P.C is absolute; after the judgement is signed, even the High Court in exercise of its inherent power under Section 482 CrP.C has no authority or jurisdiction to alter/review the same (vide Moti Lal Vs. State of M.P. (2012) 11 SCC 427).

If a judgement has been pronounced without jurisdiction or in violation of principle of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 Cr.P.C would not operate. In such an eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault.(vide Chitawan Vs. Mahboob Ilahi, 1970 Cri. LJ 378(All), Asit Kumar Kar Vs. State of West Bengal (2009) 2 SCC 703)".

In view of the abovementioned judgments, the review petition is expressly barred under Section 362 Cr.P.C and applicant has not able to point out that impugned judgment was passed contrary to the rule of natural justice or passed without jurisdiction, therefore, even under power of 482 Cr.P.C., this review application cannot be entertained. Thus, the present review application is rejected being not maintainable."

20. It is also to be mentioned here that there is no allegation that any order has been obtained by playing any fraud or misrepresentation. The merit has been discussed and thereafter the detailed judgment has been passed by considering the entire evidences produced by the parties. It is also not the case that the applicant was not served notice and his counter affidavit has been filed. It is also not the case of the applicant that this Court lacks inherent jurisdiction while passing the final order. After discussing the aforesaid judgments of the Supreme Court as well as of this Court and perusing the record, it is observed that this Court has passed the order after considering the evidences available on record and in view of Section 362 Cr.P.C., final order cannot be recalled.

21. This Court, therefore, cannot review or alter the judgment once the same has been pronounced and signed. There is also no correction of a clerical or an arithmetical error in the case, rather the applicant wants that the judgment should be recalled and the matter should be re-heard, which is impermissible in view of various judgments, as cited above.

22. In view of above, the recall application is devoid of merit. It is accordingly ***rejected.***

(2026) 5 ILRA 1730
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 05.05.2026

BEFORE

THE HON'BLE MS. NAND PRABHA SHUKLA, J.

Application U/S 528 BNSS No. 7980 of 2026

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

ISSUE FOR CONSIDERATION

Whether the non-bailable warrant (NBW) issued against the applicant by the Sessions Court, in Session Trial, arising from Case Crime under Sections 307, 504 IPC, was legally sustainable, and whether the applicant is entitled to relief under Section 528 BNSS for quashing the NBW ?

HEADNOTES

Criminal Law – Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) – Sections 228, 355, 356, 73, 75, 84, 85, 92, 193(3), 210, 227, 251, 263, 269, 335, 346, 485, 486, 491, 492, 528 - Code of Criminal Procedure (Cr.P.C.) – Sections 82, 83, 89, 205, 317, 323, 299, 309, 446, 446A - Indian Penal Code (IPC) – Sections 174A, 307, 504 - U.P. Police Regulations – Rules 215, 216: - Application u/s 528 BNSS – for quashing NBW – FIR – offence under Sections 307, 504 IPC – investigation - charge-sheet – cognizance – applicant released on bail – case committed to Sessions – charges framed – trial – applicant thereafter absconded – NBW issued repeatedly – proclamation u/s 82 Cr.P.C. and attachment u/s 83 Cr.P.C. ordered – applicant pleaded NBW illegal as no bailable warrant or bond forfeiture notice issued – Court finds applicant deliberately absconded, failed to appear despite repeated opportunities – statutory provisions under BNSS and Cr.P.C. permit issuance of NBW, proclamation and attachment – online process portals (NSTEP/CIS) must be used, responsibility fixed on clerks/police for non-compliance, trial in absentia permissible under new Section 356 BNSS, departmental action against negligent presiding officers/public prosecutors, monitoring by DGP, District Judge and JTRI – held - (1) NBW validly issued, applicant not entitled to relief – (2) NBW order kept in abeyance for two months, thereafter trial court free to proceed if applicant fails to cooperate – (3) application is disposed of with directions for strict adherence to BNSS provisions and expeditious trial – however, direction issued to Registrar General to transmit a copy of the order to Judicial Training and Research Institution – further direction issued to the investigating officers, the public prosecutors and the presiding officers that they shall proceed with the criminal proceedings in a systematic manner and within the time frame, as provided under the BNSS for a speeding trial and justice in the interest of both the accused as well as the victim.

(Para – 95 to 105)

Application Disposed of. (E-11)

CASE LAW CITED

No case is referred.

LIST OF ACTS

Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) – Indian Penal Code (IPC) – Code of Criminal Procedure (Cr.P.C.) – U.P. Police Regulations.

LIST OF KEYWORDS

Application u/s 528, Absconding accused, Non-bailable warrant, Proclamation under Section 82, Attachment under Section 83, Bail bond forfeiture, Trial in absentia, BNSS procedure, Section 528 BNSS application, Monitoring cell, prosecution, circulate, Systematic manner, time frame, speedy trial and justice, prescribed by law, unnecessarily delay, answerable, NSTEP, CIS, disposed of with direction.

CASE ARISING FROM

Case Crime No. 204 of 2020, Police Station Sainya, District Agra. Offences: Sections 307, 504 IPC. Sessions Trial No. 109/2024.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Sanjay Singh.
Counsel for Respondent(s): Sri Pankaj Kumar, AGA.

(Delivered by Hon'ble Ms. Nand Prabha Shukla, J.)

1. Heard Sri Sanjay Singh, learned counsel for the applicant and Sri Pankaj Kumar, learned A.G.A. for the State.

2. Learned counsel for the applicant submits that the present application has been filed under **Section 528 BNSS**, for the relief mentioned in the **prayer clause** of the application. The relief sought in the application is delineated below:

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow this application under 528 B.N.S.S. and quash the Non Bailable warrant issued against the applicant vide order dated 18.10.2024 passed by the Additional Session Judge, Court No.10, Agra in Session Trial No. 109/2024, arising out in case crime no.204 of 2020 for the offence under section 307, 504 IPC, Police Station Sainya, District Agra And/or pass such other and further order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case."

3. Learned counsel for the applicant submits that the O.P. No. 2 had lodged an F.I.R. on 24.11.2020 against three accused persons, including the present applicant, under Sections 307 and 504 IPC. He further submits that, after completion of investigation, the I.O. submitted a charge-sheet on 20.03.2021 against three accused persons, including the present applicant, and thereafter, the learned trial court took cognizance vide order dated 03.04.2021. Learned counsel for the applicant further submits that the applicant was released on bail on 08.12.2021 by this Court vide order dated 08.12.2021 passed in Crl. Misc. Bail Application No. 38063 of 2021 (Ravi @ Ravindra vs. State of U.P.), on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned. He further submits that, as the matter was triable by the Sessions Court, the case was committed to the Sessions Court vide order dated 08.01.2024. He further submits that, in this case, charges were framed on 14.02.2024 in the presence of the accused-applicant and the next date was fixed as 16.03.2024. He further submits that the applicant was directed to be present before the trial court, either personally or through his counsel, on 12.08.2024.

4. Learned counsel for the applicant further submits that the applicant, due to personal difficulty, could not appear before the trial court and, in the meantime, the trial court issued a non-

bailable warrant (NBW) against the applicant on 18.10.2024. He further submits that the trial court issued the NBW directly against the applicant without issuing first a bailable warrant against him, which is contrary to law. He further submits that a non bailable warrant was issued on 18.10.2024 against the applicant, and thereafter, a proclamation under Section 82 Cr.P.C. was also issued on 03.11.2025 against him along with the NBW on 03.11.2025, and thereafter, on 24.12.2025, an order of NBW along with orders under Sections 82 and 83 Cr.P.C. was also passed. He further submits that, since the applicant had already been granted bail, the appropriate course available to the court was in terms of Section 89 Cr.P.C., which provides that when a person who is bound by a bail bond to appear before the court and fails to appear, the court may issue a warrant directing that such person be arrested and produced before the court and thereafter in case of absconding, the proceeding of proclamation, cancellation and confiscation of bail bond and sureties to be done.

5. Learned counsel for the applicant further submits that, till date, no notice has been issued for forfeiture of the bail bond as provided under Section 446 Cr.P.C. He further submits that, after forfeiting the bail bond and proceeding against the movable and immovable property in respect of the bail bond, as well as proceeding against the property of the sureties as pledged before the Court, proceedings under Section 83 Cr.P.C. should be initiated in terms of Section 356 of the BNSS.

6. Per contra, A.G.A. Sri Pankaj Kumar submits that the accused applicant after release on bail is not participating in trial proceeding, even charge has been framed in his presence and lingering the trial proceedings. After framing of charge on several dates, applicant moved exemption applications to exempt his personal appearance, some were allowed by the learned trial court, applicant was very well aware with the proceeding and he deliberately absconded, for which process was issued as NBW on 12.08.2024, which was recalled on application of applicant vide order dated 13.09.2024, thereafter, the applicant again played hide and seek with the trial court and fled from the court proceeding, though the date for evidence was fixed in presence of applicant as 16.03.2024, therefore, the impugned order has been passed in accordance with law.

7. Learned A.G.A. further submits that order sheet annexed as Annexure No.4 to the affidavit, itself reveals that after framing of charge, the applicant tried to delay the trial, though rest of the accused persons appeared before the trial court, who may also be facing hardship, due to dilatory tactics of the applicant.

8. This Court after perusing the record finds that the applicant accused was present before the trial court upto 02.08.2024 either personally or he moved his exemption application from appearance in person due to any personal difficulties. On 12.08.2024 the applicant accused neither appeared before the trial court nor moved any exemption application therefore, a Non-bailable warrant issued was against him by the trial court. On 13.09.2024 the warrant was recalled on furnishing personnel bond. The applicant accused appeared before the trial court up to 05.10.2024 and on 18.10.2024, neither he appeared personally before the trial court nor filed any exemption application therefore Non-Bailable warrant was issued against him.

9. The applicant accused was continuously absent since 18.10.2024, consequently, non bailable warrants were issued by the learned trial court from 18.10.2024 upto 28.10.2025 for 29 dates. For the first time on 03.11.2025 an order declaring him a **proclaimed offender** under section

82 Cr.P.C. was issued by the trial court and date of appearance before the court was fixed 14.11.2025, even so the applicant accused did not appear for six dates in compliance with the order of proclamation, thereafter, on 24.12.2025, the order of attachment of property under section 83 of Cr.P.C. was issued by the trial court. For two years, the process of Non-bailable warrant issued under section 89 Cr.P.C. and order of proclamation issued under section 82 of Cr.P.C., even then the accused has not appeared and therefore, order of attachment of property of applicant was issued under section 83 of Cr.P.C. and thereafter he filed the instant application under 528 of BNSS on 17.02.2026 for quashing the order of Non-bailable warrant passed against him by the trial court .

10. There are two sections i.e. Section 228 BNSS *(corresponding Section 205 Cr.P.C.)* and 355 BNSS (corresponding Section 317 Cr.P.C.) which provide that the personal attendance of the accused may be dispensed with during an enquiry or trial and in absence of the accused, the proceedings may be conducted by his Advocate. For ready reference the provisions of Sections 228 and 355 BNSS are delineated below :-

Section 228. Magistrate may dispense with personal attendance of accused. *(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his advocate.*

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided.

Section 355 BNSS. Provision for inquiries and trial being held in absence of accused in certain cases. *(1) At any stage of an inquiry or trial under this Sanhita, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by an advocate, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.*

(2) If the accused in any such case is not represented by an advocate, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.

Explanation. For the purpose of this section, personal attendance of the accused includes attendance through audio-video electronic means.

11. Thus, as per Section 228 and 355 BNSS during an enquiry or trial, the accused is required to appear before the court in person, unless an exemption from personal appearance has been granted by a judicial magistrate or a judge.

12. To ensure the attendance of the accused and the expeditious conclusion of the trial, the court concerned shall adhere to the prescribed statutory procedures without delay and refrain from adjourning proceedings without sufficient cause.

13. There are four stages of criminal proceedings during which an accused may abscond. Upon following the prescribed legal procedure, the criminal proceedings shall be concluded. The stages and the corresponding legal procedures are as follows :-

First- An accused absconds during investigation and police report/charge sheet is submitted against him, declaring him a proclaimed offender.

Second- An accused is not arrested during the investigation; either his arrest is stayed by any court of law, or his arrest is not required and he subsequently absconds after summoning and till the conclusion of the trial.

Third- An accused is on bail during investigation, furnishing bail bond and surety and he absconds subsequently after summoning and till the conclusion of the trial.

Fourth- An accused **absconds after the framing of charge** while he was released on bail/anticipatory bail, on furnishing his bail bond and surety.

Accordingly, the police, public officers, prosecutors and the court should strictly adhere to the following procedures prescribed under the BNSS and other relevant laws to ensure a speedy trial in cases involving an absconding accused at any stage of criminal proceedings.

1. If an accused is absconding from the stage of investigation till conclusion of trial and not on bail, the procedure to be followed by the concerned police officer and court, to complete the investigation, enquiry and trial as per law provided under the provisions mentioned herein below:-

Chapter XIX Rule 215 U.P. Police Regulations - Absconded Offenders. During investigation, an accused of cognizable and non-bailable offence is either absconding or concealing himself from his arrest, the procedure to be followed to complete investigation.

Section 75 BNSS (Corresponding Section 73 Cr.P.C**.). Issuance of NBW in the manner prescribed under Section 356 BNSS also.**

Section 84 BNSS (Corresponding Section 82 Cr.P.C.) **Proclamation for person absconding in the manner prescribed under Section 356 also.**

Section 209 of BNS (corresponding Section 174A of IPC). **Initiate proceedings to prosecute and punish for non-appearance in response to a proclamation under section 84 BNSS as per provision of Section 215(1)(a) BNSS** (corresponding section 195(1)(a) Cr.P.C.).

Section 85 BNSS (Corresponding Section 83 Cr.P.C.) **Attachment of property of an absconding person after thirty days, if fails to appear as per proclamation**

Section 193(3) BNSS (corresponding Section 173(2) Cr.P.C.) **Submit Police Report in court on completion of investigation**

Section 210 BNSS (corresponding Section 190 Cr.P.C.) Cognizance of the offences be taken by the concerned court upon police report, complaint and suo moto.

Section 227 BNSS *(corresponding Section 204 of Cr.P.C.)* ***Issue of process (summons or warrant) against the accused***

Appointment of an advocate/amicus curiae as per Section 356 BNSS

The Court concerned shall appoint amicus curiae to collect the records of the case on behalf of the absconder accused to defend the accused at every stage of enquiry or trial in absence of the accused

Section 230 BNSS (corresponding Section 207 Cr.P.C.). ***Supply copy of police report and other documents to amicus curiae/appointed advocate as per Section 356 BNSS for the absconded accused, copy of police report and other documents****.*

Section 231 BNSS (corresponding Section 208 Cr.P.C.). ***Supply of copies of statements and documents to amicus curiae for the absconded accused in complaint cases triable by Court of Session***

Section 232 BNSS (corresponding Section 209 Cr.P.C.). ***Commitment of case to Court of Session when offence is triable exclusively by it, or***

Section 362 BNSS (corresponding Section 323 Cr.P.C.) ***Procedure when after commencement of inquiry or trial, Magistrate finds case should be committed to the court of session for trial***

*Section 251 BNSS (corresponding Section 228 Cr.P.C.)****. Framing of charge in Session Trial in presence of amicus curiae appointed for the absconded accused***

Section 263 BNSS (corresponding Section 240 Cr.P.C.) ***Framing of charge in trial of warrant cases instituted on a police report in presence of amicus curiae***

*Section 269(1) BNSS (corresponding Section 246(1) Cr.P.C.)****) Procedure where accused is not discharged i.e. framing of charge in trial of warrant cases instituted on complaint or suo moto by the competent court in presence of amicus curiae.***

Section 346 BNSS (corresponding section 309 Cr.P.C) ***In every inquiry or trial, the proceedings shall be continued from day-to-day basis until all the witnesses in attendance have***

been examined and in case of rape or gang rape, the inquiry or trial shall be completed within a period of two months from the date of filing of the charge-sheet.

Section 335 of BNSS (corresponding to section 299 of the Cr.P.C.) ***Record of evidence in absence of accused after a gap of 90 days as prescribed under section 356 of BNSS .***

Section 356 of BNSS. (New Section as no provision in Cr.P.C.) ***Inquiry, trial or judgment in absentia of proclaimed offender.***

A **permanent warrant** shall be issued against the convicted person. Every month, the effort of the police to execute the conviction order or judgement shall be monitored by the trial court until it is executed, as per Section 72(2) BNSS. The matter shall also be monitored by the members of the District Monitoring Cell, in their monthly meetings. Additionally, the court shall obtain a written progress report from the concerned head of the police department of the district or police commissionerate, regarding execution of NBW in respect of the convicted person.

2**. If an accused is on bail during investigation or his arrest has been stayed or his arrest was not required during investigation and is absconding after summoning. The procedure to be followed by the Judicial Officers to conclude trial as provided under the provisions mentioned hereinbelow :-**

Section 193(3) BNSS (corresponding Section 173(2) Cr.P.C.**) Submission of Police Report in court on completion of investigation**

Section 210 BNSS (corresponding Section 190 Cr.P.C.) **Cognizance of the offences be taken by the concerned court upon police report, complaint or suo moto.**

Section 227 BNSS *(corresponding Section 204 of Cr.P.C.)* ***Issue of process (summons or warrant) against the accused.***

Section 92 of BNSS (corresponding Section 89 of Cr.P.C.) ***In case of absconding, arrest the accused on breach of bond, issue NBW against the accused or bail bond for his appearance in the court, twice at the interval of 30 days as per Section 356 BNSS to arrest him on breach of bond.***

Section 84 of BNSS (corresponding Section 82 of Cr.P.C.) ***Proclamation for person absconding in the manner prescribed under Section 356 also***

*Section 209 BNS (corresponding Section 174A IPC)****- Initiate proceedings to prosecute and punish for non-appearance in response to a proclamation under section 84 of Bharatiya Nagarik Suraksha Sanhita, 2023 as per provision of Section 215(1)(a) BNSS (corresponding Section 195(1)(a) Cr.P.C.)***

Section 485 BNSS (corresponding Section 441 Cr.P.C.) ***Bond of accused and sureties.***

Section 486 BNSS (corresponding Section 441-A of Cr.P.C.) ***Declaration by sureties.***

Section 491 BNSS (corresponding Section 446 of Cr.P.C.) ***Procedure when bond has been forfeited.***

*Section 492 BNSS (corresponding Section 446-A of Cr.P.C.)-****Cancellation of bond and bail bond***

Section 85 BNSS (corresponding Section 83 of Cr.P.C.) ***Attachment of property of person absconding.***

<u>Appointment of amicus curiae as provided under Section 356 BNSS</u>

The Court concerned shall appoint amicus curiae to collect records of the case on behalf of the proclaimed offender to defend the absconded accused at every stage of enquiry or trial in absence of the accused.

Section 230 BNSS (corresponding Section 207 Cr.P.C.). ***Supply copy of police report and other documents to amicus curiae/appointed advocate as per Section 356 BNSS for the absconded accused, copy of police report and other documents.***

Section 232 BNSS (corresponding Section 209 Cr.P.C.). ***Commitment of case to Court of Session when offence is triable exclusively by it, or***

Section 362 BNSS (corresponding Section 323 Cr.P.C.) ***Procedure when after commencement of inquiry or trial, Magistrate finds case should be committed to court of session for trial***

Section 251 BNSS (corresponding Section 228 Cr.P.C.). ***Framing of charge in Session Trial in presence of amicus curiae appointed for the absconded accused***

Section 263 BNSS (corresponding Section 240 Cr.P.C.) ***Framing of charge in trial of warrant cases instituted on a police report in presence of amicus curiae***

Section 269(1) BNSS (corresponding Section 246(1) Cr.P.C.) ***Procedure where accused is not discharged i.e. framing of charge in trial of warrant cases instituted on complaint or suo moto by the competent court in presence of amicus curiae.***

Section 346 BNSS (corresponding section 309 Cr.P.C) ***In every inquiry or trial the proceedings shall be continued from day to day basis until all the witnesses in attendance have been examined and in case of rape or gang rape, the inquiry or trial shall be completed within a period of two months from the date of filing of the charge sheet.***

Section 335 of BNSS (corresponding to section 299 of the Cr.P.C.) ***Record of evidence in absence of accused after a gap of 90 days from the date of framing of charge as prescribed under section 356 of BNSS.***

Section 356 of BNSS. (New Section as no provision in Cr.P.C.) ***Inquiry, trial or judgment in absentia of proclaimed offender.***

A **permanent warrant** shall be issued against the convicted person. Every month, the effort of the police to execute the conviction order or judgement shall be monitored by the trial court until it is executed, as per Section 72(2) BNSS. The matter shall also be monitored by the members of the District Monitoring Cell, in their monthly meetings. Additionally, the court shall obtain a written progress report from the concerned head of the police department of the district or police commissionerate, regarding execution of NBW in respect of the convicted person.

3. An accused is on bail and absconds at the stage of framing of charge. The procedure to be followed to complete trial as provided under sections:-

Section 92 of BNSS (corresponding Section 89 of Cr.P.C.) ***Arrest on breach of bond or bail bond for appearance***

Section 84 of BNSS (corresponding Section 82 of Cr.P.C.) Proclamation for person absconding

Section 209 BNS (corresponding Section 174A IPC) ***- Initiate proceedings to prosecute and punish for non-appearance in response to a proclamation under section 84 of Bharatiya Nagarik Suraksha Sanhita, 2023 as per provision of Section 215(1)(a) BNSS (corresponding Section 195(1)(a) Cr.P.C.)***

Section 485 BNSS (corresponding Section 441 Cr.P.C.) ***Bond of accused and sureties.***

Section 486 BNSS (corresponding Section 441-A of Cr.P.C.) ***Declaration by sureties.***

Section 491 BNSS (corresponding Section 446 of Cr.P.C.) ***Procedure when bond has been forfeited.***

Section 492 BNSS (corresponding Section 446-A of Cr.P.C.)- ***Cancellation of bond and bail bond***

Section 85 BNSS (corresponding Section 83 of Cr.P.C.) ***Attachment of property of person absconding.***

Appointment of amicus curiae as prescribed under section 356 of BNSS

The Court concerned shall appoint **amicus curiae/advocate** to collect the record of the case on behalf of the proclaimed offender to defend the absconded accused in his absence at every stage of the court proceedings.

Section 346 BNSS (corresponding section 309 Cr.P.C) ***In every inquiry or trial the proceedings shall be continued from day to day basis until all the witnesses in attendance have been examined and in case of rape or gang rape, the inquiry or trial shall be completed within a period of two months from the date of filing of the charge-sheet.***

Section 335 of BNSS (corresponding to section 299 of the Cr.P.C.) ***Record of evidence in absence of accused.***

Section 356 of BNSS. (New Section as no provision in Cr.P.C.) ***Inquiry, trial or judgment in absentia of proclaimed offender.***

A permanent warrant shall be issued against the convicted person. Every month, the effort of the police to execute the conviction order or judgement shall be monitored by the trial court until it is executed, as per Section 72(2) BNSS. The matter shall also be monitored by the members of the District Monitoring Cell, in their monthly meetings. Additionally, the court shall obtain a written progress report from the concerned head of the police department of the district or police commissionerate, regarding execution of NBW in respect of the convicted person.

14. The procedure, for the execution of summons, warrant of arrest, proclamation and attachments to compel the appearance of an accused shall be followed by the Court and the police as provided in Chapter VI (Sections 63 to 93) of the Bharatiya Nagarik Suraksha Sanhita, 2023.

15. If the service of a summons on an individual (accused) shall be performed in the manner provided under Sections 64, 66, 67, 68, 69 and 70 of BNSS i.e. the summons shall be served by a police officer on the accused personally,if practicable;otherwise,it may be served by leaving one of the duplicates for him with an adult member of his family residing with him.

16. Regarding an absconding accused, the procedures for completing the investigation, inquiry and trial, even in the absence of the accused, has been mentioned in the relevant paragraphs of this judgement, as provided under the Bharatiya Nagarik Suraksha Sanhita, 2023 etc.

17. If an accused person absconds or conceals himself from arrest during an investigation involving a cognizable and non-bailable offence, the investigation shall be completed in accordance with Rule 215 and 216 of Chapter XIX of the U.P. Police Regulations. The investigating Officer shall apply to the concerned court for a warrant of arrest, a proclamation and an order of attachment. Following this, the officer shall complete the investigation and submit the police report to the court. Rules 215 and 216 of the U.P. Police Regulation are delineated below for ready reference :-

*"**Rule 215 of U.P. Police Regulations-** Whenever an officer-in- charge of a police station, or an officer making an investigation under Chapter XII of the Code of Criminal*

Procedure, 1973 (2 of 1974) is satisfied that a person whom he is empowered to arrest under Section 41 (1) of the Code has ***absconded or is concealing himself so that he cannot be arrested****, he must apply to the Court having jurisdiction, successively, for a* ***warrant of arrest, a proclamation*** *under Section 82 of the Code of Criminal Procedure, 1973 (2 of 1974) and* ***an order of attachment*** *under Section 83/84. All these applications should be made as early as may be desirable in the particular case; they need not be delayed for the conclusion of an investigation; and a warrant of arrest, a proclamation and an order of attachment may all legally be issued one after the other in their proper order on the same day. The officer who asks a Court to issue a proclamation must be prepared to produce legal evidence to prove that the person whose arrest desired has absconded, and must not accept the mere statement or report of an officer who has no personal knowledge of the absconding to satisfy the Court. When an order of attachment is issued he must satisfy himself that it is efficiently executed.*

Rule 216 of U.P. Police Regulations*- Any person for whose appearance a proclamation has been issued under Section 82 of the Code of Criminal Procedure, 1973 (2 of 1974) is an* ***absconded offender*** *within the meaning of this Chapter."*

18. If a court concerned is satisfied that, after proved service of summons upon an accused, the accused has not appeared before the court**, Section 73** of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to section 71 Cr.P.C.) empowers the court to direct that security (bail) be taken from the person against whom a warrant of arrest is issued, with the objective of reducing unnecessary detention while issuing such a warrant, the court may endorse it with a direction that if the person executes a bond with sufficient sureties, he shall be released from custody.

19. The provisions of section 73 of BNSS (corresponding section 71 Cr.P.C.) is delineated below:-

*"****Section 73 of BNSS . Power to direct security to be*** *taken.-(1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bail bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.*

(2) The endorsement shall state"

(a) the number of sureties;

(b) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound;

(c) the time at which he is to attend before the Court.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court."

20. In case of any person/accused of a non-bailable offence who is evading arrest, **Section 75** of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding section 73 of Cr.P.C.) empowers a Chief Judicial Magistrate or a Magistrate of the First Class to direct a warrant to any person, within his local jurisdiction for the arrest of an escaped convict, a proclaimed offender, or **any person accused of a non-bailable offence who is evading arrest.** The provisions of section 75 of BNSS (corresponding section 73 of Cr.P.C.) are delineated below:

Section 75 of BNSS

"Section 75 of BNSS. Warrant may be directed to any person. *-(1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of* ***any person who is accused of a non-bailable offence and is evading arrest****.*

(2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 73."

21. If an accused person is hiding to avoid the execution of a warrant, issued twice 30 days intervals as provided under Section 356 BNSS, Section 84 of the BNSS (corresponding section 82 of Cr.P.C.), empowers the courts to issue a written proclamation against such person. The proclamation requires such person to appear at a specified place and time (within 30 days from the date of publication of such proclamation). Thus, as per Section 84 of the BNSS, if the Court has reason to believe that a person is absconding to avoid execution of a warrant, a proclamation may be issued, but the proclamation shall be published as per Section 84 BNSS as well as Section 356 BNSS. If the absconded person fails to appear within 30 days, at the specific place and time, the Court can declare him a □proclaimed offender□. Failure to appear can also lead to the accused to criminal prosecution under Section 209 of the BNS (corresponding section 174-A IPC). In cases where the accused was released on bail, failure to appear may result in a show cause notice, forfeiture of the bail bond and surety and its recovery under Section 491 BNSS (corresponding Section 446 Cr.P.C.), Section 492 BNSS (corresponding Section 446A Cr.P.C.) and furthermore, the court may order the attachment of property of the absconded accused under section 85 BNSS (corresponding Section 83 Cr.P.C.). The provisions of Section 84 of the BNSS (corresponding to section 82 Cr.P.C.) are delineated below:-

"Section 84 of BNSS:- Proclamation for person absconding*.- (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.*

(2) The proclamation shall be published as follows:"

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; (c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence which is made punishable with imprisonment of ten years or more, or imprisonment for life or with death under the Bharatiya Nyaya Sanhita, 2023 or under any other law for the time being in force, and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1)."

22. If a proclaimed offender does not appear in court on the date and time in compliance of order of Section 84 BNSS (corresponding Section 82 Cr.P.C.), then before cancellation, forfeiture of the bail bond and sureties which was furnished before release from judicial custody, a fresh separate criminal case can be initiated as per the provisions of Section 215(1) of BNSS, under Section 209 BNS (corresponding Section 174A IPC) against the absconded accused for violation of order of a court passed under Section 84 BNSS (corresponding Section 82 Cr.P.C.), thus, Section 209 of the Bharatiya Nyaya Sanhita (BNS), 2023 (corresponding section 174-A IPC) penalizes non-appearance in response to a proclamation issued by a court under Section 84 of the Bharatiya Nagarik Suraksha Sanhita (BNSS). It applies to individual who fails to appear at a specified place and time after being proclaimed offenders. For offence of Section 209 of the BNS (corresponding section 174-A IPC) provision of cognizance has been mentioned under section 215(1)(a) of the BNSS. The provisions of Section 209 of the Bharatiya Nyaya Sanhita, 2023 are delineated below:-

"Section 209 BNS:- Non-appearance in response to a proclamation under section 84 of Bharatiya Nagarik Suraksha Sanhita, 2023.-*Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both, or with community service, and where a*

declaration has been made under sub-section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

23. For offfence of section 209 of the B.N.S, provision of cognizance has been mentioned under section 215(1)(a) of the BNSS**. Section 215(1)(a) of the BNSS** (corresponding section 195(1)(a) of Cr.P.C.) restricts courts from taking cognizance of specific offences, including contempt of lawful authority, offences against public justice, and document-related crimes, without a formal written complaint from the concerned public servant. This provision ensures orderly administration of justice by requiring written authorization for prosecution. Section 215(1)(a) of the BNSS covers offences under Sections 206 to 223 of the Bharatiya Nyaya Sanhita (BNS), 2023, excluding Section 209 BNS. The provisions of Section 215(1)(a) of the BNSS are delineated below:-

Section 215(1)(a) of BNSS

Section 215. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.--(*1) No Court shall take cognizanc"*

(a)(i) of any offence punishable under sections 206 to 223 (both inclusive ***but excluding section 209)*** *of the Bharatiya Nyaya Sanhita, 2023; or*

(ii) of any abetment of, or attempt to commit, such offence; or

(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant *concerned or of some other public servant to whom he is administratively subordinate or of some other public servant who is authorised by the concerned public servant so to do;*

Section 195 (1)(a) of Cr.P.C

Section 195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.-*(1) No Court shall take cognizance"*

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or (

iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

24. Under section 195(1)(a) of Cr.P.C. there was no such word Excluding section 174-A of IPC while under section 215 of BNSS the word Excluding, Section 209 of BNS has been mentioned.

25. The 'Exclusion' **Explained**: Section 215(a)(i) covers offences under sections 206 to 223 of BNS but explicitly excludes Section 209 BNS. Section 209 BNS deals with non-appearance in response to the order of proclamation passed by a court of law rather than a public servant. This means that while other offences require a formal written complaint, but prosecution for non-appearance (209 BNS) can proceed through standard police procedures without this specific limitation. Thus, the term Exclusion explains that there is no restriction on taking cognizance, if there is no written complaint to initiate criminal proceedings against the proclaimed offender and thus an FIR can be registered and police report can be submitted in the court for taking cognizance or suo moto cognizance can be taken by the court who passed the order of proclamation under section 84 of BNSS.

26. If an accused person absconds and he has been declared a proclaimed offender and thereafter, as per section 85 of BNSS, the court issuing a proclamation under section 84 (corresponding section 82 CrPC) may order the attachment of any property (movable or immovable) belonging to the proclaimed person. Attachment may take place within the district or, if endorsed by the District Magistrate, outside the district. If the property is perishable, the court may order its immediate sale to avoid spoilage, with proceeds held by the court. Individuals other than the accused can file claims or objections to the attached property within 6 months. The provisions of Section 85 of the BNSS (corresponding section 83 of Cr.P.C.) are delineated below:-

Section 85 of BNSS

Section 85 of BNSS. Attachment of property of person absconding*.-(1) The Court issuing a proclamation under section 84 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person: Provided that where at the time of the issue of the proclamation the Court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to be issued,"*

(a) is about to dispose of the whole or any part of his property; or

(b) is about to remove the whole or any part of his property from the local jurisdiction of the Court, it may order the attachment of property simultaneously with the issue of the proclamation.

(2) Such order shall authorise the attachment of any property belonging to such person within the district in which it is made; and it shall authorise the attachment of any property

belonging to such person without such district when endorsed by the District Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made"

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to the State Government, be made through the Collector of the district in which the land is situate, and in all other case- (a) by taking possession; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the payment of rent on delivery of property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of live-stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908).

27. If an accused of non-bailable and cognizable offence is evading arrest, and he is declared a proclaimed offender and his property is attached, the investigating officer is required to submit the final police report (charge-sheet) under Section 193(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to section 173(2) CrPC) to the court of Magistrate without unnecessary delay, including through electronic communication.

28. Further, the Investigating Officer is obligated to inform the informant or the victim about the progress of the investigation within ninety days as per Section 193(3) of the BNSS while same was not mentioned under the Code of Criminal Procedure, 1973. The provisions of section 193(3) of BNSS (corresponding to section 173(2) Cr.P.C.) are delineated below:-

Section 193(3) BNSS

"Section 193(3) of BNSS *(i) As soon as the investigation is completed, the officer in charge of the police station shall forward, including through electronic communication to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form as the State Government may, by rules provide, stating*

(a) the names of the parties;

(b) the nature of the information;

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

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

(e) whether the accused has been arrested;

(f) whether the accused has been released on his bond or bail bond;

(g) whether the accused has been forwarded in custody under section 190;

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 64, 65, 66, 67, 68, 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023;

(ii) the police officer shall, within a period of ninety days, inform the progress of the investigation by any means including through electronic communication to the informant or the victim; (New provision as this provision was not in Cr.P.C.)

(iii) the officer shall also communicate, in such manner as the State Government may, by rules, provide, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given"

Section 173(2) of Cr.P.C.

"Section 173(2) of Cr.P*.C. (2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating"*

(a) the names of the parties;

(b) the nature of the information;

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

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

(e) whether the accused has been arrested;

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

(g) whether he has been forwarded in custody under section 170.

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under [sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB] or section 376E of the Indian Penal Code (45 of 1860)].]

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.□ ”

29. As per Section 210 of the Bharatiya Nagarik Suraksha Sanhita, 2023, a Judicial Magistrate/Special Court may take cognizance in three ways: upon receiving a complaint of facts constituting an offence; upon a police report, or upon the Magistrate□s own knowledge.

30. This provision signifies the formal commencement of criminal proceedings, wherein the Magistrate applies judicial mind to the facts to determine whether there is sufficient ground to proceed. The provisions of section 210 of BNSS (corresponding Section 190 Cr.P.C.) are delineated below:-

Section 210 of BNSS. Cognizance of offences by Magistrate*.-(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section*

(2), may take cognizance of any offence□

(a) upon receiving a complaint of facts, including any complaint filed by a person authorised under any special law, which constitutes such offence;

(b) upon a police report (submitted in any mode including electronic mode) of such facts;
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(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

31. As per Section 227 of the BNSS, if the Magistrate finds sufficient grounds to proceed, he may issue a summon (for summons cases) or a warrant/summon (for warrant cases) to bring the accused before the Court. Summons or warrants can be issued through electronic means (e.g., digital message).

32. If an accused has been released on bail and has furnished a bail bond with sureties under Section 485 BNSS (corresponding Section 441 Cr.P.C.) and 486 BNSS (corresponding Section 441A Cr.P.C.), the Court concerned, after taking cognizance of the offence, may issue summons or non-bailable warrant (NBW) under Section 227 of the BNSS. The provisions of Section 227 BNSS (corresponding Section 204 Cr.P.C.) are delineated below for ready reference:-

*"**Section 227 BNSS. Issue of process.-** (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be"*

(a) a summons-case, he shall issue summons to the accused for his attendance; or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction:

Provided that summons or warrants may also be issued through electronic means.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 90"

33. The summons and warrants of arrest shall be issued, served as well as executed as per provision of Chapter VI of BNSS from Section 63 to 93 of the BNSS. The relevant provisions for ready reference delineated below:

Section 64 BNSS (corresponding Section 62 Cr.P.C.)- Service of summons to be served personally to the person summoned.

Section 66 BNSS (corresponding Section 64 Cr.P.C.)- Where the person summoned cannot be found, the summons may be served on some adult member of his family residing with him.

Section 67 BNSS (corresponding Section 65 Cr.P.C.)- If service of summons cannot be effected as provided in Sections 64 and 66 BNSS, the serving officer shall affix one of the duplicates of summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides.

Section 90 BNSS (corresponding Section 87 Cr.P.C.)- After summons if a court concerned has reason to believe that the accused is either absconding or not obeying the summons or not appearing before court after duly service of summons.

Section 91 BNSS (corresponding Section 88 Cr.P.C.)-Power to take bond or bail bond for appearance

Section 92 BNSS (corresponding Section 89 Cr.P.C.)-Arrest on breach of bond or bail bond for appearance

34. Section 92 of the BNSS (corresponding section 89 of Cr.P.C.) empowers a Court to issue a warrant for the arrest of any person who fails to appear after executing a bond (with or without sureties) to appear before that Court. This ensures compliance with attendance orders in criminal proceedings.

35. The section applies when a person is bound by a bond (under the Cr.P.C.) to appear in Court but fails to do so. The Presiding Officer of the Court can issue a warrant directing the arrest of such a person, and upon arrest, the individual is brought before the Court. It is a procedural tool designed to compel the attendance of individuals who have previously given undertaking to appear before the Court. The provisions of Section 92 of the BNSS (corresponding section 89 of Cr.P.C.) are delineated below:-

Section 92. BNSS:- Arrest on breach of bond or bail bond for appearance *- When any person who is bound by any bond or bail bond taken under this Sanhita to appear before a Court, does not appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.*

36. If a person/accused is hiding to avoid execution of a warrant then Section 84 of the BNSS (corresponding section 82 of Cr.P.C.), empowers courts to issue a written proclamation against an absconding person for whom a warrant has been issued. It requires such person to appear at a specified place and time (at least 30 days from the date of publication).

37. Thus, as per Section 84 of the BNSS, if the Court has reason to believe (with or without evidence) that a person is hiding to avoid execution of a warrant, a proclamation may be issued. The proclamation is read publicly in the town or village where the person resides, affixed to his house, and displayed at the courthouse. If the person fails to appear within 30 days at the specified place and time, the Court can declare him a □proclaimed offender□. Failure to appear **within 30 days** can lead to an accused to criminal prosecution under Section 209 of the BNS (corresponding section 174-A IPC), to show cause and forfeiture of bail bond and surety and its recovery under Section 491 BNSS (corresponding Section 446 Cr.P.C.), Section 492 BNSS (corresponding Section

446A Cr.P.C.) and attachment of property of the absconded accused under section 85 BNSS (corresponding Section 83 Cr.P.C.).

38. If a person is in custody in a criminal case and released on bail after furnishing a bond and sureties to appear before the court, then Section 485 of the BNSS (corresponding to section 441 of Cr.P.C.) mandates that, before releasing any person on bail, he must execute a bond (with or without sureties) guaranteeing his attendance at court on the date of hearings and continue to appear until instructed otherwise. The bond can also bind the accused to appear in higher courts (High Court, Court of Session) to answer the charges. The provisions of Section 485 of the BNSS (corresponding section 441 of Cr.P.C.) are delineated below:-

Section 485 of BNSS:- Bond of accused and sureties.- *(1) Before any person is released on bond or bail bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bond or bail bond, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.*

(2) Where any condition is imposed for the release of any person on bail, the bond or bail bond shall also contain that condition.

(3) If the case so requires, the bond or bail bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

(4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an enquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.

39. Section 485 (Bond of accused and sureties): Mandates that before a person is released, he must execute a bond for a sum of money the court/police officer deems sufficient, if the court requires, this must also be executed by sufficient sureties to ensure the accused attends court.

40. Section 2(1) BNSS. Definitions the specific definitions for the terms, □bail, bail bond and bond."

Section 2(1) (b) "bail" *means release of a person accused of or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or Court on execution by such person of a bond or a bail bond*

Section 2(1)(d) "bail bond" *means an undertaking for release with surety;*

Section 2(1)(e) "bond" *means a personal bond or an undertaking for release without surety;*

41. For surety, Section 486 of the BNSS (corresponding section 441-A of Cr.P.C.) mandates that any person acting as a surety for an accused person□s bail must declare to the Court the number of other persons for whom he has stood surety along with relevant details. This provision enhances accountability and allows the Court to verify the surety's capacity.

42. The surety must provide details of his current and past bail commitments to the Court. This ensures transparency and prevents individuals from over-extending their obligations as sureties, thereby ensuring that they are capable of guaranteeing the accused's appearance. This applies to the process of granting bail and setting bond conditions. The provisions of Section 486 of the BNSS (corresponding section 441-A of Cr.P.C.) are delineated below:-

Section 486 BNSS:- Declaration by sureties.-*Every person standing surety to an accused person for his release on bail, shall make a declaration before the Court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars.*

43. For forfeiture of a bond, Section 491 of the BNSS (corresponding section 446 of Cr.P.C.), outlines the procedure when a bail or surety bond is forfeited. It enables courts to demand payment of the penalty, recover it as a fine, or imprison the surety, if the bond conditions are broken/not complied with.

44. As per section 491 of BNSS, when a bond for appearance or production of property is proven to be forfeited, the court must record the grounds of proof. The court may call upon any person bound by such bond (or his surety) to pay the penalty amount or show cause why it should not be paid. If the penalty is not paid and sufficient cause is not shown, the court can proceed to recover the amount as if it were a fine imposed by it. If the penalty cannot be paid and recovery is not possible, the person can be committed to civil prison for up to six months. The court, after recording reasons, has the power to remit (reduce or waive) any portion of the penalty. If the surety dies before the bond is forfeited, their estate is discharged from liability. The provisions of **Section 491 BNSS** are delineated below for reference :-

Section 491. BNSS Procedure when bond has been forfeited.- *(1) Where, □ (a) a bond under this Sanhita is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the* ***bond has been forfeited****; or*

(b) in respect of any other bond under this Sanhita, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited,56 the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation--A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Sanhita:

Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in ***civil jail for a term which may extend to six months.***

(3) The Court may, after recording its reasons for doing so, remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 125 ***or section 136 or section 401 is convicted*** *of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 494, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.*

45. For cancellation of bond or bail bond, Section 492 of the BNSS (corresponding section 446-A of Cr.P.C.), mandates that if an accused fails to comply with bond conditions (e.g., missing a court date), the accused□s bond and his surety□s bond are forfeited and cancelled, generally restricting automatic release on bail.

46. As per the provisions of section 492 of BNSS upon breach of conditions, the court cancels the current bail bond, and the bond for appearance is forfeited. Following cancellation, the person cannot be released again on his own bond without sufficient cause shown, the person may be released if he provides a new personal bond and new surety bonds. The provisions of Section 492 of the□BNSS (corresponding section 446-A of Cr.P.C.) are delineated below:-

Section 492 BNSS . Cancellation of bond and bail bond*.-Without prejudice to the provisions of section 491, where a bond or bail bond under this Sanhita is for appearance of a person in a case and it is forfeited for breach of a condition,□(a) the bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled; and*

(b) thereafter no such person shall be released only on his own bond in that case, if the police officer or the Court, as the case may be, for appearance before whom the bond was executed, is satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with its condition:

Provided that subject to any other provisions of this Sanhita he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the police officer or the Court, as the case may be, thinks sufficient.

47. If an accused person is released on bail on furnishing bail bond and sureties and absconds to avoid court proceedings so that a warrant could not be executed and thereafter, he has been declared a proclaimed offender. Thereafter, a fresh criminal proceedings against the accused under Section 209 BNSS is initiated and thereafter, the bond and sureties are cancelled and confiscated. After that, the Court may initiate action under Section 85 of the BNSS (corresponding section 83 of Cr.P.C.), which governs the attachment of rest of the property of the absconding persons, and authorizes a court to order the attachment of property belonging to a person, who has failed to appear after a proclamation.

48. After exhausting the processes in case of an absconded accused, released on bail on furnishing bail bond and surety, the concerned Court shall **appoint an amicus curiae/advocate**, as provided under section 356 BNSS to the absconded accused and thereafter, if a case is not committed, then after compliance of provision of Section 230 BNSS (corresponding Section 207 Cr.P.C.), the case shall be committed to the court concerned under Section 232 BNSS (corresponding Section 209 Cr.P.C.) or under Section 362 BNSS (corresponding Section 323 Cr.P.C.) for framing charge under Section 251 BNSS (corresponding Section 228 Cr.P.C.) in case of Sessions Trial, and under Section 263 BNSS (corresponding Section 240 Cr.P.C.) in case of warrant trial instituted on police report and under Section 269(1) BNSS (corresponding Section 246(1) Cr.P.C.) in case of warrant trial instituted on complaint and to proceed further to complete trial.

49. Before committal of a case instituted on police report, for framing of charge, Section 230 of the BNSS, 2023 (corresponding to Section 207 Cr.P.C.) mandates that, in cases instituted on a police report, the Judicial Magistrate shall furnish to the accused, and to the victim (where represented), free copies of the police report/chargesheet, the FIR, witness statements recorded under Section 180(3), confessions and statements recorded under Section 183, and any other relevant documents submitted along with the report.

50. These documents must be supplied without delay and, in any case, within 14 days from the date of the accused□s appearance or production before the court. Where the documents are voluminous, the court may, instead of providing physical copies, permit inspection of such documents either in court or through electronic means. The provisions mentioned under Section 230 of BNSS (corresponding to section 207 of Cr.P.C.) are delineated below for reference :-

Section 230 BNSS:- Supply to accused of copy of police report and other documents.-*In any case where the proceeding has been instituted on a police report, the Magistrate* ***shall without delay, and in no case beyond fourteen days from the date of production or appearance of the accused, furnish to the accused and the victim (if represented by an advocate) free of cost, a copy of each of the following:"***

(i) the police report;

(ii) the first information report recorded under section 173; (iii) the statements recorded under sub-section (3) of section 180 of all persons whom the prosecution proposes to examine as

its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (7) of section 193;

(iv) the confessions and statements, if any, recorded under section 183;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (6) of section 193:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused and the victim (if represented by an advocate) with a copy thereof, may furnish the copies through electronic means or direct that he will only be allowed to inspect it either personally or through an advocate in Court:

Provided also that supply of documents in electronic form shall be considered as duly furnished.

51. It is relevant to mention here that in section 230 of BNSS (not in Cr.P.C.) the time period has been given **14 days to provide copy of** the investigated documents not only to the accused but also to the victim either personally or through represented advocate.

52. Before committal of case instituted on complaint for framing of charge, Section 231 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 (corresponds to Section 208 of the Cr.P.C) mandates that in private complaint cases triable by a Court of Session, the Judicial Magistrate must immediately furnish the accused, free of cost, the documents mentioned under section 231 BNSS. The provisions of Section 231 of BNSS (corresponding Section 208 of Cr.P.C.) are delineated below:-

Section 231 B.N.S.S.:- Supply of copies of statements and documents to accused in other cases triable by Court of Session*.-Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 227 that the offence is triable exclusively by the Court of Session, the Magistrate shall forthwith furnish to the accused, free of cost, a copy of each of the following:"*

(i) the statements recorded under section 223 or section 225, of all persons examined by the Magistrate;

(ii) the statements and confessions, if any, recorded under section 180 or section 183;

(iii) any documents produced before the Magistrate on which the prosecution proposes to rely:

Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through an advocate in Court:

Provided further that supply of documents in electronic form shall be considered as duly furnished.

53. There are two Sections i.e. Section 232 and Section 362 in the Bharatiya Nagarik Suraksha Sanhita, 2023 for committal of case to the court of sessions. Section 232 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding Section 209 of Cr.P.C.) governs the commitment of cases to the Court of Session, when an offence is exclusively triable by it. After complying with Section 230 or 231 BNSS (supply of documents to the accused and victim), the Judicial Magistrate shall commit the case under Section 232 BNSS to the Court of Session and transmit the entire record, including documents and articles intended to be produced as evidence, while also notifying the Public Prosecutor. Such committal proceedings must ordinarily be completed within 90 days from the date of taking cognizance, extendable up to 180 days for reasons to be recorded in writing. The provisions of section 232 of BNSS (corresponding Section 209 of Cr.P.C.) are delineated below:-

Section 232 BNSS

232. Commitment of case to Court of Session when offence is triable exclusively by it.- *When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall*

(a) commit, after complying with the provisions of section 230 or section 231 the case to the Court of Session, and subject to the provisions of this Sanhita relating to bail, remand the accused to custody until such commitment has been made;

(b) subject to the provisions of this Sanhita relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session:

Provided that the proceedings under this section shall be completed ***within a period of ninety days from the date of taking cognizance, and such period may be extended by the Magistrate for a period not exceeding one hundred and eighty days for the reasons to be recorded in writing: (New provision as this proviso was not mentioned in the Cr.P.C.)***

Provided further that any application filed before the Magistrate by the accused or the victim or any person authorised by such person in a case triable by Court of Session, shall be

forwarded to the Court of Session with the committal of the case. ***(New provision as this proviso was not mentioned in the Cr.P.C.)***

Section 209 Cr.P.C.

209. Commitment of case to Court of Session when offence is triable exclusively by it- *When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall"*

1(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session.

54. Thus maximum extended period in totality with reason in writing shall be 180 days to commit a case in court of session, therefore, it shall be committed within 90 days as per section 232 of BNSS and with reason in writing it may be extended upto 90 days only.

55. Section 362 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding Section 323 of Cr.P.C.) provides that if, during any inquiry or trial, a Magistrate is of the opinion that the case ought to be tried by a Court of Session, the Magistrate shall commit it (cross case etc.) to that Court before signing the judgment. This provision ensures that cases requiring higher jurisdiction are tried by the Court of Session. The Magistrate may commit the case at any stage of the proceedings prior to the pronouncement of judgment, and once such a decision is made, the procedure for commitment prescribed under the relevant provisions of the Sanhita shall be followed. The provision of section 362 of BNSS (corresponding Section 323 of Cr.P.C.) are delineated below:-

Section 362 BNSS:- Procedure when after commencement of inquiry or trial, Magistrate finds case should be committed.-*If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing the judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provisions of Chapter XIX shall apply to the commitment so made.*

56. Regarding Session trial, Section 251 of the *Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding Section 228 of Cr.P.C.)* deals with the framing of charges in trials before a Court of

Session. It provides that when a case is triable by the Court of Session, the Judge shall frame the charge in writing within 60 days from the date of the first hearing on the question of charge, with a view to reducing delays. If the offence is not exclusively triable by the Court of Session, the Judge may transfer the case to a Judicial Magistrate of the First Class for trial. The charge so framed shall be read and explained to the accused, who may be present either physically or through audio-video electronic means, and the accused shall be asked whether they plead guilty or claim trial. Charges are framed only after the Judge is satisfied that a prima facie case exists against the accused. The provision of section 251 of BNSS (corresponding Section 228 of Cr.P.C.) are delineated below:-

Section 251 BNSS. Framing of charge.-*(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which"*

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) ***is exclusively triable by the Court, he shall frame in writing a charge against the accused within a period of sixty days from the date of first hearing on charge. (New provision as it was not in the Cr.P.C.)***

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused present either physically or through audio-video electronic means and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

Section 228 Cr.P.C. Framing of charge*.-(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which"*

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

57. Regarding warrant trial instituted on a police report, Section 263 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding Section 240 of Cr.P.C.) deals with the framing of charge. It provides that when such a case is before a Judicial Magistrate, and upon consideration of the police report and the accompanying documents, and after hearing both the prosecution and the accused, the Magistrate is of the opinion that there are sufficient grounds for presuming that the accused has committed an offence triable as a warrant case, the Magistrate shall frame a charge in writing within 60 days from the date of the first hearing, with a view to expediting the trial. The charge shall be read and explained to the accused, who shall then be asked whether they plead guilty or claim to be tried. The provision of section 263 of BNSS (corresponding Section 240 of Cr.P.C.) are delineated below:-

Section 263 BNSS. Framing of charge.-*(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused within a period of sixty days from the date of first hearing on charge.*

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

58. Regarding warrant trial instituted on complaint or suo moto by the concerned court, Section 269(1) of BNSS (corresponding Section 246(1) of Cr.P.C.) deals with the framing of charge as if, upon taking all the evidence referred to in Section 268, the Judicial Magistrate is of the opinion that there are grounds for presuming that the accused has committed an offence triable as a warrant case, the Magistrate shall frame a charge in writing. Upon framing of the charge, it shall be read and explained to the accused, and the Magistrate shall ask whether the accused pleads guilty or claims to be tried. The provision of section 269(1) of BNSS (corresponding Section 246(1) of Cr.P.C.) are delineated below:-

Section 269(1) BNSS:- Procedure where accused is not discharged.-*(1) If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.*

59. In case of absconding accused, in presence of amicus curiae/advocate (appointed under Section 356(3) BNSS) for the absconded accused, section 335 of BNSS (corresponding section 299 of the CrPC), allows courts to record evidence against an absconding accused who has no immediate prospect of arrest. These depositions can be used as evidence if the witness dies, is incapable of testifying, or cannot be found when the accused is eventually tried.

60. Section 335 of BNSS ensures evidence is preserved for prosecution when an accused **is on the run**, preventing the loss of testimony over time. It must be proved that the accused has absconded, and there is no immediate prospect of arresting them. A Magistrate or Sessions Court can examine witnesses in the accused's absence and record their depositions. These recorded statements can be used against the accused later if the witness is dead, incapable of giving evidence, or missing. The provisions of Section 335 of the BNSS (corresponding section 299 of Cr.P.C.) are delineated below:-

Section 335 of BNSS. Record of evidence in absence of accused*.-(1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court* ***competent to try, or commit for trial****, such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.*

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India.

61. In case of absconding accused, released on bail after furnishing bail bond and sureties, the court concerned should initiated proceedings as per the provision of law and after exhausting it, as per Section 356 of the BNSS, the accused must be declared a proclaimed offender. Two consecutive warrants must be issued within a 30 days interval. Public notice in a local or national newspaper is required, allowing 30 days for appearance. Information must be given to relatives/friends and pasted at the last known residence and the local police station. The Court must wait 90 days from the framing of charges before starting the trial in absentia. If the offender does not have an advocate, the State must provide one Advocate at its expense.

62. In respect of an absconding accused declared a proclaimed offender, a new provision of law, i.e., Section 356, has been introduced with a mandatory provision to conduct a criminal case in the absence of the accused and to complete the trial. In case of conviction, his appeal shall not be entertained unless he first surrenders, and the limitation period to file an appeal is three years in the case of an absconding and convicted accused. The complete procedure to conduct a criminal case has been provided under Section 356 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). **The provisions of Section 356 BNSS is** delineated below:-

"Section 356. Inquiry, trial or judgment in absentia of proclaimed offender. - (1) Notwithstanding anything contained in this Sanhita or in any other law for the time being in force, when a person declared as a proclaimed offender, whether or not charged jointly, has absconded to

evade trial and there is no immediate prospect of arresting him, it shall be deemed to operate as a waiver of the right of such person to be present and tried in person, and the Court shall, after recording reasons in writing, in the interest of justice, proceed with the trial in the like manner and with like effect as **if he was present, under this Sanhita and pronounce the judgment:**

Provided that the Court shall not commence the trial unless a period of ninety days has lapsed from the date of framing of the charge.

(2) The Court shall ensure that the following procedure has been complied with before proceeding under sub-section (1), namely:---

(i) issuance of two consecutive warrants of arrest within the interval of at least thirty days;

(ii) **publish in a national or local daily newspaper** circulating in the place of his last known address of residence, requiring the proclaimed offender to appear before the Court for trial and informing him that in case he fails to appear within thirty days from the date of such publication, the trial shall commence in his absence;

(iii) inform his relative or friend, if any, about the commencement of the trial; and

(iv) affix information about the commencement of the trial on some conspicuous part of the house or homestead in which such person ordinarily resides and display in the police station of the district of his last known address of residence.

(3) Where the proclaimed offender is not represented by any advocate, he shall be provided with an advocate for his defence at the expense of the State.

(4) Where the Court, competent to try the case or commit for trial, has examined any witnesses for prosecution and recorded their depositions, such depositions shall be given in evidence against such proclaimed offender on the inquiry into, or in trial for, the offence with which he is charged:

Provided that if the proclaimed offender is arrested and produced or appears before the Court during such trial, the Court may, in the interest of justice, allow him to examine any evidence which may have been taken in his absence.

(5) Where a trial is related to a person under this section, the deposition and examination of the witness, may, as far as practicable, be recorded by audio-video electronic means preferably mobile phone and such recording shall be kept in such manner as the Court may direct.

(6) In prosecution for offences under this Sanhita, voluntary absence of accused after the trial has commenced under sub-section (1) shall not prevent continuing the trial including the pronouncement of the judgment even if he is arrested and produced or appears at the conclusion of such trial.

(7) No appeal shall lie against the judgment under this section unless the proclaimed offender presents himself before the Court of appeal:

Provided that no appeal against conviction shall lie after the expiry of three years from the date of the judgment."

63. Section 356 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 introduces Trial in Absentia, allowing courts to try, inquire into, or judge a proclaimed offender who has absconded to evade justice. This provision ensures that the trial proceeds even if the accused cannot be arrested, and is aimed at reducing delays.

64. Section 356 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, is a landmark provision that introduces the concept of Trial in Absentia into the Indian criminal justice system. It allows a court to proceed with the inquiry, trial, or judgment of an accused person who has been declared a proclaimed offender and is deliberately evading arrest.

65. Thus to prosecute an absconder accused and to complete trial, certain conditions are mentioned under Section 356 BNSS must be followed. The conditions are depicted herein below :

1. If a proclaimed offender absconds to evade trial and there is no immediate prospect of arrest, it is legally deemed a **waiver of their right** to be present and tried in person.

2. The court can record evidence, examine witnesses, and pronounce a judgment even if the accused is not physically present.

3. To ensure transparency and accuracy, depositions and examinations of witnesses should be recorded using **audio-video electronic mean**s, such as mobile phones.

4. If the absconding accused does not have lawyer, the court **must provide an advocate** for their defence at the expense of the State.

5. The trial cannot commence until at least 90 days have passed since the framing of charges.

6. At least **two consecutive arrest warrants** must be issued with an interval of at least 30 days between them.

7. A notice must be published in a **national or local daily newspaper** circulating in the area of the accused's last know residence.

8. The court must **inform the accused's relatives** or friends about the commencement of the trial.

9. Trial **information** must be displayed at a **conspicuous part** of the accused's house and at the local police station.

66. Appeal is continuation of trial, therefore, as per Section 356(7) of BNSS, an appeal against a judgment under this section is permitted only if the **offender presents himself** before the appellate court. **No appeal** against conviction can be filed **after three years** from the date of the judgment.

67. The concerned court at any stage of criminal proceeding should ensure that effective measures have been adopted to inform the accused about criminal proceedings and that is also reflected by the order-sheets as well as records of the case, thus, after filing of a charge-sheet if the Court is taking cognizance and summoning the accused, the concerned court must ensure that the accused must have proper knowledge of the summons. Service of summons may be effected at conspicuous places such as the accused□s residence, public areas like roadways or railway stations, and through official records including DCRB and NCRB and it entry shall be made in the General Diary (G.D.) of the police station and must be submitted to the Court to ensure that the best effort has been made to serve the summons, so that the court may record it in the order sheet and thereafter issue Non Bailable Warrants twice, at interval of 30 days, as provided under Section 356 BNSS to proceed to declare the accused as proclaimed offender.

68. If the concerned court is satisfied that a summon has been duly served and the accused fails to appear, the Court concerned may issue a Non-Bailable Warrant (NBW). Service attempts and information must be recorded in writing as it has been served personally to the accused or relative or affixed on conspicuous places such as the accused□s residence, public areas, or through official records including DCRB and NCRB, with a G.D. entry at the police station to bring it to the Court□s notice. However, if the accused has furnished a bail bond with sureties and was released on bail, the process of issuing an NBW shall be carried out in accordance with Section 92 of BNSS (corresponding Section 89 Cr.P.C.).

69. If the accused appears within two dates after the issuance of a Non-Bailable Warrant (NBW) under Section 92 of the BNSS, the Court may recall the NBW upon his appearance. The General Diary (G.D.) entries of the police, documenting their efforts to execute the NBW and attempt to arrest the accused, must be submitted to the Court. These entries should also be recorded in the order sheet of the case to enable the Court to take further proceedings in accordance with law.

70. As per Section 84 of BNSS (corresponding section 82 of Cr.P.C.), if a Court believes that a person against whom a warrant has been issued is absconding or hiding to avoid arrest, it may issue a written proclamation as per the conditions mentioned under Section 356 BNSS requiring the person to appear at a specified place and time, **at least thirty days from publication**. The proclamation must be publicly read and affixed at conspicuous places in the person□s residence or locality circulating in the place in which such person ordinarily resides and the Court, and may also be published in a national or daily local newspaper. A written statement by the Court confirming publication is conclusive evidence of compliance.

71. If the accused is not appearing before the court concerned in compliance of order of proclamation issued under section 84 BNSS (corresponding Section 82 Cr.P.C.) the police shall

take action under Section 209 BNS (corresponding Section 174 A IPC) as per Section 215 BNSS (corresponding Section 195 Cr.P.C.).

72. In case of an accused released on bail on furnishing personal bond and surety and declared proclaimed offender, the Court may declare a bail bond forfeited and, thereafter in accordance with **Section 491 of BNSS** (corresponding section 446 of Cr.P.C.), take steps to recover the penalty from the accused and the sureties. Under this section, if a bond is found to be forfeited, the Court records the reasons for such finding and directs the person bound by the bond to either pay the penalty or show cause why it should not be paid. If no sufficient cause is shown, the penalty may be recovered as a fine, and in default, the surety may be liable to imprisonment in civil jail for a term of up to six months. The Court also has discretion to remit part of the penalty after recording reasons. Furthermore, a surety's liability ceases upon their death.

73. As per Section 492 of BNSS (corresponding section 446-A of Cr.P.C.), the Court may cancel the bail bond of the accused as well as the bonds of the sureties due to breach of the bond conditions. Following such cancellation, the accused cannot be released on personal bond alone if no sufficient cause is shown for the failure to appear. However, the Court or the police officer may allow release upon the execution of a fresh personal bond with adequate sureties, as deemed necessary.

74. The concerned court or the police shall inform to the other court about cancellation of bail bond and sureties where any other criminal case is pending of the absconding accused person.

75. After the issuance of a proclamation against an absconding person, if the accused does not appear, the Court concerned in view of Section 85 of BNSS (Corresponding Section 83 Of Cr.P.C.), can order attachment of his movable or immovable property. Such attachment may be effected within or outside the district and carried out by seizure, appointment of a receiver, or prohibitory orders, as applicable. The Court may also order sale of perishable property, and any receiver appointed shall exercise powers as under the Code of Civil Procedure, 1908.

76. As per Section 335 BNSS (corresponding Section 299 of Cr.P.C.) the concerned court can record the evidence in absence of accused and thereafter permanent Non-Bailable Warrant shall be issued and it shall be monitored on 30 days by the court concerned and its effort of arrest shall be brought to the knowledge of the court concerned through G.D. entry of the police station and it shall also be placed in the every District crime meeting and its effort shall be mentioned in the minutes of the meeting and shall be brought in the knowledge of the court concerned, and the permanent NBW shall continue till its execution.

77. In respect of the absconded accused declared proclaimed offender, new provision of law i.e. Section 356 has been introduced with mandatory provision to conduct a criminal case in absence of an accused and complete the trial and pronounce the judgment and in case of conviction, his appeal shall not be entertained until and unless he surrenders and the limitation period to file an appeal is three years in case of absconded and convicted accused. The complete procedure to conduct a criminal case has been provided under section 356 of Bhartiya Nagarik Suraksha Sanhita, 2023.

78. For speedy trial, Section 389 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding Section 350 Cr.P.C.) empowers criminal courts to summarily punish non-attending witnesses with fine upto five hundred rupees, without initiating lengthy legal proceedings. It applies to any witness who has been duly summoned by a criminal court but fails to attend or departs prematurely without sufficient justification. The provisions of section 389 BNSS (corresponding Section 350 Cr.P.C.) is delineated below:-

*"**Section 389 of BNSS:- Summary procedure for punishment for non-attendance by a witness in obedience to summons**.-(1) If any witness being summoned to appear before a Criminal Court is legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart, and the Court before which the witness is to appear is satisfied that it is expedient in the interests of justice that such a witness should be tried summarily, the Court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to fine not exceeding five hundred rupees.*

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials."

*"**Section 350 of Cr.P.C.:- Summary procedure for punishment for non-attendance by a witness in obedience to summons.-**(1) If any witness being summoned to appear before a Criminal Court is legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart, and the Court before which the witness is to appear is satisfied that it is expedient in the interest of justice that such a witness should be tried summarily, the Court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to fine not exceeding one hundred rupees.*

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials."

79. If any hindrance is caused in speedy enquiry or trial, the person causing hindrance or holding the enquiry or trial for unreasonable period may be prosecuted treating as helping to the accused as his past/subsequent conduct as mentioned under Section 6 of Bharatiya Sakshya Adhiniyam, 2023 (corresponding Section 8 of Indian Evidence Act, 1872). Thus, for unreasonable period, order of sanction or any forensic test etc. cannot be held by the concerned authority or person otherwise, the court concerned may treat it as hindrance in imparting speedy justice.

80. The concerned court at the stage of enquiry or trial shall for speedy trial/justice shall follow the mandate as provided under section 346 BNSS, otherwise, it shall be mentioned by the concerned court of enquiry or trial in respect of delay in the orders or judgement so that accountability of the concerned court may be determined whether, delay occurred due to unavoidable circumstances or ignorance of the concerned court.

81. Section 346 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding section 309 Cr.P.C.) mandates that criminal inquiries and trials should, as far as practicable, be conducted on a **day-to-day** basis until all witnesses are examined. It restricts adjournments, allowing them only when necessary and only if the court records its reasons in writing, thereby preventing unnecessary delays. In cases of sexual offences under Sections 64 to 71 of the Bharatiya Nyaya Sanhita, the trial should, as far as possible, be completed within two months from the date of filing of the charge sheet. Further, when proceedings are adjourned or postponed, the court may remand the accused to custody, but such remand shall not exceed fifteen days at a time. The provision also limits adjournments by allowing only a restricted number in circumstances beyond the control of a party, generally not exceeding two in certain situations, to ensure the expeditious disposal of cases. The provisions of Section 346 of BNSS (corresponding section 309 Cr.P.C.) is delineated below:

"*Section 346 of BNSS. Power to postpone or adjourn proceedings.-**(1) In every inquiry or trial the proceedings shall be continued* from day-to-day basis *until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:*

Provided that when the inquiry or trial relates to an offence under section 64, section 65, section 66, section 67, section 68, section 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023) the inquiry or trial ***shall be completed within a period of two months from the date of filing of the chargesheet.***

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Court shall remand an accused person to custody under this section for a term exceeding fifteen days at a time: Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him:

Provided also that"

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) where the circumstances are beyond the control of a party, not more than two adjournments may be granted by the Court after hearing the objections of the other party and for the reasons to be recorded in writing;

(c) the fact that the ***advocate of a party is engaged in another Court, shall not be a ground for adjournment;***

(d) where a witness is present in Court but a party or his advocate is not present or the party or his advocate though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.

Explanation 1.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.—The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused."

82. To ensure speedy proceedings under the Bharatiya Nagarik Suraksha Sanhita, a time limit (Luxman Rekha) has been fixed for every stage, including enquiry, investigation, summons, warrants, proclamation, supply of copies, committal, framing of charges, completion of evidence and pronouncement of judgment, even in the absence of an absconded accused.

83. The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which replaced the CrPC on July 1, 2024, introduces several strict timelines to ensure a speedier criminal justice process. The time limits and periods mentioned in various sections are delineated below:

1. Investigation & FIR

Preliminary Enquiry : Must be completed within 14 days under Section 173(3) for offences punishable with 3 to 7 years of imprisonment.{Section 173(3) BNSS}

E-FIR Registration : Information sent electronically must be signed by the informant within 3 days to be formally recorded as an FIR {Section 173(1)(ii) of BNSS}.

Medical Examination (Sexual Offences): The report must be forwarded to the Investigating Officer within 7 days. (Section 184 BNSS)

Investigation Progress Update : The police must update the informant or victim on the progress of the investigation within 90 days. {Section 193(3)(ii) BNSS}.

Default Bail : If the accused person is in custody during investigation for a total period exceeding 90 days, where the investigation relates to an offence punishable with death, imprisonment for life, or imprisonment for a term of ten years or more, or 60 days, where the investigation relates to any other offence, the accused is entitled to bail {Section 187(3) BNSS}.

Sexual Offence Investigation : Must be completed within 2 months from the date the FIR was registered {Section 193(2) BNSS}.

Further investigation : Generally capped at 90 days requires court permission during trial {Section 193(9) BNSS}

2. Summons, Warrants & Proclamations

Supply of Documents : Copies of the police report and documents must be supplied to the accused within 14 days of their first appearance (Section 230 BNSS).

Proclamation for Absconding Person. Must specify a time not less than 30 days from the date of publication for the person to appear (Section 84 BNSS).

Attachment of Property: Claims or objections to attached property must be made within 6 months from the date of attachment (Section 87 BNSS).

Sale of Attached Property : The state cannot sell attached property until 6 months have passed from the date of attachment. {Section 88(2) BNSS}

3. Committal and Framing of Charges

Committal Proceedings : Must be completed within 90 days from the date of taking cognizance (extendable to 180 days with recorded reasons). (Section 232 BNSS)

Discharge Application:

Sessions Cases : Must be filed within 60 days from the date of committal. {Section 250(1) BNSS}

Warrant Cases : Must be filed within 60 days from the date of supply of documents. {Section 262(1) BNSS}.

Framing of Charge : Must be completed within 60 days from the first hearing on the charge {Sections 251(1)(b) and 263(1) BNSS}

4. Trial and Judgment

Plea Bargaining : An application must be filed within 30 days from the date of framing charges. (Section 290 BNSS)

Trial Completion (Sexual Offences): Rape trials must be completed within 2 months from the date of filing the charge sheet (Section 254 BNSS)

Section 356 BNSS primarily deals with the trial in absentia of □proclaimed offenders.□ It provides the following important provisions regarding the time period.

1. Commencement of Trial

The court cannot commence trial in the absence of the proclaimed offender until 90 days have elapsed from the date of framing of charge. {Section 356(1) Proviso BNSS}

2. Gap between Warrants

Before the trial in absentia can begin, the court must issue two consecutive warrants of arrest at least 30 days apart. {Section 356(2)(i) BNSS}

3. Newspaper Publication

The court must publish a notice in a newspaper in the area of the offender□s last known address. This notice given the offender 30 days to appear. If they fail to appear within this time, the trial can be conducted in their absence. {Section 356(2)(ii) BNSS}

4**. Limitation for Appeal**

If the offender is convicted under this section, he cannot appeal against the sentence after the expiry of 3 years from the date of the judgment. {Section 356(7) BNSS}

Pronouncement of Judgment :

General : Must be pronounced within 30 days of the conclusion of final arguments (extendable to 45 days with reasons) {Section 392(1) BNSS}

Sessions Trial : Verdict within 30 days (extendable to 45 days) (Section 258 BNSS)

Uploading of Judgment : Must be uploaded to the official portal within 7 days of its pronouncement {Section 392(1) BNSS}

84. Although the BNSS came into force on 1 July 2024 and the alleged offence took place prior to the date of its enforcement, it is a settled principle of law, that the procedure that is more beneficial to the accused must be adopted. In the case **of Deepu and Ors. v State of U.P. and Ors., (2024) 8 ILRA 903 (Crl. Misc. Writ Petition No.12287 of 2024),** the Division bench of this Court in paragraph no.16 (iii) held that on or after 01.07.2024, the procedure mentioned under the Bharatiya Nagarik Suraksha Sanhita, 2023, shall be applicable to offences committed under the Indian Penal Code or other Special Act. The paragraph No. 16 is delineated below:

"16 .On the basis of above analysis, this Court is also summarising the law regarding effect of repealing the IPC and Cr.P.C. by BNS and BNSS respectively and same is being mentioned as below:

(i) If an FIR is registered on or after 1.7.2024 for the offence committed prior to 1.7.2024, then FIR would be registered under the provisions of IPC but the investigation will continue as per BNSS.

(ii) In the pending investigation on 01.07.2024 (on the date of commencement of New Criminal Laws), investigation will continue as per the Cr.P.C. till the cognizance is taken on the police report and if any direction is made for further investigation by the competent Court then same will continue as per the Cr.P.C.;

(iii) The cognizance on the pending investigation on or after 01.07.2024 would be taken as per the BNSS and all the subsequent proceeding including enquiry, trial or appeal would be conducted as per the procedure of BNSS.

(iv) Section 531(2)(a) of BNSS saved only pending investigation, trial, appeal, application and enquiry, therefore, if any trial, appeal, revision or application is commenced after 01.07.2024, the same will be proceeded as per the procedure of BNSS.

(v) The pending trial on 01.07.2024, if concluded on or after 01.07.2024 then appeal or revision against the judgement passed in such a trial will be as per the BNSS. However, if any application is filed in appeal, which was pending on 01.07.2024 then the procedure of Cr.P.C. will apply.

(vi) If the criminal proceeding or chargesheet is challenged before the High Court on or after 01.07.2024, where the investigation was conducted as per Cr.P.C. then same will be filed u/s 528 of BNSS not u/s 482 Cr.P.C."

85. The usage of word 'Trial' in a criminal proceeding has been mentioned in Section 2(1)(k) of the BNSS, which reads as under :

2. Definitions.(1)(k) BNSS."*inquir" means every enquiry, other than a trial, conducted under this Sanhita by a Magistrate or Court;*

86. In the case of **Hardeep Singh vs. State of Punjab and others, AIR 2014 SC 1400,** the Hon'ble Supreme Court has held that the stage of trial begins after the framing of the charge. The relevant paragraphs no.35 and 43 of the aforesaid judgment is being quoted below :-

"35. In view of the above, the law can be summarised to the effect that as □trial□ means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, ***the 'trial' commences only on charges being framed. T****hus, we do not approve the view taken by the courts that in a criminal case, trial* ***commences on cognizance being taken.***

x x x x

*43. **Since after the filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences**, and therefore, the power under Section 319(1) Cr.P.C. can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Section 207/208 Cr.P.C., committal etc., which is only a pre-trial stage, intended to put the process into motion. This stage cannot be said to be a judicial step in the true sense for it only requires an application of mind rather than a judicial application of mind.*

87. On failure to comply with the process, the dealing assistant/clerk shall be responsible for the same. Further, the GD entry in respect of service or compliance of the order of the court shall be uploaded on the portal of the concerned police station to ascertain its execution by the concerned court to maintain order sheet of the case and to proceed further, and if the police official fails to follow this procedure, it will be deemed that the concerned police official of the concerned police station, as well as the nodal officer of the police, shall be answerable or responsible to the concerned court for further necessary action under Section 199 of the BNS (corresponding to section 166-A IPC), as well as under Section 29 of the Police Act, 1861. The provisions of Section 199 BNS is delineated below:-

***"Section 199. Public servant disobeying direction under law**.-Whoever, being a public servant,"*

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter; or

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation; or

(c) fails to record any information given to him under sub-section (1) of section 173 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in relation to cognizable offence punishable under section 64, section 65, section 66, section 67, section 68, section 70, section 71, section 74, section 76, section 77, section 79, section 124, section 143 or section 144,

shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine"

88. Section 29 of the Police Act, 1861 outlines the penalties for police officers, who fail to perform their duties, disobey orders, or act negligently, all such officers shall be liable for punishment in accordance with law. The provisions of Section 29 of the Police Act, 1861 are delineated below:-

Section 29. Penalties for neglect of duty, etc.

Every police-officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall

withdraw from the duties of his office without permission, or without having given previous notice for the period of two months, or who, being absent on leave, shall fail, without reasonable cause, to report himself for duty on the expiration of such leave, or who shall engage without authority in any employment other than his police-duty, or who shall be guilty of cowardice, or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months pay, or to imprisonment with or without hard labour, for a period not exceeding three months, or to both.

89. The Public Prosecutors are under an obligation to assist the Court in the manner as well as within the time frame as mentioned in the BNSS at every stage of the proceedings, therefore, to ensure the expeditious disposal of criminal cases in the District, responsibility to monitor cases has been given to the Director of Prosecution, Deputy Director of Prosecution and Assistant Director of Prosecution under Section 20(7)(8)(9) and (10) of the BNSS. Thereafter, as per Section 20(3)(4)(5)(6) of the Bharatiya Nagarik Suraksha Sanhita, 2023, the Additional Chief Secretary, Home Department, Government of U.P., the concerned Director of Prosecution, and the concerned Public Prosecutors are to be held accountable for ensuring expeditious disposal of the criminal cases pending in district courts. Section 20 of the BNSS is delineated below for ready reference :-

"20. Directorate of Prosecution.-(1*The State Government may establish,"*

(a) a Directorate of Prosecution in the State consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit; and

(b) a District Directorate of Prosecution in every district consisting of as many Deputy Directors and Assistant Directors of Prosecution, as it thinks fit.

(2) A person shall be eligible to be appointed,"

(a) as a Director of Prosecution or a Deputy Director of Prosecution, if he has been in practice as an advocate for not less than fifteen years or is or has been a Sessions Judge;
(b) as an Assistant Director of Prosecution, if he has been in practice as an advocate for not less than seven years or has been a Magistrate of the first class.

(3) The Directorate of Prosecution shall be headed by the Director of Prosecution, who shall function under the ***administrative control of the Home Department in the State.***

(4) Every Deputy Director of Prosecution or Assistant Director of Prosecution shall be subordinate to the Director of Prosecution; and every Assistant Director of Prosecution shall be subordinate to the Deputy Director of Prosecution.

(5) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (1) or sub-section (8) of section 18 to conduct cases in the High Court shall be subordinate to the Director of Prosecution.

(6) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (3) or sub-section (8) of section 18 to conduct cases in District Courts and every Assistant Public Prosecutor appointed under sub-section (1) of section 19 shall be subordinate to the Deputy Director of Prosecution or the Assistant Director of Prosecution.

(7) The powers and functions of the ***Director*** *of Prosecution shall be to monitor cases in which offences are punishable for ten years or more, or with life imprisonment, or with death; to expedite the proceedings and to give opinion on filing of appeals.*

(8) The powers and functions of the ***Deputy Director*** *of Prosecution shall be to examine and scrutinise police report and monitor the cases in which offences are punishable for seven years or more, but less than ten years, for ensuring their expeditious disposal.*

(9) The functions of the Assistant Director of Prosecution shall be to monitor cases in which offences are punishable for less than seven years.

(10) Notwithstanding anything contained in sub-sections (7), (8) and (9), the Director, Deputy Director or Assistant Director of Prosecution shall have the power to deal with and ***be responsible for all proceedings under this Sanhita.***

(11) The other powers and functions of the Director of Prosecution, Deputy Directors of Prosecution and Assistant Directors of Prosecution and the areas for which each of the Deputy Directors of Prosecution or Assistant Directors of Prosecution have been appointed shall be such as the State Government may, by notification, specify.

(12) The provisions of this section shall not apply to the Advocate General for the State while performing the functions of a Public Prosecutor."

90. In view of the above facts and circumstances and in the interest of justice as well as for a speedy trial, this Court has reached to a conclusion, based upon the findings above that:-

91. The Government has invested huge public money to develop online process portals namely, (NSTEP) National Service and Tracking of Electronic Processes and (CIS) Court Information System; therefore, processes must be sent through the ongoing online portal and its record must be maintained by the dealing officer or court clerk/assistant. In the event of non-compliance thereof, the concerned official assigned the duties to do so, shall be held responsible and the consequences would follow.

92. On failure to comply with the process, the dealing assistant/clerk shall be responsible for the same. Further, the GD entry in respect of service or compliance of order of the court shall be uploaded on the portal of the concerned police station to ascertain its execution by the concerned court to maintain order sheet of the case and to proceed further, and if the police official fails to follow this procedure, it will be deemed that the concerned police official of the concerned police station, as well as the nodal officer of the police, shall be answerable or responsible to the

concerned court for further necessary action under Section 199 of the BNS (corresponding section 166-A IPC), as well as under Section 29 of the Police Act, 1861.

93. The court concerned is directed that in case of an inquiry, trial or judgment in absentia of a proclaimed offender/absconded accused, notwithstanding anything contained in the Sanhita or any other law, for the time being in force, when a person, declared as a proclaimed offender, whether or not charged jointly, has absconded to evade trial and there is no immediate prospect of arresting him, it shall be deemed to operate as a waiver of the right of such person to be present and tried in person. The Court shall, after recording reasons in writing and in the interest of justice, proceed with the trial in the same manner and with the same effect, as if he was present and/or has participated in trial under this Sanhita and pronounce the judgment; accordingly.

94. It is directed that the new provision of law introduced under Section 356 of the BNSS, in cases of an absconding accused, shall be followed by the Court concerned, as well as by the Public Prosecutor and the police, while conducting a criminal case.

95. It is directed that, if the presiding officer adjourns the case without any cogent reason as prescribed by law, and the adjournment so given results in an unnecessary delay in respect of an absconder/accused, in that event the concerned court/presiding officer shall be dealt with departmentally, and appropriate proceedings may be conducted for such negligence or dereliction of duty, while discharging judicial work.

96. It is directed that when a public servant fails to discharge his duty, as prescribed by the law or a court order within the stipulated time or in accordance with the provision of the BNSS, such inaction on the part of the concerned official may attract the provisions of Disciplinary Rules, and contempt of court proceedings on the judicial side.

97. The Investigating Officer, the Public Prosecutor and the Presiding Officer are directed, that they shall proceed with the criminal proceedings in a systematic manner and within the time frame, as provided under the BNSS as observed in the preceding **paragraphs no.13 and 83** of this order for a speedy justice and trial in the interest of both the accused as well as the victim.

98. It is directed that in cases of non-compliance with summons, warrants, or the provisions of Sections 84 and 85 of the BNSS (corresponding Sections 82 and 83 Cr.P.C.) or Section 174-A IPC (corresponding Section 209 BNS), within time frame and in the manner as specified under the law, the Presiding Officer shall immediately inform the concerned Superintendent of Police (S.P.), Senior Superintendent of Police (S.S.P.), or Commissioner of Police, as the case may be and the District Magistrate, so that appropriate departmental and/or criminal proceedings may be initiated against the erring officers or personnel, who cause a hindrance in imparting a speedy trial/justice to the aggrieved party in accordance with the Conduct and Disciplinary Rules, as applicable under the law.

99. It is directed that, if the public prosecutors do not assist the Court for the expeditious disposal of the criminal cases, as per the provisions of law within the time frame or in the manner prescribed under the law or, as directed by the Court, in cases of absconding accused etc., the concerned authorities mentioned under Section 20 of the BNSS i.e. Additional Chief Secretary, Home Department, U.P. Govt., the concerned Director of Prosecution and the District Magistrate, may take appropriate action against the erring Public Prosecutors, as provided under law.

100. It is directed that all summons, warrants, and orders be executed by the concerned person/authority in accordance with the procedure, prescribed by law. Evidence of such execution/non-execution of summons, warrants or orders shall be entered into the order sheet, as the case may be, to establish that the accused was afforded an opportunity to be heard prior to passing an order of conviction, regardless of whether the proceedings were conducted in person or as an absconder.

101. The Director General of Police (D.G.P.) and the Director of Prosecution are directed to circulate this order within 60 days to all concerned authorities to co-operate in concluding enquiry, investigation and trial for speedy justice in the manner as well as within the prescribed time under the Bharatiya Nagarik Suraksha Sanhita, 2023 and other laws.

102. It is directed that the concerned District Judge shall take up the matter/issue in every monthly meeting of the Judicial Officers and further in the Monitoring Cell meeting of the district, which is held every month.

103. The Registrar General of this Court is directed to transmit a copy of this order to the Judicial Training and Research Institute, U.P., Lucknow (JTRI), for the academic purposes of judicial officers.

104. The Government Advocate is directed to communicate this order to the Chief Secretary, Govt. of U.P.; Additional Chief Secretary, Home Department, Govt. of U.P.; the Additional/Principal Secretary of Law Department, Govt. of U.P.; the Director General of Prosecution and Director of Prosecution, State of U.P.; the District Magistrates, the Senior Superintendents of Police, the Superintendents of Police, the Commissioners of Police of all districts of the State of U.P., to take necessary action **within 60 days** from the date of this order so as to conclude the trial of proclaimed offenders, as provided under Section 356 BNSS and other provisions of law.

105. This application is **disposed of** with the direction that the impugned order dated 18.10.2024 shall be kept in abeyance for a period of two months from the date of this order, thereafter, the trial court shall be at liberty to pass an appropriate order in the event the accused does not cooperate in the trial at every stage i.e. such as framing of charges, recording of statements under Section 351 BNSS (corresponding to Section 313 Cr.P.C.) and at the time of pronouncement of the judgment etc.

(2026) 5 ILRA 1775
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.05.2026

BEFORE

THE HON'BLE TEJ PRATAP TIWARI, J.

Application U/S 482 No. 9674 of 2024

Smt. Geeta Singhal & Anr. ...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

ISSUE FOR CONSIDERATION

Whether the criminal proceedings (under Sections 498-A, 323, 504, 506, 406 IPC and Sections 3/4 Dowry Prohibition Act) pending before the Chief Judicial Magistrate, along with charge-sheet and cognizance order are liable to be quashed under Section 482 Cr.P.C. ?

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 - Section 482 - Indian Penal Code, 1860 - Sections 405, 406, 498-A, 323, 504, 506 - Dowry Prohibition Act, 1961 – Sections 3, 4 : - Application u/s 482 Cr.P.C. – against criminal proceedings - seeking relief of quashing FIR, charge-sheet and cognizance order – FIR – office of cruelty, dowry demand, assault, forced sexual relations, acid threat, and retention of Stridhan – investigation - charge-sheet - cognizance taken – trial initiated – earlier, divorce petition and complaint case, noted as connected matter – Applicants pleaded allegations vague, retaliatory, unsupported by medical evidence, and contradicted by complainant's handwritten note – Scope of inherent powers under Section 482 Cr.P.C - Definition and scope of "cruelty" under Section 498-A IPC - Ingredients of criminal breach of trust under Sections 405/406 IPC - Court finds that, FIR discloses cognizable offences, disputed facts require trial, delay in complaint not fatal in matrimonial matters – scope of Section 482 limited, no mini-trial permissible, allegations must be tested at trial – held, sufficient material exists to proceed – hence, application dismissed – trial court to decide case expeditiously as per earlier order – application accordingly, dismissed.

(Para – 20, 21, 22)

Application Dismissed. (E-11)

CASE LAW CITED

Binod Kumar v. State of Bihar, (2014) 10 SCC 663
Manju Ram Kalita v. State of Assam, (2009) 13 SCC 330
Ramesh Sitaldas Dalal v. State of Maharashtra, 2023 (4) Bom CR (Cri) 845
Omprakash Krishnya Nayar v. State of Maharashtra, 1999 SCC OnLine Bom 253
CBI v. Aryan Singh, (2023) 18 SCC 399
Daxaben v. State of Gujarat, (2022) 16 SCC 117
State of Odisha v. Pratima Mohanty, (2022) 16 SCC 703

LIST OF ACTS

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

LIST OF KEYWORDS

Application under section 482, Quashing of proceedings, Section 482 Cr.P.C., criminal breach of trust, cruelty, dowry demand, Stridhan, matrimonial dispute, counterblast, mini-trial, inherent powers.

CASE ARISING FROM

Case Crime No. 578 of 2021, Police Station Teela Mod, District Ghaziabad, U.P.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Anjani Kumar Singh, Aradhana Singh, Jai Raj, Rajat Sonkar, Ravi Pratap Narayan Singh, Shiv Bahadur Singh, Suresh Kumar Maurya.
Counsel for Respondent(s): - G.A., Lavkush Yadav, Nikil Pathak.

(Delivered by Hon'ble Tej Pratap Tiwari, J.)

1. The present Criminal Misc. Application has been filed under Section 482 Cr.P.C., to quash the entire criminal proceedings of Case no. 20633 of 2022 arising out of Case Crime No. 578 of 2021, State of U.P. vs. Akhil Singhal and others, pending in the court of learned Chief Judicial Magistrate, Ghaziabad, under sections 498A, 323, 504, 506, 406 I.P.C. and section 3/4 Dowry Prohibition Act, Police Station-Teela Mod, District Ghaziabad (U.P.) as well as Charge-sheet dated 24.03.2022 and cognizance order dated 16.05.2022.□□

Factual Matrix

2. Shorn of the details, Smt Harsha Singhal married to Akhil Singhal on 02.02.2012, after the marriage of the complainant with the applicant, she was subjected to cruelty and harassment on account of demand of additional dowry. The complainant was allegedly assaulted and mentally tortured by her husband and in-laws. It is further alleged that she was compelled to maintain unnatural physical relations against her will and was subjected to forced sexual intercourse without her consent. Allegations have also been levelled regarding an attempt to throw acid upon the complainant during an altercation. The complainant has further alleged that her stridhan and other belongings were retained by her mother-in-law and she was ultimately ousted from the matrimonial house and prevented from meeting or residing with her children. It has also been alleged that a demand of ₹5,00,000/- and 50 yards of landed property was made from her in-laws side as additional dowry. The case was registered against the husband and the mother-in-law of the complainant, detailed mentioned above.□

Argument on behalf of applicant□

3. Learned counsel for the applicants submits that the allegations levelled in the First Information Report are false, frivolous and baseless, and the applicants have been falsely implicated due to matrimonial discord. It is further submitted that despite being continuously summoned by the Court on as many as 14 occasions, the complainant failed to appear before the Court for almost three years and only appeared after issuance of Non-Bailable Warrant, and the impugned FIR is a manifestly retaliatory □counterblast□ to prior civil and criminal litigation and filed with unexplained delay, which casts serious doubt upon the genuineness of the prosecution case.

4. Learned counsel further submits that the Medical evidence proves that the respondent no. 2 is the aggressor, not the victim. A trial where the victim has zero injuries and the accused has a documented MLC of assault is a perversion of justice. Under the Achin Gupta case (2024), when the totality of facts shows that the allegations are improbable, the court must intervene.

5. Learned counsel further submits that there is not a single specific date, time, or month attributed to the alleged daily routine of beating, the demand for 5 lakhs, or the acid throwing threat. By providing only biographical dates, the complainant has attempted to give a veneer of precision to a narrative that is otherwise entirely vague, generic, and hypothetical.

6. Learned counsel submits that the FIR alleges that on 16.11.2020, the Applicants threw her out of the matrimonial home. This is false and contradicted by her own hand. In a handwritten letter dated 28.02.2020, the respondent No. 2 explicitly declared that she wanted to abandon the matrimonial house and her two children on her own accord to start a new life.

7. Learned counsel further submits that from the allegations made in the FIR and the material available on record, the offences under Sections 406 and 498-A IPC are not made out against the applicants. It is submitted that there is no specific allegation regarding entrustment or misappropriation of stridhan by the applicants, and the allegations of cruelty are general and vague in nature without assigning any specific role to them. In support of his submission, learned counsel has relied upon the decision in **Manju Ram Kalita vs. State of Assam, (2019) 13 SCC 330** and **Binod Kumar vs. State of Bihar, (2014) 10 SCC 663.**

Argument on behalf of State and opposite party no. 2

8. Learned A.G.A. for the State as well as learned counsel appearing for opposite party no. 2 vehemently opposed the prayer for quashing of chargesheet and submitted that the allegations levelled in the First Information Report disclose commission of cognizable offences and the same are supported by the statements of the victim and other material collected during investigation.

9. It is further submitted that the complainant was continuously subjected to cruelty and harassment on account of dowry demands by the applicants and the allegations cannot be brushed aside merely on the ground that the dispute arises out of a matrimonial relationship.

Learned counsel submits that the delay in lodging the complaint or taking legal recourse is quite natural in matrimonial matters as the victim generally makes every possible effort to save her matrimonial life and family relations.

10. Learned counsel further submits that specific allegations regarding demand of dowry, physical and mental cruelty and retention of stridhan have been levelled against the applicants and, therefore, at this stage, it cannot be said that the essential ingredients of the offences under Sections 406 and 498-A Indian Penal Code, 1860 are not made out.

Observation

11. At the first instance, it would be appropriate to reproduce the provisions of law under which the present criminal misc. application has been preferred i.e Section 482 Cr.P.C.

482. Saving of inherent powers of High Court.

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

12. It would be apposite, at this stage, to extract Section 405 and Section 406 of Indian Penal Code, 1860 which reads as under:-

405. Criminal breach of trust.-

"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust"

Explanation 1.- A person, being an employer of an establishment whether exempted under section 17 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not who deducts the employee s contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2.- A person, being an employer, who deducts the employees contribution from the wages payable to the employee for credit to the Employees State Insurance Fund held and administered by the Employees State Insurance Corporation established under the Employees State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid."

406. Punishment for criminal breach of trust.

"Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

13. To better understand the concept, reliance may be placed on certain legal precedents, such as ***Binod Kumar versus State of Bihar (2014) 10 SCC 663***

"14. At this stage, we are only concerned with the question whether the averments in the complaint taken at their face value make out the ingredients of criminal offence or not. Let us now examine whether the allegations made in the complaint when taken on their face value, are true and constitute the offence as defined under Section 406.

15. Section 405 IPC deals with criminal breach of trust. A careful reading of Section 405 IPC shows that a criminal breach of trust involves the following ingredients:

(a) a person should have been entrusted with property, or entrusted with dominion over property;

(b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so;

(c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

16. Section 406 IPC prescribes punishment for criminal breach of trust as defined in Section 405 IPC. For the offence punishable under Section 406 IPC, prosecution must prove:

(i) that the accused was entrusted with property or with dominion over it; and

(ii) that he (a) misappropriated it, or (b) converted it to his own use, or (c) used it, or (d) disposed of it.

The gist of the offence is misappropriation done in a dishonest manner. There are two distinct parts of the said offence. The first involves the fact of entrustment, wherein an obligation arises in relation to the property over which dominion or control is acquired. The second part deals with misappropriation which should be contrary to the terms of the obligation which is created.

18. In the present case, looking at the allegations in the complaint on the face of it, we find that no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilised the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust."

14. **Ramesh Sitaldas Dalal and ors. Versus State of Maharashtra and ors., 2023(4)Bom CR(Cri)845**.

"13. The term 'cruelty' for the purpose of Section 498-A of the IPC has been specifically defined. In order to constitute an offence under Section 498-A there must be prima facie material to prove (a) willful conduct of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman; (b) that they had harassed her with a view to coerce her to satisfy unlawful demand of dowry. It is well settled that to prove offence under Section 498-A, it has to be established that the woman has been subjected to cruelty continuously or persistently or at least in close proximity of time of lodging the complaint. Petty quarrels do not amount to cruelty. Reliance is placed on the decision of the Apex Court in Manju Ram Kalita vs. State of Asam MANU/SC/0911/2009: (2009) 13 SCC 330."

15. After thoughtfully considering the arguments advanced by learned counsel for the parties, the relevant legal provisions, the case laws relied upon, and upon perusal of the material available on record, it appears that the FIR contains specific allegations against the mother-in-law of the complainant, namely, Geeta Singhal, regarding non-return of stridhan and administering certain medicines alleged to be harmful to the complainant. It further appears that, according to the written submissions advanced on behalf of the applicants, a handwritten note (Annexure SA-34) has been relied upon to contend that the complainant/respondent had left the matrimonial home of her own accord. However, the said handwritten note forms part of the evidence and its authenticity, genuineness and evidentiary value cannot be conclusively examined at this stage, as the question whether the same was actually written by the complainant/respondent or not is a disputed question of fact requiring appreciation of evidence during trial.

16. It also appears that the applicants have questioned the credibility of the prosecution case on the ground that no formal complaint was lodged for almost nine years and that the present proceedings were initiated only after institution of Criminal Complaint Case No. 905 of 2021 and Divorce Petition (HMA No. 421 of 2021) by Applicant No. 2 on the ground of cruelty, thereby contending that the present FIR is a counterblast to the earlier proceedings. However, merely because the present proceedings may appear to be a counterblast to the aforesaid cases, the same by itself would not constitute a sufficient ground for quashing of the FIR, particularly when certain disputed questions of fact and evidence still require examination during trial. The issue regarding the injuries allegedly sustained by Applicant No. 2, and whether the same were caused by the complainant/respondent, also involves factual adjudication based upon evidence to be led during trial. The reliance be place on the judgment **Omprakash Krishnya Nayar v. State of Maharashtra, 1999 SCC OnLine Bom 253**

"Between "may be true" and "must be true" there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence."

17. Looking to the aspect of the powers of the Court under Section 482 Cr.P.C., it is settled that at the stage of quashing, the Court is not required to conduct a mini trial, thus the jurisdiction under Section 482 Cr.P.C with respect to quashing is somewhat limited as the Court has to only

consider whether any sufficient material is available to produce against the applicant or not, if sufficient material is available, the power under Section 482 Cr.P.C should not be exercised. Further in the case **of Central Bureau of Investigation v. Aryan Singh and others, (2023) 18 SCC 399** this Court held that at the stage of Section 482 of the Cr.P.C., the High Court is not required to conduct a mini trial, relevant para is reproduced below:-

"6. From the impugned common judgment and order [Aryan Singh v. CBI, 2022 SCC OnLine P&H 4158] passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned trial court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 CrPC, the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency.

7. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482CrPC, the Court has a very limited jurisdiction and is required to consider whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not".

8. One another reason pointed by the High Court is that the initiation of the criminal proceedings/proceedings is malicious. At this stage, it is required to be noted that the investigation was handed over to the CBI pursuant to the directions issued by the High Court. That thereafter, on conclusion of the investigation, the accused persons have been charge-sheeted. Therefore, the High Court has erred in observing at this stage that the initiation of the criminal proceedings/proceedings is malicious. Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial. In any case, at this stage, what is required to be considered is a prima facie case and the material collected during the course of the investigation, which warranted the accused to be tried."

18. In **Daxaben v. State of Gujarat** (2022) 16 SCC 117, a two-Judge Bench held as follows:

"*26. Even though, the inherent power of the High Court under Section 482 CrPC, to interfere with criminal proceedings is wide, such power has to be exercised with circumspection, in exceptional cases. Jurisdiction under Section 482 CrPC is not to be exercised for the asking. 27. In Monica Kumar v. State of U.P. [(2008) 8 SCC 781 (2008) 3 SCC (Cl) 649], this Court held that inherent jurisdiction under Section 482 CrPC has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.*

28. In exceptional cases, to prevent abuse of the process of the Court, the High Court might in exercise of its inherent powers under Section 482 quash criminal proceedings. However, interference would only be justified when the complaint did not disclose any offence, or was patently frivolous, vexatious or oppressive, as held by this Court in Dhanalakshmi v. R. Prasanna Kumar [1990 Supp SCC 686: 1991 SCC (Cri) 142: AIR 1990 SC 494].

36. Offence under Section 306 IPC of abetment to commit suicide is a grave, non-compoundable offence. Of course, the inherent power of the High Court under Section 482 CrPC is wide and can even be to non exercised to quash criminal proceedings relating compoundable offences, to secure the ends of justice or to prevent abuse of the process of court. Where the victim and offender have compromised disputes essentially civil and personal in nature, the High Court can exercise its power under Section 482 CrPC to quash the criminal proceedings. In what cases power to quash an FIR or a criminal complaint or criminal proceedings upon compromise can be exercised, would depend on the facts and circumstances of the case."

22. On the aspect of the powers of the Courts under Section 482 of the Cr. P.C., it is settled that at the stage of quashing, the Court is not required to conduct a mini trial. Thus, the jurisdiction under Section 482 of the Cr. P.C. with respect to quashing is somewhat limited as the Court has to only consider whether any sufficient material is available to proceed against the accused or not. If sufficient material is available, the power under Section 482 should not be exercised.

19. The Court is also relying on the judgment of case, **State of Odisha v. Pratima Mohanty (2022) 16 SCC 703** held that:-

"8.2. It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per the settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section 482 CrPC when after a thorough investigation the charge-sheet has been filed. At the stage of discharge and/or considering the application under Section 482 CrPC the courts are not required to go into the merits of the allegations and/or evidence in detall as if conducting the mini-trial. As held by this Court the powers under Section 482 CrPC are very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court."

20. Even if there appears to be a possibility that the present FIR has been lodged as a counterblast to the earlier proceedings instituted by the applicants, the said aspect itself cannot be conclusively determined at this stage, particularly when adjudication of such plea requires appreciation and determination of evidence. The evidentiary value and correctness of the rival claims raised by the parties can only be properly examined during trial upon leading of evidence. Therefore, this Court, while exercising jurisdiction under Section 482 Cr.P.C., cannot undertake such factual determination at this stage.

21. In this context, it seems relevant to take note of that vide order dated 14.11.2025 of this Court, in Application U/S 482 Cr.P.C. No. 4269 of 2025 (Harsha Singhal versus State of U.P. and others), the concerned trial Court has been directed to decide the instant case preferably within 3 months.

22. In view of the law, reasons and discussions made herein above, this Court finds that the present case warrants no interference at this stage as it is necessary to examine the allegations. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution. Therefore, the instant application is liable to be dismissed.

23. With the aforesaid observations, the present application is **dismissed.**

24. The Court acknowledge and appreciates the sincere efforts and valuable assistance of Research Associate Ms. Kratanshi Srivastava.

(2026) 5 ILRA 1783
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 04.05.2026

BEFORE

THE HON'BLE MS. NAND PRABHA SHUKLA, J.

Application U/S 528 BNSS No. 10028 of 2026

Smt. Mansi Tyagi & Anr. ...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

ISSUE FOR CONSIDERATION

Whether a DNA test can be directed to determine the paternity of a child born during the subsistence of a valid marriage, in light of Section 112 of the Indian Evidence Act, 1872, and whether the Family Court erred in rejecting the application ?

HEADNOTES

Criminal Law - Code of Criminal Procedure, 1973 – Section - 125 - Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 528 - Indian Evidence Act, 1872 - Sections 112 - Hindu Marriage Act, 1955 – Section - 13: - Application u/s 528 BNSS – against rejection of DNA test request – seeking relief of paternity determination – rejected by Family Court, Agra – maintenance petition u/s 125 Cr.P.C. – child born during subsistence of valid marriage – DNA report obtained by husband – divorce petition pending – Applicant pleaded that opposite party fathered child through extra-marital relationship – Court finds that, presumption of legitimacy under Section 112 Evidence Act is conclusive unless non-access proved – DNA test cannot rebut legitimacy without proof of non-access - law favours legitimacy over illegitimacy – held, there is no 'eminent need' for a DNA profiling test - – hence, petition dismissed.

(Para – 13, 14, 15)

Application Dismissed. (E-11)

CASE LAW CITED

Goutam Kundu v. State of W.B. (1993) 3 SCC 418
Sharda v. Dharmpal (2003) 4 SCC 493
Bhabani Prasad Jena v. Orissa State Commission for Women (2010) 8 SCC 633
Aparna Ajinkya Firodia v. Ajinkya Arun Firodia (2024) 7 SCC 773
Ivan Rathinam v. Milan Joseph (2025 INSC 115)
R. Rajendran v. Kamar Nisha (2025 INSC 1304)

LIST OF ACTS

Bharatiya Nagarik Suraksha Sanhita, 2023 - Indian Evidence Act, 1872 - Hindu Marriage Act, 1955.

LIST OF KEYWORDS

Application under section 528, Paternity, Legitimacy, DNA Test, Non-access, Presumption, Maintenance, Extra-marital relationship, Divorce, Family Court.

CASE ARISING FROM

Family Court order dated 19.01.2026 in Case No. 994 of 2020 (*Mansi Tyagi v. Satish Tiwari*) rejecting request for DNA test in maintenance proceedings.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Mrs. Nikki Verma holding brief of Mr. Bhaiya Ram
Counsel for Respondent(s): - Sri Mr. Asim Kumar Singh, Mr. Nand Lal, AGA

(Delivered by Hon'ble Ms. Nand Prabha Shukla, J.)

1. Heard Mrs. Nikki Verma holding brief of Mr. Bhaiya Ram, learned counsel for the applicants, Mr. Asim Kumar Singh, learned counsel for the opposite party No. 2 and Mr. Nand Lal, learned AGA for the State and perused the record.

2. The present application under Section 528 BNSS has been filed with a prayer to quash the order dated 19.01.2026 passed by learned Additional Principal Judge, Family Court No.1, Agra, in Case No. 994 of 2020 (Mansi Tyagi v. Shri Satish Tiwari) rejecting the application No. 11B dated 20.09.2023 moved by Smt. Mansi Tyagi for the determination of the paternity of her begotten son Master Shiva through DNA test by taking the blood samples of applicant No. 2 Master Shiva and opposite party No. 2, Satish Tiwari in the pending maintenance proceeding under section 125 Cr.P.C.

3. The noticeable facts relevant to deal with the controversy are that the marriage of the applicant, Smt. Mansi Tyagi was solemnized with one Narendra Tyagi in the year 2012 according to Hindu rites and rituals and two sons were born out of their wedlock, namely, Harsh Tyagi and Rohit Tyagi. In the year 2018-19, the applicant Mansi Tyagi came in contact with the opposite party No. 2, Satish Tiwari @ Akhilesh Tiwari and developed extra-marital relationship and a son named Shiva was begotten on 12.07.2020. The husband Narendra Tyagi noticed the fact and went for the paternity test of himself and the begotten child Master Shiva wherein the DNA Test report dated 28.07.2020 disclosed that husband Narendra Tyagi is not the biological father of the applicant No. 2, Master Shiva and thus moved a divorce petition on 24.08.2020 for dissolution of the marriage.

4. In the meantime, the applicant, Smt. Mansi Tyagi, moved an application dated 05.10.2020 under Section 125 Cr.P.C., i.e., Petition No. 994 of 2020 (Smt. Mansi Tyagi and another v. Satish Tiwari @ Akhilesh Kumar Tiwari) before the Principal Judge, Family Court, Agra claiming maintenance on behalf of the minor begotten son i.e., applicant No. 2 Master Shiva, from the opposite party No. 2, Satish Tiwari @ Akhilesh Kumar Tiwari.

5. During the pendency of the Maintenance Petition, the applicant No. 1 Mansi Tyagi moved an application No. 11B dated 20.09.2023 for the scientific determination of the paternity wherein the impugned order dated 19.01.2026 has been passed by learned Additional Principal Judge, Family Court No.1 rejecting the same on the ground that there is no material in regard to live-in-relationship between the applicant no. 1 and opposite party no.2, hence, the present petition.

6. In this backdrop, it is relevant to mention that admittedly the applicant No.1, Mansi Tyagi is the legally wedded wife of Narendra Tyagi and during the subsistence of the valid marriage, she developed an extra marital relationship with the opposite party No. 2, Satish Tiwari @ Akhilesh Tiwari who fathered the child i.e., the applicant No. 2, Master Shiva.

7. The birth of applicant No. 2, Master Shiva, during the subsistence of valid marriage between the couple is the conclusive proof of legitimacy. However, at the subsequent stage, the husband Narendra Tyagi separated himself from applicant No. 1 after obtaining the DNA Test Report dated 28.07.2020 which disclosed that Narendra Tyagi was not the biological father of applicant No. 2, Master Shiva and thus moved a divorce petition on 24.08.2020 bearing Petition No. 1094 of 2020 (Narendra Tyagi v. Mansi Tyagi) before the Court of Principal Judge, Family Court, Agra which is still pending decision.

8. Recently, the Hon'ble Apex Court in Ivan Rathinam v. Milan Joseph, 2025 INSC 115 has discussed in detail on the issues relating to paternity, legitimacy and maintenance of a child begotten from an extra marital relationship. At this juncture, it is relevant to refer the legal position which exists in India. The relevant paragraphs are referred here-in-below:

"26. The advent of scientific testing has made it much easier to prove that a child is not a particular person's offspring. To this end, ***Indian courts have sanctioned the use of DNA testing, but sparingly.***

27. Before delving into the analysis, it is pertinent to elucidate Section 112 of the Indian Evidence Act, 1872:

"112. Birth during marriage, conclusive proof of legitimacy. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten."

28. The language of the provision makes it abundantly clear that there exists a strong presumption that the husband is the father of the child borne by his wife during the subsistence of

their marriage. This section provides that conclusive proof of legitimacy is equivalent to paternity. The object of this principle is to prevent any unwarranted enquiry into the parentage of a child. Since the presumption is in favour of legitimacy, the burden is cast upon the person who asserts 'illegitimacy' to prove it only through 'non-access.'

29. It is well-established that access and non-access under Section 112 do not require a party to prove beyond reasonable doubt that they had or did not have sexual intercourse at the time the child could have been begotten. 'Access' merely refers to the possibility of an opportunity for marital relations. To put it more simply, in such a scenario, while parties may be on non-speaking terms, engaging in extra-marital affairs, or residing in different houses in the same village, it does not necessarily preclude the possibility of the spouses having an opportunity to engage in marital relations. Non-access means the impossibility, not merely inability, of the spouses to have marital relations with each other. For a person to rebut the presumption of legitimacy, they must first assert non-access which, in turn, must be substantiated by evidence. (emphasis supplied)

30. It is only when such an assertion is made, that the court can consider the question of ordering a DNA test to establish paternity. In **Goutam Kundu v. State of W.B.; 1993 (3) SCC 418**, this Court laid down the following parameters to decide whether a court can order a DNA test for the purposes of Section 112 of the Indian Evidence Act.

"(1) that courts in India cannot order blood test as a matter of course;

(2) wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.

(3) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act.

(4) The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.

(5) No one can be compelled to give sample of blood for analysis."

31. These parameters have been subsequently followed by this Court in **Sharda v. Dharmpal; (2003) 4 SCC 493 and Bhabani Prasad Jena v. Orissa State Commission for Women; (2010) 8 SCC 633.** In these cases, it was held that DNA tests may be ordered, only if a strong prima facie case of non-access is made out, with sufficient material placed before the court to arrive at a decision.

9. At this juncture, one must not ignore the observations made by the Hon'ble Apex Court in ***Aparna Ajinkya Firodia v. Ajinkya Arun Firodia; (2024) 7 SCC 773 that : "under the Indian legal spectrum, a husband, is strongly presumed to be the father of a child borne to his wife. It has been held that there is a strong presumption regarding the paternity of a child. This presumption can be overcome only by evidence precluding any pro-creative role of the husband***

such as by showing that the husband and wife had no access to the each other at the time of possible conception. Therefore, in the absence of proof of non-access the law considers that husband's paternity to be conclusively established if they cohabited when the child is likely to have been conceived. The presumption protects social parentage over biological parentage.

10. Further, it has been observed that if husband and wife were living together during the time of conception but the DNA test reveals that the child was not borne to the husband, the conclusiveness of the presumption of legitimacy of such child in law would remain irrebuttable. In such situation, adultery may be proved on the part of the wife, the legitimacy of the child, would still be conclusive in law. The conclusive presumption of legitimacy of a child borne during the subsistence of a valid marriage is that the child is that of the husband and it cannot be rebutted by a mere DNA test report. For rebuttal, there must be the proof of non-access at the time when the child could have been begotten, i.e,, at the time of its conception."

11. However, as to the stage of conducting DNA test and the consideration which are required to be taken into account before forming such option, the observations made by the Apex Court in the Case of **Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commissioner for Women and another reported in MANU/SC/0555/2010: 2010 (8) Supreme Court Cases 633** *are relevant to be taken note of. In that case, the Apex Court had held that DNA test in a matter relating to paternity of a child should not be directed by the Court as a matter of course or routine manner. Wherever such request is made, the Evidence Act; pros and cons of such order and the test of "eminent need" whether it is not possible for the Court to reach the truth without use of such test. Any order or direction for DNA test can be given by the Court only when a strong prima facie case is made out for such a course. Since the presumption is in favour of the legitimacy, the burden to prove it only through "non-access" is cast upon the person who asserts "illegitimacy" as discussed above.*

12. Forcefully undergoing a DNA test would subject an individual's private life to scrutiny from the outside world. That scrutiny, particularly when, concerning matters of infidelity, can be harsh and can eviscerate a person's reputation and standing in society.

13. In the case at hand, it is an admitted fact that applicant no. 2 was begotten on 12.07.2020 during the subsistence of the valid marriage of Mansi Tyagi and Narendra Tyagi who remained together until the husband separated himself after procurement of DNA Test Report dated 28.07.2020 and filing of the divorce petition under section 13 of Hindu Marriage Act dated 24.08.2020 which is still pending decision. It is obvious that both had access throughout their marriage. Even if it is presumed that Applicant No.1 developed extra marital relationship with opposite party no.2 especially when the Applicant No.2 was begotten, such a fact, per se, would not be sufficient to displace the presumption of legitimacy. It seems that the husband and opposite party no. 2 both had simultaneous access. There being a statutory mandate, the applicant No. 2, Master Shiva shall be presumed to be the son of Narendra Tyagi.

14. Most recently, the Supreme Court has reiterated in **R. Rajendran vs. Kamar Nisha, 2025 INSC 1304** "*that the law favours legitimacy and frowns upon the illegitimacy" and that*

section 112 of the Indian Evidence Act "stands as a bulwark against the casual illegitimization of children on the strength of unsubstantiated allegations or mere suspicion."

15. In the light of the legal position, as discussed above, there is no 'eminent need' for a DNA Profiling test of opposite party No. 2. The learned Family Court has rightly rejected the application No. 11B for the determination of paternity.

16. No interference is required.

17. The present application is accordingly, ***dismissed***.

(2026) 5 ILRA 1788
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 04.05.2026

BEFORE

THE HON'BLE MS. NAND PRABHA SHUKLA, J.

Application U/S 528 BNSS No. 11808 of 2026

Arun Kumar **...Applicant**
Versus
State of U.P. & Anr. **...Opposite Parties**

ISSUE FOR CONSIDERATION

Whether the Trial Court was justified in taking the viscera report on record at the stage of final arguments and framing an alternate charge under Section 302 IPC, despite delay and closure of prosecution evidence?

HEADNOTES

Criminal Law – Bharatiya Nagarik Suraksha Sanhita, 2023 – Section 528 - Code of Criminal Procedure, 1973 – Section - 216, 217, 313 - Indian Penal Code, 1860 – Section - 498A, 304B, 302 - Dowry Prohibition Act, 1961 - Section 3, 4: - Application u/s 528 BNSS – against order passed by the learned Addl. Sessions Judge, FTC-I, Mathura – seeking relief of setting aside order taking viscera report on record and framing alternate charge u/s 302 IPC – FIR lodged alleging dowry death u/ss 498A, 304B IPC & 3/4 D.P. Act – investigation – charge sheet – cognizance – trial – eight prosecution witnesses examined – statement of accused recorded u/s 313 Cr.P.C. – viscera preserved in 2015, report showing organophosphorus poison produced belatedly in 2025 – applicant pleaded prejudice, delay, abuse of process – Court finds viscera report is material evidence - Section 216 Cr.P.C. empowers alteration/addition of charge at any stage before judgment – framing of alternate charge u/s 302 IPC justified, no illegality – the post-mortem report reveals that no ante-morterm injuries were found – Viscera preserved was examined in time, the poison was detected which is a material evidence – held, there is no illegality in the order impugned – hence, application is dismissed.

(Para – 11, 12, 13)

Application Dismissed. (E-11)

CASE LAW CITED

Jasvinder Saini v. State (Govt of NCT of Delhi), 2013 LawSuit (SC) 559
Rajbir v. State of Haryana (referred in Jasvinder Saini)

Dr. Nallapareddy Sridhar Reddy v. State of Andhra Pradesh (affirming Jasvinder Saini)

LIST OF ACTS

Indian Penal Code, 1860 – Dowry Prohibition Act, 1961 – Code of Criminal Procedure, 1973 - Bharatiya Nagarik Suraksha Sanhita, 2023.

LIST OF KEYWORDS

Application under section 528, Dowry death, Murder charge, Viscera report, Organophosphorus poison, Section 216 Cr.P.C., Alteration of charge, Fair trial, Delay in evidence.

CASE ARISING FROM

Case Crime No. 1073 of 2015, PS Vrindavan, District Mathura - S.T. No. 41 of 2017 - Charges under Sections 498A, 304B IPC, 3/4 D.P. Act - Viscera report dated 22.12.2016 - Order dated 10.02.2026 framing alternate charge under Section 302 IPC.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Sanjeev Kumar Pandey
Counsel for Respondent(s): AGA.

(Delivered by Hon'ble Ms. Nand Prabha Shukla, J.)

1. Heard Sri Sanjeev Kumar Pandey, learned counsel for the applicant, learned AGA for the State and perused the record.

2. The present application under section 528 BNSS has been filed with a prayer to set aside the order dated 10.02.2026 passed by learned Additional Sessions Judge, FTC-Ist, (Offence Against Women) Mathura in S.T. No. 41 of 2017 under sections 498A, 304B IPC and 3/4 D.P. Act, Case Crime No. 1073 of 2015, Police Station Vrindavan, District Mathura.

3. Briefly stated, Shri Krishan Sharma, the opposite party no.2, lodged an FIR bearing Case Crime No. 1073 of 2015 under Sections 498-A, 304-B IPC and 3/4 D.P. Act at Police Station Vrindavan, District Mathura against the applicant and 3 others alleging that the marriage of his daughter Km. Kshama was solemnized with the applicant, Arun Sharma on 19.02.2011 wherein cash of Rs. 3 lacs and various articles were given but the in-laws demanded additional dowry of Rs. 5 lacs cash and a four wheeler. Due to non-fulfillment of dowry demand, the daughter of opposite party no.2 was killed on 04.11.2015 at 2.00 P.M. at her matrimonial home. After thorough investigation, the applicant was charge-sheeted under sections 498A, 304B IPC and 3/4 D.P. Act. According to the autopsy report dated 05.11.2015, no ante mortem injuries were found as the cause of death could not be ascertained, the viscera was preserved.

4. The learned Chief Judicial Magistrate, Mathura took cognizance on 08.02.2016 and the matter was committed to the Court of Sessions and the charges were framed against the applicant on 05.07.2018 under sections 498A, 304-B IPC and 3/4 D.P. Act. During the trial proceedings, total eight prosecution witnesses have been examined and the statement of the accused/applicant was recorded under section 313 Cr.P.C on 09.07.2025 and the date was fixed for final arguments. The viscera of the deceased was preserved on 04.11.2015 and was sent for chemical examination to the Forensic Science Laboratory, Agra on 17.12.2015 and was chemically examined on 22.12.2016.

5. In the meantime, taking a somersault, the ADGC (Crl.) moved an Application No. 82 Kha dated 05.12.2025 for taking viscera report on record and to frame an alternate charge under Section 302 IPC. The objection was invited on the said application wherein the applicant filed the objection dated 13.01.2026 and the application was allowed vide impugned order dated 10.02.2026, passed by learned Addl. Session Judge/Fast Track Court I (Atrocities against Women) Mathura by taking viscera report dated 22.12.2016 on record, and fixed the date for framing of the alternate charge under section 302 IPC.

6. Learned counsel for the applicant submits that the order dated 10.02.2026 is arbitrary and illegal and is not sustainable in the eyes of law. It has further been argued that the learned Trial Court had committed gross illegality by taking viscera report dated 22.12.2016 on record at the stage of final argument i.e. after closing of eight prosecution witnesses and recording the statement of accused-applicant under section 313 Cr.P.C. and the same could not be taken on record at such a belated stage.

7. It has further been argued that the viscera report dated 22.12.2016 has been placed before the Trial Court on 05.12.2025 with an inordinate delay of ten years without any plausible explanation given by the prosecution. No opportunity of cross-examination was given to the applicant, therefore, the same cannot be read in evidence or made part of the prosecution evidence by the Trial Court concerned. The findings recorded by the learned Additional Sessions Judge for taking viscera report dated 17.12.2025 on record is based on surmises and conjectures. The matter is fixed for final argument after completion of the prosecution evidence as well as after recording the statement of the accused under section 313 Cr.P.C. The alternate charge under section 302 Cr.P.C cannot be framed at this stage as no opportunity has been given to the appellant to raise their defence. There is no material on record for the framing of alternate charge under section 302 IPC and is an abuse of the process of the court.

8. Learned Counsel for the applicant has relied upon the Judgement rendered by Hon'ble Apex Court in ***Jasvinder Saini and Others v. State (Govt of NCT of Delhi) 2013 LawSuit(SC) 559*** wherein it has been observed as follows:-

"13. Be that as it may the common thread running through both the orders is that this Court had in Rajbir's case (supra) directed the addition of a charge under Section 302IPC to every case in which the accused are charged with Section 304-B. That was not, in our opinion, the true purport of the order passed by this Court. The direction was not meant to be followed mechanically and without due regard to the nature of the evidence available in the case. All that this Court meant to say was that in a case where a charge alleging dowry death is framed, a charge under Section 302 can also be framed if the evidence otherwise permits. No other meaning could be deduced from the order of this Court. It is common ground that a charge under Section 304B IPC is not a substitute for a charge of murder punishable under Section 302. As in the case of murder in every case under Section 304B also there is a death involved. The question whether it is murder punishable under Section 302 IPC or a dowry death punishable under Section 304B IPC depends upon the fact situation and the evidence in the case. If there is evidence whether direct or circumstantial to prima facie support a charge under Section 302 IPC the trial Court can and indeed ought to frame a charge of murder punishable under Section 302 IPC, which would then be

the main charge and not an alternative charge as is erroneously assumed in some quarters. If the main charge of murder is not proved against the accused at the trial, the Court can look into the evidence to determine whether the alternative charge of dowry death punishable under Section 304B is established. The ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients. The trial Court in that view of the matter acted mechanically for it framed an additional charge under Section 302 IPC without adverting to the evidence adduced in the case and simply on the basis of the direction issued in Rajbir's case (supra). The High Court no doubt made a half hearted attempt to justify the framing of the charge independent of the directions in Rajbir's case (supra), but it would have been more appropriate to remit the matter back to the trial Court for fresh orders rather than lending support to it in the manner done by the High Court."

9. Thus, the aforesaid Judgement does not categorically excludes the framing of alternate charge u/s 302 IPC especially when the evidence is otherwise and does not support the applicant's contention.

10. The Hon'ble Apex Court in **Dr. Nallapareddy Sridhar Reddy v. The State of Andhra Pradesh** affirming Jasvinder Saini (supra) has held that:

*"19. In **Jasvinder Saini v. State (Govt of NCT of Delhi),** this Court dealt with the question whether the Trial Court was justified in adding a charge under Section 302 of the IPC against the accused persons who were charged under Section 304B Justice T S Thakur (as he then was) speaking for the Court, held thus: ?11. A plain reading of the above would show that the court's power to alter or add any charge is unrestrained provided such addition and/or alteration is made before the judgment is pronounced. Sub-sections (2) to (5) of Section 216 deal with the procedure to be followed once the court decides to alter or add any charge. Section 217 of the Code deals with the recall of witnesses when the charge is altered or added by the court after commencement of the trial. There can, in the light of the above, be no doubt about the competence of the court to add or alter a charge at any time before the judgment. The circumstances in which such addition or alteration may be made are not, however, stipulated in Section 216. It is all the same trite that the question of any such addition or alternation would generally arise either because the court finds the charge already framed to be defective for any reason or because such addition is considered necessary after the commencement of the trial having regard to the evidence that may come before the court.? (Emphasis supplied)*

*20. From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words "**at any time before judgment is pronounced**" in Sub-Section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there 15 (2013) 7 SCC 256 was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely*

commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court?s power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-Section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused."

11. From the perusal of the records, it transpires that the post-mortem report reveals that no ante-mortem injuries were found, hence, cause of death could not be ascertained and the viscera was preserved in 2015. The said report was ready in the year 2016 but the investigating officer did not bring the same on record. As the viscera preserved was examined in time, the poison was detected which is a material evidence to be taken into account for just decision of the case.

12. Considering the fact, that the viscera report dated 22.12.2016 indicates that the organophosphorus insecticide poison was found, therefore, it is a material evidence which needs to be taken into account for reaching the just conclusion.

13. In view of the law as discussed above, there is no illegality in the order impugned.

14. No interference is required.

15. The present application is, accordingly, dismissed.

(2026) 5 ILRA 1792
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 11.05.2026

BEFORE

THE HON'BLE RAJIV LOCHAN SHUKLA, J.

Criminal Misc. Bail Application No. 15823 of 2026

Ayodhya Singh @ Kaksh Bahadur Singh ...Applicant
Versus
State of U.P. ...Opposite Party

Issue for Consideration

Matter pertains to whether a previous conviction of accused, particularly for an offence u/s 307 IPC (corresponding to s. 109(1) of Bharatiya Nyaya Sanhita, 2023), by itself disentitles him from being granted bail u/ss. 480 and 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, and whether, having regard to the nature of injuries, the applicant's role, the sentence awarded in the previous conviction and the overall facts and circumstances of the case, he was entitled to be enlarged on bail.

Headnotes

Bharatiya Nyaya Sanhita, 2023 - ss. 109(1), 115(2), 117(2), 352 and 351(3) - Bharatiya Nagarik Suraksha Sanhita, 2023 - ss. 480, 483 - Bail - Criminal antecedents - Previous conviction - Grounds - Word Punishable - Interpretation of - The applicant sought bail in connection with Case Crime No. 372 of 2025, registered under various sections of BNS, 2023 - The prosecution alleged that the applicant assaulted the injured with a Tangi, whereas the defence contended that despite the allegation of use of a sharp-edged weapon, the injured sustained only lacerated wounds and rib fractures, none of which were found to be dangerous to life - The State opposed the bail application primarily on the ground that the applicant was a previous convict u/s 307 IPC, had been sentenced to five years' imprisonment and possessed a criminal history of several cases - The applicant, asserted that he was already on bail in the previous conviction and that a solitary conviction carrying a sentence of five years did not attract the statutory embargo u/s 480 of BNSS.

Held: The previous conviction on the facts of the instant case would, firstly, not disentitle the applicant to seek bail, as only one conviction has been shown against the applicant in which five years' imprisonment has been awarded to him; and secondly, the Court, in exercise of powers conferred by virtue of s. 483 BNSS (s. 439 Cr.P.C.), can consider and grant bail even in cases where there is a bar u/s 480(1)(i) and (ii) having regard to all other facts and circumstances, including relevant considerations with respect to exercise of jurisdiction to grant bail, of which criminal history and previous conviction also is an integral part - Taking into consideration the facts and circumstances of case, without expressing any opinion on the merits of the case, the Court found appropriate to enlarge the applicant on bail - Accordingly, bail application allowed. [Paras 20 to 22] (E-13)

Case Law Cited

Prabhakar Tewari v. State of U.P. and Another **(2020) 11 SCC 648;**
Arimardan v. State of U.P., **2007 SCC OnLine All 1200; referred to**

Saquib Abdul Hamid Nachan v. The State of Maharashtra **passed in Criminal Misc. Bail Application No.716 of 2014; relied on**

List of Acts

Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023

List of Keywords

Bail Application; First Information Report; Tangi; Lacerated wounds; Fracture; Injury is not injurious to life; Medical Board; Criminal antecedents; Repeat offender; Previous conviction; Imprisonment; Non-bailable offence; Criminal history; Release order; Cognizable offence; Application allowed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Bail Application No. - 15823 of 2026

From the First Information Report in Case Crime No. 372 of 2025, Police Station Revti, District Ballia.

Appearances for Parties

Advs. for the Applicant(s):
Saurabh Chaturvedi, Senior Advocate

Adv. for the Opposite Party(s):
G.A.

(Delivered by Hon'ble Rajiv Lochan Shukla, J.)

1. Heard Shri I.K. Chaturvedi, Learned Senior Advocate assisted by Shri Nirmal Kumar Singh, Learned counsel for the applicant and Learned AGA for the State.

2. The instant bail application has been filed with a prayer to release the applicant on bail in Case Crime no.372 of 2025, under Sections 109(1), 115(2), 117(2), 352, 351(3) BNS, Police Station Revti, District Ballia.

3. Shri I.K. Chaturvedi, Learned Senior Advocate contends that the applicant has been assigned a general role in the FIR. The applicant is said to have been armed with a Tangi. He contends that the Tangi is a sharp-edged axe like weapon and the injured has not received any incised wound. He further contends that in the X-ray report, the fracture of the 9th rib was found and the said injury is not dangerous to life. The applicant is said to have been in jail since 16.12.2025. The applicant has a criminal history of 11 cases and he has been convicted in one case and has been awarded five year's imprisonment. He is on bail in the said case.

4. Learned AGA has opposed the prayer for bail and has contended that the earlier conviction of the applicant was recorded for an offence under Section 307 IPC. The present case also is a case for an offence under Section 307 IPC (Section 109 BNS). He has two other cases under Section 307 IPC to his credit. The applicant is a repeat offender and may not be considered for grant of bail as he is likely to repeat the offence in the near future.

5. I have considered the submissions made by the Learned counsels for the parties.

6. The applicant is named in the FIR and has been assigned the role of assaulting the injured with a 'Tangi'. Tangi is stated to be a sharp-edged weapon like an axe. The injured has received two lacerated wounds, one just above the eyebrow on the left side of the forehead and the other behind the left ear near the mastoid process. The other injuries found on the person of the injured were all abrasions and complaint of pain. The X-ray report notes a fracture on the 9th rib. Later, it appears that a medical board had been constituted, which also found fracture in the 8th and 10th ribs also. The injuries sustained by the injured were not found to be dangerous to life.

7. Coming to the objection with respect to the criminal antecedents of the applicant, the applicant is said to be a previous convict for an offence under Section 307 IPC and has been awarded five years? imprisonment. He is stated to be on bail under the orders of this Court. The order of this Court has been annexed as Annexure No.19 to the affidavit, and the details regarding the conviction have been mentioned in paragraph no.33.

8. The prohibition for grant of bail, as provided under Section 480 of the BNSS (earlier Section 437 Cr.P.C.), is for the Courts other than the High Court or the Court of Session. Section 480 of the BNSS reads as under:-

"480. When bail may be taken in case of non-bailable offence.-

(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or

appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but-

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but less than seven years:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is a child or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation or for police custody beyond the first fifteen days shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:

Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, subject to the provisions of section 492 and pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter VII or Chapter XVII of the Bharatiya Nyaya Sanhita, 2023 or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the Court shall impose the conditions,-

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter;

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected; and

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

and may also impose, in the interests of justice, such other conditions as it considers necessary.

(4) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2), shall record in writing his or its reasons or special reasons for so doing.

(5) Any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time, after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond for his appearance to hear judgment delivered."

9. This Court, while considering the grant of bail under Section 483 of the BNSS, shall, apart from taking into consideration the other factors like the gravity of the offence, the nature of allegations, and the material collected in support thereof, also consider the criminal antecedents of an accused.

10. The Supreme Court in ***Prabhakar Tewari vs. State of U.P. and Another (2020) 11 SCC 648***, while considering the challenge to an order granting bail to an accused having several cases against him, has held as under:-

"On considering the submissions of the learned counsel for the parties. Having regard to the circumstances of this case, in our opinion, there has been no wrong or improper exercise of discretion on the part of the High Court in granting bail to the accused. The factors outlined in the case of Mahipal vs. Rajesh Kumar (2020) 2 SCC 118 for testing the legality of an order granting bail are absent in the order impugned. The materials available do not justify arriving at the conclusion that the order impugned suffers from non-application of mind or the reason for granting bail is not borne out from a prima-facie view of the evidence on record. The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail. The High Court has exercised its discretion in granting bail to the accused Vikram Singh upon considering relevant materials. No ex-facie error in the order has been shown by the appellant which would establish

exercise of such discretion to be improper. We accordingly sustain the order of the High Court granting bail. This appeal is dismissed."

11. Thus, while considering bail of the accused, the same cannot be refused solely on the ground of the applicant having a number of criminal cases to his credit. However, the conviction and the bar to grant of bail under Section 480(1)(i) and (ii) BNSS is not one to be taken lightly. Normally, while considering the bail application of an applicant, the Court must bear in mind any previous conviction.

12. The conviction recorded against an applicant, which has yet to be set aside by the appellate court, in the prima facie opinion of this Court, does come in the way of an applicant to be considered for grant of bail. However, as per the argument of the Learned AGA, the provisions of Section 480(1)(i) and (ii), if considered in their right perspective, would mean that a person would become disentitled to be considered for bail if he is convicted for an offence punishable with death, imprisonment for life or imprisonment for seven years or previously on two or more occasions of a cognizable offence punishable with imprisonment of three years or more but less than seven years.

13. Section 307 IPC, which is equivalent to Section 109(1) of the BNS, provides for different punishments for the same offence. Section 307 IPC reads as follows:-

"Section 307. Attempt to murder.-

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.? When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death."

14. Section 109 BNS reads as follows:-

"Section 109.-

(1) Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

(2) When any person offending under sub-section (1) is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death or with imprisonment for life, which shall mean the remainder of that person?s natural life."

15. The language used in Section 480(1)(i) and (ii) use the word "punishable". The Full Bench of this Court had the occasion to deal with its interpretation while considering the application of the proviso to Section 389 Cr.P.C. in the case of ***Arimardan v. State of U.P., 2007 SCC OnLine All 1200*** and has opined as under:-

"*12. Here in the proviso there is a slight ambiguity in the language employed in it, which has also given rise to the disputed question of construction as regards the applicability of the expression punishable with death or imprisonment for life or imprisonment for a term not less than ten years whether one is charged or actually sentenced to that period. We consider that it would be conducive to clarify as well as to the avoidance of unnecessary technical objections giving occasion for litigation.*

13. The entire submission on the part of learned Advocate General with regard to the applicability of the proviso rest on the meaning of the word "convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than 10 years". Actual awarding of sentence is not relevant for the attraction of proviso to Section 389. Reliance is placed on the expression punishable defined by the Apex Court in the case of Sube Singh and Ors. v. State of Haryana and Ors. : [(1989) 1 SCC 235] : AIR 1988 SC 2235) wherein it is said to mean:

"The word 'punishable' is ordinarily defined as deserving of or capable or liable to punishment, punishable within statute providing that Defendant may have ten (sic) peremptory challenges if offences charged is punishable with death or by life imprisonment; means deserving of or liable to punishment; capable of being punished by law or right, may be punished, or liable to be punished, and not must be punished.

We find ourselves unable to accept the argument in view of the clear language of the proviso to Sub-section (1). To say that the proviso refers only to the offence(s) for which death sentence or imprisonment for life or imprisonment for a term of not less than 10 years is provided in the penal statute and its applicability has nothing to do with the sentence virtually awarded, would make the proviso practically futile and un-meaningful. It was also observed by the Apex Court in the case of P.S. Sathappan (Dead) By L.Rs. v. Andhra Bank Ltd., 2004 SCW 5934: ((2004) 11 SCC 672 : AIR 2004 SC 5152) that in the guise of purposive construction one cannot interpret a Section in a manner which wound lead to a conflict between the Sections of the same Section. If all the categories of offences wherein lesser punishment is also provided and awarded are taken within its sweep, it would be contrary to the legislative spirit. Where the Legislature intended to provide opportunity of giving show-cause in writing it meant that the heinous offences should not go unresponded. While keeping the third category of offences wherein imprisonment for not less 10 years is provided would itself show that its applicability would not be widened for the offences wherein the sentence less than 10 years is awarded. Here the proviso relating to the offence punishable with imprisonment for life would be strictly construed keeping in view the minimum sentence so provided in the proviso. It cannot take within its purview the offences where the lesser imprisonment is awarded. In this context, the expression "not less than" would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more."

16. In view of the determination of the Full Bench of this Court, in the opinion of this Court, the word ?punishable? in Section 480(1)(i) and (ii) would necessarily be interpreted in the light of the actual sentence awarded. So far as the offences which provide for imprisonment for life or death, there is no ambiguity. The offence under Section 307 IPC (now Section 109(1) BNS), although provides for a maximum of life imprisonment, also provides for imprisonment which may extend up to 10 years. As held by this Court in the case of Arimardan (supra), in the opinion of this Court the word 'punishable' must be given the same interpretation and the actual sentence awarded shall be taken into account, when considering previous conviction.

17. The applicant has a previous conviction of one case and five years? imprisonment has been awarded to him. The prohibition under Section 480(1)(ii), in the opinion of the Court, would not apply. Even otherwise, conviction of a person would not automatically make him disentitled to be granted bail, as no such prohibition exists under Section 483 of the BNSS.

18. This Court, in Criminal Misc. Bail Application No.4137 of 2024, while considering the effect of Section 437(1) Cr.P.C., considered a decision of the Bombay High Court in the case of ***Saquib Abdul Hamid Nachan v. The State of Maharashtra*** passed in Criminal Misc. Bail Application No.716 of 2014 and quoted with approval paragraphs 22 and 23 of the said judgment. Paragraphs 22 and 23 of the above-mentioned case are being reproduced hereunder:-

“"22. Mr. Jha submitted that the applicant cannot be released on bail n view of the fact that the applicant is a previous convict having undergone a sentence of imprisonment for a period of 10 years on the charge of an offence punishable under section 3(3) of the TADA Act.

23. I have carefully considered this aspect of the matter, and I have heard the learned counsel for the applicant in this regard. Indeed, section 437 of the Code treats a person who has been previously convicted of an offence punishable with death, Imprisonment for Life or Imprisonment for 7 years or more, differently from others, and provides that such person shall not be released on bail. However, the prohibition in that regard is not absolute, and the second proviso to sub-section(1) of section 437 of the Code retains the power of the court to direct such a person to be released on bail if it is satisfied that it is just and proper, so to do for any special reason. In my opinion, that there is no prima-facie case, would by itself be a special and sufficient reason for releasing an accused to has been previously convicted, on bail. Any other interpretation would mean that a previous convict of a category mentioned in section 437 of the Code can be booked for any and every offence, and would have to remain in custody till the conclusion of the trial irrespective of whether or not, there is substance in the accusation. In the instant case, coupled with the weakness on a number of aspect of the prosecution case, as observed in my order granting bail to the co-accused Shamil Nachan and Akif Nachan, the applicant has managed to bring out further weakness in the prosecution case on the basis of information procured by him under the Right to Information Act. It is not as if for releasing the applicant on bail, a positive finding that he is not guilty of the alleged offences, is required to be raised or recorded. What would be required is satisfaction about existence of 'reasonable grounds' for believing him to be not guilty. The phrase 'reasonable grounds' imports lesser degree of satisfaction than 'sufficient grounds'. It is not that it is only if there would be no case for proceeding against an accused, that he can be released on

bail. This has been specifically made clear by Their Lordships of the Supreme Court of India of Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra & Anr. (supra). "

19. While relying upon the above-mentioned decision, this Court then proceeded to opine as follows:

"Thus from the above judgements it is amply evident that the applicability of Section 437 (i) and (ii) cannot be applied by shutting eyes or in a mechanical fashion. The individual's role who s seeking bail also occupies significance and it carries weight. The court's have to critically assess one's role, and his satisfaction about existence of 'reasonable ground' for beleaving that his name might have be dragged with ulterior motive, thus believing hum that he is nor guilty fro the offence charged for. The phrase 'reasonable grounds' imports lesser degree of satisfaction than 'sufficient ground'.

If the aforesaid provision of Cr.P.C. is applied mechanically, it may lead to gross injustice and disastrous result and even a previous convict, who has done nothing or falsely implicated in the alleged offence, cannot come out on bail till conclusion of trial. This is not the intention of legislation. As mentioned above, in the instant case that there is family rift between father and his two sons with regard to selling of a property belonging to them. Specific case, that Zaid Khan has given deadly blow on the deceased and the role attributed to present applicant Muslim, that he caught hold the deceased ? a passive role role attributed to the applicant. Thus, keeping in view the role attributed to the applicant, he deserves to be bailed out."

20. Thus, in the opinion of the Court, the previous conviction on the facts of the present case would, firstly, not disentitle the applicant to seek bail, as only one conviction has been shown against the applicant in which five years? imprisonment has been awarded to him; and secondly, this Court, in exercise of powers conferred by virtue of Section 483 BNSS (Section 439 Cr.P.C.), can consider and grant bail even in cases where there is a bar under Section 480(1)(i) and (ii) having regard to all other facts and circumstances, including relevant considerations with respect to exercise of jurisdiction to grant bail, of which criminal history and previous conviction also is an integral part.

21. Taking into consideration the facts and circumstances of the case, without expressing any opinion on the merits of the case, I find it appropriate to enlarge the applicant on bail.

22. The bail application is ***allowed.***

23. Let the accused-applicant, **Ayodhya Singh @ Kaksh Bahadur Singh**, involved in above mentioned case crime number be released on bail, on his executing a personal bond and two reliable sureties each, in the like amount to the satisfaction of the court concerned, subject to the following conditions:

(i) The applicant will not tamper with the evidence.

(ii) The applicant will not indulge in any criminal activity.

(iii) The applicant will not pressurize/intimidate the prosecution witnesses and co-operate in the trial.

(iv) The applicant will appear regularly on each and every date fixed by the trial court, unless his personal appearance is exempted by the court concerned.

24. In the event of breach of any of the aforesaid conditions, the court concerned will be at liberty to proceed to cancel his bail.

25. It is made clear that the applicant shall be released on the basis of computer generated copy of this order, downloaded from the official website of High Court Allahabad and verified by the concerned counsel with the undertaking that the certified copy will be filed within 15 days.

26. It is further directed that the trial court shall send the release order to the concerned jail through Bail Order Management System (BOMS) to ensure early release of the applicant.

27. The observations made hereinabove are exclusively for deciding the instant bail application and are not to be considered to be an opinion on the merits of the case.

(2026) 5 ILRA 1801
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 13.05.2026

BEFORE

THE HON'BLE RAJIV GUPTA, J.
THE HON'BLE DR. AJAY KUMAR-II, J.

Criminal Misc. Writ Petition No. 10231 of 2026

Yashobhrith Jaiswal **...Petitioner**
Versus
State of U.P.& Ors. **...Respondents**

Issue for Consideration

Matter pertains to whether, the High Court ought to issue a writ of mandamus directing constitution of a Special Investigation Team (SIT) for investigation of the FIR on the allegation that the local police was not conducting a fair and impartial investigation.

Headnotes

Bharatiya Nyaya Sanhita, 2023 - ss. 191(2), 333, 115(2), 309(4), 352, 351(3) - Special Investigation Team (SIT) - Constitution of - Fair and impartial investigation - Commissioner of Police - Jurisdiction of - The petitioner, being the first informant instituted the present criminal writ petition seeking a writ of mandamus for constitution of a Special Investigation Team (SIT) to investigate the case, contending that despite registration of FIR on 23.03.2026, the investigating agency was not conducting the investigation in a fair and impartial manner.

Held: The petitioner may move an application before the respondent no.3-Commissioner of Police Commissionerate, Prayagraj, District Prayagraj, highlighting his grievance and seeking fair and impartial investigation and if such an application is moved by the petitioner, respondent no.3-Commissioner of Police Commissionerate, Prayagraj, District Prayagraj, shall ensure the fair, impartial and expeditious investigation in the instant case - Accordingly, writ petition disposed of. [Para 4, 5] (E-13)

Case Law Cited

Nil

List of Acts

Bharatiya Nyaya Sanhita, 2023

List of Keywords

Mandamus; Special Investigation Team; Director General of Police; Investigation; First Informant; First Information Report; Police; Fair; Impartial; Commissioner of Police; Commissionerate; Prayagraj; Grievance; Application; Direction; Expeditious Investigation; Petition disposed of.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ Petition No. 10231 of 2026

From the First Information Report dated 23.03.2026 in Case Crime No. 0064 of 2026, Police Station Cantt, District Prayagraj.

Appearances for Parties

Adv. for the Petitioner(s):
Manoj Kumar Mishra

Adv. for the Respondent(s):
G.A.

(Delivered by Hon'ble Rajiv Gupta, J.
&
Hon'ble Dr. Ajay Kumar-II, J.)

1. Heard learned counsel for the petitioners, learned AGA for the State and perused the record.

2. The instant writ petition has been filed by the petitioners for the following relief:-

"(1) Issue an appropriate writ, order or direction in the nature of Mandamus commanding the respondent no. 2- Director General of Police, U.P., Lucknow to constitute Special Investigation Team (SIT) to investigate the present Case Crime No. 0064 of 2026, under Sections 191(2), 333, 115(2), 309(4), 352, 351(3) of B.N.S., 2023, Police Station Cantt, District Prayagraj."

3. Learned counsel for the petitioner has submitted that the petitioner is the first informant in the present case and though the F.I.R. in the instant case has been registered on 23.03.2026, yet the police is not investigating the case in fair and impartial manner.

4. In view of the above, the petitioner may move an application before the respondent no.3-Commissioner of Police Commissionerate, Prayagraj, District Prayagraj, highlighting his grievance

and seeking fair and impartial investigation and if such an application is moved by the petitioner, respondent no.3-Commissioner of Police Commissionerate, Prayagraj, District Prayagraj, shall ensure the fair, impartial and expeditious investigation in the present case.

5. With the aforesaid order, the present writ petition stands **disposed of**.

(2026) 5 ILRA 1803
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.05.2026

BEFORE

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

Criminal Misc. Writ Petition No. 23466 of 2025

Samarpan Jain **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

Matter pertains to whether an Advocate, who merely acts in his professional capacity by filing a statutory appeal and advising the mode of statutory pre-deposit under the Goods and Services Tax Act, 2017, can be prosecuted for criminal conspiracy and allied offences along with his client solely on account of such professional acts, and whether the impugned FIR, charge-sheet and cognizance order disclosed any criminal liability against the Advocate warranting continuation of criminal proceedings.

Headnotes

Bharatiya Nyaya Sanhita, 2023 - ss. 61(2), 318(4), 336(3), 338, 340(2), Goods and Services Tax Act, 2017 - s. 107 - State Goods and Services Tax Act, 2017 - s. 74 - Constitution of India, 1950 - Articles 14, 21 - Professional duties of Advocate - Criminal liability - Quashing of FIR, charge-sheet and cognizance - Petitioner impleaded as accused for professional advice rendered to client in GST - Appellate proceedings - Impermissibility - The petitioner, an Advocate practising in indirect taxes, direct taxes and corporate laws, was engaged by his client to file statutory appeals of the challenging assessment orders passed by Deputy Commissioner, State Goods and Services Tax - Acting in his professional capacity, the petitioner filed the appeals by making the prescribed ten per cent pre-deposit through utilisation of Electronic Credit Ledger and Input Tax Credit, relying upon the prevailing judicial interpretation - The Appellate Authority, however, held such mode of pre-deposit to be impermissible and dismissed the appeals on the ground of maintainability - Instead of initiating recovery proceedings against the assessee, the Deputy Commissioner lodged an FIR alleging that the petitioner had conspired with his client to evade GST and cause loss to State Exchequer - During the pendency of writ petition, the police submitted a charge-sheet and Magistrate took cognizance - The petitioner challenged the FIR, the charge-sheet and cognizance order, contending that the acts attributed to him were performed solely in discharge of his professional duties as an Advocate and did not constitute any criminal offence.

Held:. The impugned F.I.R., which has led to the police report and the order of cognizance violate all known principles of criminal liability - Even if the Deputy Commissioner of GST thinks that pre-deposit of the disputed

tax could not be debited to the Electronic Ledger out of the Input Tax Credit, the professional decision of learned Advocate, to do so, does not, in any way, make him a conspirator with the assessee - It is purely a professional act and not at all something to do with his client's business - It was done in the course of filing an appeal and nothing more - It was based on a particular view of law, whether right, wrong or utterly wrong - Accordingly, writ petition allowed. [Paras 17 to 19] (E-13)

Case Law Cited

Union of India and another v. Yasho Industries Ltd., **2025 SCC OnLine SC 1526;** *M/s Yasho Industries Ltd. v. Union of India and another*

List of Acts

Bharatiya Nyaya Sanhita, 2023; Goods and Services Tax Act, 2017; Constitution of India, 1950

List of Keywords

First Information Report; Charge-Sheet; Cognizance order; Criminal Liability; Professional capacity; Advocate; Statutory appeal; Goods And Services Tax Act; GST portal; State Goods And Services Tax Act; Deputy Commissioner; Electronic Credit Ledger; Input Tax Credit; Pre-Deposit; Appellate Authority; Maintainability; Police Report; Conspiracy; State Exchequer; Professional act; Right to legal assistance; Advocates Act; Articles 14 And 21; Quashing of FIR; Quashing of Charge-sheet; Quashing of Cognizance; Writ petition allowed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ Petition No. - 23443 of 2025

From the First Information Report dated 04.10.2025 giving rise to Case Crime No. 175 of 2025, Police Station - Kotwali, District- Rampur and impugned cognizance order dated 14.05.2026 passed by learned Additional Chief Judicial Magistrate, Court No. 1, Rampur and the charge-sheet giving rise to Case Crime No. 3171 of 2026 on the Magistrate's file.

Appearances for Parties

Advs. for the Petitioner(s):
Sharad Sharma, Sushil Shukla

Adv. for the Respondent(s):
G.A.

(Delivered by Hon'ble J.J. Munir, J.
&
Hon'ble Tarun Saxena, J.)

Order on Criminal Misc. Amendment Application No.3 of 2026.

1. The application is **allowed.**

2. Let the amendment be carried out during the course of the day.

Order on Writ Petition

1. A counter affidavit has been filed by respondent no. 3, to which a rejoinder has been filed and a personal affidavit of the Deputy Commissioner, State Goods and Services Tax Department, Sector-I, Rampur has also been filed.

2. The parties do not propose to file any further affidavits.

3. Admit.

4. Heard forthwith.

5. Heard Mr. Sushil Shukla, learned Senior Advocate assisted by Mr. Sharad Sharma, learned Counsel for the petitioner, Mr. Anoop Trivedi, learned Additional Advocate General, assisted by Ms. Sadhna Singh, learned Additional Government Advocate appearing on behalf of respondent no. 3 and Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate appearing on behalf of respondent nos. 1 and 2.

6. In its amended form, this petition now challenges the First Information Report dated 04.10.2025 giving rise to Case Crime No. 175 of 2025, under Sections 61(2), 318(4), 336(3), 338, 340(2), BNS, Police Station- Kotwali, District- Rampur as well as the impugned cognizance order dated 14.05.2026 passed by the learned Additional Chief Judicial Magistrate, Court No. 1, Rampur and the charge-sheet giving rise to Case Crime No. 3171 of 2026 on the Magistrate?s file.

7. The short case of the petitioner is that he is an Advocate enrolled with the Bar Council of U.P. since 20.12.2021. He practices and specializes in indirect taxes, direct taxes and corporate laws. He is also an Advocate on Record before this Court, his AOR No. being A/S0088/25. One Mohd. Haris is the proprietor of the firm, called M/s M H Enterprises having GSTIN-09AJDPH7962C3Z5 with its registered office at Mohalla Magazine, Bareilly Gate, PS Sadar, District Rampur. He approached the petitioner and engaged him as his Advocate to file a statutory appeal under Section 107 of the Goods and Services Tax Act, 2017 questioning orders dated 16th of April, 2025 passed by the Deputy Commissioner, GST, Sector-1, Rampur, under Section 74 of the State Goods and Services Tax Act, 2017 assessing a sum of Rs. 81,46,291/- as tax, besides interest and penalty for the financial year 2021-2022, Rs. 4,90,78,118/- as tax, interest and penalty for the financial year 2022-2023 and Rs. 4,80,16,615/- towards tax, interest and penalty for the financial year 2023-2024 against his firm. For the financial year 2021-2022, the petitioner did not file an appeal and assertion to that effect in the FIR is said to be factually incorrect.

8. According to the instructions of his client Mohd. Haris, the petitioner filed two online statutory appeals on 15th of August, 2025 before the Appellate Authority-3 in accordance with Section 107 of the GST Act, 2017, uploading the memoranda of appeals and other required documents on the GST Portal in respect of two identical orders dated 18.04.2025 passed by the Deputy commissioner, GST, Sector-1, Rampur. It is emphasized that payment of pre-deposit of 10 % of the disputed tax by utilization of the Input Tax Credit and Electronic Credit Ledger of any assessee is permissible under CBIC-20001/2/2022- GST dated 06.07.2022. The aforesaid provision and procedure for making pre-deposit was interpreted that way by a Division Bench of the Gujarat High Court in **M/s Yasho Industries Ltd. v. Union of India and another**, a judgment that was upheld by the Supreme Court in **Union of India and another v. Yasho Industries Ltd., 2025 SCC OnLine SC 1526.**

9. The case further is that after filing of the statutory appeals on 22.09.2025, the petitioner's client was served dasti with an intimation dated 23.09.2025 from the office of the Appellate Authority-3, Moradabad wherein it was said that the pre-deposit of 10 % of the disputed tax from his Electronic Credit Ledger, utilizing Input Tax Credit for filing a statutory appeal cannot be accepted as statutory pre-deposit for the purpose. He was, therefore, directed to clarify on 24.09.2025 on the question of maintainability of the appeal.

10. It is then said that the petitioner was intimated of the Appellate Authority's communication on 22.09.2025, late in the night of 23.09.2025, and, as the petitioner was to attend some urgent meeting at Ghaziabad, he expressed his inability to attend the hearing at Moradabad. The petitioner?s client could not arrange an adjournment and the Appellate Authority dismissed the statutory appeal on ground of maintainability, with the remark that pre-deposit of 10% of the disputed tax made by the assessee from his Electronic Ledger, utilizing Input Tax Credit, was not acceptable as a valid tender.

11. After the above appellate order was passed, the informant, that is to say, the Deputy Commissioner of GST, respondent no.3, instead of proceeding to recover the assessed amount of tax, interest and penalty from the petitioner?s client, lodged the impugned F.I.R. on 04.10.2025, not only against the petitioner?s client but also nominating the petitioner for allegedly making a pre-deposit of 10% of the dispute tax out of the Electronic Credit Ledger by utilizing Input Tax Credit, which, according to the informant, was an illegal course adopted by the petitioner?s client in appealing his order. It was also alleged in the F.I.R. that there was evasion of GST, committed by the petitioner?s client in conspiracy with the petitioner, in order to cause financial loss to the State Exchequer. It is this part of the F.I.R. which aggrieves the petitioner.

12. It is submitted by Mr. Shushil Shukla, learned Senior Advocate that the petitioner, in filing the appeal and making a tender of the requisite fee deposit of disputed tax, acted in his "professional capacity" and did so to the best of his knowledge, going by the laws of the land, as declared by the Superior Courts of the Country. He relied for the purpose on the Division Bench decision of the High Court of Gujarat in **M/s Yasho Industries Ltd.** *(supra).*

13. The submission is that even if the petitioner acted in error, he was acting in a "professional capacity". There is nothing to show that he was a partner in his client's business and, therefore, a conspirator.

14. The further submission is that it is a very perilous proposition to accept that an Advocate, who enters appearance for his client and takes a particular course of action, that he advises, would land himself in midst of a criminal prosecution on the charge of a conspiracy with his client.

15. Mr. Anoop Trivedi, learned Additional Advocate General, when confronted with this issue, has not much to say. The informant, that is to say, the GST Officer, who has been summoned in-person, was asked about the reason why he nominated the assessee?s learned Advocate in the F.I.R., for his professional act in filing an appeal, in the F.I.R., to which he had no answer. Matters have not stopped at this and we must notice, as we have already done that after notice was issued in

this case, the Police swung into action and a charge-sheet was promptly cleared and filed in Court, all in one day, that is to say on 14.05.2026 and an order of cognizance was also passed the same day by the learned Additional Chief Judicial Magistrate. This necessitated an amendment of the writ petition, and, now, the order of cognizance and the charge-sheet are also under challenge before us.

16. We have heard Mr. Shushil Shukla, learned Senior Advocate, Mr. Anoop Trivedi, learned Additional Advocate General and Ms. Sadhna Singh, learned Additional Government Advocate on behalf of the GST.

17. After a careful consideration of the matter, what we find is that the impugned F.I.R., lodged in this case, which has led to the police report and the order of cognizance violate all known principles of criminal liability. An Advocate, by his profession, is authorized to represent his client, who may have a case of any kind to be suited in a Court or defended. An Advocate, by his profession, is authorized to defend men charged with murders, rape, terror offences and it is his/her duty to defend them. If, for doing a professional act, like preferring an appeal, an Advocate is to be held in conspiracy with his client, it would be the end of the very existence of the Bar and the right of an Advocate to practice under the Advocates Act. It would, indirectly also, deprive the citizens of their right to the much valued right to legal assistance, because a person, who practices the profession of law before defending his client, would be thinking about his own defence and, this he would be thinking about, before he files a vakalatnama and takes steps on behalf of his client. This kind of a situation, which hits as the roots of the principles enshrined under Articles 14 and 21 of the Constitution, cannot be permitted to happen. An Advocate has to work fearlessly and discharge his professional duties, just as an officer of the State is entitled to discharge his duties.

18. Here, even if the Deputy Commissioner of the GST thinks that pre-deposit of the disputed tax could not be debited to the Electronic Ledger out of the Input Tax Credit, the professional decision of the learned Advocate, to do so, does not, in any way, make him a conspirator with the assessee. It is purely a professional act and not at all something to do with his client?s business. It was done in the course of filing an appeal and nothing more. It was based on a particular view of the law, whether right, wrong or utterly wrong.

19. In the circumstances, we are of opinion that the impugned F.I.R., the charge-sheet filed by the Police, on its basis and the order of cognizance cannot be sustained. This writ petition **succeeds** and is **allowed**. The impugned F.I.R. dated 04.10.2025 giving rise to Case Crime No. 175 of 2025, under Sections 61(2), 318(4), 336(3), 338, 340(2), BNS, Police Station- Kotwali, District-Rampur, Charge-sheet No. 30 of 2026 dated 04.04.2026 filed in Court and the cognizance order dated 14.05.2026, passed by the learned Additional Chief Judicial Magistrate-I, Rampur are all hereby **quashed**, in so far as it relates to the petitioner.

20. The learned Chief Judicial Magistrate, Rampur shall cause an entry to be made in red ink in the General Diary of Police Station Kotwali, District Rampur that the proceedings of Case Crime No. 175 of 2025, under Sections 61(2), 318(4), 336(3), 338, 340(2) of B.N.S. have been **quashed** in so far as it relates to the petitioner, under orders of this Court.

21. Let this order be communicated to the learned Chief Judicial Magistrate, Rampur and through him to the Superintendent of Police, Rampur, the Station House Officer, Police Station Kotwali, District Rampur and the Deputy Commissioner, GST, Sector-I, Rampur by the Registrar (Compliance).

(2026) 5 ILRA 1808
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 08.05.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 247 of 2013

Monu @ Raghvendra Tiwari ...Appellant
Versus
State of U.P. ...Respondent

Issue for Consideration

Matter pertains to whether the conviction of the appellant under S. 366 of the Indian Penal Code, 1860 could be sustained after the trial court had acquitted him of the offences under Ss. 363 and 376 IPC and had itself recorded findings that the victim had voluntarily accompanied the appellant, whether the offence of abduction within the meaning of S. 362 IPC was established, and whether the trial court was justified in discarding the uncontroverted medical evidence regarding the age of the victim and substituting its own opinion. (Paras 36-40)

Headnotes

Criminal Law - Abduction - Conviction under S. 366 IPC - Indian Penal Code, 1860 - Ss. 362 and 366 - Essential ingredient of abduction is use of force or deceitful means - Trial court itself recorded that appellant did not use force or abduct the victim and that the victim had gone with the appellant under a plan prepared earlier due to mutual love and affection - Having so held, conviction under S. 366 IPC was wholly inconsistent and perverse - Conviction set aside and appellant acquitted. (Paras 35-40)

Criminal Law - Appreciation of evidence - Medical evidence regarding age - Indian Penal Code, 1860 - Ss. 363, 366 and 376 - Opinion of medical experts cannot be substituted by court's own opinion - Trial court ignored scientific opinion of radiologist and doctor regarding age and assessed age by relying upon absence of third molar, secondary sexual characteristics and its own calculations - Such approach held perverse and materially illegal - Medical opinion that victim was major accepted. (Paras 28-34)

Criminal Law - Expert evidence - Scope of judicial assessment - Indian Penal Code, 1860 - Ss. 363, 366 and 376 - Though direct evidence of sterling quality may prevail over expert opinion in appropriate cases, court cannot replace expert opinion by its own opinion - Trial court acted as an expert without any authentic basis - Finding regarding age liable to be set aside. (Paras 32-34)

Held: The trial court erred in discarding the unchallenged opinion of the medical experts and acted itself as an expert by assessing the age of the victim on the basis of the absence of the third molar and the secondary sexual characteristics although the court cannot replace the opinion of an expert by its own opinion and by doing so the trial court acted with material illegality - The finding regarding the age of the victim was perverse and the opinion of the medical experts that the victim was major on the date of the incident deserved

acceptance - The trial court itself concluded that the appellant did not use force or abduct the victim and that the victim had gone with the appellant under a plan prepared earlier due to mutual love and affection and after recording such finding it could not have held the appellant guilty of the offence under S. 366 IPC - The prosecution failed to establish that the appellant had abducted or induced the victim to go with him by use of force or by deceitful means and when the offence of abduction was not made out the offence of abduction to compel marriage was also not made out - The conviction under S. 366 IPC was therefore liable to be set aside and the appellant acquitted - appeal allowed. (Paras 30-40) (E-7)

Case Law Cited

The judgment refers generally to principles laid down by the Hon'ble Supreme Court but does not reproduce any authority or its citation

List of Acts

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

List of Keywords

Abduction; Kidnapping; Medical evidence; Expert opinion; Age determination; Radiological examination; Secondary sexual characteristics; Third molar; Major; Mutual love and affection; Force; Deceitful means; Perversity; Appreciation of evidence; Conviction; Acquittal.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal arising from the judgment and order dated 11.01.2013 passed in Sessions Trial No. 68 of 2012 arising out of Case Crime No. 1393 of 2011 under Ss. 363, 366 and 376 IPC, Police Station Hasanganj, District Unnao, whereby the appellant was acquitted of the charges under Ss. 363 and 376 IPC but convicted under S. 366 IPC and sentenced to undergo rigorous imprisonment for five years with fine.

Appearances for Parties

Advs. for the Appellant:
Sri Dharmendra Kumar Misra.
Advs. for the Respondents:
Sri Mayank Sinha learned A.G.A. for the State.

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

1. Heard Sri Dharmendra Kumar Misra, the learned counsel for the appellant, Sri Mayank Sinha, the learned A.G.A. appearing on behalf of the State and perused the records. The appellant-Monu @ Raghvendra Tiwari is present in person and he states that he has furnished a personal bond and sureties before the Chief Judicial Magistrate, Unnao in compliance of this Court?s order dated 03.04.2026.

2. By means of the instant appeal filed under Section 374(2) Cr.P.C. the appellant has challenged the judgment and order dated 11.01.2013 passed by Sri. Jagdish Prasad-IV, the learned IV Additional Session Judge, Ex-Cadre, Unnao in Session Trial No.68 of 2012, arising out of Case Crime No.1393 of 2011 under Sections 363, 366 and 376 I.P.C., Police Station Hasanganj, District Unnao, whereby although the appellant has been acquitted of the charges for the offences under Sections 363 and 376 I.P.C., he has been convicted for the offence under Section 366 IPC and has been sentenced to undergo rigorous imprisonment for five years and pay Rs.5,000/- as fine.

3. The brief facts of the case are that the complainant gave a written complaint on 11.08.2011, stating that while he was in his grove at about 3:00 p.m. on 18.07.2011, his daughter aged 14 years went away with the appellant Monu, under the pretext of attending the call of nature and she took away silver anklets weighing about 250 grams, gold earrings worth about Rs.9,500/-, Rs.15,000/- cash and a mobile phone. The complainant's elder daughter Phool Kumari had seen the victim going away with the appellant. One Kamlesh resident of village Kurauli was also involved in it. The complainant told about the incident to the appellant's mother and brother Rohit and they told that the appellant had gone to Surat. The complainant asked Rohit to accompany him to Surat but Rohit denied and thereafter the complainant gave the complaint.

4. In the statement of Phool Kumari (the elder married daughter of the complainant) recorded under Section 161 Cr.P.C., she stated that it was around 3:00 p.m., her parents were not at home, they were in the grove, the victim said she had to go to attend the call of nature, she got up from the cot, at that time the appellant came there on a motor cycle, stopped in front of her house, called the victim, the victim went to the appellant and went away with him on his motor cycle.

5. The informant told the investigating officer that he and his wife were guarding the mango grove. When they returned home in the evening, their elder daughter told that the appellant came there on a motor cycle, stopped in front of her house, the victim went to the appellant and went away with him on his motor cycle.

6. The informant?s wife stated that the appellant came there on a motor cycle, stopped on the paved road, called the victim by gesture and the victim went to the appellant and went away with him on his motor cycle. She further stated that the victim had taken away some jewelry and cash with her.

7. On the basis of the aforesaid complaint, F.I.R. No.1393/2011 was registered on 14.08.2011 against the appellant and Kamlesh for offenses under Sections 363 & 366 IPC.

8. The recovery memo prepared on 22.09.2011 states that while Sub-Inspector Teji Ram and Constable Manoj Pandey were going towards Munshiganj trisection in search of the victim and they had reached near Sarai Mal Kadim turn, they met the informant there. They took him along with them to Munshiganj trisection. Upon reaching there, the informant stated that his daughter (the victim) was standing there and the appellant, who had enticed her away, was also standing with her. Upon seeing them, the appellant ran away and they recovered the victim and took him in police custody at 07:45 a.m.

9. In the statement of the victim recorded under Section 161 Cr.P.C., she stated that she has passed class IX. The appellant lives in her village, he used to meet her in the mango grove and indulge in sweet loving talks. He allured to take her to Kanpur for an excursion. The appellant came in front of her house at about 03:00 p.m. on 18.07.2011, enticed her away on foot to Sarai Mal Kadim trisection, from there they went to Ajgain via Munshiganj in a tempo, from there he took her to Surat. The appellant kept her in a rented house and he used to commit the misdeed during nights, against her wish. When the victim tried to shout, he used to press her mouth with a cloth. She was frightened and disturbed. She requested the appellant to take her to meet her parents

once and thereafter she would come back with him. Upon this request, the appellant brought her by train and then by tempo from Ajgain to Munshiganj. While they were waiting for some transport, the police reached there and the appellant ran away.

10. The medico-legal examination of the victim was conducted on 23.09.2011. The report states that: -

"External appearance ? A young girl of average built, breast well developed, pubic and auxiliary hairs well developed, height 154 cm, weight 55 Kg, teeth 14/14. L.M.P. 7 Sept., no mark of injury is present over body.

Internal appearance ? No mark of injury is present. Hymen old torned. On per vaginum examination two fingers are easily admitted through it. Vaginal smear is taken and two slides are prepared and sent to pathalogist. For age referred to radiologist Distt. Hospital, Unnao."

11. The supplementary medical report states that as per pathological examination report, there was no evidence of human spermatozoa, alive or dead, in the vaginal smear. As per X-Ray report, all the major joints were completely fused. The age of the girl was more than 19 years as per radiologocial examination. However, the actual age was more than 19 years. The report concluded that ?The age of the girl is about more than 19 (nineteen) yrs. No definite opinion about rape can be made."

12. The statement of the victim under Section 164 Cr.P.C. was recorded on 24.09.2011. She stated that on 18.07.2011, the appellant had enticed her away for going for an excursion to Kanpur. She roamed around with him at Kanpur. Thereafter she went with the appellant to Surat by train. The appellant took a room on rent and she stayed with him for three months. She alleged that the appellant made physical relations with her 3-4 times against her wishes. She asked him to drop her back home. While the appellant was bringing her back to her village, he saw the police at Munshiganj trisection and he ran away and the police caught her. She stated that she wanted to go with her father.

13. The victim was handed over to the informant on 24.09.2011.

14. The allegations levelled against Kamlesh were not established during investigation and a charge-sheet was submitted against the appellant only for offences under Sections 363, 366 and 376 IPC.

15. The Radiologist was examined as PW-1. He stated that all the major joints of bones were fused and at the time of the medico-legal examination, the victim?s age was more than 20 years. PW-1 stated that her age was more than 19 years. There might be a variation of 6 months in her age. PW-1 was not cross-examined by the defence Counsel.

16. The doctor who had conducted the medico-legal examination of the victim, was examined as PW-2. She stated that the victim?s breasts were fully developed. Auxiliary and pubic hair were well developed. There was no mark of injury on any part of the victim's body. No mark

of injury was found in her internal examination. The hymen was old torn and healed. The vagina admitted two fingers easily. Two slides of vaginal swab were sent for pathological examination and the victim was sent for radiological examination to ascertain her age. PW-2 had prepared her supplementary medico-legal examination report, as per which, no spermatozoa, dead or alive, were found in the pathological examination of the vaginal swabs. PW-2 also stated that at the time of the incident, the victim's age was more than 19 years.

17. In reply to a question put by the Court, PW-2 stated that she had not made any remark about the third molar or about the empty space near the second molar. She admitted that while ascertaining the age of the victim, she had not taken into consideration the situation of teeth. PW-2 also was not cross-examined by the defense counsel.

18. PW-3 was a Sub-Inspector who proved the recovery memo dated 22.09.1011 regarding recovery of the victim from a place near Munshiganj trisection. He stated that Section 376 IPC was added as per the victim's statement.

19. The informant was examined as PW-4. He reiterated the F.I.R. version. He stated that he has four daughters and four sons. The victim was at the fifth position amongst his eight children. She has studied up to Class-V in a private school in the village. He stated that he had mentioned her date of birth by estimation. He could not tell when did she passed Class-V. PW-4 further stated that he had gone to Surat along with his son, Satwant and the appellant's brother Rohit, to recover the victim. He had met the appellant and the victim at Surat. He was bringing both of them, but the appellant got down from the train at Surat and ran away. He came back to Unnao along with his son and the victim as well as the appellant's brother, Rohit. The victim was handed over to him on the third day after lodging of the FIR. He stated that the victim had got married on the date of recording his statement.

20. PW-5 was a Constable of police, who stated about the recovery of the victim from a place near Munshiganj trisection.

21. The victim was examined as PW-6. She stated that she had gone to attend the call of nature in a grove at about 3:00 p.m. on 18.07.2011. The appellant came there and took her with him for an excursion by use force and threat. He kept her at Surat for 1□ months and he raped her repetitively against her wishes. When the appellant was coming with her to drop her back home, the police caught her at Munshiganj crossing and the appellant escaped.

22. During cross-examination, the victim stated that she had studied up to Class-VIII. She stated that on the date of the incident she had gone to attend the call of nature in a mango grove of one Pandit ji of Amoliya. This grove is situated at a distance of about 100 steps from her home. She also stated that she has her own grove which is adjacent to her house. The victim stated that she had gone in that particular grove (of the Pandit ji of Amoliya) on the date of the incident only and prior to that she had never gone to that grove. The appellant had come to that grove on foot and he took her with him after one minute. His motorcycle was parked on the roadside at a secluded place.

23. The victim stated that the appellant made her sit on the motorcycle and took her to Munshiganj, where he parked the motorcycle and took her to Ajgain in a taxi. It was crowded at the Munshiganj taxi stand. One or two other persons were also sitting in the taxi in which they had traveled up to Ajgain. From there, she went to Kanpur on a thela, in which another person was also sitting. They took the 5:00 p.m. train to Surat. She stayed in a room at Surat for 1 months. The appellant used to cook and wash the utensils. She had taken a pair of clothes with her and therefore she did not require new clothes. After about 1 months the appellant's brother Rohit and the victim's father had gone to Surat, but she did not return with them as the appellant had forbidden her. After staying there for about 1 months the appellant brought her back to Munshiganj. When police came there, the appellant ran away. She stated that the appellant had brought her back on her asking.

24. The victim's elder sister Phool Kumari was examined as PW-8. She stated that the victim had gone to attend the call of nature. After she came back and was sitting on a cot inside the home, the appellant came there on a motorcycle, he called the victim and took her on his motorcycle. PW-2 had raised her voice against the appellant taking her sister. During cross-examination, PW-8 stated that two or three days prior to the incident, her parents had gone to village Araura Mau. She made a phone call and thereafter they returned on the following day. Her youngest sister Sonam had gone with her parents. Only PW-8 and the victim were there in the house. She further stated that on the date of the incident the appellant had gone to attend the call of nature and thereafter she had returned home. After about hour, the appellant came at the door of her house and called the victim. The victim went out of the house and went with the appellant. She had already kept some cash, jewelry and a mobile phone with her.

25. In the statement of the appellant recorded under Section 313 Cr.P.C. he denied the allegations.

26. The appellant filed a declaration of marriage verified by a Notary, which was witnessed by one Swami Singh. Swami Singh was examined as D.W.-1. He stated that the marriage declaration was prepared and was executed by the appellant and the victim in his presence and it was verified by a Notary on 30.08.2011.

27. The trial court noted that the incident took place on 18.07.2011, the complainant gave a written complaint on 11.08.2011 and the F.I,R, was lodged on 13.08.2011. The victim was recovered on 22.09.2011 at 07:45 a.m. and she was sent for medico-legal examination on 23.09.2011.

28. The trial court noted that although the transfer certificate of Class V issued by R.A.S. Shanti Shiksha Mandir, Sarai Mal Kadim, Hasanganj, Unnao, mentions the date of birth of the victim as 12.05.1996, this date of birth was recorded on 01.07.2002 on the basis of information given by her father (PW-4), who has stated in his cross-examination that he does not know the date of birth of the victim and he had got it recorded by estimation. The trial Court recorded that due to lack of resources in rural areas, children start going to school at higher ages and keeping in view their future, the guardians get their date of birth recorded by reducing their age by 2-3 years. Therefore, the medical evidence regarding age appears to be more trust worthy.

29. Although the doctor who had conducted the medico-legal examination and the pathologist had opined that the age of the victim was more than 19 years, the trial Court noted that the doctor had not mentioned the stage of third molar and had assessed the age of the victim on the basis of radiological examination report. The trial Court held that 14/14 teeth situation is attained during the age of 12 to 14 years and the third molar starts appearing in the 17th year of age, but the third molar was absent.

30. Although the trial Court had put a question to the Doctor (PW-2) that she had not made any remark about the third molar or about the empty space near the second molar, it did not ask the Doctor whether the third molars necessarily appear in all persons and it appear at a particular age. It is not at all necessary that the third molar appear appear in all persons and those appear during the 17th year of age. The absence of third molar does not establish that the person has not attained 18 years of age. The trial Court's assessment of age of the victim based on the absence of the third molar, is absolutely without any basis and is perverse.

31. The trial Court further held that the symptoms of the secondary sexual characteristics get fully developed during 16 to 18 years. The trial Court noted that the doctor has stated that the breasts were fully developed, but the auxiliary and pubic hair were merely well developed and not fully developed. The trial Court has erred in holding that the doctor has recorded that the auxiliary and pubic hairs were well developed and not fully developed as the phrases ?well developed? and ?fully developed? are often used to mean one and the same thing. There can be no measure to differentiate between ?well developed? and ?fully developed?, which denote practically one and the same thing.

31. The trial court itself assessed the age of the victim to be 14 to 15 years on the basis of her teeth, 16 to 17 years on the basis of the secondary sexual characteristics and 19 years as per the assessment on the basis of radiological examination. The trial Court calculated the average of the aforesaid three ages, i.e. (19+17+15)/3=17. The reasoning assigned by the trial court was that the girls living in the rural areas have to perform household chores since early ages, and due to this laborious work, their bone joints get fused at earlier ages and the trial court assessed the age of the victim to be 17 years.

32. This finding of the trial court is perverse because the trial court has ignored the specific opinion of two experts based on scientific examination and acted itself as an expert in the field by assessing the age of the victim on the basis of her secondary sexual characteristics and absence of the third molar. The trial Court has discarded the medical expert?s opinion and has acted as an expert in the field so as to hold that the third molar start appearing in 17th year of age and the secondary sexual characteristics like auxiliary and pubic hairs get fully developed in 16-17, years even without referring to any authentic text.

33. It is true that in certain circumstances, when there is other direct evidence of sterling quality to prove a point, the Court can give precedence to that evidence over the opinion of an expert. However, the Court cannot replace the opinion of an expert by its own opinion. By doing so, the trial Court has acted with material illegality.

34. The trial Court has referred to Modi's Medical Jurisprudence as per which there can be a variation of 3 years on either side in the medical age assessed by the pathological examination and has also noted the principle of law laid down by the Hon'ble Supreme Court in some cases to the effect that where two conclusions are possible, the one favoring the accused should be accepted. As per this principle, when the pathological examination opined the age of the victim to be 19 years, by adding three years variation towards the higher side, her age could be assessed at 22 years if one view favoring the victim was taken. The trial court has wrongly assessed the age of the victim to be 17 years without any basis. Therefore, this court sets aside this finding of the trial Court regarding age of the victim and accepts the opinion of the medical experts that the victim was major on the date of the incident.

35. The trial court scrutinized the statement of the victim, wherein she stated that she had taken Rs.15,000/- from her home, the appellant came in the grove on her own and after one minute, he took her with him. She stayed at Surat with the appellant for one and a half months. The appellant used to cook the food and clean the utensils. The trial court also referred to the statement of the elder sister of the victim (PW-2), who stated that after attending the call of nature, the victim returned home and the appellant came there. He called the victim, and she went with him. From this statement, the trial court concluded that the appellant did not use force or abduct the victim. The trial court further noted that the victim had her own orchard near her home yet she did not go to that place for attending the call of nature and instead she went to an orchard situated far away. She took money and a mobile phone with her and thereafter went on a motorcycle with the appellant, which establishes that the victim had gone with the appellant under a plan prepared earlier. There can be no other cause except for the mutual love and affection between the appellant and the victim. The trial court acquitted the appellant of the charges under Section 376 IPC, but held him guilty of the offence under Section 366 IPC.

36. As the trial court has acquitted the appellant for the offences under Sections 363 and 376 IPC, this court has only to examine whether offence under Section 366 of IPC is made out. Section 366 of IPC reads as follows: -

"366. Kidnapping, abducting or inducing woman to compel her marriage, etc."

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid."

37. The word ?abduction? is defined in Section 362 of the IPC, which reads as follows: -

*"**362. Abduction.-**Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person."*

38. It is strange that the trial court itself has concluded that the appellant did not use force or abduct the victim and that the victim had gone with the appellant under a plan prepared earlier due to mutual love and affection between the appellant and the victim. After having recorded a finding that the appellant did not abduct the victim, the trial court held the appellant guilty of the offence of abducting a woman to compel her marriage. There can be no worse example of perversity in a judgment.

39. Keeping in view of foregoing discussions, I am of the view that the prosecution has failed to establish that the applicant had abducted or induced the victim to go with him by use of force or by deceitful means and therefore the offence of abduction is not made out. When the offence of abduction is not made out, the offence of abduction to compel marriage of the victim is also not made out.

40. In view of the foregoing discussion, the criminal appeal is allowed. The impugned order dated11.01.2013, passed by Sri. Jagdish Prasad-IV, the learned IV Additional Sessions Judge, Ex-Cadre, Unnao in Sessions Trial No.68 of 2012, arising out of Case Crime No.1393 of 2011, under Sections 363, 366 and 376 I.P.C. Police Station Hasanganj, District Unnao, whereby the appellant has been acquitted of the charges for the offences under Sections 363 and 376 I.P.C. but has been convicted for the offence under section 366 IPC and has been sentenced to undergo rigorous imprisonment for five years and pay Rs.5,000/- as fine is hereby set aside and the appellant is acquitted of the charges levelled against him.

41. The personal bond and sureties furnished by the appellant before the Chief Judicial Magistrate, Unnao, on 06.05.2026 in compliance of the order dated 03.04.2026 passed by this Court, shall hold good for appearance of the appellant before the Hon'ble Supreme Court in case any appeal is filed against this order and the Hon'ble Supreme Court issues notice of the appeal , as per the provision contained in Section 437-A Cr.P.C.

(2026) 5 ILRA 1816
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 04.05.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE JAI KRISHNA UPADHYAY, J.

Criminal Appeal No. 709 of 2019

Prakash Pradhan **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

The case arose from allegations of rape of an eight-year-old girl, culminating in the appellant's conviction under section 376(2(i) IPC.

Headnotes

A. Criminal matter—Criminal Procedure Code,1973-Section 374(2)-Indian Penal Code,1860-Section 376(2(i) & 5(m)/6 POCSO Act-Hostile Victim and Informant- Statements u/s 161 & 164 CrPC retracted-Material contradictions regarding identity of accused-Medical evidence establishing sexual assault but not authorship of crime-Testimony of prosecutrix found unreliable-Failure of prosecution-Acquittal. (Para 17 to 36)

Held

The court held that although the evidence of hostile witness is not wholly inadmissible, only its reliable and corroborated portion can be acted upon. In the present case, the victim and the informant retracted their earlier allegations, the victim's testimony was materially inconsistent regarding the identity of the offender, and no trustworthy evidence connected the appellant with the offence. Consequently, the prosecution failed to establish guilt beyond reasonable doubt, entitling the appellant to the benefit of doubt. (E-6)

Case law Cited

Koli Lakhmanbhai Chandabhai Vs State of Gujarat (1999) 8 SCC 624, Ramesh Harijan Vs State of U.P. (2012) 5 SCC 777, State of U.P. Vs Ramesh Prasad Misra & Anr (1996) AIR (Supreme Court) 2766, Selvamani Vs State of T.N. (2024) 19 SCC 112, State of Rajasthan Vs Babu Meena (2013) 4 SCC 206, Hem Raj S/o Moti Ram Vs State of Harayana JT (2014) 2 SC 399, State of Maharashtra Vs Chandraprakash Kewalchand Jain [JT (1990) 1 SC 61 (1990) 1 SCC 550]]-referred to.

List of Acts

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

List of Keywords

Rape, Minor victim, Section 376(2)(i) IPC, Section 5(m)/6 POCSO Act, Hostile witness, Prosecutrix, Retraction of statement, Contradictory evidence, Sole testimony, Medical evidence, Benefit of doubt, Acquittal.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. -709 OF 2019

Prakash Pradhan Vs. State of U.P

From the Judgment and order dated 04.05.2026 of the High Court of judicature at Allahabad.

Appearances for parties

Advs. for Appellant(s):

Siddharth Niranjan, Sr. Advocate

Adv. for Respondent(s):

G.A.

(Delivered by Hon'ble Jai Krishna Upadhyay, J.)

1. This criminal appeal has been preferred by the accused appellant against the judgment and order dated 14.12.2018 passed by the 1st Additional District & Sessions Judge, Jalaun at Orai in Criminal Case No. 31 of 2017 (State vs. Prakash Pradhan), arising out of Case Crime No. 422 of 2017, Police Station Kotwali, District Jalaun at Orai, convicting the appellant for the offence punishable under Section 376 (2)(i) of IPC and sentencing him to undergo rigorous imprisonment of life and a fine of Rs. 50,000/- with default clause.

2. The facts of the case, in nutshell, as unfolded by the informant Nawab son of Gafoor Khan in the First Information Report (in short 'F.I.R.') are that on April 26, 2017, at 12.30 p.m., he sent his eight years old daughter to the home of his acquaintance, Prakash Pradhan located in the same vicinity to call / summon him. Upon finding the girl inside his house, Prakash Pradhan grabbed her and sexually assaulted her. When the daughter returned home, she tearfully recounted the entire ordeal to both her mother and him. The girl also sustained bleeding from her private parts.

3. On the basis of the written report (Ext. ka-1), chik First Information Report (Ext. Ka-4) was registered at Police Station concerned mentioning all the details as had been described in Ext. Ka-.3. G.D. entry was also made at the same time.

4. Investigation in the matter was initiated by S.H.O. Sanjay Gupta. He inspected the place of occurrence and prepared site plan (Ext. ka-6). The Investigating Officer recorded the statement of the witnesses. Injured was medically examined and injury report Ext. ka-5 was prepared. Statement of the victim under Section 164 CrPC was also recorded, which is Ext. ka-2.

5. On medical examination of the victim, it was found that hymen was torn at 6' O clock position and perineum at 9' O clock position and slight bleeding in external urethral meatus was present at the time of examination.

6. In the opinion of the doctor, there were signs suggestive of recent forceful penetration of vagina.

7. After completing the investigation, charge-sheet (Ext. ka-7) against the accused appellant was submitted before the concerned Magistrate and he took the cognizance. The case being exclusively triable by session court, was committed to the Court of sessions.

8. Accused-appellant appeared and charges under Sections 376 (2)(i) of IPC and 5(m)/6 POCSO Act were framed. Accused had denied the charges framed against him and pleading not guilty claimed his trial.

9. Trial proceeded and in order to prove its case on behalf of prosecution, six witnesses, namely, PW-1, Nawab Khan (informant), PW-2 victim girl, PW-3 Mahila Constable Munna Devi, PW-4 Dr. Kavita Kori, PW-5 S.H.O. Sanjay Gupta, Investigating Officer and PW-6 Dr. Ravi Prakash Rathore, Principal, were examined.

10. In documentary evidence, written report Ex.ka.-1, statement of victim recorded under Section 164 CrPC Ext. ka-2, G.D. entry Ext. ka-3, chick FIR Ext. ka-4, injury report Ext. ka-5, site plan Ext. ka-6 , charge sheet Ext. ka-7, entry of S.R. Register as Ext. ka-8 and original admission form of the victim as Ext. ka-9 respectively have been proved.

11. After closure of prosecution evidence the incriminating evidence and circumstances were put to the accused in his statement under Section 313 Cr.P.C. wherein he claimed the entire prosecution evidence / case as false and fabricated.

12. The learned trial court upon scrutiny of the evidence on record concluded that the case of prosecution was proved beyond reasonable doubt against the accused appellant and recorded conviction and sentenced him, as mentioned here-in-above. Hence, this appeal.

13. We have heard Shri Siddharth Niranjan, learned counsel for the appellant and Shri C. B. Dhar Dubey, learned AGA for the State at length, and perused the entire record carefully.

14. Assailing the impugned judgment on various grounds, learned counsel appearing for the appellant submitted that the prosecution has not proved its case beyond reasonable doubt. It has been submitted that the impugned judgment and order is not sustainable under law. Learned counsel has further submitted that PW-1, informant, father of the victim, though not an eye witness, had also not supported the prosecution case in his cross-examination before the Court. It has further been submitted that the victim of the case had not supported the prosecution case before the Court and she had been declared hostile. The other witnesses are simply formal witnesses only. Hence there remains absolutely no reliable evidence against the appellant to connect him with the present offence and the conviction recorded by the trial court becomes unsustainable under law. Several other submissions have been made on behalf of the appellant to demonstrate the falsity of the allegations made against him.

15. Learned A.G.A. has supported the impugned judgment and order and has stated that the judgment is well reasoned and well-discussed. Medical evidence fully supports the oral version. Findings recorded by trial court in the impugned judgment and order are based on correct appreciation of facts, evidence and law and do not suffer from any infirmity or illegality warranting interference by this Court.

16. We have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned judgment and order carefully.

17. The Court finds that the allegations made against the accused-appellant in the F.I.R. and all the assertions made by PW-1 / informant against the appellant in his examination-in-chief have been tried to be washed off by him in the cross-examination. The FIR was lodged by him with the allegations that on April 26, 2017, at 12.30 p.m., he sent his eight years old daughter to the home of his acquaintance, Prakash Pradhan located in the same vicinity to call him. Upon finding the girl inside his house, Prakash Pradhan grabbed her and sexually assaulted her. When the daughter returned home, she tearfully recounted the entire ordeal to both her mother and him. The girl also sustained bleeding from her private parts and he supported the FIR version in his examination-in-chief but in his cross-examination he does not support the prosecution case and narrates in favour of the accused-appellant. In his cross-examination he deposed that his daughter had stated that while she was walking along the road, a man grabbed her and took her away, and he committed rape with her. She did not know his name nor did she recognize him. However, she already knew Prakash Pradhan by name. She did not allege that Prakash Pradhan was the man who raped her or committed the wrongful act. She stated that the person who committed the wrongful act against her was between 18 - 20 years of age. The police officers tutored his daughter regarding her statement before the Magistrate and she subsequently gave her statement before the Magistrate in accordance with that coaching. He further stated that at the time and date of the incident, Prakash

Pradhan was not present at Urai. Regarding the statement recorded under Section 161 CrPC, he asserted that he had not given any such statement to the police.

18. Same is the situation with regard to the star witness of the offence i.e. the victim - PW.2. She did not support the prosecution case before the Court and turned hostile. In her examination-in-chief she had stated that Prakash Pradhan had done nothing with her. A boy, who met her on the way, did something wrong with her. She had told her father that the boy had done something wrong with her as a result of which, she bled. In her cross-examination she retracted her statement given under Section 161 of the CrPC. She claimed that the wrongful act committed with her had taken place at a different location. She further stated that she had not informed the Magistrate that her father had sent her along with her brother to call / summon Prakash Pradhan. When her statement under Section 164 was read out to her, she asserted that she had not given such a statement. She denied knowing the boy who had committed rape with her, describing him as a tall, fair-complexioned boy aged between 15 - 20 years.

19. PW-3 Constable Munni Devi proved the chick FIR Ext. ka-4 and G. Entry Ext. ka-3.

20. PW-4 Dr. Kavita Kori had medically examined the victim and proved the medical report as Ext. ka-5.

21. PW-5 S.H.O. Sanjay Gupta was the Investigating Officer of the case. He proved the investigation proceedings, site plan Ext. ka-6 and charge sheet Ext. ka-7.

22. PW-6 Dr. Ravi Prakash Rathor, Principal Aacharya Narendra Deo Inter College, Orai stated that the victim was the student of his college and proved the entries of S.R. Register as Ext. ka-8 and original admission form of the victim as Ext. ka-9.

23. This situation takes the Court to examine the legal position regarding the evidentiary value of a witness who, after corroborating the prosecution version in material sense, turns hostile subsequently and resiles from his earlier statements.

24. The Hon'ble Apex Court in ***Koli Lakhmanbhai Chandabhai vs. State of Gujarat, 1999 (8) SCC 624*** has held that evidence of hostile witness can be relied upon to the extent it supports the version of prosecution and it is not necessary that it should be relied upon or rejected as a whole.

25. In the case of ***Ramesh Harijan vs. State of U.P., 2012 (5) SCC 777***, the Hon'ble Apex Court has also held that it is settled legal position that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether.

26. In ***State of U.P. vs. Ramesh Prasad Misra and another, 1996 AIR (Supreme Court) 2766,*** the Hon'ble Apex Court held that evidence of a hostile witnesses would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close

scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon.

27. In the case of ***Selvamani v. State of T.N., (2024) 19 SCC 112*** the Hon'ble Supreme Court has observed as under:

"16. A 3-Judge Bench of this Court in Khujji v. State of M.P., (1991) 3 SCC 627, relying on the judgments of this Court in Bhagwan Singh v. State of Haryana, (1976) 1 SCC 389, Rabindra Kumar Dey v. State of Orissa [Rabindra Kumar Dey v. State of Orissa, (1976) 4 SCC 233, Syad Akbar v. State of Karnataka, (1980) 1 SCC 30, has held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof."

28. From the above settled principles of law, it is evident that the hostility of a witness may be a deceitful act on his part but this improper conduct of a hostile witness does not disentitle the prosecution to rely upon any portion of his testimony which supports the prosecution and is also corroborated by some other material evidence on record.

29. Further, law is also settled on the point that if the evidence of victim of offence of rape is found to be wholly reliable, the same can be made basis for conviction.

30. As to what value should be attached to the evidence of a victim of rape, has been considered by Hon'ble Apex Court in the case of ***State of Rajasthan Vs. Babu Meena reported in (2013) 4 SCC 206*** wherein Hon'ble Apex Court has observed in para 9 as under:-

"We do not have the slightest hesitation in accepting the broad submission of Mr. Jain that the conviction can be based on the sole testimony of the prosecutrix, if found to be worthy of credence and reliable and for that no corroboration is required. It has often been said that oral testimony can be classified into three categories, namely (i) wholly reliable, (ii) wholly unreliable and, (iii) neither wholly reliable nor wholly unreliable. In case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration. This principle applies with greater vigour in case the nature of offence is such that it is committed in seclusion. In case prosecution is based on wholly unreliable testimony of a single witness, the court has no option than to acquit the accused."

31. In the case of ***Hem Raj S/o Moti Ram V. State of Harayana reported in JT 2014 (2) SC 399***, the Hon'ble Apex Court has again considered this aspect and has observed in paragraph no. 6 as under:-

"*In a case involving charge of rape the evidence of the prosecutrix is most vital. If it is found credible; if it inspires total confidence, it can be relied upon even sans corroboration. The court may, however, if it is hesitant to place implicit reliance on it, look into other evidence to lend assurance to it short of corroboration required in the case of an accomplice.* ***[State of***

Maharashtra v. Chandraprakash Kewalchand Jain [JT 1990 (1) SC 61 : 1990 (1) SCC 550]]. *Such weight is given to the prosecutrix's evidence because her evidence is on par with the evidence of an injured witness which seldom fails to inspire confidence. Having placed the prosecutrix's evidence on such a high pedestal, it is the duty of the court to scrutinize it carefully, because in a given case on that lone evidence a man can be sentenced to life imprisonment. The court must, therefore, with its rich experience evaluate such evidence with care and circumspection and only after its conscience is satisfied about its creditworthyness rely upon it."*

32. In this matter, earlier the victim had stated that on April 26, 2017, at 1:00 PM, her father asked her to go and call the uncle. Therefore, she and her brother Nooralam went to uncle's room to call him. She told uncle, "Papa had called you for some work." Thereafter, the uncle gave her brother Rs. 5/- and sent him to bring 'gutkha'. Then he said to her that he was going to misbehave with her and she must not tell anyone about the same and for this he will give her ten rupees. He latched the door from the inside and when she started crying, he covered her mouth, pulled down her underwear, laid on top of her, and committed a vile act against her. He further stated that just then, her brother returned and he immediately let go of her and began putting his clothes. She was bleeding. Contrary to that in her statement before the Court she had stated that Prakash Pradhan had done nothing with her. A boy, who met her on the way, did something wrong with her. She had told her father that the boy had done something wrong with her and when the boy committed the wrongful act with her, she bled. In her cross-examination she retracted her statement given under Section 161 of CrPC. She claimed that the wrongful act committed with her had taken place at a different location. She further stated that she had not informed the Magistrate that her father had sent her along with her brother to call / summon Prakash Pradhan. When her statement under Section 164 was read out to her, she asserted that she had not given such a statement. She denied knowing the boy who had committed rape with her, describing him as a tall, fair-complexioned boy aged between 15 - 20 years. Even though PW-1, informant and PW-2-victim were cross-examined on behalf of the State but nothing incriminating could be brought on record against the appellant.

33. From a perusal of testimony of the victim ? PW-2 given before the Court, it is explicitly clear that in regard to the statements given under Sections 161 and 164 CrPC she had denied the same. Though it is established that the offence of rape had been committed with her but she had stated nothing against the appellant before the Court rather she stated that a boy aged about 15-20 years tall and fair complexioned had committed rape with her and she denied knowing the said boy. In the facts of the instant case, the victim was the only witness on the point of rape with her. Therefore, there are two versions in her evidence one is given by her in her statements recorded under Sections 161 and 164 CrPC and the other before the Court. In her deposition before the Court she had specifically stated that she had not given any such statements as had been mentioned in the statements recorded under Sections 161 and 164 CrPC. The two set of evidence given by the victim are so contradictory and opposite to each other that the same cannot stand together. One of the said statements is definitely false. She is not a reliable witness. The testimony of the victim is inconsistent and same inspires no confidence and there are material contradictions which shake the prosecution case. Hence, the story put forward by the informant does not inspire confidence and makes the prosecution case doubtful. The principle of law as laid down by catena of judgments of the Hon'ble Supreme Court that the testimony of hostile witnesses shall not be completely

discarded and the part of the statement which supports the prosecution version can always be taken into consideration cannot be disputed, but the way it had been applied in the facts and circumstances of this case, that was totally uncalled for and unwarranted.

34. Hence, upon careful analysis and consideration of the settled legal position in the backdrop of the facts and circumstances of the present case, we are of the opinion that the conclusion taken by the Trial Court in the impugned judgment and order is not in accordance with law and the evidence available on record. Thus, this Court is of the view that the prosecution has not been able to establish the guilt of the accused appellant beyond reasonable doubt. Therefore, the Court is inclined to grant benefit of doubt to the accused appellant on the ground of rule of caution.

35. In view of the above discussions, we are of the opinion that the prosecution has failed to establish the guilt of the accused appellant for the offence punishable under 376 (2)(i) of IPC beyond reasonable doubt and to the satisfaction of the judicial conscience of the Court. So, the impugned judgment and order of conviction and sentence dated 14.12.2018, which has been sought to be assailed, call for and deserves, interference. The criminal appeal is liable to be allowed.

36. Accordingly, criminal appeal is allowed and the conviction and sentence imposed upon the accused appellant Prakash Pradhan for the offence punishable under Section 376 (2)(i) of IPC is set-aside as the accused appellant is found not guilty for the aforesaid offence. He is acquitted of all the charges framed against him. He be set at liberty. He is in jail. He shall be released forthwith, if not wanted in any other case.

37. Office is directed to communicate this order to the court concerned forthwith for compliance and also to send back the trial court record.

(2026) 5 ILRA 1823
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.05.2026

BEFORE

THE HON'BLE SANTOSH RAI, J.

Criminal Appeal No. 916 of 1983

Lallo **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

The prosecution case arose from a fatal assault inside the accused's house, resulting in the death of one person and injuries to another.

Headnotes

A. Criminal matter-Criminal Procedure Code, 1973-Section 374(2)-Indian Penal Code, 1860-Sections 304 Pt.II & 307-Indian Evidence Act, 1872-Sections 6. 8 & 106-Circumstantial evidence-Hostile witnesses-Res gestae-Burden of proof-Section 106, Evidence Act-Death inside

accused's house-Prompt FIR-Medical Evidence-Admitted documents u/s 294 CrPC- Blood-stained weapon-Accused fleeing from scene-Conviction affirmed-Sentence modified-Mandatory fine under section 307 IPC.(Para 20 to 37)

Held

The court held that conviction can be sustained despite the informant and injured witness turning hostile where the prosecution established an unbroken chain of circumstances through prompt FIR, medical evidence, contemporaneous disclosure admissible as res gestae, the accused's conduct in fleeing with blood stained weapon and his failure to explain the homicidal death occurring inside his house. The plea based on hostile witnesses was rejected by relying on the principles u/s 6, 8, and 106 of the Evidence Act. (E-6)

Case law Cited

Saddiq & Ors Vs State (1981) CriLJ 379, Employees State Insurance Corporation Vs A.k. Abdul Samad & Anr (2016) 4 SCC 785, Kali Ram Vs State of H.P. AIR (1973) SCC 2073,State of U.P. Vs Pussu @ Ram Kishore (1983) 3 SCC 502,State of U.P. Vs Krishna Gopal & Anr. (1988) 4 SCC 302, Basalingappa Vs Mudibasappa (2019) 5 SCC 418 -referred to.

List of Acts

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

List of Keywords

Murder, Culpable Homicide, Circumstantial evidence, Hostile witness, Res Gestae, Conduct of accused, Section 6, Evidence Act, Section 8 Evidence Act, Section 06, Evidence Act, Section 294 CrPC, Prompt FIR , Medical Evidence, Blood-stained Weapon, Burden of Proof, Section 304 Part II IPC, Section 307 IPC. Mandatory Fine.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. -916 OF 1983

Lalloo Vs. State of U.P

From the Judgment and order dated 01.05.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):

A.n. Mulla, Arun Kumar Singh

Advs. for Respondent(s):

A.g.a.A. G.A.

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

1. Heard Sri Arun Kumar Singh, learned counsel for the appellant; Sri Shyam Narayan Rai, learned AGA for State and perused the materials on record including the trial court records.

2. This criminal appeal is preferred under Section 374 of Cr.P.C. by the accused appellant Lalloo to set aside the judgment and order dated 31.3.1983, passed by the II Additional Sessions Judge, Non-Metropolitan Area, Kanpur in Sessions Trial No.30 of 1983 (State of U.P. Vs. Lalloo & Anr.), arising out of Case Crime No.197 of 1982, under Sections 302/34, 307/34 IPC, Police Station Billhaur, District Kanpur Dehat, whereby the appellant has been sentenced to three years rigorous imprisonment under Section 304 Part-II IPC, sentenced to three years rigorous imprisonment under Section 307 IPC. All the sentences are directed to run concurrently.

3. In this case, the first informant is PW-1, Phool Chandra, who is the younger brother of the accused appellant Lalloo. He submitted a written report (Ex.Ka.1). In his report, he stated that

the deceased, Chotey Lal, used to work as a helper on his farm and also lived in his house. An illicit relationship had developed between the deceased and his mother, Shanti. One night, the deceased and his mother were lying together on a cot. At that time, the accused appellants Lalloo and Shyam came into the house. When they saw the deceased and Shanti in a compromising position, both accused persons attacked the deceased with a spade. During the incident, the informant□s mother also suffered injuries while trying to save the deceased. On the basis of this written report, an FIR was registered under Section 307 IPC as Case Crime No.197 of 1982 at Police Station Billhaur, District Kanpur Dehat.

4. The investigation started, and statements of witnesses were recorded. After investigation, a charge sheet was filed under Sections 302 and 307 IPC. The Magistrate took cognizance of the case and committed it to the Court of Sessions, where it was registered as Sessions Trial No.30 of 1983 (State of U.P. vs. Lalloo & Another), arising out of Case Crime No.197 of 1982, under Sections 302/34 and 307/34 IPC. Charges were framed against the accused persons. They denied the charges and demanded trial. However, accused Shyam Lal was later acquitted of the charges under Sections 302/34 and 307/34 IPC.

5. To prove its case, the prosecution produced the following documentary evidence:

"1. FIR dated 13.08.1982

2. Written Report dated 13.08.1982 (Ex. Ka-1)

3. Injury Report dated 13.08.1982 (Ex. Ka-8)

4. Injury Report dated 13.08.1982 (Ex. Ka-9)

5. Recovery Memo of plain and blood-stained soil (Ex. Ka-5)

6. Supurdaginama dated 13.08.1982 (Ex. Ka-6)

7. Panchayatnama dated 18.08.1982 (Ex. Ka-4)

8. Post-mortem Report dated 19.08.1982 (Ex. Ka-2)

9. Charge-sheet dated 13.9.1982 (Ex. Ka-7)"

6. Apart from the documentary evidence, the prosecution also presented oral evidence. The witnesses examined, Phool Chandra (PW-1), Shanti (PW-2), Fakire Singh (PW-3), Kalyan Singh (PW-4), Dinesh Singh (PW-5), Atar Singh (PW-6), Chhotelal (PW-7), M.A. Siddiqui (PW-8), and M.M. Khan (PW-9), in support of the prosecution case.

7. P.W.-1 Phool Chandra and P.W.-2 Smt. Shanti Devi resiled from their statement recorded during investigation and were declared hostile.

8. Fakire Singh (PW-3) is a witness who resides adjacent to the house of accused Lalloo. He has stated that the incident occurred at the night of Janmashtami at about 1:30 or 2:00 A.M., when he was lying in the courtyard of his house. He further stated that the deceased, Chhotey Lal, used to reside in the house of Lalloo and was engaged in agricultural work there. He has clearly stated that he did not witness the actual assault. Upon hearing an alarm that Lalloo had attacked Chhotey Lal, he reached the spot. At that time, he saw accused Lalloo running towards the pond with a gadasa in his hand. He further deposed that several other persons had also gathered there. He stated that he enquired from Phool Chandra, who informed him that Lalloo had assaulted Chhotey Lal. He also stated that the name of Lalloo as an assailant was disclosed to him by persons present at the spot. He further deposed that Lalloo was at a distance of about four steps from him while running towards the pond. However, he admitted that he did not see Lalloo in the light of any torch. With regard to his statement before I.O wherein he claimed himself as eyewitness of incident.

9. P.W.-6 Atar Singh is a resident of District Etawah and has been mentioned as a witness in the F.I.R. He has deposed that he had come to the village one day prior to the occurrence and had stayed at the house of Achhey Lal, who is the maternal uncle of the deceased Chhotey Lal. He further stated that a keertan was being held at the house of Ram Krishna, where he had gone along with Achhey Lal. He said he left the keertan at about 2:00 A.M., and at that time Achhey Lal was also accompanying him. He further stated that Fakire Singh and Ram Sanchi were also with him when they heard an alarm coming from the house of Lalloo. On reaching there, they found that Chhotey Lal had been murdered. He further stated that he saw Lalloo and Shyam Lal running away from the house towards the pond. The witness has further deposed that a dibbi (oil lamp) was burning inside the house. He also stated that it was a dark night and that they were carrying torches, though the Investigating Officer did not inspect his torch. He further stated that the house of Ram Krishna, where the keertan was held, was situated about five to six houses away from the place of occurrence. He has stated that he had come to the house of Achhey Lal without any specific work. He further deposed that when he entered the house of Lalloo, Phool Chandra had already reached there before him. He also stated that he had seen Lalloo and Shyam Lal assaulting Chhotey Lal, and that Smt. Shanti Devi sustained injuries while trying to save Chhotey Lal.

10. P.W.-4 Kalyan Singh did not support the prosecution case and was declared hostile. However, he has deposed that he heard an alarm raised by P.W.-1 Phool Chandra, who was shouting that the accused had committed the murder.

11. P.W.-5 Dinesh is the scribe of the written report. He has testified that the contents of the FIR were written by him on the dictation of P.W.-1 Phool Chandra.

12. P.W.-7 Dr. K.L. Vaish has proved post-mortem report (Ex.Ka.-2) of deceased Chhotey Lal. He stated he found one stitched wound 16 cm long upon the right side of head extending upto right side of cheek. Second wound was 17 cm long having nine stitches on right side of cheek. Parietal bone of deceased was found fractured. He stated that said injuries could have been caused by sharp weapon.

13. Injury reports of deceased Chhotey Lal and P.W.-2 Shanti Devi were admitted by accused under Section 294 Cr.P.C. As per injury report of deceased Chhotey Lal, he has sustained

two incised wounds □19cm x 2 cm x bone deep on right side face upto scalp with bleeding present and incised wound 20 cm x 2 cm x bone cut upto brain matter on frontal region with eye ball damaged□. Similarly, P.W.-2 Shanti Devi also sustained two incised wound in the incident. She sustained □one incised wound bone deep found on middle finger of left hand measuring 2.5 cm x 1 cm. Second injury of incised wound was of 7 cm x 1 cm x muscle deep on left side of lumber region of abdomen□.

14. P.W.-8 A.M. Siddiqi has proved bed head ticket of deceased. He was posted as pharmacist in U.H.M. Hospital at Kanpur. He deposed deceased was brought and admitted in said hospital on 13-08-1982 and remained there upto 18-08-1982 till his death.

15. P.W.-9 S.I. M.M. Khan deposed he was investigation officer and he had recorded statements of witnesses, prepared site plan and recovered blood stained and plain soil from place of incident, prepared memo of earthen lamp and submitted charge sheet finding sufficient evidence against accused.

16. Upon appreciation of the evidence on record, it is revealed that the testimony of P.W.-3 Fakire Singh and P.W.-6 Atar Singh establishes that both the said witnesses had seen the accused fleeing from the place of occurrence immediately after the incident, armed with a blood-stained spade. The presence of blood on the weapon and the conduct of the accused in running away from the spot were treated as incriminating circumstances against him. The trial court has further taken into consideration the statements of the aforesaid witnesses that they had heard the alarm raised by P.W.-1 Phool Chandra, who was shouting that accused Lalloo had murdered Chhotey Lal. The said utterance was held by the trial court to be admissible as forming part of the same transaction under the doctrine of res gestae.

17. The trial court has also observed that the conduct of the accused in fleeing from the place of occurrence with a blood-stained spade, at the very moment when P.W.-1 was raising alarm and naming the accused, constitutes a relevant circumstance indicative of his involvement in the occurrence. On the basis of the aforesaid circumstances, the trial court, while holding that the charge under Section 302 IPC was not made out, proceeded to convict the accused under Section 304 Part II IPC. However, no specific and cogent reasons were assigned by the trial court as to the absence of intention so as to exclude the offence under Section 302 IPC and for converting the conviction to one under Section 304 Part II IPC.

18. Learned counsel for the appellant has submitted that none of the witnesses examined by the prosecution can be said to be an eyewitness to the actual occurrence, inasmuch as no witness has consistently deposed to having seen the incident of assault. It is further contended that P.W.-1 Phool Chandra and P.W.-2 Shanti, who are alleged to be the eyewitnesses and, in the case of P.W.-2, an injured witness, have not supported the prosecution version during trial. Both these witnesses were declared hostile by the prosecution and have not attributed any role to the accused in the commission of the offence. Learned counsel has also submitted that though the trial court has placed reliance upon the testimony of P.W.-3 Fakire Singh and P.W.-6 Atar Singh, the said witnesses are not eyewitnesses of the occurrence. Their presence at the time of actual assault is doubtful, and even according to their own statements, they reached the place of occurrence after the

incident. It is further urged that P.W.-6 Atar Singh has been treated by the trial court itself as only a partially reliable witness, and therefore, his testimony could not have been made the sole basis of conviction. It is next contended that both P.W.-3 Fakire Singh and P.W.-6 Atar Singh have deposed that they heard P.W.-1 Phool Chandra raising an alarm that accused Lalloo had murdered Chhotey Lal. However, such statements cannot be relied upon, inasmuch as they do not find any corroboration from the testimony of P.W.-1 Phool Chandra and P.W.-2 Shanti, who have not supported the prosecution case at all and have denied the occurrence as alleged. In absence of such corroboration, the said evidence loses its evidentiary value and cannot form the basis of conviction.

19. Learned A.G.A., on the other hand, has opposed the submissions advanced on behalf of the appellant and contended that the prosecution case cannot be discarded merely on the ground that the alleged eyewitnesses, namely P.W.-1 Phool Chandra and P.W.-2 Shanti, have turned hostile during trial. It is submitted that the testimony of a hostile witness is not to be rejected in toto and can be relied upon to the extent it supports the prosecution case. It is further argued that the evidence of P.W.-3 Fakire Singh and P.W.-6 Atar Singh clearly establishes that they reached the place of occurrence immediately after the incident and saw the accused fleeing from the spot armed with a blood-stained spade, which constitutes a strong incriminating circumstance against him. It is also submitted that both the said witnesses have consistently deposed that they heard the alarm raised by P.W.-1 Phool Chandra naming the accused as the assailant, which forms part of the same transaction and is admissible under the doctrine of res gestae. Learned A.G.A. has further contended that the conduct of the accused in running away from the place of occurrence with a blood-stained weapon, coupled with the surrounding circumstances, clearly points towards his guilt, and the trial court has rightly appreciated the evidence on record in recording the conviction, which does not call for any interference by this Court.

20. Upon a careful consideration of the entire material available on record and the submissions advanced by learned counsel for the parties, this Court finds that the trial court has rightly arrived at the conclusion that the accused was responsible for the assault upon the deceased Chhotey Lal. However, the conversion of the charge from murder punishable under Section 302 IPC to culpable homicide not amounting to murder under Section 304 Part II IPC does not appear to be supported by any cogent reasoning and is, therefore, unsustainable in law.

21. It is difficult to accept the findings recorded by the trial court inasmuch as, having placed reliance upon the testimonies of P.W.-3 Fakirey Singh and P.W.-6 Atar Singh, there existed no justifiable basis to absolve the accused of the offence punishable under Section 302 IPC. The findings of the trial court suffer from lack of proper appreciation of evidence.

22. It is further pertinent to note that the trial court has neither adverted to nor discussed the injury report and post-mortem report of the deceased Chhotey Lal, nor has it properly considered the injury sustained by P.W.-2 Shanti Devi. The evidence on record clearly indicates that P.W.-2 Shanti Devi had also sustained injuries during the course of the same incident, namely two incised wounds on her left hand finger and abdomen. The genuineness of the injury report (Ex.Ka-9) stood admitted by the accused during trial, yet the same has not been properly appreciated by the trial court. In this regard, it is relevant to observe that where the genuineness of a document is admitted under Section 294 Cr.P.C., the same becomes substantive evidence. The Full Bench of the

Allahabad High Court in **Saddiq & Ors. vs. State 1981 CriLJ 379** has held that once a document is admitted, its contents and execution need not be formally proved, and it can be read in evidence as substantive material. The expression "read in evidence" implies that such document can be relied upon for proving the facts in issue.

23. If the testimonies of P.W.-3 Fakire Singh and P.W.-6 Atar Singh are accepted to the extent that they saw the accused fleeing from the place of occurrence with a blood-stained spade at the very moment when P.W.-1 was raising alarm naming the accused, then the chain of circumstances clearly points towards the involvement of the accused in the commission of the offence. Such conduct is relevant under Section 8 of the Evidence Act, and the contemporaneous utterance of P.W.-1 forms part of the same transaction and is admissible under Section 6 of the Evidence Act as "res gestae". Section 6 of Indian Evidence Act, 1872 is extracted hereinafter:-

"This section incorporates the principle of res gestae, which is a kind of an exception to the rule against hearsay as illustrated in Illustration (a) to this section. The word "hearsay" is used in various senses. Sometimes it means whatever a person is heard to say; sometimes it means whatever a person declares on information given by someone else. There are four illustrations to the section. In the first illustration, A is accused of the murder of B, by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

Even a hearsay statement is relevant if it forms a part of the same transaction as the fact-in-issue (occurrence). Unless any fact or statement forms a part of the same transaction, it will not be admissible in evidence. For example, utterances just before, during or immediately after the commission of a crime, spontaneous outbursts of bystander or of accused or victim forming part of the same transaction are admissible."

24. Section 8 of the Indian Evidence Act, 1872 is reproduced hereinbelow:-

"8. ***Motive, preparation and previous or subsequent conduct.*** *Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.*

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1. The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2. When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Thus, conduct, which is relevant and hence provable under this section, is conduct, which directly and immediately influences or is influenced by any fact in issue or relevant fact. Relevant conduct does not include actions resulting from some intermediate cause. Such conduct must have nexus with the crime committed. It must form a part of the evidence as regards his conduct either preceding, during or after the commission of the offence as envisaged under section 8 of the Indian Evidence Act, 1872. Hence, any behaviour or conduct of the accused would be relevant if it had nexus with the offence alleged to have been committed by him. Only such conduct of the accused, which supports, destroys dents the presumption of innocence, is relevant. Conduct of accused by way of immediate reaction to an illegal overture of bribe is relevant. Creating false record is a conduct, which, is relevant. False explanation or false plea by an accused is relevant."

25. Considering all the facts and circumstances of the present case as also the material evidence available on record, the trial court has rightly held the accused appellant Lalloo guilty on the basis of relevancy of evidence and conduct of the appellant under Section 6 of the Indian Evidence Act, 1972 but the trial court has committed an erroneous finding that testimony of PW-6 Atar Singh is wholly unreliable. The specific role of appellant Lalloo and Shyam Lal for committing murder of deceased Chotey Lal inside the house of informant has been clearly assigned in the FIR and PW-3 and PW-6 also stated that they have seen the Lalloo and Shyam Lal running away from the house having spade (gadasa) in their hands but as to how Shyam Lal was not held guilty and acquitted in this case is not clearly explained on the basis of specific findings returned by the trial court in this case.

26. In this case, the incident is said to be occurred at about 2.00 AM in the house of the accused appellant Lalloo and three family members were present inside the house i.e. the deceased Chotey Lal and injured Shanti. The FIR was registered by the real brother of accused appellant alleging that accused applicant has committed murder of Chotey Lal, who was a servant and involved in agricultural work in the house of the appellant. On hearing screams of informant the witnesses reached towards the place of occurrence and saw the accused appellants coming out from the house having blood stained spade (gadasa) in their hands and they ran towards the tank. The persons, who were present at the place of occurrence were informant Phool Chandra, mother of accused appellant Shanti, deceased Chotey Lal and accused appellant himself. Phool Chandra PW-1, who is the real brother of the appellant has no enmity with the accused appellant but he has lodged the FIR promptly. The deceased Chotey Lal and Shanti were taken to the hospital for medical treatment. Though the informant has turned hostile in this case but the relevant and broad facts regarding commissioning of cognizable offence are clearly mentioned in the FIR and the incident is duly corroborated with the testimonies of PW-3 and PW-6 and there is burden upon the inmates of the house namely appellant Lalloo under Section 106 of the Indian Evidence Act, 1872. Section 106 of the Indian Evidence Act, 1872 provides that when any fact is essentially within the knowledge of any person, the burden of proving that fact is upon him. The appellant Lalloo is the only family member who has not explained special circumstance of death of Chhotey Lal inside his house at night. Furthermore, the accused appellant has generally denied the statement as wrong in his statement recorded under section 313 Cr.P.C. and he has not explained the material evidence/circumstances clearly in his statement.

27. The prompt lodging of the FIR by P.W.-1 Phool Chand, who is the real brother, the admitted genuineness of the injury reports of the deceased and P.W.-2 Shanti Devi under Section 294 Cr.P.C., and the testimony of P.W.-5 Dinesh, the scribe, who has categorically stated that he wrote the report as dictated by P.W.-1, conduct of accused Lalloo, unexplained circumstance by the accused appellant, are all circumstances which, taken together, sufficiently establish the guilt of the accused, notwithstanding the fact that the alleged eyewitnesses and injured witness turned hostile during trial.

28. However, this Court is constrained to observe that, in view of the limitations imposed under Section 386 Cr.P.C., and in absence of any appeal or enhancement proceedings by the State, it is not permissible to alter the conviction to one under Section 302 IPC. Nevertheless, it is observed that the trial court has failed to properly appreciate the evidence on record, has omitted to consider material evidence including the injury reports, and has committed a grave illegality in the matter of sentencing by not imposing fine while convicting the accused under Section 307 IPC.It is further observed that even the sentence awarded under Section 304 Part II IPC does not appear to be commensurate with the gravity of the offence established on record.

29. The Apex Court in **Employees' State Insurance Corporation vs. A.K. Abdul Samad and Another, (2016) 4 SCC 785** held that:

"9. In our considered view, the clause "shall also be liable to fine", in the context of the Penal Code may be capable of being treated as directory and thus, conferring on the court, a discretion to impose sentence of fine also in addition to imprisonment although such discretion stands somewhat impaired as per the view taken by this Court in Zunjarrao Bhikaji Nagarkar. But clearly no minimum fine is prescribed for the offences under IPC nor that the Act was enacted with the special purpose of preventing economic offences as was the case in Chern Taong Shangs. The object of creating offence and penalty under the Employees' State Insurance Act, 1948 is clearly to create deterrence against violation of provisions of the Act which are beneficial for the employees. Non-payment of contributions is an economic offence and therefore the legislature has not only fixed a minimum term of imprisonment but also a fixed amount of fine of five thousand rupees under Section 85(a)(i)(b) of the Act. There is no discretion of awarding less than the specified fee, under the main provision. It is only the proviso which is in the nature of an exception whereunder the court is vested with discretion limited to imposition of imprisonment for a lesser term. Conspicuously, no words are found in the proviso for imposing a lesser fine than that of five thousand rupees. In such a situation the intention of the legislature is clear and brooks no interpretation. The law is well settled that when the wordings of the statute are clear, no interpretation is required unless there is a requirement of saving the provisions from vice of unconstitutionality or absurdity. Neither of the twin situations is attracted herein."

30. Thus, imposition of fine is integral part and fundamental aspect of the punishment, whereas the learned trial court, while awarding sentence, has overlooked the aforesaid legal provision and committed legal error, but so far as the finding of conviction recorded against the accused appellant is concerned, it appears to be just and proper.

31. In **Kali Ram v State of Himachal Pradesh AIR 1973 SCC 2073**, the Supreme Court cautioned that the earlier observations do not affect the well-established principles of presumption of innocence and the burden of proof beyond reasonable doubt. The observations in the decisions quoted above have been quoted with approval in **State of Uttar Pradesh v Pussu @ Ram Kishore (1983) 3 SCC 502**, wherein the Apex Court held as under:-

"25. The rule governing the appreciation of evidence in a criminal case is laid down by this court in State of Punjab v. Jagir Singh [(1974) 3 SCC 277 : 1973 SCC (Cri) 886 : AIR 1973 SC 2407 : 1973 Cri LJ 1589 : (1974) 1 SCR 328] in which this court set aside the judgment of acquittal passed by the High Court which had reversed the conviction and sentence imposed by the trial court thus : [SCC para 23, pp. 285-86 : SCC (Cri) pp. 894-95]

"A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

32. In **State of U.P. Vs. Krishna Gopal & Anr. (1988) 4 SCC 302** the Supreme Court has held as under:-

"25. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to □proof□ is an exercise particular to each case. Referring to the interdependence of evidence and the confirmation of one piece of evidence by another a learned Author says [See: □The Mathematics of Proof-II□ : Glanville Williams: Criminal Law Review, 1979, by Sweet and Maxwell, p. 340 (342)] :

The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other."

Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over-emotional response. Doubts must be actual and substantial doubts as to the guilt of

the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice."

33. In **Basalingappa Vs. Mudibasappa (2019) 5 SCC 418,** the Supreme Court has held as under:-

"This Court in M.S. Narayana Menon case [M.S. Narayana Menon v. State of Kerala, (2006) 6 SCC 39 : (2006) 3 SCC (Cri) 30] held that what is needed is to raise a probable defence, for which it is not necessary for the accused to disprove the existence of consideration by way of direct evidence and even the evidence adduced on behalf of the complainant can be relied upon. Dealing with standard of proof, the following was observed in para 32: (SCC p. 51)

"32. The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which he relies. 17. In Krishna Janardhan Bhat v. Dattatraya G. Hegde [Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166] , this Court held that an accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. The following was laid down in para 32: (SCC p. 62)"

17. In Krishna Janardhan Bhat v. Dattatraya G. Hegde [Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166] , this Court held that an accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. The following was laid down in para 32: (SCC p. 62)

"32. An accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. An accused has a constitutional right to maintain silence. Standard of proof on the part of an accused and that of the prosecution in a criminal case is different."

18. This Court in Krishna Janardhan Bhat case [Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166] again reiterated that whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to

prove a defence on the part of an accused is □preponderance of probabilities□. In para 34, the following was laid down: (SCC p. 63)

"34. Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is □preponderance of probabilities". Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which he relies."

34. Letting the guilty escape is not doing justice according to law. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense, growing out of the evidence. If a case is proved perfectly, it is argued it is artificial. If it has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. Proof beyond reasonable doubt is a guideline, not a fetish. A judge presides over a trial not merely to see that no innocent man is punished, also to see that a guilty man is punished. Both are public duties. What degree of probability amounts to proof is an exercise particular to each case. Reasonable doubt is free from a zest for abstract speculation, from over emotional response. Doubt must be actual and substantial, doubt as to guilt of the accused, arising from the evidence or from the lack of it, as opposed to vague apprehensions.

35. In view of the aforesaid discussion and upon careful appreciation of the entire evidence available on record, this Court finds that the prosecution has succeeded in proving the guilt of the accused-appellant beyond reasonable doubt. The testimony of prosecution witnesses inspires confidence and stands duly corroborated by the medical as well as documentary evidence. The minor discrepancies pointed out by the defence are natural and do not affect the core of the prosecution case. It is well settled that reasonable doubt must be real, substantial and arising from the evidence on record and not based upon conjectures, surmises or vague apprehensions. Criminal justice cannot be allowed to suffer merely on account of trivial inconsistencies which are bound to occur due to normal errors of observation and memory. The learned trial court has rightly appreciated the evidence in its correct perspective and this Court does not find any illegality, perversity or infirmity in the findings so recorded warranting interference in appellate jurisdiction. Accordingly, the appeal lacks merit and is hereby dismissed. The judgment and order passed by the trial court is hereby affirmed, subject to partial modification in the sentence awarded under section 307 IPC.

36. It is observed that the imposition of fine under Section 307 IPC is mandatory and the Trial court does not possess discretion to waive the same in any circumstances. Though this Court, in an appeal against conviction, is not empowered to enhance the substantive sentence, it is well within its jurisdiction to modify or alter the sentence awarded by the trial court. Since fine constitutes an □integral part□ of the sentence under Section 307 IPC, this Court finds it expedient to impose the same.

37. Accordingly, in addition to the sentence already awarded, the accused is directed to pay a fine of Rs. 10,000/- (ten thousand rupees only) for the offence under Section 307 IPC. In default

of payment of fine, the accused shall undergo further simple imprisonment for a period of three months. The rest of the judgment of the trial court shall remain unaltered.

38. The accused is directed to appear before the trial court forthwith to serve out the sentence.

39. In the event of failure to appear, the trial court shall take all necessary coercive steps in accordance with law to secure his presence and ensure execution of the sentence.

40. The trial court record be transmitted back forthwith along with a copy of this judgment for compliance.

(2026) 5 ILRA 1835
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 22.05.2026

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 1097 of 2026

Pramod Kumar Singh @ Guddu Singh ...Appellant
Versus
State of U.P. ...Respondent

Issue for consideration

The case relates to an FIR named the appellant as one of the assailants, but the police found no evidence against him; after being summoned under section 319 CrPC, the key prosecution witnesses retracted and stated that he was not present at the scene, yet the trial court convicted him by relying on pre-summoning evidence.

Headnotes

A. Criminal Matter-Criminal Procedure Code,1973-Section 374(2), 319, 273, 299-Indian Penal Code,1860-Sections 302/149, 307/149, 148 & 506(2)-Indian Evidence Act,1872-Section 33-Subsequent summoning of accused-Pre-summoning evidence cannot be treated as substantive evidence for conviction unless permissible under law-Right of cross-examination being denied, conviction based thereon is vitiated-Appellant acquitted. (Para 15 to 30)

Held

The court held that an accused summoned subsequently u/s 319 CrPC cannot be convicted solely on the basis of evidence recorded before his summoning, as such evidence was not recorded in his presence and he had no opportunity to cross-examine the witnesses. In the present case, the material prosecution witnesses, after the appellant was summoned and put to trial, categorically stated that he was not involved in the occurrence. The Trial court erred in relying upon pre-summoning depositions while ignoring the legally admissible evidence recorded after the appellant's appearance. Such reliance violated the mandate of Sections 273 and 299 CrPC and the principle underlying the section 33 of the Evidence Act, rendering the conviction unsustainable.

Appeal allowed. (E-6)

Case law Cited

Hardeep Singh Vs State of Punjab (2014) 3 SCC 92, Nirmal Singh Vs State of Haryana (2000) 4 SCC 41, Jayendra Vishnu Thakur Vs State of Maharashtra (2000) 7 SCC 104-referred to.

List of Acts

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

List of Keywords

Sections 273 and 299 CrPC, Section 33 of the Evidence Act, Pre-summoning evidence, Right of cross-examination, Fair Trial, Admissibility of Evidence, Acquittal. Natural justice, Hardeep Singh Principle, Re-appreciation of evidence, Due process of law.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. -1097 OF 2026

Promod Kumar Singh Alias Guddu Singh Vs. State of U.P. Thru. Secy. Deptt. Of Home Lko

From the judgment and order dated 22.05.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Adv. for Appellant(s):
Suyesh Pradhan
Adv. for Respondent(s):
G.A.

(Delivered by Hon'ble Rajesh Singh Chauhan, J.
&
Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Suyesh Pradhan, the learned counsel for the appellant and Sri Vipul Kumar Singh, the learned State Counsel.

2. By means of the instant appeal, the appellant has challenged the validity of a judgment and order dated 28.03.2026 passed by the learned Additional Session Judge, Court No. 3, Hardoi in Session Trial No. 465/2008, arising out of Case Crime No. 230/2008, under Sections 302/149, 307/149, 506(2) & 148 IPC, Police Station Beniganj, District Hardoi whereby the trial Court has convicted the appellant for the offences under Sections 302 read with Section 149, Section 307 read with Section 149, 148 and 506(2) IPC and has sentenced him to undergo rigorous imprisonment for life and Rs.10,000/- fine for the offence under Section 302/149, rigorous imprisonment for ten years and Rs.5,000/- fine for the offence under Section 307/149, rigorous imprisonment for two years and Rs.2,000/- fine for the offence under Section 506(2) and rigorous imprisonment for two years and Rs.2,000/- fine for the offence under Section 148.

3. The aforesaid judgment is a composite judgment whereby four sessions trial have been decided. The appellant was an accused only in one of the four trials, namely, Sessions Trial No. 465/208 and the judgment of the trial court, so far as it decides Sessions Trial No. 465A/2008, 466/2008 & 468/2008, has not been challenged and the same is not being scrutinized by this Court.

4. The appeal was admitted by means of the order dated 21.04.2026 and the trial court?s record was summoned. The state was granted time to file objections against the application for

release of the appellant on bail. The State has filed a counter affidavit and the appellant has filed a rejoinder affidavit. However, as the trial Court's record is available, instead of deciding the bail application the Court proceeds to decide the appeal itself after hearing the submissions of the learned counsel for the parties in support of an in opposition of the appeal and after perusal of the trial court's record.

5. The aforesaid case was instituted on the basis of an FIR lodged on 09.03.2008 alleging that the informant's cousin Vijay Kumar Singh @ Pappu was having animosity because of a prior criminal litigation against Bhau Singh, Bhanna Singh, Kallu Singh and Sport Singh and all the aforesaid persons are accused in a case under Section 307 IPC. Vijay Kumar Singh @ pappu was sitting on a platform in front of his door at about 08:00 p.m. on 08.03.2008. There was a lantern which was emanating light. Bhau Singh, Bhanna Singh and Sport Singh, sons of Chhotkau Singh came there carrying firearms. Pramod Kumar Singh @ Guddu Singh, son of Harnam Singh (the appellant) also came with them and he was carrying a country made pistol. All the aforesaid persons started firing gun shots. Vijay Kumar Singh got seriously injured because of the gun shot injuries. The complainant Pramod Kumar Singh @ Pintu Singh also suffered injuries in the incident. Several persons reached there and the accused persons ran away while threatening them. Vijay Kumar Singh @ Pappu was taken to the District Hospital, Hardoi but keeping in view his serious condition he was referred to Lucknow. He succumbed to his injuries on 09.03.2008.

6. After investigation, the Investigating Officer submitted a charge-sheet on 27.05.2008 against Sport Singh, Bhanna Singh, Bhau Singh and Kallu Singh only. The charge-sheet stated that the appellant?s involvement in the incident could not be established during investigation.

7. The trial proceeded against the aforesaid four accused persons. After recording of testimony of some prosecution witnesses, the prosecution filed an application under Section 319 Cr.P.C. for summoning of the appellant to face the trial. The application was allowed by means of an order dated 04.06.2012 and thereafter the prosecution witnesses were examined again.

8. After commencement of the trial against the appellant, the injured complainant Pintu Singh alias Pramod Kumar son of Indra Pal Singh was examined again as PW-1 on 05.09.2013 and he categorically stated that the appellant was not involved in the incident and that he was not present on the spot. PW-1 specifically stated that he had falsely implicated the appellant in his earlier statement, under pressure of his family members and some villagers.

9. Although the judgment refers to the testimony of Ajay Kumar Singh as that of PW-2, the record reveals that after summoning of the appellant and commencement of his trial, Ajay Kumar Singh was not examined. After commencement of the trial against the appellant, Indrapal Singh was examined as PW-2 on 05.09.2013. This witness was the uncle of the deceased Vijay Kumar Singh @ Pappu and father of the injured complainant Pintu Singh alias Pramod Kumar. PW-2 stated that at the time of the incident he was sitting in front of his house. Upon hearing the noise, he went to the house of the victim and saw Bhanna Singh, Bhau Singh, Sport Singh, and Kallu Singh were standing in front of the victim's house carrying firearms and all the aforesaid four persons had fired shots with their weapons. He categorically stated even during his examination in chief that he did not see the appellant Pramod Kumar Singh alias Guddu Singh on the spot of the incident.

10. The trial court held that in the written complaint it had been stated that the appellant was accompanying the other accused persons Bhau Singh, Bhanna Singh, Sport Singh and Kallu Singh and that all of them had fired gunshots. During their statements recorded by the trial court, the injured witness Pramod Kumar Singh alias Guddu Singh and the independent witness Ajay Kumar Singh had stated about the appellant's involvement in commission of the offences and thereafter he was summoned under Section 319 CrPC. to face the trial, relying on the statement of injured witness Pintu Singh. Even though Pintu Singh had resiled from his earlier statement and has stated that the appellant was not involved in the incident, there are statements of two other persons, one of whom Indra Pal Singh had specifically stated that the appellant had fired gunshots along with other accused persons causing injuries to Vijay Kumar Singh alias Pappu and the witnesses' son Pintu Singh.

11. The trial Court erred in so holding, because Indra Pal Singh had stated about involvement of the appellant in the incident in his statement recorded on 01.02.2011, i.e., before the appellant was summoned to face the trial, and this statement cannot be read against the appellant. In his statement recorded on 05.09.2013, after commencement of the appellant?s trial, Indrapal Singh had stated that the appellant was not involved in the incident and only this evidence could be read by the trial Court for deciding the correctness of the charges leveled against him.

12. The trial Court held that PW-2 Ajay Kumar was also an eyewitnesses of the incident and he had also stated that Pramod Kumar Singh alias Guddu Singh was carrying a country-made pistol and all the accused persons had fired with intention of killing Pappu Singh. The trial Court held that from the aforementioned statements, it is established that the appellant Pramod Kumar Singh alias Guddu Singh was involved in the incident and merely because Pintu Singh has stated in his examination that Pramod Kumar Singh alias Guddu Singh was not involved in the incident, the prosecution story does not become doubtful.

13. However, this statement of Ajay Kumar Singh was recorded on 25.02.2009. After the appellant was summoned to face the trial, Ajay Kumar Singh did not come forward to get his testimony recorded. The testimony of Ajay Kumar Singh recorded before the appellant was summoned to face the trial, cannot be read against the appellant.

14. The trial court further held when once the court has acted upon the testimonies to summon the appellant to face the trial under Section 319 CrPC, those testimonies cannot be ignored and those can form the basis of conviction of the appellant.

15. In **Hardeep Singh v. State of Punjab, (2014) 3 SCC 92**, the Hon?ble Supreme Court held that: -

*"**106**. ...In Section 319 CrPC the purpose of providing if ?it appears from the evidence that any person not being the accused has committed any offence? is clear from the words ?for which such person could be tried together with the accused?. The words used are not ?for which such person could be convicted?. There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused."*

16. Therefore, the evidence recorded in absence of an accused person, which is relied upon for summoning him under Section 319 Cr.P.C., cannot form the basis of his conviction.

17. The trial Court has ignored the provision contained in Section 273 Cr.P.C., which reads as follows: -

"273. Evidence to be taken in presence of accused-?*Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader.*

***

Explanation.?In this section ?accused? ?includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code."

18. Section 273 Cr.P.C. provides that except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his attendance is dispensed with, in the presence of his pleader. Therefore, the evidence recorded when the appellant had not been summoned by the trial Court and he was not present before the trial for this reason, cannot be relied upon by the trial Court.

19. Section 299 Cr.P.C. provides an exception where the evidence of a witness recorded in absence of an accused person can be read against him and this Section reads as follows: -

"299. Record of evidence in absence of accused.-(*1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try, or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.*

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India."

20. It would be appropriate to have a look at the provision contained in Section 33 of the Evidence Act, which reads as follows: -

"33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.-*Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:*

Provided"
that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.?A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section."

21. Section 33 of the Evidence Act, 1872, provides relevancy of certain evidence for proving the truth of the facts stated therein, in any subsequent proceeding, according to which evidence given by a witness is treated to be relevant in a subsequent proceeding or at a later stage in the same proceeding under certain eventualities.

22. In **Nirmal Singh v. State of Haryana:** (2000) 4 SCC 41, the Hon?ble Supreme Court discussed the scope and requirements of Section 33 of the Evidence Act, 1972 and Section 299 CrPC and observed as follows: -

"4. On a mere perusal of Section 299 of the Code of Criminal Procedure as well as Section 33 of the Evidence Act, we have no hesitation to come to the conclusion that the preconditions in both the sections must be established by the prosecution and it is only then, the statements of witnesses recorded under Section 299 CrPC before the arrest of the accused can be utilised in evidence in trial after the arrest of such accused only if the persons are dead or would not be available or any other condition enumerated in the second part of Section 299(1) of the Code of Criminal Procedure is established."

23. Section 278 Cr.P.C. provides that as soon as the evidence of each witness in a criminal trial is taken under Section 275 or 276, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected. Section 279 CrPC also provides for interpretation of evidence to the accused in open court, in case he is present and such evidence is given in a language not understood by him.

24. In **Jayendra Vishnu Thakur v. State of Maharashtra:** (2009) 7 SCC 104, the Hon'ble Supreme Court held that: -

"18. The right of an accused to watch the prosecution witnesses deposing before a court of law indisputably is a valuable right. "

***

23. An accused is, however, always entitled to a fair trial. He is also entitled to a speedy trial but then he cannot interfere with the governmental priority to proceed with the trial which would be defeated by conduct of the accused that prevents it from going forward. In such an event several options are open to courts. What, however, is necessary is to maintain judicial dignity and decorum. The question which arises for consideration is whether the same will take within its umbrage the said principle. We will examine the said question a little later. We will proceed on the premise that ***for invocation of the provisions of Section 299 of the Code the principle of natural justice is inbuilt in the right of an accused.***

24. A right to cross-examine a witness, apart from being a natural right is a statutory right. Section 137 of the Evidence Act provides for examination-in-chief, cross-examination and re-examination. Section 138 of the Evidence Act confers a right on the adverse party to cross-examine a witness who had been examined in chief, subject of course to expression of his desire to the said effect. But indisputably such an opportunity is to be granted. An accused has not only a valuable right to represent himself, he has also the right to be informed thereabout. If an exception is to be carved out, the statute must say so expressly or the same must be capable of being inferred by necessary implication. There are statutes like the Extradition Act, 1962 which excludes taking of evidence vis-□-vis opinion.

(See ? Sarabjit Rick Singh v. Union of India [(2008) 2 SCC 417]).

25. It is also beyond any cavil that the provisions of Section 299 of the Code must receive strict interpretation, and, thus, scrupulous compliance therewith is imperative in character. It is a well-known principle of interpretation of statute that any word defined in the statutory provision should ordinarily be given the same meaning while construing the other provisions thereof where the same term has been used. Under Section 3 of the Evidence Act like any other fact, the prosecution must prove by leading evidence and a definite categorical finding must be arrived at by the court in regard to the fact required to be proved by a statute. Existence of an evidence is not enough but application of mind by the court thereupon as also the analysis of the materials and/or appreciation thereof for the purpose of placing reliance upon that part of the evidence is imperative in character."

(Emphasis added)

25. Further, the trial court's observation that besides the injured witness Pintu Singh alias Pramod Kumar Singh, two other witnesses had stated about the involvement of the appellant in commission of the offence out of whom the witness Indrapal Singh has categorically stated about the involvement of the appellant, suffice it to say that the trial court omitted to notice that after summoning the appellant under Section 319 CrPC and the commencement of trial against him, Indrapal Singh was examined again on 05.09.2013 as PW-2 and in this statement he categorically stated that the appellant was not involved in the incident. The trial Court has acted on the statement of Indrapal Singh recorded earlier, while the appellant had not been summoned to face the trial, but

has ignored the statement of this witness recorded after the appellant was summoned, wherein he categorically stated that the appellant was not involved in the incident.

26. It is interesting to note that the witness, Indrapal Singh is the father of the injured witness Pintu Singh and uncle of the deceased Vijay Kumar Singh. Being so closely related to the deceased victim and the injured victim, this witness cannot be said to be a witness who may be interested to wrongly defend the accused persons and there is no reason to discard the testimony of PW-2.

24. There is no other evidence available on record to establish the involvement of the appellant in commission of the alleged offence.

27. In view of the foregoing discussions, we are of the considered view that the prosecution has failed to establish the guilt of the appellant in the commission of the alleged offences. The trial court has convicted the appellant without adverting to the aforesaid aspect of the matter, which vitiates the finding of the trial court and renders its judgment unsustainable in law.

28. Accordingly, the appeal is ***allowed.***

29. The judgment and order dated 28.03.2026 passed by the learned Additional Sessions Judge, Court No. 3, Hardoi in Session Trial No. 465/2008, arising out of Case Crime No. 230/2008, under Sections 302/149, 307/149, 506(2) & 148 IPC, Police Station Beniganj, District Hardoi, convicting and sentencing the appellant for the offences under Sections 302 read with Section 149, Section 307 read with Section 149, 148 and 506(2) IPC is set aside. The appellant is acquitted of all the charges. The appellant is directed to be released from custody forthwith, unless he is wanted in any other case, after complying with the provisions of Section 437-A Cr.P.C. by furnishing a personal bond and two sureties for ensuring his appearance before the Hon?ble Supreme Court, in case any appeal is filed against this order and the Hon?ble Supreme Court issues a notice to the appellant.

30. As the appeal itself has been allowed and the appellant has been acquitted of the charge of all the charges, the bail application has become infructuous and the same is disposed off accordingly.

(2026) 5 ILRA 1842
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 07.05.2026

BEFORE

THE HON'BLE AVNISH SAXENA, J.

Criminal Appeal No. 1350 of 1984

Hetram & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

Matter pertains to the appeal against conviction under section 376 IPC, questioning the reliability of the prosecution evidence in an alleged gang rape case.

Headnotes

A. Criminal matter-Criminal Procedure Code,1973-Section 374(2)-Indian Penal Code,1860-Section 376-Gang rape-Appreciation of evidence-Delayed FIR- Material contradictions in the prosecution case-Medical evidence not corroborating the allegations-Seven month's pregnant prosecutrix-No injuries and no definite opinion of rape-Accused were entitled to the benefit of doubt and acquittal. (Para 12 to 29)

Held

The court held that in the absence of trustworthy and cogent evidence establishing the offence of rape, the appellants could not be convicted merely on doubtful prosecution evidence and were entitled to the benefit of doubt. (E-6)

Case law Cited

Lalliram Vs State of M.P (2008) 10 SCC 69, Jitendra kumar Mishra Alias Jittu Vs State of M.P. (2024) 2 SCC 666-referred to.

List of Acts

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

List of Keywords

Section 376 IPC, Gang rape, Appeal against conviction, Acquittal, Benefit of doubt,, Appreciation of evidence, Ocular evidence, Seven months Pregnancy, Prosecutrix Testimony.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. -1350 OF 1984

Hetram & Ors Vs. State of U.P

From the judgment and order dated 07.05.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):

Om Prakash Shukla, Ramanuj Tripathi, S.d.n singh, Tej Pal

Adv. for Respondent(s):

A.G.A.

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

1. Heard Sri Ashwini Tripathi, learned Advocate holding brief appeared for the appellants and Sri Chandra Badan, learned counsel for the State.

THE APPEAL :-

2. The present criminal appeal under Section 374 CrPC has been preferred by the three accused/appellants, namely, Hetram son of Shri Dhar, Shanker son of Shibba and Bhudat son of Chetram in Sessions Trial No. 259 of 1983 (State Vs. Hetram & others), on being aggrieved by judgment of conviction and sentenced dated 08.05.1984, wherein all the three accused/appellants were convicted for offence of rape and sentenced to seven years rigorous imprisonment with a fine of Rs. 500/-, in default thereof further six months rigorous imprisonment.

THE PROSECUTION CASE AND TRIAL :-

3. The prosecution case disclosed in the written information Ex.Ka-1 is such that on 09.05.1983 at about 2:00 p.m., the informant-Baso son of Nathi, r/o Bharna, who belongs to the scheduled caste is the only family of Scheduled Caste in the village, wherein the village is of Haivasi and Brahmins Caste, came to his house along with his nephew (bhanja) Banwari Lal (scribe of the written information) son of Giriraj Prasad and Lajja son of Peeti r/o of village Gajipur. They met him at Saahar Canal, where he was grazing the goat. On reaching the house, he found that the house was bolted from inside, he jumped the boundary wall and opened the door and came inside, He saw Hetram, Shanker and Bhudat ran away after opening the door. His wife (prosecutrix) has informed him while crying that she has been raped. This incident has been witnessed by him and his friends and they have also identified the accused/appellants. He was not let to go out but somehow managed by hiding himself to reach the police station. He is afraid of his life and property.

4. This FIR is lodged on 14.05.1983 at Police Station Barsana, District Mathura in Case Crime No. 32 of 1983. The victim was medically examined on 15.05.1983 at Mahila Chikitsalaya, Mathura at 4:35 p.m., wherein it is disclosed that she is 26-28 weeks pregnant. The vaginal smear was taken for pathological examination. The supplementary report dated 19.05.1983 provides that no sperm seen, the age of lady is about 18 years. The pathological report reveals that she is seven months pregnant but not in labour pain and no definite opinion could be given.

5. The investigation of the case has been carried out by PW-4 Balbeer Singh, who has submitted the charge sheet on 31.05.1983 against the three accused.

6. The charge has been framed on 08.12.1983 against the accused/appellants for committing rape. The prosecution has produced four witnesses, three witnesses of fact, namely, PW-1/Baso (informant); PW-2/prosecutrix; and PW-3/ Banwari Lal (the scribe of written information), who has also witnessed that the accused/applicant have sprinted away from the house. The formal witness/ PW-4 Balbeer Singh was produced, who is the Investigating Officer and has proved the FIR, G.D., site plan and the charge sheet. The accused/applicants have admitted the medico legal report and supplementary medical report.

7. In the statement under Section 313 CrPC, the accused/appellants denied having committed rape on the prosecutrix. They submits that they are the neighbours of the informant. Hetram and Shanker have stated that the goats of informant had entered into the field of accused/appellants and damaged the crops, due to which the accused/appellant had beaten the informant, who in retaliation has lodged the false and frivolous FIR. Bhudat has submitted that he has been falsely implicated due to the village party bandi. The accused/appellants have not produced any witness in defense.

THE TRIAL COURT JUDGEMENT :-

8. The trial court has recorded the conviction on the basis of testimonies of three witnesses of fact because the documentary evidence is silent.. Learned trial judge has found that the

informant, victim and the witnesses are trustworthy. The delay in lodging the FIR is attributed on the point of fear of the informant from the accused/appellants, because the informant was the only scheduled caste family in the village. The trial judge further found substance in the statement of prosecutrix that she has been raped by four persons including the appellants. The fourth person, who is known as driver could not be traced out. The trial judge further found that it is but natural that the victim might have washed her clothes because she was not aware of the procedure. The trial judge further considered that the injuries on the hands of victim could have dried up which she suffered due to broken bangles. The trial judge further considered that the victim is habitual to sex because she is married as such there was no injury on her private parts. The trial judge further considered that the victim has cried for help but her voice could not reach the neighbours because it was summer month and all the persons might be in their houses. Further considers that the victim was subjected to rape on the point of knife.

THE ARGUMENTS :-

9. Learned counsel for the appellants has submitted that the FIR is delayed; there are inconsistencies in the statements of PW-1/Baso and PW-3/Banwari on the point of delay in lodging the FIR. PW-1 has stated in his cross examination that after the incident he used to go out to graze the goat, hence the apprehension of fear from the accused/appellants is incorrect finding. Further submits that there is no external injury suffered by the victim, which would have been suffered by the victim as she was subjected to rape by four persons. The witness Banwari is an interested, related and chance witness. He could not answer the query of the defence that why he came to meet Baso. Though he has stated that he came to purchase goat from Baso but on further questioning he states that Baso has stated to send the goat. This fact is not stated by the witnesses in their examination-in-chief. Further submits that the doctor has not been produced. The victim was already having pregnancy of the seven months. It is not believable that she could not suffer any injury from the incident of gang rape. Further submits that there is no evidence against the accused/appellants other than the statement of the witnesses. There is marked inconsistency in their statements. The victim in her statement has stated that she has been raped by four persons. All the persons exited from the house in presence of PW-1/Baso, who has seen only three persons exiting the house.

10. There is no plausible answer in respect to the fourth persons. Further submits that the accused/appellants are the neighbours of informant, who have been falsely implicated in the case, and the trial judge has not rightly taken into consideration the statements of witnesses and recorded conviction. Hence, submitted that the appeal be allowed and the accused/appellant be acquitted.

11. Per contra, learned AGA submits that the family of the victim was the only family of scheduled caste, they were apprehensive of being beaten and afraid of their life and property, which restricted them to lodge the FIR soon after the incident; they were waiting for the opportune time to go to the police station to lodge the FIR. The prosecution has proved their cases by producing three witnesses of fact, the informant, the victim, the scribe of written information. The accused have already admitted the medico legal examination carried out on the victim. The trial judge has rightly appreciated the evidence and recorded conviction, which is liable to be affirmed.

THE POINT OF DETERMINATION :-

12. The point of consideration in the present appeal is whether the trial judge has rightly appreciated the ocular and documentary evidences and reached to the conclusion of convicting the accused?

APPRECIATION OF EVIDENCE :-

13. The points that culled out from the FIR dated 14.05.1983 are reiterated underneath:-

13.1. The incident is of 09.05.1983. The FIR is of 14.05.1983 lodged at 10:00 a.m.

13.2. Three persons were named in the FIR, who are the appellants.

13.3. The informant/Baso and PW-3 Banwari Lal have seen three accused (apellants) exiting from the house of informant after opened the door. The informant and witness Banwari have seen the victim crying.

13.4. They have not seen the incident of rape.

13.5. The victim herself has intimated the informant that she has been raped by the accused/appellants, as such, the FIR was lodged for the incident of rape.

13.6. Banwari Lal/PW-3 and Lajja came to meet the informant Baso on 09.05.1983.

13.7. Baso's father met Banwari Lal and Lajja and informed them that the informant Baso went to graze the goat at Saahar Canal. It is not disclosed where the informant□s father met Banwari Lal and Lajja.

13.8. Banwari Lal/PW-3 and Lajja went to Saahar Canal to meet Baso, who was in the forest, grazing the goat.

13.9. Baso came home along with Banwari Lal and Lajja and found that door of the house was bolted from inside. He has jumped the boundary wall and came inside.

13.10. He saw Hetram, Shanker and Bhudat leaving the house after opening the door.

14. The contents of the FIR is proved by PW-1/Baso and PW-3/Banwari. The FIR reveals two types of facts; firstly, from the information received by victim that she was subjected to rape by three persons and secondly, that the informant himself saw three persons exiting from his house. The FIR has no reference about four persons. The delay in FIR is attributed on fear factor.

15. The medico legal report reveals two facts; firstly, the victim was seven months pregnant and secondly, that there is no mark of injury on her private part or body of victim and no definite opinion of rape can be given, with no sperm seen in pathological examination test.

16. The site plan was prepared by PW-4/ Balbeer Singh, the Investigating Officer at the instance of informant and victim. The site plan shows that the accused/appellants along with driver had committed gang rape on victim at place □A□, which is □Kotha□ situated at south western corner of the house. The site plan further shows that the accused/appellants had run away from the house after jumping the boundary wall from the western side, whereas the door of the house situated at north. It is not shown in the site plan that from where the informant has jumped the boundary wall to enter the house. These documents have been discussed prior to considering the testimonies of the witnesses, which are important to be discussed first to consider the truthfulness of the testimonies vis-a-vis the documents and inter-se corroboration.

17. PW-2 is the victim. She in her statement has stated that the incident is of 2:00 p.m., she was all alone in the house. Her husband went to graze the goats. Her father-in-law was also out of the house. She stated that in her house Hetram and one driver came from the backside, they have pointed knife on her and threatened her if she will not cooperate, they would kill her. They have dragged her to the Kotha and threw her on the cot. Hetram has asked the driver to go first. The driver has raped her, then Hetram has raped her. Thereafter, Bhudat and Shanker also came. Then Bhudat has raped her and lastly Shanker has raped her. She further stated that no one else came for her rescue. When she was being raped the other persons used to stand in the Chhapper. She was seven months pregnant and she was wailing in pain. She further stated that Bhudat, Shanker and Hetram are her neighbour, she knew the accused/appellants before the incident. She cried a lot but none came for help. Further stated that the door was closed from inside, her husband, Banwari and Lajja entered the house by jumping boundary wall and the accused had ran away. She did not know the driver. She has intimated entire incident to her husband. During her cross examination she has stated that she has been raped for one hour. Her bangles were broken and blood was oozing out from her hand. She further stated that she did not suffer injuries but was wailing in pain. She stated that she had washed her clothes with soap.

18. This witness has stated that she has intimated the incident to her husband. The husband of victim is the author of FIR. If the name of fourth accused has been intimated by the victim to the informant then why the FIR contained the name of only three accused persons. The matter is of gang rape. The three accused are the neighbours of the victim. In not naming the fourth accused in the FIR, who has raped the victim, creates doubts as to truthfulness of the prosecution case. The victim further stated that there was bleeding from her hand, but blood from the hand of the victim is neither reflected from the statement of PW-1/Baso nor from the statement of PW-3/ Banwari. It is not even disclosed that what first-aid she has taken. No broken bangles have been handed over to the Investigating Officer. Even the mark of injuries are not reflected from the medico legal examination report, which was carried out five days after the incident, even dried up injuries require notice. These points required further appreciation of the statement of other witnesses of fact.

19. PW-1/Baso has stated that on 09.05.1983, he went to Saahar Canal to graze the goats. At 2:00 p.m. his nephew Banwari Lal and Lajja came from Gowardhan to meet him. They initially met his father at the Bus Station who has intimated them that this witness/Baso is grazing goats. Hence, they right away reached to the Saahar Canal. PW-1 on meeting them has left his goats grazing, taken them to his home. He found that the door was closed from inside. Hence, he had

jumped the wall and opened the door on which he saw Hetram, Shanker and Bhudat running away from the door. His father was not at home. He found his wife weeping, who has intimated him that Hetram, Driver, Shanker and Bhudat had committed rape on her. If she had specifically stated that driver has also committed rape on her then why the FIR did not contain the name of driver. He specifically stated that he got the written information dictated to Banwari who has written report in his hand writing. The report was then read over to him and he put his thumb impression.

20. PW-3/Banwari Lal has specifically stated in his statement that he was intimated that driver has not committed rape on the victim. He further stated that all the three accused have pointed out the knife on the victim and committed rape, whereas the pointing out of knife was attributed on driver.

21. As the medico legal examination report does not show the signs of gang rape and the entire case lies on the ocular testimonies on the witnesses then it would be expedient to scrutinize the statement of witnesses with utmost caution. There is marked inconsistency in the statements of PW-1 and PW-3 about the role of driver and the role of pointing out the knife on the victim.

22. During the course of examination PW-1 has stated that as the three witnesses including PW-1 and PW-3 entered the house after jumping the boundary wall, they have seen the accused/appellants moving out from the house. On cross examination, PW-1 has stated that he did not try to chase them or to catch them. On further questioning, he stated that all the accused/appellants were wearing their clothes and he also found his wife in full clothes. During further examination PW-1 has stated that the accused have threatened him. On continuous threatening he mustered courage to lodge the FIR. He further stated that he has never seen these accused coming in his house or meeting his wife. He has stated that he has not seen any injury on the person of his wife. She was wearing bangles and has not seen that bangles were broken. This shows that there is discrepancy pertaining to the injuries suffered by the victim in her hands by broken bangles. The accusation is heinous in nature. The informant has not promptly lodged the FIR or took the victim to hospital, though she was seven months pregnant and purportedly raped by four persons. This sounds unnatural. Moreover, the informant mustered courage by threatening of accused, but he remained timid, though his wife being raped. Hence, there is no plausible explanation of delay in lodging the FIR.

23. In the case of **Lalliram Vs. State of M.P. reported in [(2008) 10 SCC 69],** Hon'ble the Supreme Court has held that it is true that the injury is not sine qua non for deciding whether rape has been committed, but it has to be decided on the factual matrix of each case. This observation was made in a matter of Gang rape. The relevant paragraphs 10-12 of the judgment are reiterated underneath :-

"10. The trial court noted that though the prosecutrix claimed that she was raped by several persons at several times there was no injury noticed and doctor has categorically stated that there was no sign of rape and in fact there was no injury.

11. It is true that injury is not a sine qua non for deciding whether rape has been committed. But it has to be decided on the factual matrix of each case. As was observed by this

Court in Pratap Misra v. State of Orissa where allegation is of rape by many persons and several times but no injury is noticed that certainly is an important factor and if the prosecutrix's version is credible, then no corroboration is necessary. But if the prosecutrix's version is not credible then there would be need for corroboration. (See Aman Kumar v. State of Haryana .)

12. As rightly contended by learned counsel for the appellants, a decision has to be considered in the background of the factual scenario. In criminal cases the question of a precedent particularly relating to appreciation of evidence is really of no consequence. In Aman Kumar case it was observed that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands on a higher pedestal than the injured witness. In the latter case there is injury in the physical form while in the former both physical as well as psychological and emotional. However, if the court finds it difficult to accept the version of a prosecutrix on the face value, it may search for evidence direct or circumstantial."

24. The Investigating Officer/PW-4 Balbeer Singh was not cross examined but in his examination-in-chief, he has stated that he has prepared the site plan at the instance of informant and his wife. He has proved that the FIR and GD is in hand writing of Constable Shiv Dan Singh and proved the same.

CONCLUSION :-

25. If the statement of three witnesses, namely, the informant/husband of victim, the victim and the independent witness Banwari/PW-3 is taken into consideration as to the veracity of the prosecution case, it is found that the accused/appellants are the neighbours of informant. They have never been in the house of informant prior to the date of incident. There was altercation between the accused/appellants and Baso regarding the grazing of his goat in the field of accused, though it is denied by the informant but it could be plausible reason for lodging the FIR. If the incident of was rape committed by four persons with a pregnant lady having pregnancy of seven months, the rape might have caused grave medical exigency, which was not reflected in the medico legal report. On the contrary, the pregnancy was stated to be normal. There is no mark of injury, even in the hands of the victim. The vagueness of the FIR is also reflected when only three persons were named in the FIR, though the victim was purportedly raped by four persons. The delay attributed in the FIR also shows that it is not attributed to any fear factor, as the informant was continuously going out even after the incident, then what stops him from lodging the FIR in such a heinous crime. It would also not be out of place to mention that according to the prosecution case every act is done at 2:00 p.m.; the victim was raped, informant entered the house and accused left the house, whereas, victim was raped for one hour. The delay and the prosecution case creates a doubt in the prosecution story. Hence, the accused/appellants are entitled for the benefit of doubt because the prosecution evidence is not creating confidence that the accused/appellants have committed rape. Hence, they shall be acquitted from the charges as the ocular and documentary evidences does not evinces the involvement of accused appellant in the offence of rape in view of the evidences adduced by the prosecution.

26. In the case of **Jitendra Kumar Mishra alias Jittu Vs. State of Madhya Pradesh** reported in **(2024) 2 SCC 666**, Hon'ble the Supreme Court held that an appellate court should be slow in interfering with conviction recorded by courts below but where evidence on record indicates that prosecution has failed to prove guilt of accused beyond reasonable doubt and that a plausible view, different from one expressed by trial court, can be taken. The appellate court should not shy away in giving benefit of doubt to the accused.

27. Thus, the judgment of conviction and sentence dated 08.05.1984 passed by IInd Additional Sessions Judge, Mathura in Session Trial No. 259 of 1983 (State Vs. Hetram & others), under Section 376 IPC, is hereby **set aside**.

28. The appellants- **Hetram, Shanker and Bhudat** are acquitted for offence under Section 376 IPC.

29. Accordingly, the criminal appeal is **allowed.**

30. The accused appellants are on bail. Their sureties and executed bail bonds stands discharged.

31. The record be remitted, forthwith, as per law, with the copy of the judgement.

(2026) 5 ILRA 1850
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 06.05.2026

BEFORE

THE HON'BLE AVNISH SAXENA, J.

Criminal Appeal No. 1373 of 1986

Bhola **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

The case concerns the appellant's conviction for robbery based on allegations that he was caught at the spot while his co-accused escaped with the stolen property.

Headnotes

A. Criminal matter-Criminal Procedure Code,1973-Sectionn 374(2)-Indian Penal Code,1860-Section 394-Robbery-Conviction-Sustainability- Appellant alleged to have been apprehended at the spot while co-accused escaped with stolen property-No recovery of stolen articles or weapon from appellant-Co-accused acquitted- Material independent witnesses not examined-Delay in lodging FIR inadequately explained-Ocular evidence suffering from inconsistencies and unsupported by reliable corroboration- Benefit of doubt extended-Appeal allowed.(Para 12 to 27)

Held

The court held that mere apprehension of the appellant at the place of occurrence, in the absence of recovery, reliable corroboration and credible evidence, was insufficient to sustain the conviction. (E-6)

Case law Cited:

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

List of Acts

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

List of Keywords

Robbery, Section 394 IPC, Benefit of doubt, Acquittal, Appreciation of evidence, Delayed FIR, No Recovery, Stolen property, Firearm injury, Ocular evidence, Investigative lapses, Independent witnesses, Identification of accused, Conviction set aside.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. -1373 OF 1986

Bhola Vs. State of U.P.

From the judgment and order dated 06.05. 2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):

I.m Khan, Jitendra Singh, Narendra Kumar

Adv. for Respondent(s):

A.G.A.

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

1. The present criminal appeal is preferred under Section 374 CrPC by the sole accused appellant- Bhola on being aggrieved by judgment of conviction and sentence dated 21.5.1986 in State Vs. Bhola and another (S.T. No.187 of 1985) wherein the accused appellant was convicted for the offence under Section 394 IPC and punished with rigorous imprisonment of five years and fine of Rs.500/- and in default of the payment of fine, six months rigorous imprisonment.

2. Heard Sri Narendra Kumar, learned counsel for the appellant and Sri Chandra Badan, learned A.G.A. for the State.

3. The prosecution case disclosed in the FIR dated 30.1.1985 lodged at 11:30 AM at P.S. Kishunpur, District- Fatehpur is such that Sushila Devi (P.W.-6) along with Param Sundari who were posted at Primary Health Centre, Vijaipur were going to village Sarauli on 29.1.1985. When they reached the canal culvert at about 08:00 PM two persons came there pointed country made pistol and started robbing them of their jewellery. They have started crying for help, hearing them, Chheddu son of Pahalwan and Babu Singh son of Ram Raj of village Sarauli came there. Seeing them, the miscreants have fired at them with country made pistol, due to the fire Chheddu suffered fire arm injuries on his right leg and Babu Singh suffered fire arm injuries on his right wrist. These two persons then apprehended one of the miscreants but the second miscreant has sprinted away along with the booty. The apprehended accused has disclosed his name as Bhola son of Badri Kori resident of village Takkipur, P.S.- Khakhereru, District- Fatehpur. He has also disclosed the name of second miscreant as Sheo Kulli @ Ranvir Singh son of Sughar Singh resident of village

Takkipur, P.S.- Khakhereru. This accused appellant was taken to the police station. The items, which were robbed by the accused appellants, i.e. 1. chain with pendant, 2. silver ring, 3. nose pin, 4. brass earring, 5. brass ring and Rs.10/-. As it was already dark and night hour, the report could not be lodged on the same day.

4. The case was registered at Case Crime No.21 of 1985 for offences under Sections 394, 307 IPC against two named accused, which was entered in GD No.13. After registration of the FIR, the injured were taken to medical officer Vijaipur where the injuries of Chheddu and Babu Singh were examined at 4:15 PM and 4:30 PM, respectively, on 30.1.1985. The investigation has been carried out by S.I. Sukhdeo Pandey (P.W.3) who has investigated the place of occurrence, recorded the statement of witnesses and submitted charge sheet against two accused, namely, Bhola Kori and Sheo Kulli @ Ranvir Singh.

5. The charge against both the accused have been framed for offence under Section 394 read with 397 IPC on 2.1.1986. The prosecution has produced three witnesses of fact P.W.1- Babu Singh, P.W.-2, Chheddu, P.W.6 Smt. Sushila Devi and three formal witnesses, namely, S.I. Sukhdeo P.W.-3, the Investigating Officer, Dr. S.N. Awasthi P.W.-4, the doctor who has examined the injured, Constable Mukhtar Ahmad P.W.-5 who entered the chick FIR and GD.

6. The appellant in his statement under Section 313 CrPC has stated that he has been falsely implicated in the case by Babu Singh. The reason for false implication is that Babu Singh has asked the accused applicant for doing some work, which he has refused. He has also refused Babu Singh for getting sterilization of his wife. Further submits that Sushila Devi, the informant is the daughter of Babu Singh□s aunt (Bua) who is working at the Primary Health Centre and called his wife for sterilization process. Further stated that the accused appellant was taken by Chheddu and Babu Singh from his house to hand him over to the police.

7. The trial court while recording the conviction of accused appellant on the basis of statement of the injured and informant observed that there is nothing to discard the testimonies of witnesses, whose testimonies are corroborated to each other and are reliable. Further observed that there is no evidence against co-accused Sheo Kulli @ Ranvir Singh, hence, acquitted him of the offence.

8. Learned counsel for the accused appellant has submitted that the witnesses are not trustworthy, if their deposition is taken into consideration in the light of their cross examinations. There is no role attributed on the accused appellant of firing at the injured. The accused appellant was apprehended from his house and given into the custody of police. The witnesses are not reliable. The FIR is delayed, as during the whole night the accused appellant was kept in custody of the informant. There is consistency in the statement of the witnesses about the role of the accused appellant. The site plan of the case does not show the place from where the injured witnesses have heard the shrieks of the informant. The independent witnesses who were there along with the informant has not been produced. The co-accused on whom the role of shooting is attributed, has been acquitted. The accused appellant has not committed any offence, hence, he may be acquitted.

9. Per contra, learned A.G.A. for the State has submitted that it is the matter of robbery with two ladies who were going to village. The booty robbed from the informant was taken away by the co-accused. The FIR is prompt. The investigation has been carried out by the Investigating Officer in the right direction and the accused appellant has been apprehended by the injured witnesses at the place of incident. The witnesses have rightly identified the accused appellant and the trial court has rightly appreciated the evidence on record and convicted the accused appellant. Hence, submits that the appeal is devoid of merit and is liable to be dismissed.

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

11. This Court has taken into consideration the rival submissions made by the parties and perused the record.11. The point of consideration in the present appeal is:-

(a) Whether the accused appellant has committed robbery with the informant and voluntarily caused hurt to Chheddu and Babu Singh?

(b) Whether the trial court has rightly appreciated the oral and documentary evidence and reached to the right conclusion in convicting the accused appellant for the offence of robbery?

12. Before considering the ocular and documentary evidences adduced in the case, it would be necessary to mention that the alleged robbery has been committed by two accused. The accused appellant was apprehended by injured at the place of incident whereas another accused managed to escape along with the booty. Another accused was arrested by the police. The charge sheet has been submitted against them on the basis of statements of the witnesses, but during the deposition it is found that co-accused Sheo Kulli @ Ranvir Singh was not involved in the crime and he has been acquitted of the charge. The remnant facts shows that it is the second miscreant has opened fire at the witnesses Chheddu and Babu Singh. It is the he, who has robbed the informant and left with the booty and the accused appellant Bhola was arrested on the spot, who was neither attributed the role of opening fire nor robbing the informant, but held guilty because he was allegedly apprehended at the place of incident. This fact is to be kept in mind while going through the testimonies of the eye witnesses.

13. P.W.-6 Smt. Sushila Devi was the first person to encounter the robbery. Hence, her deposition is required to be taken into consideration first. In her statement she has stated that she is on the post of ANM at Primary Health Centre, Vijaipur. She has stated that she was going to village Sarauli along with Param Sundari, when she has been robbed on pistol point. It is not the case of prosecution that Param Sundari has also been robbed. The prosecution has not produced her as a witness. She further stated that the miscreant has fired single shot. Two witnesses suffered injuries. P.W.-1 Babu Singh suffered injuries on his right hand. P.W.2 Chheddu suffered injury on his right leg. P.W.-3, the Investigating Officer has not shown in the site plan where these two witnesses were standing at the time of opening of fire. It is also not on record that how these two injured witnesses were placed at the time when injury was received to them. It is a bit doubtful as to how the two persons who were coming to rescue the informant suffered gunshot injuries on right side of their body, more particularly Chheddu suffered on his right leg middle surface, 21 cm below

right knee joint, kept under observation and advised X-ray for foreign body. No blackening, no tattooing and no wound of exit and Babu Singh suffered gunshot injuries on his right wrist posterior surface.

14. P.W.-6 Smt. Sushila Devi has further stated that there was no recovery from the accused appellant- Bhola. He was not even having country made pistol or the booty.

15. During her cross examination, P.W.-6 Smt Sushila Devi has stated that there was sterilization camp at Primary Health Centre, Vijaipur. She took two cases but none has turned up, whereas, Param Sundari has had two cases of sterilization matured. She has further stated that all the persons are of village Sarauli. She has further stated that when she was coming along with Param Sundari, they were also accompanied with two ladies who had under gone sterilization and was also accompanied with the mother of one lady. It shows that there were five ladies present at the time of robbery. The four ladies present at the incident are star witnesses but they have not been produced by the prosecution.

16. The trial court while recording the evidence of P.W.-6 Smt. Sushila Devi has specifically asked certain questions about the writing of written information. This witness has replied that first information report was written at village Sarauli which was a rough. Subsequently, the Gram Pradhan has asked her to prepare a fresh written information. The one she has proved before the Court as Ext.Ka.6 is the subsequent written information. She has further stated that 15-20 persons along with Pradhan of the village has accompanied them to the police station for lodging the FIR.

17. The accused appellant was apprehended by two injured persons in the night of 29.1.1985 at canal culvert at about 8:00 PM. The accused appellant was tied by the 'Angocha' (scarf) and kept at the house of Pradhan. According to this witness he was also beaten up. On questioning as to why the FIR was not lodged on the same day and the accused appellant, who was apprehended, was not handed over to the police that day. The reply of the three witnesses of fact is that it was dark and night, hence, they were scared of going to police station. For more than 12 hours, the accused appellant was under the custody of the informant, the injured witnesses and Pradhan.

18. The statement of P.W.-6 Smt. Sushila Devi does not inspire confidence to be truthful, because out of five ladies she was the only person who has been robbed. The sterilization programme was continuing. It is the statement of the accused recorded under Section 313 CrPC that he was asked by Babu Singh for sending his wife for sterilization, which she has refused and this witness was a bit annoyed by the failure of her in calling ladies for sterilization.

19. The other two witnesses of fact namely Babu Singh P.W.-1 and Chheddu P.W.2 have stated that they were in their field at the time when they have heard the shrieks of ladies. The field of Chheddu and Babu Singh is situated at the distance of 2-3 fields in between. It is stated that their field lies at the north of culvert. The Investigating Officer has not shown the place where the field of these witnesses is situated. The Investigating Officer has also not shown the place from where the accused appellant has opened fire on these witnesses.

20. The injury sustained by Chheddu and Babu Singh reveals that Chheddu suffered gunshot wound of entry 1/4 cm x 1/4 cm x muscle deep on the right leg, medial surface, 21 cm below the right knee joint, kept under observation and advised X-ray for foreign body. No blackening, no tattooing and no wound of exit. The injuries sustained by Babu Singh is one gunshot wound of entry 1/4 cm x 1/4 cm muscle deep on the right wrist post surface, kept under observation and advised X-ray. No blackening, no tattooing and no wound of exit. It was the observation of Dr. S.N. Awasthi P.W.-4 that these injuries is about one day old. There is no X-ray carried out to establish whether there is any foreign body present or not.

21. P.W.-1 Babu Singh and P.W.-2 Chheddu both have stated that they had seen Sheo Kulli in the village and they also knew Bhola.

22. The injuries suffered by the injured witnesses stated to be suffered by gunshot fire by the co-accused. The co-accused is not convicted in the present case. The injuries has not been attributed on the accused appellant. The presence of witnesses itself doubted in view of the single gunshot fired by the co-accused. The FIR is delayed. The reason for the delay is not plausible. The accused appellant when apprehended was neither having the booty nor he was having any weapon for committing the robbery, who is of the same village. It is also a bit doubtful that an injured person could have apprehended the accused when one of the accused managed to escape, on whom the role of collecting the booty and firing the shot is attributed.

23. Hence, the ocular and documentary evidences does not show the involvement of accused appellant in the offence of robbery in view of the evidences adduced by the prosecution.

24. In the case of **Jitendra Kumar Mishra alias Jittu Vs. State of Madhya Pradesh** reported in **(2024) 2 SCC 666**, Hon'ble the Supreme Court held that an appellate court should be slow in interfering with conviction recorded by courts below but where evidence on record indicates that prosecution has failed to prove guilt of accused beyond reasonable doubt and that a plausible view, different from one expressed by trial court, can be taken. The appellate court should not shy away in giving benefit of doubt to the accused.

25. Thus, the judgment of conviction and sentence dated 21.5.1986 passed by IVth Additional Sessions Judge, Fatehpur in Session Trial No. 187 of 1985 (State Vs. Bhola and another), under Section 394 IPC, is hereby set aside.

26. The sole appellant- Bhola is acquitted for offence under Section 394 IPC.

27. Accordingly, the criminal appeal is **allowed.**

28. The accused appellant is on bail. His sureties and executed bail bonds stands discharged.

29. The record be remitted, forthwith, as per law.

(2026) 5 ILRA 1856
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 22.05.2026

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 1508 of 2018

Nand Kishore **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

In the present case, the deceased died an unnatural death in her matrimonial home within three months of marriage after alleged dowry harassment and demand of Rs. 2 lakh and a gold chain, leading to the husband's conviction under sections 498-A, 304-B IPC and Section 4 of the Dowry Prohibition Act.

Headnotes

A. Criminal matter-Criminal Procedure Code,1973-Section 374(2)-Indian Penal Code,1860-Sections 498-A, 304-B & Section 4 of the Dowry Prohibition Act-Dowry death-Life imprisonment-reduction of sentence-Mitigating circumstances -Long Incarceration-First offender-Absence of Criminal Antecedents-Reformative theory-Sentencing policy- Recording of reasons-Maximum punishment-Conviction upheld-Sentence modified to period already undergone-Partly allowed.(Para 7 to 21)

Held

The court ruled that sentencing must be guided by reformative principles. Imposition of life imprisonment is not automatic. Courts must consider aggravating and mitigating circumstances and record cogent reasons before awarding the maximum punishment. In the absence of such reasons, the sentence is liable to be modified. (E-6)

Case law Cited

Hem Chand Vs State of Haryana (1994) 6 SCC 727 & Kashmira Devi Vs State of Uttarakhand (2020) 11 SCC 343, K. Pounammal Vs State (2025) SCC OnLine SC 1784, Pramod Kumar Mishra Vs State of U.P. (2023) 9 SCC 810-referred to.

List of Acts

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

List of Keywords

Dowry death, Section 304-B, Section 498-A, Sentencing, Quantum of Sentence, Reduction of sentence, Mitigating circumstances, Aggravating circumstances, Reformative theory, First-time offender, No criminal antecedents, Prolonged incarceration, Judicial Discretion, Recording of Reasons, Conviction upheld, Sentence Modified, Period already undergone, Remission, Presumption as to Dowry death.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. -1508 OF 2018
Nand Kishore Vs. State of U.P.

From the judgment and order dated 22.05.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):
Arun Kumar, Ajeet Kumar, Ashok Kumar Singh, Chhote Lal Yadav Ganesh Nath Mishra, Sanjay Kumar Bajpai
Adv. for Respondent(s):
G.A.

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

1. Heard Shri Ajeet Kumar, the learned counsel for the appellant, and Ms. Meera Tripathi, learned Additional Government Advocate.

2. By means of the instant criminal appeal filed under Section 374 (2) Cr.P.C., the appellant Nand Kishore has challenged the validity of a judgment and order dated 31.07.2018 passed by the learned Special Judge (P.C. Act-3), Lucknow in Session Trial No.891 of 2014 titled 'State Vs. Nand Kishore', arising out of Case Crime No.127 of 2014, Police Station- Itaunja, District- Lucknow whereby the appellant has been convicted for the offences under Sections 498-A and 304-B I.P.C. and Section 4 of the Dowry Prohibition Act. The appellant has been sentenced to undergo 3 years' imprisonment and to pay a fine of Rs. 10,000/-, and in case of failure to pay fine, an imprisonment for an additional period of three months for the offence under Section 498-A IPC, imprisonment for life for the offence under Section 304-B of IPC, and six months' imprisonment for the offence under Section 4 of the Dowry Prohibition Act. All the sentences have been directed to run concurrently.

3. The appeal was admitted by means of an order dated 06.09.2018, whereby the trial Court's record was summoned, and objections were invited on the application for release of the appellant on bail. The first bail application of the appellant was rejected by means of an order dated 14.12.2022. The appellant filed the second application for his release on bail on 22.07.2024, which is still pending. Meanwhile, the trial Court's record has been received and the paper book has also been prepared. Therefore, instead of deciding the bail application, we have proceeded to decide the appeal itself.

4. The aforesaid case was instituted on the basis of an FIR lodged by the complainant stating that the complainant's daughter had got married to the appellant on 06.03.2014. After marriage, her husband and the husband's family members started harassing her by demanding dowry. The complainant's son had gone to bring his sister to her parental home about 15 days ago, but the accused persons had not sent her, saying that his sister would not be sent until Rs. Two lakh cash and a gold chain were given. Upon failure of the complainant to give dowry, the accused persons gave some toxic substance to the deceased in her food, due to which she died on 06.06.2014.

5. The post-mortem examination mentioned two injuries: (1) a contusion of size 5cm x 4cm on the left side of the head, 2 cm above the left ear, and (2) a contusion of size 2 cm x 1.5 cm on the right side of the occipital region. On opening, ecchymosis was present in the above noted injuries. Viscera examination revealed the presence of 'Aluminium Phosphide' in her abdomen.

6. The complainant was examined as PW-1, his wife was examined as PW-2, the complainant's sons, namely, Ravinder Kumar & Suneel Kumar were examined as PW-3 & PW-4 and all of them supported the prosecution version. The doctor, who had conducted the post-mortem examination, was examined as PW-5, and he proved the post-mortem report. The Tehsildar, who had prepared the inquest report, was examined as PW-7.

7. After going through the entire evidence, the Trial Court concluded that the deceased died in her matrimonial home in unnatural circumstances, within seven years of her marriage. The appellant failed to prove the reasons behind her death; therefore, a presumption has to be drawn under Section 113-B of the Evidence Act. Accordingly, the Trial Court convicted the appellant for the offence under Sections 498-A, 304-B of the IPC and Section 4 of the Dowry Prohibition Act. However, the appellant was acquitted of the alternative charge under Section 302 of the IPC and the charge of committing the offence under Section 3 of the Dowry Prohibition Act.

8. The learned counsel for the appellant has not advanced any submission assailing the order of conviction and he has confined his submissions only for reducing the sentence to the period for which the appellant has already remained in custody. He has submitted that the appellant has no other criminal history. He has placed reliance on the decisions of the Hon'ble Supreme Court in the cases of **Hem Chand v. State of Haryana**: (1994) 6 SCC 727 and **Kashmira Devi v. State of Uttarakhand**: (2020) 11 SCC 343.

9. The appellant was taken into custody immediately after lodging the FIR. He was not granted bail during the trial. Even though this appeal was admitted on 06.09.2018, the first bail application of the appellant remained pending for more than 4 years, and it was rejected by means of an order dated 14.12.2022.

10. As learned counsel for the appellant has not challenged the validity of the conviction order and the appellant has already undergone more than 13 years period in custody, the learned AGA has left it to the discretion of the Court to decide the period of sentence.

11. A custody certificate issued by the Superintendent, District Jail, Lucknow, has been annexed with the affidavit filed in support of the second bail application, as per which the appellant had remained in custody for 4 years 1 month and 13 days (i.e. 1503 days) during trial and after conviction and till 15.08.2023, he had spent 5 years and 16 days (i.e. 1841 days). Thus, the appellant had spent actual period of 9 years 1 month 29 days period in custody till 15.08.2023. He earned remission of 1 year 3 months and 10 days, which made the period of custody as 10 years 5 months and 9 days.

12. Since 15.08.2023, the appellant has spent a further period of 2 years 9 months 7 days in custody, which makes the period undergone in custody as 13 years 2 months and 18 days. After adding the period of remission earned after 15.08.2023, the total period undergone by the appellant in custody becomes about 14 years.

13. In **Hem Chand v. State of Haryana:** (supra), the Hon?ble Supreme Court held that: -

"Section 304-B IPC only raises presumption and lays down that minimum sentence should be seven years but it may extend to imprisonment for life. Therefore awarding extreme punishment of imprisonment for life should be in rare cases and not in every case."

14 In **Hem Chand v. State of Haryana:** (supra), the Hon'ble Supreme Court reduced the sentence of imprisonment for life to 10 years? rigorous imprisonment for the offence under Section 304-B IPC.

15. In **Kashmira Devi v. State of Uttarakhand** (supra), the Hon?ble Supreme Court followed the decision in Hem Chand (supra) and keeping in view the age of the appellant and also the contribution that would be required to be made by her to the family as the appellant?s husband was also aged and further taking into consideration all other circumstances, the sentence of life imprisonment awarded by the High Court was modified by ordering the appellant to undergo rigorous imprisonment for a period of seven years and to pay the fine as imposed and thereby the default sentence was sustained.

16. In **K. Pounammal v. State:** 2025 SCC OnLine SC 1784, the Hon?ble Supreme Court held that: -

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

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

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

(Emphasis added)

17. The Hon'ble Supreme Court further held in **K. Pounammal** (supra) that: -

"9. The prolongation of a criminal case for an unreasonable period is in itself a kind of suffering. It amounts to mental incarceration for the person facing such proceedings. For a person who is convicted and who has appealed against his or her conviction and sentence and who

everyday awaits the fate of litigation, spends time in distress. In the present-day system of administration of justice, in which proceedings have often go on protracted unreasonably and therefore unbearably, the passage of long time itself makes the person suffer a mental agony."

18. While deciding the quantum of sentence, the learned trial Court has recorded the submission of the appellant that it was his first offence and he had no criminal history, he is a poor person and there was nobody to pursue the case on his behalf. However, the trial Court awarded the maximum sentence of imprisonment for life for the offence under Section 304-B IPC, although the minimum sentence for the offence is imprisonment for 7 years. The trial Court has not assigned any reason for rejecting the appellant's request for awarding a lesser sentence in view of the mitigating circumstances pleaded by the appellant and has awarded the maximum sentence without assigning any reason.

19. In **Pramod Kumar Mishra v. State of U.P**., **(2023) 9 SCC 810**, the Hon'ble Supreme Court has held that:-

"*10. It is a well-established principle that while imposing sentence, aggravating and mitigating circumstances of a case are to be taken into consideration.*

12. India, till date, does not have a statutory sentencing policy in place. This Court, however, has proceeded to examine the objective behind sentencing and the factors to be kept in mind while imposing such punishments. In Mohd. Giasuddin v. State of A.P. [(1977) 3 SCC 287], it stood observed that:

"9. Crime is a pathological aberration, that the criminal can ordinarily be redeemed, that the State has to rehabilitate rather than avenge. The sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturisation. Therefore, the focus of interest in penology is the individual, and the goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today views sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of social defence. We, therefore, consider a therapeutic, rather than an ?in terrorem? outlook, should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind.

***

16…. ?A proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances ? extenuating or aggravating ? of the offence, the prior criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental conditions of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in

respect to the particular type of offence. These factors have to be taken into account by the Court in deciding upon the appropriate sentence. [As observed in Santa Singh v. State of Punjab, (1976) 4 SCC 190] "

17. It will thus be seen that there is a great discretion vested in the Judge, especially when pluralistic factors enter his calculations. ? innovation, in all conscience, is in the field of judicial discretion."

(emphasis in original)

14. In State of U.P. v. Sanjay Kumar [(2012) 8 SCC 537], this Court held that courts for the purpose of deciding just and appropriate sentence, have to delicately balance the aggravating and mitigating factors and circumstances in which a crime has been committed. To balance the two, is the primary duty of courts."

19. It is settled law that reason is the very soul of any order and any judicial order bereft of a sound and cogent reasoning has no legs to stand on. In the present case, when specific submissions were advanced highlighting the mitigating factors that existed to award a lesser sentence than the maximum prescribed sentence, the submissions advanced ought to have been dealt by the trial court. The trial court has turned down the submissions without recording any reasons and has arbitrarily awarded the maximum prescribed sentence to the accused appellant. Therefore, we are of the view that the trial Court has committed an error in awarding the maximum sentence without assigning any reason, which in our opinion is not proper.

20. Keeping in view the submission of the appellant advanced before the trial Court that it was his first offence and he has no criminal history, he is a poor person and also the fact that the appellant has already undergone about 14 years in custody (including the period of remission) we are of the view that the sentence of life imprisonment awarded to the appellant deserves to be modified and reduced to an imprisonment for the period for which he has already remained in custody.

21. Accordingly, the appeal is **allowed in part** by upholding the conviction of the appellant for the offence under Sections 498-A, 304-B of IPC and Section 4 of Dowry Prohibition Act, but the sentence of imprisonment for life for the offence under Section 304-B of IPC is reduced to the period already undergone by the appellant in custody. For the offence under Section 498-A IPC the appellant has been sentenced to 3 years? imprisonment and a fine of Rs.10,000/-, and in case of failure to pay fine, imprisonment for an additional period of three months. As the appellant has already undergone more than 3 years and 3 months period in custody, it would not be proper to recover Rs.10,000/- fine from the appellant. Therefore, it is ordered that the appellant will not pay any amount as fine.

22. As the appeal itself has been decided, the bail application has become infructuous and it is disposed of accordingly.

23. The appellant shall be released from custody forthwith, upon his executing a personal bond under the provision of Section 437-A Cr.P.C., containing an undertaking to appear before the Hon'ble Supreme Court in case any appeal is filed against this order and the Hon'ble Supreme Court issues notice of the appeal. The bond shall remain in force for a period of six months.

(2026) 5 ILRA 1862
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 14.05.2026

BEFORE

THE HON'BLE MADAN PAL SINGH, J.

Criminal Appeal No. 1753 of 2026

Rajan Chaurasia @ Rajendra & Ors. ...Appellants
Versus
State of U.P. & Anr. ...Respondents

Issue for consideration

The appellants filed a criminal appeal under section 14-A (1) of the SC/ST Act seeking to quash the order dated 15.09.2025 by which the Special Judge, Deoria framed charges u/s 427, 504, 506 IPC and Sections 3(1) (da) & 3(1) (dha) of the SC/ST Act. The respondent raised a preliminary objection that the appeal was not maintainable as an order framing charge is an interlocutory order.

Headnotes

A. Criminal matter-Indian Penal Code,1860-Sections 427, 504, 506-Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,1989-Section 14-A(1) & Sections 3(1)(da), 3(1)(dha)-Appeal against framing of charge-Maintainability-Order framing charge is an interlocutory order as it neither terminates the proceedings nor finally determines the rights of the parties-It merely marks the commencement of trial-Thus, appeal against such an order is not maintainable-Dismissed. (Para 17 to 28)

Held

The court ruled that section 11(2) of the Special Courts Act,1979 provides that no appeal shall lie against an interlocutory order passed by a Special Court. Consequently, if the impugned order is interlocutory in nature, the statutory right of appeal is barred. In the present case, the Court relied upon this principle and the Supreme Court's decision in V.C. Shukla Vs. State through CBI, holding that an appeal against interlocutory order is incompetent. (E-6)

Case law Cited

Ratilal Bhanji Mithani Vs State of Maharashtra & Ors (1979) 2 SCC 179, State Th. CBI New Delhi Vs Jitendra Kumar Singh (2014) 11 SCC 724, Hardeep Singh Vs State of Punjab (2024) 3 SCC 92, Amar Nath Vs State of Haryana (1977) 4 SCC 137, V.C. Shukla Vs State through C.B.I. (1980) Supp. SCC 92, Lagnesh Verma Vs State of H.P. & Ors-referred to.

List of Acts

Indian Penal Code, 1860, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,1989.

List of Keywords

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,1989, Section 14-A(1), SC/ST Act, Maintainability of appeal, Framing of charge, Interlocutory order, Special court, Quashing of charge, Trial commencement.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. -1753 OF 2026
Rajan Chaurasia @ Rajendra & 3 Ors Vs. State of U.P & Anr
From the judgment and order dated 14.05.2026 of the High Court of judicature at Allahabad.

Appearances for parties

Adv. for Appellant(s):
Prince Kumar
Advs. for Respondent(s):
Amar Nath Tiwari, G.A.

(Delivered by Hon'ble Madan Pal Singh, J.)

1. Heard learned counsel for the appellants, learned counsel for opposite party no.2 and learned A.G.A. for the State.

2. The present criminal appeal under Section 14-A (1) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been preferred by the appellants to quash the order dated 15th September, 2025 passed by the Special Judge (S.C./S.T. Act), Deoria in Special Trial No. 132 of 2023 (Badami Devi Vs. Rajan Chaurasia & Others) under Sections 427, 504, 506 I.P.C. and Sections 3 (1) (da) and 3 (1) (dha) of S.C./S.T. Act, Police Station-Khukhundu, District-Deoria, whereby the charges have been framed against the appellants.

3. Before considering the present criminal appeal on merits, learned counsel for opposite party no.2 and the learned A.G.A. for the State have raised preliminary objection to the maintainability of the present criminal appeal by submitting that since the order of framing of charge is an interlocutory order, therefore, as per Section 14-A of S.C./S.T. Act itself, the present criminal appeal is not maintainable.

4. Learned counsel for the appellants vehemently argues that the order of framing the charge cannot be termed as interlocutory order and, therefore, an appeal against framing of charge is maintainable. He further submits that as per Section 14-A of S.C./S.T. Act, an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order to the High Court both on facts and law.

5. On the above premise, learned counsel for the appellant submits that since the 'framing of charge' is not an interlocutory order, the present criminal appeal is maintainable.

6. I have considered the submissions made by the learned counsel for the appellant, the learned counsel for the opposite party no.2 and the learned A.G.A. as well as perused the material available on record including the impugned order.

7. The first issue is up for consideration before this Court as whether the order of framing of charge is an interlocutory order or not?

8. The second issue is as to whether appeal under Section 14-A of S.C./S.T. Act is maintainable against an interlocutory order or not?

Issue No.1

9. For deciding the said issue, it is necessary for this Court to refer the law laid down by the Apex Court in various judgments from time to time on the said issue.

10. In the case of **Ratilal Bhanji Mithani Vs. State of Maharasthtra & Others reported in (1979) 2 SCC 179** has held that an order of discharge in a warrant case instituted on complaint or police report, can be made only after the process has been issued and before the charge is framed.

11. It is further opined by the Apex Court that once a charge is framed, the Magistrate has no power under section 227 or any other provision of the Code to cancel the charge, and reverse the proceedings to the stage of Section 353 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it, the proceedings are only an inquiry. After the framing of charges if the accused pleads not guilty, the Magistrate is required to proceed with the trial in the manner provided in section 254 to 258, to a logical end. Once a charge is framed in a warrant case, instituted either on complaint or a police report, the Magistrate has no power under the Code to discharge the accused, and thereafter, he can either acquit or convict the accused unless he decides to proceed under Section 349 and 562 of the Code of 1892 (which correspond to Sections 325 and 360 of the Code of 1973).

12. It is then held that after framing charges the Magistrate whimsically, without appraising the evidence and without permitting the prosecution to produce all its evidence, 'discharges' the accused, such an acquittal, without trial, even if clothed as 'discharge', will be illegal.

13. Relying upon the judgment of the Apex Court in the case **of Ratilal Bhanji Mithani (Supra),** further the Apex Court in the case of **Bharat Parikh Vs. C.B.I. & Another** reported in *(2008) 10 SCC 109* has opined that once the charges have been framed and the accused pleads not guilty, the Magistrate is required to proceed with the trial to its logical end. The Magistrate has no power under the Code to discharge the accused. He/she can, thereafter, either convict or acquit the accused.

14. Taking note of the judgment of the Apex Court in the case of **Ratilal Bhanji Mithani (Supra)**, the Apex Court in the case of **State Th. CBI New Delhi Vs. Jitendra Kumar Singh** reported in *(2014) 11 SCC 724* has held that the trial of a warrant case starts with the framing of charge. Prior to that the proceedings are only an inquiry. The Apex Court has reiterated the same law as held by the Apex Court in the case of **Ratilal Bhanji Mithani (Supra).**

15. A Six Judges of Constitution Bench of the Hon'ble Supreme Court in the case of Hardeep Singh Vs. State of Punjab reported in 2014) 3 SCC 92, has also relied and followed the judgment of the Hon'ble Supreme Court of India in the case of Ratilal Bhanji Mithani (Supra).

16. The Hon'ble Supreme Court of India in the case of **Amar Nath VS. State of Haryana** reported in *(1977) 4 SCC 137* has opined that "interlocutory order" "denotes" orders of a purely interim or temporary nature which do not decide or touch the important rights or liabilities of the parties and that any order which substantially affects the rights of the accused is not an interlocutory order.

17. From the aforesaid settled legal position, it is crystal clear that once charges have been framed, the issue of discharge becomes redundant, as Courts have no jurisdiction to allow discharge after charges having been framed. After charges have been framed, Court can either convict or acquit an accused. As such, the said issue is no longer res-integra and stands concluded by the judgement of Supreme Court referred to above.

18. On the basis of the aforesaid legal position, this Court is of the considered opinion that an interlocutory order or judgment is one made or given during the progress of an action, but which does not finally dispose of the rights of the parties. In case of an interlocutory order, the conclusion is inescapable that an order which does not terminate the proceedings or finally decides the rights of the parties is only an interlocutory order. In other words, in ordinary sense of the term, an interlocutory order is one which only decides a particular aspect or a particular issue or matter in a proceeding, suit or trial but which does not however conclude the trial at all. This would be the result if the term interlocutory order is interpreted in its natural and logical sense without having resort to Criminal Procedure Code or any other statute.

19. It is well settled that the trial begins when the accused is charged and called on to answer and then the question before the Court is whether the accused is to be acquitted or convicted and not whether the complaint is to be dismissed or the accused discharged. Therefore, this Court has no room to doubt to hold that order of framing of charge is an interlocutory order, as after charging an accused, the trial begins and he is called on to answer and then the question before the Court, whether is to be acquitted or convicted.

20. From the aforesaid settled legal position as laid down by the Hon'ble Supreme Court of India in aforesaid cases, it is crystal established that the order of framing of charges an interlocutory order, in which the conclusion is inescapable and the same does not terminate the proceedings or finally decides the rights of the parties. Accordingly, while answering the issue no.1, this Court opines that the order of framing of charge is an interlocutory order.

Now this Court comes to the second issue.

21. For appreciating the aforesaid legal issue, it would be worthwhile to reproduce Section 14-A of S.C./S.T. Act wherein the instant criminal appeal has been filed. Section 14-A of S.C./S.T. Act is quoted here-under:

*"**14A. (1) Notwithstanding anything contained in the Code of Criminal Procedure,1973, an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.***

(2) Notwithstanding anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure, 1973, an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from:

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

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal."

22. Perusal of the Section 14-A (1) specifically reflects that an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law. Consequently, this Court is of the firm opinion that since the impugned order framing charge against the appellant is an interlocutory order as the said issue has already been answered by this Court herein above, therefore, as per Section 14-A (1), the present criminal appeal is maintainable against such order.

23. While deciding the aforesaid two issues, the Hon'ble Supreme Court of India in the case of **V.C. Shukla Vs. State through C.B.I**. reported in *1980 Supp SCC 92*, has opined that applying these tests to the order impugned we find that the order framing of the charges is purely an interlocutory order as it does not terminate the proceedings but the trial goes on until it culminates in acquittal or conviction. It is true that if the Special Court would have refused to frame charges and discharged the accused, the proceedings would have terminated but that is only one side of the picture. The other side of the picture is that if the Special Court refused to discharge the accused and framed charges against him, then the order would be interlocutory because the trial would still be alive.

24. The Apex Court has concluded that in view of the conclusion that the order framing a charge is an interlocutory order within the meaning of Section 11 (1) of Special Courts Act, 1979, the appeal against such an order is incompetent in view of the provision contained in Section 11 (2) of Special Courts Act, 1979, and therefore the preliminary objection must be upheld and the appeal is dismissed.

25. A learned Single Judge of Himanchal Pradesh High Court at Shimla in the case of **Lagnesh Verma Vs. State of H.P. & Others** reported in *2026 SCC OnLine HP 1038* has opined that once the Hon'ble Supreme Court had held that framing of charge cannot be construed as final order, the appeal is not maintainable, the aggrieved party can avail the remedy of revisional jurisdiction or inherent jurisdiction of this Court under the BNSS or other laws if permissible. However, the appeal filed by the appellant is not maintainable against the order of framing the charge. Accordingly, the Himanchal Pradesh High Court has held that the appeal against the order of framing of charge is not maintainable and hence is dismissed. However, the appellant is at liberty to avail any other remedy available under law.

26. For the sake of argument, if it is presumed that the order of framing charge is a final order and the appeal is maintainable, then in that circumstances also, this Court cannot direct the trial court to terminate the proceedings or discharge the accused or to pass a fresh order of framing of charge, as the trial court has no power to do the same, in view of the aforementioned settled position of law.

27. Consequently, this Court holds that the present criminal appeal preferred for quashing/setting aside the order dated 15th September, 2025 passed by the Special Judge (S.C./S.T. Act), Deoria in Special Trial No. 132 of 2023 (Badami Devi Vs. Rajan Chaurasia & Others) under Sections 427, 504, 506 I.P.C. and Sections 3 (1) (da) and 3 (1) (dha) of S.C./S.T. Act, Police Station-Khukhundu, District-Deoria, whereby the charges have been framed against the appellants, is not maintainable and is liable dismissed, as the impugned order is an interlocutory order and against an interlocutory order, the criminal appeal under Section 14-A (1) of S.C./S.T. Act shall not lie, as has been opined by this Court herein above.

28. Accordingly, the present criminal appeal being not maintainable is **dismissed.**

(2026) 5 ILRA 1867
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.05.2026

BEFORE

THE HON'BLE AVNISH SAXENA, J.

Criminal Appeal No. 2347 of 1985

Saghir Ahmad & Anr. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

The appellants were convicted under section 307/34 for causing a gunshot injury to Smt. Dharmi Devi during a village dispute arising out of alleged objections to their conduct, and challenged the conviction in appeal.

Headnotes

A. Criminal matter-Criminal Procedure Code,1973-Section 374(2)-Indian Penal Code,1860-Sections 307/34-Attempt to murder-Old Criminal Appeal-45-Year Delay-Verified Compromise-Senior Citizen Accused-No Criminal Antecedents-Reformative Theory of Punishment & Supreme Court Precedents Applied-Sentence Modified-Partly allowed. (Para 12 to 20)

Held

The court held that mere passage of time does not erase criminal liability, but in exceptional circumstances involving prolonged pendency, compromise and absence of criminal antecedents, the sentence may be suitably modified while maintaining the conviction. (E-6)

Case law Cited

Labh Singh Vs State of Haryana (2012) LawSuit (SC) 255, State of U.P. Vs. Siyaram (2010) LawSuit (SC) 897, George Pan Paul Vs Kanagalet (2009) LawSuit (SC) 795, Manjappa Vs State of Karnataka (2007) LawSuit (SC) 706, Ramesh Vs State of U.P. (1992) 1 SCC 318, State of M.P. Vs Bablu (2014) 9 SCC 2811 , Adul Waheed Vs State of U.P.(2016) 1 SCC 583-referred to.

List of Acts

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

List of Keywords

Attempt to murder, Sentence modification, Period already undergone, Long Pendency of appeal, Verified compromise, Quantum of sentence, Reformative Theory of Punishment.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. -2347 OF 1985

Saghir Ahmad & Anr. Vs. State of U.P.

From the judgment and order dated 29.05.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):

D.N. Pandey, Digvijay Nath Pandey Aram Janam Shahi, Sheikh Obaidullah

Advs. for Respondent(s):

A.G.A. Mayank Krishna S Chandel Vinod Kumar Chandel

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

1. Heard Sri Salman Ahmad, learned counsel for the appellants, Sri Vinod Kumar Chandel, learned counsel for the informant and Sri Anuj Kumar Mishra, learned AGA for the State.

2. The present criminal appeal has been preferred under Section 374(2) CrPC by accused appellants Saghir Ahmad and Mohammad Iliyas on being aggrieved by the judgment of conviction and sentence dated 05.09.1985 in S.T. No. 616 of 1983 (State Vs. Saghir and another) wherein the appellants have been convicted for offence under Section 307 read with Section 34 IPC and sentence each of them for five years rigorous imprisonment.

3. Before adverting to the facts of the case, it would be expedient to mention that there is cross version of FIR. The injured in this case namely Smt. Dharmi has moved an application on 04.10.1986 before this Court along with an affidavit stating therein that the permission be granted to compromise the matter. It is mentioned in paragraph nos. 1 to 3 of the affidavit that the

appellants have been wrongly convicted under Section 307 IPC though on the face of it Sections 324, 325 IPC is attracted. The relevant paragraph are reiterated underneath:-

"1. That the applicant Smt. Dharmi received minor/simple injuries in an occurrence which is said to have taken place on 24.05.1981. But under the pressure of the local police Hari Lal was compelled to lodge FIR against the appellants under Section 452/307 IPC and thus the correct facts were not disclosed. Even during the course of the trial the police threatened the applicant and other witnesses not to disclose the correct facts leading to an resulting in the occurrence.

2. That the injury received by Smt. Dharmi was not caused with an intention or knowledge to cause her death. In view of the facts and circumstances on record only offences under Section 324 and 325 IPC are made out. In the interest of justice conviction, of the appellants under Section 307/34 IPC is bad an liable to be set aside. The trial court has also observed that correct facts leading to the occurrence have not been disclosed by any of the parties.

3. That the injured (applicant) and the appellants have come to terms and have compromised the case. In case the compromise is accept and the applicant is permitted to compromise the case, the relation between the parties would become friendly and sweet. The tension between the two families and apprehension of any future trouble and dispute will come to an end."

4. This Court in order dated 03.09.1992 has granted permission and send the compromise for verification. The order dated 03.09.1992 is reiterated underneath:-

"Send the compromise to the C.J.M. Azamgarh for verification. The C.J.M. Azamgarh shall send it back after verification within two months from today. Office to take steps within three days."

5. In pursuance to the aforesaid order the application in original was sent to the court of Chief Judicial Magistrate, Azamgarh, who in order dated 25.01.1993 has verified compromise. The text of the verified compromise is reiterated underneath:-

"आज इस सुलहनामे मुद्दई श्री धर्मी देवी ने रूबरू अदालत सत्यापित किया। तथा जिसकी पहचान शाहजहां एडवो० ने किया मजमून सुलहनामा सुनाया और समझाया गया उसमे मजमून को तस्दीक किया। तथा सुलहनामे पर अंगूठा निशानी स्वीकार किया।"

6. The verified compromise received to this Court on 18.03.1993 and since then it is fixed for disposal.

7. The prosecution case in nutshell is that the informant Hari Lal has lodged the FIR on 24.05.1981 at 7:00 p.m., P.S.- Gambhirpur with the allegation against Saghir Ahmad and Illiyas that the informant is residence of Molanpur, P.S.- Rani Ki Sarai, District- Azamgarh. Udairaj and Balraj Chauhan of his village having their daughters of easy virtues. Saghir Ahmad and Illiyas used to meet the daughters, which has been objected by the villagers. Udairaj had instigated Saghir

Ahmad on which Saghir Ahmad and Illiyas came to the village where the villagers were attending marriage party in the house of Sahab Ali Chauhan where Saghir Ahmad, Illiyas and unknown person came and asked for Ram Pyare. Sahab Ali□s wife raised hue and cry on which several ladies of village came. Illiyas has opened fire. Smt. Dharmi Devi, suffered gunshot injury.

8. In the prosecution Hari Lal and Dharmi Devi were produced as PW-1 and PW-2; whereas Dr. B.Das the Medical Officer has been produced as PW-3, the Doctor who found injuries on the person of Dharmi Devi suffered due to gun shot. Smt. Surji has been produced as PW-4 and Sub-Inspector Yashpal Singh has been produced as PW-5.

9. It is the contention of learned counsel for appellants that the parties are of same village. The matter is nearly 45 years old. The parties have settled their dispute through compromise in the year 1992 and there is no point in moving with the conviction of the accused appellants, who are presently the senior citizens of nearly 80 years of age, hence, prayed for an order of modification of sentence that the appellants shall be released on undergone.

10. Learned AGA, though argued that there is cross fight wherein both the accused and informant suffered injuries, which establishes the guilt, but concedes that there is compromise between the parties and the same is verified.

11. This Court has given thoughtful consideration to the rival submissions and considered some judgments on the point, which are dealt with in subsequent paragraphs.

12. In the case of ***Labh Singh v. State of Haryana1,*** Hon'ble the Supreme Court has taken the view, while considering the sentence awarded in the old case of 1985, wherein, all the accused are senior citizen by then, that no useful purpose would be served in sending the accused to jail. The relevant paragraph numbers 3 to 6 are reiterated underneath:

" 3. According to the impugned judgment passed by the High Court, Appellant 1 is more than 82 years of age and Appellants 2 and 3 are 72 and 62 years of age respectively.

4. This is an incident of 1985. The appellants have already undergone part of the sentence. Sending them to jail after a lapse of about 27 years, in the facts and circumstances of this case, would not be justified.

5. On a consideration of the totality of the facts and circumstances of this case, we are of the opinion that ends of justice would meet if we direct each of the appellants to pay Rs 1 lakh to the complainant/injured persons. We direct accordingly. Let the amount be deposited before the trial court within two weeks from today and after the amount is deposited, the trial court shall disburse the amount equally among the injured persons.

6. Consequently, the sentence of the appellants is reduced to the period already undergone by them, the impugned judgment is modified to the aforementioned extent and the appeal is partly allowed."

13. In the case of ***State of U.P. v. Siyaram2***, Hon'ble the Supreme Court has considered the old case and propensity to false implication, took the view to compensate than to further incarceration. The relevant paragraph number 4 is reiterated underneath:-

"4. We have heard the learned counsel for the parties and have gone through the record. We are not inclined to interfere in the acquittal of Siyaram for the reasons recorded by the High Court, as the propensity to implicate falsely is not uncommon in India. We, however, do agree with Mr Dash that the reduction in the sentence in case of Jiya Lal to already undergone was somewhat inadequate but as the prosecution had been initiated in the year 1988, we are not inclined to interfere on the term of imprisonment. We, however, direct that the fine be increased to Rs 25,000 in all and in default of payment of fine the appellant Jiya Lal shall undergo 2 years' RI. The fine will be paid within three months from now to Banshi Lal, the injured and if Banshi Lal is not available, to his legal representatives."

14. In the case of **George Pon Paul v. Kanagalet3,** Hon'ble the Supreme Court considered the passage of time, as a relevant factor to consider. The relevant paragraph numbers 4 to 6 are reiterated underneath:-

"4. The only question that remains is whether the custodial sentence as was imposed by the trial court was adequate or not i.e. confinement till rising of the court.

5. It appears from record that the fine amount has been deposited and the amount which was directed to be paid to PW 2 has already been paid.

6. Considering this fact and the long passage of time, it would be appropriate to restrict the period of sentence to the period already undergone. The appeals stand disposed of."

15. In the case of ***Manjappa v. State of Karnataka4,*** Hon'ble the Supreme Court considered the long pendency of case and opined the adequate punishment would be the period of incarceration already undergone but enhanced the fine to be paid as compensation. The relevant paragraph numbers 14 to 16 are reiterated underneath:-

"14. At the same time, however, the fact remains that the High Court has reduced substantive sentence to a month and a half. It is also not in dispute that the appellant has undergone and has remained in custody for about fifteen days. Moreover, as on today, he is on bail. Hence, even though we are of the view that in the facts and circumstances of the case, provisions of Section 360 read with Section 361 of the Code are not attracted and Om Prakash [(2001) 10 SCC 477 : 2003 SCC (Cri) 799] does not help the appellant, it would not be appropriate now to direct the appellant to surrender and to suffer the remaining sentence for about a month. The incident is of 1997 and about 10 years have passed.

15. Keeping in view all the facts and circumstances, in our opinion, ends of justice would be met, if we order that the substantive sentence which the appellant has already undergone is held sufficient. We are also of the view that it would be appropriate if over and above the amount which the appellant herein has paid towards fine and also towards compensation to the injured victim, the

appellant is ordered to pay an additional amount of Rs 10,000 (Rupees ten thousand only), to the complainant by way of compensation.

16. For the foregoing reasons, the appeal is partly allowed by holding that the sentence already undergone by the appellant is held sufficient and adequate in the facts and circumstances of the case. It is, however, ordered that the appellant will pay an additional amount of Rs 10,000 (Rupees ten thousand only) to the injured complainant within a period of one month from today over and above the amount of fine and compensation ordered to be paid by the courts below."

16. In the case of **Ramesh v. State of U.P.5,** Hon'ble the Supreme Court has converted the offence of attempt to murder to the voluntary causing of grievous hurt in view of single injury and awarded punishment accordingly. The relevant paragraph numbers 3 and 4 are reiterated underneath:-

"3. The learned counsel for appellant has assailed the finding recorded by the High Court and the trial Judge and has urged that the appellant was implicated due to enmity. He urged that even though the High Court held that in the FIR the main part was specifically assigned to the appellant and one Jagat Singh but in the evidence it was confined to the appellant as the relations between the two were strained. The learned counsel further urged that the case of the prosecution was that the complainant was bitten by Jagat Singh and there being no injury of biting, the High Court committed an error in maintaining the conviction. We are not impressed by the argument. The learned counsel then urged that the High Court committed an error in convicting the appellant under Section 307, Penal Code, 1860. We do not propose to decide it as a matter of law. But we agree with the learned counsel for the appellant that in peculiar circumstances of the case it being a case of single injury in the back of neck the conviction can be altered to be under Section 324, Penal Code, 1860.

4. In the result the appeal succeeds and is allowed in part. The conviction under Section 307/34, IPC is converted to under Section 324, IPC and the sentence is reduced to the period already undergone. The appellant shall deposit a sum of Rs 3000 as fine within six months which shall be paid to the complainant. In default of payment he shall serve out the entire sentence. On deposit of fine the bail bond shall stand discharged."

17. There is judicial discretion attached to reasoned sentencing. In the cases of **State of Madhya Pradesh Vs. Bablu6 and Abdul Waheed Vs. State of Uttar Pradesh7,** Hon'ble the Supreme Court observed solemn duty of the Courts while imposing sentence that the same would be just, adequate and proportionate to the gravity of offence. Further observed that undue sympathy to impose inadequate sentence would do more harm to the justice system and undermine the public confidence in the efficacy of system. Considering those principles the trial court rightly evaluated the role of the sole surviving appellants and adequately sentenced them on 05.09.1985 with just and adequate punishment. This Court in appeal has granted bail on 06.09.1985 and since then the surviving appellants are enlarged on bail. Now the point of concern is whether it would be rightful decision by appellate court to send the accused to serve the remaining sentence after elapse of 41 years.

18. The incident occurred 45 years back. There is nothing on record to show that the accused appellants were habitual criminals. Sending the appellants to jail will not serve the purpose of basic principles of the law of punishment, which in India is not corporeal in nature but reformative in its form. The intention of legislature in considering the act, conduct and behaviour of convict for remission also evinces the same principle.

19. Therefore considering, the dictums of Hon'ble the Supreme Court; the analogy drawn up from the facts of the case; and involvement of the appellants, their role in the occurrence vis-a-vis their age at the time of incident and as on date, this Court is of the view that the judicious and purposeful punishment would be to modify the punishment as below:-

19.1. The sentence awarded to accused appellants Saghir Ahmad son of Faujdar, r/o Village Anwak, P.S.- Rani Ki Sarai, District Azamgarh and Mohammad Iliyas son of Mohammad Idris, r/o Village- Bhelkhara Jamalpur, P.S.- Rani Ki Sarai, District- Azamgarh, is reduced to the period already undergone by them in S.T. No. 616 of 1983 (State Vs. Saghir and another) for offence under Section 307 read with Section 34 IPC.

20. The appeal is therefore **partly allowed** on the point of sentence, which is modified.

21. The appellants are on bail. Their bail bonds and sureties are discharged.

22. Record be returned forthwith as per Rules.

(2026) 5 ILRA 1873
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 22.05.2026

BEFORE

THE HON'BLE SANTOSH RAI, J.

Criminal Appeal No. 2392 of 1988

Shiv Lal & Ors. **...Appellants**
Versus
State **...Respondent**

Issue for consideration

The matter pertains to an appeal against conviction u/s 323/34 IPC. In the present case, the accused assaulted the deceased and his son with lathis over dispute regarding irrigation of agricultural fields, resulting in the deceased's death and injuries to the informant.

Headnotes

A. Criminal matter-Indian Penal Code,1860-Sections 308,304, 323-Criminal Procedure code,1973-Section 374(2)-Probation of offenders Act,1958-Sections 4& 5-Evidence Act, 1872-Section 6 & 134-Common intention-Joint liability-Sole injured witness-Appreciation of evidence-Sentence-Benefit of Probation-Elderly convicts-Long pendency of appeal-Conviction u/s 323/34

IPC affirmed-Sentence of one year's rigorous imprisonment set aside-Appellants released on probation with conditions and directed to pay compensation to the victim.(Para 17 to 31)

Held

The court held that the conviction of the appellants u/s 323/34 IPC was affirmed however, considering their advanced age, long pendency of the appeal, and absence of criminal antecedents, the sentence of imprisonment was substituted by release on probation. (E-6)

Case law Cited

Sitaram Paswan & Anr. Vs State of Bihar (2005) 13 SCC 110, Lakhanlal alias Lakhan Singh Vs State of M.P. (2021) 6 SCC 100,Mohd. Hashim Vs State of U.P. & Ors (2017) 2 SCC 198, Chellammal & Anr Vs State represented by the Inspector of Police (2025) LiveLaw (SC) 461-referred to.

List of Acts

Indian Penal Code, 1860, Criminal Procedure code, 1973, Probation of offenders Act,1958-Evidence Act, 1872.

List of Keywords

Common intention, Assault with lathis, Injured witness, Res gestae, Probation of offenders Act, 1958, Compensation, Sentence modification, Release on probation, Victim.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. -2392 OF 1988

Shiv Lal & Ors Vs. State

From the judgment and order dated 22.05.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):

Mohan Chandra, P.t.m. chandra

Adv. for Respondent(s):

A.G.A.

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

1. Heard Sri Lalit Prakash, Sri Yashasvi Shukla, learned counsel for the appellants; Sri Purushottam Maurya, learned AGA for State and perused the materials on record including the trial court records.

2. Four accused appellants have filed the instant appeal in the year 1988 but when the matter is taken up for hearing today we are informed that one of them namely Mani @ Mayaram has already died, hence, the appeal has already been abated accordingly. The appeal now survives only at the instance of appellant nos.1,3 and 4. The appellants are aggrieved by the judgment and order dated 6.10.1988, passed by III Additional Sessions Judge, Moradabad in Sessions Trial No.781 of 1986 (State Vs. Shiv Lal & Ors.), arising out of Case Case No.138 of 1986, under Sections 308, 304, 323 IPC, Police Station Asmoli, District Moradabad; whereby they have been convicted and sentenced to one year rigorous imprisonment under Section 323/34 IPC.

3. In this case, the first informant is PW-1, Vijay Pal, who is the son of the deceased Kalua. He submitted a written report (Ex.Ka.1) scribed by Nandram, stating therein that on 12.8.1986, he alongwith his father Kalua (deceased) and daughter Kusum was watering his maize field. All the

four accused persons came armed with lathis and asked the deceased Kalua that they would water their field first and when the deceased resisted, the accused persons attacked the deceased with lathis. During rescuing his deceased father, he also sustained injuries. On the basis of this written report, FIR was registered under Section 308, 323 IPC as Case Crime No.138 of 1986 at Police Station Asmoli, District Moradabad.

4. The investigation started, and statements of witnesses were recorded. After investigation, charge sheet was filed under Sections 304, 308, 323 IPC. The Magistrate took cognizance of the case and committed it to the Court of Sessions, where it was registered as Sessions Trial No.781 of 1986 (State of U.P. vs. Shiv Lal & Ors.), arising out of Case Crime No.138 of 1986, under Sections 308, 304, 323 IPC. Charges were framed against the accused persons. They denied the charges and demanded trial.

5. To prove its case, the prosecution produced the following documentary evidence:-

"1. Written Report dated 11.8.1988 (Ex.Ka.1)

2. Postmortem report dated 30.8.1988 (Ex.Ka.2)

3. Chik Report dated 8.9.1988 (Ex.Ka.3)

4. G.D. Entries dated 8.9.1988 (Ex.Ka.4,5)

5. Site Plan dated 8.9.1988 (Ex.Ka.6)

6. Charge-sheet dated 8.9.1988 (Ex.Ka.7)

7. Letter RI dated 8.9.1988 (Ex.Ka.8)

8. Letter SI for P.M. dated 8.9.1988 (Ex.Ka.9,10)

9. Sealed Sample dated 8.9.1988 (Ex.Ka.11)

10. Deadbody Photo dated 8.9.1988 (Ex.Ka.12)

11. Deadbody Challan dated 8.9.198 (Ex.Ka.13)

12. Panchayatnama dated 8.9.1988 (Ex. Ka-14)

15. Injury Report dated 8.9.1988 (Ex. Ka-15)"

6. Apart from the documentary evidence, the prosecution also submitted oral evidence. The witnesses examined, Vijay Pal (PW-1), Ganga Saran (PW-2), Nandram (PW-3), Dr. R.D. Gupta (PW-4), S.I. S.N. Sharma (PW-5), in support of the prosecution case.

7. P.W.-1 is the injured witness, who is the son of deceased Kalua. This witness stated in his statement before the court that all the accused persons were having sticks (lathi) in their hands and they caused injuries to him as well as his father.

8. P.W.-2 and P.W.-3 are Ganga Saran and Nandram (brother of deceased Kalua), who were present in their fields which were near the place of occurrence and on hearing commotion they reached at the spot and saw that four accused persons were assaulting the injured and deceased.

9. P.W.-4 is Dr. R.D. Gupta, who proved the ante-mortem injuries and postmortem report of the deceased. This witness stated that age of the deceased was 55 years and the deceased sustained two injuries on his body. This witness opined that injury no.2 may be caused due to falling down.

10. P.W.-5 is S.I. S.N. Sharma, who proved chik FIR and general diary entries as Exs.Ka.3,4,5 and also proved the site plan as Ex.Ka.6 and charge-sheet as Ex.Ka.7.

11. Learned counsel for the appellants without going into the merits of the case, argued only on the point of sentence. Submission is that in the event this Court arrives at a finding of guilt, it is prayed that the accused-appellants be extended the benefit of probation, considering their advance ages.

12. Per contra, learned AGA submits that the trial court has rightly held the accused appellants guilty and awarded rigorous sentence of one year in the present case on the basis of reliable evidence available on record.

13. In this case, four accused persons are said to be involved against whom charge under Sections 304, 323/34 were framed. P.W.-1 and P.W.-2 are witnesses of fact. P.W.-1 is the injured witness, who is the son of deceased Kalua. This witness stated in his statement before the court that all the accused persons were having sticks (lathi) in their hands and they caused injuries to him as well as his father (deceased). P.W.-2 Ganga Saran, who was present in his field which was near the place of occurrence and on hearing commotion, reached at the spot and saw that four accused persons were assaulting the injured and deceased.

14. The trial court opined that statement of PW-1 is reliable and there are no material contradictions in his statement and on the basis of statement of PW-1 and medical evidence convicted the accused persons under Section 323/34 IPC but P.W.-2, who reached on the spot after hearing commotion and saw the accused persons assaulting the injured and deceased with sticks which indicates that the statement of P.W.-2 comes within the category of □res gestae□. If the testimony of P.W.-2 Ganga Saran is accepted to the extent that he saw the accused persons assaulting P.W.-1 and the deceased at the place of occurrence with sticks, then the chain of circumstances clearly points towards the involvement of the accused persons in the commission of the offence. Such conduct is relevant under Section 8 of the Evidence Act, and the contemporaneous utterance of P.W.-2 forms part of the same transaction and is admissible under

Section 6 of the Evidence Act as □res gestae□. Section 6 of Indian Evidence Act, 1872 is extracted hereinafter:-

"This section incorporates the principle of res gestae, which is a kind of an exception to the rule against hearsay as illustrated in Illustration (a) to this section. The word "hearsay" is used in various senses. Sometimes it means whatever a person is heard to say; sometimes it means whatever a person declares on information given by someone else. There are four illustrations to the section. In the first illustration, A is accused of the murder of B, by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

Even a hearsay statement is relevant if it forms a part of the same transaction as the fact-in-issue (occurrence). Unless any fact or statement forms a part of the same transaction, it will not be admissible in evidence. For example, utterances just before, during or immediately after the commission of a crime, spontaneous outbursts of bystander or of accused or victim forming part of the same transaction are admissible."

15. Thus, this Court finds that the statement of PW-2 Ganga Saran is admissible in light of principle of res gestae and admissible under Section 6 of the Evidence Act, but the trial court has raised doubt on the testimony of PW-2, which is not correct, as per law. Thus, this Court finds no material contractions in the statement of PW-2 also.

16. The trial court opined that no specific role has been assigned regarding the fact that who specially caused injury to the deceased Kalua due to which he died. Four accused persons are said to be involved in this incident and their presence and involvement is not doubted by the trial court on the basis of statement of PW-1. Since specific involvement of accused appellants is specified in terms of Section 34 IPC, the accused appellants should also be held guilty under Section 304 IPC on the basis of very same evidence/material.

17. The principle as enshrined under Section 34 IPC is extracted below:-

"The underlying principle is a well-recognized canon of criminal jurisprudence that the courts cannot distinguish between co-conspirators, nor can they inquire as to the part taken by each in the crime. Where parties go with a common purpose to execute a common object, each and everyone becomes responsible for the acts of each and every other in execution and furtherance of their common purpose; as the purpose is common so must be the responsibility. Section 34 provides that when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. The common intention can be formed at the spur of the moment (eo instanti) The pre-arranged plan need not be elaborate nor is a long interval of time required. It can arise and be formed suddenly in other words there is no rule that common intention pre-supposes prior-consert it can be formed previously or in the course of occurrence and on the spur of the moment. The plan may develop on the spot during the course of commissioning of offence but the plan must preceed that constitute the offence. Common intention is question of fact although it is subjective it may be inferred from the facts and circumstances. For the purpose of common intention it is required □to

participate meaning thereby to take part and part in an act may be taken by doing something which advances or hold the common cause or achievement. Beside pre-planning what is required is an element of physical presence at the scene of occurrence coupled with the actual participation which can be a passive character."

18. Furthermore, the principle as enshrined under Section 134 of the Evidence Act is, no particular number of witnesses shall in any case be required for the proof of any fact. How may witnesses are necessary for the proof is wholly left to the court. As a general rule a court can act may act on the testimony of a single witness, though in-corroborated. One credible witness outweighs the number of other witnesses of indifferent character. Admittedly the public are generally reluctant to come forward to depose before the court it is, therefore, not correct to reject the prosecution version only on the ground that all witnesses to the occurrence has not been examined nor is it proper to reject the case for want of corroboration by independent witness. The Apex Court has in number of cases sustained conviction on the basis of testimony of sole witness.

19. The court has erroneously held the accused appellants are guilty of offence under Section 323/34 IPC only, which indicates that the trial court has ignored material evidence and established legal principles of joint liability. The trial court also opined that no enmity was found between the accused appellant and the informant and no chance of false implication. Four injuries are said to be sustained to the injured and the deceased. The deceased died due to one of the grievous injury sustained on his vital part (head). Thus, it appears that the reasons given by the trial court regarding acquittal of accused appellants under Section 304/34 IPC is not legally just and proper on the basis of the facts and circumstances of this case and evidence available on record.

20. The trial court has not doubted the testimony of PW-1 who stated that all the accused persons were involved in offence of culpable homicide of his father Kalua and causing injuries to him and his father also. The presence of all the accused persons at the place of occurrence has not been doubted. The medical evidence also supports the prosecution version regarding injuries sustained by the deceased and injured witness. It also further transpires from the evidence on record that all the accused persons acted conjointly and assaulted the deceased and injured with lathis/stick. Therefore, their liability has been rightly considerd with aid of Section 34 IPC, but trial court has committed gross illegality by way of acquitting the accused persons under Section 304/34 IPC. Thus, the trial court has committed material illegality and has overlooked the evidence and established legal principle.

21. Learned AGA informs that no any criminal appeal/revision etc is pending against impugned order to enhance the punishment or acquittal order passed by the trial court under Section 304/34 IPC.

22. Sections 4 and 5 of the Probation of Offenders Act, 1958 are reproduced below for ready reference:-

"4. Power of court to release certain offenders on probation of good conduct.- *(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having*

regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

5. Power of court to require released offenders to pay compensation and costs.-*(1) The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay"*

(a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

(b) such costs of the proceedings as the court thinks reasonable.

(2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.

(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages."

23. In **Sitaram Paswan and Another vs. State of Bihar, (2005) 13 SCC 110**, the Apex Court has held as under:

"For exercising the power which is discretionary, the court has to consider the circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. The benefit available to the accused under Section 4 of the Probation of Offenders Act is subject to the limitation embodied in the provisions and the word "may" clearly indicates that the discretion vests with the court whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation of Offenders Act, having regard to the nature of the offence and the character of the offender and overall circumstances of the case. The powers under Section 4 of the Probation of Offenders Act vest with the court when any person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the courts while finding the person guilty and if the court thinks that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, benefit should be extended to the accused, the power can be exercised by the court even at the appellate or revisional stage and also by this Court while hearing the appeal under Article 136 of the Constitution."

24. In **Lakhanlal alias Lakhan Singh vs. State of Madhya Pradesh, (2021) 6 SCC 100,** the Apex Court held as under:

"10. A three-Judge Bench of this Court in Rattan Lal v. State of Punjab, AIR 1965 SC 444, while examining the provisions of the 1958 Act held that in case the offenders are below 21 years, an injunction is issued to the Court not to sentence them to imprisonment unless it is satisfied that having regard to the circumstances of the case, it is not desirable to deal with them under Sections 3 and 4 of the 1958 Act but in respect of offenders who were above age of 21 years, the Court has absolute discretion to release such offenders either after admonition or on probation of good conduct. The Court held as under:

"4. The Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. Broadly stated, the Act distinguishes offenders below 21 years of age and those above that age, and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years, absolute discretion is given to the court to release them after admonition or on probation of good conduct, subject to the conditions laid down in the appropriate provisions of the Act, in the case of offenders below the age of 21 years an injunction is issued to the court not to sentence them to imprisonment unless it is satisfied that, having regard to the circumstances of the case, including the nature of the offence

and the character of the offenders, it is not desirable to deal with them under Sections 3 and 4 of the Act."

11. This Court in Jugal Kishore Prasad v. State of Bihar, (1972) 2 SCC 633 explained the rationale of the provision as to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. The Court held as under:

"6. The Probation of Offenders Act was enacted in 1958 with a view to provide for the release of offenders of certain categories on probation or after due admonition and for matters connected therewith. The object of the Act is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. The above object is in consonance with the present trend in the field of penology, according to which effort should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice. Modern criminal jurisprudence recognises that no one is a born criminal and that a good many crimes are the product of socio-economic milieu. Although not much can be done for hardened criminals, considerable stress has been laid on bringing about reform of young offenders not guilty of very serious offences and of preventing their association with hardened criminals. The Act gives statutory recognition to the above objective. It is, therefore, provided that youthful offenders should not be sent to jail, except in certain circumstances. Before, however, the benefit of the Act can be invoked, it has to be shown that the convicted person even though less than 21 years of age, is not guilty of an offenec punishable with imprisonment for life. This is clear from the language of Section 6 of the Act."

25. In **Mohd. Hashim vs. State of Uttar Pradesh and Others, (2017) 2 SCC 198**, the Apex reiterated the exercise of discretionary power of the court under Probation of Offenders Act as under:-

"21. In this regard, it is also seemly to refer to other authorities to highlight how the discretion vested in a court under the PO Act is to be exercised. In Ram Parkash v. State of H.P., (1972) 4 SCC 46, while dealing with Section 4 of the PO Act in the context of the Prevention of Food Adulteration Act, 1954, the Court opined that the word "may" used in Section 4 of the PO Act does not mean "must". On the contrary, as has been held in the said authority, it has been made clear in categorical terms that the provisions of the PO Act distinguish offenders below 21 years of age and those above that age and offenders who are guilty of committing an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. Thereafter, the Court has proceeded to observe:

"7.... While in the case of offenders who are above the age of 21 years. absolute discretion is given to the court to release them after admonition or on probation of good conduct in the case of offenders below the age of 21 years an injunction is issued to the Court not to sentence them to imprisonment unless it is satisfied that having regard to the circumstances of the case, including the nature of the offence and the character of the offenders, it is not desirable to deal

with them under Sections 3 and 4 of the Act. (Rattan Lal v. State of Punjab, AIR 1965 SC 444 and Ramji Missar v. State of Bihar, AIR 1963 SC 1088.)"

Be it noted, in the said case, keeping in view the offence under the Prevention of Food Adulteration Act, 1954, the Court declined to confer the benefit under Section 4 of the PO Act.

22. We have referred to the aforesaid authority to stress the point that the court before exercising the power under Section 4 of the PO Act has to keep in view the nature of offence and the conditions incorporated under Section 4 of the PO Act. Be it stated in Dalbir Singh v. State of Haryana, (2000) 5 SCC 82, it has been held that Parliament has made it clear that only if the Court forms the opinion that it is expedient to release the convict on probation for the good conduct regard being had to the circumstances of the case and one of the circumstances which cannot be sidelined in forming the said opinion is "the nature of the offence". The Court has further opined that though the discretion has been vested in the court to decide when and how the court should form such opinion, yet the provision itself provides sufficient indication that releasing the convicted person on probation of good conduct must appear to the Court to be expedient. Explaining the word "expedient", the Court held thus:

"9. The word "expedient" had been thoughtfully employed by Parliament in the section so as to mean it as "apt and suitable to the end in view". In Black's Law Dictionary the word "expedient" is defined as "suitable and appropriate for accomplishment of a specified object" besides the other meaning referred to earlier. In State of Gujarat v. Jamnadas G. Pabril, (1975) 1 SCC 138, a two-Judge Bench of this Court has considered the word "expedient". The learned Judges have observed in para 21 thus:

21.... Again, the word "expedient" used in this provision, has several shades of meaning. In one dictionary sense, "expedient" (adj.) means "apt and suitable to the end in view", "practical and efficient": "politic"; "profitable"; "advisable", "fit, proper and suitable to the circumstances of the case". In another shade, it means a device "characterised by mere utility rather than principle, conducive to special advantage rather than to what is universally right" (see Webster's New International Dictionary)'.

10. It was then held that the court must construe the said word in keeping with the context and object of the provision in its widest amplitude. Here the word "expedient" is used in Section 4 of the PO Act in the context of casting a duty on the court to take into account "the circumstances of the case including the nature of the offence...". This means Section 4 can be resorted to when the court considers the circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct."

26. In **Chellammal and Another vs. State represented by the Inspector of Police, 2025 LiveLaw (SC) 461**, where the Sessions Judge has acquitted the appellants (mother-in-law and husband) of the charge under Section 304-B IPC but convicted them under Section 498-A, the Apex Court has held as under:-

"Summing up the legal position, it can be said that while an offender cannot seek an order for grant of probation as a matter of right but having noticed the object that the statutory provisions seek to achieve by grant of probation and the several decisions of this Court on the point of applicability of Section 4 of the Probation Act, we hold that, unless applicability is excluded, in a case where the circumstances stated in subsection (1) of Section 4 of the Probation Act are attracted, the court has no discretion to omit from its consideration release of the offender on probation; on the contrary, a mandatory duty is cast upon the court to consider whether the case before it warrants releasing the offender upon fulfilment of the stated circumstances. The question of grant of probation could be decided either way. In the event, the court in its discretion decides to extend the benefit of probation, it may upon considering the report of the probation officer impose such conditions as deemed just and proper. However, if the answer be in the negative, it would only be just and proper for the court to record ord the reasons therefore."

27. At present, the accused-appellants are elderly persons, aged more than 60 years. The appeal has remained pending before this Court since the year 1988. No reliable material has been brought this Court to indicate that they are habitual offenders or they have any criminal antecedents. There is nothing on record to show the misuse of liberty during pendency of this appeal. The possibility of reformation cannot be rule out. Furthermore, learned counsel for the appellants has not assailed the conviction on merits but has confined his argument particularly to the question of sentence and prayed for extending the benefit of probation as provided under Section 4 of the Probation of Offenders Act.

28. Having considered the submissions advanced by the parties and material evidence available on record, this Court is of the considered opinion that the benefit of probation deserves to be extended to the accused-appellants under Section 4 of the Probation of Offenders Act, 1958.

29. Thus, in view of the above specific facts and circumstances, it would be just and proper to release the accused-appellants on probation. The appeal is, thus, **partly allowed** with modification in sentence. The conviction of the appellants under Section 323/34 IPC is hereby affirmed. However, the sentence of one year rigorous imprisonment is set aside.

30. In view of the modification of sentence and release of the appellants on probation, the bail bonds and sureties furnished earlier during trial/appeal shall stand discharged.

31. Let the accused-appellants Shiv Lal, Omkar and Ratibhan be released on probation under Section 4 of the Probation of Offenders Act, 1958, subject to the following conditions:

(i) The accused-appellants shall execute a □fresh□ personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand) with one surety of the like amount to the satisfaction of the court concerned for a period of one year with an undertaking that they shall maintain peace and good behaviour and will not involve in any criminal activity.

(ii) Invoking Section 5 of the Probation of Offenders Act, each appellant (Shiv Lal, Omkar and Ratibhan) shall pay compensation of Rs.20,000/- (Rupees Twenty Thousand) to the

informant/victim within a period of one month from today. In case of death of injured/victim, the appellants shall pay the same to their legal representatives.

(iii) In the event of breach of any of the aforesaid conditions, the accused-appellants shall be liable to undergo the sentence as awarded by the trial court to serve the original sentence.

32. Trial court shall ensure compliance and seek report from the Probation Officer for supervision.

33. The appellants are directed to appear before the trial court forthwith to furnish the requisite bonds. In case of default, the trial court shall be at liberty to proceed in accordance with law, including issuance of coercive process.

34. Let a copy of this judgment be transmitted forthwith to the trial court concerned along with trial court record for compliance.

35. The trial court is directed to submit its compliance report to this Court within two months of the receipt of this order. Furthermore, the registry is also directed to place the compliance report on record.

(2026) 5 ILRA 1884
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 07.05.2026

BEFORE

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

Criminal Appeal No. 2399 of 1983

Raghuver & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

The matter pertains to an appeal against conviction in a murder case. The deceased was allegedly beaten to death with lathis by four accused after the main accused suspected him of informing the police about illicit liquor, resulting in their prosecution u/s 302/34 IPC.

Headnotes

A. Criminal matter-Criminal Procedure Code,1973-Section 374(2)-Indian Penal Code,1860-Sections 302/34-Murder-Common intention- Prior meeting of minds-Death of three appellants during pendency of appeal-Appeal surviving only against accused no. 4-Re-appreciation of evidence-Primary motive attributed to accused no. 1 and his brother due to suspected police informant leak regarding illicit liquor-No motive, prior dispute or family relationship established against the accused no.4-Absence of any explanation as to why accused no. 4 would participate in the commission of the crime on behalf of the primary accused-Medical evidence showing only

three head/body injuries-Improbability of four attackers causing only three injuries simultaneously-Discrepancies and contradictions in eye-witness testimonies-Trial court failing to record cogent findings on premeditation or shared common intention-General allegations insufficient to sustain conviction-Presence and participation of surviving appellant held highly doubtful –Relying on Krishna Govind Patil Vs. State of Maharashtra and Constable 907 Surendra singh Vs. State of Uttrakhand, conviction set aside-Surviving appellant acquitted.(Para 14 to 21)

Held

The court ruled that for a conviction u/s 302/34 IPC the prosecution must establish beyond reasonable doubt a prior meeting of minds, a pre-arranged plan or a prior concert. A criminal act must be proved to have been executed in furtherance of that shared common intention, which must precede the act constituting the offence. Vague and general allegations by prosecution witnesses are insufficient to fasten vicarious liability under section 34 IPC, particularly where the trial court fails to record cogent findings regarding premeditation or prior concert. More so, where the eye witnesses allege a simultaneous, joint assault by four accused persons armed with lathis, but the post mortem report reveals only three corresponding injuries on the deceased, such a stark discrepancy heavily undermines the credibility of the prosecution's narrative regarding the collective participation of all accused. (E-6)

Case law Cited

Krishna Govind Patil Vs State of Maharashtra 1963 SCC Online SC 29, Constable 907 Surendra Singh & Anr Vs State of Uttarakhand (2025) 5 SCC 433-referred to.

List of Acts

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

List of Keywords

Murder, Common intention, Vicarious liability, Joint liablity, Premeditation, Post mortem report, Abatement of appeal, Illicit liquour, Mukhbiri, Absence of enmity, Krishna Govind Patil Vs. State of Maharashtra, Constable 907 Surendra singh Vs. State of Uttrakhand.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. -2399 OF 1983

Raghuver & Ors Vs. State of U.P

From the judgment and order dated 07.05.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):

Ajay Kumar Pandey, G.C.Saxena Jaysingh Yadav, Y.S. Saxena

Adv. for Respondent(s):

D.G.A.

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

1. Heard Sri Ajay Kumar Pandey, learned Amicus Curiae for appellants, Sri G.N. Kanaujia, learned AGA-I for State-respondent and perused the trial court record and judgment and order of the trial court.

2. This criminal appeal has been preferred by the appellants Raghuver, Hira, Idal and Chhakki against the judgment and order of the learned Sessions Judge, Lalitpur dated 03.10.1983 passed in Sessions Trial No. 147 of 1982, arising out of crime No. 54 of 1982, Police Station Talbehat, District Lalitpur. By the impugned judgment and order dated 03.10.1983, the learned

Trial Court found guilty to accused appellants Raghuver, Hira, Idal and Chhakki under Section 302 read with Section 34 I.P.C., and sentenced to each accused appellant for life imprisonment. Aggrieved by the above judgment and order of conviction and sentence, accused-appellants have preferred this criminal appeal in this Court.

3. Informant Viran-PW-1 has given oral information (suchna jubani) at Police Station Talbehat on 15.06.1982 at 08:45 a.m. in the morning in respect of the incident which happened on 15.06.1982 at about 07:00 a.m. in the morning. According to the oral information of informant Viran-PW-1, that informant Viran was a resident of village Gevra, Police Station Talbehat; name of his father was Laxman. Accused appellants were also residing in the same village, Gevra. According to the informant Viran-PW-1, that on 14.06.1982, one Sub-Inspector of the police station had searched the house of Raghuver accused in connection with the manufacturing of illicit liquor, but after searching the house of Raghuver, police could not find anything. Raghuver suspected the hand of Laxman who had an impression that on the Mukhbiri of Laxman, this search had been made. Due to this reason, Raghuver and his family members felt aggrieved. On the next day, i.e. 15.06.1982 at about 07:00 a.m. my father Laxman had gone to ease himself from his house. After easing himself, he was on the road near his well (kuaan), then at that time, accused-appellant Raghuver, Hira, Idal and Chhakki surrounded Laxman and began to beating and assaulting by laathi. According to the informant Viran PW-1, he and his mother had seen the assaulting of his father Laxman by accused persons. At that time, my mother was at Well (Kuaan); we raised alarm and rushed to the place. Ram Dayal, Ram Prasad, and Tulsi had also reached at the spot and challenged the accused persons. However, after assaulting, accused- persons managed to escape. Laxman was lying unconscious with injuries on his body. The informant rushed to the house of Raja Sahab, who came to the spot and thereafter came his son Mahendra Singh with the tractor. The injured was taken to Thana, but on way, Laxman died.

4. On the basis of the above, oral information (suchna jubani) of informant Viran PW-1, a chik FIR exhibit Ka-1 was registered against the accused persons by Head Constable Jaideo Singh PW-4. The investigation of the case was taken by the Investigating Officer Harnath Singh PW-8. The Investigating Officer Harnath Singh PW-8 prepared panchayatnama of the dead body of the deceased Laxman. He also prepared other necessary police papers regarding the Panchayatnama, such as challan lash, photo lash and namuna seal which are from Exhibit Ka-12 to Ka-14, respectively. Thereafter the Investigating Officer handed over the dead body to Constable Lallan-PW-5 and Upendra Singh for autopsy examination by the doctor. He has also inspected the place of occurrence and prepared site plan as Exhibit Ka-15. He also taken blood stained soil and simple soil from the place of occurrence and prepared a recovery memo Exhibit Ka-16. The Investigating Officer recorded the statement of the prosecution witnesses including informant Viran PW-1, thereafter this witness Harnath Singh PW-8 was transferred. After transfer of Harnath Singh PW-8, Nandkishore Malla PW-6 had took the investigation of the case and filed a charge-sheet Exhibit Ka-10 on 16.07.1982 against accused-appellants.

5. Dr. H.N. Srivastava, PW-9, who was posted at the District Hospital, Lalitpur at that time, had conducted the postmortem examination of the deceased Laxman on 16.06.1982 and prepared postmortem report Exhibit Ka-20. According to the postmortem report Exhibit Ka-20, following ante mortem injuries were found on the dead body of the deceased Laxman.

"(1) Lacerated wound 2cms x 2cms x 2 inch front of skull, margins lacerated.
(2) Lacerated wound tear 3 cms x 0.2 cm x through and through right upper pinna.
(3) Contusion 2 cms x 2 cms on right elbow.
(4) Contusion 2 cms x 2 cms on right wrist back.
(5) Abrasion 2 cms x 2 cms on right thumb middle part back.
(6) Abrasion 2 cms x 2 cms to 1 cm x 1 cm on front of left leg in area about 6 cms x 6 cms multiple.
(7) Abrasion 2 cms x 1 cm on right ankle outside.
(8) Two contusions 3 cms x 3 cms to 2 cms x 2 cms in middle of back. Red blue.
(9) Traumatic swelling 6 cms x 4 cms on right side back, reddish blue colour.

6. After filing of the charge-sheet against the accused-appellants by Nandkishore Malla PW-6 in concerned Magistrate Court, the case was committed to the Court of Sessions for trial.

7. Charges were framed against accused-appellants on 22.11.1982 by trial Court under Section 302 read with Section 34 IPC. The accused-appellants denied from the charge as levelled against them and claimed for trial.

8. In support of its case, the prosecution adduced informant Viran PW-1, Ram Dayal PW-2, Tulsi PW-3 as witnesses of fact and Jaideo Singh PW-4, Upendra Singh Yadav PW-5, Nand Kishore Malla PW-6, Mahendra Singh PW-7, Harnath Singh PW-8, Dr. H.N. Srivastava, PW-9 as formal witnesses. Apart from the above ocular evidence, the prosecution also relied on documentary evidence from Exhibit Ka-1 to Exhibit Ka-20.

9. After recording of the evidence of all prosecution witnesses, both of fact and formal, the trial court examined the accused-appellants under Section 313 Cr.P.C. In their statements under Section 313 Cr.P.C., accused-appellants denied from the allegations. They have also stated that they have been falsely implicated in this case due to enmity. In their defence, the accused-appellants adduced Rashiya DW-1, Gopal Singh DW-2, and accused-appellant Raghuver DW-3 as defence witnesses.

10. The trial Court has heard arguments of both sides and after hearing the arguments and perusing the evidence as available on the record, found guilty to accused-appellants under Section 302 read with Section 34 IPC and convicted them for life imprisonment for the commission of the crime. Aggrieved by the judgment and order of conviction and sentence dated 03.10.1983, accused-appellants have preferred this criminal appeal in this Court.

11. It is noteworthy to mention here that appellant Nos. 1 and 2 Raghuver and Hira have died and due to their death, appeal in respect of appellant Nos. 1 and 2 namely Raghuver and Hira has been abated by order dated 16.07.2024. Appellant No.3 Idal has also died and appeal in respect of appellant No.3 Idal has also been abated by order dated 03.04.2026.Thus, accused-appellant No.1 Raghuver, appellant No.2- Hira and appellant No.3 Iddal have died during the pendency of appeal. This appeal, therefore, survives only in respect of accused-appellant No.4 Chhakki, hence we are adjudicating only in respect of surviving accused-appellant No.4 Chhakki.

12. Learned counsel for the surviving accused-appellant No.4 Chhakki has submitted that surviving accused-appellant No.4 Chhakki has been falsely implicated in this case. There is no motive of any kind against surviving accused-appellant No.4 Chhakki for the commission of the crime. It is also submitted that there is no any quarrel, dispute with the surviving accused-appellant No.4 Chhakki with deceased Laxman The informant Viran PW-1 falsely and with afterthought named in his jubani information, the name of surviving accused-appellant No.4 Chhakki and other deceased appellants. The prosecution case that four accused-persons have assaulted with laathi at deceased Laxman. It is an established fact that there is only three lacerated wounds on the head of the deceased Laxman, injury Nos.1, 2 and 9 are also on the head of the deceased on the back side. Thus, only three injuries were found on the head of the deceased Laxman in which injury No.9 occipital bone was found broken. It is argued by the learned counsel for surviving accused-appellant No.4 Chhakki that if four persons would attack simultaneously at the deceased Laxman, then there is most possibility that many other injuries would have been caused at the body of the deceased Laxman, but there is only three injuries i.e. injury No.1 and 2 and injury No.9 which are found on the head of the deceased Laxman. These injuries shows that involvement and implication of four persons including surviving accused-appellant No.4 Chhakki was falsely narrated by the prosecution. In this way, it is submitted by the learned counsel for the surviving accused-appellant No.4 Chhakki that he has no enmity so as to attack at the deceased Laxman. However, the informant has wrongly and falsely with consideration and afterthought named the surviving accused-appellant No.4 Chhakki for the alleged commission of the crime. It is submitted that the learned trial Court has not considered this major aspect also that there is no evidence on behalf of the prosecution that there was a premeditation, pre-planed and pre-concert, on behalf of the surviving accused-appellant No.4 Chhakki for the commission of the alleged crime. Despite this fact, the trial Court without considering those aspects and without recording any cogent reason in this regard, has given a finding against the evidence as available on the record. The trial Court has not appreciated the evidence in proper perspective and delivered a finding against the evidence and settled principles of the law. Therefore, the appeal of the surviving accused-appellant No.4 Chhakki is liable to be allowed and judgment and order of conviction and sentence passed against the surviving accused-appellant No.4 Chhakki with the aid of Section 34 IPC are liable to be set aside.

13. Per contra, learned AGA for respondent-State has submitted that all accused-persons including the surviving accused-appellant No.4 Chhakki simultaneously attacked with laathi at deceased Laxman and by assaulting with laathi in their hands, they have caused death of the deceased Laxman. There is a strong motive against the surviving accused-appellant No.4 Chhakki for the commission of the alleged crime. The surviving accused-appellant No.4 Chhakki has also equally participated and was present at the scene of the crime. In view of the above facts and evidence of prosecution witnesses of fact, informant Viran PW-1, Ram Dayal PW-2 and Tulsi PW-3, the learned trial Court has delivered a finding against the accused persons including surviving accused-appellant No.4 Chhakki for the commission of the crime. The trial Court has appreciated the evidence in a proper perspective and there is no illegality and perversity in the finding and reasoning as delivered by the trial Court in the judgment and order dated 03.10.1983. The appeal of the appellants is devoid of merit and hence liable to be rejected.

14. In the light of the above arguments and counter arguments on behalf of the surviving accused-appellant No.4 Chhakki and learned AGA for the State, from the perusal of the oral

information (suchna jubani) of informant Viran PW-1, we find that before the date of incident on 15.06.1982, local police had raid and searched the house of deceased accused appellant Raghuver in the impression that he was manufacturing illicit liquor in his house. However, the police could not recover any incriminating material including the illicit liquor. According to the suchna jubani, Raghuver and his family suspected that Laxman was the man behind this police raid and search, therefore, in the light of the above facts, only element of enmity is revealed insofar as the deceased accused appellant Raghuver and Hira are concerned, who are real brothers in information jubani, no any cause, reason or motive for the commission of the occurrence has been stated in respect of surviving accused-appellant No.4 Chhakki.

15. From the perusal of the evidence of eye-witness, Viran PW-1son of the deceased Laxman, we find that during the time of recording his evidence in the Court, informant Viran PW-1 has alleged general allegations about all accused-appellants that accused-appellants have had doubt that my father has done mukhibiri , by which police search was made at the house of Raghuver. In his cross-examination, Viran PW-1 has clearly stated that before the incident, there was no any enmity with accused persons and there was also no any mis-happening between them. From the perusal of the evidence of Ram Dayal PW-2, we find that there is no any specific allegation, motive and enmity against the surviving accused-appellant No.4 Chhakki for the commission of the alleged crime. Ram Dayal PW-2 has also made a general allegation against accused-persons that they had came jointly with laathi in their hands and attacked at Laxman. In the same way, next prosecution witness Tulsi PW-3 has also stated about accused-appellants. Tulsi PW-3 also made a general allegation without attributing any motive, reason or cause against surviving accused-appellant No.4 Chhakki for the participation in the crime. During the course of cross-examination, Tulsi PW-3 has stated that I had seen accused appellant No.1-Raghuver, accused-appellant No.2-Hira, accused-appellant No.3-Idal and accused-appellant No.4-Chhakki with laathi going from the back side of the house. How Daroga Ji has written, I could not know the reason for this. The Investigating Officer Harnath Singh PW-8, who investigated the case and recorded the statement of witnesses under Section 161 Cr.P.C. has stated in his cross-examination that no witness has told to me that they have seen Raghuver etc. coming out of their house. This witness has also stated that Tulsi had given the statement to me that I had seen Raghuver, Hira, Idal and Chhakki with laathi going from back side of the house.

16. Thus, prosecution witness Tulsi PW-3 is not aware about this fact that whether he had seen or not accused-appellant Raghuver, Hira, Idal and Chhakki with laathi in their hands going from the back side of the house. Meaning thereby, this witness himself is not sure and certain about the above facts.

17. Thus, from the perusal of the evidence of informant Viran PW-1, Ram Dayal PW-2, Tulsi PW-3, we find that only this fact is revealed from the evidence of above prosecution witnesses that enmity was only between deceased Laxman and accused-Raghuver and his brother Hira, because Raghuver suspected that Laxman has given information to the police and police searched his house for illicit liquor. There is no any single fact about any reason, cause or enmity that motivated to surviving accused-appellant No.4 Chhakki to come with laathi in his hands and attack on the body of the deceased Laxman. The accused-appellant Raghuver and Hira were real brothers. However, the surviving accused-appellant No.4 Chhakki is not a family member of

accused-appellant Raghuver. From this, it appears that surviving accused-appellant No.4 Chhakki has been falsely implicated in this case without any cause or reason only after consideration and afterthought. It was Raghuver and his family who has doubted about the deceased Laxman that Laxman has informed the local police about making of illicit liquor in his house. However, from the perusal of the evidence of Viran PW-1, Ram Dayal PW-2, Tulsi PW-3, we find that there is no any evidence of this kind on behalf of the prosecution that why surviving accused-appellant No.4 Chhakki would be present and participated in the commission of the crime for accused-appellant Raghuver and his family. The prosecution evidence is silent on this point. The learned trial Court has also not considered this material and major aspect in its discussion and finding when trial Court has held guilty to all accused-appellants with the aid of Section 34 IPC. The learned trial Court only with the aid of Section 34 IPC held guilty of accused-appellants including surviving accused-appellant No.4 Chhakki without discussing and giving any finding in this respect that why surviving accused-appellant No.4 Chhakki would participated in the commission of the alleged crime. Due to this reason, participation by surviving accused-appellant No.4 Chhakki in the commission of the crime appears to be doubtful and shrouded in suspicion.

18. It is settled principle of law that for the conviction of any person under Section 302 IPC with the help of Section 34 IPC, definite and conclusive evidence must be present on the record that accused-appellants have by a premeditation, preplanned and preconcert, along with other accused person for committing the alleged offence. However, we find that in the case at present, there is no any evidence of this kind and nature which could show that there was a premeditation, preplan, preconcert amongst accused-appellants for the commission of the alleged crime. Apart from the above elements, overt act of other accused-persons must be proved by the prosecution in respect of the commission of the crime. The Supreme Court in ***Krishna Govind Patil Vs. State of Maharashtra 1963 SCC Online SC 29*** has held in respect of Section 34 IPC thus:

"It is well settled that common intention within the meaning of the section implied a pre-arranged plan and the criminal act was done pursuant to the prearranged plan. The said plan may also develop on the spot during the course of the commission of the offence; but the crucial circumstance is that the said plan must precede the act constituting the offence. If that be so, before a court can convict a person under s. 302, read with Section 34 of the Indian Penal Code, it should come to a definite conclusion that .the said person, had a prior concert with one or more other persons, named or unnamed, for committing the said offence."

19. From the perusal of the finding and reasoning as given by learned trial Court in paragraph 12 at page 6 of the judgment, it appears that trial Court has not discussed and considered on this point that whether there was any premeditation, preplan and preconcert of surviving accused-appellant No.4 Chhakki with deceased accused-appellants Raghuver, Hira and Idal for the commission of the crime. The learned trial Court only on the ground of injuries found on the dead body of the deceased Laxman has held that these accused had an intention to kill in furtherance of common intention of all, that they had assaulted Laxman to such an extent that he had lost his life within just an hour and after the incident, when he was being taken to the police station, the intention to kill has been established. Thus, the trial Court has not considered and given any cogent finding about premeditation, preplan and preconcert of surviving accused-appellant Chhakki with deceased-appellant Raghuver, Hira and Idal for

the commission of the crime. The Hon'ble Supreme Court in the case of ***Constable 907 Surendra Singh and Another Vs. State of Uttarakhand (2025) 5 SCC 433*** has held in paragraph 30 in respect of Section 34 IPC thus:

"By now it is a settled principle of law that for convicting the accused with the aid of Section 34 of the IPC the prosecution must establish prior meetings of minds. It must be established that all the accused had preplanned and shared a common intention to commit the crime with the accused who has actually committed the crime. It must be established that the criminal act has been done in furtherance of the common intention of all the accused."

20. Thus, in the light of the above discussion, we find that the presence and participation of the surviving accused-appellant Chhakki at the place of occurrence and in the commission of the crime is highly doubtful. There is no any evidence of this nature, which could support the reason and causes by which surviving accused-appellant Chhakki would participat in the commission of the alleged crime. The trial Court, on general allegations by the prosecution witnesses, has only on the ground of common intention and in furtherance of the common intention of all the accused persons, held guilty to surviving accused-appellant Chhakki. In our view, this is not sustainable in the eyes of law. Apart from the above facts even in the light of the law as propounded by the Hon'ble Supreme Court in ***Krishna Govind Patil (supra) and Constable 907 Surendra Singh and Another (supra)***, we find that premeditation, preplanned, and preconcert could not be proved by the prosecution behind reasonable doubt. In a heinous offence like murder, every ingredient of the law must satisfy the requirements and evidence must be present on the record in this respect. Thus, in the light of the above discussion, we are unable to sustain the judgment and order of the trial Court dated 03.10.1983 in respect of surviving accused-appellant **Chhakki**. Therefore, we find that the judgment and order dated 03.10.1983 of conviction and sentence as passed by the trial Court is not sustainable and affirmable in respect of surviving accused-appellant Chhakki. Hence, we inclined to set aside the judgment and order of conviction and sentence as passed by the trial Court in respect of surviving accused-appellant **Chhakki.**

21. The criminal appeal is allowed. Accordingly, we set aside the impugned judgment and order dated 03.10.1983 of conviction and sentence passed against the surviving accused-appellant, **Chhakki,** by learned Trial Court in Sessions Trial No. 147 of 1982, arising out of Crime No. 54 of 1982, Police Station Talbehat, District Lalitpur. The appellant is acquitted of the charge under Sections 302/34 IPC. The appellant, Chhakki, is on bail. He need not surrender. His bail bonds are cancelled and sureties stand discharged. However, he shall comply with the provisions of Section 437-A Cr.P.C.

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

(2026) 5 ILRA 1892
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 22.05.2026

BEFORE

THE HON'BLE SANTOSH RAI, J.

Criminal Appeal No. 2452 of 1988

Tosif & Anr. **...Appellants**
Versus
State **...Respondent**

Issue for consideration

In the present case, The prosecutrix alleged that the appellants committed rape upon her in an orchard and robbed her silver ornaments, leading to their conviction u/s 376 IPC, which was challenged in appeal.

Headnotes

A. Criminal matter-Criminal Procedure Code,1973-374(2) –Indian Penal Code,1860-Section 376-Rape-Appreciation of evidence-FIR-Material omissions-Contradictions and improvements-Medical evidence-Absence of injuries-Non-recording of statement u/s 164 Cr.P.C.-Identification of Accused doubtful-Independent witnesses not examined and sole supporting witness found to be hearsay-Conviction unsustainable-Trial court ignored material inconsistencies and omissions in prosecution evidence-Prosecution failed to prove guilt beyond reasonable doubt-Appeal allowed.(Para 17 to 32)

Held

The court held that absence of any allegation of rape in the FIR, coupled with non-recording of the prosecutrix's statement u/s 164 CrPC and lack of medical corroboration created serious doubt regarding the prosecution case, entitling the accused to acquittal. (E-6)

Case law Cited

Tahsidar Singh & Anr Vs State of U.P., AIR (1959) SC 1012, Shivaji Sahabrao Bobade & Anr Vs State of Maharashtra (1973) 2 SCC 793, The State of Punjab Vs Jagir Singh, Baljit Singh & Karam (1974) 3 SCC 277, Yogesh Singh Vs Mahabeer Singh & Ors (2017) 11 SCC 195-referred to.

List of Acts

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

List of Keywords

Rape, Section 376, Appreciation of evidence, Material contradictions, Medical evidence, Burden of proof, Absence of injuries, Statement u/s 164 CrPC, Hearsay evidence. Benefit of doubt.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. -2452 OF 1988
Tosif & Anr. Vs. State
From the judgment and order dated 22.05.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Adv. for Appellant(s):
M. Islam

Adv. for Respondent(s):
A.G.A.

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

1. Heard Shri Ajay Kumar Mishra, learned counsel for the appellant and Shri Vibhav Anand Singh, learned AGA for the State.

2. The present appeal is preferred under Section 374 of Cr.P.C. by the accused-appellants Tosif (died) and Badullah to set aside the judgment and order dated 17.10.1988 passed by 5th Additional Sessions Judge, Meerut in Sessions Trial No.383 of 1984 under Section 376 IPC, Police Station- Kithore, District- Meerut, whereby both the appellants were convicted under Section 376 IPC and sentenced to undergo rigorous imprisonment for a period of seven years.

3. Tersely, the prosecution case, in brief, is that on 21.06.1984 at about 2:00 P.M., the accused Tosif and Badulla, residents of Village Shahjahanpur, P.S.- Kithore, District- Meerut, allegedly came to an orchard situated within the limits of the said village and committed rape upon Smt. Rajendri, wife of Suraj Aheri. It is further alleged that the accused persons robbed one hansali, one pair of khandwe, and silver payjeb belonging to the complainant, and upon her resistance, assaulted her and threatened her with dire consequences in case she reported the incident. Thereafter, the complainant went to the police station along with her father-in-law, but her report was not lodged. Subsequently, on 22.06.1984, she submitted a written complaint to the S.S.P., Meerut, upon which an order for investigation was passed. After investigation, S.I. Lal Singh Harit submitted charge-sheet against the accused Tosif and Badulla (Ext. Ka. 5).

4. The 5th Additional Sessions Judge, Meerut, after perusal of the case diary and other relevant papers, framed the charge against the accused-appellants under Section 376 IPC on 02.07.1986. The prosecution examined Smt. Rajendri, the complainant as P.W.-1, Km. Suresh as P.W.-2, H.C. Rajendra Singh as P.W.-3, S.I. Lal Singh Harit as P.W.-4 and Dr. Vidhu Lata Tiwari as P.W.-5. Accused persons produced no defence witness.

5. P.W.-1, Rajendri (the complainant), duly proved the written complaint (Ext. Ka-1). P.W.-3, H.C. Rajendra Singh proved the chik report (Ext. Ka-2) and the copy of the General Diary No.32 (Ext. Ka-3). The Investigating Officer, P.W.-4 S.I. Lal Singh Harit, proved the site plan (Ext. Ka-4) and the chargesheet (Ext. Ka-5) and P.W.-5 Dr. Vidhu Lata Tiwari proved the medical report (Ext. Ka-6).

6. The accused-appellants were examined under Section 313 Cr.P.C., wherein they denied the prosecution allegations and further stated that they have been falsely implicated in this case due to previous rivalry.

7. P.W.-1 Smt. Rajendri stated briefly that about four years prior to her deposition, at about 2:00 P.M., she was alone in the orchard situated on Shahjahanpur Dhalwala Road as her husband and father-in-law had gone to Moradabad for selling fruits. Accused Tosif and Badulla came there and committed rape upon her one after another. Meanwhile, her mother-in-law and sister-in-law

arrived at the spot, upon which the accused persons fled away after robbing her Hansli, Khandwa and Payjeb and also extended threats of dire consequences. She informed her husband and father-in-law about the occurrence on their return. She further stated that though, she went to the police station, her report was not lodged, whereafter she approached the S.S.P., Meerut by submitting an application. She was medically examined and her statement was recorded by the Investigating Officer.

8. P.W.-2 Km. Suresh stated briefly that about four years prior, at about 2:00 P.M., when her father and brother had gone out in connection with selling fruits, she along with her mother went to the orchard where her Bhabhi Smt. Rajendri was present. On reaching there, she heard noise and saw accused Tosif committing rape upon Smt. Rajendri, while accused Badulla was also present nearby. On their raising alarm, the accused persons fled away carrying the Payjeb, Khandwa and Hansli of Smt. Rajendri.

9. P.W.-3 Head Constable Rajendra Singh stated briefly that on 23.06.1984 he was posted as Head Moharrir at Police Station Kithore. He received an application of Smt. Rajendri forwarded by the S.S.P., Meerut with directions to register the case. On the basis of the said application, he registered the case at Crime No. 187 and prepared the chik F.I.R. in his handwriting and signature, which was marked as Ext. Ka-2. He also prepared the General Diary entry, marked as Ext. Ka-3.

10. P.W.-4 S.I. Lal Singh stated briefly that he investigated the case, recorded the statements of witnesses, inspected the place of occurrence and prepared the site plan Ext. Ka-4. On the basis of statements of witnesses, he converted the case under Sections 376/506 I.P.C. He received the medical report on 26.06.1984 and arrested accused Badulla on 27.06.1984. After completion of investigation, he submitted the charge-sheet Ext. Ka-5 against the accused persons.

11. P.W.-5 Dr. Vidhu Lata Tiwari, Medical Officer, Women Hospital, Meerut, stated briefly that on 26.06.1984, she medically examined Smt. Rajendri wife of Suraj. On examination, she found her teeth 15□15, height about 5 feet and weight about 90 pounds. Breasts, axillary hair and pubic hair were well developed. On vaginal examination, old healed tears were present in the hymen and the vagina admitted two fingers easily. No internal or external injury was found on any part of the body. Vaginal smear was taken for examination and X-ray of wrist, knee and elbow joints was advised. In her opinion, the victim was habituated to sexual intercourse and no definite opinion regarding rape could be given.

12. In brief the grounds of appeal are that the conviction and sentence awarded to the appellants are against the weight of evidence on record, and upon a proper appreciation of the evidence available on record, the appellants are entitled to acquittal. In any case, the sentence awarded is too severe.

13. Learned counsel for the appellant submits that the allegation against the accused-appellant committing rape along with the co-accused Tosif, who has already died during the pendency of the present appeal, is not reliable. He further submits that the FIR was lodged at belated stage and no plausible explanation for the delay was furnished by the prosecution. As per the allegations contained in the FIR, the accused-appellant Badulla and co-accused Tauseef

committed the offences of loot and outraged the modesty of the victim/informant, Rajendri. Accordingly, the first information report was registered under Sections 354, 394 and 506 IPC, whereas the charge-sheet was ultimately submitted under Section 376 IPC. Thus, according to the learned counsel, the Investigating Officer found no reliable material or evidence regarding the commission of loot or intimidation causing death to the victim and her family members.

14. It is further submitted that the statement of the victim under Section 164 Cr.P.C. was not recorded before the concerned Magistrate. Furthermore, there are material contradictions and improvements in the statements of the victim. The Investigating Officer also committed gross illegality and material irregularity during the course of investigation. The medical report does not corroborate the version of the victim, who was examined as PW-1 before the trial court. During medical examination, no external or internal injuries were found on the person of the victim, which creates a reasonable doubt regarding the prosecution case that the accused-appellants Badulla and Tauseef committed rape upon the victim and looted certain ornaments from her possession. The Investigating Officer neither recovered nor collected the alleged looted ornaments mentioned in the FIR. It is, therefore, submitted that due to previous enmity and on the basis of irrelevant material, the charge-sheet was filed before the trial court. The trial court also failed to consider the material contradictions in the statements of the victim and other prosecution witnesses, and consequently held the accused-appellants Badulla and Tauseef guilty under Section 376 IPC merely on the basis of conjectures and surmises.

15. Learned AGA vehemently opposed the submissions advanced by the learned counsel for the appellant and contended that the accused-appellants were involved in the commission of rape upon the victim. Admittedly, the statement under Section 164 Cr.P.C. was not recorded before the Magistrate, however, the same is merely an omission and the prosecution case cannot be doubted on this sole ground. It is further submitted that the prosecution case cannot be discarded merely because minor contradictions exist in the statements of the prosecution witnesses. Where witnesses are examined after a long lapse of time, minor discrepancies may naturally occur due to human error.

16. In light of the submissions advanced by the learned counsel for the appellant and the learned AGA, we have perused the material evidence available on record and have also perused the judgment and order passed by the learned trial court dated 17.10.1988.

17. A typed written tehrir (Ex. Ka-1) was submitted before the S.S.P., Meerut, on 22.08.1984. The said tehrir was submitted by the victim, Rajenderi, herself, and the first information report (Ex. Ka-2) was registered on the basis of the said written tehrir. Both the formal papers were proved by the informant (PW-1) and the formal witness (PW-3). In the tehrir and the first information report, there is no allegation of rape against the accused-appellants. The allegations, as mentioned in the tehrir and the first information report, are that the accused persons, Tosif and Badulla, committed □insult□ and further looted the □silver ornaments□ of the victim. On the basis of the said allegations, the first information report was registered under Sections 354, 394 and 506 IPC at Police Station- Kithore, District- Meerut. However, in Column No. 3 of the FIR, Section 506 IPC is missing, and only Sections 354 and 394 IPC have been mentioned therein. The FIR was lodged on 23.06.1984, i.e., after two days of the alleged incident.

18. In the FIR, no specific allegation has been made regarding causing injuries by the accused-appellants. After registration of the FIR, the site plan was prepared by the Investigating Officer, who was further examined before the trial court. In the site plan, two witnesses, namely the mother-in-law and sister-in-law of the victim Rajenderi, have been shown at sign □B□, which is situated at a short distance from sign □A□. Sign □A□ has been shown as the place of occurrence, which indicates that the mother-in-law and sister-in-law of the victim were also present near the spot i.e., in the same orchard. The time of the incident is alleged to be about 2:00 p.m. Though, victim, in her statement before the trial court at page no. 4, stated that about 10 to 20 persons, including her brother-in-law and others, were present near the place of occurrence but according to her statement, only the mother-in-law and sister-in-law rushed towards the spot when one of the accused, Tosif, was clinging to the victim. After seeing the witnesses, namely the mother-in-law and sister-in-law of the victim, the accused persons fled away from the spot. In the statement of the victim, it has nowhere been stated that the accused-appellant, Badulla, was clinging to or committing rape upon the victim when her mother-in-law and sister-in-law reached the place of occurrence. As per the broad version of the prosecution story, one of the accused, Tosif, was committing rape upon the victim when the witnesses rushed towards the place of occurrence, whereupon the accused persons fled away, whereas the witnesses were also present near the place of ocurrence, in the same orchard. Out of the two witnesses, only one witness, namely PW-2 Kumari Suresh, who is the sister-in-law of the victim, was examined by the prosecution. She stated in her deposition that she was not familiar with the accused-appellants. She further stated that the names of the accused-appellants were disclosed to her by some other person, which clearly indicates that the statement of PW-2 is based upon information received from another person. Thus, her testimony falls within the category of □hearsay evidence□, which is neither reliable nor admissible in evidence.

19. In the tehrir and first information report, it has also been alleged that the accused-appellants looted silver ornaments from the possession of the victim. The victim, PW-1 Rajendri, has also stated that the accused-appellants committed rape upon her and also snatched her silver ornaments and fled away. However, the Investigating Officer, PW-4, who was examined before the trial court, stated that the alleged looted items were not recovered from the possession of the accused persons and that all the said items were found lying near the place of occurrence. That is why no recovery memo, etc., was prepared with regard to the alleged looted articles. Admittedly, the accused-appellant Badulla was arrested soon after the incident and, as per the memo, no incriminating article was recovered from his possession, whereas the recovery memo has not been formally proved before the trial court in accordance with law, a copy thereof is available on the record, and the said fact has been clearly mentioned in G.D. No. 24/18:50 hours dated 26.06.1984. It has also been clearly mentioned therein that no incriminating article was recovered from the possession of the accused-appellant, Badulla. Thus, as per the recovery memo, the date of arrest/recovery has been mentioned as 26.06.1984, whereas the Investigating Officer has stated in his deposition that the accused-appellant was arrested on 27.06.1984. The same appears to be a material contradiction in the statement of the Investigating Officer and the preparation of the recovery memo.

20. In the FIR, no specific allegation has been made regarding causing injuries by the accused-appellants. The victim, who has been examined as PW-1 before the trial court, stated in

her deposition that the accused-appellants caused injuries to her and also looted her silver ornaments. She further stated in her deposition before the trial court, at page no. 4, that the accused-appellants caused injuries to her, due to which she became unconscious. She further stated that the accused-appellant had bitten her on the cheek and had stuffed a cloth into her mouth. However, PW-5 Dr. Vidhu, who was examined as an expert witness, stated that no external or internal injury was found on the body of the victim. She proved the injury report (Ext. Ka-6). It has been clearly mentioned in the injury report that hymen torn old healed tears present. Vagina admits two fingers easily. There is no internal or external injury seen on any part of the body. In my opinion, she is used to sexual intercourse, so no opinion about rape can be given. Admittedly, the injury report was prepared on 26.06.1984, and no external or internal injuries were noted by the doctor. Thus, the statement of the victim that the two accused persons had assaulted her and bitten her on the cheek and caused injuries is not corroborated by the medical evidence available on record. Consequently, there exists a material contradiction between the statement of the victim and the medical evidence.

21. PW-1 is the victim as well as the main witness of the alleged incident. In her examination-in-chief, she stated that she was previously acquainted with the accused-appellants and that they had committed rape upon her. However, during the course of cross-examination, she stated that she was not acquainted with the accused-appellants earlier. She further stated that she had seen the accused-appellants for the first time at the place of occurrence, therefore, identification of accused persons on the spot by the victim is also appears to be doubtful. Admittedly, the victim alleged that the accused-appellants had looted her ornaments, however, the said allegation has not been corroborated by the statement of the Investigating Officer. No incriminating/looted article was said to be recovered from the possession of the accused-appellant.

22. The injuries alleged in the present case as stated by the victim is not reliable. Admittedly, the injuries alleged to have been caused by the accused-appellants upon the victim are not corroborated by the relevant medical evidence available on record. That appears to be the reason why the Investigating Officer exonerated the offence under Section 394 IPC or Section 323/324 IPC.

23. Admittedly, the place of occurrence is an open place, namely an orchard. In the North and East direction of the place of occurrence, the orchards of Khurshid Alam and Hafeez respectively are clearly shown, whereas in the southern direction, field of sugercane of Sahid Akhtar is shown. The victim has stated in her deposition that about 10 to 20 persons were present near the place of occurrence, however, none of them rushed towards the spot. She further stated that the accused-appellants had stuffed a cloth into her mouth, due to which she was unable to speak. She also stated that, owing to fear of the accused-appellants, she did not raise any alarm. However, she again stated that when she raised an alarm, upon hearing the hue and cry, her mother-in-law and sister-in-law reached the spot. Thus, the victim has made contradictory statements in her deposition in this regard.

24. So far as the allegation regarding commission of rape is concerned, no specific statement or averment in that regard is available in the FIR or the tehrir whereas the FIR was registered by the victim herself. In her statement before the trial court, the victim stated that the

accused-appellants had committed rape upon her and had inserted their private part into her private. Admittedly, no statement of the victim under Section 164 Cr.P.C. was recorded during the course of investigation. It is also a material omission on the part of the Investigating Officer that the statement of the victim under Section 164 Cr.P.C. was not recorded, and no plausible explanation in this regard has been furnished by the prosecution. Meaning thereby, for the first time before the trial court, the victim stated that the accused-appellants had committed rape upon her.

25. In the case of **Tahsildar Singh and Another vs. State of U.P., AIR 1959 SC 1012,** the Apex Court has held that only those omissions in the statement of a prosecution witness made before the police can be used for the purpose of contradiction, which by necessary implication may be deemed to have been included in the expressly recorded statement. No other omissions can be permitted to be used as contradictions. The omissions must be in regard to the important features of the incident in the statement made before the police. Thus, every omission does not amount to a contradiction unless such omission vitally touches the very factum required to be proved by the prosecution. In the case at hand, the prosecutrix herself registered the FIR before the police station and did not level any allegation against the accused-appellant regarding the commission of rape with her, but simply alleged commission of □insult□. Further, the FIR was registered after three days of the incident. In view of the above, it appears that the same is nothing but a material □improvement□ and it vitally creates doubt upon the statement of prosecutrix recorded before the trial court.

26. On the facts and circumstances of the case, and in view of the submissions and statements of the victim before the trial court, it clearly appears the material contradictions and improvements in the statements of prosecution witnesses.

27. In the case of **Shivaji Sahabrao Bobade and Another vs. State of Maharashtra, (1973) 2 SCC 793,** the Apex Court has held as under:

"6. Even at this stage we may remind ourselves of necessary social perspective in criminal cases which suffers from insufficient forensic appreciation. The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs thro' the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light heartedly as a learned author has sapiently observed, goes nauch beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted 'persons' and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that "a

miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent.... In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents. We have adopted these cautions in analysing the evidence and appraising the soundness of the contrary conclusions reached by the Courts below. Certainly, in the last analysis reasonable doubts must operate to the advantage of the appellant. In India the law has been laid down on these lines long ago."

28. In the case of **The State of Punjab vs. Jagir Singh, Baljit Singh and Karam, (1974) 3 SCC 277**, the Apex Court has held as under:

"A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question which he is charged. Crime is an event in real life and is the product of as to whether the accused arraigned at the trial is guilty of the crime with interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

29. In the case of **Yogesh Singh vs. Mahabeer Singh and Others, (2017) 11 SCC 195**, the Apex Court has held as under:

"15. It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. However, the burden on the prosecution is only to establish its case beyond all reasonable doubt and not all doubts. Here, it is worthwhile to reproduce the observations made by Venkatachaliah, J. in State of U.P. v. Krishna Gopal, (1988) 4 SCC 302:

"25... Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concept of probability, and the degrees of it, cannot obviously g be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same

time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice."

16. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. (Vide Kali Ram v. State of H.P., (1973) 2 SCC 808, State of Rajasthan v. Raja Ram, (2003) 8 SCC 180, Chandrappa v. State of Karnataka, (2007) 4 SCC 415, Upendra Pradhan v. State of Orissa, (2015) 11 SCC 124 and Golbar Hussain v. State of Assam, (2015) 11 SCC 242)"

30. Admittedly, the victim was not previously acquainted with the accused-appellants, which clearly indicates that she had seen the accused-appellants for the first time at the place of occurrence. How the victim identified the accused-appellants is not clear from the evidence available on record. It appears that she made statements regarding the identification and involvement of the accused-appellants on the basis of information or suggestions given by others. PW-2 also stated in her deposition that she was not familiar with the accused-appellants earlier. Admittedly, about 10 to 20 independent persons were present near the place of occurrence, however, no independent and reliable witness has been examined by the prosecution to substantiate the allegation of rape against the accused-appellants. PW-2 is an interested witness, and her deposition is based upon □hearsay□ evidence. Though PW-1 is the victim of the case, material contradictions and improvements are available in her testimony regarding the causing of injuries, commission of loot, commission of rape, raising of alarm, identification of the accused-appellants on spot, and her prior unfamiliarity with the accused-appellants, etc.

31. Thus, under the totality of the facts and circumstances of the case and evidence available on the record, it appears that the learned trial court did not properly exercise judicial discretion while appreciating the evidence available on record. The learned trial court has ignored the material contradictions, improvements and omissions appearing in the statements of the prosecution witnesses, including the victim. It appears that the trial court has held the accused-appellants guilty merely on the basis of conjectures and surmises. Thus, the impugned judgement and order passed by the trial court suffers from illegality and is liable to be set aside.

32. Thus, in view of the above observations, the appeal is **allowed**. The impugned judgement and order dated 17.10.1988 passed by 5th Additional Sessions Judge, Meerut whereby the appellant has been convicted and sentenced as above, is hereby set aside. The appellant is acquitted of the charges levelled against him.

33. The appellant is on bail. He need not surrender. The bail bonds and sureties furnished earlier during trial/appeal shall stand discharged.

34. Office is directed to send the trial court record back to the court concerned within 15 days from today.

(2026) 5 ILRA 1901
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 26.05.2026

BEFORE

THE HON'BLE MADAN PAL SINGH, J.

Criminal Appeal No. 2737 of 2026

Kapil Som & Anr. **...Appellants**
Versus
State of U.P. & Anr. **...Respondents**

Issue for consideration

The present appeal concerns the legality of criminal prosecution based on an alleged false promise of marriage, consensual relationship, and invocation of the SC/ST Act.

Headnotes

A. Criminal matter-Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989-Section 14A(1), 3(1)(r), 3(1)(s) & 3 (2)(v)-Bhartiya Nyaya Sanhita,2023-Sections 352, 351(2), 69-False promise of marriage-Consent-Quashing of Proceedings-Mere refusal or failure to marry, in the absence of evidence that the promise was false from the very inception and made solely to obtain consent for sexual intercourse, does not constitute the offence of rape-Section 69 BNS was held inapplicable retrospectively-the ingredients of the SC/ST Act were also not established- Appeal Allowed.(Para 11 to 34)

Held

The court held that a prolonged consensual relationship without protest or insistence on marriage generally negates the allegation that consent was obtained by deception. Section 69 of the BNS,2023 operates prospectively and cannot be applied to acts committed before 1 july 2024. (E-6)

Case law Cited

Sheikh Arif Vs The State of Maharashtra & Anr (CRLA No. 1368 of 2023), Naim Ahmad Vs The State (NCLT Delhi) (CRLA No. 257 of 2023),Pramod Suryabhan Pawer Vs The State of Maharashtra AIR (2019) SC 4010, Abbas Ahmed Choudhury Vs State of Assam (2010) 12 SCC 115, Deepak Gulati Vs State of Haryana AIR 2013 SC 2071, Mahesh DamU Khare Vs The State of Maharashtra & Ors 2024 SCC OnLine SC 347, Nitin B. NIkhare Vs The State of Maharashtra & Anr. CRLA No(S)..... of 2025 arising out of SLP (Crl.)No 1889 of 2024-referred to.

List of Acts

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Bhartiya Nyaya Sanhita, 2023.

List of Keywords

False promise of marriage, Consent, Misconception of fact, Rape, Consensual relationship, Breach of Promise to marry, Section 69, BNS,2023, Abuse of Process of court, Delay in FIR Prima facie case.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. -2737 OF 2026
Kapil Som & Anr. Vs. State of U.P & Anr
From the judgment and order dated 26.05.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Adv. for Appellant(s):
Aditya Prasad Mishra
Adv. for Respondent(s):
G.A.

(Delivered by Hon'ble Madan Pal Singh, J.)

1. Heard learned counsel for the appellants and the learned A.G.A. for the State. Despite the fact that notice has been served as per the counter affidavit filed on behalf of the State, no one appeared for opposite party no.2.

2. By means of the present criminal appeal under Section 14A(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellants have prayed for quashing of the order dated 5th July, 2025 passed by the Special Judge (S.C./S.T. Act), Moradabad in Special Sessions Trial No. 1283 of 2025 (State Vs. Kapil Som & Another) arising out of Case Crime No. 29 of 2025, under Sections 352, 351 (2) 69 B.N.S. and Sections 3 (1) (r), 3 (1) (s) and Section 3 (2) (v) of SC/ST Act Police Station-Mahila Thana, District-Moradabad as well as further proceedings of above mentioned criminal case.

3. Brief facts are that a first information report has been lodged by opposite party no.2 (prosecutrix herein) against the appellants along with four named persons on 1st May, 2025 at 18:35 hrs. which has been registered as Case Crime No. 29 of 2025, under Sections 352, 351 (2) 69 B.N.S. and Sections 3 (1) (r), 3 (1) (s) and Section 3 (2) (v) of SC/ST Act Police Station-Mahila Thana, District-Moradabad. In the first information report, it has been alleged by the prosecutrix that about 3 years ago, accepting the fraud request of Kapil Som (appellant no.1 herein) on the prosecutrix's Insta ID, started talking to appellant no.1 and one day appellant no.1 told the prosecutrix that he likes her as she is very beautiful and he wants to meet her and also talk about their marriage after coming to Moradabad, on this, the prosecutrix said to appellant no.1 to come to her sister house, namely, Kamlesh siutated in Kanshi Ram Yojana, where everything will be discussed. Appellant no.1 came to the house of the sister of the prosecutrix and proposed to come to Meerut along with him, where they will get married. Believing the words so given by appellant no.1, the prosecutrix went to Meerut and appellant no. 1 had physical relations with her against her will several times in his house even before marriage. On the pressure of the prosecutrix, appellant no.1, lying to the prosecutrix, his father i.e. appellant no.2 and relative of appellant no.1 took her to Meerut court and made her sign on a stamp on 1st October, 2022 and said that now her marriage with appellant no.1 has been registered and they both will live as husband and wife. After some time, in December, 2023, appellant no.1 left the prosecutrix at Moradabad Zero Point and ran away. The prosecutrix complained about the same to the Senior Superintendent of Police, upon which appellant and his father (appellant no.2) took her back to Meerut. Taking the prosecutrix to their house at Meerut, appellant no.2 found the prosecutrix alone and raped her several times in the room. When the prosecutrix complained about the same to appellant no.1, he abused her by indicating as "Chamariya" and said that he did not marry her as it is their business. After trapping girls like the prosecutrix, the appellants take away their money and they also use them. Appellant no.1 allegedly swindled approximately 2 to 2.5 lakhs rupees from the prosecutrix as cash and online. Last year, when the prosecutrix informed her family about the same her family members

arrived at the house of appellant no.1 to take her back, appellant nos. 1 and 2, sisters of appellant no.2, namely, Vishakha, Preeti, Monica, and brother Rahul, all of them, abused the prosecutrix and her family members and threatened to kill her and said them to get out from their house as they have no relationship with her. Thereafter the appellants and their relatives threw the prosecutrix out from their house. After registration of the said first information report, the investigation was proceeded. After completion of investigation, charge-sheet was submitted against the appellants on which cognizance was taken and summoning order of appellants was also passed by means of the order impugned. Hence the present criminal appeal.

4. Learned counsel for the appellants submits that as per the prosecution, the alleged incident started from 1st October, 2022 but the first information report was lodged by the prosecutrix on 1st May, 2025 at 18:35 hours i.e. after two years and eight months for which no plausible explanation has been given and the same appears that the said first information report is an afterthought. He then submits that admittedly the prosecutrix came in the contact of appellant no.1 and she herself joined the company of appellant no.1 on her own sweet and free will. On 1st October, 2022 admittedly the prosecutrix entered into marriage agreement and she would started living with appellant no.1 as her wife on her sweet will. The prosecutrix remained in the company of appellant no.1 for more than one year without any protest or raising any alarm. As per her own version as unfolded in the first information report and her statements recorded under Sections 161 and 164 Cr.P.C., she paid handsome amount to appellant no.1 on her own free will.

5. It is then submitted that the appellants are innocent, as the allegations made in the first information report implicating the appellants along with other accused are false and fabricated. The first information report lodged by opposite party no.2 is nothing but a bundle of lie and the same has been lodged only for exploiting the appellants by indulging their names in a fake, false and frivolous case. The entire prosecution story as unfolded in the first information report is absolutely a self-made story projected by opposite party no.2. The relation between the appellant no.1 and the informant is consensual in nature. There is no independent witness, who came forward to support the prosecution version. The allegation made against appellant no.2 who is none other than the father of appellant no.1, is only exerted pressure upon appellants in order to complete the ulterior motive of opposite party no.2.

6. It is next submitted that the allegation made by opposite party no.2 against the appellants does not constitute the offence under Section U/s, 352, 351 (2), 69 B. N. S. 2023 and U/s 3 (1) (r), 3 (1) (s), 3 (2) (v) of The Schedule Caste and Schedule Tribes (Prevention Of Atrocities) Act 1989 in view of the judgment of the Hon'ble Apex Court rendered in the case of **Sheikh Arif versus The State of Maharashtra and Another passed in Criminal Appeal No. 1368 of 2023** as well as in the case of **Naim Ahmad versus The State (NCLT Delhi) passed Criminal Appeal No. 257 of 2023.**

7. It is also submitted that a bare perusal of the FIR shows no allegations constituting the offences under the SC/ST Act against the appellant. No incriminating evidence was produced before the Investigating Officer to substantiate the claim that the victim was exploited by the appellant on a false promise of marriage. Notably, neither the FIR nor the victim's statements under Section 161 Cr.P.C. and 164 Cr.P.C. disclose the duration of the relationship between the appellant

and the victim. It merely levels a bald allegation of exploitation on the pretext of false marriage. She alleged that when she asked the appellant to solemnize the marriage, he replied that he did not marry her as it is their business to trap girls like prosecution and to take away their money and they also use them. Appellant no.1 allegedly swindled approximately 2 to 2.5 lakhs rupees from the prosecutrix as cash and online.

8. Learned counsel for the appellant further submits that in her statements recorded under Sections 161 and 164 Cr.P.C., the victim/prosecutrix/opposite party no.2 herself has admitted that she is 24 years old and have studied till class 12 i.e. a major capable of understanding the consequences of her actions. The contents of the FIR, read with the victim's statements under Sections 161 and 164 Cr.P.C., clearly indicate that even assuming the prosecution's allegations to be true, the relationship was consensual. The omission to specify particulars of any promise of marriage by the appellant gives rise to a presumption that no such promise was made. Mere allegation of rape based on a pretext of marriage is insufficient unless the prosecution proves that the victim consented to the sexual relationship relying on such a promise. Absent substantiation of this material fact, the allegation of rape cannot stand. Thus, the entire proceedings against the appellant are liable to be quashed.

9. Learned A.G.A. for the State has opposed the submissions made by the learned counsel for the appellants by contending that the victim's statement clearly shows that she was deceived by the appellant, who promised marriage to satisfy his lust. She stated that when she pressed for marriage, the appellant refused, citing their different castes as the reason. The appellant no.1 established physical relations with her repeatedly on the pretext of marriage but later refused to marry. The victim's statement is cogent, clear, and consistent, establishing the guilt of the accused-appellants. Since there is no illegality or infirmity in the order impugned, hence, this criminal appeal lacks merit and is liable to be dismissed.

10. I have considered the facts and circumstances of the case, the submissions advanced by the learned counsel for the appellants and learned A.G.A. for the State and also perused the material available on the record.

11. Before entering into the facts of this case, it would be proper to examine the difference between false promise of marriage to induce a woman to obtain her consent for physical relationship and breach of promise to marry. Sexual relationship amounts to rape if it is obtained without consent of women. What amounts to "consent" as mentioned in Section 375 IPC is defined in Section 90 IPC.

Section 90 of I.P.C. defines consent known to be given under fear or misconception:-

"90. Consent known to be given under fear or misconception.- A consent is not such a consent as intended by any section of this Code, if the consent is given by a person under fear of injury or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person.- if the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature of the consequence of that to which he gives his consent; or

Consent of child.- unless the contrary appears from the context, if the consent is given by a person who is under 12 years of age."

12. Reading the definition of "consent" (Section 90 IPC) with the definition of "rape" (Section 375), it becomes manifest consent of women is vitiated if she is convinced to engage in sexual relationship with accused who induces her with false promise to marry.

13. The Supreme Court in **Pramod Suryabhan Pawar vs The State Of Maharashtra,** reported in *AIR 2019 S C 4010,* while dealing with a similar situation, enunciated principles of law by following observations:-

"Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it"

The Supreme Court was further observed:

"To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act."

14. Hence, it becomes evident that a man can be held criminally liable for having a sexual relationship on the basis of a false promise of marriage only if the sexual relationship happened solely because of that false promise. If the relationship occurred due to other reasons, the offence is not made out. A woman may choose to enter into a physical relationship for reasons other than a promise of marriage, such as mutual affection or personal choice, even without insisting on marriage.

15. Now, the next significant question arises as to when and how an accused can be held guilty for inducing a woman to engage in sexual relationships by making false promise of marriage?

16 It is trite that in criminal cases, where accused is alleged to have committed rape, testimony of victim becomes significant and if her statement is of sterling quality, it does not even

require corroboration. However, converse is also true because law regarding appreciation of evidence does not distinguish between different categories of witnesses and no privilege has been extended to victim of rape. There is no universal law to treat statement of victim as gospel truth. The Supreme Court **in Abbas Ahmed Choudhury v. State of Assam** reported in *(2010) 12 SCC 115* held that a case of sexual assault has to be proved beyond reasonable doubt as any other case and that there is no presumption that a prosecutrix would always tell the entire story truthfully.

17. The proposition as discussed in preceding paragraph applies equally in cases where the allegation against accused is of inducing the victim to engage in sexual relationship by making false promise to marry. In order to fasten an accused of such criminal liability, it is necessary for prosecution to come up with adequate evidence to show that at relevant time, i.e, at the initial stage itself, the accused had no intention of keeping his promise to marry the victim. The Supreme Court in **Deepak Gulati v. State of Haryana",** reported in *AIR 2013 SC 2071,* held as follows:

"*24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance". Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."*

18. Hence, it evident that before an accused can be held liable, it is necessary that (a) the accused never intended to marry the victim from the beginning. A mere failure to marry, due to later circumstances, does not amount to deception. Section 90 IPC applies only when dishonest intention existed at the outset and, (b) same has to be proved by adequate evidence.

19. From the foregoing discussions, it is apparent that establishing physical relationships with a woman by making false promise of marriage is an offence which vitiates her consent and it attracts offence under Section 376 IPC. Breach of promise is generally defined as the failure of one party to fulfill a mutual agreement or commitment to marry another and it is viewed as a civil wrong. In order to hold an accused criminally liable for committing rape on pretext of false promise of marriage, it is necessary that prosecution must establish that accused right from the beginning cheated victim without any intention to marry with an intent to satisfy his lust. Hence, the essential ingredients of the offence are:

(a) the accused made a promise to marry the victim;

(b) the promise was false and not intended to be fulfilled;

(c) the promise was made with the intention of deceiving the victim and inducing her to consent to a sexual relationship;

(d) the dishonest intention to deceive and cheat existed from the very inception of the promise; and

(e) the victim's consent for the sexual relationship was obtained solely on the basis of such false promise;

(f) for consent to be vitiated by a false promise, the promise must have immediate relevance to the woman's decision to engage in intercourse;

(g) there must be adequate evidence to show that promise made by accused from its inception was made without any intention to fulfill.

20. In light of the aforesaid legal principles, a careful scrutiny of the FIR and the victim's statements under Sections 161 and 164 Cr.P.C. reveals only bald allegations of exploitation on the pretext of marriage without disclosing the duration of the relationship or any contemporaneous promise. In the first information report as well as in the statements recorded under Sections 161 and 164 Cr.P.C., the victim/prosecutrix has through out stated that Three years ago, the prosecutrix met and talked to appellant no.1 on Instagram. One day, Kapil said that she looks very beautiful to him and he want to meet her and talk about their marriage on which she said to him to come to her sister's house in Kanshi Ram Awas Yojna. Appellant no.1 came on 28th October, 2022 and then he asked the prosecutrix to come to his house at Meerut. She came to his house along with him at Meerut where the appellant no.1 had established physical relations with her for 56 days without her consent. When the prosecutrix asked the appellant no.1 as to when will he solemnize marriage with her, then appellant no.1 took her along with his family members and some of his relatives to Civil Court (Kachehri) and got her signature appended on a stamp of Rs. 50. After that, the appellant no.1 said to the prosecutrix that their marriage is over and now both of them will live as husband and wife. The prosecutrix has further stated that in December, 2023 the appellant no. 1 left the prosecutrix at Jeera Point and went away, after which she gave an application to the concerned Superintendent of Police then from Kotwali Police Station, both appellants, uncle and other relatives of appellant no.1 took the prosecutrix to Meerut.

21. From the aforesaid statements of the proseuctrix it is clear that the prosecutrix used to chat with the appellant no.1 for about three days on Instagram of her own free will. It is also very surprising from the above statements that a 24 year major girl, without knowing about the Appellant No. 1, calls him to her sister's place and on his insistence goes to his house the very next day and stays there for 56 days where the Appellant No. 1 establishes physical relations with her without her consent, about which she does not complain to any one. It is also worth noting here that the prosecutrix□s mother, father, brother and sister also send the prosecutrix along with the appellant no.1 without even knowing about him. They do not raise any objection for almost a year and they come only when the prosecutrix calls them as stated by the prosecutrix in her statements. The aforesaid statements of the prosecutrix clearly shows that there were consensual relationship between the appellant no.1 and the prosecutrix.

22. Besides the above, this Court also finds that as per the version of the first information report lodged on 1st May, 2025 she was in contact of the appellant through Instagram before three

years and as per the statements of the prosecutrix under Sections 161 and 164 Cr.P.C., she went at the place of appellant i.e. Meerut along with him in October, 2022 and till December, 2023 she was in relation with the appellant no.1 at his house as wife and husband, meaning thereby that when the alleged offence was committed by the appellant no.1 upon the proseuctrix between the period 2022 to 2023, the Bhartiya Nyay Sanhita has not come into force. The said Sanhita has come into force on 1st July, 2024, meaning thereby that any section of said Sanhita cannot effect retrospectively it can effect prospectively. As such offence under Section 69 of B.N.S. is not made out against the appellant no.1.

23. The absence of proof that the essential ingredient of a "promise to marry" is specifically that the promise was made without any intention of fulfilling it from the beginning------does not invalidate consent of victim for sexual relations under Section 90 read with Section 375 of the Indian Penal Code, 1860. A consensual sexual relationship followed by a subsequent refusal to marry does not render the accused liable for rape. This position finds consistent support in the jurisprudence of the Supreme Court, as laid down in **Deepak Gulati (Supra) and Pramod Suryabhan Pawar (Supra)**, wherein it has been emphatically held that mere breach of promise to marry, in absence of initial dishonest intent, cannot convert consensual physical relations into rape. Treating every such refusal to marriage as vitiated consent would dilute the sanctity of Section 375 IPC and overburden the criminal justice system with cases arising from soured relationships rather than genuine sexual offences.

24. These materials, even if assumed true, fail to establish the essential ingredients: (a) no adequate evidence shows the promise, if any, was false from inception with dishonest intent to deceive solely for lust; (b) the relationship appears driven by mutual affection over four months rather than immediate reliance on a false promise; and (c) subsequent refusal citing caste difference suggests breach of promise at best, not deception ab initio. Mere failure to marry due to later circumstances does not vitiate consent under Section 90 IPC, as held in **Pramod Suryabhan Pawar (supra) and Deepak Gulati (supra).**

25. The Hon'ble Supreme Court of India In the case of **Mahesh Damu Khare Vs. The State of Maharashtra & Others** reported in *2024 SCC OnLine SC 347* has opined that that□□...**The fact that the complainant continued to have a physical relationship for a long time without any insistence on marriage would indicate the unlikelihood of any such promise made by the appellant for marrying her and it rather indicates that the relationship was a consensual one.**

(Emphasis supplied)

26. Further the Hon□ble Supreme Court of India has opined that **the longer duration of the physical relationship between the partners without protest and insistence by the female partner for marriage would be indicative of a consensual relationship rather than a relationship based on false promise of marriage by the male partner and thus, based on misconception of fact**. Moreover, even if it is assumed that a false promise of marriage was made to the complainant initially by the appellant, even though no such cogent evidence has been brought on record before us to that effect, the fact that the relationship continued for nine long

years, would render the plea of the complainant that her consent for all these years was under misconception of fact that the Appellant would marry her implausible. Consequently, the criminal liability attached to such false promise would be diluted after such a long passage of time and in light of the fact that no protest was registered by the complainant during all those years. Such a prolonged continuation of physical relationship without demurral or remonstration by the female partner, in effect takes out the sting of criminal culpability and neutralises it.

(Emphasis supplied)

27. Then the Hon'ble Supreme Court of India has expressed its opinion that it will be very difficult to assume that the complainant who is otherwise a mature person with too grown up child, was unable to discover the deceitful behaviour of the appellant who continued to have sexual relationship with her for such a long period on the promise of marriage. Any such mendacious act of the appellant would have been exposed sooner without having to wait for nine years. The inference one can draw under the circumstances is that there was no such false promise made to the complainant by the appellant of marriage by continuing to have physical relationship so as to bring this act within the province of Section 376 IPC and therefore, there was no vitiation of consent under misconception of fact. Further, it appears that discontinuance of financial support to the complainant, rather than the alleged resiling from the promise to marry by the appellant appears to be the triggering point for making the allegation by the complainant after a long consensual relationship for about nine years.

28. On the basis of aforesaid opinion, the Hon'ble Surpeme Court of India has viewed that **if criminality is to be attached to such prolonged physical relationship at a very belated stage, it can lead to serious consequences. It will open the scope for imputing criminality to such long term relationships after turning sour, as such an allegation can be made even at a belated stage to drag a person in the juggernaut of stringent criminal process. There is always a danger of attributing criminal intent to an otherwise disturbed civil relationship of which the Court must also be mindful.**

(Emphasis added)

29. Relying the judgment of **Pramod Suryabhan Pawar (Supra) and Mahesh Damu Khare (Supra),** Hon'ble Supreme Court of Indian in the case of **Nitin B. Nikhare Vs. The State of Maharashtra & Another in Criminal Appeal No(S)...of 2025 arising out of SLP (Crl.) No. 1889 of 2024** decided on *21st January, 2025, in paragraph no. 6* has held that mere fact that physical relations were established pursuant to a promise to marry will not amount to a rape in every case. In order for the offence of rape to be made out, two conditions need to be satisfied i.e. that the promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intention of fulfilling said promise from the very beginning, and that the false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations.

30. For charges under Sections 352, 351 (2) and 69 of B.N.S. 2023, the claims of assault, abuse and threats are too vague and general. No specific details appear in the FIR or statements, so no initial case is made out.

31. No offences under Sections 3(1)(r), 3(1)(s), or 3(2)(v) of the SC/ST Act are made out either. The FIR and victim's statements lack any specific caste slurs aimed at her SC/ST status, said in public to humiliate her. Just mentioning caste differences in refusing marriage does not meet the legal requirements, so Section 14-A(1) of the SC/ST Act does not apply.

32. Hence, this Court is of view that allowing the criminal proceeding against the appellant in the facts and circumstances to continue, where no criminal liability can be attached, would amount to abuse of the process of court. Therefore, appellant is entitled to the relief claimed for quashing the complaint/ FIR.

33. In view of the aforesaid, the impugned order dated 5th July, 2025 as well as the entire proceedings of Special Sessions Trial No. 1283 of 2025 (State Vs. Kapil Som & Another) arising out of Case Crime No. 29 of 2025, under Sections 352, 351 (2) 69 B.N.S. and Sections 3 (1) (r), 3 (1) (s) and Section 3 (2) (v) of SC/ST Act Police Station-Mahila Thana, District-Moradabad pending in the Court of Special Judge (S.C./S.T. Act), Moradabad are quashed.

34. This criminal appeal is, accordingly, **allowed**.

(2026) 5 ILRA 1910
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 15.05.2026

BEFORE

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

Criminal Appeal No. 2855 of 1984

Shakar & Ors. **...Appellants**
Versus
State of U.P. **...Respondent**

Issue for consideration

The matter pertains to a dispute over reconstruction of a wall escalated into a violent clash in which one person died and several others were injured, leading to the prosecution of the appellants for murder and allied offences.

Headnotes

A. Criminal matter-Criminal Procedure Code,1973-Section 374(2)-Indian Penal Code,1860-Sections 147, 148, 302/149, 307/149-Right of private defence-Cross-case-Non-explanation of injuries on accused-Suppression of genesis of occurrence-prosecution failed to explain the injuries sustained by the accused and an injured non-participant, concealed the true manner of

occurrence-Evidence indicated a mutual fight with a probable exercise of the right of private defence-Prosecution version unreliable-Benefit of doubt-Appellants acquitted.(Para 47 to 53)

Held

The court held that non-explanation of injuries sustained by the accused in a cross-case is a material infirmity and may render the prosecution version doubtful. (E-6)

Case law Cited

Lakshmi Singh & Ors Vs State of Bihar (1976) SCC OnLine SC 307, Nand Lal & Ors Vs State of Chhattishgarh (2023) SCC OnLine SC 262 & State of Rajasthan Vs Madho & Anr (1991) SCC (Cri) 1048, Darshan Singh Vs State of Punjab & Anr. (2010) 2 SCC 333 -referred to.

List of Acts

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

List of Keywords

Cross-case, Right of Private defence, Benefit of doubt, Non-explanation of injuries, Suppression of genesis of occurrence, Free fight, Common object, Interested witness.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. -2855 OF 1984

Shakar & Ors Vs. State of U.P

From the judgment and order dated 15.05.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):

Ambreen Masroor, Sadrul Islam Jafri, Sanjay Goswami, Syed Shahnawaz Shah

Advs. for Respondent(s):

Kamal Kishor Mishra ,A.G.A.

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

1. This criminal appeal has been preferred, under Section 374 (2) Cr.P.C., by appellants Shakar, Yusuf, Unus, Irfan and Manjar against the judgment and order dated 09.10.1984 passed by Ist Additional Sessions Judge, Ghaziabad in Session Trial No.143 of 1983, under Sections 147, 148, 302/149 and 307/149 Indian Penal Code (in short "I.P.C."), Police Station Bhojpur, District Ghaziabad.

2. By the impugned judgment and order, the appellants, Shakar, Irfan and Manjar were held guilty and convicted and sentenced to undergo one year□s rigorous imprisonment for offence punishable under Section 147 I.P.C.; appellants Unus and Yusuf were sentenced to undergo one year□s rigorous imprisonment for offence punishable under Section 148 I.P.C.; all the five appellants were convicted and sentenced to undergo imprisonment for life for offence punishable under Section 302 read with Section 149 I.P.C.; and all of them were further convicted and sentenced to undergo three years□ rigorous imprisonment each for the offence punishable under Section 307 read with Section 149 I.P.C. It was further directed that all the sentences shall run concurrently.

3. Feeling aggrieved, the present appeal has been filed by all the five convicts. During the pendency of this criminal appeal, appellant No.1, **Shakar** and appellant No.4 **Irfan** have died and

the appeal against them stood **abated** vide order dated 03.08.2018. Therefore, the appeal has been heard in respect of the surviving appellants, Unus, Yusuf and Manjar.

4. Brief facts of the case are that the first informant, Kabir Ahmad submitted a written application *(Tehrir)* (Ext. Ka-1) at Police Station Bhojpur, District Ghaziabad on 24.04.1982, stating therein that few days ago there erupted a dispute between him and Shakar over raising a wall, due to which, Shakar had developed a grudge against him. On 24.04.1982 at about 7:00 p.m., while the informant Kabir Ahmad, Nasir, Yamin, his nephew, sister-in-law, Smt. Bano and grandson Matloob @ Kallwa were present in his house, Shakar, Yusuf, Unus, Irfan, Fayyaz and Manjar, all natives of his village, reached armed with lathi and farsa. They started hurling abuses and upon objection, assaulted them with lathi and farsa. Upon alarm, Abbas, Taki, Ibrahim, Mohd. Sharif and many persons came and saved them. The condition of injured Nasir and Kallwa was very critical and the informant also sustained fracture on his left wrist.

5. Upon this information, an FIR bearing Case Crime No. 51 of 1982, under Sections 147, 323, 504, 324, 325, and 307 I.P.C., was lodged at Police Station Bhojpur, District Ghaziabad, on 24.04.1982 at 9:15 p.m. The investigation commenced and the Investigating Officer reached the place of occurrence, recorded the statements of the informant and other witnesses, inspected the place of occurrence, and prepared the site plan (Ext. Ka-9). The injured were sent for medical examination. Kallwa, son of Nashir, subsequently died as a result of the injuries sustained by him. His inquest was conducted and the dead body was sent for post-mortem examination. In post-mortem examination, three ante-mortem injuries were found on the body and in the opinion of the doctor, the cause of death was shock and coma as a result of ante-mortem head injury.

6. The Investigating Officer also collected blood-stained clothes of Smt. Bano and Kabir and prepared its recovery memo (Ext. Ka-8). After completing the investigation, the Investigating Officer submitted charge-sheet under Sections 147, 148, 149, 323, 504, 324, 325, 307 and 302 I.P.C. before the competent Court.

7. The concerned court took cognizance of the offence and summoned the accused. They appeared before the Court and copies of the relevant prosecution papers were furnished to them under Section 207 Cr.P.C., whereafter the case was committed to the Court of Sessions for trial.

8. The accused persons appeared before the Court of Sessions, where charges for offences punishable under Sections 148, 302/149, 307/149, 323/149 and 450 IPC were framed against Shakar, Unus, Yusuf, Irfan, Fayyaz and Manjar. All the accused persons pleaded not guilty and claimed to be tried.

9. The prosecution examined twelve witnesses in support of the prosecution case, namely, P.W.1 Kabir Ahmad, P.W.2 Mohd. Zaki, P.W.3 Abbas, P.W.4 Nasir, P.W.5 Taqi, P.W.6 Dr. Mahavir Singh, P.W.7 Ibrahim, P.W.8 Mahkar Singh, P.W.-9 Ram. K. Chaturvedi, P.W.10 Dr. M.K. Goel, P.W.11 Tilakram and P.W.12 Satyaveer Singh.

10. P.W.1 Kabir is the informant of the case. He has said that both his and accused Shakar’s houses are adjacent to each other. There was a wall between both theses houses. Accused

Shakar claiming it to be his own wall, wanted to rebuild it, to which the informant had objection. About one and a half years ago Shakar had threatened him that he would see him in 4-5 days. About four days ago, after sunset, Shakar, Yusuf, Unus, Faiyyaz, Irfan and Manjar came to his house, where Yamin, Momin, Nasir, Kallwa and Smt. Bano were present. The accused started hurling abuses and when the first informant and other inmates of the house came out, they saw Unus and Yusuf armed with farsa and the remaining accused armed with lathi. Yusuf assaulted the informant with farsa. Kallwa was attacked with lathi by Irfan. Nasir was assaulted with a farsa by Unus. Smt. Bano was beaten by Manjar and Yamin was beaten by Shakar. As a result, they fell on the ground. Abbas, Taki and Rahim reached there and saved them. His arm was fractured as a result of a lathi blow by Shakar. He, Jaki and other injured persons were taken to Police Station Bhojpur. Jaki lodged the FIR. He gave the application against Shakar, which was written by the Station Officer at his dictation. The witness has proved the written application, Ext. Ka-1 and has stated that on the same day, his son Kallwa died at the District Hospital, Ghaziabad.

11. In cross-examination, P.W.1 Kabir has said that after the incident was over, they proceeded to the police station within 3-4 minutes by tractor, where they reached in about 4-5 minutes. The application was written in the presence of the S.H.O., who gave him the paper. The Inspector himself took his thumb impression on the application, marked as (Ext. Ka-1). After about an hour, the accused also reached there. After reaching at the hospital, they saw the accused persons had also came there for medical examination. Due to injuries, he became semi-conscious. Jaffari is the grandmother of Unus and Yusuf and was not involved in the assault. She was standing at her door when the incident took place. None of them attacked Jaffari with any sharp-edged weapon. He also said that they did not commit any assault in self-defence and did not wield any sharp-edged weapon upon the accused. He said that he was unarmed during the assault. His nephew, Momin came there and wielded a danda in self-defence. He also said that he did not see any injuries on Yusuf, Manjar, Unus and Jaffari. He said that he had seen an injury on Yusuf at the police station. Blood splattered at the place of occurrence from wounds of Nasir and Bano and he himself. The incident took place in a 2-3 feet wide lane (gali). It was dark at the time of incident. Jaffari□s house is situated to the west of Yasin□s house. About 15-16 days earlier, the accused had constructed a staircase adjacent to the disputed wall. It is true that a case regarding assault involving Jaffari, Manjar and others is pending against him.

12. P.W.2 Mohd. Zakir, has said that at the time of the incident he was standing at the Tanga Stand outside the village. One person came and told him that a dispute has occurred in the village. Thereafter, he reached near Nasir's house and saw Kallwa lying in front of the door. Nasir, Kabir, Yamin, Momin and Bano were also injured. He took them to Police Station Bhojpur. He wrote the tehrir in the light of a bulb outside the police station at the dictation of Kabir and thereafter Kabir put his thumb impression over it.

13. In the cross-examination, P.W.2 Mohd. Zakir has said that on the 28th day of the month, the election for the post of Village Pradhan was held. He further said that he was one of the contestants for the post of Gram Pradhan. He is an accused in the cross-case. He also said that he did not see any injuries on Unus, Yusuf, Jaffari and Manjar.

14. P.W.3 Abbas said that at the time of incident, he was at his house along with Taqi. He heard cries coming from in front of Kabir□s house. He and Taqi ran there and saw that Shakar and Kabir were fighting with each other. Shakar, Unus, Yusuf, Irfan and Manjar were present there, carrying lathi and farsa. The farsa was with Unus and Yusuf and the rest of the accused were carrying lathi and danda. Both parties were fighting with each other. Momin was wielding a lathi. He saw Kallwa in the crowd and noticed injuries on Kallwa, Nasir and Kabir. He also said that he saw Yusuf in an injured condition. Many persons had gathered there.

15. In cross-examination, P.W.-3 has said that there is a staircase in Sakir□s house. When he reached there, 10-20 persons were already present. It was dark at that time. No assault took place on the open land in front of Aziz□s house. Jaffari was standing at her door. He does not know whether she suffered any injury. He saw Manjar and Unus in an injured condition. He also saw Yusuf, Unus, Manjar, Kabir, Nasir and Kallwa in injured condition. After he reached there, none of the persons attacked the other. The assault had ended before he reached at the spot.

16. P.W.4 Nasir has said that at the time of the incident, he himself, Kabir, Yamin, Momin and Kallwa, along with their mother Bano, were in the house. The accused Shakar, Unus, Usuf, Manjar, Irfan and Fiyyaz came there. Out of them, Unus and Yusuf were having farsa and rest of the accused were having lathi in their hands. They abused and when objected, they started wielding lathi. Unus and Yusuf attacked with farsa, causing injuries to Kabir, Kallwa, Bano and Yamin. Yamin also picked up a lathi and wielded it 2-4 times. He does not know who got injured. Momin was also beaten by the accused with lathis. Upon their alarm, Abbas, Taqi and others came there and pacified the matter. Thereafter, they were taken to Bhojpur by tractor, where Kabir lodged the FIR. The doctor advised to take injured Kallwa to Government Hospital at Ghaziabad. At Ghaziabad, the doctor declared him dead. The witness proved the clothes worn by Kallwa at the time of the incident and also the clothes of Bano and Kabir.

17. In cross-examination, P.W.-4 said that when Kallwa was taken to Bhojpur Hospital, his report had already been lodged. He remained admitted in a hospital at Ghaziabad for about 15 days. He was not interrogated in the hospital. After he reached the village, the Investigating Officer met him after 20 days. Before meeting the Investigating Officer, he did not tell anybody about the incident because he was in the hospital. Nobody from his side wielded farsa, ballam or lathi. He did not see any injuries on the accused and if Jaffari had sustained injuries, then it may have been caused by their own weapons. He did not count how many lathi blows Kallwa sustained.

18. P.W.-5 Taqi has said that at the time of the incident, he heard noise from the direction of Nasir□s house. Thereafter, he and his brother Abbas went there and saw a dispute taking place in front of Nasir□s house. He said that Manjar, Irfan, Unus and Yusuf were beating Kabir, Nasir, Bano, Yamin, Momin and Kallwa. He further said that Yusuf and Unus were armed with farsas, while Manjar and Irfan were armed with lathi and there were five assailants in total. He also said that Momin ran inside his house and returned with a lathi, which he wielded. Kallwa fell on the ground in an injured condition. He further said that he, Sharif and many other persons reached at the spot and pacified the matter. According to him, the incident took place on a rasta in front of Nasir□s house over a dispute regarding a wall.

19. In cross-examination, P.W.5, Taqi, has said that there was dark at the time of the incident. He did not see Jaffari at the place of occurrence. He did not see any injuries on Jaffari or on any other accused. The accused were not beaten in his presence. When he reached at the spot, people were pacifying the matter. He remained at the place of occurrence for about 20 minutes.

20. P.W.6 Dr. Mahavir Singh, is a witness who prepared the injury reports of the injured persons. He has said that in April 1982, he was posted as Medical Officer at P.H.C., Bhojpur. On the same night, he medically examined Nasir, Yamin, Bano, Momin and Kabir at 10:15 p.m., 10:30 p.m., 10:40 p.m., and 10:55 p.m. respectively. They were brought by Constable Rishi Pal. Kallwa was also brought along with them. As his condition was critical and was unconscious and his pulse was feeble, so he referred him to M.M.G. Hospital, Ghaziabad. Therefore, he did not note his injuries. He found the following injuries on Nasir:

(i) Incised wound 13 cm □ 1 cm, bone-deep, on the top of the skull, 10 cm above the right ear. X-ray was advised.

(ii) Lacerated wound 3 cm □ □ cm, scalp-deep, on the left side of the head, 6 cm above the left eyebrow. X-ray was advised.

(iii) Traumatic swelling 5 cm □ 2 cm around injury no. 2.

(iv) Traumatic swelling 5 cm □ 5 cm on the lower back of the left scapula. X-ray was advised.

(v) A double-ended contusion on the top of the right shoulder.

He further said that injuries nos. (i), (ii) and (iv) were kept under observation, while the remaining injuries were simple in nature. Injury no. (i) was caused by a sharp-edged weapon, such as a farsa, whereas the remaining injuries were caused by a blunt object like a lathi.

He found the following injuries on **Yamin Khan**:-

(i) Traumatic swelling 4 cm □ 3 cm on the right side of the face, just below the right eye.

(ii) Abrasion □ cm □ □ cm over the nose.

(iii) Abrasion over Injury No. 1.

In his opinion, the injuries were simple and were caused by a blunt object such as a lathi.

He found the following injuries on **Smt. Bano:-**

(i) Incised wound 3 cm □ □ cm, 1 cm above the left eye on the left side of the forehead.

(ii) Pain in the waist, but there was no visible injury.

In his opinion, all the injuries were caused by a hard and blunt object such as a lathi.

He also found the following injuries on **Kabir:-**

(*i) Incised wound 5 cm □ 1 cm, bone deep, present on the top of the skull, 6 cm above the root of the nose.*

(ii) Traumatic swelling 6 cm □ 2 cm around Injury No. 1. X-ray was advised.

(iii) Incised wound 3 cm □ 0.5 cm, muscle deep, present on the left side of the head, 5 cm below Injury No. 1.

(iv) Traumatic swelling 3 cm □ 2 cm on the left forearm, 7 cm above the left wrist joint. X-ray was advised.

(v) Contusion 5 cm □ 4 cm on the back of the right scapula, just above the inferior angle of the right scapula.

In his opinion, injury Nos. 1, 2, and 4 were kept under observation. The rest of the injuries were simple in nature. Injury Nos. 1 and 3 were caused by a sharp-edged weapon such as a farsa, and the remaining injuries were caused by a blunt object such as a lathi.

He found the following injuries on **Momin:**-

(i) Traumatic swelling measuring 3 cm □ 3 cm on the left side of the head, 10 cm above the left ear (upper part).

(ii) Pain in the right arm, but no visible injury was seen.

In his opinion, all the injuries were simple and fresh and were caused by a hard and blunt object, such as a lathi.

21. He has proved the injury reports of all the injured as Ext. Ka-3 to Ext. Ka-7 and stated that the above injuries could have been caused on 24.04.1982 at 7:00 p.m. In cross-examination, he said that on the same day, he medically examined Yusuf at 11:30 p.m. and thereafter examined Manjar on 25.04.1982 at 12:25 a.m., Unus at 12:45 a.m., and Smt. Jaffari at 1:00 a.m., and prepared their injury reports. He said that the original injury reports are on the record of Sessions Trial No. 112 of 1983 (State vs. Jaki and others). He filed true copies of these injury reports, which he proved as Ext. Kha-1 to Ext. Kha-4. He said that injury Nos. 1, 2, and 3 of Yusuf, injury No. 1 of Manjar and injury No. 1 of Smt. Jaffari may have been caused by ballam or farsa, while the remaining injuries could have been caused by lathi. All the above injuries could have been caused on 24.04.1982 at about 7:30 p.m. He further stated that Constable Devendra Singh of Police Station Bhojpur had brought all the above-mentioned injured persons before him. He also stated that injury Nos. 1 and 3 of Kabir and injury No.1 of Nasir could have been caused by the sharp edge of a spade, whereas the remaining injuries could have been caused by the blunt side of a spade. Injury

No. 2 of Kabir could not have been caused by injury No.1. Except for the incised wound, the remaining injuries of Kabir and Momin could not have been caused by bricks or stones thrown at them.

22. P.W.7, Ibrahim, said that he and Afruri had gone to offer namaz at Julahe Wali Masjid. Thereafter, he heard noise coming from the side of Kabir's house. He, along with Sarif, reached near Kabir's house and saw that Kabir and Nasir were being beaten by Shakar, Unus, Fiyyaz, Irfan, Manjar and Yusuf. Unus and Yusuf were armed with farsa, while the remaining accused were carrying lathi. Blood was oozing from the injuries of Bano, Yamin and Kallwa. In cross-examination, he said that when he reached the place of occurrence, Kallwa had already fallen on the ground and he did not see anyone beating Kallwa in lying condition. He further said that it was dark when he reached at the spot. He saw Abbas and Taqi pacifying the dispute. After his arrival, Bano and Nasir also sustained injuries. Bano sustained injuries when she fell over Kallwa while trying to save him. He did not see blood oozing from the injuries of the assailants. He did not see injuries on any of the accused. He also said that he did not see any of the injured persons assaulting the accused. He did not see Jaffari, the mother of Manjar, at the place of occurrence. Jaffari's house was situated about 10-15 steps away from the place of occurrence. Zaqi was one of the contestants for the post of Gram Pradhan.

23. P.W.8, Mahkar Singh, is the first Investigating Officer of this case. He has said that he carried out a part of investigation, recorded the statements of some witnesses and took into possession blood-stained clothes of Smt. Bano and prepared a recovery memo, which was proved as Ext. Ka-8. He also said that, at the pointing out of Smt. Bano, he inspected the place of occurrence and prepared its site-plan, which was proved as Ext. Ka-9. In cross-examination, he said that there is a site-plan in the record of Sessions Trial No. 112 of 1983. The above site-plan was also prepared by him and the said Sessions Trial is the cross-case of the present case.

24. P.W.9, R.K. Chaturvedi, is the second Investigating Officer of the case. He said that he conducted remaining part of investigation and recorded the statements of other witnesses and after completing the investigation, filed charge-sheet, (Ext. Ka-10). In cross-examination, he said that Kabir had not given any statement that a dispute occurred regarding the construction of a wall 4-5 days prior to the incident, nor was threatened that he would be beaten within 4-5 days. He further said that he had also completed the investigation of the cross-case. He clarified that the investigation was assigned to him because it was election time and the situation was sensitive.

25. P.W.10, Dr. M.K. Goel, conducted autopsy of the deceased, Kallwa. He said that on 25.04.1982, while being posted as Medical Officer at MMG Hospital, Ghaziabad, he conducted post-mortem examination of Kallwa, whose dead body was brought by Constables Satvir Singh and Yash Pal Singh. He said that rigor mortis was present over the body. He found following ante-mortem injuries:

(i) Traumatic swelling 22 cm □ 15 cm on the right side of the forehead and right side of the head, just above the right ear.

(ii) Traumatic swelling 17 cm □ 10 cm on the left side of the head, just above the left ear.

*(iii) Abrasion 1 cm * 1 cm on the back of the right elbow.*

He also said that on internal examination, the frontal bone and both parietal bones were fractured. The brain was smeared with blood. The brain was lacerated in the frontal and parietal areas. There was fracture on the right side of the middle cranial fossa. In his opinion, the cause of death was shock and coma as a result of ante-mortem head injuries. He said that the injuries could have been caused by a blunt object such as a lathi. The injuries could have been caused on 24.04.1982 at about 7:00 p.m. He proved the post-mortem report as Ext. Ka-11 and said in his cross-examination that the above injuries could also be caused by bricks and stones. Injury no. 3 could be caused by any friction.

26. P.W.11 Tilakram (S.I.), is a formal witness who scribed the chik FIR, marked as Ext. Ka-12 and made its entry in G.D. No. 29 dated 24.04.1982, which is proved as Ext. Ka-13. He further said that on 25.04.1982, vide G.D. No. 12 at 7:30 a.m., he converted the case under Section 302 I.P.C. and proved the copy of the said General Diary as Ext. Ka-14. In the cross-examination, he said that on the same day at about 10:00 p.m., Unus had also lodged a report, which was entered at G.D. No. 30 under Sections 147, 323, 324, 452 and 307 I.P.C., and he proved the said General Diary entry as Ext. Kha-5.

27. P.W.12, Constable Satvir Singh, filed his affidavit in evidence and said that the Inspector conducted the inquest of the deceased, Kallwa in his presence and prepared the inquest report along with other related documents. The defence did not cross-examine him.

28. After closure of the prosecution evidence, the statements of the accused were recorded, in which they denied the prosecution case and said that there was no dispute regarding the reconstruction of the wall. In fact, the case was lodged due to election enmity. The appellant Yusuf said that the Police came to Zaki's house and Bano was not present during the fight. He further said that the fight was started by the informant's party at Jaffari's house. Mohd. Unus said that he and Yusuf wielded spades in their defence and his aunt (Tai) had thrown bricks. He further said that they were sitting at their aunt's house when Zaki, Taqi, Yamin, Makul, Nasir, Momin and Kabir came and forcefully asked them to vote in favour of Zaki. When they did not agree, the informant's party started the fight, in which he, Yusuf, Manzer and their aunt (Tai) Jaffari sustained injuries. He also said that Zaki was on good terms with the Inspector and that a false case was lodged against them. The appellant Manzer also said that Bano was not present there. He said that they wielded spades in self-defence, due to which, the injuries could have been caused. He further said that he was with his mother when the informant's party came and started a quarrel, in which he, Unus, his mother and Yusuf sustained injuries.

29. After closure of evidence, the learned Trial Court heard the arguments of both the parties and after perusal of the evidence, found that the prosecution had been able to prove its case beyond reasonable doubt. There was motive for the appellants to commit the crime. The appellants were the aggressors. The ocular testimony was supported by medical evidence. The place of occurrence was in front of the informant□s house. The injuries sustained by the appellants and Jaffari were well explained and thus, the learned Trial Court found the appellants guilty and convicted and sentenced them to the terms as indicated above.

30. Heard Sri N.I. Jafri, learned Senior Advocate assisted by Sri S.I. Jafri, learned Counsel for the appellants, Ms. Divya Ojha, learned Additional Government Advocate-I for the State and Sri Kamal Kishor Mishra, learned Counsel for the informant.

31. Learned counsel for the appellants has submitted that this was a cross-case. It is admitted by the prosecution witnesses that Zaqi and others had asked for votes for forthcoming Gram Pradhan election and, thus, this was the root cause of the alleged assault. It is also submitted that the injuries sustained on the side of the appellants have not been satisfactorily explained by the prosecution at all. The prosecution case suffers from inherent improbabilities and the evidence consists of highly interested and chance witnesses. It is further submitted that the learned Trial Court erred in rejecting the defence version, which stood fully proved by the admissions made by the prosecution witnesses and by medical and other circumstantial evidence. Lastly, it is submitted that the prosecution has suppressed the genesis and the origin of the occurrence and has not presented the true version. The appellants were attacked and the injuries to the informant's side were caused when the appellants exercised their right of private defence. Therefore, the prosecution case is doubtful, and the appellants deserve acquittal.

32. In support thereof, learned Counsel for the appellants has relied upon the following case laws **Lakshmi Singh And Others vs. State of Bihar** reported in **1976 SCC OnLine SC 307; Nand Lal And Others vs. State of Chhattishgarh** reported in **2023 SCC OnLine SC 262** and **State of Rajasthan vs. Madho And Another reported in 1991 SCC (Cri) 1048.**

33. Per contra, learned A.G.A. as well as learned Counsel for the informant have submitted that the prosecution case is proved beyond reasonable doubt. The case is based on direct evidence. The informant and other injured witnesses, as well as independent witnesses, have supported the prosecution case. The oral testimonies are supported by medical evidence. There was a motive for the appellants to commit the offence over a dispute regarding the reconstruction of the wall adjoining the houses of the informant and the appellants. The injuries to the appellants are well explained. The appellants were the aggressors and so were not entitled to the right of private defence, therefore, this appeal has no force and is liable to be dismissed.

34. It is settled law that in a criminal case the burden of proof lies upon the prosecution to prove its case beyond reasonable doubt. The present case is based on direct evidence. The date and time of the incident are not disputed. The injuries sustained from the side of the informant are also not disputed. As per the prosecution, the alleged incident occurred because there is a wall intervening between the houses of the first informant and the appellant, Shaker. Shaker wanted to reconstruct it but the wall belonged to the first informant. Thereafter, Shaker threatened him to face the consequences within 4-5 days. Subsequently, on the fateful day, all the appellants came to the house of the first informant armed with lathi and farsa and committed assault, as a result of which Kabir, Kallwa, Nasir, Bano, and Yamin sustained injuries and Kallwa succumbed to his injuries at the District Hospital, Ghaziabad.

35. On the other hand, it is the case of the appellants that during those days, contestants for the post of Gram Pradhan and their supporters were seeking votes. On the fateful day, the first informant and his men came to Jaffari□s house asking for votes and upon refusal, they committed

assault. In self-defence, Unus and Yusuf wielded spades, which caused injuries to the members of the first informant□s party. It is submitted on behalf of the appellants that this is a cross-case and the informant□s party was the aggressor and the appellants acted in self-defence. It is further submitted that four persons from the side of the appellants were injured, but the prosecution has neither disclosed nor explained the injuries of the appellants. Therefore, the prosecution has suppressed material facts and the genesis of the occurrence and thus the appellants are entitled to the benefit of doubt.

36. So far as the case being a cross-case is concerned, P.W.1 Kabir, in his cross-examination, has said that there is a case pending against him with regard to an assault involving Jaffari and another. P.W.2, Mohd. Zaqi, has also said that he is one of the accused in the cross-case. P.W.4, Nasir, has also said that, regarding the same incident, a cross-case is pending against him with regard to an assault involving Unus and others. P.W.8, S.I. Mahakar Singh, who was the first Investigating Officer of the case, has said that he also prepared the site plan of the cross-case of Case Crime No. 51-A of 1982, in respect of which Sessions Trial No. 112 of 1983 is pending and has said that this is the cross-case of the present case and he had prepared the site plan of the said cross-case also. P.W.9, S.O. R.K. Chaturvedi, is the second Investigating Officer of this case, and he has also stated that he had investigated the cross-case as well. P.W.11, S.I. Tilakram, who is the scribe of the chik F.I.R., has said that vide G.D. No. 30, a case under Sections 147, 323, 324, 452 and 307 I.P.C. was lodged by him. He has proved G.D. No.30. In view of the above and the admissions of the prosecution, it is not in dispute that this matter relates to a cross-case. Although both the parties have not clearly said what happened to the cross-case, but it is settled law that the evidence of one cross-case cannot be taken into consideration in another cross-case and it is the evidence which is produced in a case that is to be examined. In view of the above, it has to be seen whether the prosecution has been able to prove its case beyond reasonable doubt on the basis of the evidence filed in this case.

37. The prosecution has examined P.W.1 Kabir, P.W.2 Mohd. Zaqi, P.W.3 Abbas, P.W.4 Nasir, P.W.5 Taqi and P.W.7 Ibrahim as witnesses of fact. From the evidence of these witnesses, it emerges that P.W.2 Mohd. Zaqi, P.W.3 Abbas and P.W.5 Taqi are not eyewitnesses of the incident. P.W.3 has said that when he reached at the place of occurrence, none of the parties attacked each other and the assault had already ended. P.W.5 Taqi has said that when he reached at the place of occurrence, people were pacifying both the parties and no one was beaten in his presence. P.W.2 Mohd. Zaqi has said that when he reached at the place of occurrence, Kallwa was lying on the ground and others were found in an injured condition, therefore, he also reached at the place of occurrence after the incident had ended.

38. So far as P.W.1 Kabir, P.W.4 Nasir and P.W.7 Ibrahim are concerned, they have supported the prosecution case and said that on the fateful day, the appellants, armed with lathi and farsa, came to the first informant□s house, hurled abuses and committed assault. As a result, Nasir, Kabir, Yamin, Momin, and Bano sustained injuries. All the above prosecution witnesses have concealed the material fact regarding the injuries sustained on the side of the appellants.

39. During the statement of P.W.6 Dr. Mahavir Singh, the defence questioned him regarding the injuries sustained by Yusuf, Unus, Manzer, and Smt. Jaffari and copies of their injury

reports were filed by P.W.6, Dr. Mahavir Singh, stating that the originals are on record in Sessions Trial No. 112 of 1983. He further said that injury Nos. 1, 2, and 3 of Yusuf, injury No.1 of Manzer and injury No.1 of Smt. Jaffari were caused by ballam and farsa and the remaining injuries could have been caused by lathi. He also said that these injuries could have been sustained on 24.04.1982 at about 7:30 p.m. So there were injuries to these injured persons. P.W.1 Kabir, in this regard, said that he did not see any injuries on the appellants or on Smt. Jaffari. On the other hand, he said that his party was unarmed and his nephew Momin wielded a danda in self-defence. He further said that he saw injuries on Yusuf at the Police Station. Therefore, P.W.1 Kabir, the first informant, has concealed the real facts and denied the injuries sustained by the appellants and Smt. Jaffari. Similarly, P.W.2 has not said that he witnessed any injuries on the appellants. P.W.3 said that both sides were fighting with each other and he did not see any injuries on Smt. Jaffari. He said that he saw injuries on Yusuf, but did not know who caused those injuries. He further said that he saw injuries on Manzer and Yuns, and that in the darkness he saw Yusuf, Unus, Manzer, Kabir, Nasir, and Kallwa in an injured condition, but he did not state how the injuries to the appellants were caused.

40. P.W.4, Nasir, has said that Yamin sustained injuries. He further said that none of the persons from his side wielded a ballam, farsa, or tabbal and he did not see any injuries on the appellants or on Jaffari. He also said that it is possible that they might have sustained injuries, if any, due to their own weapons. Lastly, P.W.7, Ibrahim, said that he did not see any blood or injuries on the appellants. He also said that he did not see any person beating the appellants. Therefore, these witnesses have either denied the injuries to appellants and Smt. Jaffari or concealed the names of the person(s) who caused these injuries.

41. All the above witnesses have said that the appellan'□s mother, Smt. Jaffari, was not present there and it has also come in their evidence that she was standing at the door of her house and had not participated in the assault. If it is admitted then the prosecution should have explained how Smt. Jaffari sustained injuries. Similarly, the injuries on other appellants, Yusuf, Unus, and Manzer were also not satisfactorily explained. The nature of injuries to Yusuf, Manzer, and Smt. Jaffari shows that some of them may have been caused by ballam or farsa, i.e., sharp-edged weapons. The prosecution has also concealed the fact that the informant□s side was armed with sharp-edged weapon. It is said that Kabir□s nephew, Momin came with a danda and wielded it in self-defence. It is also said that Momin was wielding a lathi. It has not come in evidence that the informant party used any sharp-edged weapon, whereas the injuries on appellants Yusuf, Manzer and Smt. Bano show that they sustained injuries in the said incident from sharp-edged weapons like farsa and ballam. The injuries sustained by the appellants and Smt. Jaffari, mother of appellant Manzer, are not simple or superficial. The non-explanation of these injuries shakes the very basis of the prosecution case and shows that the prosecution witnesses have concealed material facts and the genesis of the cause of the incident before the Court.

42. The witnesses of fact produced by the prosecution are related to each other and/or chance witnesses, therefore, their testimony was to be scrutinized closely. That being so,the omission on their part to explain the injuries on the persons of the appellants and Smt. Jaffari assumes much greater importance and it appears that the prosecution has not come out with the true version of the facts. According to the prosecution, the appellants attacked the first informant and

his family members over a dispute regarding the construction of a wall adjoining the house of the first informant, Kabir and the appellant, Manzer. As per the prosecution, this was the immediate cause of the incident. But in this regard, P.W.1 Kabir has said that the dispute with regard to the said wall occurred about one and a half years ago and after 4-5 days, appellant Shaker had threatened them. It has come in his evidence that the staircase was already constructed by the appellants 15-20 days prior to the said incident. There is no evidence that the first informant or his men ever reported or complained with regard to the said dispute to any person/authority. P.W.3 Abbas has said that there is a staircase in appellant Shaker□s house and he had purchased the house more than 20 years ago and after a few months from the date of purchase, he had constructed the staircase. The above statement of P.W.3 shows that there was no such immediate dispute with regard to the construction of staircase. P.W.4 Nasir has said that 10-15 days ago the staircase was constructed and thereafter, a threat was given to the informant□s side. Thus, all these statements of the prosecution witnesses are contradictory to each other and thus prosecution case that the immediate cause of the dispute with regard to the reconstruction of the staircase is not believable.

43. On the other hand, the fact witness, P.W.1 Kabir has admitted that the election for Gram Pradhan was underway and the contestants and their supporters were seeking votes about 4-5 days prior to the incident. He also said that Zaki had contested the election. P.W.2, Mohd. Zaki, said that he had contested the election for Gram Pradhan and 2-4 days prior to the election, the contestants were seeking votes. P.W.3, Abbas, also said that people had been seeking votes prior to the date of the incident for the election of Gram Pradhan. P.W.7, Ibrahim, further said that Zaki had contested the election for Gram Pradhan. In this regard, the statement of P.W.9, R.K. Chaturvedi, is assumes significance. He is the second Investigating Officer of the case and in his cross-examination, has said that the entire investigation was entrusted to him because the situation was sensitive and it was the time of the election. All these statements of the witnesses show that prior to the incident, the contestants and their supporters were seeking votes by visiting the houses of villagers and the situation was sensitive. It is the case of the appellants that the first informant and his associates came to the house of the appellant, Manzer□s mother, Smt. Jaffari, to seek votes and upon refusal, they started committing assault. As a result, the appellants, Yusuf, Unus, Manzer and Smt. Jaffari sustained injuries.

44. It is said that the appellants, Yusuf and Unus, wielded spade in self-defence. So far as the place of occurrence is concerned, it has come in evidence that the house of the first informant and the house of Smt. Jaffari are separated by two houses, meaning thereby that the place of occurrence, which is an open place, is near the houses of both the first informant and Smt. Jaffari.

45. Here it is material to note that, as per the evidence of the prosecution, Smt. Jaffari did not take part in the commission of the offence and was standing at the door of her house. However, it is also on record that she sustained injuries, which gives weight to the appellants□ case that the incident took place near Smt. Jaffari□s house; otherwise, there was no reason for her to have sustained injuries while standing at the door of her house. In view of the above, it gives weight to the appellants□ case that the incident might have occurred when the informant and his men came to Smt. Jaffari□s house seeking votes for the election of Gram Pradhan.

46. Now let us see whether the appellants caused injuries in their right of private defence. Considering the principle governing the right of private defence, the Hon'ble Supreme Court in ***Darshan Singh vs State of Punjab & Anr 2010 (2) SCC 333***, was pleased to hold as under:

"54. In Vidhya Singh v. State of Madhya Pradesh, (1971)3 SCC 244, the court observed that:

"18. The right of self-defence is a very valuable right, serving a social purpose and should not be construed narrowly. Situations have to be judged from the subjective point of view of the accused concerned in the surrounding excitement and confusion of the moment, confronted with a situation of peril and not by any microscopic and pedantic scrutiny. In adjudging the question as to whether more force than was necessary was used in the prevailing circumstances on the spot it would be inappropriate, as held by this court, to adopt tests by detached objectivity which would be so natural in a court room, or that which would seem absolutely necessary to a perfectly cool bystander. The person facing a reasonable apprehension of threat to himself cannot be expected to modulate his defence step by step with any arithmetical exactitude of only that much which is required in the thinking of a man in ordinary times or under normal circumstances."

55. In Jai Dev v. State of Punjab, AIR 1963 Supreme Court 612 the court held as under:

"13.....as soon as the cause for the reasonable apprehension has disappeared and the threat has either been destroyed or has been put to rout, there can be no occasion to exercise the right of private defence."

56. In order to find out whether right of private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered.

57. In Buta Singh v. The State of Punjab, (1991)2 SCC 612, the court noted that:

"10.....a person who is apprehending death or bodily injury cannot weigh in golden scales in the spur of moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons.

In moments of excitement and disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him where assault is imminent by use of force, it would be lawful to repel the force in self-defence and the right of private-defence commences, as soon as the threat becomes so imminent. Such situations have to be pragmatically viewed and not with high-powered spectacles or microscopes to detect slight or even marginal overstepping.

Due weightage has to be given to, and hyper technical approach has to be avoided in considering what happens on the spur of the moment on the spot and keeping in view normal human reaction and conduct, where self- preservation is the paramount consideration.

But, if the fact situation shows that in the guise of self-preservation, what really has been done is to assault the original aggressor, even after the cause of reasonable apprehension has disappeared, the plea of right of private defence can legitimately be negatived. The court dealing with the plea has to weigh the material to conclude whether the plea is acceptable. It is essentially, as noted above, a finding of fact."

" 58. The following principles emerge on scrutiny of the following judgments:

(i) Self-preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.

(ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.

(iii) A mere reasonable apprehension is enough to put the right of self defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is co-terminus with the duration of such apprehension.

(v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.

(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.

(vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.

(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(ix) The Indian Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened."

47. In view of the above legal position with regard to right of private defence, if we look into the present case then it comes out that in the instant case, both sides sustained injuries and the

injury reports of both sides are on record. Kallwa succumbed to his injuries in the hospital. His post-mortem report shows that he sustained three injuries on his body, of which one was an abrasion and the other two were traumatic swellings on the forehead and on both sides of the head. Nasir sustained five injuries, including incised wounds, traumatic swelling and contusions. Yamin sustained three injuries, of which one was a traumatic swelling and two were abrasions. Smt. Bano sustained one injury of the nature of a lacerated wound and also complain of pain over her back. Kabir sustained five injuries, comprising incised wounds, traumatic swelling and contusions. Momin sustained one injury in the nature of traumatic swelling on the left side of his head and complained of pain in his right arm.

48. So far as the appellants side is concerned, appellant Yusuf sustained seven injuries, including incised wounds, traumatic swelling, and contusions over the head, left forearm and right knee joint, as well as an injury to the upper lip, along with complain of back pain. The appellant Manzer sustained two injuries: an incised wound on the right leg and an abrasion on the left elbow, accompanied by complain of pain on leg. The injured Unus sustained two injuries in the form of traumatic swelling and abrasions, along with complain of pain over the right shoulder. Smt. Jaffari sustained an incised wound on the scalp, on the right side of the head. The nature of these injuries on both sides, and the manner in which the incident occurred, indicates that the appellants also sustained multiple injuries. The prosecution has suppressed material facts regarding how the appellants and Smt. Jaffari sustained such injuries. The nature of these injuries suggests that they may have been caused by a lathi or other blunt object, as well as by sharp-edged weapons such as a ballam or farsa.

49. Looking at the nature of the injuries sustained by the appellants and Smt. Jaffari, the appellants' claim that they acted in the exercise of their right of private defence has merit. Being attacked with such weapons, the appellants may have feared sustaining grievous hurt or death. Therefore, their retaliation and use of weapons against the first informant and his associates are protected under the right of private defence.

50. In view of the case laws as quoted above, the omission on the part of the prosecution to explain the injuries on the persons of the appellants and Smt. Jaffari assumes greater importance and it lends support to the defence version, which probabilities that the incident may have occurred in the manner as alleged by the defence.

51. In view of the material omissions on the part of the prosecution witnesses of fact, it would be hazardous to place implicit reliance on their testimony, and thus the appellants are entitled to the benefit of doubt.

52. In view of the above discussion, we came to the conclusion that the prosecution has suppressed the material facts with regard to the genesis of the incident and has also concealed material facts with regard to the incident. Particularly, the non-explanation of the injuries on the persons of the appellants and Smt. Jaffari raises serious doubt over the prosecution version. Therefore, we come to the conclusion that the findings of the Trial Court are based on conjecture and Trial Court has not appreciated the evidence correctly and has erred in holding the appellants guilty. Thus, the conviction and sentence of the appellants are liable to be set aside.

53 . In view of the above, the instant criminal appeal is **allowed**. The impugned judgment and order dated 09.10.1984 passed by the Trial Court is set aside and appellants, Unus, Yusuf and Manjar are a**cquitted** of offence punishable under Sections 147, 148, 302/149 and 307/149 I.P.C.

54. The appellants, Unus, Yusuf and Manjar are on bail. They need not surrender. Their bail bonds are cancelled and the sureties are discharged.

55. Before being released, the appellants shall execute a personal bond in the sum of Rs.20,000/- under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for their appearance, in the event of an appeal being preferred against their acquittal.

56. Let a copy of this order be forwarded to the Trial Court concerned alongwith the Trial Court record for information and necessary compliance.

(2026) 5 ILRA 1926
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 12.05.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE JAI KRISHNA UPADHYAY, J.

Criminal Appeal No. 4426 of 2008

Rajnish **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for Consideration

Matter pertains to whether the statement of the deceased prosecutrix recorded by the police under S. 161 Cr.P.C. was admissible as a dying declaration under S. 32(1) of the Indian Evidence Act, 1872, and, if so, whether such uncorroborated dying declaration, in the face of delayed F.I.R., delayed recording of witnesses' statements, non-recording of the father's statement, absence of medical examination, failure to send the alleged bloodstained clothes for chemical analysis (FSL), and lack of medical corroboration, was sufficient to sustain the conviction of the accused beyond reasonable doubt. (Paras 18-33)

Headnotes

Criminal Law - Dying Declaration - Admissibility of statement recorded under S. 161 Cr.P.C. - Indian Evidence Act, 1872 - S. 32(1) - Code of Criminal Procedure, 1973 - S. 161 - A statement made by a deceased person as to the cause of death or the circumstances of the transaction resulting in death is admissible under S. 32(1) and there is no requirement that such statement must necessarily be made to a Magistrate - The statement of the deceased prosecutrix recorded by the police under S. 161 Cr.P.C. was held admissible as a dying declaration as it bore a direct nexus with the circumstances leading to her death - The objection regarding its inadmissibility merely because it was recorded by a police officer was rejected. (Paras 19-25)

Criminal Law - Dying Declaration - Evidentiary value - Indian Evidence Act, 1872 - S. 32(1) - Code of Criminal Procedure, 1973 - Ss. 161 and 162 - Though a statement recorded under S. 161

Cr.P.C. may assume the character of a dying declaration and can legally form the sole basis of conviction, the Court must apply the rule of prudence and satisfy itself that the declaration is truthful, voluntary, free from tutoring or imagination, and suitably corroborated by surrounding circumstances - The evidentiary value of such declaration stands strengthened by medical and other independent corroborative evidence. (Paras 27-30)

Criminal Law - Appreciation of evidence - Delayed F.I.R. and delayed recording of witnesses' statements - Code of Criminal Procedure, 1973 - Ss. 154 and 161 - Unexplained delay in lodging the F.I.R. and in recording the statements of material witnesses introduces the possibility of afterthought, embellishment and tutoring, thereby rendering the prosecution version doubtful - Such unexplained delays constituted serious infirmities affecting the credibility of the prosecution case. (Para 30)

Criminal Law - Rape - Medical corroboration - Indian Penal Code, 1860 - Ss. 363, 366 and 376 - Absence of medical examination of the victim, failure of the post-mortem report to establish sexual violence, and omission to send the alleged bloodstained clothes for chemical analysis constituted significant evidentiary deficiencies - In the facts of the case, such absence of corroborative medical evidence created a serious gap in the prosecution case requiring extreme caution before sustaining conviction. (Paras 31-32)

Criminal Law - Benefit of doubt - Conviction based solely on dying declaration - Indian Evidence Act, 1872 - S. 32(1) - Code of Criminal Procedure, 1973 - S. 161 - Where the cumulative effect of delayed F.I.R., delayed recording of witnesses' statements, non-recording of the father's statement, failure to send bloodstained clothes for chemical analysis, and absence of medical corroboration deprived the dying declaration of its indisputable character, it was legally unsafe to sustain conviction solely on such uncorroborated declaration - Prosecution having failed to establish guilt beyond reasonable doubt, the accused was entitled to benefit of doubt and acquittal. (Paras 32-35)

Held: A statement made by a deceased person as to the cause of death or as to any of the circumstances of the transaction which resulted in death is admissible under S. 32(1) of the Indian Evidence Act, 1872 and there is no requirement of law that such statement must necessarily be made to a Magistrate - A statement recorded by the police under S. 161 Cr.P.C. may, in appropriate circumstances, assume the character of a dying declaration and can legally form the sole basis for conviction but its reliability must be tested on the rule of prudence and it must inspire absolute confidence, be wholly unblemished and fit into the surrounding circumstances - In the present case, although the statement of the deceased prosecutrix recorded under S. 161 Cr.P.C. was admissible as a dying declaration, the cumulative effect of the delayed F.I.R., delayed recording of statements of witnesses, failure to record the statement of the father of the victim, investigative lapse in not sending the bloodstained clothes for chemical analysis (FSL), absence of medical examination of the victim, and lack of medical corroboration severely vitiated its evidentiary value - Such unexplained lapses and substantive inconsistencies introduced the possibility of afterthought, embellishment and tutoring and rendered it legally unsafe to sustain the conviction solely on the uncorroborated dying declaration - The prosecution, therefore, failed to establish the guilt of the accused beyond reasonable doubt and the appellant was entitled to the benefit of doubt - Consequently, the judgment of conviction and sentence was set aside and the appellant was acquitted of all the charges - appeal allowed. (Paras 19-33) (E-7)

Case Law Cited

Sudhakar v. State of Maharashtra, **(2000) 6 SCC 497***; Rattan Singh v. State of H.P.* **[(1997) 4 SCC 161: 1997 SCC (Cri) 525]***; Sharad Birdhichand Sarda case* **[(1984) 4 SCC 116: 1984 SCC (Cri) 487];** *Pradeep Bisoi v. State of Odisha,* **(2019) 11 SCC 500***; Sri Bhagwan v. State of U.P.,* **(2013) 12 SCC 137***; Dharmendra Kumar v. State of M.P.* **(2024) 8 SCC 6***; Neeraj Kumar v State of UP* **2025 SCC OnLineSC 2639;** *Shampoo Alias Surendra Pratap singh vs. State of U.P.* **1981 Supreme (all) 475***; Ram Bihari Yadav v. State of Bihar,* **(1998) 4 SCC 517***; Panipuri Naresh v. State of A.P.,* **(2012) 12 SCC 495***; Sunil Kashyap v. State of Bihar,* **(2020) 18 SCC 725***; Baleshwar Mahto and another Vs. State of Bihar and another,* **(2017) 3 SCC 152***; Pankaj Rana Vs. State of Punjab,* **2013 SCC OnLine P&H 15686.**

List of Acts

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

List of Keywords

Dying declaration; Statement under S. 161 Cr.P.C.; Admissibility; Evidentiary value; Rule of prudence; Corroboration; Delayed F.I.R.; Delayed recording of statements; Medical examination; Medical corroboration; Bloodstained clothes; Chemical analysis (FSL); Investigative lapse; Benefit of doubt; Kidnapping; Rape; Suicide; Circumstances of the transaction; Beyond reasonable doubt; Acquittal.

Case Arising From

APPELLATE JURISDICTION: Appeal against the judgment and order dated 21.05.2008 passed by the Additional District and Sessions Judge, Meerut, in Sessions Trial No. 702 of 2008, whereby the appellant was convicted under Ss. 363, 366 and 376 of the Indian Penal Code, 1860 and sentenced thereunder.

Appearances for Parties

Advs. for the Appellant:
Shri Y.S. Tyagi, Advocate holding brief of Shri Kamal Kishor Mishra.
Advs. for the Respondents:
Sri Ajay Sharma, learned A.G.A. for the State.

(Delivered by Hon'ble Jai Krishna Upadhyay, J.)

1. This criminal appeal has been preferred by accused-appellant - **Rajnis**h against the judgment and order dated 21.05.2008 passed by the Additional District and Sessions Judge, Meerut, in Sessions Trial No. 702 of 2008 (State vs. Rajnish) under sections 363, 366, 376 of I.P.C. whereby the learned trial court has convicted the accused-appellant under the aforesaid sections and sentenced him to undergo seven years of rigorous imprisonment and a fine of rupees 10,000 for the offence under Section 363 IPC, to undergo ten years of rigorous imprisonment and a fine of rupees 10,000 for the offence under section 366 I.P.C and to undergo life imprisonment and a fine of rupees 10,000 for the offence under section 376 I.P.C with default clause.

FACTS OF THE CASE

2. The prosecution's narrative arc may be summarized as follows :

On 05.11.1997, the daughter of Ajab Singh, a resident of village Lalpur, had gone to answer the call of nature. When she did not return, a search was conducted, and it was discovered that Rajnish, son of Surendra Singh, had enticed the girl away. At that time, the victim's age was approximately 15 years. A search was conducted among relatives, and on 06.11.1997, a report written by scribe Kirpal Singh was lodged. The victim's guardians received information to the effect that Rajnish's maternal grandfather had taken her to Durveshpur, where the police reached along with Richhpal and Ajab Singh. There, the accused's maternal grandmother informed them that Rajnish, Surajmal, Vikram, and Bhartu were taking the victim in a buggy to village Gavandi. On the way, the four accused were found going in the buggy with the victim; seeing the police, everyone fled from the spot, and she was recovered. It was stated by the victim to them that Rajnish had committed rape with her and she had been dishonored. Her clothes, which had bloodstains on them, were taken into possession by the police. The victim was given into the custody of Ajab Singh and she was brought to Richhpal's house. Her medical examination was to be conducted the next day, but the victim committed suicide during the night itself by hanging from a fan. The

prosecution alleges that Rajnish kidnapped and raped the victim as an act of revenge. This was apparently because her family had rejected the proposal of marriage of Tejpal's son, who is a relative of the accused.

3. On the basis of written report (Ex.Ka.1), chik First Information Report (Ex.Ka.9) was registered at the police station concerned mentioning all details. G.D. entry was also made at the same time (Ex.Ka.10). The investigation of this case was conducted by R.K. Singh, In-charge Inspector, who after completing the investigation and the necessary formalities, submitted the chargesheet and the case being one exclusively triable by Sessions Court, was committed to Sessions Court for trial. The Charges were framed against the accused-appellant under Sections 363, 366, 376 IPC, which he denied and claimed trial.

4. On behalf of the prosecution, in order to support its case, the statements of PW-1 Kirpal Singh, PW-2 Richhpal, PW-3 Smt. Bala (mother of the deceased), PW-4 S.I. R.B. Dixit, PW-5 Head Constable Arvind Kumar, PW-6 S.I. R.K. Singh, and PW-7 N.K. Gupta were recorded. No evidence was produced by the defense.

5. In order to substantiate the ocular testimony and establish the procedural facts of the case, the prosecution has placed reliance upon and proved as documentary evidence : F.I.R.(Ex.Ka.9), Inquest Report (Ex. Ka-4), Constable's Form 13 (Ex. Ka-5), Photo of the body (Ex. Ka-6), Police Line report (Ex. Ka-7), CMO report (Ex. Ka-8), Site Plan (Ex. Ka-14), Post-mortem report (Ex. Ka-15), victim's Section 161 statement (Ex. Ka-15A), and Charge Sheets (Ex. Ka-12, Ka-13).

6. **PW-1** Kirpal Singh, son of Shri Raghubir Singh, aged 63 years, resident of Lalpur, P.S. Bhavanpur, District Meerut, stated that the deceased was his granddaughter by village relation. He stated that the incident occurred on 05.11.1997 at approximately 06:00 AM when victim went to attend the call of nature but did not return. He stated that they searched for her in various places and among relatives. He further stated that on the following day, Ajab Singh informed him that the accused Rajnish had enticed his daughter and taken her away. Ajab Singh called him to his house and dictated a written complaint (tehrir), which the witness wrote down and Ajab Singh signed it in his presence, and the witness also signed it; the witness identified both signatures, and the document was marked as Ext. Ka-1. He stated that he and Ajab Singh together submitted this report at the police station. Further, the Sub-Inspector took him, Richhpal, and Ajab Singh to village Durveshpur to the house of Rajnish's maternal grandfather where accused's maternal grandmother informed them that Rajnish, Surajmal, Vikram, and Bhartu had taken victim in a buggy toward village Gavandi. He stated that they, along with the police, proceeded toward village Gavandi and spotted the buggy on the way, in which all four aforementioned accused persons and the victim were present. He stated that upon seeing them and the police, the four accused persons jumped off and fled, and only victim was recovered. He stated that the girl was then brought to Bhavanpur police station, where she informed them that when she had gone to attend the call of nature, the accused Rajnish raped her in a sugarcane field. He deposed that she stated she had been deeply disgraced. He further stated that the salwar and kurti of the victim, which were soiled and blood-stained during the rape, were taken into possession in his presence, and he identified his signatures on the recovery memo (fard), marked as Ext. Ka-2. He stated that the girl was handed over to the

custody of Ajab Singh, marked as Ext. Ka-3. The witness deposed that they then brought victim to Richhpal's house in Meerut to stay until her medical examination was conducted the next morning. He stated that in the morning, it was learned that victim had committed suicide by hanging herself from a fan after locking the door.

7**. PW-2** Richhpal Singh, son of Shri Tareef Singh, aged 50 years, resident of Phool Bagh Colony, Meerut, stated that he knew Ajab Singh, who was murdered about a year prior on 23.05.1999, and that victim was Ajab Singh's daughter. He stated that on 05.11.1997, at about 06:00 AM, she went to attend the call of nature but did not return. He stated they waited and searched for her. He also stated that she was about 16 years old at the time. He deposed that on 06.11.1997, the report was written by Kirpal Singh and after that he, Kirpal Singh, and Ajab Singh went with the police to search for her and learned that she was at the place of Surajmal and Bhartu in Durveshpur. He stated that upon reaching Durveshpur, it was found that the accused had taken her in a buggy toward Gavandi. He further stated that while traveling towards Gavandi, they saw four people taking the victim in a buggy; however, upon seeing the police, the four persons left the victim and fled. They brought the girl to the police station where her clothes were sealed and she was given to Ajab Singh's custody. He stated they then went to his house in Phool Bagh Colony. He deposed that in the presence of Ajab Singh, Kirpal Singh, and himself, the girl told the police that Rajnish and a bearded boy named Vikram had forcibly kidnapped her to a sugarcane field where rajnish tied her mouth, showed a knife, and raped her. The next morning, after having breakfast, the girl entered a room and committed suicide by hanging from a fan. He stated that victim had stated that since she had been raped, she was no longer able to show her face to the villagers.

7.1 In his cross-examination, he stated that on 5.11.1997, Ajab Singh informed him about the disappearance of victim. He further stated that, on 12.7.2000 it was the first time when he had given the statement in the court and before that he had not told these facts to anyone. His statement in court was recorded after three and a half years and he told everything on the basis of his memory.

8. **PW-3**, Smt. Bala, wife of Ajab Singh, aged 48 years, resident of Jagatpur, Delhi, stated, the incident occurred about 4 years and 11 months ago and that victim was approximately 15-16 years old at that point of time. She stated that on the day of the incident, at about 06:00 AM, victim went to the fields to attend the call of nature and did not return. She stated her husband and family searched for her but found nothing that day. She deposed that the next day, her husband found out that Rajnish and Vikram had abducted the girl and kept her at the house of Surajmal in village Durveshpur. She stated her husband mentioned Bhartu was also involved. She further stated that the girl was recovered by the police while the accused fled. She stated the police handed the girl over to the custody of her husband and Kirpal Singh, who took her to Richhpal's house. She stated that Manju committed suicide due to the loss of her honor because of what Rajnish had done.

8.1 In her cross examination, she stated investigating officer recorded her statement after 12-13 days of the incident.

9. **PW-4**, SI R.V. Dixit stated that on November 7, 1997, he was posted at Police Station Nauchandi. At 11:10 AM that day, a report was filed by Richhpal regarding the suicide of victim. Following this report, he proceeded to Richhpal's residence to conduct the inquest. He prepared the inquest report (Panchayatnama), which he identified as being in his handwriting and signature (Exhibit Ka-4). He then sealed the body and sent it for a post-mortem examination. He also confirmed preparing related documents, including Form-13 and letters to the RI and CMO (Exhibits Ka-5 to Ka-8).

10. PW-5: HC Arvind Kumar stated that on November 6, 1997, he was posted as a Constable Clerk at Police Station Bhavanpur. He recorded the Chick FIR (Exhibit Ka-9) based on the written complaint submitted by Ajab Singh. He entered this report into General Diary (GD) No. 37 at 21:30 hours on the same day. He identified a carbon copy of the GD (Exhibit Ka-10) because the original GD had been destroyed. A report from record keeper S.K. Sharma confirming the destruction of the original GD was also submitted (Exhibit Ka-11).

10.1 In his cross examination, he admitted that the Chick FIR was "ante-timed". He further admitted that Exhibit Ka-10 contained entries in different ink and lacked the author's signature. He also stated he could not remember or verify exactly when the FIR was sent to the court.

11. **PW-6**, SI R.K. Singh testified that he took over the investigation on December 2, 1997, following the death of the previous investigator, SI Suraj Pal Singh. SI R.K. Singh then recorded the statement of the accused Rajnish and initiated proceedings against other accused persons. He subsequently filed the charge sheet against Rajnish (Exhibit Ka-12). He also recorded statements of accused persons Bhartu, Surajmal, and Vikram, and filed charge sheets against them (Exhibit Ka-13). He proved the site map (Exhibit Ka-14) and recovery memos for the victim's clothes (Exhibits Ka-2 and Ka-3) as being in the handwriting of the late SI Suraj Pal Singh. He submitted a photocopy of the victim's statement under Section 161 CrPC (Exhibit Ka-15).

12. **PW-7,** Dr. N.K. Gupta testified that he was a physician at P.L. Sharma Hospital, Meerut. On November 7, 1997, at 5:00 PM, he performed the post-mortem on the body of deceased. He stated that her age was of approximately 15 years. He found following ante-mortem injuries on the body:

"A rope mark 30cm long and 1-1/2 cm wide which was obliquely on the neck, and this mark was between the chin and the windpipe. Upon cutting below this mark, the area was hard and glistening."

12.1 On External examination, he found
-Build and stature were normal.
- Post-mortem stiffness was present all over the body.
- There were no signs of putrefaction on the body.
- Cyanosis was present on the face.
-12.2 On Internal examination, he found
- The windpipe was congested; both lungs were congested.
- The liver, spleen, and kidneys were also congested.

- The C-2 bone of the neck was displaced from its position.
- The uterus was normal.
- There was 100 ML of water-like substance inside the stomach.
- Prepared 2 slides (Vaginal) of the deceased, sealed them, and handed them over to the accompanying constable so that he could get them tested.

12.3 He opined that the cause of death of the deceased was asphyxia as a result of hanging. He testified the report to be in his handwriting and signature, proved as Exhibit Ka-15 A.

13. After closure of prosecution evidence the incriminating evidence and circumstances were put to the accused in his statement under Section 313 Cr.P.C. wherein he claimed the entire prosecution evidence / case as false and fabricated and stated that he had been implicated in the matter falsely due to enmity.

14. The learned trial court upon scrutiny of the evidence on record concluded that the case of prosecution was proved beyond reasonable doubt against the accused appellant and recorded conviction and sentenced him, as mentioned here-in-above. Hence, this appeal.

15. Heard Shri Y.S. Tyagi, Advocate holding brief of Shri Kamal Kishor Mishra, learned counsel for the appellant and Sri Ajay Sharma, learned A.G.A. for the state at length.

SUBMISSIONS

16. Learned Counsel for the appellant has submitted that :

16.1 There is an unexplained delay of several hours in lodging the F.I.R., suggesting it was filed after due deliberation to concoct a false and fabricated story.

16.2 There are material contradictions in the statements of the witnesses of fact, specifically PW-1, PW-2, and PW-3.

16.3 There is an unexplained delay in recording the statements of witnesses under Section 161 Cr.P.C..

16.4 The statement of Ajab Singh, father of the victim, was never recorded.

16.5 No medical examination of the prosecutrix was conducted despite allegation of rape and the post-mortem report does not support the allegation of sexual assault.

16.6 The victim's clothes, alleged by the prosecution to be blood-stained, were never sent for chemical analysis (FSL).

16.7 The "cause of death" of the victim has not been connected with the alleged rape; therefore, the statement of the victim recorded under section 161 C.r.P.C. cannot be treated as a dying declaration.

16.8 There is no eyewitness to the alleged suicide, and no documentary evidence has been produced to substantiate the occurrence of the suicide.

17. Per Contra, learned AGA argued that in view of the incriminating evidence against the appellant, learned trial court had rightly convicted the appellant. He submitted that the testimony of PW-1, PW-2, and PW-3 is consistent on the core facts of the incident and that minor contradictions do not erode their fundamental credibility. He further contented that the brief delay in lodging the F.I.R. and recording statements of witnesses under Section 161 Cr.P.C. was natural and same was without any deliberation. Furthermore, he contended that failure to send blood-stained clothes for FSL analysis is a mere investigative lapse and benefit of the same should not be given to the accused, keeping in view the gravity of the offence.

APPRECIATION AND ANALYSIS OF EVIDENCE :

18. From the careful scrutiny of the prosecution evidence, rival submissions and perusal of learned trial court judgment, we are of the view that the cornerstone of the prosecution's case rests upon the statement of the deceased which has been recorded by the police officer under section 161 Cr.P.C. and the same has been relied upon as dying declaration of the deceased. It has been argued that the statement of deceased cannot be held to be admissible as dying declaration as it was given to police officer and that too after due tutoring.

19. Before proceeding to deal with the submissions, we need to evaluate Section 32(1) of the Indian Evidence Act, 1872. It states :

Section 32(1) of the Indian Evidence Act, 1872; When it relates to cause of death-

"When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question."

20. The above-quoted provision implies that a statement, written or oral, made by a person who is dead as to the **cause of his death** or as to any of **the circumstances of the transaction which resulted in his death**, in cases in which the cause of that person's death comes into question, becomes admissible under Section 32(1) of the Evidence Act. Such statement made by the deceased is commonly termed as 'dying declaration'. There is no requirement of law that such a statement must necessarily be made to a Magistrate. What evidentiary value or weight has to be attached to such statement, must necessarily depend on the facts and circumstances of each particular case. In a proper case, it may be permissible to convict a person only on the basis of a dying declaration in the light of the facts and circumstances of the said case.

21. In **Sudhakar v. State of Maharashtra, (2000) 6 SCC 497**, Hon'ble Apex Court reiterated that:

"8. In Rattan Singh v. State of H.P. [(1997) 4 SCC 161: 1997 SCC (Cri) 525] this Court held that the expression "circumstances of transaction which resulted in his death" means that

there need not necessarily be a direct nexus between the circumstances and death. Even distant circumstance can become admissible if it has nexus with the transaction which resulted in death. Relying upon Sharad Birdhichand Sarda case [(1984) 4 SCC 116: 1984 SCC (Cri) 487] the Court held that: (SCC pp. 166-67, para 15)

"It is enough if the words spoken by the deceased have reference to any circumstance which has connection with any of the transactions which ended up in the death of the deceased. Such statement would also fall within the purview of Section 32(1) of the Evidence Act. In other words, it is not necessary that such circumstance should be proximate, for, even distant circumstance can also become admissible under the sub-section, provided it has nexus with the transaction which resulted in the death."

22. In the light of the aforesaid legal position, let us examine the statement of the deceased prosecutrix. The victim explicitly stated that;

"रजनीश ने मेरे साथ चार बार गन्ने के खेतो मे ही अब तक जबर (CRLA No. 4426 of 20088अस्पष्ट) बलात्का र िकया है। मै अब इस दु िनया में मुंह िदखानेलायक भी नहीं हूँ । मेरा भिवष् य अब सभी बबार्द हो गया है।

23. The words spoken by the prosecutrix are not merely expressions of personal grief but they serve as a vital link in the chain of events leading to her demise. The victim's statement that she had lost all dignity and could not continue to live in society under such shame clearly shows the mental trauma which directly led her to commit suicide. The Court finds that this declaration establishes a proximate and unbroken link between her state of mind and her death.

24. Further, the Hon'ble Supreme Court has, in a catena of authoritative pronouncements, settled the proposition of law that a statement made by the victim to the police under Section 161 of the Code of Criminal Procedure may, in appropriate circumstances, be treated as a dying declaration. In **Pradeep Bisoi v. State of Odisha, (2019) 11 SCC 500**, Hon'ble Apex Court reiterated that:

"*12. A similar view has been expressed by this Court in Sri Bhagwan [Sri Bhagwan v. State of U.P., (2013) 12 SCC 137], wherein this Court had the occasion to consider Section 161 CrPC and Section 32 of the Evidence Act.*

"20. While keeping the above prescription in mind, when we test the submission of the learned counsel for the appellant in the case on hand at the time when Section 161 CrPC statement of the deceased was recorded, the offence registered was under Section 326 IPC having regard to the grievous injuries sustained by the victim. PW 4 was not contemplating to record the dying declaration of the victim inasmuch as the victim was seriously injured and immediately needed medical aid. Before sending him to the hospital for proper treatment PW 4 thought it fit to get the version about the occurrence recorded from the victim himself that had taken place and that is how Ext. Ka-2 came to be recorded. Undoubtedly, the statement was recorded as one under Section 161 CrPC. Subsequent development resulted in the death of the victim on the next day and the law

empowered the prosecution to rely on the said statement by treating it as a dying declaration, the question for consideration is whether the submission put forth on behalf of the respondent counsel merits acceptance."

25. Thus, it is clear that the statement given by the deceased to the police officer in the case in hand is admissible as a dying declaration. Now, the question arises as to whether this statement can form the sole basis for conviction of the accused, and what will be the evidentiary value of the same and upto what extent such statement may be relied upon.

26. In order to analyze these issues, we may refer the relevant judicial precedents on the point.

27. In **Dharmendra Kumar v. State of M.P. (2024) 8 SCC 6,** Hon'ble Supreme Court held that:

"65. Section 161CrPC empowers the police to examine orally any person who is acquainted with the facts and circumstances of the case under investigation. The police may reduce such statement into writing also. Section 162(1) CrPC, nonetheless, mandates that no statement made by any person to a police officer, if reduced to writing, be signed by the person making it, nor shall such statement be used in evidence except to contradict a witness in the manner provided by Section 145 of the Evidence Act. However, sub-section (2) of Section 162CrPC carves out an exception to sub-section (1) as it explicitly provides that nothing in Section 162 shall be deemed to apply to any statement falling within the ambit of clause (1) of Section 32 of the Evidence Act. In other words, a statement made by a person who is dead, as to the cause of his death or to the circumstances of the transaction which resulted in his death, to a police officer and which has been recorded under Section 161CrPC, shall be relevant and admissible, notwithstanding the express bar against use of such statement in evidence contained therein. In such eventuality, the statement recorded under Section 161CrPC assumes the character of a dying declaration. Since extraordinary credence has been given to such dying declaration, the court ought to be extremely careful and cautious in placing reliance thereupon…"

28. Similar view has been reiterated by the Courts in the case of **Neeraj Kumar v State of UP 2025 SCC OnLineSC 2639, Shampoo Alias Surendra Pratap singh vs. State of U.P. 1981 Supreme (all) 475 Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517, Panipuri Naresh v. State of A.P., (2012) 12 SCC 495, and Sunil Kashyap v. State of Bihar, (2020) 18 SCC 725.**

29. From the above judicial precedents, it is clear that while a statement under Section 161 CrPC given to a police officer is admissible as a dying declaration, its reliability must be tested against the rule of prudence. Although a conviction can legally be based on such a statement alone, yet the courts emphasize the importance of corroboration from other circumstances to ensure that the declaration is truthful, voluntary, and not a result of tutoring or imagination. Therefore, the evidentiary value of such a statement is significantly strengthened when it is supported by medical evidence, independent witness testimony etc., ensuring that it is safe to rely upon it as a ground for conviction.

30. Now the Court proceeds to analyze as to whether the dying declaration given by the victim is corroborated from other circumstances to ensure that the same was truthful and voluntary. In the instant case, there are several glaring procedural lapses and substantive inconsistencies critically undermining the prosecution's case. Primarily, the unexplained delay in lodging the First Information Report (FIR) and the subsequent delay in recording the statements of key witnesses cast a shadow of doubt over the truthfulness of the allegations. Such unexplained delays are fatal to the prosecution's narrative, as they introduce the distinct and dangerous possibility of afterthought, embellishment, and tutoring. When the initial reporting and the recording of statements of witnesses are delayed without a plausible explanation, the foundational narrative becomes suspicious, suggesting that the version of events may have been deliberately concocted rather than being a natural and immediate reaction to the alleged incident.

31. Further, it is a matter of record that no medical examination of the victim was conducted, nor does the post-mortem report establish any act of sexual violence. It is a settled principle that while the testimony of the victim in a sexual offence is vital, the total absence of a medical examination, creates a significant gap in the prosecution's case. In **Baleshwar Mahto and another Vs. State of Bihar and another, (2017) 3 SCC 152**, the Hon'ble Supreme Court observed that where medical evidence is completely missing or contradicts the ocular version, it would be turned as serious contradiction and the court must exercise extreme caution. Moreover, in **Pankaj Rana Vs. State of Punjab, 2013 SCC OnLine P&H 15686**, it was held that while corroboration is not a rule of law, it is a rule of prudence; the lack of medical findings to support the allegation of force or sexual intercourse can, in specific factual matrices, lead to a cloud of doubt regarding the occurrence.

CONCLUSION

32. Thus, it is evident that while evaluating the dying declaration, the rule of prudence must be strictly applied. A dying declaration can only form the sole basis for conviction if (i) it inspires absolute confidence, (ii) is wholly unblemished, and (iii) fits into the surrounding circumstances. In the present matter, the cumulative effect of the delayed FIR, delayed recording of statements of witnesses, failure to record the statement of father of the victim, investigative lapse to send the bloodstained clothes of the victim for chemical analysis (FSL) and a glaring lack of medical corroboration severely vitiates the dying declaration of its indisputable character. In light of these substantive evidentiary gaps and contradictions, it becomes exceedingly difficult and legally unsafe to rely solely on the uncorroborated dying declaration (recorded by the police officer under section 161 Cr.P.C.) to sustain the conviction of the appellant, as the prosecution has manifestly failed to establish the guilt of the accused beyond a reasonable doubt.

33. Hence, upon careful analysis and consideration of the settled legal position in the backdrop of the facts and circumstances of the present case, we are of the opinion that the conclusion taken by the Trial Court in the impugned judgment and order is not in accordance with law and the evidence available on record. Thus, this Court is of the view that the prosecution has not been able to establish the guilt of the accused appellant beyond reasonable doubt. Therefore, the Court is inclined to grant benefit of doubt to the accused appellant on the ground of rule of caution.

34. The impugned judgment and order of conviction and sentence dated 21.05.2008, which has been sought to be assailed, call for and deserves, interference and instant criminal appeal is liable to be allowed.

35. Accordingly, the Criminal Appeal is **allowed** and the impugned judgment and order is set aside. The accused appellant is acquitted of all the charges framed against him. He be set at liberty. He is in jail. He shall be released forthwith, if not wanted in any other case.

36. Office is directed to communicate this order to the court concerned forthwith for compliance and also send back the trial court record.

37. We are thankful to Ms. Anjali Singh, Research Associate for ably assisting the Court.

(2026) 5 ILRA 1937
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 12.05.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE PRASHANT MISHRA-I, J.

Criminal Appeal No. 4514 of 2023

Mahipal **...Appellant**
Versus
State of U.P. **...Respondent**

Issue for consideration

The present case relates to one deceased Mamta, wife of appellant was found dead in her matrimonial house on 14.08.20217; prosecution alleged dowry harassment and strangulation, leading to conviction under section 302 IPC, which was challenged in appeal.

Headnotes

A. Criminal matter-Criminal Procedure Code,1973-Section 374(2)-Indian Penal Code,1860-Section 302-Indian Evidence Act-Section 106-Matrimonial home death-Husband's conviction-Burden of proof—Application of last seen theory-Husband working as a driver, often staying away from home-Prosecution fail to establish the physical presence of the husband at the scene of occurrence-Non-examination of material witness (real sister residing in the same village)-Medical ambiguity-Ligature marks without broken hyoid bone or fingernail scratches-Possibility of suicide by hanging not ruled out-Conviction based on mere presumption of staying under the same roof unsustainable-Appeal allowed.(Para 24 to 30)

Held

The court held that the prosecution cannot invoke section 106 of the Evidence Act to shift the burden of proof onto a husband merely because a death occurs under a shared matrimonial roof, without first establishing his physical presence at the scene. In the light of material contradictions between witnesses, the non-examination of a crucial neighborhood witness, medical evidence supporting suicidal hanging, and the acquittal of co-accused on identical evidence, the sole conviction of the husband u/s 302 IPC is unsustainable.

Appellant acquitted. (E-6)

Case law Cited

Smt. Gargi Vs State of Haryana AIR 2019 SC4864, Smt. Gargi Vs State of Haryana (2019) 9 SCC 738-referred to.

List of Acts

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

List of Keywords

Matrimonial death, Circumstantial evidence, Burden of proof, Shared matrimonial roof, Physical presence, Presumption of guilt, Non-examination of crucial witness, Last seen theory, Section 106 of Indian Evidence Act, Co-accused, Acquittal.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. -4514 OF 2023 12.05.2026

Mahipal Vs. State of U.P.

From the judgment and order dated 12.05.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):

Bishram Tiwari, Kamlesh Kumar Tripathi, Ram Naresh Nigam, Ritesh singh, Shyam Shanker Pandey, Sonu Malik, Suresh Singh

Adv. for Respondent(s):

G.A.

(Delivered by Hon'ble Siddhartha Varma, J.
&
Hon'ble Prashant Mishra-I, J.)

1. The present criminal appeal has been preferred against the judgment and order dated 7.4.2023 passed by learned Sessions Judge, Rampur, in Session Trial No. 372 of 2017 (State vs. Mahipal and others), in Case Crime No. 552 of 2017 under Section 302 IPC, Police Station - Milak, District - Rampur, whereby the trial court had convicted the appellant to undergo life imprisonment under Section 302 IPC with a fine of Rs. 30,000/- and in case of default of payment of fine, he shall undergo four months additional imprisonment.

2. Upon the death of Mamta, the niece of the first informant Sri Rameshwar, an FIR was got lodged on 15.8.2017 which had given rise to Case Crime No. 552 of 2017. The alleged incident had taken place on 14.8.2017. As per the FIR version, the first informant had informed that the daughter of the elder brother of the first informant was married around 3 years earlier to Mahipal. In the marriage, it has been said, the elder brother Sompal had given sufficient dowry to the accused Mahipal. However, the in-laws were not satisfied with the dowry and, therefore, immediately after the marriage the husband of the deceased, Mahipal, her father-in-law Sompal, her mother-in-law Sharda, jethani Saroj, jeth Brijesh and nanad Kumari Annu were from the very beginning after the marriage torturing her. In this regard, a panchayat was also held. However, in the mid night of 14/15.8.2017 they all had together killed his niece Mamta. Upon getting the information about the death of Mamta, he had stated that he had reached the matrimonial house of Mamta and, thereafter, he had found that her dead body was lying and that the family members had

run away. He had stated that at the place where the dead body was lying he had left behind his brother Sompal and had gone to get the FIR lodged.

3. Upon the FIR being lodged, the Police got into action and the inquest report was prepared on the 15.8.2017 itself. The inquest had commenced at 10:05am and had got completed at 11:00am. The dead body along with the Panchayatnama and the FIR etc. was sent for post mortem which was conducted on 15.8.2017 at 2:45PM. The cause of death was said to be asphyxia due to ante-mortem throttling. It was, however, said that the viscera was preserved. The police thereafter recorded the statements of various witnesses and also that of the accused persons and submitted its report before the Court, which on 20.1.2018 framed charges under Sections 498-A and 304-B IPC. An alternative charge under Section 302/34 IPC was also framed on 7.12.2022. The charges were framed against the husband Mahipal, the father-in-law Sompal and the mother-in-law Smt. Sharda.

4. For proving of the prosecution case, as many as 7 prosecution witnesses were examined. Ashok Kumar Singh was produced as the court witness and from the side of the defence, three defence witnesses, namely, Smt. Chameli Devi, Rajpal, Harpal Singh were also examined.

5. P.W.-1 was the first informant, namely, Rameshwar. He had deposed before the Court in his examination in chief that the deceased was his niece and was the daughter of his brother Sompal. He had reiterated the facts as were stated in the FIR. In the statement-in-chief he had stated that for 4 -5 months after marriage in the place of the in-laws everything went off well but after that there were demands of dowry. In the dowry, Rs. 1 lac cash, one car and money for the purposes of building a house were demanded. He had stated that when the dowry was not given then they used to beat the deceased Mamta. After the completion of one year of marriage when the demand of dowry was not fulfilled then Mamta was also turned out of her house. With regard to the turning out of Mamta from her matrimonial house, a report was also got lodged at the Mahila Police Station. However, thereafter, there was an agreement reached between the parties with the help of all the relatives. Upon the rapprochement, Mamta went back to her matrimonial house but again after sometime the in-laws started beating her. On 14.8.2017, he had stated that when dowry was not given she was killed by strangulation and the culprits were Mahipal, Sompal, Sharda, Brijesh and Annu. He had stated that thereafter he had reached the matrimonial house of the deceased on 15.8.2017 where none of the family members were to be found and the dead body was lying on a cot inside the room. On the neck there was an injury and there was a black line on it. On the head, there was a swelling. He had stated that he had got the FIR lodged against all the six accused and he had got it reported by dictating it to his nephew Arvind and he had, thereafter, proved the FIR. In the cross-examination, he had stated that Sompal and he himself i.e. Rameshwar were living in the same house. He had stated that in the morning he along with his nephew Arvind had gone to the place of incident at Partapur. They had started at 7:00am on a bike. After half an hour of their reaching Partapur, the elder brother of the first informant Radhey Shyam, another nephew Poshaki Lal and other relatives also started in two tractor trolleys. One tractor-trolley belonged to the pradhan of the village and the other tractor-trolley belonged to Poshakilal and he had stated that in the village Partapur another daughter of Sompal was got married and the name of the other daughter was Guddi and her husband□s name was Jai Virath. Guddi was the eldest daughter amongst the brothers and sisters. He had stated that Guddi had not given the news to him but other persons of the village had given that news. Who had rung him up, he did not know and he

had also not asked the name of that person. He had also not verified about the death of Mamta from Guddi. When he had reached Partapur, Guddi was not there and she had also not reached the place of incident till such time as the informant□s side was there. He had stated that when he had reached Partapur then no one of the in-laws side was there. However, when he and his nephew Arvind had reached, the other villagers had reached the place of incident whose name the informant did not know. He had stated that he stayed back at the place of incident for about 15 minutes. Who all had killed Mamta was informed by the person who had informed him of the incident on the phone. For him to reach at Milakh Kotwali from Partapur, it had taken about 15 to 20 minutes. At the police station, the nephew Arvind had scribed the FIR on his dictation. He had in the cross-examination stated that whenever Mamta used to come to her Maika, she used to tell everything about her in-laws. Upon asking the villagers as to where the family members of the in-laws had gone, the villagers had told the informant that they had left the village at around 4:00am in the morning. He had stated that even though the relations with Guddi the elder sister of the deceased were cordial, they had not contacted Guddi. He had stated that he had no idea that the elder brother of the accused Mahipal, namely, Brijesh had gone to Bagad (a place of pilgrimage). He had stated that Mamta was a simple girl and that he had no idea if she was suffering from any fits of anger etc. Upon further cross-examination, he had stated that because there was swelling on the neck and on the head he had stated that there was throttling. Upon a question being asked as to where the child of the deceased was born, he had told that the child was born in the Lovey Hospital. After the child was born, she had stayed for some time with the in-laws and thereafter for sometime, she went to her maika. He had also stated that he had no idea as to how much was the expense of the hospital as the same was borne by his brother. He had further stated in his cross examination that it was wrong to say that because the husband of the deceased was a driver and because of that reason he used to remain out of the village and, therefore, the husband was vexed when she was not found in the matrimonial house. He had further stated that it was also not correct that because she stayed for long periods in her maika, her husband did not get the happiness she could give. He had stated that in his presence never any altercation had taken place for the purposes of dowry. In fact, he had stated that in the FIR he had not mentioned about the demand of dowry because nothing of that sort had happened in his presence ever.

6. P.W.-2, was the father of the deceased, Sompal. He had stated that the deceased was his daughter and that he had married her off around three years earlier with Mahipal and had given her enough dowry. He had stated that around 8 to 10 months after the marriage, Mamta used to inform him about the demand of dowry by her in-laws. He had also stated that she was turned out of her matrimonial house because of the non-payment of dowry. He had also stated that he had got a report lodged in the Mahila Police Station at Rampur. However, the two families had arrived at an agreement when there was a panchayat of the relatives. For sometime things went off smoothly but thereafter again the demand of dowry started off. He had stated that for a very long period, the deceased was not given food and when she used to fall ill she was not given any money for buying medicines. He had stated that he used to send money for the medicines. He had, thereafter, stated that the incident had taken place around one and a half year prior to the date of the recording of the testimony in the Court and that on 15.8.2017 his elder daughter Guddi whose house was in the neighbourhood of the house of Mamta had rung him up and had informed him that the in-laws had throttled Mamta. He had stated that upon hearing this, all the family members had gone to the in-laws place at Partapur. There he had found that the in-laws were not present in the house. In the

statement-in-chief, further he had stated that when he had reached the house at Partapur, he had found the dead body lying on a cot. He had also found some injury on the neck and head. He had stated that his brother Rameshwar had informed the police about the incident. After all the formalities the dead body was cremated. In the cross-examination he had stated that he had given enough dowry to the husband of the deceased at the time of the marriage. He had also stated in the Court, that he had also given a list of things which he had given as dowry. He had stated that whenever his daughter and son-in-law used to come to the village they were seen off with presents. He had stated that he had not gone to get the FIR lodged and thus the same was lodged by his brother Rameshwar. He had stated that he had given enough dowry at the time of marriage. He had stated that his son-in-law Mahipal was a driver and also used to do farming and had stated that it was correct to say that for many days together his son-in-law used to be out of the house and that his daughter used to stay in her maika. On the date of the incident, he had reached the place of incident half an hour after his brother and his nephew had reached. Thereafter he had stated that at the house the inmates of the susural and various villagers were there. In the cross-examination again he had stated as to how he had got the information and then he had stated that his son-in-law was present.

7. He had stated that his daughter was never happy in her in-laws house. She had become pregnant after two years of marriage and had stayed in her in-laws house thereafter. The medical treatment was also given by the in-laws. The child, however, was a still born child and was born in the Lovey hospital and that he had got her admitted in the maika in the Lovey hospital. He had however no proof about it. He had stated that the in-laws had kept the daughter admitted for 4 days in the Lovey hospital. From the time she conceived till such time as she delivered the baby she had remained in the matrimonial home. She never came to her maika. After she was discharged from the hospital she had gone to her in-laws. The child was born after full 9 months. When the deceased was pregnant, the maika vala used to visit her. He had stated that he had not got the FIR lodged as he was unconscious at the relevant point of time. He had also stated that police had never taken any statement of his. Upon being confronted with a statement under Section 161 Cr.P.C., he had stated that he had not got any statement under Section 161 Cr.P.C. recorded. On the date of incident he was unconscious. What was got recorded in the FIR he did not know. Whether Brijesh, the Jeth, had gone for pilgrimage he did not know. Why his brother despite knowledge that there was a demand of dowry had not mentioned in the FIR that Rs. 1 lac was demanded, he did know. He had stated that whenever his son-in-law Mahipal used to go out as a driver his daughter i.e. the deceased used to stay with her in-laws and she never used to go to her maika. He had further stated that he had on many an occasion brought the deceased to his own house. Then he had stated that he had seen the injuries on the body of the deceased and that it was present on the waist and neck and on the neck there were injuries of beating by danda also. He had stated that earlier also she used to get beatings. He had never got reported those beatings as he feared that the son-in-law Mahipal would abandon her. He had in the cross-examination stated that the deceased had never fallen ill and, therefore, earlier when he had stated in his statement that he used to give her medicines was a wrong statement. The fact was that no medicine was required by her. He had stated that his other daughter Maldei (Guddi) was also got married in the village where the deceased had got married and Maldei had never informed of any torture or demand of dowry. He had stated that it was wrong to say that because the father had kept the daughter for a very long time in maika, therefore, Mamta

had committed suicide. He had thereafter in the end stated that it is wrong to say that she used to stay very happily in the matrimonial home.

8. P.W.-3 was the Sub Inspector Satendra Kumar who was the Investigating Officer at the relevant point of time. He was also present at the time of the panchayatnama. He had stated in his cross-examination that he had not found any evidence of any broken bangles. She was also wearing a chain(mala) in her neck. There was no apparent injury on the body. On the neck there was a ligature mark. How the death had taken place, he had no idea. She was wearing a round Bindi and her clothes were proper. From the panchayatnama it was apparent that there were a few people from her maika and a few people from her Sasural. No danda etc. was recovered.

9. P.W.-4 was one Vinod Babu, the brother of the deceased. He had stated in the examination-in-chief that he had solemnized the marriage of his sister in the village Partapur, Police Station Milakh, District Rampur, with Mahipal around 3 years prior to the date of incident. For a period of 8 to 9 months everything went off well and thereafter there was a demand of Rs. 1 lac and a car and some money for the construction of house. The demand was made by the husband Mahipal, her father-in-law Sompal, her mother-in-law Sharda, her sister-in-law Annu, her Jeth Brijesh and jethani Saroj. When the demand was not fulfilled, the deceased was tortured and somehow she used to go to her village i.e. her mother’s place. When a complaint was made with the police then the in-laws asked for forgiveness and they also stated that they would never in future demand any dowry. For some time everything went off well but subsequently he states that Mahipal and his family members killed the deceased. Upon getting the information about the death of the deceased, he had stated that he had reached the village Partapur where he had found the dead body on a cot. He had stated that he had seen the injuries on the eye-brows, neck and at that point of time, the accused persons were not available in the house and the FIR was lodged by his uncle Rameshwar. He had also signed on the Panchayatnama. The compromise which was earlier entered into was also seen by him and he had stated that it was a Panchayatnama which was entered between the family members of the deceased and her in-laws. In the cross-examination, he had stated that information with regard to the death had reached his uncle on phone. He or his father had not received any information. In the cross-examination, further he had stated what he had got recorded in the examination-in-chief. Upon a question being asked whether he had got any case lodged earlier then he had said that he had got a case lodged in the Mahila Police Station. He, however, had stated that he did not have a copy of the FIR as the matter had resulted in a compromise. He had, in fact, not known even about the case crime number. He had stated that the deceased never used to stay continuously for 15 to 20 days in her susural. Even though she used to get a beating at the in-laws place he had stated that he never used to get a medical done. Whenever they used to say that they would not torture her then they used to take her to the in-laws place. When the deceased was pregnant, he had stated that the routine check up was got done by in-laws as also by her family members on the mother's side. He had stated that he did not remember as to who had taken the discharge certificate. The still born child was born almost after one and a half or two years of the marriage of Mamta.

10. P.W. -5 is the Doctor who had conducted the post mortem along with other doctors in the panel. He had stated about the ante- mortem injuries that were there, namely traumatic swelling on the top of the head and on the right eye-brow. There was also an injury on the neck, both on the

front side and on the back side. There was an abrasion on the chest of the left side. The doctor had stated that the hyoid bone was intact and the opinion given by the doctor was that it could have been caused by throttling. However, the viscera was preserved. He had also stated that at the time of post mortem all the articles of make up, namely, bangles etc. were in proper state. He had also given an opinion that the case could have been that of hanging and the injuries could have been because the body had fallen down when it was being taken down from the rope. There were no thumb impressions on the throat which are usually found at the time of throttling and, therefore, he also stated that the death could happen because of hanging and that it also could be a case of suicide. In the cross-examination, however, further he had stated that there was no sign of any rope being used for hanging. He had then stated that if throttling by hand was done then there would have been some signs of nails on the neck. Upon a question being put as to whether it was essential for the finger prints to be there if there was throttling then he had answered that it was not possible without them. He has stated that hyoid bone normally got broken in the case of throttling but it was not essential at all times.

11. P.W.-6, Sri O.P. Arya was the investigating officer and he had stated the manner in which the investigation was done. He had stated that it was right to say that at the time of the incident most of the family members were not there but the whereabouts of Mahipal, the husband who was a driver could not be told. He had, however, stated that it was wrong to say that she had committed suicide as she was tired of the people in the maika.

12. P.W.-7 was the constable Harendra Singh who had proved the chik.

13. A Court Witness by the name of Ashok Kumar Singh was also summoned and had stated that on 15.8.2017 he was posted at Tehsil Milakh as Tehsildar and he had gone to oversee the panchayatnama on the relevant date. He had stated that on the body of the deceased there was no sign of any resistance and, there was no injury to that effect. However, there was only a ligature mark on the throat. There was absolutely no sign of any weapon having been used. The ligature mark, it was said could have been there because of hanging. The other articles of make up namely a chain (neckless) Bindi and bangles were found intact.

Thereafter, the statements of the accused persons were recorded under Section 313 Cr.P.C. They had denied having committed the crime.

14. From the side of the defence also, certain witnesses had appeared.

D.W.-1 was Smt. Chameli Devi. She had very categorically stated that Mamta had died by hanging. The door was closed from inside and she had hung herself to death with the help of a Chunni. She had stated that father of Mahipal had informed her that Mahipal had gone somewhere else in some programme of Janamasthmi. When the incident had occurred, the mother of Mahipal had raised a hue and cry and quiet a few people of the village had collected and from the window they had seen Mamta hanging. They broke down the door and entered. She had stated very categorically that Mamta had committed suicide. She had, upon a question being asked as to why she was taken down from hanging position then she had replied that it was thought that she might have been saved by taking her down from the hanging position. She had also stated that her in-laws

never tortured her. She had stated that Mahipal used to go for driving and was very often out of the house. She had basically stated that the deceased was happy in the house of the in-laws and there was no torturing etc done. The child of Mamta was also born by surgery and that the entire expenses were borne by Mahipal, the accused.

15. In the cross-examination, she stood firm and had stated that Sompal, the father-in-law of the deceased had come and informed her about the death of Mamta.

16. D.W.-2 Rajpal had also stated somewhat the same thing as was stated by the D.W.-1. He had also stated that he was not in any manner related to the accused persons.

17. D.W.-3 is Haripal Singh. He had also stated exactly what the D.W.- 1 and 2 had stated that Mamta had died by hanging herself.

18. Upon completion of the Trial, the court on 7.4.2023 had acquitted Sompal @ Dhyan Singh and Smt. Sharda of the charges under Section 498-A, 304-B, 302/34 IPC and Section 3/4 of the Dowry Prohibition Act. However the Trial Court convicted the accused appellant Mahipal under Section 302 IPC, then the instant criminal appeal was filed by Mahipal.

19. Learned counsel for the appellant Sri Bishram Tiwari assisted by Sri Ritesh Singh has submitted that the witnesses of fact i.e. the P.W. 1, 2, 3 and 4 had simply concluded that because of the fact that the incident had occurred in the house of the appellant Mahipal, the appellant alone was responsible and had to be convicted.

20. Learned counsel for the appellant assailed this aspect of the case by submitting that as per the law laid down by the Supreme Court in the judgement of Smt. Gargi v. State of Haryana reported in AIR 2019 SC 4864, settled law was that even if the appellant was the husband of the deceased and both of them were staying under the same roof, the fact remained that such companionship in itself did not mean that a presumption of guilt of the appellant had to be drawn. The Trial Court could not have thus proceeded in the manner it had proceeded by presuming that the appellant was guilty as per the provisions of Section 106 of the Evidence Act. He had submitted that it was the bounden duty of the prosecution to discharge its primary burden of proving the case of the prosecution beyond reasonable doubt. The prosecution first had to work its way through various evidence to find out that the appellant was actually in the house at the relevant point of time. Learned counsel for the appellant submits that the appellant was a driver and there was every possibility that he was not in the house at all.

21. Since the learned counsel for the appellant relied upon paragraph no. 33 of the judgment in the case of **Smt. Gargi v. State of Haryana reported in (2019) 9 SCC 738**, they are being reproduced here as under:-

"33. The prosecution has relied upon another circumstance that the deceased was lastly in the company of the appellant and she had failed to explain his whereabouts as also the circumstances leading to his death.

33.1 Insofar as the □last seen theory□ is concerned, there is no doubt that the appellant being none other than the wife of the deceased and staying under the same roof, was the last person the deceased was seen with. However, such companionship of the deceased and the appellant, by itself, does not mean that a presumption of guilt of the appellant is to be drawn. The trial court and the High Court have proceeded on the assumption that Section 106 of the Evidence Act **["106. Burden of proving fact especially within knowledge.-**When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.□] directly operates against the appellant. In our view, such an approach has also not been free from error where it was omitted to be considered that Section 106 of the Evidence Act does not absolve the prosecution of its primary burden. This Court has explained the principle in Sawal Das [Sawal Das v. State of Bihar, (1974) 4 SCC 193 : 1974 SCC (Cri) 362] in the following: (SCC p. 197, para 10)

"10. Neither an application of Section 103 nor of 106 of the Evidence Act could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the accused."

33.2. On the facts of the present case, it emerges that as per the version of PW 7, the deceased was lastly in his company on 28-4-1997 when he allegedly expressed his dejection and fear as also his plan to return with luggage. The appellant has pointed out that the deceased was with her in the morning of 29-4-1997 when he pointed out his tour programme commencing that day with scheduled return on 3-5-1997. It is not in dispute that the deceased was regularly on tour for longer durations of about two weeks in connection with his duties. The dead body was recovered on 1-5-1997 and as per post-mortem report, the probable time that had elapsed between death and post-mortem (on 2-5-1997 at 12.30 p.m.) was 24 to 72 hrs. On the basis of this opinion, it cannot be assumed by way of arithmetical calculation that the deceased might have met with his end on 29-4-1997. The possibility of it being a day later is not ruled out.

33.3. In the given set of circumstances, the last seen theory cannot be operated against the appellant only because she was the wife of the deceased and was living with him. The gap between the point of time when the appellant and the deceased were last seen together and when the deceased was found dead had not been that small that possibility of any other person being the author of the crime is rendered totally improbable. In Sk. Yusuf [Sk. Yusuf v. State of W.B., (2011) 11 SCC 754 : (2011) 3 SCC (Cri) 620] , this Court has said: (SCC pp. 760-61, para 21)

"21. The last-seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible."

22. The other arguments raised by the learned counsel were as follows:-

I. Still further, learned counsel for the appellant submitted that one more sister of the deceased known by the name of Guddi @ Maldeihad got married in the very same village where

the deceased had got married but she had never given the information of the death and also the sister of the deceased was not in the know of the fact that her own sister was being tortured in any manner whatsoever.

II. Learned counsel for the appellant further submitted that if the evidence of the various prosecution witnesses of fact are seen then also it becomes clear that the first informant was the uncle of the deceased and he had stated that somebody had rung him up to inform about the death but in fact he was unable to tell the name of the person who actually had informed him and the call details were also not looked into when the investigation had taken place and, therefore, it was not reliable to believe that somebody had informed him. Further, the case of the P.W.-1 becomes doubtful when P.W.-2 who was the father had said that he had directly got information at around 8 to 9 AM in the morning on the date of the incident. The father had also never got the FIR registered but he was stating that he had got the FIR scribed. The source from where the father got information also was the elder daughter and this fact was never disclosed by P.W.-1.

III. Learned counsel for the appellant had submitted that when the still born child of the deceased was born there were contradictory stands taken by the prosecution witnesses as to who had met the expenses of the treatment. The P.W.-1 had stated that it was the Maikawala who had got the treatment done whereas the P.W.-2 and other prosecution witness i.e. the brother of the deceased had stated that the in-laws had got the treatment done.

IV. Learned counsel for the appellant had further stated that when there were statements from the side of the defence also that they had seen the incident actually with regard to the hanging of the body from the roof then that aspect of the matter ought to have been looked into by the Trial Court.

V. Learned counsel for the appellant further stated that if there had to be a strangulation there in the absence of any hyoid bone being fractured then a definite medical opinion ought to have been there with regard to the fact as to whether there were any thumb nail marks on the throat. Learned counsel for the appellant states that when thumb nail marks on the throat were absent and the ligature mark was there present on the neck and throat then there was a possibility that the deceased had died owing to hanging.

VI. Learned counsel for the appellant had submitted that when other co-accused had been discharged of the charges levelled against them and the evidence was led with regard to all the accused virtually on the same ground that the deceased and the accused were all living under the same roof then for the trial court to take a view different for the accused definitely had a prejudicial effect on the case of the appellant who was the only accused who was convicted.

23. Learned AGA Sri Amit Sinha opposed the appeal and submitted that in view of the evidence which was there against the accused and in view of the fact that the deceased had died in the house of the accused appellant then there was no other presumption to be drawn than the one which had been drawn by the trial court.

24. Having heard the learned counsel for the parties, we are of the view that the prosecution did not discharge its duty of actually coming up with the evidence which would have gone to prove that despite the fact that the husband i.e. the accused appellant was staying with the deceased under the same roof he alone was the person who had actually committed the crime. In the instant case, we find that the appellant's husband was a car driver and he quite often used to be away in connection with his job but at no point of time the prosecution specifically pointed out that in fact the appellant alone had committed the crime and conclusions had been drawn because of the provisions of Section 106 of the Evidence Act that if the accused was living with the appellant then it was the appellant's duty to have explained as to how the murder had taken place. In the instant case, we find that the very first prerequisite was that the prosecution should have come up with the case whereby it would have been found that the husband was on that particular date in the house where the deceased had died. In the absence of the primary function which had to be performed by the prosecution whereby they had to prove that the husband was actually present in the house at that particular point of time, we are of the view that the prosecution had failed in its duty and thus the only irresistible conclusion is that when the prosecution itself had failed to discharge its duty of bringing in evidence to prove that the husband i.e. the appellant was in the house at the relevant point of time and had committed the murder, then the accused appellant is entitled for acquittal. Also it is noteworthy to mention here that one of the most important witnesses of cruelty, harassment and demand of dowry, etc. was the elder daughter of Sompal i.e. Maldei alias Guddi, who was married in the very same village where the deceased Mamta was married. She has not been produced by the prosecution. She would have been the test witness regarding the allegations levelled by the in-laws of Mamta (deceased) as both were real sisters and were married in the same village. Had Maldei alias Guddi was examined by the prosecution she would have been a much better witness than those produced by the prosecution.

25. Further, PW-2, in his examination-in-chief, has very clearly stated that Maldei alias Guddi was married in the neighbourhood of Mamta s matrimonial home and he has also stated that Maldei informed him on telephone that Mamta was beaten and was throttled to death by her in-laws, whereas PW-1, on the other hand who is the uncle of deceased Mamta, has vehemently stated in his cross-examination that the information as to the death of Mamta was not given by Guddi. So, at this juncture, there is a big contradiction between the version of the witnesses. It has also been stated by the prosecution witnesses that the cost of treatment during pregnancy of Mamta was borne by the Maikawalas and in the same context the other prosecution witness says that the cost was borne by the in-laws of the deceased. Therefore, here also appears a contradiction which although not very material to the case but holds an importance as the family members of the deceased would have known the fact as to who borne the expenses when the deceased was undergoing a surgery during her pregnancy, when still born child was born.

26. Moreover, the defence witnesses, namely, Chameli Devi, Rajpal and Harpal Singh have also been examined and they all have stated that Mamta died due to hanging and they have also stated about the injuries which they saw on the body of the deceased. The doctor, who conducted the post-mortem of the deceased, has also stated in his cross-examination that the injuries caused on the body of the deceased, may be due to hanging.

27. Therefore, in view of the above, we are of the view that prosecution has completely failed to establish the charges levelled against the appellant and that if on the same set of evidence, the two accused Sompal alias Dhyan Singh and Smt. Sharda Devi were acquitted of the charges levelled against them, it was bad to convict the sole appellant-Mahipal on account of the same evidence.

28. Thus in view of what has been stated by us, we are of the view that the appeal deserves to be allowed and the judgment and order dated 7.4.2023 passed by the Sessions Judge, Rampur, be set aside.

29. The instant criminal appeal is, therefore, allowed and the judgement and order dated 7.4.2023 passed by the Sessions Judge, Rampur, is set aside.

30. That the appellant is honourably acquitted of all the charges under which he was tried. Since the appellant is acquitted of all the charges, the sureties and bail bonds be discharged. The appellant be, therefore, released forthwith if he is not required in any other case.

(2026) 5 ILRA 1948
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 26.05.2026

BEFORE

THE HON'BLE MANOJ BAJAJ, J.

Criminal Revision No. 120 of 2026

Sarthak Dixit & Anr. **...Revisionists**
Versus
State of U.P. & Ors. **...Opposite Parties**

Issue for Consideration

Matter pertains to whether, after alteration of charges u/s 216 Cr.P.C. during the pendency of trial, the accused were entitled, as a matter of right u/s 217 Cr.P.C., to recall and further cross-examine prosecution witnesses, and whether the trial court had erred in rejecting such prayer on the ground that it was intended merely to delay the trial proceedings.

Headnotes

Indian Penal Code, 1860 - ss. 302, 147, 148, 149, 120-B, 452, 212 - Arms Act, 1959 - s. 27/30 - Code of Criminal Procedure, 1973 - ss. 216, 217, 311, 397(2) - Constitution of India, 1950 - Article 21 - Alteration of charge - Recall of witnesses - Maintainability of revision - The petitioners, who were facing trial in connected sessions cases arising out of offences including murder and offences under the Arms Act, challenged the order dated 27.08.2025 whereby the trial court rejected their application seeking recall of prosecution witnesses PW-8 and PW-9 - Initially, charges under the Arms Act had been framed on 21.04.2023, however, after examination of several prosecution witnesses, the trial court altered the charges on 06.06.2025 by additionally framing a charge u/s 5/27 of Arms Act - Contending that the alteration of charge conferred upon them a statutory right u/s 217 Cr.P.C. to further cross-examine the investigating

witnesses with reference to altered charge, the petitioners sought their recall - The trial court declined the request on the premise that it was intended to delay the trial - Aggrieved thereby, the petitioners invoked the revisional jurisdiction of High Court.

Held: The testimonies of PW-8 and PW-9, started on 18.12.2024 and the same completed on 03.06.2025 when the cross-examination of PW-9 concluded - The application by the petitioners, who are in custody was moved promptly on 19.06.2025 after alteration of charge on 06.06.2025, therefore, it cannot be said that the petitioners-accused moved the application with an object to delay the trial proceedings - The original charge apprises the accused about alleged commission of offence punishable under Arms Act also, but the omission to frame charge against them u/s 5/27 Arms Act, 1959 is not attributed to accused, and once the trial court has altered the charge, the accused, are well within their right to seek recall of prosecution witnesses PW-8 and PW-9 for cross-examination, who were directly related to the investigation, as well as the recovery of weapon - There is nothing on record to suggest ,that in case, the permission is granted to the accused to recall PW-8 and PW-9 any prejudice would be caused either to the complainant or prosecution – Accordingly, petition allowed, thus, impugned order set aside. [Paras 13, 14, 16] (E-13)

Case Law Cited

Neelam Mahajan and another v. The State of others, **2016(229) DLT, 29; distinguished**

List of Acts

Indian Penal Code, 1860; Arms Act, 1959; Constitution of India, 1950; Code of Criminal Procedure, 1973

List of Keywords

Criminal Revision; Alteration of Charge; Recall of witnesses; Cross-Examination; Prosecution witnesses; Sessions Trial; Arms Act; Murder trial; Investigation; Recovery of weapon; Revisional Jurisdiction; Interlocutory; Fair trial; Article 21; Constitution of India; Charge; Testimony; Custody;

Case Arising From

REVISIONAL JURISDICTION: Criminal Revision No. - 120 of 2026

From the Judgment and Order dated 27.08.2025 passed by Additional District and sessions Judge/Special Judge (POCSO Act), Court No.1 Budaun in connected Sessions Trial Nos.446, 448 and 465 of 2023, arising out of connected Case Crime Nos.351, 352 and 353 of 2022 all registered at Police Station Ushait, district Badaun.

Appearances for Parties

Advs. for the Revisionist(s):
Rajesh Kumar Mishra, Rohit Shukla

Advs. for the Opposite Party(s):
Aryan Srivastava, Chandra Shekhar, G.A

(Delivered by Hon'ble Manoj Bajaj, J.)

1.Petitioners are aggrieved against the order dated 27.08.2025 passed by Additional District and sessions Judge/Special Judge (POCSO Act), Court No.1 Budaun in connected Sessions Trial Nos.446, 448 and 465 of 2023, titled State Vs. Chand Mohammad and others, arising out of connected Case Crime Nos.351, 352 and 353 of 2022, under Sections 302, 147, 148, 149, 120-B, 452 and 212 I.P.C. and Sections 27/30 Arms Act, 1959 all registered at Police Station Ushait, district Badaun, whereby their prayer for recalling prosecution witnesses, PW-8 and PW-9 for examination on the ground of alteration of charge has been dismissed.

2.Learned counsel for the petitioners has argued that the petitioners being accused are facing the prosecution in murder trial, wherein charges against them in S.T. Nos.446 and 448 of 2023 were framed on 21.04.2023 under Sections 3/25(1)(1b) and Section 3/25 Arms Act, 1959 respectively. Learned counsel has argued that after the commencement of trial, the prosecution examined its witnesses including PW-8-S.I. Jitendra Singh and PW-9-Awadhesh Kumar Singh, Inchrage Station House Officer, who were associated with the investigation. He further submits that after examination of ten witnesses, the charges in Sessions Trial Nos.446 and 448 of 2023 were altered vide order(s) dated 06.06.2025 and the petitioners were also additionally charged for alleged commission of offence punishable under Section 5/27 Arms Act, 1959. Learned counsel submits that since the charges were altered by the trial court on its own, therefore, the accused-petitioners moved an application seeking recalling of the two prosecution witnesses, PW-8 and PW-9 for further cross-examination, but the said prayer has been declined through the impugned order dated 27.08.2025.

3.Sri Rohit Shukla, learned counsel for the petitioners has drawn the attention of the Court to the impugned order dated 27.08.2025 to argue that the trial court has not carefully analyzed the provisions of Section 217 Cr.P.C., and it erroneously proceeded to dismiss the applications on the sole ground that the accused are making an attempt to delay the trial proceedings. He prays that the impugned order be set aside and the application for recalling PW-8 and PW-9 be allowed.

4.The prayer is vehemently opposed by Sri Chandrashekhar, learned counsel for the complainant on the ground that the alteration is not surprising the accused with a new charge as in the original order framing charges against the accused they were made aware that they had committed an offence under Arms Act, 1959. That apart, learned counsel has argued that the order in respect of recalling a witness is interlocutory in nature, therefore, such an order is not revisable in view of the bar contained in section 397(2) Cr.P.C. In this regard, learned counsel has relied upon the decision of Delhi High Court in ***Neelam Mahajan and another Vs. The State of others, 2016(229) DLT, 29, t***herefore, according to him, the revision petition be dismissed as not maintainable.

5.Lastly, according to learned counsel for the complainant the cross-examination of PW-8 and PW-9 already stood conducted by the accused at length and all the questions regarding weapon and recovery etc. had already been put to the witnesses, therefore, apparently, the recall of witnesses by the accused-petitioners is aimed to delay the trial proceedings, and the trial court has rightly declined the prayer. According to him, the impugned order dated 27.08.2025 does not call for any interference by this Court in exercise of revisional jurisdiction. He prays that the revision petition be dismissed.

6.Learned State Counsel has argued that the witnesses, PW-8 and PW-9 are related to the alleged recovery of weapon of crime and they have already been subjected to cross-examination by the petitioners, but during hearing it is not disputed by the learned State Counsel that the charges against the petitioners were altered after completion of their testimony.

7.After hearing learned counsel for the parties and considering their submissions, this Court finds that as far as the facts of the case are concerned, the same are not disputed, as concededly,

initially the charges against the petitioners were framed on 21.04.2023, and the offence punishable under Section 5/27 Arms Act, 1959 in the connected trials bearing Sessions Trial No.446 and 448 of 2023 was added vide order(s) dated 06.06.2025. As far as alteration of the charge under Section 216 Cr.P.C. is concerned, the trial court is vested with this power to alter the charge, at any stage, before the pronouncement of judgment, if, evidence and material on record suggests that necessary and relevant charge was not framed against accused as a result of an omission. If, the power vested with trial court under Section 216 Cr.P.C. is exercised, the safeguard for the prosecution as well as the accused are also provided in the following Section 217 Cr.P.C.. The said section reads as under:

"Section 217. Recall of witnesses when charge altered *:*

Whenever a charge is altered or added to by the court after the commencement of the trial, the prosecutor and the accused shall be allowed-

(a) To recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

(b) Also to call any further witness whom the court may think to be material."

8.A careful reading of the above section would show that whenever the charge against the accused is altered by the trial court during the trial proceedings, a right is vested with the prosecution as well as the accused to recall or re-summon any witness, who has already been examined, and this permission to recall or re-summon the witness can be denied, if it is for the purpose of vexation or causing delay.

9.At this juncture, it is relevant to read Section 311 Cr.P.C., which is extracted below:

"***Section 311. Power to summon material witness, or examine person present :***

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

10.A plain reading of the above section makes it abundantly clear that this provision empowers the trial Court to analyze the relevance and importance of any person as a witness, in the context of the trial or other proceedings pending before it, and if, in the considered opinion of the trial Court, the summoning of the said person for examination as a witness or recall of a witness already examined for the purposes of re-examination, appears to be necessary in order to reach at just conclusion, the exercise of discretionary power would be justified. It is needless to observe here that this power being extra ordinary in nature cannot be invoked in a routine manner, but in exceptional situations, keeping in mind the facts and other attending circumstances of the case.

11.The comparison of above two provisions contained in Code of Criminal Procedure would show that the above two sections are distinct in nature, as the expression contained in Section 217 Cr.P.C. makes it absolutely clear that whenever there is alteration of the charge, prosecution or the accused, as the case may be, can seek indulgence of the trial court to re-summon or recall any witness, who has already been examined. If, an order rejecting the prayer of an accused to recall or re-summon the prosecution witnesses is rejected, it may affect the right contemplated by Section 217 Cr.P.C., therefore, such an order cannot be construed as an interlocutory in nature and the bar contained under Section 397(2) Cr.P.C. would not be attracted.

12.Thus, Section 217 Cr.P.C. cannot be equated with Section 311 Cr.P.C., as the discretionary power vested with the trial court to recall, re-examine or summon any witness during inquiry, trial or other proceedings under Code of Criminal Procedure cannot be pressed as a right. An order under Section 311 Cr.P.C. is purely discretionary, therefore, such an order being interlocutory in nature is not revisable, and the judgment relied upon by learned counsel for the complainant also deals with an order under Section 311 Cr.P.C., wherein it is held that the revision is barred under Section 397 (2) Cr.P.C. As a result, the judgment in **Neelam Mahajan and another Vs. The State and others, (Supra)** is not applicable in this case.

13.Concededly, the testimonies of PW-8-S.I. Jitendra Singh and PW-9-Awadhesh Kumar Singh, Incharge Station House Officer started on 18.12.2024 and the same completed on 03.06.2025 when the cross-examination of PW-9 concluded. The application by the petitioners, who are in custody was moved promptly on 19.06.2025 after alteration of charge on 06.06.2025, therefore, it cannot be said that the petitioners-accused moved this application with an object to delay the trial proceedings. Even otherwise, the accused-petitioners are confined in custody since their arrest on 11.11.2022 and the delay in trial would adversely affect them, therefore, the observation by the trial court in the impugned order that the accused have moved this application to delay the trial court proceedings is erroneous.

14.No doubt, the original charge apprises the accused about alleged commission of offence punishable under Arms Act also, but the omission to frame charge against them under Section 5/27 Arms Act, 1959 is not attributed to the accused, and once the trial court has altered the charge, the accused, are well within their right to seek recall of the prosecution witnesses PW-8 and PW-9 for cross-examination, who were directly related to the investigation, as well as the recovery of weapon. Similarly, the argument by learned counsel for the complainant that as the two prosecution witnesses have already been subjected to lengthy cross-examination and all material questions have already been put to them, their further cross-examination may not be necessary is also without any force, because not only the cross-examination of these two witnesses is prior to alteration in charge, but even the two different offences defined under Arms Act, 1959 carry different punishments.

15.Further, while examining the issue conversely, there is nothing on record to suggest ,that in case, the permission is granted to the accused to recall PW-8 and PW-9 any prejudice would be caused either to the complainant or prosecution. Most importantly, Article 21 Constitution of India also guarantees right to fair trial to the accused, and if, the permission is denied to the accused , it may deprive them of their right to fair trial, therefore, considering the entire background of the case as well as the law on the subject, this Court has no hesitation in holding that the trial court vide

impugned order dated 27.08.2025 has committed a serious error of law in refusing to recall two prosecution witnesses, PW-8-S.I.Jitendra Singh and PW-9-Awadhesh Kumar Singh, Inchaerge Station House Offiocer under Section 217 Cr.P.C.

16.Resultantly, the revision petition succeeds, impugned order dated 27.08.2025 is set aside and it is ordered that the two witnesses be recalled for cross-examination by the accused-petitioners.

(2026) 5 ILRA 1953
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 08.05.2026

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Writ A No. 504 of 2026
And other Cases

Sunil Kumar Mehrotra & Ors. **...Petitioners**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(1) Validity of the orders rejecting the claims of the petitioners for payment of higher pension on their joint option.

Headnotes

(A) Service law – Pension – Ceiling – Higher pension on joint option – Claim of higher pension was rejected on the ground that Rule 20.2.1 of the HAL Trust Rules limits the pensionable salary to Rs. 6,500/- despite the fact that the employer is contributing 8.33% on the actual salary, and the pension has already been dispersed on the statutory ceiling of Rs. 15,000/- – Validity challenged – Hindustan Aeronautics Limited, a government undertaking, operates as an exempted establishment u/s 17 of the Act, 1952, for the purpose of provident fund through the Trust – Effect

Held : The Act of 1952 as well as the scheme of 1995, amended time to time, envisage the beneficial provisions to the employees of the respondent department and the other establishments. The ceiling, which has been prescribed, under the Rules of the Trust, made under the Act, if contrary to the object of the beneficial scheme, would be unsustainable to that extent as the same is less beneficial. [Para 26]

Further held : If any provision is contrary to the settled proposition of law, as is apparent from the Trust Rules, which curtails the beneficial right of the employees, it would be a nullity to that extent. Even otherwise the scheme of 1995 has also got the statutory strength and the provisions of the Trust rules would have no overriding effect over, to the sphere of the intent and object of promulgation of the Act of 1952 and the scheme of 1995. [Para 27] (E-1)

Case Law Cited

R. C. Gupta vs. RPFC, (2018) 14 SCC 809; EPFO vs. Sunil Kumar B., (2023) 12 SCC 701 – **referred to.**

List of Acts

Employees' Provident Fund and Miscellaneous Provisions Act, 1952 – S. 17; HAL Employees Provident Fund Trust Rules – Rules 20.1 and 20.2.1; Employees Pension Scheme, 1995.

List of Keywords

Adjudication, Higher pension, Superannuation, Public sector, Administrative control, Provident fund, Actual salary, Pensionable salary, Ceiling, Joint option form, Statutory enhancement, Overriding effect, Statutory restriction, Financial burden, Contribution, Formula, Cut-off date, Differential contribution, Higher contribution, Trust Rules.

Case Arising From

The orders rejecting the claims of the petitioners for payment of higher pension on their joint option.

Appearances for Parties

Advs. for the Petitioner : Pradeep Kumar Singh Vats; Anshuman Singh Rathore.
Advs. for the Respondents : Akhilesh Pratap Singh; Prakash Kumar Sinha.

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

1. Heard Mr. Anshuman Singh Rathore, learned counsel for the petitioners, Mr. Akhilesh Pratap Singh, learned counsel for the respondent nos. 1 and 2, and Mr. Prakash Kumar Sinha, learned counsel for respondent nos. 3 and 4.

2. Since identical questions are involved for adjudication in the present petition and the other connected petitions, therefore, all the writ petitions are being decided collectively.

3. The petitioners have preferred the writ petitions, being aggrieved that the claims of the petitioners for payment of higher pension on their joint option, has been rejected.

4. The brief factual matrix of the case is that the petitioners were employees of the Hindustan Aeronautics Limited (HAL), Lucknow, and have been retired after attaining the age of superannuation while discharging their duties on various posts and are getting their pensions. The HAL is a public sector undertaking which functions under the administrative control of the Ministry of Defence, Government of India. The HAL is an exempted establishment under Section 17 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 1952 Act). For the limited purpose of managing the provident fund through the HAL Employees Provident Fund Trust Rules, the employer's share of the contribution to the Employees Pension Scheme, 1995 is regularly remitted to the EPFO in accordance with the scheme. The contribution towards the pension has regularly been made on the actual salary of both the employer and the employees in accordance with the statutory provisions of the scheme 1995.

5. The dispute has arisen once the Regional Provident Commissioner, Lucknow, rejected the joint option forms for higher pension on the ground that Rule 20.2.1 of the HAL Trust Rules limits the pensionable salary to Rs.6,500/- despite the fact that the employer is contributing 8.33% on the actual salary, and the pension has already been dispersed on the statutory ceiling of Rs.15,000/-. The Regional Provident Fund Commissioner, perhaps, has considered the Rule 20.1 and 20.2.1 of the Trust Deed, and has rejected the joint option forms on higher pension.

6. The issue for adjudication herein is whether the ceiling on the contribution shall be applicable as per the Trust Deed, or the higher permission would be payable as per the joint option forms for higher pension.

7. The submission of the learned counsel for the petitioners is that the respondents, without properly applying their minds and on layman's, arbitrary grounds, have refuted to accept the joint option form and further denied higher pension, which caused great prejudice to the petitioners. He submits that Section 17(1)(C) of the 1952 Act provides that an establishment exempted under Section 17(1)(A) of the Scheme 1995 shall not be exempted from the Employees Pension Scheme framed under Section 6A. He added that HAL is exempted only from the scheme 1995 and continues to be governed fully by the Employees Provident Fund Scheme, 1995. He added that the employees have already contributed as per the actual salary and, consequently,

the liberty provided under Section 26 (6) of the 1952 Scheme has effectively been exercised.

8. Further submission is that the Regional Provident Fund Commissioner has wrongly relied upon the Trust Rules, which prescribes a ceiling of Rs.6,500/- for disbursement at 8.33% towards the pension fund against the statutory enhancement to the tune of Rs.15,000/- by notification dated 22.8.2014, as the issue has already been dealt with by the Apex Court, in the case of **R. C. Gupta Vs. RPFC, (2018) 14 SCC 809**, and, therefore, the rejection of the joint option given by the petitioner goes against the aforesaid settled law. He also submits that the ratio of the judgment in R. C. Gupta (supra) has been re-affirmed in the case of EPFO versus Sunil Kumar B., reported in (2023) 12 SCC 701.

9. Adding his arguments, he submits that the respondent authorities, relying upon the ceiling provided under the Trust Rules, have declined to accept the joint option whereas the same is against the Scheme, 1995, which is a statutory scheme and has the overriding effect over the Trust Rules. He added that the absence of a procedural clause cannot defeat the statutory right of higher pension conferred under Section 66(9) of the 1952 and the Scheme, 1995. Therefore, the restriction in the form of a ceiling would have no statutory restriction.

10. Giving strength to his arguments, he submits that alone higher pension to the petitioners would not impose any additional financial burden on the employer or the pension fund as both the employer and employees have already contributed on the actual salary which exceeded the ceiling as is prescribed under the Trust Rules, and, in this view, the adjustment of the 8.33% from the employer share towards the pension fund is merely a statutory diversion.

11. Concluding his arguments, he submitted that so far as paragraph 27 AA expressly provides that any beneficial amendment to the Central Scheme applies automatically to employees of exempted establishment, even before formal amendment of Trust Rules and further, since the Scheme, 1995, is a beneficial scheme, therefore, the same cannot be denied by way of any rule or provision of the Trust Rules and if it is permitted so, the statutory right as enshrined in the Scheme, 1995, shall be unfurnished. Thus submission is that the impugned orders passed by the respondent authorities, by which the joint option has been refuted and the payment of the higher pension from

the actual deduction from the salary of the petitioners, is unjustified and, therefore, the orders impugned may be quashed and a writ of mandamus may be issued to the Regional Provident Fund Commissioner to approve the joint option of the petitioners submitted before him thereby providing the enhanced pension in terms of the judgment and order dated 4.11.2022 passed by the Apex Court in the case of EPFO Vs. Sunil Kumar B**.(supra).**

12. On the other hand, learned counsel appearing for the respondent nos. 1 & 2 submits that Trust Rules are framed by HAL under the statutory provision which provides a ceiling of contribution by the employer and the employees, and, therefore, the same restricts the contribution on the actual salary as is prescribed under the Scheme, 1995. It is further submitted that the Trust Rules do not provide any permit for exercising any joint option either by the employer or by the employee to contribute over and above the ceiling limit and since there is no amendment in the Trust Rules regarding the ceiling limit, therefore, it is binding upon the petitioners. He submits that there is no conflict between the Act, 1952, and the Rules, 1995, that the Trust Rules permit to contribute only on the ceiling limit provided in the Act, 1952 and, therefore, submission is that there is no illegality or informality in the decision making of the authority as the same has been taken in complete adherence to the judgment and order passed by the Apex Court.

13. Mr. P. K. Sinha, learned counsel appearing for the HAL, submits that the employer has already been agreed for joint option, for payment of pension, on higher pay to the petitioners/employees within the prescribed time frame and the contribution has been deducted from the pay of the petitioners accordingly, therefore there would be no extra financial burden upon the employer or employees at this stage. He submits that the Trust Rules would not come in the way of the mandate of the Act, 1952, as well as the Scheme, 1995 and, therefore, the petitioners are entitled for the higher pension as per the actual deduction, on the actual pay of the petitioners.

14. Having heard learned counsel for the parties and after perusal of the records, it is apparent that the petitioners are the retired employees of the HAL and after their retirement, the issue has arisen that whether they are entitled for the payment of pension, on the ceiling amount, as prescribed under the Trust Rules or the actual deduction, which has already been made by the employer, and the contribution given by the employees/petitioners on the actual salary, in furtherance to the provision of the Act, 1952, as well as the Scheme, 1995 and as per the settled proposition of law.

15. When this Court examines the matter in facts and law, it reveals that there is no dispute that the petitioners have been the employees of the HAL. Further, it is also admission in between the parties that the contribution of the employees and the employer have been deducted, on their actual salary. It is also undisputed that the employer has no objection if the petitioners are paid the higher pension, on the actual deduction made on the salary of the petitioners.

16. The dispute has arisen because of the provision of the Trust Rules. In fact the HAL is a Government of India Public Undertaking and engaged in the manufacture and maintenance of the aircraft and defence systems. It operates as an exempted establishment under Section 17 of the Act, 1952, for the purpose of provident fund, through the Trust. The provision of the Trust Rules, which are relevant, are the Rules 20.1 and 20.2.1, which read as under:-

"20.1 Every member shall subscribe to the Fund every month sum equal to 12% of his monthly running Basic Pay, DA and retaining allowance if any (without limit in Pay) equal contribution payable by the company to the Fund of members (for P.F only).

20.2 EMPLOYER CONTRIBUTION TO THE FUND

The employer shall transfer to the Board of Trustees the contribution payable to the Provident Fund by himself and employees at the rate prescribed under the Act from time to time by the 15th of each month following the month for which the contributions are payable. The employer shall be liable to pay simple interest in terms of the provisions of section 7Q. of the Act for any delay in payment of nay dues towards the Board of Trustees,

20.2.1 Out of Company's Contribution 8.33% of member's wages subject to a maximum of Rs. 6500.00 of eligible members shall be diverted to Member's Pension Contribution and shall be remitted to The Regional Provident Fund Commissioner U.P. within 15 days of the close of every month. The cost of remittance shall he born by the employer provided that where the pay of the member exceeds Rs. 6500/- per month, the balance of the employer contribution shall be credited to the member's individual account the establishment is not liable to make any contribution in respect of voluntary contribution. The contribution of employees pension fund shall be applicable only in case if the employee is a member of employees pension scheme 1995."

17. The pension scheme for the Employees of the HAL was adopted by introducing Section 6A, in the Act of 1952, with effect from 16.11.1995, and the quantum of the pension is to be fixed, as per the formula specified in paragraph 12 of the scheme. Section 7 of the Act 1952 empowers the Central Government to amend the scheme, both prospectively and retrospectively, subject to compliance with certain procedures provided in this provision. Except apart, the trust rules following provisions, which are relevant with respect to the contribution of the employer and employees and the payment of pension, are extracted herein under:-

*"**i. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952** has been enacted with the primary objective to provide for compulsory provident fund, pension, and deposit-linked insurance benefits to employees working in factories and other establishments.*

***a. Section 6 - Contribution towards provident fund**- Both the employer and employee are required to contribute equally to the Provident Fund on the employee's basie wages, dearness allowance, and retaining allowance, if any. The standard rate of contribution is ten percent, which may be enhanced to twelve percent by the Central Government for specific establishments. Employees may voluntarily contribute more, though the employer is not bound to match the excess.*

*b. **Section 6A Employees' Pension Scheme** - It empowers the Central Government to frame the Employees' Pension Scheme for providing superannuation, retirement, disablement, and family pensions. The Scheme is administered by the Central Board of Trustees.*

c. Section 17-Power to Exempt

Section 17(1) *authorises the appropriate Government to exempt any establishment from all or any provisions of the Provident Fund Scheme if its own fund provides benefits not less favourable than those prescribed under the Act. Such exemption may be granted prospectively or retrospectively, but only after consultation with the Central Board.*

Section 17 (1A) *The employer of an exempted establishment must constitute a Board of Trustees to administer the fund, maintain detailed accounts, submit returns, and invest monies as per Government directions.*

Section 17(1C) *Exemption from the Pension Scheme This Section allows the Government to exempt an establishment or class of establishments from the operation of the Employees' Pension Scheme, 1995, if employees are covered by another pension scheme that offers benefits at par or more favourable than those under the statutory Scheme. The exemption is subject to prescribed conditions, particularly regarding the pattern of investment of the pension fund and other safeguards notified by the Government.*

Section 17(6)-*Employer's Obligation of Exempted Establishments-This Section provides that, subject to sub-section (IC), the employer of an exempted establishment or of an exempted employee of an establishment to which the provisions of the Employees' Pension Scheme apply shall, notwithstanding any exemption granted under sub-section (1) or (2), continue to pay to the Employees' Pension Fund such portion of the employer's contribution to its provident fund as may be specified in the Pension Scheme, within the time and manner prescribed therein. This provision ensures that the obligation to contribute towards the statutory Pension Fund remains unaffected by any exemption, thereby safeguarding employees' entitlement to pensionary benefits under the Act.*

ii. ***Employee's Provident fund Scheme 1952*** *has been framed by the Central Government exercising the power providing under sec. 5 of the EPF and MP Act, 1952.*

a. Paragraph 26(6): *provides that, notwithstanding anything contained elsewhere in the Scheme, an officer not below the rank of Assistant Provident Fund Commissioner may, on a joint written request made by an employee and his employer, permit such employee to be enrolled as a member of the Fund or to contribute on a salary exceeding Rs. 15,000/-per month (initially 5000/-, later enhanced to 6500/-), if he is already a member. Upon such enrollment, the employee becomes entitled to all the benefits and is subject to all the conditions of the Fund, provided that the employer furnishes a written undertaking to pay the prescribed administrative charges and to comply with all statutory provisions applicable to such employee.*

b. ***Paragraph 27AA*** *provides that all exemptions already granted or to be granted under Section 17 of the Act or under Paragraph 27A of the Scheme shall be subject to the terms and conditions specified in Appendix A."*

18. At the earlier stage, when the respondent department declined to entertain the joint option, the matter went up to the Apex Court wherein the Hon'ble Supreme Court in the case of R.C. Gupta **(supra)** has held that the right of joint option of the employees of the HAL would have no cut-off date, and, therefore, after the amendment under the scheme of 1995, the employees

would have the right to take the joint option. The relevant paragraphs of the aforementioned judgment is quoted herein under:-

"*8. A further argument has been made on behalf of the Provident Fund Commissioner that the appellant employees had already exercised their option under Para 26(6) of the Employees' Provident Funds Scheme. Para 26(6) is in the following terms:*

"26. Classes of employees entitled and required to join the fund.?(1)-(5)***

(6) Notwithstanding anything contained in this paragraph, an officer not below the rank of an Assistant Provident Fund Commissioner may, on the joint request in writing, of any employee of a factory or other establishment to which this Scheme applies and his employer, enroll such employee as a member or allow him to contribute more than [Substituted by Notification No. S-350/2/2/96-SS II dated 4-5-2001, for "rupees five thousand". Earlier the words "rupees five thousand" were substituted by GSR 718(E), dated 23-9-1994, for the words "rupees three thousand and five hundred" (w.e.f. 1-10-1994).] [six thousand five hundred rupees] of his pay per month if he is already a member of the fund and thereupon such employee shall be entitled to the benefits and shall be subject to the conditions of the fund, provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee.

9. We do not see how exercise of option under Para 26 of the Provident Fund Scheme can be construed to estop the employees from exercising a similar option under Para 11(3). If both the employer and the employee opt for deposit against the actual salary and not the ceiling amount, exercise of option under Para 26 of the Provident Scheme is inevitable. Exercise of the option under Para 26(6) is a necessary precursor to the exercise of option under Clause 11(3). Exercise of such option, therefore, would not foreclose the exercise of a further option under Clause 11(3) of the Pension Scheme unless the circumstances warranting such foreclosure are clearly indicated.

10. The above apart in a situation where the deposit of the employer's share at 12% has been on the actual salary and not the ceiling amount, we do not see how the Provident Fund Commissioner could have been aggrieved to file the LPA before the Division Bench of the High Court. All that the Provident Fund Commissioner is required to do in the case is an adjustment of accounts which in turn would have benefited some of the employees. At best what the Provident Commissioner could do and which we permit him to do under the present order is to seek a return of all such amounts that the employees concerned may have taken or withdrawn from their provident fund account before granting them the benefit of the proviso to Clause 11(3) of the Pension Scheme. Once such a return is made in whichever cases such return is due, consequential benefits in terms of this order will be granted to the said employees."

19. Vide the aforesaid judgment and order, the Hon'ble Apex Court has categorically held that the joint options presented on or before the 31st of January 2015, shall be accepted by the respondent, as the cut-off date has not been accepted by the Apex Court in presenting joint option. It has also been provided that after remittance of the differential contribution to the EPFO by the employees along with the interest, a higher pension shall be disbursed.

20. This issue has again been brought before the Apex Court, in the case of EPFO Vs. Sunil Kumar B. (supra), wherein it has been held as under :-

"50.We accordingly hold and direct:

(i) The provisions contained in the notification no. G.S.R. 609(E) dated 22nd August 2014 are legal and valid. So far as present members of the fund are concerned, we have read down certain provisions of the scheme as applicable in their cases and we shall give our findings and directions on these provisions in the subsequent sub-paragraphs.

(ii) Amendment to the pension scheme brought about by the notification no. G.S.R. 609(E) dated 22 August 2014 shall apply to the employees of the exempted establishments in the same manner as the employees of the regular establishments. Transfer of funds from the exempted establishments shall be in the manner as we have already directed.

(iii) The employees who had exercised option under the proviso to paragraph 11(3) of the 1995 scheme and continued to be in service as on 1 September 2014. will be guided by the amended provisions of paragraph 11(4) of the pension scheme.

(iv) Th The members of the scheme, who did not exercise option, as contemplated in the proviso to paragraph 11(3) of the pension scheme (as it was before the 2014 Amendment) would be entitled to exercise option under paragraph 11(4) of the post amendment scheme. Their right to exercise option before 1? September 2014 stands crystallized in the judgment of this Court in the case of R.C. Gupta (supra). The scheme as it stood before 1 September 2014 did not provide for any cut-off date and thus those members shall be entitled to exercise option in terms of paragraph 11(4) of the scheme, as it stands at present. Their exercise of option shall be in the nature of joint options covering pre-amended paragraph 11(3) as also the amended paragraph 11(4) of the pension scheme.

There was uncertainty as regards validity of the post amendment scheme, which, was quashed by the aforesaid judgments of the three High Courts. Thus, all the employees who did not exercise option but were entitled to do so but could not due to the interpretation on cut-off date by the authorities, ought to be given a further chance to exercise their option. Time to exercise option under paragraph 11(4) of the scheme, under these circumstances, shall stand extended by a further period of four months. We are giving this direction in exercise of our jurisdiction under Article 142 of the Constitution of India.

Rest of the requirements as per the amended provision shall be complied with.

(v) The employees who had retired prior to 1 September 2014 without exercising any option under paragraph 11(3) of the pre-amendment scheme have already exited from the membership thereof. They would not be entitled to the benefit of this judgment.

(vi) The employees who have retired before 1 September 2014 upon exercising option under paragraph 11(3) of the 1995 scheme shall be covered by the provisions of the paragraph 11(3) of the pension scheme as it stood prior to the amendment of 2014.

(vii) The requirement of the members to contribute at the rate of 1.16 per cent of their salary to the extent such salary exceeds Rs. 15000/- per month as an additional contribution under the amended scheme is held to be ultra vires the provisions of the 1952 Act. But for the reasons already explained above, we suspend operation of this part of our order for a period of six months. We do so to enable the authorities to make adjustments in the scheme so that the additional contribution can be generated from some other legitimate source within the scope of the Act, which could include enhancing the rate of contribution of the employers. We are not speculating on what steps the authorities will take as it would be for the legislature or the framers of the scheme to make necessary amendment. For the aforesaid period of six months or till such time any amendment is made, whichever is earlier, the employees contribution shall be as stop gap measure. The said sum shall be adjustable on the basis of alteration to the scheme that may be made.

(viii) Will We do not find any flow in altering the basis for computation of pensionable salary.

(ix) We agree with the view taken by the Division Bench in the case of R.C. Gupta (supra) so far as interpretation of the proviso to paragraph 11(3) (pre-amendment) pension scheme is concerned. The fund authorities shall implement the directives contained in the said Judgment within a period of eight weeks, subject to our directions contained earlier in this paragraph.

(x) The Contempt Petition (C) Nos. 1917-1918 of 2018 and Contempt Petition (C) Nos. 619-620 of 2019 in Civil Appeal Nos. 10013-10014 of 2016 are disposed of in the above terms.""

21. The issue under the consideration before the Apex Court was, whether the amended provisions, which imposed cut-off date and restricted higher pension entitlement only to those employees, who had exercised a joint option earlier, were valid in light of the judgment and order rendered in the case of R.C. Gupta (supra), and the Apex Court, while upholding the validity of the 2014 amendment in the 'Scheme 1995', held that those, who did not exercise an option as contemplated in Proviso 2, paragraph 11 (3) of the pension scheme [as it was before the 2014 amendment] would be entitled to exercise the option under paragraph 11(4) of the post-amendment scheme, and their right to exercise the option before 1st September 2014 stands crystallized. Thus, the Hon'ble Apex Court has reiterated the law rendered in the case of R.C. Gupta **(supra),** while holding that no cut-off date existed under the pre-amended paragraph 11 (3) of the scheme of 1995, and restricting higher pension benefits to those who had earlier exercised the option, would be contrary and a window of joint option has been reopened, thus allowed all eligible employees and employers to jointly apply for higher pension under the amended scheme.

22. Now, coming to another reason, which has been assigned by the Regional Fund Commissioner, is that since Rule 20.1 and 20.2.1 of the trust rules made under the Act of 1952 provide the cap/limitation, and, therefore, the joint option for higher contribution on actual salary has been rejected.

23. It is worth consideration that Rule 38 of the Trust Rules says that the more beneficial scheme shall be made applicable to the employees. Rule 38 of the Trust Rules Rules reads as under:-

Rule 38. ALTERATIONS OR AMMENDMENT IN THE RULES,

These Rules may from time to time be altered, enlarged or reduced in such manner as the board may consider desirable, for the proper implementation of the Rules or for the administration thereof including difficulties in the matter of payment of accumulations in the Fund to members after they cease to be such members, and each member shall be bound by the amendments, additions or otherwise in the same manner as in the original rules.

Provided that all such amendments shall have received the prior approval of the Commissioner of Income-Tax and the Regional Provident Fund Commissioner (or in the event of any appeal by the company, the central Provident Fund Commissioner). A copy of all amendments to the Rules shall be sent to the Commissioners.

Any amendment to the Scheme, which is more beneficial to the employees than the existing rules of the establishment, shall be made applicable of them automatically pending formal amendment of the Rules of the Trust.

24. Further Rule 42 Speaks about the overriding effect and it says that if the Trust Rules are silent on any matter, the provisions of the scheme will prevail. Thereafter Rule 42.2 provides that if any provision of Rules conflicts with any provision of the scheme 1952, the letter shall always deem to prevail. The Rule 42.3 also talks about that question with respect to more beneficial scheme will be decided by the Regional Provident Commissioner concerned. Rule 42.1, 42.2, 42.3 are extracted as under:-

Rule 42. Statutory provisions to have overriding effect:

If these rules are silent on any matter, the provisions of the scheme will prevail, and that the rules shall be brought at per by providing for matching benefits from the date of introduction of provision of any new benefit in the scheme.

42.1 in the absence of any specific provisi□n in these rules of if any provision of the rules is less beneficial than the corresponding provision of the employees provident fund & Misc, provisions Act 1952 and the employees provident fund scheme 1952, framed there under the latter provisions shall prevail, mutates mutandis.

42.2 Where any provisions of rules conflicts with any provisions of the EPF. Scheme 1952, the latter shall always be deemed to prevail.

42.3 Question whether a particular rule is beneficial or not shall be decided by the Regional Provident Fund Commissioner whose decision shall be final.

25. From bare perusal of the aforesaid provisions, it culled out that while framing Trust Rules, the framers were aware of focusing to adopt the more beneficial scheme for the members/employees and further in case of any less beneficial provision of the Rules than the scheme, there is deeming provision that the provision of scheme shall prevail.

26. In fact, the Act of 1952 as well as the scheme of 1995, amended time to time, envisage the beneficial provisions to the employees of the respondent department and the other establishments. The ceiling, which has been prescribed, under the Rules of the Trust, made under the Act, if contrary to the object of the beneficial scheme, would be unsustainable to that extent as the same is less beneficial.

27. It is also relevant in this regard that the Hon'ble Apex Court in the case of R.C. Gupta **(supra)** and EPFO versus Sunil Kumar B **(supra**) has allowed the joint option scheme with higher contribution, and the cut-off date, as was made in the amendment, in the scheme, was found unsustainable. Therefore, if any provision is contrary to the settled proposition of law, as is apparent from the Trust Rules, which curtails the beneficial right of the employees, it would be a nullity to that extent. Even otherwise the scheme of 1995 has also got the statutory strength and the provisions of the Trust rules would have no overriding effect over, to the sphere of the intent and object of promulgation of the Act of 1952 and the scheme of 1995.

28. In view of the aforesaid submissions and discussions, this Court finds merit in the writ petition. Ergo, the present writ petition, including the connected writ petitions having identical issues, are hereby allowed, and the orders under challenge, in all the connected writ petitions, are quashed.

29. It is directed that the respondent no.2 shall take fresh decision, in light of the observations made herein above and the prevalent laws.

(2026) 5 ILRA 1963
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.05.2026

BEFORE

THE HON'BLE ANISH KUMAR GUPTA, J.

Writ A No. 835 of 2022

Dr. Albina **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(1) Entitlement of the participants-candidates to challenge the selection process.
(2) Applicability of preferential qualification, when the essential qualification was also provided in the advertisement.
(3) Overriding effect of the Rules framed under Article 309 contrary to the Regulation framed under the Act.

Headnotes

(A) Service law – Selection – Post of Reader/Jarahat – Unani Medical College – Selection process was challenged by the participant – Permissibility

Held : The person who consciously takes part in the selection process and thereafter having failed or not selected in the said selection process cannot be permitted to challenge the selection process or the advertisement. [Para 14]

(B) Service law – Selection – Qualification – Essential qualification and Preferential qualification – Preference was claimed by the petitioner as she was postgraduate and the selected candidate was not postgraduate – Permissibility

Held : When an advertisement describes the essential qualifications as well as the preferential qualification, then in such position, all the candidates who are having essential qualifications are eligible to apply and participate in the selection process and on the basis of the selection process where number of candidates are participating, when two or more candidates are having the equal marks, then in that case the preference shall be given, who is having the preferential qualification. Merely because, a candidate is possessing the preferential qualification would not give him any preferential right to be selected. [Para 23]

(C) Service jurisprudence – Rules framed under Article 309 and Regulation framed under the Act, 1970 – Contradiction – Overriding effect

Held : The rules framed under proviso to Article 309 would apply and hold the field in case of any contradiction with the recommendations/regulations framed under the Act, 1970. Consequently, this Court do not find any irregularity in the advertisement which prescribed the qualification as prescribed under 1990 Rules. [Para 27] (E-1)

Case Law Cited

Anand Kumar Yadav and Others vs. Union of India and Others : [2015 (8) ADJ 338 (FB)]; Ashish Kumar vs. State of U.P., (2018) 3 SCC 55; Ramesh Chandra Shah and Others vs. Anil Joshi and others, (2013) 11 SCC 309; Madras Institute of Development Studies and Another vs. Dr. K. Sivasubramaniyan and Others, 2015(4) ESC 601(SC); Secy. (Health) Deptt. of Health & F.W. and Another vs. Dr. Puri and others Anita, (1996) 6 SCC 282; State of U.P. and Another vs. Om Prakash and Others, 2006 (6) SCC 474; Pepsico India Holding P. Ltd. vs. Grocery Market & Shops Board and others, (2016) 4 SCC 493; Government of Andhra Pradesh and Another vs. Dr. R. Murali Babu Rao and Another, (1988) 2 SCC 386; Om Prakash Shukla vs. Akhilesh Kumar Shukla, 1986 Supp SCC 285; Madan Lal vs. State of J&K, (1995) 3 SCC 486; Manish Kumar Shahi vs. State of Bihar, (2010) 12 SCC 576; Vijendra Kumar Verma vs. Public Service Commission, (2011) 1 SCC 150; Ramesh Chandra Shah vs. Anil Joshi, (2013) 11 SCC 309; Madras Institute of Development Studies vs. K. Sivasubramaniyan, (2016) 1 SCC 454; Health Department and FW and others vs. Dr. Anita Puri and others, 1996, SCC 282; State of U.P. vs. Om Prakash, (2006) 6 SCC 474; Andhra Pradesh vs. Dr. R. Murali Babu Rao and another 1988 (2) SCC 386; Kundan Singh vs. State of UP and others, 2020 SCC OnLine All 6; Dr. Neetu Singh vs. State of U.P. and others, 2019 SCC OnLine All 5871 – **referred to.**

List of Acts

Constitution of India – Article 309; United Provinces (Ayurvedic and Unani Tibbi Systems of Medicine) Act, 1939; Indian Medicine Central Council Act, 1970 – S. 36; Uttar Pradesh State Ayurvedic and Unani Colleges Teachers' Service Rules 1990.

List of Keywords

Reader/Jarahat, *Quo Warranto*, Requisition, Advertisement, Recommendation, Eligibility condition, Qualification, Registerable, Selection process, Participation, Result of examination, Essential qualification, Preferential qualification, Preferential right, Conflicting recommendation, Contradiction, Irregularity, Public service.

Case Arising From

Recommendation of the U.P. Public Service Commission dated 19.01.2022 for appointment of the respondent no. 4 to the post of Reader/Jaharat in Government Unani Medical Colleges.

Appearances for Parties

Advs. for the Petitioner : H. N. Singh, Sr. Adv.; Syed Fahim Ahmed; Karrar Husain; Kshitij Shailendra (Elevated).

Advs. for the Respondents : Avneesh Tripathi; Gaurav Singh, S.C.; Gautam Baghel; Utkarsh Singh.

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

1. Heard Sri H.N. Singh, learned Senior Counsel assisted by Syed Fahim Ahmed for the petitioner, Sri Avneesh Tripathi, learned counsel for the respondents no. 2 and 3, Sri Gaurav Singh, learned counsel appearing for the respondent no. 1 and Sri Utkarsh Singh holding brief of Sri Gautam Baghel, learned counsel for the respondent no. 4.

2. The instant petition has been initially filed by the petitioner seeking quashing of the order/recommendation dated 19.01.2022, whereby the U.P. Public Service Commission has recommended the name of respondent no. 4 for appointment to the post of Reader/Jaharat in Government Unani Medical Colleges and further, seeking a direction to the respondents to appoint the petitioner as the Reader/Jarahat (Surgical) being an eligible candidate, as she is having the post-graduate degree, which was a preferential qualification. Later, by way of an amendment, the petitioner has challenged the advertisement dated 24.09.2019, whereby the said post of Reader/Jarahat under U.P. AYUSH (Unani Department) was advertised as Item No. VIII, and also seeks a Writ of Quo Warranto against respondent no. 4, and also to the respondents not to permit respondent no. 4 to hold the post of Lecturer, Jarahat Department of the State Takmeel-Ut-Tib College & Hospital, Lucknow.

3. The briefly stated facts of the case are that on the requisition of the State Government, U.P. Public Service Commission, Prayagraj issued an Advertisement No. 2 of 2019-20, dated 24.09.2019, whereby one post of Reader/Jarahat in General Category was advertised to be filled-up on the basis of the conditions prescribed in the advertisement. Pursuant to the said advertisement, the petitioner herein has applied to the post, participated in the selection process and was also interviewed. However, she could not be selected and the respondent no. 1 was selected for the aforesaid post of Reader/Jarahat and her name was recommended vide impugned order dated 19.01.2022 by the U.P. Public Service Commission for appointment. The said advertisement prescribed the following eligibility conditions:-

"(viii) 01 (One) post of Reader Jarahat *in Government Unani Medical Colleges of the State, (General recruitment),* ***Deptt. No****. S-11/16, Nature of Post. Gazetted & Temporary,* ***Reservation****: Unreserved,* ***Pay Band****- Rs. 15600-39100/-, Grade Pay 6600/- level-11 (According to 7th Pay Commission),* ***Educational qualification Essential:*** *(1) Five years degree in unani from a University established by law or five years degree from the Board of Indian medicine, Uttar Pradesh or any other state Board or faculty which is registrable Under the united Provinces Indian medicine Act, 1939. (2) Seven years teaching experience of the subject (Five years for a post-Graduate) In a recognized institution. (3) Working Knowledge of Hindi, English and Urdu or Arabic or Persian.* ***Preferential: (1)*** *Post--Graduate qualification from a recognized institution. (2) Research work andpublication of original papers and books****. Preferential Qualification****:-A candidate who has:- (i) Served in the Territorial Army for a minimum period of two years. or (ii) Obtain a "B" Certificate of National Cadet Corps, shall other things being equal, be given*

preference in the matter of direct recruitment. Age:-Minimum 28 years, maximum 45 years (Age relaxation as per Rules). See general instructions for this. ***Other condition and qualification****:-(1) The selected candidates may be transferred to any Government Unani Medical College of the State on any equivalent post. Note:- (1) The new pension scheme will be applicable permitted by the U.P. Government at present. (2) Candidates will have to mention their obtained marks and total marks of all semesters in online application and annex all semesters marksheet (in which maximum marks/minimum marks/obtained marks should be clearly mentioned) essentially alongwith other all certificates, at the time o demand of records. (3) Regarding essential qualification No.3. candidates will have to annex related certificate/marksheet about adequate knowledge of Hindi. English and Urdu or Arabic or Persian. (4) Experience certificate should be of full time paid post in an institution recognized by Government and issued by appointing authority and it should be counter signed by Registrar/Director of State Unani Medical Council or by a competent authority of the Government. Experience of unpaid or part time post will not be acceptable."*

4. Learned Counsel for the petitioner submits that the said advertisement was wrongly prescribed the conditions of eligibility of higher degree in Ayurvedic/Unani from University established by law or higher degree from the board of Indian Medicine, Uttar Pradesh or any other State, Board or faculty which is registerable under **the United Provinces [Ayurvedic and Unani Tibbi Systems of Medicine] Act, 1939** ***(hereinafter referred as,'?the Act, 1939').*** The thrust of the arguments made on behalf of petitioners is that in the year 1970, the Indian Medicine Central Council Act, 1970 (hereinafter referred as, ?the Act, 1970?) was enacted by the Parliament as the medical education was a subject matter in the Concurrent List. The Act, 1970 has superseded the Act, 1939. In lieu of such suppression, the State Government by framing the Uttar Pradesh State Ayurvedic and Unani Colleges Teachers? Service Rules 1990 (hereinafter referred as, ?the Rules, 1990?) cannot prescribe the qualifications which were prescribed under the State Act, 1939 but ought to have prescribed the qualification in terms of the Act, 1970. In such view of the matter, the petitioner seeks quashing of the advertisement itself and consequently seeks quashing of the impunged order whereby the U.P. State Public Service Commission has recommended the appointment of the respondent no. 4 pursuant to the said advertisement.

5. In support of its submissions, Sri H.N. Singh, learned Senior Counsel for the petitioner has relied upon the Full Bench Judgement of this Court in ***Anand Kumar Yadav and Others vs. Union of India and Others : [2015 (8) ADJ 338 (FB)].***

6. It is further submitted by the learned Senior Counsel that pursuant to Section 36 of the Act, 1970, the regulations were framed in the year, 1986 which have been later amended in the year 2016, which prescribe the higher qualifications and also the degree of post-graduation for appointment to the post of Reader. Therefore, since the respondent no. 4 was not having the post-graduate qualification, she was not eligible for appointment and since the petitioner was having the post-graduate qualification she ought to have been given preference in the appointment as per the advertisement.

7. Learned Senior Counsel for the petitioner has further relied upon the judgment of the Apex Court in ***Ashish Kumar v. State of U.P., (2018) 3 SCC 55*** and submits that in part of the

advertisement which is contrary to the statutory rules has to give way to the statutory prescriptions, which reads as under:

"27. Any part of the advertisement which is contrary to the statutory rules has to give way to the statutory prescription. Thus, looking to the qualification prescribed in the statutory rules, the appellant fulfils the qualification and after being selected for the post denying appointment to him is arbitrary and illegal. It is well settled that when there is variance in the advertisement and in the statutory rules, it is the statutory rules which take precedence. In this context, reference is made in the judgment of this Court in Malik Mazhar Sultan v. U.P. Public Service Commission [Malik Mazhar Sultan v. U.P. Public Service Commission, (2006) 9 SCC 507 : 2006 SCC (L&S) 1870] . Para 21 of the judgment lays down the above proposition which is to the following effect: (SCC p. 512)

"21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1-7-2001 and 1-7-2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules."

8. Thus, since in the instant case, the advertisement has prescribed the qualifications, which are registerable in the State Act of 1939, which has already been superseded by the Parliamentary Act of 1970, governing the same subject of medical education. Therefore, the said qualifications under the Old State Act could not have been prescribed in their advertisement, therefore, the advertisement itself is bad and thus the same be quashed.

9. Per contra, Sri Gaurav Singh, learned Standing Counsel for the State submits that in the instant case, the petitioner has not challenged the validity of the Act, 1939 or the 1990 Rules framed by the State Government under Article 309 of the Constitution of India, which prescribes the qualification which are registerable under the Act, 1939 for appointment on the post of Reader. Neither the said Act, 1939 nor 1990 Rules are under challenge in the instant petition. Therefore, the advertisement prescribing the qualification in terms of the statutory rules framed by the State under Article 309, cannot be questioned.

10. It is further submitted by learned Standing Counsel for the State that it is a settled position of law that a candidate who has participated pursuant to an advertisement in the selection process and has been disqualified cannot be permitted to challenge after the declaration of result of the selection process. It is further submitted that it is a settled position of law that regulations framed under Section 36 of the Act, 1970 are only recommendatory and not mandatory and it is beyond the scope of the Indian Council of Central Medicine to prescribe the qualification for recruitment to the post of Professors, Readers and Lecturers. It can only lay down the broad guidelines. Therefore, such qualifications for recruitment are required to be framed under the

proviso to Article 309 and thus the recommendations made by the Indian Council of Central Medicine cannot override the Rules framed under Article 309 by the State concerned. Therefore, learned Standing Counsel for the State seeks dismissal of the instant petition.

11. Sri Utkarsh Singh, Advocate holding brief of Sri Gautam Baghel, learned counsel respondent no. 4 has also adopted the submissions of the learned Standing Counsel for the State. They have relied upon the following judgments of the Apex Court in support of aforesaid submissions:-

1. Ramesh Chandra Shah and Others Vs. Anil Joshi and others : (2013) 11 SCC 309

2. Madras Institute of Development Studies and Another Vs. Dr. K. Sivasubramaniyan and Others : [2015(4) ESC 601(SC)]

3. Secy. (Health) Deptt. of Health & F.W. and Another Vs. Dr. Puri and others Anita : (1996) 6 SCC 282

4. State of U.P. and Another Vs. Om Prakash and Others : 2006 (6) SCC 474

5. Pepsico India Holding P. Ltd. Vs. Grocery Market & Shops Board and others : (2016) 4 SCC 493

6. Government of Andhra Pradesh and Another Vs. Dr. R. Murali Babu Rao and Another: (1988) 2 SCC 386

12. Having heard the rival submissions so made by learned counsel for the parties, this Court has carefully gone through the records of the case. The advertisement dated 24.09.2019 has prescribed the following qualifications.:-

"Educational qualification Essential: *(1) Five years degree in unani from a University established by law or five years degree from the Board of Indian medicine, Uttar Pradesh or any other state Board or faculty which is registrable Under the united Provinces Indian medicine Act, 1939. (2) Seven years teaching experience of the subject (Five years for a post-Graduate) In a recognized institution. (3) Working Knowledge of Hindi, English and Urdu or Arabic or Persian.*

Preferential*: (1) Post--Graduate qualification from a recognized institution. (2) Research work andpublication of original papers and books."*

13. It is undisputed in the instant case that pursuant to the said advertisement, the petitioner herein without challenging the advertisement as such has participated in the selection process and could not qualify, and respondent no. 4 has qualified in the selection process. Pursuant to the said advertisement and consequently the recommendations were made by the U.P. Public Service Commission for appointment of respondent no. 4 to the post of Reader/Jarahat in Unani Department. It is only after the selection process is complete, petitioner has filed the instant petition initially for seeking quashing of the said recommendation of U.P. Public Service Commission and seeking mandatory injunction to give appointment to the petitioner and later by way of an amendment the advertisement has also been challenged.

14. It is settled position of law that the person who consciously takes part in the selection process and thereafter having failed or not selected in the said selection process cannot be permitted to challenge the selection process or the advertisement. In this regard, it is relevant to take note of

the judgment of the Apex Court in ***Om Prakash Shukla vs. Akhilesh Kumar Shukla, 1986 Supp SCC 285***. The Three-Judges' Bench of the Apex Court has held that when person appeared in examination without protest, he was not entitled to challenge the result of the examination. The same view has also been reiterated in ***Madan Lal v. State of J&K, (1995) 3 SCC 486*** in the following words:-

"9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla [1986 Supp SCC 285 : 1986 SCC (L&S) 644 : AIR 1986 SC 1043] it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

15. Likewise in ***Manish Kumar Shahi v. State of Bihar, (2010) 12 SCC 576***, the Apex Court has observed as under:-

"16. ***We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection.*** *Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition."*

16. Likewise in ***Vijendra Kumar Verma vs. Public Service Commission: (2011) 1 SCC 150,*** the Apex Court held that once the candidate has taken the chance and opportunity while participating in the selection process without any protest at any stage of the selection process, he/she cannot turn back and challenge the selection procedure.

17. In ***Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309***, the Apex Court considering the above judgements has observed as under:-

"*24. In view of the propositions laid down in the above noted judgments, it must be held* ***that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection*** *and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents."*

18. In ***Madras Institute of Development Studies vs. K. Sivasubramaniyan, (2016) 1 SCC 454, t***he Apex Court has held that a candidate who has further applied pursuant to the advertisement and the rules without raising any objection to the alleged advertisement and rules, and participated in the selection process by appearing before the Committee of Experts and after he was not selected, cannot be permitted to turn around and challenge the very selection process.

19. Since in the instant case, the advertisement was issued in the year 2019, the petitioner herein without raising any objection had applied and participated in the selection process and was also interviewed and after the result was declared and respondent no. 4 was selected and recommended by the U.P. Public Service Commission for appointment, the instant petition has been filed by the petitioner challenging the selection process and the advertisement itself. This cannot be permitted in view of the aforesaid settled position of law.

20. The petitioner has further challenged the selection of the respondent no. 4 on the ground that the advertisement prescribed the qualification and also provided that preference be given to the postgraduate qualification from a recognized institution or for the research work and publication of original papers and books. The petitioner claims that since he was a postgraduate and the respondent no. 4 was not a postgraduate, therefore, the preference ought to have been given to the petitioner instead of respondent no. 4.

21. In ***Secretary, Health Department and FW and others vs. Dr. Anita Puri and others, 1996, SCC 282***, the Apex Court has categorically observed as under:

"..When an advertisement stipulates a particular qualification as the minimum qualification for the post and further stipulates that preference should be given for higher qualification, the only meaning it conveys is that some additional weightage has to be given to the higher qualified candidates. But by no stretch of imagination it can be construed to mean that a higher qualified person automatically is entitled to be selected and appointed.."

22. In **State of U.P. v. Om Prakash, (2006) 6 SCC 474**, the Apex Court has observed as under:

"...The word ?preference? would mean that when the claims of all candidates who are eligible and who possess the requisite educational qualification prescribed in the advertisement are taken for consideration and when one or more of them are found equally positioned, then only the additional qualification may be taken as a tilting factor, in favour of candidates vis-□-vis others in the merit list prepared by the Commission. But preference does not mean en bloc preference irrespective of inter se merit and suitability..."

23. Thus, from the aforesaid judgments of the Apex Court, it is settled position of law that when an advertisement describes the essential qualifications as well as the preferential qualification, then in such position, all the candidates who are having essential qualifications are eligible to apply and participate in the selection process and on the basis of the selection process where number of candidates are participating, when two or more candidates are having the equal marks, then in that case the preference shall be given, who is having the preferential qualification. Merely because, a candidate is possessing the preferential qualification would not give him any preferential right to be selected. In such view of the matter, the claim of the petitioner is that she was having preferential qualification, therefore, preference ought to have been given to her, is unfounded and cannot be sustained.

24. Learned Senior Counsel for the Petitioner has vehemently claimed that so far as the medical education is concerned, the Act, 1939 has already been superseded by Act, 1970 enacted by the parliament, as the medical education was the subject of Concurrent List and once the parliament has been enacted any State Act, so far as it is repugnant to the Central Act, cannot be given effect to. Thus, he claims that since the regulations framed under the Central Act are in fray, which prescribe the essential qualification for appointment to the post of Principal, Professor, Reader, Assistant Professor etc. Thus, any lesser qualification prescribed under the rules framed under Article 309, are not in consonance with the Central Act, the same are repugnant to that extent and thus the same cannot be given effect to, since the impugned advertisement prescribes the qualification in terms of the Rules 1990, which takes note of the 1939 Act of the State, which has already been superseded by the Central Act. Thus, the advertisement was not a valid advertisement, therefore, the same should be quashed.

25. So far as the medical education is concerned, it is undisputed that it is the subject matter of the Concurrent List. Earlier there was a State Act of 1939, later the Parliament has enacted a Central Act. However, so far as the State Public Services or the State Public Service Commissions are concerned that is the subject matter exclusively available to the State and proviso to Article 309 permits the State to frame rules to prescribe the condition for selection for State Public Service. In terms thereof, the 1990 Rules have been framed by the State which prescribe the qualification for selection of Reader (Jaharat) in Government Unani Medical Colleges. Therefore, the State Rules were framed by the State in accordance with the constitutional scheme. Therefore, the State Rules shall holds the field in the matter of Selection for State Public Service. So far as the regulations framed by the Indian Central Council of Indian Medicine under Section 36 of the Central Council of Indian Medicine Act, 1970 are concerned, with regard to the same, similar regulations framed under Indian Medical Council Act, 1956 held to be recommendatory in nature and they cannot be held to be mandatory.

26. In ***Government of Andhra Pradesh vs. Dr. R. Murali Babu Rao and another 1988 (2) SCC 386,*** the Apex Court has held that the rules framed under proviso to Article 309 shall override the conflicting recommendations/regulations framed under the Central Act. In this regard, the following observations made by the Apex Court, which would be relevant to take note of:-

"15. .....Nevertheless, the Government failed to appreciate that the recommendation which was later approved of by the Government of India and acquired the status of a regulation, was only recommendatory and could not override a rule framed under the proviso to Article 309 of the Constitution. The panel had to be drawn by the State Government strictly in conformity with the rules of recruitment made under the proviso to Article 309 and not on the basis of the recommendations of the Council.

16. ….A fortiori, the recommendations made by the Council or the Regulations framed by it are only recommendatory and not mandatory. It is not for the Council to prescribe qualifications for recruitment to posts of Professors, Readers and Lecturers. It can only lay down broad guidelines therefor. Such qualifications have necessarily to be prescribed by the framing of Rules under the proviso to Article 309. Right to be considered for promotion is a condition of service and it can only be regulated by a rule framed under the proviso to Article 309."

27. In such view of the matter, so far as the appointment to the public service, which is the case herein, it is settled position of law that the rules framed under proviso to Article 309 would apply and hold the field in case of any contradiction with the recommendations/regulations framed under the Act, 1970. Consequently, this Court do not find any irregularity in the advertisement which prescribed the qualification as prescribed under 1990 Rules. So far as the last prayer, that is the issuance of Writ of Quo Warranto against respondent no. 4 is concerned, the same has been resisted by learned counsel for respondent no. 4 and submits that the post of Teachers, Professors, Assistant Professors, Associate Professors etc., are not amenable to the Writ of Quo Warranto.

28. In support to the submission, learned counsel for the petitioner has relied upon the judgement of the Division Bench of Lucknow Bench of this Court ***in Kundan Singh versus State of UP and others, 2020 SCC OnLine All 6*** in which the Division Bench has categorically held that the post of Professors are merely the employee of the statutory body, therefore, they cannot be described as the public service in respect of which a Writ of Quo Warranto would lie. In such view of the matter, a similar view has also been taken by the Division Bench of this Court in ***Dr. Neetu Singh v. State of U.P. and others, 2019 SCC OnLine All 5871***. In view of the aforesaid discussion, the petitioner has no right to challenge the advertisement and also to challenge the selection of respondent no. 4, by participating in the selection process.

29. Accordingly, the writ petition is **dismissed.**

30. Respondents are directed to act upon the recommendations made by the U.P. Public Service Commission vide the order dated 19.01.2022 and do needful in the matter, if not already acted.

31. Interim order granted earlier is hereby ***vacated.***

(2026) 5 ILRA 1972
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 14.05.2026

BEFORE

THE HON'BLE KARUNESH SINGH PAWAR, J.

Writ A No. 2468 of 2026

Mr. Saleem Anwar Khan & Ors. **...Petitioners**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(1) Entitlement to get interest on delayed payment of Gratuity.

Headnotes

(A) Service law – Gratuity – Delayed payment – Interest – Petitioner was retired on 31.07.2005, however, he was paid gratuity only on 30.07.2024 – 18% interest claimed – Entitlement

Held : It is evident that the gratuity amount payable to the deceased employee upon retirement on 31.07.2005 remained withheld without any valid justification and was ultimately released only on 30.07.2024 after prolonged litigation extending over nearly two decades – The petitioners are entitled to interest on delayed payment of gratuity – The respondents are directed to pay simple interest at the rate of 10% per annum on the gratuity amount for the period commencing from 31.07.2005 till 30.07.2024. [Para 23, 25 and 26] (E-1)

Case Law Cited

S. D. Bandi vs. Divisional Traffic Officer, KSRTC & Ors., AIR 2013 SC 2507; Neelima Srivastava vs. State of Uttar Pradesh and Others, AIR 2021 SC 3884; Securities and Exchange Board of India vs. Ram Kishori Gupta and Others, MANU/SC/0461/2025; Writ Petition No. 1133(S/B) of 2001, Indrajeet Singh vs. State of U.P., 2008: AHC-LKO:3718-DB; Commissioner of Customs, Mumbai vs. M/s Toyo Engineering India Limited, (2006) 7 SCC 592; Case of R. Kapur vs. Director of Inspection (Painting and Publication) Income Tax and another; Writ Petition (Civil) No. 771 of 1995, Uma Agrawal vs. State of U.P. and Ors. (Supreme Court-FB); Writ Petition No. 1133(S/B) of 2001, Indrajeet Singh vs. State of U.P., 2008:AHC-LKO:3718-DB; Writ C No. 18684 of 2010, Laxman Singh Bhadauriya vs. Controlling Authority and Others; Special Leave to Appeal (C) No. 4468 of 2022, Gagan Bihari Prusty vs. Paradip Port Trust and Others decided on 03.03.2025 – **referred to.**

List of Acts

Payment of Gratuity Act, 1972 **–** Section 7 (3-A); Government Order dated 28.07.1989.

List of Keywords

Gratuity, Delayed payment, Interest, Unauthorised occupation, House rent, Simple interest, Valid justification, Prolonged litigation, Contempt proceeding.

Case Arising From

Impugned order dated 01.01.2026 rejecting the claim of payment of interest on delayed payment of gratuity.

Appearances for Parties

Advs. for the Petitioner : Sheikh Wali Uz Zaman.
Advs. for the Respondents : Amarnath Singh.

(Delivered by Hon'ble Karunesh Singh Pawar, J.)

1. Heard Sri Sheikh Wali Uz Zaman, learned counsel for the petitioners, and Sri Amarnath Singh, learned Standing Counsel appearing for the State-respondents.

2. By means of the present writ petition, the petitioners have prayed for issuance of a writ in the nature of **Certiorari** quashing the impugned order dated 01.01.2026, annexed as Annexure No.1 to the writ petition, whereby the claim of the petitioners for payment of interest on delayed payment of gratuity has been rejected. A further prayer has been made for issuance of a writ in the nature of **Mandamus** commanding the respondents to sanction and pay interest on the delayed payment of gratuity with effect from 31.07.2005 till 30.07.2024, at the rate of 18% per annum, within a stipulated period as may be fixed by this Court.

3. The brief facts of the case, as borne out from the pleadings on record, are that the petitioners are the legal heirs and children of Late Dr. Anwarullah Khan, who was appointed as a Medical Officer in the Provincial Medical Services (hereinafter referred to as "P.M.S.") on 22.06.1970. After rendering more than 35 years of unblemished service, Late Dr. Anwarullah Khan attained the age of superannuation and retired from service on 31.07.2005.

4. Since the retiral dues, particularly gratuity, were not released despite retirement, Late Dr. Anwarullah Khan instituted Writ Petition No.1061 of 2014, *Dr. Anwarullah Khan Vs. State of U.P. and Others*, which came to be disposed of vide judgment and order dated 17.07.2017. By the said order, this Court directed the respondents that in case there existed no legal or other impediment, the gratuity amount shall be paid within two months from the date of production of the certified copy of the order; otherwise, a reasoned order was required to be passed indicating specific reasons for withholding gratuity.

5. The aforesaid order was not complied with by the respondents. In the meantime, Late Dr. Anwarullah Khan died on 03.12.2014 and thereafter his wife also died on 11.06.2022. Consequently, the petitioners instituted Contempt Petition (Civil) No.2901 of 2018 seeking compliance of the order dated 17.07.2017.

6. During pendency of the contempt proceedings, a compliance affidavit was filed on behalf of the respondents stating therein that gratuity had been withheld on account of alleged outstanding house rent dues amounting to Rs.18,50,975/-. The Contempt Court, however, vide order dated 29.05.2024 rejected the compliance affidavit and directed filing of a fresh affidavit.

7. Subsequently, while considering the matter on 16.07.2024, the Contempt Court recorded an observation that admittedly no proceedings had ever been initiated against the deceased employee during his lifetime regarding alleged unauthorized occupation or recovery of house rent. Thereafter, in compliance of the order passed by the Writ Court, gratuity amounting to Rs.3,50,000/- was sanctioned vide order dated 24.07.2024 passed by the Chief Medical Officer, Rampur and the said amount was credited into the accounts of the petitioners on 30.07.2024. Consequently, the contempt petition came to be dismissed on 31.07.2024 after recording compliance.

8. Considering paragraph no. 31 and 32 of the judgement passed in ***S. D. Bandi Vs. Divisional Traffic Officer, KSRTC & Ors. [AIR 2013 SC 2507]***, the petitioners were paid gratuity of the deceased employee on 30.07.2024.

9. Learned counsel for the petitioners submits that the gratuity amount, which became payable immediately upon retirement on 31.07.2005, was ultimately paid only on 30.07.2024 after an inordinate delay of almost 19 years. It has been argued that once the plea regarding alleged outstanding house rent had already been rejected during contempt proceedings and attained finality, the respondents could not have reopened the same issue while rejecting the petitioners representation for grant of interest by means of the impugned order dated 01.01.2026.

10. In support of his submissions, learned counsel for the petitioners has placed reliance upon the judgment of the Hon'ble Supreme Court ***in Neelima Srivastava Vs. State of Uttar Pradesh and Others [AIR 2021 SC 3884*** emphasis on Para 32 to 36 and ***Securities and Exchange Board of India Vs. Ram Kishori Gupta and Others [MANU/SC/0461/2025]*** emphasis on Para 28 to 31, wherein it has been held that once an issue has attained finality, the same cannot be permitted to be reopened as it would amount to abuse of process of Court and adversely affect administration of justice.

11. Further reliance has been placed upon the judgment rendered by the Division Bench of this Court in ***Indrajeet Singh Vs. State of U.P. passed in Writ Petition No. 1133(S/B) of 2001,*** Neutral Citation- 2008:AHC-LKO:3718-DB, wherein interest at the rate of 12% per annum was awarded on delayed payment of gratuity.

12. Per contra, learned Standing Counsel appearing for the State has opposed the writ petition and attempted to justify the delay on the ground that an amount of Rs.18,50,975/- towards house rent was recoverable from the deceased employee. However, the said contention does not impress this Court for the reason that the very same issue had already been raised before the Contempt Court and stood rejected vide order dated 29.05.2024. Admittedly, no proceedings under Section 11 of the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 were ever initiated against the deceased employee during his lifetime.

13. Learned Standing Counsel has also referred to a Government Order dated 28.07.1989; however, the same has neither been brought on record nor substantiated before this Court.

14. Rebutting the submissions advanced on behalf of the State, learned counsel for the petitioners has submitted that the respondents are attempting to reagitate an issue which has already attained finality. It has further been submitted that once gratuity itself has been released in compliance of the orders passed by this Court, the respondents cannot deny statutory interest on delayed payment thereof.

15. Learned counsel for the petitioners also submits that new plea of the Government Order dated 28.07.1989 is nothing, but an attempt to mislead the Court and it is impermissible, in view of the judgement passed by the Hon'ble Supreme Court in the case of ***Commissioner of Customs, Mumbai Vs. M/s Toyo Engineering India Limited [(2006) 7 SCC 592]***

16. It is also relevant to note that during the lifetime of the deceased employee, a punishment order dated 28.01.2003 had been passed against him in disciplinary proceedings. The said order was challenged in Claim Petition No.1544 of 2007, which came to be allowed and the punishment order dated 28.01.2003 was quashed with all consequential service benefits. Thereafter, consequential orders were also issued by the State Government and ultimately vide order dated 05.10.2009(annexed as Annexure No. RA-2), a decision was taken to release the retiral dues of the deceased employee.

17. The Central Government, Ministry of Labour, New Delhi, vide Notification dated 01.10.1987 issued in exercise of powers conferred by Sub-Section (3A) of Section 7 of the

Payment of Gratuity Act, 1972, specified that in cases where gratuity is not paid within the prescribed period, the employer shall be liable to pay simple interest at the rate of 10% per annum.

18. The Hon'ble Supreme Court in the case of ***R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Another*** enhanced the rate of interest on delayed payment of gratuity. Para 10 judgement is extracted hereinbelow:-

"10. This Court in M.Padmanabhan Nair case has held as under:-

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

The Hon'ble Supreme Court awarded 18% interest on the delayed payment of gratuity.

19. Likewise in the case of ***Uma Agrawal Vs. State of U.P. and Ors***. Full Bench of the Hon'ble Supreme Court passed in ***Writ Petition (Civil) No. 771 of 1995*** Hon'ble the Supreme Court observed that in several cases decided by the Hon'ble Supreme Court interest of 12% had directed to be paid by the State for delay in payment of retiral dues.

20. In the case of ***Indrajeet Singh Vs. State of U.P.*** passed in ***Writ Petition No. 1133(S/B) of 2001, Neutral Citation- 2008:AHC-LKO:3718-DB***, the Division Bench of this Court while allowing the writ petition filed by the petitioner commanded opposite parties to pay rate of interest @ 12% from the date of retirement to the date of actual payment of dues to the petitioner.

21. In the case of ***Laxman Singh Bhadauriya Vs. Controlling Authority and Others*** passed in ***Writ-C No. 18684 of 2010***, the learned Singh Judge modified the order and directed the respondents to pay 10% interest on the delayed payment of gratuity.

22. In the case of ***Gagan Bihari Prusty Vs. Paradip Port Trust and Others*** passed in ***Special Leave to Appeal (C) No. 4468 of 2022*** vide judgement and order dated 03.03.2025 awarded 10% per annum on the delayed payment of gratuity.

23. From the material brought on record, it is evident that the gratuity amount payable to the deceased employee upon retirement on 31.07.2005 remained withheld without any valid justification and was ultimately released only on 30.07.2024 after prolonged litigation extending over nearly two decades.

24. Once the respondents themselves complied with the order passed by this Court and released the gratuity amount, and further once the plea regarding outstanding house rent had already been rejected during contempt proceedings, it was not open for the respondents to reagitate the same issue while considering the petitioners claim for interest. Such conduct is clearly

impermissible in view of the law laid down by the Hon□ble Supreme Court ***in Neelima Srivastava(Supra).***

25. In view of the foregoing discussions, the Notification dated 01.10.1987 issued by the Government of India, and the judgments of the Hon□ble Supreme Court as well as this Court relating to delayed payment of retiral dues and gratuity, wherein 10% simple interest per annum has been prescribed to be paid by the employer in cases of delayed payment of gratuity, this Court is of the considered opinion that the petitioners are entitled to interest on delayed payment of gratuity.

26. Accordingly, since the petitioners□ late father retired on 31.07.2005 and the gratuity amount was actually credited into the accounts of the petitioners only on 30.07.2024, i.e., after a delay of almost 19 years, the respondents are directed to pay simple interest at the rate of 10% per annum on the gratuity amount for the period commencing from 31.07.2005 till 30.07.2024.

27. The impugned order dated 01.01.2026 is hereby **quashed.**

28. The writ petition succeeds and is accordingly **allowed**.

29. The respondents are directed to calculate and release the aforesaid amount of interest to the petitioners within a period of three months from the date a certified copy of this order is produced before the competent authority.

(2026) 5 ILRA 1977
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 07.05.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ A No. 2856 of 2002

Rajesh Srivastava ...Petitioner

Versus

Committee Of Management D.M.U. Inter College Kanpur ...Respondent

Issue for Consideration

(1) Validity of an order rejecting the approval of an appointment made against the short-term vacancy on the ground that there was ban on the date of appointment.

Headnotes

(A) Service law – Appointment – L.T. Grade Teacher – Approval – Petitioners were appointed before 25.01.1999 against the short term vacancy – Approval claimed, which was rejected on the ground that there was ban on the appointment and also there is no provision for adhoc appointment – Validity challenged – Issue of regularization u/s 33-G of the Act, 1982 also felt into consideration

Held : On perusal of Government Order dated 09.03.1997, it is crystal clear that ban was imposed on ad hoc appointment under Section 18 of U.P. Secondary Education Services Selection Board Act, 1982. There was no ban against short term appointment made under Removal of Difficulties Order (II), 1981 as well as the appointment against short term vacancy was also permitted in view of provisions contained under Section 16-E of U.P. Intermediate Education Act, 1921. [Para 15]

Further held : The claim of the petitioners in view of provisions contained under Section 33-G of Selection Board Act, 1982 which came into existence w.e.f. 22.03.2016 is liable to be considered for regularization w.e.f. 22.03.2016, as the petitioners have continuously discharged duties on their respective posts. [Para 20] (E-1)

Case Law Cited

Vijay Singh vs. State of U.P. and others, 2005 (23) LCD 1696 (FB) **– referred to.**

List of Acts

Intermediate Education Act, 1921 – S. 16E; U.P. Secondary Education Services Selection Board Act, 1982 – Section 33-G; U.P. Secondary Education Services Selection Board Act, 1982 – Section 18; Removal of Difficulties (Second) Order, 1981 – Clauses 2(3)(iii) and 2(3)(iv); Removal of Difficulties order, 1981 (II).

List of Keywords

Appointment, Approval, Short term vacancy, Adhoc appointment, Ban, Illegal, Short term appointment, Regularization.

Case Arising From

Impugned order dated 15.05.2002 passed by the DIOS refusing to accord approval to the appointment.

Appearances for Parties

Advs. for the Petitioner : Pt. S. Chandra, Pankaj Bajpai; Krishna Kumar Singh; Manoj Kumar Pandey.
Advs. for the Respondents : Rajiv Srivastava, A.C.S.C.

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

1. Heard Sri Pt. S. Chandra, learned counsel for the petitioners and Sri Rajiv Srivastava, learned Additional CSC for the respondent - State.

2. In spite of notice issued to the Committee of Management, no-one has responded to appear before this Court.

3. By means of present writ petition, the petitioners are challenging the order dated 15.05.2002 contained as Annexure-22 passed by respondent No.3 and Government Order dated 03.11.1997 issued by respondent No.2 contained as Annexure-23 to the writ petition with a further prayer to issue writ of mandamus commanding the respondent Nos.2 to 5, specifically respondent No.3 to accord approval to the posts and salary of the petitioners w.e.f. 05.04.1998 and to pay the petitioners their salary along with arrears of salary and to give assent to the salaries of the petitioners deeming the appointments of the petitioners to be approved as per provisions of Clauses 2(3)(iii) and 2(3)(iv) of the Removal of Difficulties (Second) Order, 1981 and accord specific approval to ensure salary of the petitioners on their respective posts treating them to be continuing in service w.e.f. 05.04.1998 till date.

4. Factual matrix of the case is that the petitioners are adhoc LT Grade Teachers of recognized and aided Inter College run by the Committee of Management. All the petitioners are appointed before 25.01.1999 under the provision of Removal of Difficulties order, 1981 (II). The date of appointment of petitioner No.1 - Rajesh Srivastava is 04.04.1998 as LT Grade (Adhoc) on the short term post which occurred due to adhoc promotion of Arvind Kumar Tripathi as Lecturer on 21.10.1997. The petitioner No.2 - Shashi Kant Mishra got appointment on 04.04.1998 as LT Grade (Adhoc) against the short term post which fell vacant also on 21.10.1997 due to adhoc promotion of Jawahar Krishna as a Lecturer. Petitioner No.-2 Shashi Kant Mishra died during pendency of this writ petition and his legal heirs did not turn up despite of repeated reminders. Petitioner No.3- Lakhan Singh Chandel was appointed on 04.04.1998 as LT Grade (Adhoc) on the short term post, which fell vacant on 06.03.1997 due to adhoc promotion of Sri K.N. Dwivedi as lecturer.

5. Petitioner Nos.1 and 3 are still working and getting salary in pursuant to interim order dated 17.05.2002 passed in this case in countinuance with order of approval dated 30.12.2003 issued by District Inspector of Schools. All the petitioners possess more than 28 years of service continuously as Assistant Teacher LT Grade (Adhoc). Till date the Selection Board/Commission has not made regular selection against the posts of the petitioners.

6. The petitioners are entitled for regularization w.e.f. 22.03.2016 under the provision of Section 33-G of U.P. Secondary Education Services Selection Board Act, 1982. All the petitioners were duly selected after due advertisement and appointed on the post of LT Grade teacher on Adhoc basis in D.M.U. Inter College, Govind Nagar, District Kanpur. The committee of management sought approval from the DIOS, who refused to give approval vide order dated 15.05.2002 on the pretext that there is ban on the appointment and also there is no provision for adhoc appointment.

7. The petitioners filed present writ petition challenging the impugned G.O. dated 03.11.1997 (Annexure No.23, Page 107) and impugned order dated 15.05.2002 passed by the DIOS (Annexure No. 22, Page 106).

8. Submission of learned counsel for the petitioner is that the G.O. dated 03.11.1997 is putting ban on adhoc appointment and not on against appointment made under Section 16E of Education Act, 1921. The Selection Board Act, 1982, specifically Removal of Difficulties Order, 1981 (II) provides for selection and appointment against short term vacancy. The Government Order dated 03.11.1997 putting ban on appointment is illegal and not sustainable in the eyes of law because by Government Order, the statutory provisions of Selection Board Act, 1982 neither can be suspended nor can be diluted in any manner, as law is settled in Full Bench judgment of this Court in the case **of Vijay Singh Vs. State of U.P. and others; 2005 (23) LCD 1696 FB ALLD,** para 6 & 7.

9. He next submitted that the State Government subsequently withdrawn the G.O. dated 03.11.1997 vide G.O. dated 03.04.1998, as such G.O. dated 03.11.1997 deserves to be quashed. He submitted that the order dated 15.05.2002 is unsustainable being unlawful and arbitrary because Section 18 of Selection Board Act, 1982 was finally amended on 30.12.2000 and in this case,

provision of Removal of Difficulties Order (II), 1981 is attracted and short term appointment of the petitioners was made under the provisions of Removal of Difficulties Order (II), 1981 as short term posts were occured due to adhoc promotion on the post of Lecturer, therefore, the impugned order dated 15.05.2002 has been passed without considering the provisions of Removal of Difficulties Order (II), 1981 under which the management has power to make appointment under Section 16-E of U.P. Intermediate Education Act, 1921 and subsequently by adding Section 33-G of Selection Board Act, 1982 these appointments were regularized w.e.f. 22.03.2016, as such the impugned order is not sustainable in the eyes of law and is liable to be set aside.

10. On the other hand, learned Additional CSC invited attention of this Court on the judgment rendered in the case of petitioners, which was filed challenging the impugned order dated 15.05.2002, wherein writ petition was disposed of by giving benefit of Section 33-G, as was provided in the case of Vinod Kumar Srivastava with a direction to the Regional Level Committee to consider the case of the petitioners with a direction that in case salary is being paid to the petitioners, it shall be paid to them till their claim is decided by the Regional Level Committee. The Chairman - Joint Director of Education kept the matter pending due to pendency of the present writ petition before this Court and did not pass any order till date.

11. He next submitted that the impugned order does not suffer from any infirmity or illegality and the ban imposed vide Government Order dated 03.11.1997, which is valid and wants no interference by this Court.

12. In rebuttal, learned counsel for the petitioner placed the Government Order dated 09.03.1998, whereby the ban on adhoc appointment under Section 18 was lifted and was permitted to make appointment. The same will be placed on record of the present writ petition.

13. I have considered the submissions advanced by learned counsel for the parties and perused the material on record as well as law report cited by learned counsel for the petitioner.

14. To resolve the controversy involved in the matter, relevant portion of the judgment relied upon by learned counsel for the petitioner is being quoted below:

Vijay Singh (Supra):

"6. It is settled legal proposition that executive instructions cannot override the statutory provisions [Vide B.N. Nagrajan v. State of Mysore, AIR 1966 SC 1942; Sant Ram Sharma v. State of Rajasthan and Ors., AIR 1967 SC 1910; Union of India and Ors. v. Majji Jangammyya and Ors., AIR 1977 SC 757; B.N. Nagarajan and Ors. v. State of Karnataka and Ors., AIR 1979 SC 1676; P.D. Agrawal and Ors. v. State of U.P. and Ors., (1987) 3 SCC 622; M/s. Beopar Sahayak (P) Ltd. and Ors. v. Vishwa Nath and Ors., AIR 1987 SC 2111; State of Maharashtra v. Jagannath Achyut Karandikar, AIR 1989 SC 1133; Paluru Ramkrishananiah and Ors. v. Union of India and Ors., AIR 1990 SC 166; Comptroller and Auditor General of India and Ors. v. Mohan LalMalhotra and Ors., AIR.1991 SC 2288; State of Madhya Pradesh v. G.S. Dall and Flour Mills, AIR 1991 SC 772; Naga People's Movement of Human Rights v. Union of India and Ors., AIR 1998 SC 431; C. Rangaswamaeah and Ors. v. Karnataka Lokayukta and Ors., AIR 1998 SC 96.]

7. Executive instructions cannot amend or supersede the statutory rules or add something therein, nor the orders be issued in contravention of the statutory rules for the reason that an administrative instruction is not a statutory Rule nor does it have any force of law; while statutory rules have full force of law provided the same are not in conflict with the provisions of the Act. (Vide State of U. P. and Ors. v. Babu Ram Upadhyaya, AIR 1961 SC 751; and State of Tamil Nadu v. M/s. Hind Stone etc., AIR 1981 SC 711)."

15. On perusal of Government Order dated 09.03.1997, it is crystal clear that ban was imposed on ad hoc appointment under Section 18 of U.P. Secondary Education Services Selection Board Act, 1982. There was no ban against short term appointment made under Removal of Difficulties Order (II), 1981 as well as the appointment against short term vacancy was also permitted in view of provisions contained under Section 16-E of U.P. Intermediate Education Act, 1921, therefore, the Government Order, which was lifted ban vide Government Order dated 09.03.1998 has no efficacy in law in regard to appointment made under Removal of Difficulties Order (II), 1981 against short term vacancy arising in the institution, therefore, the impugned Government Order has no existence in regard to appointment made under Removal of Difficulties Order (II), 1981.

16. In the impugned order, objection has been taken that there is a ban on appointment made under Section 18 of U.P. Secondary Education Services Selection Board Act, 1982.

17. On perusal of Government Order as well as impugned order, it is apparent on the face of record that ban was imposed on adhoc appointments made under Section 18 of the Act of 1982. There was no ban imposed on appointments made against short term vacancies under the provisions of Removal of Difficulties Order (II), 1981, therefore, the impugned order is not sustainable in the eyes of law and is liable to be set aside.

18. The impugned order dated 15.05.2002 is also not sustainable in the eyes of law on the ground that without perusal of contents of Government Order dated 03.11.1997, which was imposing ban on appointments made under Section 18 of Act of 1982, the impugned order was passed.

19. The respondents have also failed to consider that short term appointments have always been permitted to continue till regularly selected candidate comes and joins, therefore, the impugned order suffers from apparent illegality and is liable to be set aside.

20. The claim of the petitioners in view of provisions contained under Section 33-G of Selection Board Act, 1982 which came into existence w.e.f. 22.03.2016 is liable to be considered for regularization w.e.f. 22.03.2016, as the petitioners have continuously discharged duties on their respective posts.

21. In view of reasons recorded above and facts and circumstances of the case, this Court is of the considered opinion that the government order does not apply to the appointments made against short term vacancy under Removal of Difficulties Order (II), 1981 and based on

Government Order dated 03.11.1997, the order of DIOS dated 15.05.2002 is also not sustainable in the eyes of law.

22. In view of above, the impugned order dated 15.05.2002 is hereby quashed.

23. The writ petition succeeds and is **allowed**.

24. However, the Regional Level Committee is directed to consider the claim of the petitioners for regularization under Section 33-G of the Act of 1982 w.e.f. 22.03.2016, as directed by this Court in Writ-A No.6558 of 2024.

25. In the meantime, the petitioners shall be paid salary month by month on the post of Assistant Teachers LT Grade.

26. The Government Order dated 03.11.1997 was lifted vide Government Order dated 09.03.1998, therefore, it has lost its efficacy.

(2026) 5 ILRA 1982
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.05.2026

BEFORE

THE HON'BLE DINESH PATHAK, J.

Writ A No. 7210 of 2016

North Central Zone Insurance Employees ...Petitioner

Versus

U.O.I. & Ors. ...Respondents

Issue for Consideration

(1) Permissibility to engage the employees of L.I.C. for the purposes of discharging duties as the Supervisors to facilitate the work of census operations.

Headnotes

(A) Service Law – Employees of L.I.C. – Census duty – Engagement as Supervisors of census work – Permissibility – Definition of 'Establishment' felt into consideration :

Held : Conjoint reading of Section 4, 4-A, 6(1)(e), 7(c) of the Act, 1948 read with Rule 3 of the Rules, 1990 leaves no room for doubt that employee of any establishment can legally be engaged for census duties. Once appointed or directed, they are under the statutory obligation to perform such duty – These provisions were inserted/amended to strengthen the machinery for large scale operations like decennial census. These sections balance compulsory public duty with particular administration for a massive exercise like the Indian census – The term 'establishment' has not been narrowly defined under the Act, 1948 and, in ordinary parlance, includes commercial establishments such as L.I.C. In the backdrop of the statutory scheme, the order issued by the competent authority requiring staff of L.I.C. to function as Enumerator/Supervisor cannot be said to be dehors the provision of the Act, 1948 or the Rule, 1990. Once appointed for census work, such

persons are deemed to be public servants and are under a statutory obligation to discharge the assigned duties. [Para 12]

Case Law Cited

C.W.P. No. 7037 of 2010, Life Insurance Corporation of India vs. Union of India and others decided on 21.09.2010 (High Court of Punjab & Haryana); Special Civil Appeal No. 5335 of 2010, Life Insurance Corporation Ltd. vs. Registrar General and Census Commissioner of India decided on 14.10.2013 (Gujarat High Court); Civil Misc. Writ Petition No. 28736 of 2010, Life Insurance Corporation of India And Others vs. Municipal Commissioner/Additional Chief Census Officer, Nagar Nigam, Kanpur And Others decided on 04.03.2011 (Allahabad High Court-DB) **– referred to.** (E-1)

List of Acts

Constitution of India – Article 246 – Schedule VII, List 1 (Union List), Entry 69; Census Act, 1948 – Section 4-A, 6 (1)(e) and 7(c); Census Rules, 1990 –Rule 3; General Clauses Act, 1897 – Section 3(31).

List of Keywords

Entrustment of census duty, Employees of LIC, Establishment, Commercial establishment,, Central law, Exclusive power, Industrial establishment, Mobilization of staff, Factory, Tubulation, Teacher, Decennial census.

Case Arising From

Orders passed by the Authorized Authority/Zonal Officer directing the employees of the L.I.C. to discharge duties as Enumerators/Supervisors to facilitate the work of census operations.

Appearances for Parties

Advs. for the Petitioner : Vikrant Pandey; Raunak Singh.
Advs. for the Respondents : S.P. Singh, ASGI; Viviek Kumar Singh; Krishna Deo Rai; Ashish Mishra; Siddharth Singhal; Brijesh Kumar Srivastava, S.C.

(Delivered by Hon'ble Dinesh Pathak, J.)

1. Heard Sri Vikrant Pandey, learned counsel for the petitioner; Sri S.P. Singh, learned Additional Solicitor General of India, assisted by Sri Vivek Kumar Singh for respondent nos. 1, 2 and 3; Sri Ashish Mishra, learned counsel for respondent nos. 4 and 5, and Sri Brijesh Kumar Srivastava, learned Standing Counsel for State respondent no. 6.

2. The petitioner is a Union representing Class III and Class IV employees of the Life Insurance Corporation of India (in brevity 'L.I.C.') in the North Central Zone, having its Head Quarter at Kanpur. The grievance raised in the present writ petition pertains to entrustment of census duties upon the employees of the L.I.C.

3. Learned counsel for the petitioner submits that under Section 4-A of the Census Act, 1948 (in brevity 'Act, 1948'), only employees of local authorities can be requisitioned for performing census duties as Enumerators/Supervisors. He further submits that the employees of the L.I.C. do not fall within the definition of "local authorities" as defined under Section 3(31) of the General Clauses Act, 1897; therefore, entrustment of census duties upon them is wholly unsustainable in the eyes of law. In support of his submissions, he has placed reliance upon the judgment dated 21.09.2010 passed by the Hon'ble High Court of Punjab & Haryana at Chandigarh in the case of **Life Insurance Corporation of India vs. Union of India And Others, C.W.P.**

No.7037 of 2010 (Annexure-5), as well as the judgment dated 14.10.2013 passed by the learned Single Judge of the **Gujarat High Court in the case of Life Insurance Corporation Ltd. vs. Registrar General and Census Commissioner of India; Special Civil Appeal No.5335 of 2010.**

4. Per contra, learned Senior Counsel for the Union of India has contended that Section 4-A of the Act, 1948 cannot be read in isolation and has to be constructed conjointly with Section 6 (1)(e) and 7(c) of the Act, 1948, which specifically contemplate engagement of employees of factories, firms and establishments for census work. He has emphasized that the L.I.C. comes within the ambit of a 'commercial establishment' and, therefore, engaged of its staff for census operations is well within the domain of the Act, 1948. It has further been contended that Rule 3 of the Census Rules, 1990 (in brevity 'Rules 1990') prescribes the categories of officers who may be appointed a census officers. In the tabulation appended to Rule 3, the designation "Enumerator" appears at Serial No.5 and the corresponding category of persons eligible for appointment includes "teachers, clerks or any official or any person". Thus, according to the Senior Counsel, the Rule confers wide discretion upon the competent authority to appoint suitable persons as Enumerators. He has further contended that the order passed by the Zonal Officer under Section 4(4) of the Act, 1948, whereby employees of the L.I.C. are appointed as Enumerators/Supervisors, has not been challenged in the writ petition. In support of his submission, learned Senior Counsel has placed reliance upon the judgement dated 04.03.2011 rendered by a Division Bench of this court in case of **Life Insurance Corporation of India And Others vs. Municipal Commissioner/Additional Chief Census Officer, Nagar Nigam, Kanpur And Others, Civil Misc. Writ Petition No.28736 of 2010.**

5. Having considered the rival submissions advanced by learned counsel for the parties and upon perusal of record, it reflects that the question which arises for consideration in the present writ petition lies in a narrow compass, namely, whether employees of the L.I.C. can legally be engaged as Enumerators/Supervisors for the purposes of performing the census work.

6. The subject of "Census" falls under Entry 69, of List 1 (Union List) of the Seventh Schedule to the Constitution of India read with Article 246 thereof, and thus Parliament has exclusive power to legislate in census matter. The Act, 1948, as amended from time to time, the Central law, governs the entire process relating to census operations, including appointment of census staff, duties of citizens, penalties for non-compliance, and confidentiality of information collected during census operations. Section 4 of the Act, 1948, provides the provision for appointment of census staff and Section 4-A of the Act, 1948 enunciates that staff of every local authority to be made available for taking census. The said provisions are reproduced hereinbelow :-

***"Section 4: Appointment of census staff** :- (1) The Central Government may appoint a Census Commissioner to supervise the taking of the census throughout the area in which the census is intended to be taken, and [Directors of Census Operations] to supervise the taking of the census within the several States.*

(2) The State Government may appoint persons as census-officers [with such designations as that Government may deem necessary] to take, or aid in, or supervise the taking of,

the census within any specified local area and such persons, when so appointed, shall be bound to serve accordingly.

(3) A declaration in writing, signed by any authority authorised by the State Government in this behalf, that any person has been duly appointed a census-officer for any local area shall be conclusive proof of such appointment.

(4) The State government may delegate to such authority as it thinks fit the power of appointing census-officers conferred by sub-section (2).

Section 4-A Staff of every Local Authority to be made available for taking census :- *Every local authority in a State shall, when so directed by a written order by the Central Government or by an authority appointed by that Government in this behalf, make available to any Director of Census Operations such staff as may be necessary for the performance of any duties in connection with the taking of census."*

7. Section 4(1) authorizes the Central Government to appoint a Census Commission and Directors of Census Operations to supervise the census work. Section 4(2) of the Act, 1948 authorizes the State Government to notify the appointment of persons as Census Officers with such designation as may be deemed necessary for carrying out census operations within any specified local area. Such persons, who are appointed for the assigned work of census, shall be statutorily bound to serve accordingly. Sub section 4 of Section 4 further authorizes the State Government to delegate the power of appointing the Census Officer conferred by sub section 2. In exercise of power under Section 4(2) of the Act, 1948, the State Government issued Notification dated 09.01.2026 appointing officers as Census Officers with various designations, as mentioned in the said notification, which contains a tabulation wherein serial number, officers' name, census designation and their jurisdiction are indicated. It appears that pursuant thereto, the Zonal Officer, in exercise of delegated power under Section 4(4) of the Act, 1948 read with Rule 3 of the Rules, 1990, issued orders appointing the officials of the L.I.C. as Enumerators/Supervisors.

8. For adjudication of the present controversy involved in the instant matter, Section 6 and Section 7 of the Act, 1948 along with Rule 3 of the Rules, 1990 are also relevant to be considered, which are reproduced hereinbelow :-

"Section 6: Discharge of duties of census officers in certain cases *:- (1) Where the District Magistrate, or such authority as the State Government may appoint in this behalf, by a written order so directs ?*

(a) every officer in command of any body of men belonging to the naval, military or air forces, or of any vessel of war, of India,

(b) every person (except a pilot or harbourmaster) having charge or control of a vessel,

(c) every person in charge of a lunatic asylum, hospital, workhouse, prison, reformatory or lock-up or of any public, charitable, religious or educational institution,

(d) every keeper, secretary or manager of any sarai, hotel, boarding-house, lodging-house, emigration depot or club,

(e) every manager or officer of a railway or any commercial or industrial establishment, and

(f) every occupant of immovable property wherein at the time of the taking of the census persons are living, shall perform such of the duties of a census-officer

in relation to the persons who at the time of the taking of the census are under his command or charge, or are inmates of his house, or are present on or in such immovable property or are employed under him as may be specified in the order.

***Section 7: Power to call upon certain persons to give assistance** :- The District Magistrate, or such authority as the State Government may appoint in this behalf for any local area, may, by written order which shall have effect throughout the extent of his district or of such local area, as the case may be, call upon - (a) all owners and occupiers of land, tenure-holders, and farmers and assignees of land revenue, or their agents,*

(b) all members of the district, municipal, panchayat and other local authorities and officers and servants of such authorities, and

(c) all officers and members of staff of any factory, firm or establishment, to give such assistance as shall be specified in the order towards the taking of a census of the persons who are, at the time of the taking of the census, on the lands of such owners, occupiers, tenure-holders, farmers and assignees, or in the premises of factories, firms and other establishments, or within the areas for which such local authorities are established, as the case may be, and the persons to whom an order under this section is directed shall be bound to obey it and shall, while acting in pursuance of such order, be deemed to be public servants within the meaning of the Indian Penal Code.

***RULE 3: Appointment of Census Officers :-** The State Governments and the Union territory Administrations in order to aid the taking of the census within their States or Union territories, may appoint officers from against the category mentioned in column 2 as census officers within their jurisdictions with such designation mentioned in column 1 of the Table below.*

	Designation *1*	*Officers to be appointed* *2*
1.	*Principal Census Officer*	*District Collectors/ Magistrates/ Commissioners of administrative heads of Corporations or any nominated Officer.*
2.	*District/Additional district/ Deputy district/Sub-divisional district/City/Additional City Census, Officer.*	*District Collectors/ Magistrates/ Officer assisting District Collectors/ Magistrates/ Commissioner/ District*

		Sub-divisional Officers or Revenue Divisional Officers.
3.	*Charge Officer/ Assistant Charge Officer/ Additional Charge Officer and Sub- Charge Officer.*	*Tehsildars/ Additional Tehsildars/ Mamlatdars/ Block Development Officer/ Chief Administrative Officer of towns/ Executive Officers and other Officers.*
4.	*Supervisor*	*Officers generally of a rank higher than enumerators or any person.*
5.	*Enumerator*	*Teachers, Clerks or any official or any person.*

9. Section 6 of the Act, 1948 empowers the District Magistrate (or any authority appointed by the State Government) to issue a written order directing specific categories of persons/officials to perform the duties of census officers in respect of people under their command, charge, or control. Clause (e) of Section 6 (1) targets Manager/Officers of Railways, commercial and industrial establishment. It allows the administration to enlist corporate and industrial sector personnel for census work (e.g. enumerating employees, workers or people on the premise). This is crucial for covering organized sector workforce and institutional population efficiently. It reflects legislative intent to leverage extending administrative hierarchy in the private sector for public duties during census operations. Failure to comply can lead to penal consequences.

10. Furthermore, Section 7 of the Act, 1948 gives power to the District Magistrate (or authorized authority) to issue a written order calling upon specific categories of persons to provide assistance for the census. The order has effect throughout the district or local area. Persons called upon are bound to obey the order and, while acting under it, are deemed public servant under the I.P.C. Sub section (c) of Section 7 is wide empowering provision covering the private sector. It allows mobilization of staff from companies for tasks like enumeration, supervision, or data collection within their premise. It specifically provides that every officer or employee of (i) a local authority, (ii) a factory, firm or establishment, or (iii) an institution shall be bound to assist in census operation when required by the prescribed authority. The term 'establishment' is not narrowly restricted in the Act, 1948 and is ordinarily understood to include organized bodies employing persons for official, commercial, industrial, educational, or administrative work. It compliments Section 6 by focusing on 'assistance' rather than full discharge of census officer duties. The Hon'ble Gujarat High Court, in the case of Life Insurance Corporation Ltd. vs. Registrar General (supra), as relied upon by the learned counsel for the petitioner, examined whether employees of a statutory Corporation like L.I.C. could be compelled under Section 4, 7(b) and 7(c) of the Act, 1948. The judgment clarifies the distinction between appointment of Census Officers (Section 4) and calling for assistance (Section 7). It highlighted limits on compelling staff of public undertakings/corporations without proper delegation or procedure, emphasizing that Section 7(c) applies to factory, firm or establishment but requires careful application to avoid excessive burden or invalid delegation.

11. Rule 3 of Rules, 1990 authorizes the appointment of Census Officers such Enumerators, Supervisors, Charge Officers etc. from among Government Servants and other suitable persons for performing census duties. It contains a tabulation wherein Column 1 denotes the designation of census officers who are to be appointed to carry out the census work, and Column 2 specifies the category of persons who may be appointed against such designation. Serial no.5 of the tabulation is particularly relevant for the purposes of deciding the instant writ petition, which talks about Enumerator. Against the designation Enumerator, details of officers are mentioned in Column 2 as teachers, clerks or any official or any person. Thus, undoubtedly, any teacher, clerk or any official, or even any suitable person can be appointed as an Enumerator. No distinction has been drawn in this rule between the clerks or officials of local body, institution, or establishment and others. The word "any person" employed in Column 2 against the designation "Enumerator" carries a wider connotation and cannot be confined only to the government employees or officials of the local authorities. In this backdrop of the legal proposition, the Authorized Authority/Zonal Officer is competent to issued orders commanding the persons employed with the L.I.C. to act as Enumerators/Supervisors for census work. Needless to say that the persons engaged in the execution of census duties are deemed to be public servants within the meaning of the Indian Penal Code, and any slackness or neglect on their part is punishable under the provisions of the Act, 1948, read with the Indian Penal Code.

12. Conjoint reading of Section 4, 4-A, 6(1)(e), 7(c) of the Act, 1948 read with Rule 3 of the Rules, 1990 leaves no room for doubt that employee of any establishment can legally be engaged for census duties. Once appointed or directed, they are under the statutory obligation to perform such duty, which is treated as a public duty under the Act, 1948. The expression 'any official or any person' employed in Rule 3 is of wide amplitude and cannot be restricted only to employees of local authority or government departments. Further, Section 7(c) specifically contemplates assistance by officers and members of staff of any factory, firm or establishment for the purposes of census operations. Section 6 and 7, help in decentralized and efficient census taking by utilizing local administration and private sector resources. Non-compliance of direction issued to the persons who were engaged in census operation attracts penalties (including under Section 11 of the Act, 1948). These provisions were inserted/amended to strengthen the machinery for large scale operations like decennial census. These sections balance compulsory public duty with particular administration for a massive exercise like the Indian census. As discussed above, the term 'establishment' has not been narrowly defined under the Act, 1948 and, in ordinary parlance, includes commercial establishments such as L.I.C. In the backdrop of the statutory scheme, the order issued by the competent authority requiring staff of L.I.C. to function as Enumerator/Supervisor cannot be said to be dehors the provision of the Act, 1948 or the Rule, 1990. Once appointed for census work, such persons are deemed to be public servants and are under a statutory obligation to discharge the assigned duties. Moreover, the Hon'ble Division Bench of this Court in the matter of Life Insurance Corporation And Others (supra) has already upheld the engagement of employees of L.I.C. for census work. Relevant paragraph nos. 15 and 16 of the said judgment is reproduced herein below :-

"15. That power, in our opinion, can be localised in Section 7 of the Act. The officers/employees of the writ petitioners would be covered by the expression 'establishment', as they are working in an establishment. Once, they are found working in an 'establishment', in our

opinion, the only question is as to whether the power should be exercised by the District Magistrate or by any authority notified by the State Government under Section 4 (2) of the Act, depending on whether the expression is 'as' or 'or'. If the Act as downloaded from the website is taken into consideration, the expression used is 'or' and not 'as' and thus it is not only the District Magistrate, but other authorities can also be appointed by the State Government for any local area, which the State Government has done under Section 4 (2) of the Act. Respondent no.1 is one such authority. The demand has been made by respondent no.1 in respect of the officers/employees working in the Kanpur Branch of the Life Insurance Corporation. Therefore, it was well within the jurisdiction of respondent no.1, considering that power has been conferred to call on the writ petitioners to make available the names of their officers/employees for the purpose of carrying on the census operations.

16. Alternatively, even if we assume that the expression is not 'or' and is 'as' then at the highest, the power can be exercised by the District Magistrate, who is the Principal Census Officer insofar as the whole district is concerned. Insofar as the Nagar Nigams are concerned, they are only a part of the district and thus the Municipal Commissioners have been notified as Additional Principal Census Officers. So, if in the event, respondent no.l has no jurisdiction, then the District Magistrate in respect of the district would have jurisdiction. As such, at the highest, it can be said that respondent no.1 would not have been an authority to issue a direction to the writ petitioners, as such power is vested with the District Magistrate. However, considering that in various other writ petitions, interim orders were passed directing the petitioners, like the writ petitioners, to make available not more than 25% of their officers/employees and as the census operations are going on, no useful purpose would be served by quashing the orders dated 05.04.2010 and 17.04.2010 and the subsequent orders. In fact, in the order dated 05.04.2010, a reference has been made to the Notification dated January 18, 2010. Thus, in any view of the matter, no relief can be granted as sought for. However, at the same time, we may note that though respondents may call on the writ petitioners to make available the officers/employees for the purpose of census operations, in exercise of that power, the working of the writ petitioners themselves should not be affected as observed in the case of State Bank of India (supra). If there be power, it has to be exercised with circumspection and minimum staff can be requisitioned. We, therefore, direct the respondents that if and when a notification is required to be issued under Section 7 of the Act, then from the Institutions like the writ petitioners, requisition should be, at any rate, not more than 25% of the available staff within the area of the jurisdiction conferred on the officers."

13. The judgment relied upon by the learned counsel for the petitioner rendered by the Punjab & Haryana High Court and the Gujarat High Court do not consider the effect of Rule 3 of the Rules, 1990 and Section 6(1)(e) of the Act, 1948. It is also relevant to note that the Government of Uttar Pradesh has issued notification dated 04.02.2026 prescribing the schedule for the first phase of Census of India, 2027 wherein house listening and house census operations are to be conducted from 22.05.2026 to 20.06.2026.

14. In view of the discussions made herein above, this Court is of the considered opinion that the Authorized Authority/Zonal Officer has not committed any error or illegality in issuing orders in exercise of delegated power under Section 4(4) of the Act, 1948 read with Rule 3 of the Rules, 1990, directing the employees of the L.I.C. to discharge duties as Enumerators/Supervisors

to facilitate the work of census operations. Further, the writ petition contains only a vague prayer seeking quashing of the decision to engage employees of the L.I.C. for census work and no specific challenge has been made to any particular order. The ancillary prayer seeking issuance of a writ of mandamus restraining the respondents from engaging employees of the L.I.C. in census operations also cannot be granted in light of the statutory provisions discussed herein above.

15. Resultantly, instant writ petition, being misconceived and devoid of merits, is **dismissed** with no order as to costs.

(2026) 5 ILRA 1990
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.05.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 7526 of 2026

Roshan Kumar Pandey & Ors. **...Petitioners**
Versus
State of U.P. & Anr. **...Respondents**

Issue for Consideration

(1) Legality of fixing the same cut-off date for qualification in fresh advertisement as was fixed in earlier advertisement, which was cancelled after several round litigation.

Headnotes

(A) Service Law – Assistant Professor (B.Ed.) – Qualification – Cut-off date – After a series of litigation, earlier advertisement of the year 2022 was cancelled requiring the Commission to issue a fresh advertisement – Fresh advertisement was issued in 2026, but cut-off date was kept the same as fixed in earlier advertisement – Validity challenged :

Held : There was a specific direction that Commission may issue a fresh Advertisement with respect of posts of Assistant Professor (B.Ed.), therefore, according to opinion of this Court selection process for post of Assistant Professor (B.Ed.) was separated from original Advertisement No. 51 – If the stand of Commission is accepted that cut off date so far as educational qualification is concerned, would be the date initially fixed, i.e., August, 2022, it would be arbitrary so far as candidates who have now attained educational qualification till fresh Advertisement is issued in 2026 – In order to have a fair competition, cut off date would only be the date of fresh Advertisement, i.e., 28.04.2026 and any candidate who got eligible by said date would be allowed to participate in recruitment process. [Para 16, 18 and 19] (E-1)

Case Law Cited

Km. Lakshmi and others vs. State of U.P. and others, 2026:AHC:53469; Harvindar Singh and others vs. State of U.P. and others, 2026:AHC:84883-DB **– referred to.**

List of Acts

N.C.T.E. Regulations.

List of Keywords

Appointment, Advertisement, Qualification, Cancellation, Fresh advertisement, Recruitment, Selection process, Independent, Application fee, Corrigendum.

Case Arising From

Advertisement dated 28.04.2026.

Appearances for Parties

Advs. for the Petitioners : R.K. Ojha, Sr. Adv.; Shivendu Ojha; Umang Chandra Gupta.
Advs. for the Respondents : K. Shahi; Gagan Mehta.

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

1. Affidavit filed today in Court is taken on record.

2. Heard Sri R.K. Ojha, learned Senior Advocate assisted by Sri Shivendu Ojha, learned counsel for petitioners and Sri K. Shahi, learned counsel for Respondent-U.P. Education Service Selection Commission, Prayagraj.

3. An Advertisement No. 51 for the post of Assistant Professors in 34 Subjects was issued in 2022 by U.P. Higher Education Service Commission. A challenge was made qua to qualifications determined by Commission for appointment of Assistant Professors (B.Ed.) and a Coordinate Bench of this Court has passed an order dated 09.12.2022 in Writ-A No. 12803 of 2022, Neutral Citation No. 2022:AHC:214381, whereby said Advertisement so far as appointment on 75 posts of Assistant Professors (B.Ed.) was found to be contrary to law being not in terms of the N.C.T.E. Regulations, therefore, quashed with further direction that Commission may issue fresh Advertisement with respect to said posts only. For reference relevant part of said order is mentioned hereinafter:

"13. Consequently, the impugned Advertisement No. 51 issued by the Commission insofar as it relates to appointment of 75 posts of Assistant Professor (B.Ed.) is found to be contrary to and lesser than that enforced by the special law. Therefore, to that extent, the impugned Advertisement is contrary to the mandatory law. It is quashed (only to that extent). The Commission may proceed to refund the application money to all the affected applicants through same mode it may have received that money from the individual candidates. Such compliance may be made within a period of two weeks from today. The Commission may issue a fresh advertisement with respect to the above posts strictly in accordance with the norms of the N.C.T.E. Regulations. (Emphasis supplied)

4. U.P. Higher Education Service Commission has made challenge to aforesaid order by way of a Special Appeal Defective No. 287 of 2023, which was dismissed by a Division Bench of this Court vide an order dated 21.04.2023, Neutral Citation No. 2023:AHC:87720-DB. A further attempt at behest of U.P. Higher Education Service Commission before Supreme Court also remained unsuccessful vide an order dated 01.09.2023 passed in Special Leave to Appeal (C) No. 17719 of 2023 except a clarification that refund as directed by the Writ Court shall be made on applying by individual applicants on furnishing their account details.

5. It would be relevant to observe here that examination qua to remaining 33 subjects was held, however, due to certain irregularities, entire written examination was cancelled with direction that a fresh written examination be conducted so far as 33 subjects are concerned. This order was upheld by a Writ Court of this Court though in a Special Appeal, the Division Bench has limited the cancellation only qua to 5 subjects out of 33 subjects with further direction that no fresh written examination would be required for remaining subjects, i.e., 28 subjects. So far as present case is concerned, fresh examination for 75 posts of Assistant Professors (B.Ed.) was required to be conducted independently irrespective of above order of cancellation passed by Writ Court as modified by a Division Bench.

6. In pursuance of above referred judgments of Single Judge, Division Bench and Supreme Court, the Secretary, U.P. Education Service Selection Commission issued a press note dated 23.05.2025 whereby in pursuance of earlier Advertisement No. 51 registrations were opened for increased 107 posts of Assistant Professors (B.Ed.) with cut off date 31.08.2022 so far as qualification and eligibility is concerned, i.e., fixed in terms of initial Advertisement.

7. Aforesaid order was challenged by petitioners by way of Writ-A No. 8260 of 2025 which was disposed of vide an order dated 01.07.2025 with following directions:

"14. After taking into consideration of the contents of the petition and the submissions of learned Senior Counsel, I find force in the argument but I have also considered that the recruitment process has already been started in pursuance of the new amended advertisement, therefore I am not inclined to interfere in the recruitment process at this stage but in the interest of justice, I am inclined to consider the alternative prayer to allow the writ petitioners to fill the form online as they have approached this Court by way of filing the instant writ petition before the last date of filling of the form as per amended advertisement.

15. In view of the aforesaid observations and directions, the Commission is directed to open the portal to enable the petitioners for filling up their form for one day i.e. 7th July, 2025 from 10.00 a.m. to 5 p.m. It is also made clear that the aforesaid direction has been passed only for the writ petitioners as the instant writ petition has been filed prior to the last date of submission of form as per the amended advertisement."

(Emphasis supplied)

8. Petitioners thereafter filed a Contempt Application (Civil) No. 3414 of 2025, which was disposed of vide order dated 11.09.2025 that order of Writ Court was already complied with.

9. Subsequently, an intra-Court appeal against the order passed by Coordinate Bench was also dismissed probably on ground that respondents have issued a fresh notification dated 28.04.2026, which is impugned in present writ petition, on a ground that cut off date for educational qualification was again fixed as 31.08.2022, i.e., the observations made in earlier round of litigation were not complied with.

10. Learned Senior Advocate appearing for petitioners submits that admittedly when first Advertisement No. 51 was issued in the year 2022 wherein above referred cut off date was mentioned, petitioners were not qualified and they have attained minimum qualification subsequently. It is the case of petitioners that once a fresh notification is issued the Commission ought to have included fresh candidates also, i.e., a fresh cut off date be issued in terms of notification dated 28.04.2026 so that petitioners may also apply.

11. Learned Senior Advocate also referred the judgments passed in earlier round of litigation that Commission was directed to issue a fresh Advertisement, therefore, no fresh notification could be issued in continuance of earlier Advertisement No. 51 of 2022, rather it would be a fresh recruitment process on basis of a fresh Advertisement, therefore, a fresh cut off date was required to fix so that all eligible candidates, who were not qualified earlier, may participate and that number of post has also been increased.

12. Per contra, learned counsel appearing for Commission submitted that basic Advertisement was of the year 2022 and when it was cancelled with liberty to issue a fresh Advertisement, cut off date was not disturbed. Requirement of fresh Advertisement was only for the purpose of educational qualification in terms of orders and fixed by Competent Authority.

13. Learned counsel further submits that during interregnum period now a new Act has come into force which has different method of recruitment for Assistant Professors, therefore, in case petitioners prayer is accepted, the examination has to be conducted in terms of current procedure whereas recruitment arising out of Advertisement No. 51 so far as rest of 33 subjects were conducted in terms of earlier process, therefore, to keep uniformity, the examination for Assistant Professors (B.Ed.) has to be conducted in terms of procedure applicable in the year 2022, therefore, cut off date was not disturbed. In a process arising out of same Advertisement two different type of selection process cannot be adopted.

14. I have considered the submissions and perused the material available on record.

15. The first issue before this Court for consideration is, whether in pursuance of an order dated 09.12.2022 whereby selection on the post of Assistant Professor (B.Ed.) arising out of Advertisement No. 51/2022 was quashed with a direction that fresh Advertisement be issued after adhering to the norms of N.C.T.E. Regulations, whether it would be considered a fresh Advertisement for all purposes notwithstanding that initially it was proposed alongwith Advertisement No. 51 with other subjects.

16. To answer above question, the Court takes note of para 13 of order dated 09.12.2022 that there was a specific direction that Commission may issue a fresh Advertisement with respect of posts of Assistant Professor (B.Ed.), therefore, according to opinion of this Court selection process for post of Assistant Professor (B.Ed.) was separated from original Advertisement No. 51 and any argument of learned counsel for Commission that in all circumstances fresh selection process for said post would be co-related with selection process of other subjects arising out of Advertisement No. 51, is accordingly rejected. Both recruitment process are now independent and has no relation inter se.

17. On basis of above opinion, now the Court proceed further on a premise that selection process so far as Assistant Professor (B.Ed.) is concerned, it would be a separate and independent process.

18. It is also on record that initial number of posts, i.e., 75 has now been increased to 107 and till date Commission is not able to conduct fresh recruitment. They have earlier issued a fresh Advertisement which was later on withdrawn from consideration of last date of educational qualifications. Initial Advertisement was issued in the year 2022, i.e., four years ago, therefore, undisputedly petitioners and other similarly situated candidates have now become eligible to participate in said selection process and that increase in posts also indicates that posts become vacant in subsequent years have also been included. Therefore, if the stand of Commission is accepted that cut off date so far as educational qualification is concerned, would be the date initially fixed, i.e., August, 2022, it would be arbitrary so far as candidates who have now attained educational qualification till fresh Advertisement is issued in 2026 and to non-suit them would not only be adverse to them but they will also miss a chance to appear and compete in a fresh selection process.

19. At this stage, Court also takes note that by an order dated 09.12.2022 even a direction was passed that application fees may be returned to affected applicants. Therefore, it is not necessary that all candidates who have applied in the year 2022 would definitely apply in fresh recruitment process. Otherwise also, presently there are only 30 candidates before this Court. Therefore, in order to have a fair competition, cut off date would only be the date of fresh Advertisement, i.e., 28.04.2026 and any candidate who got eligible by said date would be allowed to participate in recruitment process.

20. Accordingly, it is directed that a □Corrigendum□ be issued so that not only petitioners but any other eligible candidates, if want to apply, can apply. The □Corrigendum□ shall be issued within a period of two weeks from today.

21. Now the question is, whether examination be conducted as per old provision of new provision. The Court finds that since process was initiated in 2022 and new Act has come later on and even rest of selection process have recently conducted in terms of old provisions, therefore, there would be no legal difficulty that Commission may continue examination process in terms of old provisions (See, **Km. Lakshmi and others vs. State of U.P. and others, 2026:AHC:53469** as modified by a Division Bench in **Harvindar Singh and others vs. State of U.P. and others, 2026:AHC:84883-DB).** It is clarified that it is always open for State Government to take a decision to conduct examination as per new provision as it would not prejudice other candidates, since it is informed that there is not much change in new process about procedure.

22. With aforesaid observations/ directions, this writ petition is disposed of.

(2026) 5 ILRA 1994
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.05.2026

BEFORE
THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 8189 of 2020

Suman Kumari **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(1) Permissibility of claiming the parity of interim protection granted in certain other matter to validate an appointment obtained by using the fake degree.

(2) Effect of not conducting the departmental enquiry before passing the dismissal order on the allegation of using the fake degree to obtain the appointment.

Headnotes

(A) Service Law – Dismissal from service – Assistant Teacher – Fake and tempered B.Ed. degree was used to obtain the appointment – Effect on the validity of appointment, which was made in year 2010 – Interim protection in certain pending matter was granted – Parity claimed – Permissibility – No departmental enquiry was conducted – No opportunity of hearing was given – Effect

Held : Merely because interim orders have been passed in certain other petitions or because the matter is pending consideration before the Hon'ble Apex Court, it cannot be said that the judgments rendered by this Court cease to have binding effect – Fraud vitiates every solemn act and an appointment obtained on the basis of forged or fabricated educational qualifications confers no enforceable right upon the incumbent. In such circumstances, where the employer forms satisfaction on the basis of material available on record that the appointment itself was secured by fraud or misrepresentation, the requirement of holding a full-fledged disciplinary inquiry may not arise, as the action is not founded upon misconduct during service but upon invalidity of the very entry into service. [Para 27 and 33]

(B) Principle of sub silentio – Applicability – Permissibility of treating an interim order as the declaration of law

Held : A decision is said to pass sub silentio when a particular point of law involved in the decision is not consciously determined or is assumed without argument or consideration. An interim order granting protection without adjudication upon the legal issue involved cannot be treated as a declaration of law under Article 141 of the Constitution of India. [Para 28] (E-1)

Case Law Cited

Neelam Chauhan vs. State of U.P. and 4 others, 2020 (4) ADJ 560; Special Appeal No. 326 of 2020, Kiran Lata Singh vs. State of U.P. and Others, decided on 26.02.2021 **– referred to.**

List of Acts

Constitution of India – Article 141; U.P. Government Servant (Discipline & Appeal) Rules of 1999.

List of Keywords

Special BTC Training, Appointment, Promotion, Dismissal, Opportunity of hearing, Departmental enquiry, Principle of natural justice, Fake B.Ed. degree, Parity, Binding effect, Declaration of law, Foundation of appointment, Void ab initio, Fabricated educational qualification, Enforceable right, Fraud, Misrepresentation.

Case Arising From

Impugned dismissal order dated 14.07.2020 passed by the District Basic Education Officer, Meerut.

Appearances for Parties

Advs. for the Petitioner : Harish Chandra Pratap; Rahul Mishra; Syed Ali Murtaza; Syed Hasan Mujtaba Isfahani.

Advs. for the Respondents : Devesh Vikram; Shailendra Singh, SC; Gagan Mehta; Shivam Yadav.

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

Ref : Order on Civil Misc. Recall/Restoration Application No.16 of 2026

1. The present restoration application has been filed for recalling the order dated 06.04.2026 passed by this Hon'ble Court, by which instant writ petition has been dismissed as infructuous.

2. Application has been filed within time. In view of the liberty granted by the order dated 06.04.2026 and the reasons as disclosed in the affidavit, which are satisfactory, the restoration application is **allowed.**

3. Accordingly, the present writ petition is restored to its original number.

Ref : Order on writ petition

4. Heard Mr. Harish Chandra Pratap, learned counsel for the petitioner, Mr. Devesh Vikram, learned counsel for respondent-BSA and Mr. Shailendra Singh, learned Standing Counsel for the State.

5. Learned counsel for the petitioner submits that the petitioner passed her High School and Intermediate examinations from the Madhyamik Shiksha Parishad, U.P. in the years 1989 and 1991 respectively. Thereafter, she pursued the degree of Bachelor of Arts from Sri Tikaram Kanya Mahavidyalaya, Aligarh, affiliated with Agra University, in the year 1992 and qualified the same in the year 1994. Subsequently, she pursued and passed M.A. in Political Science in the year 1996.

6. It is further submitted that the petitioner pursued the B.Ed. course for the academic session 2003?04 from R.K. Gupta Memorial Institute of Technology and Management, Agra, which is duly recognized by the National Council for Teacher Education, Government of India, New Delhi.

7. Learned counsel for the petitioner further submits that the petitioner applied for Special BTC Training, 2008 (Examination Year 2010), on 05.02.2009, wherein all her educational certificates were duly submitted and verified. The petitioner successfully completed the Special BTC Training, 2008 and the certificate in that regard was issued on 01.06.2010.

8. It is further submitted that being duly eligible, the petitioner applied for appointment on the post of Assistant Teacher in Junior Basic Schools in District Badaun and, after due selection, she was appointed as Assistant Teacher in a Primary School situated in District Badaun, where she joined on 30.07.2010. Subsequently, the petitioner was promoted to the post of Headmaster.

9. Learned counsel for the petitioner submits that, to the utter surprise of the petitioner, a notice dated 13.07.2020 was issued by respondent no. 4, wherein it was mentioned that Dr. B.R. Ambedkar University, Agra had declared the B.Ed. degrees of 2823 candidates pertaining to the academic session 2004?05 to be fake. The notice further referred to the observations made in Writ Petition No. 190 of 2020 and also stated that the petitioner?s name appeared in the list of fake B.Ed. degrees available on the official website of Dr. B.R. Ambedkar University, Agra.

10. It is submitted that the petitioner sought time to submit her reply and also produced a certificate issued by the then Secretary of the Society managing the concerned college to establish that she had in fact pursued the B.Ed. course for the academic session 2004?05 from the concerned institution affiliated to the University. The petitioner also submitted a representation requesting the authorities to conduct a proper inquiry with respect to her B.Ed. certificate so as to ascertain the true facts.

11. Learned counsel for the petitioner submits that a registered letter was served upon the petitioner on 19.07.2020 containing the order dated 14.07.2020 passed by respondent no. 4, District Basic Education Officer, Meerut, whereby the services of the petitioner were dismissed forthwith. The aforesaid order dated 14.07.2020 has been challenged in the present writ petition.

12. It is contended that the impugned order is wholly arbitrary, illegal and has been passed without affording any adequate opportunity of hearing to the petitioner. It is further submitted that the petitioner had rendered satisfactory service after her appointment as Assistant Teacher and there has never been any complaint against her during the entire tenure of service.

13. Learned counsel for the petitioner lastly submits that the petitioner being a permanent and confirmed employee could not have been removed from service except after holding a regular departmental inquiry in accordance with the U.P. Government Servant (Discipline & Appeal) Rules of 1999, which admittedly has not been conducted in the present case.

14. Learned counsel for the petitioner further submits that neither the report of the Special Investigation Team (SIT), nor the extract of the alleged list of fake degrees, nor any other material or report relied upon by the authorities has ever been supplied to the petitioner. It is contended that in absence of disclosure of the material forming the basis of the impugned action, the petitioner was deprived of any meaningful opportunity to submit an effective reply or defend herself against the allegations levelled against her. Consequently, the impugned order stands vitiated on account of gross violation of the principles of natural justice.

15. Learned counsel for the petitioner further submits that the judgment rendered in the case of **Neelam Chauhan vs. State of U.P. and 4 others, reported in 2020 (4) ADJ 560** as well as the judgment passed in Special Appeal in the case of **Kiran Lata Singh vs. State of U.P. Through Secretary, Department of Basic Education and 5 Others, being Special Appeal No.326 of 2020 as decided on 26.02.2021, have already been challenged before the Hon?ble Apex Court in SLP Nos. 7157?7160 of 2021**. It is submitted that, taking note of the pendency of the aforesaid Special Leave Petitions, interim orders have been granted by this Court in several similarly situated matters, including Writ-A No. 14520 of 2020. Therefore, it is contended that the petitioner is also entitled to the same interim protection and relief on the ground of parity.

16. He further submits that on the aforesaid grounds, the impugned order passed against the petitioner is wholly unsustainable in the eyes of law and is liable to be set aside by this Court.

17. Learned counsel appearing for the respondents, on the other hand, submits that the controversy relating to Assistant Teachers who secured employment on the basis of B.Ed. degrees

for the academic session 2004?05 shown to have been issued by Dr. B.R. Ambedkar University, Agra, and subsequently found to be fake or tampered, already stands concluded by the judgment rendered in the case of Smt. Neelam Chauhan and connected matters, leading case being Writ-A No. 190 of 2020, decided on 29.04.2020, wherein the Court made the following observations:

'In the case of Smt. Neelam Chauhan (supra), this Hon'ble Court has made extensive observations regarding fake and tampered B.Ed. degrees allegedly issued by Dr. B.R. Ambedkar University for the academic session 2004-2005. The judgment dealt with a large batch of writ petitions filed by assistant teachers whose appointments were questioned on the basis of such degrees.'

18. The principal observations recorded by the Court were as follows:

'(i) The Court noted that a Special Investigation Team (SIT), constituted pursuant to orders passed in PIL proceedings, found large-scale irregularities and tampering in B.Ed. mark sheets and tabulation records of the University.

(ii) It was also observed that although around 8,930 students had actually appeared in the B.Ed. examination, the tabulation charts were allegedly manipulated by inserting additional pages, increasing the number to about 12,472 candidates. The Court recorded allegations that forged entries were inserted and marks were fraudulently awarded.

(iii) The Court further observed that many petitioners had obtained employment as Assistant Teachers on the basis of B.Ed. degrees or mark sheets which were found to be fake, forged, or tampered. The Court categorized the cases of affected teachers and held that where the records clearly disclosed tampering or forged degrees, the authorities were justified in proceeding against such appointees.

(iv) At the same time, the Court emphasized compliance with principles of natural justice. In certain individual cases, where relevant explanations or documents had not been considered by the authorities, the impugned termination orders were quashed and matters were remitted for fresh consideration after hearing the concerned persons.

(v) The Court specifically observed that the University had issued notices to suspected candidates and that 814 persons had approached the University, but most had failed to submit supporting documents. The Court directed the University to take appropriate decisions regarding such cases within a stipulated period. The Court also referred to its earlier decision in **Writ-A No.468 of 2020 (Tilak Singh and 495 Others vs State of U.P.)** and noted that similar submissions had already been rejected therein.'

19. Ultimately, the batch of writ petitions were disposed of with detailed directions, concerning different categories of candidates, including:

(a) persons with prima facie fake/tampered degrees,

(b) persons whose cases required reconsideration,

(c) and persons whose records had not been properly examined by the authorities.

20. The judgment later became the basis for several subsequent decisions concerning teachers appointed on allegedly fake B.Ed. Qualifications.

21. The judgment and order passed in the aforesaid bunch of writ petitions was assailed by filing **Special Appeal No. 326 of 2020 (Smt. Kiran Lata Singh vs State of U.P. and Others),** which was connected with a batch of other special appeals and came to be decided by a Division Bench of this Court on 26.02.2021. The Division Bench, while considering the controversy in detail, affirmed the findings recorded by the learned Single Judge with certain observations and directions. The principal observations recorded by the Division Bench were:

'(i) The Court observed that the Single Judge had relied extensively upon the SIT report, University records, and materials collected during investigation showing large-scale manipulation in the B.Ed. examination records of the academic session 2004?05.

(ii) The Division Bench noted that where the educational qualification itself appeared prima facie forged, fabricated, or obtained through tampering in University records, no equitable relief could ordinarily be granted to such appointees merely because they had continued in service for some time.

(iii) At the same time, the Court emphasized that each case could not be treated identically and individual scrutiny was necessary. The Bench observed that cases of candidates whose records were genuinely disputed or whose documents had not been independently verified required reconsideration in accordance with principles of natural justice.

(iv) The Court recorded that allegations existed regarding interpolation in tabulation charts and unauthorized increase in the number of successful candidates in the B.Ed. examination, and such allegations were supported by the material collected by the SIT and the University authorities.

(v) The Bench further observed that appointments secured on the basis of fake educational qualifications would amount to fraud upon public employment and such appointments could not be protected under Article 226 of the Constitution.

(vi) However, the Court also observed that adverse action affecting service rights must satisfy procedural fairness. If a candidate claimed that his or her degree was genuine and supporting material had not been properly examined, an opportunity of hearing and proper verification was necessary before final termination.'

22. The Division Bench ultimately disposed of the connected appeals by modifying and clarifying certain directions issued by the Single Judge and permitting appropriate scrutiny/verification by the authorities in individual cases.

23. It is further submitted that against the judgment passed in Special Appeal No. 326 of 2020 (Smt. Kiran Lata Singh vs State of U.P. and Others) and connected matters, Special Leave Petitions being SLP (C) Nos. 7157?7160 of 2021 were filed before the Hon?ble Supreme Court, wherein the Hon?ble Apex Court, vide interim order dated 01.07.2021, was pleased to issue notice and grant interim protection to the petitioners therein by directing payment of current salary during pendency of the proceedings.

24. The Court has considered the submissions advanced by learned counsel for the parties and perused the record.

25. The principal submission advanced on behalf of the petitioner is that since interim orders have been granted in certain pending matters and the judgment rendered in Smt. Neelam Chauhan (supra) as affirmed in Smt. Kiran Lata Singh (supra) is under challenge before the Hon?ble Apex Court, the petitioner is also entitled to similar interim protection.

26. The said submission, however, cannot be accepted in the facts of the present case. The controversy with regard to appointments obtained on the basis of allegedly fake or tampered B.Ed. degrees pertaining to the academic session 2004?05 issued by Dr. B.R. Ambedkar University, Agra, has already been considered in detail by the learned Single Judge in Smt. Neelam Chauhan (supra), which judgment was thereafter affirmed by the Division Bench in Smt. Kiran Lata Singh (supra). The legal issues involved therein thus stand duly considered and answered.

27. Merely because interim orders have been passed in certain other petitions or because the matter is pending consideration before the Hon?ble Apex Court, it cannot be said that the judgments rendered by this Court cease to have binding effect. Interim orders passed in individual matters are essentially orders passed in the peculiar facts of those cases and do not constitute binding precedents.

28. In this regard, the principle of sub silentio is also relevant. A decision is said to pass sub silentio when a particular point of law involved in the decision is not consciously determined or is assumed without argument or consideration. An interim order granting protection without adjudication upon the legal issue involved cannot be treated as a declaration of law under Article 141 of the Constitution of India. Consequently, the interim orders relied upon by the petitioner, having been passed without any detailed adjudication on the issues presently raised, cannot override or dilute the binding effect of the judgments rendered in Smt. Neelam Chauhan (supra) and Smt. Kiran Lata Singh (supra).

29. In paragraph no.30 of the counter affidavit as filed on behalf of respondent no.4-BSA, it has been stated that the interim order was granted to the petitioner on 06.10.2020, as corrected on 14.10.2020, however, the petitioner despite being called for joining, did not turn up.

30. The aforesaid paragraph has been answered stating that the petitioner was never offered to join services vide any letter. From the aforesaid, the fact remains that the petitioner has never joined, pursuant to the interim order, thus he is not entitled for any relief.

31. Accordingly, this Court is of the opinion that the petitioner cannot claim parity solely on the basis of interim orders passed in other pending matters, particularly when the controversy already stands adjudicated by coordinate and larger Benches of this Court and no final adjudication to the contrary has yet been rendered by the Hon?ble Apex Court.

32. So far as the other submission advanced by learned counsel for the petitioner, namely that no proper opportunity of hearing was afforded and no disciplinary inquiry in accordance with the applicable Rules was conducted, is concerned, it is well settled that in cases involving fraud, forgery or misrepresentation, strict compliance of departmental inquiry procedures may not be necessary where the very foundation of appointment is alleged to be void ab initio.

33. It is a settled principle of law that fraud vitiates every solemn act and an appointment obtained on the basis of forged or fabricated educational qualifications confers no enforceable right upon the incumbent. In such circumstances, where the employer forms satisfaction on the basis of material available on record that the appointment itself was secured by fraud or misrepresentation, the requirement of holding a full-fledged disciplinary inquiry may not arise, as the action is not founded upon misconduct during service but upon invalidity of the very entry into service.

34. After due verification from the records of the concerned University and upon consideration of the material available on record, the competent authority has passed a detailed and reasoned order in accordance with law, therefore, no interference is warranted by this Court in the impugned order and the writ petition, being devoid of merit is **dismissed**, accordingly.

(2026) 5 ILRA 2001
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.05.2026

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 8780 of 2016

Md. Nesar Ahmad **...Petitioner**
Versus
State of U.P. & Anr. **...Respondents**

Issue for Consideration

(1) Entitlement of candidate, having no qualification as required under the advertisement, to be declared as eligible candidate.

Headnotes

(A) Service law – Recruitment – Post of Assistant Teacher (Urdu) – Training qualification – As per the advertisement, the candidate must possess Teacher's Eligibility Test, conducted by the Central Government or the U.P. State Government – The petitioner, having the Primary Teachers Training Examination Course, was declared ineligible – Validity challenged

Held : In case the petitioner does not possess the qualifications prescribed under the advertisement/rules governing the recruitment in question, he is not entitled to be considered for appointment on the post in issue – The Courts, in exercise of judicial review, cannot expand the prescribed eligibility or treat a higher qualification as equivalent unless the Rules so provide. [Para 10]

Case Law Cited

Harsh Kumar and another vs. State of UP and others, 2014 (2) 870 (All); Zahoor Ahmad Rather & Ors. vs. Sheikh Imtiyaz Ahmad & Ors, (2019) 2 SCC 404; Ankita Thakur and others vs. H.P. Staff Selection Commission & Ors. (2024) 19 SCC 745; Rakesh Kumar Sharma vs. Government of NCT of Delhi and others, (2013) 11 SCC 58; Pramod Kumar vs. U.P. Secondary Education Services Commission and others, (2008) 7 SCC 153; District Collector and Chairman, Vizianagaram (Social Welfare Residential School Society Vizianagaram and another vs. M. Tripura Sundari Devi,(1990) 3 SCC 655 **– referred to.** (E-1)

List of Keywords

Counseling, Requisite certificate, Ineligible candidate, Qualification, Training qualification, Judicial review, Higher qualification, Essential qualification, Eligibility.

Case Arising From

The list dated 23.02.2016 issued by the District Basic Education Officer declaring the petitioner as an ineligible candidate.

Appearances for Parties

Advs. for the Petitioner : Ashish Jaiswal.
Advs. for the Respondents : Pranesh Dutt Tripathi; Shailendra Singh.

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard Mr. Ashish Jaiswal, learned counsel for the petitioner, Mr. Pranesh Dutt Tripathi, learned counsel for the respondent-BSA and Mr. Shailendra Singh, learned Standing Counsel for the State.

2. Writ-A No. 8780 of 2016 has been filed with a prayer to direct respondent No.2 District Basic Education Officer, to permit the petitioner to participate in the counselling to be held on 26.02.2016 pursuant to the notifications dated 05.01.2016 and 19.01.2016 regarding the selection and appointment against 3,500 posts of Assistant Teachers (Urdu) in the State of Uttar Pradesh, and to prepare the select list in accordance with law.

3. Writ- A No.22451 of 2016 has been filed with the following prayers:-

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned list dated 02.03.2016 issued by District Basic Education Officer, District Kushinagar respondent no.4 so fat it relates to petitioner by which his name has been placed amongst the ineligible candidate for the selection and appointment against the 3500 posts of Assistant Teacher (Urdu) in the State of U.P.

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondents to consider the selection and appointment of the petitioner, pursuant to his counselling held on 26.02.2016 at District Kushinagar, against the Notification dated 05.01.2016 and Advertisement

dated 11.01.2016 issued for the selection and appointment against 3500 posts of Assistant Teacher in the State of U.P.

(iii) Issue a writ, order or direction in the nature of mandamus directing the respondents to treat the two years Primary Teachers Training Course (P.T.T.) acquired by the petitioner from Primary Teachers Education College, Gumma, District Godda, conducted by Jharkhand Academic Council, Ranchi, recognized by the National Council for Teacher Education (NCTE), as equivalent to the two years Educational Training Examination conducted by the State Council of Educational Research and Training (SCERT), Uttar Pradesh, and accordingly modify the eligibility criteria for the selection and appointment against 3500 posts of Assistant Teacher in the State of U.P. to that extent."

4. Learned counsel for the petitioner submits that the petitioner had completed his two years Primary Teachers Training Examination Course from an institution recognized by the National Council for Teacher Education (NCTE) and had obtained the requisite certificate from Primary Teacher Education College, Gumma, District-Godda, Jharkhand conducted by the Jharkhand Academic Council, Ranchi. He further submits that petitioner was eligible for being considered for appointment in view of the notifications dated 05.01.2016 and 19.01.2016 on the post of Assistant Teacher (Urdu).

5. The Court, by order dated 25.02.2016, permitted the petitioner provisionally to participate in the counselling in view of the orders passed in Writ-A No.5938 of 2015 (Md. Nesar Ahmad v. State of U.P. and Others), wherein the Court, relying upon the judgment of the Division Bench of this Court in the case of **Harsh Kumar and another vs. State of UP and others, 2014 (2) 870 (All)** as well as **Special Appeal Defective No.130 of 2014,** had allowed the petitioner to participate in the ongoing counselling in respect of the notification dated 23.08.2010 as amended on 29.07.2011.

6. Subsequently, a list dated 23.02.2016 was issued by the concerned District Basic Education Officer, wherein the petitioner was declared an ineligible candidate. Challenging the said list, Writ-A No.22451 of 2016 has been filed.

7. Learned Counsel for the petitioner submits that the petitioner holds the qualification as mentioned in the relevant notification. He, placing reliance upon the judgment of the Division Bench passed in the case of **Harsh Kumar (supra),** submits that the petitioner is entitled to be considered for appointment on the post of Assistant Teacher (Urdu).

8. Learned Counsel for the respondent-BSA, on the other hand, submits that the petitioner does not hold the qualification for Assistant Teacher (Urdu) as detailed in the advertisement, wherein the candidate must possess Teacher's Eligibility Test which was conducted by the Central Government or the U.P. State Government. The petitioner should possess the B.T.C. (Urdu) training from training centre of Lucknow, Agra, Mawana District-Meerut and Sakaldeeha District Chandauli or should possess any equivalent certificate of B.T.C. two years B.T.C. (Urdu) or Moallim-E-Urdu prior to 11.08.1997 or may possess Diploma in Teaching from Aligarh Muslim University. Only these training qualifications were permitted to apply for 140 posts of Assistant

Teacher (Urdu) in District Kushinagar. It will not be out of place to mention here that the petitioner did not possess any of these training qualifications. The petitioner passed P.T.T. Examination from Ranchi, Jhankhand which is not equivalent to two years B.T.C. (Urdu) Training. He further submits that the judgment as relied upon by the petitioner is not applicable in the facts of the present case, as the petitioner does not hold the qualification as mentioned in the advertisement, therefore, he is not entitled for any relief as prayed for.

9. Learned counsel for the respondents informs that the issue regarding appointment of Assistant Teacher (Urdu) has already been decided in **Writ-A No.25278 of 2014 (Azahar Ali vs. State of U.P. And 2 Others)**, against which a Special Appeal is pending, and no interim order has been passed.

10. The contention advanced on behalf of the respondents is that in case the petitioner does not possess the qualifications prescribed under the advertisement/rules governing the recruitment in question, he is not entitled to be considered for appointment on the post in issue. The aforesaid proposition is no longer res integra. The Hon'ble Supreme Court in **Zahoor Ahmad Rather & Ors. v. Sheikh Imtiyaz Ahmad & Ors, (2019) 2 SCC 404**, held that prescription of qualifications for a post falls within the domain of the employer. The Courts, in exercise of judicial review, cannot expand the prescribed eligibility or treat a higher qualification as equivalent unless the Rules so provide. The said principle has been reiterated in **Ankita Thakur & Ors. v. H.P. Staff Selection Commission & Ors. (2024) 19 SCC 745**, wherein it was held that a candidate not possessing the essential qualification prescribed in the advertisement/rules cannot claim appointment. Further, in **Rakesh Kumar Sharma v. Government of NCT of Delhi & Ors., (2013) 11 SCC 58,** it has been held that eligibility has to be possessed on the cut-off date prescribed under the advertisement. Likewise, in **Pramod Kumar v. U.P. Secondary Education Services Commission & Ors., (2008) 7 SCC 153**, the Apex Court held that absence of requisite eligibility is an illegality incapable of being cured subsequently. Similar view was taken in **District Collector And Chairman Vizianagaram (Social Welfare Residential School Society Vizianagaram And Another Vs. M. Tripura Sundari Devi,(1990) 3 SCC 655**, wherein it was held that appointment contrary to the qualifications prescribed in the advertisement is impermissible in law.

11. In view of the above, the writ petition is **dismissed**.

(2026) 5 ILRA 2004
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.05.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 10539 of 2000

Nasiruddin **...Petitioner**
Versus
U.P. State Sugar Corp. & Ors. **...Respondents**

Issue for Consideration

(1) Maintainability of writ petition in respect of a dispute pertaining to the sugar factory, which was subsequently took over by a private body during the course of pendency of writ petition.

Headnotes

(A) Labour Law – Writ – Maintainability – Disciplinary proceeding – Punishment – Order of Stoppage of three annual increments with cumulative effect was passed by the Disciplinary authority – Though the Appellate Authority disagreed with the order of Disciplinary Authority but enhanced the punishment and passed the dismissal order – Validity challenged in writ petition – During the pendency of writ petition, the sugar factory in State of U.P. was disinvested and it was taken over by a private player namely; Wave Industries Private Ltd – Question of maintainability of writ petition felt into consideration

Held : There is a legal impediment to pass an order today since now the writ petition is not maintainable due to subsequent events as a private player has taken over the company – Though the Court finds that impugned order cannot survive on law, still, no relief can be granted to the petitioner – Liberty is granted to the petitioner to approach the Labour Court if so advise and in case any proceeding is initiated before Labour Court, delay if any, can be condoned since this writ petition was pending for about 25 years before this Court and Labour Court will take endeavour to decide the proceedings if initiated expeditiously, preferably within a period of one year. [Para 6 and 8] (E-1)

Case Law Cited

R.S. Madireddy and anther vs. Union of India and others, 2024 SCC OnLine SC 965; Ravi Kumar vs. State of U.P. & 3 Ors., 2024:AHC:85116-DB **– referred to.**

List of Acts

Standing Order – Clause 'O'.

List of Keywords

Disciplinary proceeding, Punishment, Stoppage, Annual increment, Disagreement, Dismissal, Maintainable, Private player, Company, Labour Court.

Case Arising From

Order of the Appellate Authority dismissing the petitioner from service.

Appearances for Parties

Advs. for the Petitioner : S. K.Srivastava; A.K.Srivastava; Alok Kumar Srivastava; Amit Kumar; M.A. Khan; M.A. Zaidi; Sanjay Kumar Rai; Sharad Kumar Srivastava.

Advs. for the Respondents : A.K. Srivastava; Sri Shashank Gupta; Dr. Y. K. Srivastava; Rajesh D. Khare; Tarun Agrawal.

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

1. Heard Sri S.K.Srivastava, learned counsel for the petitioner, Sri A.K. Srivastava and Sri Shashank Gupta, learned counsel for the respondents.

2. This Writ Petition is of the year 2000. Court finds that petitioner has a good case however, due to subsequent events whereby sugar factory in State of U.P. i.e., U.P. State Sugarcane Corporation Unit Bijnor has now been disinvested and it was taken over by a private player namely; Wave Industries Private Ltd. has now rendered this writ petition not maintainable. (see **R.S. Madireddy and Anr. Vs. Union of India and others, 2024 SCC OnLine SC 965.**

3.The facts which are not under dispute are that the petitioner a Labour had faced a disciplinary proceedings, on a charge of theft, wherein he was awarded a punishment of stoppage of 3 annual increments with cumulative effect vide an order dated 9/11.6.1998.

4. The petitioner thereafter filed an appeal in terms of Clause 'O' of Standing Order of Sugar Industry U.P. (Decision of Manager to be final, subject to right of appeal), which does not provide any specific procedure to decide the Appeals. However, Appellate Authority not only put its disagreement with the order of Disciplinary Authority but enhanced the punishment and passed an order of dismissal from service vide an order dated 17.12.1999, the order impugned.

5. Court finds merit in the argument of learned counsel for the petitioner so far as impugned order is concerned that without any specific power to enhance the punishment in a statutory appeal, impugned order whereby punishment was enhanced from three permanent stoppage of annual increments to dismissal from service would not legally survive. Court also takes note of a judgment passed by this Court in **Ravi Kumar Vs. State of U.P. & 3 Ors, 2024:AHC:85116-DB.**

6. However, as referred above, there is a legal impediment to pass an order today since now the writ petition is not maintainable due to subsequent events as a private player has taken over the company.

7. Aforesaid referred position of law in **R.S. Madireddy** (Supra) is not being disputed by the learned counsel for the petitioner also. For reference relevant paragraphs of it is reproduced hereinafter :

*"**38.** The question of issuing a writ would only arise when the writ petition is being decided. Thus, the issue about exercise of extra ordinary writ jurisdiction under Article 226 of the Constitution of India would arise only on the date when the writ petitions were taken up for consideration and decision. The respondent No. 3(AIL)- employer was a government entity on the date of filing of the writ petitions, which came to be decided after a significant delay by which time, the company had been disinvested and taken over by a private player. Since, respondent No. 3 employer had been disinvested and had assumed the character of a private entity not performing any public function, the High Court could not have exercised the extra ordinary writ jurisdiction to issue a writ to such private entity. The learned Division Bench has taken care to protect the rights of the appellants to seek remedy and thus, it cannot be said that the appellants have been non-suited in the case. It is only that the appellants would have to approach another forum for seeking their remedy. Thus, the question No. 2 is decided against the appellants.*

***39**. By no stretch of imagination, the delay in disposal of the writ petitions could have been a ground to continue with and maintain the writ petitions because the forum that is the High Court where the writ petitions were instituted could not have issued a writ to the private respondent which had changed hands in the intervening period. Hence, the question No. 3 is also decided against the appellants.*

***40**. Resultantly, the view taken by the Division Bench of the Bombay High Court in denying equitable relief to the appellants herein and relegating them to approach the appropriate forum for ventilating their grievances is the only just and permissible view."*

8. In the aforesaid circumstances, though the Court finds that impugned order cannot survive on law, still, no relief can be granted to the petitioner. The judgment of **R.S. Madireddy** (Supra) applies in present case not only on facts but on law also and this writ petition is **dismissed** being not maintainable. However, liberty is granted to the petitioner to approach the Labour Court if so advise and in case any proceeding is initiated before Labour Court, delay if any, can be condoned since this writ petition was pending for about 25 years before this Court and Labour Court will take endeavour to decide the proceedings if initiated expeditiously, preferably within a period of one year.

(2026) 5 ILRA 2007
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 08.05.2026

BEFORE

THE HON'BLE KARUNESH SINGH PAWAR, J.

Writ A No. 11164 of 2021

Balwant Chandra **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(1) Effect of disregarding the direction of the High Court issued for concluding the department enquiry within a specific period.
(2) Effect of violation of Regulation 486(1), which mandate that the departmental proceedings can ordinarily be undertaken only after the conclusion of the police investigation or criminal trial.
(3) Effect of acquittal order passed in the criminal case, based upon which the departmental enquiry was conducted and punishment order was passed.

Headnotes

(A) Service law – Punishment – Constable in Civil Police – Departmental enquiry proceeded consequent upon registration of a criminal case – Earlier High Court passed the judgment dated 13.12.2019 directing the authority to take final decision preferably within a period of two months – However, disregarding the direction, the punishment order was passed after an inordinate delay of approximately fourteen months, without any explanation or permission – Effect

Held : Although a period of two months was granted by the Coordinate Bench vide judgment and order dated 13.12.2019 for passing the final order, the disciplinary authority proceeded to pass the punishment order only on 13.02.2021, i.e., after an inordinate delay of about fourteen months. Admittedly, no application seeking extension of time was moved before this Court, nor was any permission obtained for such delay. In view of the law laid down by the Full Bench in *Abhishek Prabhakar Awasthi's case,* such action on the part of the disciplinary authority is clearly impermissible and renders the impugned punishment order unsustainable on this ground alone. [Para 29]

(B) Service law – Punishment – Constable in Civil Police – Departmental enquiry proceeded consequent upon registration of a criminal case – Regulation 486(1), which provide that the departmental proceedings can ordinarily be undertaken only after the conclusion of the police investigation or criminal trial, was not followed – Effect

Held : Regulation 486(1) is mandatory in nature, and any departmental inquiry conducted in violation thereof would stand vitiated. The Court emphasized that departmental proceedings can ordinarily be undertaken only after the conclusion of the police investigation or criminal trial. On these principles, the order of dismissal impugned therein was set aside, having been passed in contravention of the mandatory provisions of Regulation 486(1). [Para 34]

(C) Service law – Punishment – Constable in Civil Police – Departmental enquiry proceeded consequent upon registration of a criminal case – Subsequently acquittal order was passed in the criminal case, which attained finality as no appeal was filed against it – Effect : (E-1)

Held : The acquittal recorded by the competent criminal court has a binding effect on the departmental proceedings. It is not permissible for the disciplinary authority to go behind or disregard the findings returned by the criminal court. The judicial determination rendered in the criminal trial must be treated as conclusive on the issues involved, particularly when the acquittal is on merits. [Para 38] (E-1)

Case Law Cited

State of U.P. vs. Babu Ram Upadhyaya (1961) 2 SCR 679 and Kedar Nath Yadav vs. State of U.P. (2005) 3 ESC 1955; Capt. M Paul Antony vs. Bharat Cold Mills, (1999) 3 SCC 679; Service Single No. 936 of 2015, Sanjay Rai vs. State of U.P. and others; Abhishek Prabhakar Awasthi vs. New India Assurance Company Limited and others, 2013 SCC OnLine All 14267 – **referred to.**

List of Acts

Uttar Pradesh Police Regulations – Regulation 486(1), 492 and 493; Uttar Pradesh Police Officers and Subordinate Ranks (Punishment and Appeal) Rules, 1991; Police Act, 1861 – Ss. 2, 7 and 46(2).

List of Keywords

Punishment, Departmental proceeding, Salary, Allowance, Gratification, Suspension, Criminal prosecution, Show cause notice, Explanation, Charge sheet, Charges, Judicial pronouncement, disciplinary authority, Reasoned and speaking order, Beyond reasonable doubt, Credible evidence, Acquittal, Criminal proceeding, Adjudication, Condition precedent, Investigation, Criminal trial, Judicial determination.

Case Arising From

Impugned Punishment order dated 13.12.2021 passed by the disciplinary authority and impugned order dated 27.04.2021 passd by the appellate authority.

Appearances for Parties

Advs. for the Petitioner : Amrendra Nath Tripathi, Sr. Adv.; Ms. Arunima Singh; Akash Mishra; Mohd. Shujauddin Waris; Abhishek Bose; Amrendra Nath Tripathi; Indu Prakash Singh.

Advs. for the Respondents : Udai Bhan Pandey, S.C.

(Delivered by Hon'ble Karunesh Singh Pawar, J.)

1. Heard Shri Amrendra Nath Tripathi, learned Senior Advocate, assisted by Ms. Arunima Singh and Shri Akash Mishra, learned counsel for the petitioner, and Shri Udai Bhan Pandey, learned Standing Counsel for the State.

Reliefs Sought

2. By means of the present petition, the petitioner seeks issuance of a writ of certiorari for quashing the impugned punishment order dated 13.02.2021 passed by respondent no. 4 (Annexure No. 13) and the appellate order dated 27.04.2021 passed by respondent no. 3 (Annexure No. 14). The petitioner has further assailed the inquiry report dated 31.10.2019 (Annexure No. 9) as well as the entire departmental proceedings conducted against him. In addition to the above, the petitioner has also prayed for issuance of a writ of mandamus commanding the respondents to permit him to continue on the post of Constable in Civil Police in District Lucknow. A consequential relief has also been sought for payment of salary and allowances of the said post regularly as and when the same fall due, along with arrears with effect from 11.04.2018.

Factual Background

3. The brief facts, as set forth in the petition, are that while the petitioner was posted as a Constable at Police Station Mohanlalganj, he came to be arrested in connection with Case Crime No. 97 of 2018, registered at Police Station Banthara, District Lucknow on 10.04.2018 under Sections 7/13(1)(d)/13(2) of the Prevention of Corruption Act, 1988, on allegations of having demanded and accepted illegal gratification from the complainant.

4. Consequent upon the aforesaid arrest and registration of the criminal case, the petitioner was placed under suspension vide order dated 11.04.2018 (Annexure No. 1). Feeling aggrieved by the said suspension order, the petitioner preferred ***Writ Petition No. 100 (S/S) of 2019, titled Balwant Chandra vs. State of U.P. and others***, inter alia on the ground that the suspension was contrary to the provisions contained in Regulations 486 and 490 of the U.P. Police Regulations, as well as the law laid down by the Hon?ble Supreme Court in State of ***U.P. Vs. Babu Ram Upadhyaya (1961) 2 SCR 679 and Kedar Nath Yadav Vs. State of U.P. (2005) 3 ESC 1955***.

5. In the said writ petition, this Court, vide order dated 04.01.2019, granted time to the learned Standing Counsel to seek instructions in the matter. Subsequently, during the pendency of the writ petition, the suspension order was revoked on 28.02.2019 rendering the challenge to the suspension largely academic. Thereafter, a short counter affidavit was filed on behalf of the State; however, since the issues raised by the petitioner were not adequately addressed therein, this Court, vide order dated 17.07.2019, granted further time to the State authorities to file a detailed counter affidavit. In compliance thereof, a paragraph-wise counter affidavit was filed and taken on record.

6. In the said counter affidavit, reliance was placed by the State upon the judgment of the Hon?ble Apex Court in **"Capt. M Paul Antony Vs. Bharat Cold Mills, (1999) 3 SCC 679"** as well as upon a Government Order dated 06.09.2000, to contend that there is no legal bar in proceeding with departmental proceedings simultaneously with criminal prosecution arising out of the same set of allegations. Meanwhile, during the pendency of the aforesaid writ petition, a charge sheet dated 12.03.2019, based on the allegations forming subject matter of the aforesaid FIR No. 97 of 2018, came to be served upon the petitioner. The petitioner submitted his reply to the charge sheet on 30.03.2019, denying the allegations levelled against him.

7. Upon conclusion of the departmental inquiry, the Inquiry Officer submitted his report dated 31.10.2019 (Annexure No. 9), holding the petitioner guilty of the charges levelled against

him. The said inquiry report was thereafter furnished to the petitioner along with a show cause notice, calling upon him to submit his explanation, which has been brought on record as Annexure No. 10.

8. The petitioner, being aggrieved by the issuance of the show cause notice dated 12.11.2019 by the Senior Superintendent of Police, Lucknow, challenged the same by filing ***writ petition No. 34508 (S/S) of 2019 "Balwant Chandra Vs. State of U.P. and others***". The said writ petition came to be disposed of by this Court vide judgment and order dated 13.12.2019. The relevant extract of the said order is reproduced hereinbelow:

"Though I am not interfering with the show cause notice but the relevant material available on record reveals that the respondent-State has not replied the specific contention of the learned counsel for the petitioner in Service Single No.100 of 2019 to the effect that in view of the Constitution Bench Judgement of the Hon'ble Apex Court in re; Babu Ram Upadhya (supra), Kedar Nath Yadav (supra) and Sanjay Rai (supra), the departmental enquiry and criminal proceedings on the similar set of facts and evidences may not go hand in hand. Besides the defence reply submitted by the petitioner to the charge sheet raising aforesaid grounds has not been considered by the enquiry officer, therefore, if submissions and grounds so raised by the petitioner before the enquiry officer have not been considered properly and instead of the specific legal ground raised on the basis of aforesaid judgments, holding the petitioner guilty does not, prima facie, appear to be appropriate. If the Division Bench of this Court in re; Kedar Nath Yadav (supra) and Single Judge in re; Sanjay Rai (supra) have held that both criminal proceedings and departmental proceedings may not go hand in hand and the judgments in re; Kedar Nath Yadav (supra) has not been assailed till date and is a good law by now, then as to how the petitioner may be punished departmentally when admittedly criminal proceedings are pending. Besides, the writ petition of the petitioner is pending wherein it has been assailed that the departmental enquiry against the petitioner may not be conducted being violative of various provisions of Police Regulations and dictums of the Hon'ble Supreme Court, then why this much haste is being shown by the disciplinary authority even those legal grounds have not been replied by now.

These all aforesaid legal submissions of learned counsel for the petitioner need careful consideration by the disciplinary authority. Since the show cause notice has been assailed by the petitioner, therefore, this Court restrains itself in making any observation which affects the decision of the disciplinary authority but at the same time this much may be expected that no order is passed by the disciplinary authority which is illegal on the face of it in any manner whatsoever.

Therefore, without interfering the show cause notice, liberty is given to the petitioner to submit the explanation to the show cause notice within a period of fifteen days from today taking all pleas and legal grounds challenging the findings of the enquiry officer enclosing therewith decisions of the Hon'ble Courts and if the petitioner submits his explanation within the aforesaid stipulated time, the disciplinary authority shall first consider as to whether the enquiry against the petitioner has been conducted and concluded considering his all submissions so raised in his defence reply and shall also deal the other legal submissions based on the judgment of the Hon'ble Apex Court in re; Babu Ram Upadhya (supra), the judgment of Division Bench in re; Kedar Nath Yadav (supra) and the judgment of Single Judge in re; Sanjay Rai (supra) and shall give his

specific finding as to whether criminal proceedings and departmental proceedings may go hand in hand. The petitioner may be provided an opportunity of personal hearing also. The final order shall be passed strictly in accordance with law, in a manner directed above, with expedition, preferably within a period of two months.

The writ petition is accordingly disposed of."

9. While disposing of the aforesaid writ petition, this Court observed that, in view of the law laid down in ***State of U.P. vs. Babu Ram Upadhyaya (supra), Kedar Nath Yadav vs. State of U.P. (supra),*** as well as the judgment rendered in ***Sanjay Rai vs. State of U.P. and others (Service Single No. 936 of 2015)***, departmental proceedings and criminal prosecution based on the same set of facts and evidence may not ordinarily proceed simultaneously in the case of the petitioner. The Court further noted that the defence reply submitted by the petitioner to the charge sheet, specifically raising the aforesaid contention, had not been duly considered by the Inquiry Officer. It was also observed that the judgment in ***Kedar Nath Yadav vs. State of U.P. (supra)*** continues to hold the field, having not been set aside till date, and therefore, a question arises as to how the petitioner could be subjected to departmental punishment when the criminal proceedings on identical charges were admittedly pending.

10. In the aforesaid backdrop, this Court, vide order dated 13.12.2019, granted liberty to the petitioner to submit a detailed reply to the show cause notice within a period of 15 days from the date of the judgment, raising all factual and legal pleas, including those based on the aforesaid judicial pronouncements. It was further directed that, upon submission of such reply, the disciplinary authority shall first consider whether the departmental inquiry had been conducted and concluded after taking into account the defence of the petitioner. The disciplinary authority was also directed to specifically deal with the legal submissions advanced by the petitioner, particularly those based upon the judgments of the Hon'ble Supreme Court in ***State of U.P. vs. Babu Ram Upadhyaya (supra),*** the Division Bench judgment in ***Kedar Nath Yadav vs. State of U.P. (supra),*** and the decision in ***Sanjay Rai vs. State of U.P. (supra),*** and to record a clear finding as to whether, in the facts of the case, departmental proceedings and criminal prosecution could proceed simultaneously.

11. The Court further directed that the petitioner be afforded an opportunity of personal hearing and a reasoned and speaking order be passed strictly in accordance with law and in the light of the directions contained in the judgment dated 13.12.2019. It was also observed that such exercise be completed expeditiously, preferably within a period of two months.

12. In compliance of the aforesaid directions, the petitioner submitted his reply to the show cause notice, which has been brought on record as Annexure No. 12 to the writ petition, raising all the pleas available to him. The said reply dated 27.12.2019 was submitted well within the time granted by this Court. However, after considering the said reply, the disciplinary authority proceeded to pass the punishment order dated 13.12.2021. Aggrieved thereby, the petitioner preferred a departmental appeal before the Appellate Authority, which too came to be dismissed vide order dated 27.04.2021 (Annexure No. 14 to the writ petition).

13. It is further stated that, during the pendency of the present writ petition, the criminal trial arising out of FIR No. 97 of 2018 concluded before the Court of Special Judge, P.C. Act-VI, Lucknow. The said court, vide judgment and order dated 30.10.2025 passed in Criminal Case No. 996 of 2018, titled State of U.P. vs. Balwant Chandra, acquitted the petitioner of all charges.

14. A perusal of the said judgment shows that the trial court has recorded a categorical finding that the prosecution failed to establish the demand of illegal gratification by the petitioner beyond reasonable doubt. It has also been specifically held that there is no credible evidence on record to prove that the petitioner had accepted any bribe which resulting in his acquittal.

Submissions of the Petitioner

15. Learned counsel for the petitioner has submitted that the provisions contained in Regulation 486(1) of the Uttar Pradesh Police Regulations (hereinafter referred to as the ?Police Regulations?) have been authoritatively held to be mandatory in nature by the Hon?ble Supreme Court in **State of U.P. vs. Babu Ram Upadhyaya (supra).** It is contended that any departmental proceedings conducted in violation of the procedure prescribed under the aforesaid provision are vitiated in law and are liable to be declared illegal.

16. It is further argued that in ***Kedar Nath Yadav vs. State of U.P. (supra),*** it has been clearly laid down that once a police officer has been acquitted by a competent criminal court, the findings recorded therein attain finality and are to be treated as binding. Consequently, no departmental proceedings can be sustained on the same set of allegations, as the findings of the criminal court must be accepted as correct. On this premise, it is submitted that the entire impugned action, including the departmental proceedings, inquiry report, show cause notice, punishment order, and the appellate order, stands vitiated, having been undertaken in clear contravention of the law laid down by the Hon?ble Supreme Court as well as by the Division Bench of this Court.

17. Learned counsel further submits that during the pendency of the criminal trial, no departmental inquiry could have been legally continued against the petitioner on identical facts and evidence. It is urged that the judgment in ***Capt. M. Paul Antony vs. Bharat Gold Mines Ltd. (supra),*** which permits simultaneous proceedings in certain circumstances, is not applicable to members of the police force in the State of Uttar Pradesh.

18. It is also contended that the directions issued by this Court in its earlier judgment dated 13.12.2019 have been flagrantly violated. The Court had categorically directed that a final order be passed within a period of two months; however, the said period expired on 13.02.2020, whereas the impugned punishment order came to be passed much later on 13.02.2021, i.e., after a substantial and unexplained delay. It is submitted that once a time frame is fixed by a Court, the authority concerned is bound to adhere to the same, and in case of any difficulty, it ought to seek extension of time from the Court by disclosing valid and satisfactory reasons. In support of this submission, reliance has been placed upon the Full Bench judgment of this Court in ***Abhishek Prabhakar Awasthi vs. New India Assurance Company Limited and others, 2013 SCC OnLine All 14267.***

19. Learned counsel for the petitioner submits that during the pendency of the writ petition, the petitioner has been acquitted in the criminal trial vide judgment dated 30.10.2025 passed by the Special Judge, P.C. Act-VI, Lucknow in Criminal Case No. 996 of 2018, State of U.P. vs. Balwant Chandra, on the ground that the prosecution failed to prove demand and acceptance of illegal gratification beyond reasonable doubt.

Submissions of the State

20. Per contra, learned Standing Counsel has opposed the writ petition and submitted that the Uttar Pradesh Police Officers and Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as the ?Rules, 1991?) have been framed in exercise of powers conferred under sub-section (2) of Section 46 read with Sections 2 and 7 of the Police Act, 1861. It is contended that the said Rules, 1991, which were duly notified on 21.03.1991, have an overriding effect and have superseded all prior rules, regulations, and executive instructions on the subject.

21. It is thus submitted that the Rules, 1991 exclusively govern the field relating to departmental proceedings, imposition of punishment, and appellate remedies in respect of police personnel of subordinate ranks in the State of Uttar Pradesh. Consequently, reliance placed by the petitioner upon Paragraphs 486 (i), 492, and 493 of the Police Regulations, as well as the judgments in ***Babu Ram Upadhyaya (supra), Kedar Nath Yadav (supra), and Sanjay Rai (supra),*** is misconceived and not applicable in the present case.

22. It has been further contended by the learned Standing Counsel that, in view of the statutory framework under the Rules, 1991 and the law laid down in Capt. M. Paul Antony vs. Bharat Gold Mines Ltd. (supra), there exists no absolute legal bar on conducting departmental proceedings during the pendency of a criminal trial, even if both arise out of the same set of facts. Accordingly, it is submitted that the impugned proceedings have been conducted in accordance with law and do not warrant interference by this Court.

Consideration by the Court

23. Perused the record.

24. A Coordinate Bench of this Court, vide judgment and order dated 13.12.2019, disposed of the earlier writ petition with specific directions to the disciplinary authority. It was, inter alia, directed that the disciplinary authority shall first examine whether the inquiry against the petitioner had been conducted and concluded after duly considering the submissions raised by him in his defence reply. The authority was further obligated to deal with the legal submissions advanced by the petitioner, particularly those founded upon the judgments of the Hon'ble Supreme Court in ***State of U.P. vs. Babu Ram Upadhyaya (supra),*** the Division Bench judgment of this Court in Kedar Nath Yadav vs. State of U.P. (supra), and the decision of the learned Single Judge in **Sanjay Rai vs. State of U.P. (supra).** Additionally, a clear and reasoned finding was required to be recorded as to whether, in the facts of the case, the criminal proceedings and departmental proceedings could proceed simultaneously.

25. In purported compliance of the aforesaid judgment dated 13.12.2019, the petitioner submitted a detailed reply to the show cause notice, which has been brought on record as Annexure No. 12. In the said reply, the petitioner specifically relied upon and referred to the aforesaid judgments, raising categorical legal pleas regarding the impermissibility of continuing departmental proceedings during the pendency of the criminal trial on identical facts.

26. However, a perusal of the punishment order shows that the specific plea taken by the petitioner, particularly in paragraph 19 of his reply (Annexure No. 12), wherein reliance was placed upon the aforementioned judicial pronouncements, has not been dealt with in the manner directed by this Court. The disciplinary authority has cursorily observed that the said judgments are not applicable to the case of the petitioner and, therefore, require no further consideration. Such a mechanical and non-speaking approach clearly indicates non-application of mind and failure to comply with the directions issued by this Court.

27. Thus, it is evident that while passing the impugned punishment order, the disciplinary authority has completely disregarded the mandate of the judgment dated 13.12.2019. Despite a specific direction of this Court to pass the final order preferably within a period of two months, the punishment order has been passed only on 13.02.2021, i.e., after an inordinate delay of approximately fourteen months, without any explanation or permission sought from the Court for extension of time. In this context, the Full Bench judgment of this Court in ***Abhishek Prabhakar Awasthi vs. New India Assurance Company Limited and others (supra)***, has held as under:

"18. These judgments of the Supreme Court consequently recognize that the delay in concluding a departmental enquiry would not ipso facto vitiate the proceedings or render it invalid or non est. The Court has to take into consideration and balance all the relevant factors. The Court must consider in that balance the need for preserving the sanctity of the administration. On the other hand, fairness towards the delinquent employee requires that disciplinary proceedings should be concluded expeditiously. Hence, the nature of the charge, its complexity and the reasons for that delay are all relevant considerations which have to be borne in mind. Where the court has stipulated a period of time within which an enquiry has to be concluded, the direction of the Court, particularly in the form of a mandamus, has to be duly observed. It would not be open to the employer to willfully disregard the fixation of a time limit as a matter of no consequence. However, the fixation of a period within which a disciplinary enquiry has to be concluded, in an order of the Court, does not deprive the court of its jurisdiction to extend time in an appropriate case having due regard to all the facts and circumstances which have been noted above. Whether the time should be extended on a consideration of the relevant circumstances is for the court to determine.

19. In view of the above discussion, we now proceed to answer the questions which have been referred to the Full Bench.

(A) Question No. (a): We hold that if an enquiry is not concluded within the time which has been fixed by the Court, it is open to the employer to seek an extension of time by making an appropriate application to the court setting out the reasons for the delay in the conclusion of the enquiry. In such an event, it is for the court to consider whether time should be extended, based on the facts and circumstances of the case. However, where there is a stipulation of time by the Court,

it will not be open to the employer to disregard that stipulation and an extension of time must be sought;

(B) Question No. (b): The judgment of the Supreme Court in the case of Suresh Chandra (supra) as well as the judgment of the Division Bench of this Court in the case of Satyendra Kumar Sahai (supra) clearly indicate that a mere delay on the part of the employer in concluding a disciplinary enquiry will not ipso facto nullify the entire proceedings in every case. The court which has fixed a stipulation of time has jurisdiction to extend the time and it is open to the court, while exercising that jurisdiction, to consider whether the delay has been satisfactorily explained. The court can suitably extend time for conclusion of the enquiry either in a proceeding instituted by the employee challenging the enquiry on the ground that it was not completed within the stipulated period or even upon an independent application moved by the employer. The court has the inherent jurisdiction to grant an extension of time, the original stipulation of time having been fixed by the court itself. Such an extension of time has to be considered in the interests of justice balancing both the need for expeditious conclusion of the enquiry in the interests of fairness and an honest administration. In an appropriate case, it would be open to the Court to extend time suo motu in order to ensure that a serious charge of misconduct does not go unpunished leading to a serious detriment to the public interest. The court has sufficient powers to grant an extension of time both before and after the period stipulated by the court has come to an end."

28. While answering Question No. A, the Full Bench of this Court in ***Abhishek Prabhakar Awasthi vs. New India Assurance Company Limited and others (supra)*** has categorically held that where a Court prescribes a time limit for conclusion of an inquiry, it is incumbent upon the employer to adhere to the same. In the event the inquiry cannot be concluded within the stipulated period, it is open to the employer to seek extension of time by moving an appropriate application before the Court, assigning cogent reasons for such delay. It is thereafter for the Court to consider, in the facts and circumstances of the case, whether such extension ought to be granted. However, it is not open to the employer to disregard the time limit so fixed, and compliance with the said stipulation is mandatory unless duly extended by the Court.

29. In the present case, although a period of two months was granted by the Coordinate Bench vide judgment and order dated 13.12.2019 for passing the final order, the disciplinary authority proceeded to pass the punishment order only on 13.02.2021, i.e., after an inordinate delay of about fourteen months. Admittedly, no application seeking extension of time was moved before this Court, nor was any permission obtained for such delay. In view of the law laid down by the Full Bench in ***Abhishek Prabhakar Awasthi vs. New India Assurance Company Limited and others (supra),*** such action on the part of the disciplinary authority is clearly impermissible and renders the impugned punishment order unsustainable on this ground alone.

30. It is further evident that although the disciplinary authority has made a reference to the contentions raised by the petitioner, particularly those contained in paragraph 19 of his reply to the show cause notice, wherein reliance was placed upon the judgments in ***State of U.P. vs. Babu Ram Upadhyaya (supra), Kedar Nath Yadav vs. State of U.P. (supra), and Sanjay Rai vs. State of U.P. (supra),*** no reasoned finding has been recorded with respect to the applicability or otherwise of the said judgments. This is in the teeth of the specific direction issued by this Court in its order dated

13.12.2019, requiring the disciplinary authority to return a clear and categorical finding as to whether, in the facts of the case, the criminal proceedings and departmental proceedings could proceed simultaneously. The omission to record such a finding, coupled with a mere cursory observation that the said judgments are not applicable, reflects non-compliance of the directions issued by this Court and lack of proper application of mind which vitiates the impugned order.

31. The provisions contained in Regulations 486(1), 492 and 493 of the U.P. Police Regulations are essential for the proper adjudication of the present matter, having a direct and significant bearing on the issues involved. Accordingly, the said provisions are reproduced hereunder for ready reference:-

"486. When the offence alleged against a police officer amounts to an offence only under Section 7 of the Police Act, there can be no magisterial inquiry under the Criminal Procedure Code. In such cases and in other cases until and unless a magisterial inquiry is ordered, inquiry will be made under the direction of this Superintendent of Police in accordance with the following rules:

I Every information received by the police relating the com mission of a cognizable offence by a police officer shall be dealt with in the first place under Chapter XIV (now Chapter XII), Criminal Procedure Code, according to law a case under the appropriate section being registered in the police station concerned provided that-(1) if the information is received, in the first instance, by a Magistrate and forwarded by the District Magistrate to the police, no case will be registered by the police,

(2) if the information is received, in the first instance by the police, the report required by Section 157, Criminal Procedure Code, shall be forwarded to the District Magistrate, and when forwarding it the Superintendent of Police shall note on it with his own hand what steps are being taken as regards investiga-tion or the reasons for refraining from investigation:

(3) unless investigation is refused by the Superintendent of Police under Section 157(1)(b), Criminal Procedure Code and not ordered by the District Magistrate under Section 159, or unless the District Magistrate orders a magisterial inquiry under Section 159, investigation under Section 159, Criminal Procedure Code, shall be made by a police officer selected by the Superintendent of Police and higher in rank than the officer charged;

(4) on the conclusion of the investigation and before the report required by Section 173, Criminal Procedure Code, is prepared, the question whether the officer charged should or should not be sent for trial shall be decided by the Superintendent of Police. Provided that before an officer whose dismissal would require the concurrence of the Deputy Inspector General under paragraph 479 is sent for trial by the Superintendent of Police, the concurrence of the Deputy Inspector General must be obtained;

(5) the charge-sheet or final report under Section 173, or Section 169, Criminal Procedure Code, as the case may be, shall be

sent to the District Magistrate; if the Superintendent of Police or the Deputy Inspector General had decided against a prosecution, a note by the Superintendent of Police giving the reasons for this decision shall be endorsed on, or attached to the final report;

(6) when the reason for not instituting a prosecution is that the charge is believed to be baseless, no further action will be necessary; if the charge is believed to be true and a prosecution is not undertaken owing to the evidence being considered insufficient or for any other reasons the Superintendent may, when the final report under Section 173, Criminal Procedure Code, has been accepted by the District Magistrate; take departmental action as laid down in paragraph 490.

492. Whenever a police officer has been judicially tried, the Superintendent must await the decision of the judicial appeal, if any, before deciding whether further departmental action is necessary.

493. It will not be permissible for the Superintendent of Police in the course of a departmental proceeding against a Police Officer who has been tried judicially to re-examine the truth of any facts in issue at his judicial trial and the finding of the Court on these facts must be taken as final.

Thus, (a) if the accused has been convicted and sentenced to rigorous imprisonment, no departmental trial will be necessary, as the fact that he has been found deserving of rigorous imprisonment must be taken as conclusively providing his unfitness for the discharge of his duty within the meaning of Section 7 of the Police Act. In such cases the Superintendent of Police will without further proceedings ordinarily pass an order of dismissal, obtaining the formal order of the Deputy Inspector General when necessary under paragraph 479(a). Should he wish to do otherwise he must refer the matter to the Deputy Inspector General of the range for orders.

(b) If the accused has been convicted but sentenced to a punishment less than of rigorous imprisonment a departmental trial will be necessary, if further action is thought desirable, but the question in issue at this trial will be merely (1) whether the offence of which the accused has been convicted amounts to an offence under Section 7 of the Police Act, (2) if so, what punishment should be imposed. In such cases the Superintendent of Police will (i) call upon the accused to show cause why any particular penalty should not be inflicted on him, (ii) record anything the accused officer has to urge against such penalty without allowing him to dispute the findings of the Court and (iii.) write a finding and order in the ordinary way dealing with any plea raised by the accused officer which is relevant to (1) and (2) above.

(c) If the accused has been judicially acquitted or discharged and the period for filing an appeal has elapsed and/or no appeal has been filed the Superintendent of Police must at once reinstate him if he has been suspended; but should the findings of the Court not be inconsistent with the view that the accused has been guilty of negligence in or unfitness for, the discharge of his duty within the meaning of Section 7 of the Police Act, the Superintendent of Police may refer the matter to the Deputy Inspector General and ask for permission to try the accused departmentally for such negligence or unfitness.

32. In ***State of U.P. vs. Babu Ram Upadhyaya (supra),*** the Hon'ble Supreme Court, while interpreting the scope and import of Regulations 486(1), 492 and 493 of the Police Regulations, has elucidated the legal position in paragraphs 7 and 30 of the judgment, which read as under:-

"7. The second objection of learned counsel for the appellants is that sub-para (3) of para 486 of the Police Regulations enables the appropriate police authority to initiate the departmental proceeding without complying with the provisions of sub-para (1) of para 486. The relevant portion of para 486 of the Police Regulations reads:

"When the offence against a police officer amounts to an offence only under Section 7 of the Police Act, there can be no magisterial inquiry under the Criminal Procedure Code. In such cases, and in other cases until and unless a magisterial inquiry is ordered, inquiry will be made under the direction of the Superintendent of Police in accordance with the following rules:..."

Rule I relates to a cognizable offence, Rule II to a non-cognizable offence, including an offence under Section 29 of the Police Act, and Rule III to an offence under Section 7 of the Police Act or a non-cognizable offence, including an offence under Section 29 of the Police Act. Rule III says:

"When a Superintendent of Police sees reason to take action on information given to him, or on his own knowledge or suspicion, that a police officer subordinate to him has committed an offence under Section 7 of the Police Act or a non-cognizable offence (including an offence under Section 29 of the Police Act) of which he considers it unnecessary at that stage to forward a report in writing to the District Magistrate under Rule II above, he will make or cause to be made by an officer senior in rank to the officer charged, a departmental inquiry sufficient to test the truth of the charge. On the conclusion of this inquiry he will decide whether further action is necessary, and if so, whether the officer charged should be departmentally tried, or whether the District Magistrate should be moved to take cognizance of the case under the Criminal Procedure Code?."

The argument is that the words ?an offence under Section 7 of the Police Act? take in a cognizable offence and that, therefore, this rule provides for a procedure alternative to that prescribed under Rule I. We do not think that this contention is sound. Section 7 of the Police Act empowers certain officers to dismiss, suspend or reduce any police officer of the subordinate rank whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same. The grounds for punishment are comprehensive : they may take in offences under the Indian Penal Code or other penal statutes. The commission of such offences may also be a ground to hold that an officer is unfit to hold his office. Action under this section can, therefore, be taken in respect of, (i) offences only under Section 7 of the Police Act without involving any cognizable or noncognizable offences, that is, simple remissness or negligence in the discharge of duty, (ii) cognizable offences, and (iii) non-cognizable offences. Para 486 of the Police Regulations makes this clear. It says that when the offence alleged against a police officer amounts to an offence only under Section 7 of the Police Act, there can be no magisterial inquiry under the Criminal Procedure Code. This part of the rule applies to an offence only under Section 7 of the Police Act i.e. the first category mentioned above. Rule I refers to a cognizable offence i.e. the second

category, Rule II to a non-cognizable offence i.e., the third category, and Rule III applies to an offence under Section 7 of the Police Act and to a noncognizable offence. Though the word ?only? is not mentioned in Rule III, the offence under Section 7 of the Police Act can, in the context, mean an offence only under Section 7 of the said Act i.e., an offence falling under the first category. So understood, the three rules can be reconciled. We, therefore, hold that, as the offence complained of in the present case is a cognizable offence, it falls under Rule I and not under Rule III. We, therefore, reject this contention."

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30. Now what is the object of Rule I of para 486 of the Police Regulations? In our opinion, it is conceived not only to enable the Superintendent of Police to gather information but also to protect the interests of subordinate officers against whom departmental trial is sought to be held. After making the necessary investigation under Chapter XIV of the Criminal Procedure Code, the Superintendent of Police may as well come to the conclusion that the officer concerned is innocent, and on that basis drop the entire proceedings. He may also hold that it is a fit case for criminal prosecution, which, under certain circumstances, an honest officer against whom false charges are framed may prefer to face than to submit himself to a departmental trial. Therefore, the rules are conceived in the interest of the department as well as the officer. From the stand point of the department as well as the officer against whom departmental inquiry is sought to be initiated, the preliminary inquiry is very important and it serves a real purpose. Here the setting aside of the order of dismissal will not affect the public in general and the only consequence will be that the officer will have to be proceeded against in the manner prescribed by the rules. What is more, para 487 and para 489 make it abundantly clear that the police investigation under the Criminal Procedure Code is a condition precedent for the departmental trial. Para 477 emphasizes that no officer appointed under Section 2 of the Police Act shall be punished by executive order otherwise than in the manner provided under Chapter XXXII of the Police Regulations. This is an imperative injunction prohibiting inquiry in non-compliance with the rules. Para 489 only empowers the holding of a departmental trial in regard to a police officer only after a police investigation under the Criminal Procedure Code. When a rule says that a departmental trial can be held only after a police investigation, it is not permissible to hold that it can be held without such investigation. For all the foregoing reasons, we hold that para 486 is mandatory and that, as the investigation has not been held under Chapter XIV of the Criminal Procedure Code, the subsequent inquiry and the order of dismissal are illegal.

33. While interpreting the object and scope of Regulation 486(1) of the Police Regulations, the Hon'ble Supreme Court in ***State of U.P. vs. Babu Ram Upadhyaya (supra)*** observed that the provision has been enacted with the purpose of safeguarding subordinate police officers against arbitrary or premature departmental proceedings. It was held that the Regulation enables the Superintendent of Police to ensure that the interest of such officers is protected in cases where a departmental trial is sought to be initiated.

34. The Hon'ble Supreme Court further clarified in ***State of U.P. vs. Babu Ram Upadhyaya (supra***) that a police investigation in accordance with the provisions of the Code of Criminal Procedure is a condition precedent for initiating a departmental trial. It was categorically

held that Regulation 486(1) is mandatory in nature, and any departmental inquiry conducted in violation thereof would stand vitiated. The Court emphasized that departmental proceedings can ordinarily be undertaken only after the conclusion of the police investigation or criminal trial. On these principles, the order of dismissal impugned therein was set aside, having been passed in contravention of the mandatory provisions of Regulation 486(1).

35. In ***Kedar Nath Yadav vs. State of U.P. (supra),*** the Division Bench of this Court considered the interplay between the Uttar Pradesh Police Officers and Subordinate Ranks (Punishment and Appeal) Rules, 1991 and the Police Regulations. The Court held that the Rules, 1991 do not abrogate or repeal the Police Regulations in their entirety. It was further held that the law laid down by the Hon'ble Supreme Court in ***State of U.P. vs. Babu Ram Upadhyaya (supra)*** continues to hold the field and remains binding. The Division Bench held that the authorities are still bound to comply with Regulations 492 and 493 of the Police Regulations notwithstanding the enforcement of the Rules, 1991. It was further held that once a delinquent employee is acquitted in a criminal trial on merits, it is not open to the departmental authorities to go behind such acquittal. Rather, the findings recorded by the criminal court must be accepted in their true import. On this reasoning, the Division Bench allowed the appeal as well as the writ petition and quashed both the punishment order and the appellate order. Emphasis on paragraphs 26, 28, 38, 39, 40, 41, and 43 of the judgment.

36. Similarly, in ***Sanjay Rai vs. State of U.P. (supra)***, a learned Single Judge of this Court reiterated that the judgment in ***State of U.P. vs. Babu Ram Upadhyaya (supra)*** continues to be good law and retains its binding force. The Court also placed reliance upon the decision in Kedar Nath Yadav vs. State of U.P. (supra), and affirmed that the principles laid down therein are applicable and enforceable. Emphasis is on paragraphs 5, 6, 14, 15, 16, 17, 19, 24, 26, 27, and 28 of the said judgment.

37. In the present case, it is not in dispute that the petitioner has been acquitted in the criminal trial vide judgment and order dated 30.10.2025 passed by the Court of Special Judge, P.C. Act-VI, Lucknow in Criminal Case No. 996 of 2018, titled State of U.P. vs. Balwant Chandra. It is also an admitted position that no appeal has been preferred against the said judgment of acquittal, and thus, the same has attained finality.

38. In view of the law laid down by the Division Bench of this Court in ***Kedar Nath Yadav vs. State of U.P. (supra),*** read with Regulation 493 of the Police Regulations, the acquittal recorded by the competent criminal court has a binding effect on the departmental proceedings. It is not permissible for the disciplinary authority to go behind or disregard the findings returned by the criminal court. The judicial determination rendered in the criminal trial must be treated as conclusive on the issues involved, particularly when the acquittal is on merits.

Conclusion and Directions

39. Accordingly, once the petitioner stands acquitted of the charges in the criminal proceedings, the only course open to the disciplinary authority is to accept the said acquittal and give due effect to it. The findings recorded by the criminal court, having attained finality, are

binding in terms of Regulation 493 of the Police Regulations as well as the law declared in *Kedar Nath Yadav vs. State of U.P. (supra).*

40. In light of the discussions made hereinabove, this Court is of the considered opinion that the impugned punishment order, as contained in Annexure No. 13, cannot be sustained in the eyes of law and is liable to be set aside. Accordingly, the same is hereby set aside. Consequently, the appellate order contained in Annexure No. 14, which is founded upon and reiterates the same reasoning as contained in the punishment order, also cannot survive and is, therefore, set aside. 41. As a consequence, the petitioner shall be reinstated in service to the post of Constable in the Civil Police in District Lucknow and he shall be entitled to payment of arrears of salary, allowances and other consequential service benefits w.e.f. 11.04.2018.

(2026) 5 ILRA 2021
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 29.05.2026

BEFORE

THE HON'BLE KARUNESH SINGH PAWAR, J.

Writ A No. 12445 of 2024

Priyanka Yadav **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

(1) Effect of failure of not exercising the one time option for being considered for promotion within a period of three years as provided under the Reg. 13 of Clarification, 2020.

Headnotes

(A) Service law – Promotion – Head of Department (Chemical Engineering) – Seniority list of Group 'B' Lecturer – Petitioner failed to exercise the one time option for being considered for promotion within three years as provided under the Clarifications, 2020 – This option was expired on 20.05.2023, whereas the petitioner exercised her option only on 21.05.2024 – The candidates, who have been promoted, were senior to the petitioner and their promotion were not challenged – Effect

Held : In terms of Regulation 13 of the Clarifications, 2020, the petitioner cannot assert any enforceable right to be considered for promotion to the post of Head of Department **–** No person junior to the petitioner or similarly situated in the seniority list has been promoted to the post of Head of Department. Thus, the petitioner has failed to establish any hostile discrimination or unequal treatment in the matter of promotion. [Para 41 and 48] (E-1)

Case Law Cited

Kamal Prasad Dubey vs. State of Madhya Pradesh and Others, 2026 SCC OnLine SC 578; Himachal Pradesh and Others vs. Raj Kumar and Others, (2023) 3 SCC 773; Y.V. Rangaiah vs. J. Sreenivasa Rao, (1983) 3 SCC 284 – **referred to.**

List of Acts

Constitution of India – Article 14 and 16; U.P. Technical Education Gazetted Officers Service Rules, 1990 – Rule 17 read with Category VIII and X; – AICTE (Pay Scales, Service conditions and Qualifications for the Teachers and other Academic Staff in Technical Institutions (Diploma)) Regulations, 2010 – Regulation 2.1; Clarification, 2020 – Regulation 13; AICTE Regulations, 2019; U.P. Technical Education (Teaching) Service Rules, 2021.

List of Keywords

Promotion, Condition of service, Requisite qualifying service, Essential qualification, Head of Department, One time option, Eligibility, One-time promotional interest, Arbitrary, Illegal, Whimsical, Prima facie, Hostile discrimination, Right to be considered for promotion, Non-application of mind, Subsisting right, Seniority list, Enforceable right, Applicable statutory provisions, legal right, One-time measure, Bifurcation of vacancies, Jurisdiction.

Case Arising From

Non consideration for promotion from the post of Lecturer (Chemical Engineering) to the post of Head of the Department (Chemical Engineering).

Appearances for Parties

Advs. for the Petitioner : Gaurav Mehrotra, Sr. Adv.; Chinmay Mishra; Alina Masoodi.
Advs. for the Respondents : Ashwani Kumar Singh Rathore, S.C.

(Delivered by Hon'ble Karunesh Singh Pawar, J.)

1. Heard Shri Gaurav Mehrotra, learned Senior Advocate assisted by Shri Chinmay Mishra, learned counsel for the petitioner as well as Shri Ashwani Kumar Singh Rathore, learned Standing counsel for the respondents.

RELIEF SOUGHT

2. By this petition, the petitioner has prayed for a writ of mandamus directing respondent no. 2 to consider the case of the petitioner from the post of Lecturer (Chemical Engineering) to the post of Head of the Department (Chemical Engineering).

Relevant Statutory Provisions and Regulations

3. The adjudication of the present controversy involves consideration of the following statutory provisions and regulations:

- U.P. Technical Education Gazetted Officers Service Rules, 1990.

Rule, 17 read with Category VIII and X of Appendix-1

- ***AICTE (Pay Scales, Service conditions and Qualifications for the Teachers and other Academic Staff in Technical Institutions (Diploma)) Regulations, 2010***

As per Faculty Norms For promotion to Head of Department - PHD and minimum 5 years' experience

- AICTE Regulations on Pay Scales, Service Conditions and Minimum Qualifications for Appointment of Teachers and Other Academic Staff Such as Library and Physical Education Personnel in Technical Education (Diploma) Regulation, 2019

Regulation 2.1 Head of Department through direct recruitment

- Clarifications on certain issues/anomalies in 7th Central Pay Commission pertaining to Qualifications, Pay Scales, Service Conditions, Career Advancement Schemes (CAS)/promotions etc. for Teachers and Other Academic Staff of Technical Institutions (Degree/Diploma), 2020

Regulation 13 Option to be exercised by eligible Lecturers as a one-time benefit for being considered for promotion as per existing rules, to be exercised within 03 years.

- U.P. Technical Education (Teaching) Service Rules, 2021

Rule 5 Category II(a) Head of Department in Polytechnic (Engineering) to be recruited 100% by means of direct recruitment by Commission.

Appendix-II Note-11 all other conditions will be applicable as per AICTE (Diploma) Regulations, 2019 and amended from time to time.

FACTUAL MATRIX OF THE CASE

4. Brief facts of the case are that the Uttar Pradesh Technical Education Gazetted Officers? Service Rules, 1990 (hereinafter referred to as the ?Rules, 1990?) were promulgated on 02.04.1990 for regulating the conditions of service and promotional avenues of teaching personnel serving in Government Polytechnics within the State of Uttar Pradesh. Pursuant thereto, the petitioner came to be appointed on the post of Lecturer (Chemical Engineering), a Group ?B? gazetted post, carrying the pay scale of Rs. 15,600?39,100, on temporary basis vide appointment order dated 23.01.2015. In furtherance of the said appointment, the petitioner joined her duties at Government Polytechnic, Badaun on 31.01.2015 and has since been continuously discharging her duties with utmost diligence and sincerity. Upon successful completion of the prescribed probation period, the services of the petitioner were confirmed with effect from 31.01.2017 vide order dated 16.07.2024 in accordance with the provisions contained under the Rules, 1990. Thereafter, on completion of the requisite qualifying service, the petitioner became eligible for promotion to the post of Head of Department (Chemical Engineering) on 30.06.2020 under the prevailing Rules, 1990. Subsequently, in the final seniority list of Government Polytechnic Lecturers published on 24.09.2021, the petitioner was placed at Serial No. 23 in the cadre of Chemical Engineering lecturers.

5. The AICTE (Pay Scales, Service conditions and Qualifications for the Teachers and other Academic Staff in Technical Institutions (Diploma)) Regulations, 2010 (hereinafter referred to as AICTE Regulations, 2010) dated 05.03.2010 whereby the essential qualification for appointment/promotion to the post of Head of Department was modified and the requirement of

possessing a Ph.D. degree along with five years? teaching experience was prescribed. Thereafter, vide order dated 03.05.2018 issued by the Secretary, Department of Technical Education, Government of Uttar Pradesh, the aforesaid AICTE Regulations, 2010 were adopted and made applicable to Government Polytechnics throughout the State of Uttar Pradesh. Subsequently, AICTE framed and notified the ?AICTE Regulations on Pay Scales, Service Conditions and Minimum Qualifications for Appointment of Teachers and other Academic Staff such as Library and Physical Education Personnel in Technical Education (Diploma) Regulations, 2019? (hereinafter referred to as AICTE Regulations, 2019) on 01.03.2019. Regulation 2.1 thereof provided that the post of Head of Department in Government Polytechnics shall be filled through direct recruitment.

6. Thereafter, vide Government Order dated 16.03.2020, the AICTE Regulations, 2019 were formally adopted and enforced in Government Polytechnics across the State of Uttar Pradesh. By virtue of the aforesaid Regulations, the earlier mode of appointment to the post of Head of Department, which under the erstwhile Rules, 1990 was by way of promotion, stood altered to direct recruitment. The said change adversely affected the promotional prospects of lecturers serving in Government Polytechnics, thereby giving rise to widespread grievances amongst similarly situated teaching personnel throughout the country.

7. In view of the difficulties and anomalies arising from the implementation of the aforesaid Regulations, AICTE issued certain Clarifications on 20.05.2020 concerning Qualifications, Pay Scales, Service Conditions, Career Advancement Schemes (CAS), Promotions and other related matters pertaining to teachers and academic staff of technical institutions imparting degree and diploma education. Regulation 13 of the said Clarifications specifically provided that the criteria relating to promotions under the new Regulations would operate prospectively from the date of notification of the Regulations. It was further clarified that, in order to prevent hardship to existing faculty members who had either already become eligible or were likely to become eligible shortly under the earlier Regulations, such teachers could be afforded an option to be considered for promotion under the existing Regulations. However, such option was required to be exercised within a period of three years from the date of notification of the Regulations by the concerned degree and diploma teachers. Regulation 13 of the Clarifications dated 20.05.2020 is reproduced hereinbelow:-

"Regulation 13 - The criteria for promotions laid down under these Regulations shall be effective from the date of notification of these Regulations. However, to avoid hardship to those faculty members who have already qualified or are likely to qualify shortly under the existing regulations, a choice may be given to them for being considered for promotions under the existing Regulations. This option can be exercised by Degree and Diploma teachers, both but only within three years from the date of notification of these Regulations."

8. Thereafter, the State Government promulgated the U.P. Technical Education (Teaching) Service Rules, 2021 (hereinafter referred to Rules, 2021) on 09.06.2021. During the subsistence of the aforesaid three-year period contemplated under Regulation 13 of the Clarifications dated 20.05.2020, one post of Head of Department (Chemical Engineering) at Government Polytechnic, Chandausi, Sambhal fell vacant on 30.06.2022 owing to the retirement of Shri Anjani Kumar

Sharma. Subsequently, another post of Head of Department (Chemical Engineering) was created at Government Polytechnic, Bachhrawan, Raebareli vide Government Order dated 26.12.2023. Both the aforesaid vacancies arose well within the three-year period provided under Regulation 13 of the Clarifications issued by AICTE on 20.05.2020.

9. In the aforesaid backdrop, the petitioner submitted an application dated 21.05.2024 exercising her option to be considered for promotion in terms of Note 11 appended to the Rules, 2021 read with Regulation 13 of the AICTE Clarifications, 2020. Thereafter, a Departmental Promotion Committee meeting was convened on 30.05.2024 for considering promotions from the post of Lecturer to the post of Head of Department in Government Polytechnics. In the meantime, the petitioner also sought information under the Right to Information Act on 24.05.2024 regarding the number of vacancies existing on the post of Head of Department (Chemical Engineering). In response thereto, the Directorate of Technical Education informed the petitioner that as on 23.05.2024, ten vacancies of Head of Department (Chemical Engineering) were available.

10. Since no action was taken on the claim of the petitioner, she submitted a reminder dated 03.08.2024 requesting reconsideration of her candidature for promotion in accordance with Note 11 of the Rules, 2021 read with Regulation 13 of the Clarifications, 2020. Thereafter, promotion orders dated 09.12.2024 came to be issued in favour of eight lecturers of Chemical Engineering who were promoted to the post of Head of Department (Chemical Engineering). The said promotions were granted to lecturers placed at Serial Nos. 14, 15, 16, 17, 18, 19, 20 and 21 in the seniority list dated 24.09.2021.

11. Despite the issuance of the aforesaid promotion orders, two vacancies on the post of Head of Department (Chemical Engineering) still continue to remain vacant. However, the petitioner, despite being placed at Serial No. 23 in the seniority list dated 24.09.2021 and despite falling within the zone of consideration, has not been considered for promotion by the respondents. Aggrieved by the arbitrary and discriminatory action of the respondents in denying consideration to the petitioner for promotion, the present writ petition has been instituted before this Hon?ble Court.

SUBMISSIONS OF BEHALF OF THE PETITIONER

12. Learned counsel for the petitioner submits that the petitioner has been subjected to hostile discrimination at the hands of the respondent authorities inasmuch as her candidature has not been considered for promotion to the post of Head of Department (Chemical Engineering), despite her being fully eligible and falling within the zone of consideration violating the guarantees enshrined under Articles 14 and 16 of the Constitution of India. Reliance in this regard has been placed upon the judgment of the Hon?ble Supreme Court in ***Kamal Prasad Dubey Vs. State of Madhya Pradesh and Others, 2026 SCC OnLine SC 578.***

13. It is submitted that the petitioner was initially appointed on the Group ?B? post of Lecturer (Chemical Engineering) vide appointment order dated 23.01.2015 and, upon successful completion of probation, her services were confirmed vide order dated 16.07.2024 with retrospective effect from 31.01.2017. Thereafter, upon completion of the requisite qualifying service, the petitioner became eligible for promotion to the post of Head of Department (Chemical

Engineering) on 30.06.2020 in accordance with the provisions of the applicable Rules. It is further submitted that in the final department-wise seniority list of Group ?B? lecturers of Government Polytechnics, Uttar Pradesh issued on 24.09.2021, the petitioner was placed at Serial No. 23 in the cadre of Chemical Engineering lecturers.

14. It has further been submitted that under the AICTE Regulations, 2010, the essential qualification prescribed for appointment to the post of Head of Department (Engineering) included possession of a Doctorate degree in the concerned discipline along with five years? relevant experience in teaching/research/industry. In order to fulfil the said eligibility criteria, the petitioner, after obtaining due permission from the competent departmental authorities, pursued and successfully obtained a Ph.D. degree in Chemical Engineering in the year 2023.

15. Learned counsel for the petitioner has next submitted that Regulation 13 of the Clarifications, 2020 issued by AICTE specifically provided that the criteria relating to promotion under the said clarifications would operate prospectively from the date of notification thereof i.e. 20.05.2020. The said provision was introduced with the object of avoiding hardship to existing faculty members who had already acquired eligibility or were likely to acquire eligibility shortly under the earlier regulatory regime. Under the said Regulation, an option was granted to such teachers to be considered for promotion under the existing Regulations/Rules, provided such option was exercised within a period of three years from the date of issuance of the Clarifications, 2020. It is thus submitted that the intention underlying Regulation 13 was to protect the one-time promotional interest of existing faculty members who had either already become eligible or were likely to become eligible for promotion around the time of promulgation of the AICTE Regulations, 2019.

16. It has further been submitted that thereafter the Rules, 2021 were promulgated by His Excellency the Governor of Uttar Pradesh on 09.06.2021 in exercise of powers conferred under Article 309 of the Constitution of India and in supersession of the earlier Rules. By virtue of the said Rules, 2021, the provisions of the AICTE Regulations, 2019 were formally adopted and made applicable to Group ?A? and Group ?B? posts in the Directorate of Technical Education, Institute of Research, Development and Training, Board of Technical Education, Government Polytechnics for Boys and Girls, Government Leather Institutes, Northern Regional Institute of Printing Technology and Government Secondary Technical Schools.

17. It is further submitted that although the Rules, 2021 do not expressly specify whether faculty members who had already qualified or were likely to qualify shortly for promotion could exercise an option to continue to be governed by the earlier Rules, however, in light of Note 11 appended to Appendix-II of the Rules, 2021, it can safely be inferred that the option contemplated under Regulation 13 of the Clarifications, 2020 remained available to the petitioner and other similarly situated faculty members working in Government Polytechnics across the State. Consequently, such faculty members, including the petitioner, were entitled to exercise their option for consideration for promotion under the old Rules within a period of three years from the promulgation of the Rules, 2021, i.e., till 09.06.2024.

18. Learned counsel further submits that sometime in the month of May, 2024, the petitioner came to know that a meeting of the Departmental Promotion Committee was proposed to be convened for considering promotions of eligible Lecturers (Engineering) working in Government Polytechnics throughout the State of Uttar Pradesh to the post of Head of Department in their respective branches. Consequently, the petitioner submitted an application dated 20.05.2024 and 21.05.2024 exercising the option contemplated under Regulation 13 of the Clarifications, 2020 read with the Rules, 2021 for being considered for promotion to the post of Head of Department (Chemical Engineering). The petitioner also preferred an RTI application dated 24.05.2024 seeking information regarding existing vacancies. In response thereto, information was furnished on 03.07.2024 disclosing that as on 23.05.2024, ten posts of Head of Department (Chemical Engineering) were lying vacant. Thereafter, pursuant to the recommendations made by the Departmental Promotion Committee in May, 2024, promotion orders dated 09.12.2024 were issued by the Special Secretary, Department of Technical Education, Government of Uttar Pradesh whereby eight out of the ten vacant posts of Head of Department (Chemical Engineering) were filled by promotion from amongst lecturers placed up to Serial No. 21 in the seniority list.

19. It has been vehemently argued that denial of equal opportunity to persons who are identically situated in matters relating to public employment amounts to a clear violation of Articles 14 and 16 of the Constitution of India. Reliance in this regard has been placed upon the judgment of the Hon'ble Supreme Court in ***Kamal Prasad Dubey Vs. State of Madhya Pradesh and Others, 2026 SCC OnLine SC 578.***

20. It has further been submitted that despite the petitioner being fully eligible and duly qualified, her candidature was not considered by the respondents in a wholly arbitrary, illegal and whimsical manner. It is also submitted that the petitioner was the only Lecturer in Chemical Engineering who had exercised the option contemplated under Regulation 13 of the Clarifications, 2020 and yet was excluded from consideration, thereby subjecting her to prima facie hostile discrimination. Learned counsel submits that out of the eight persons promoted to the post of Head of Department (Chemical Engineering), five were recruited along with the petitioner and were similarly situated in all respects.

21. It is next submitted that in the short counter affidavit dated 04.02.2025 as well as the supplementary counter affidavit dated 23.03.2026, the sole ground taken by the respondents for denying promotion to the petitioner is that the respondents have artificially bifurcated the ten available vacancies on the post of Head of Department (Chemical Engineering) on the basis of the promulgation of the Rules, 2021 and have arbitrarily treated only those eight vacancies which existed prior to 08.06.2021 as vacancies liable to be filled by promotion under the old Rules. According to learned counsel, no such distinction with regard to vacancies arising before or after a particular cut-off date finds mention either in the AICTE Regulations or in the Rules, 2021. Thus, the respondents have carved out an artificial classification without any statutory backing or legal authority.

22. In support of the aforesaid contention, learned counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court in State ***of Himachal Pradesh and***

Others Vs. Raj Kumar and Others, (2023) 3 SCC 773, wherein, while overruling the earlier view taken ***in Y.V. Rangaiah Vs. J. Sreenivasa Rao, (1983) 3 SCC 284,*** it has been held that there exists no universal rule that vacancies are necessarily required to be filled in accordance with the law prevailing on the date on which such vacancies arose. Rather, the right of an employee is merely a right to be considered for promotion in accordance with the rules in force on the date when the consideration takes place. Learned counsel has particularly emphasized paragraphs 82 to 85 of the aforesaid judgment and submits that the stand taken by the respondents that only vacancies existing prior to the promulgation of the Rules, 2021 could be filled under the old Rules is wholly misconceived and unsupported either by statutory provisions or settled principles of law.

23. It is further submitted that the promotions of eight lecturers to the post of Head of Department in the year 2024 were themselves granted only by extending the benefit flowing from the Clarifications, 2020 issued by AICTE. Once the respondent authorities had chosen to undertake the promotional exercise in the year 2024, at a point of time when the Rules, 2021 prescribing 100% direct recruitment to the post of Head of Department were already in force, it became incumbent upon the authorities to extend the same benefit uniformly to all similarly situated and eligible persons, including the petitioner, who admittedly fell within the zone of consideration against the existing vacancies.

24. It has also been argued that although eight posts of Head of Department were filled and several persons recruited along with the petitioner were promoted, the petitioner herself was not even considered for promotion, which clearly demonstrates arbitrariness, non-application of mind and discriminatory treatment on the part of the respondents. Learned counsel submits that once the petitioner had duly exercised her option for being considered for promotion, there existed no rational or lawful justification for excluding her from the promotional exercise undertaken by the respondents.

25. It is further submitted that in their counter affidavits, the respondents have completely failed to address the specific plea of the petitioner that Regulation 13 of the Clarifications, 2020 expressly provided an option to faculty members who had already qualified or were likely to qualify shortly for promotion under the earlier regime, and that the petitioner had validly exercised such option through her application dated 20.05.2024 sent by email as well as through registered post on 21.05.2024.

26. Lastly, learned counsel for the petitioner submits that the benefit contemplated under Regulation 13 of the Clarifications, 2020 issued by AICTE ought to have been extended by the respondents as a one-time measure while conducting the promotional exercise for the recruitment year 2024?25, particularly when vacancies had admittedly arisen within three years from the issuance of the Clarifications, 2020 and the petitioner had duly exercised her option within the prescribed period. Therefore, the action of the respondents in excluding the petitioner from consideration for promotion is wholly arbitrary, discriminatory and unsustainable in law.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

27. Learned Standing Counsel, while opposing the writ petition, has submitted that the petitioner has merely sought issuance of a writ of mandamus commanding the respondents to consider her case for promotion to the post of Head of Department (Chemical Engineering). It is contended that if at all the petitioner is aggrieved, such grievance essentially arises out of the promotion orders whereby eight lecturers were promoted to the post of Head of Department (Chemical Engineering). However, the said promotion orders have not been challenged by the petitioner in the present writ petition and, therefore, the relief sought by the petitioner is itself misconceived and not maintainable in the present form.

28. It has further been submitted that the option allegedly exercised by the petitioner under Regulation 13 of the Clarifications, 2020 issued by AICTE is wholly misconceived and non est in the eyes of law. Learned Standing Counsel submits that Regulation 13 of the Clarifications, 2020 specifically provided that the concerned incumbents could exercise a one-time option within a period of three years from the date of issuance of the said notification. Since the Clarifications, 2020 were issued on 20.05.2020, the period of three years admittedly expired on 20.05.2023. It is submitted that the petitioner exercised her alleged option only on 21.05.2024, i.e., after expiry of the prescribed period by almost one year. Therefore, according to the respondents, the petitioner had no subsisting right whatsoever to claim consideration for promotion under the old Rules and, consequently, the controversy sought to be raised regarding vacancies existing prior to or subsequent to the promulgation of the Rules, 2021 or the existence of two remaining vacancies is wholly irrelevant. It is thus contended that the petitioner has failed to demonstrate the existence of any constitutional, statutory or legal right entitling her to be considered for promotion.

29. Learned Standing Counsel has further submitted that prior to the enforcement of the Rules, 2021 with effect from 09.06.2021, the field governing service conditions and promotions was occupied by the Rules, 1990 as amended in the year 1998. However, vide Notification No. 899/16-2-2021 dated 09.06.2021, the Rules, 2021 were promulgated, under which the post of Head of Department was specifically earmarked to be filled through direct recruitment.

30. It is accordingly submitted that the two vacancies of Head of Department (Chemical Engineering) which arose subsequent to 09.06.2021, i.e. the vacancy caused on account of the retirement of Shri Anjani Kumar Sharma on 30.06.2022 at Government Polytechnic, Chandausi, Sambhal and the vacancy created vide Government Order dated 26.12.2023 at Government Polytechnic, Bachhrawan, Raebareli, are necessarily required to be filled strictly through direct recruitment in accordance with the provisions contained under the Rules, 2021. Therefore, the petitioner cannot claim any right for promotion against the said vacancies under the repealed Rules, 1990.

31. It has further been stated that as on 08.06.2021, i.e., immediately prior to the enforcement of the Rules, 2021, eight vacancies on the post of Head of Department (Chemical Engineering) were available. In accordance with the provisions of the Rules, 1990 as amended in 1998, the Departmental Promotion Committee considered eligible lecturers and recommended the names of eight Lecturers in Chemical Engineering whose names were placed at Serial Nos. 14 to 21 in the seniority list. Pursuant to such recommendations, Government Appointment/Notification

No. 2923/16-2-2024 dated 09.12.2024 was issued, whereby the said officers were promoted to the post of Head of Department (Chemical Engineering).

32. It has also been clarified on behalf of the respondents that one Shri Vinod Kumar Yadav, who was admittedly senior to the petitioner and was placed at Serial No. 22 in the seniority list, could not be promoted owing to the fact that only eight vacancies were available for being filled through promotion under the old Rules. Since the petitioner was admittedly placed at Serial No. 23 in the seniority list, no enforceable right accrued in her favour for promotion when even her immediate senior had not been granted promotion.

33. Thus, only eight vacancies existed prior to the promulgation of the Rules, 2021 and the said vacancies have already been duly filled in accordance with the provisions of the Rules, 1990 as amended in 1998. The two vacancies which arose after 09.06.2021 are governed entirely by the provisions of the Rules, 2021 and are liable to be filled solely through direct recruitment. It is therefore contended that the petitioner?s reliance upon the AICTE Regulations, 2019 and the Clarifications, 2020 for claiming promotion against vacancies arising after 09.06.2021 under the old Rules is wholly misconceived, contrary to the statutory framework and legally untenable.

34. Lastly, learned Standing Counsel has submitted that the petitioner has completely misconstrued the scope and applicability of the AICTE Regulations, 2019 as well as the Clarifications, 2020 while seeking promotion from the post of Lecturer (Chemical Engineering) to the post of Head of Department (Chemical Engineering) under the repealed provisions of the Rules, 1990 and the First Amendment Rules, 1998. According to the respondents, the claim raised by the petitioner is contrary to the applicable statutory provisions governing the field and, therefore, the writ petition being devoid of merit is liable to be dismissed with costs.

CONSIDERATION BY THE COURT

35. Perused the record.

36. This Court has considered the submissions advanced by learned counsel for the parties and perused the material brought on record.

37. Admittedly, while filing the present writ petition, the petitioner has not challenged the promotion orders whereby eight persons have been promoted to the post of Head of Department (Chemical Engineering). It is also not disputed that all the said promoted persons are senior to the petitioner in the seniority list. It is further admitted that as on date, two posts of Head of Department (Chemical Engineering) are still lying vacant.

38. Prior to the promulgation of the Rules, 2021, the field governing the service conditions of lecturers working in Government Polytechnics, including promotion to the post of Head of Department, was regulated by the Rules, 1990. Under the Rules, 1990, 100 percent posts of Head of Department were liable to be filled by way of promotion. Subsequently, AICTE framed the Regulations, 2010 wherein the eligibility criteria for appointment/promotion to the post of Head of

Department were prescribed and possession of a Ph.D. degree along with minimum five years? teaching/research/industry experience was made a condition precedent.

39. Thereafter, AICTE notified the Regulations, 2019 and Regulation 2.1 thereof specifically provided that the post of Head of Department shall be filled by way of 100 percent direct recruitment. In order to protect the rights and interests of existing faculty members who had already qualified or were likely to qualify shortly for being considered for promotion by the time of promulgation of the AICTE Regulations, 2019, AICTE issued Clarifications, 2020. Regulation 13 thereof provided that such faculty members could exercise a one-time option for being considered for promotion under the existing Regulations/Rules, provided the said option was exercised within three years from the date of notification of the Clarifications dated 20.05.2020.

40. Regulation 13 clearly contemplated that the option was required to be exercised within a period of three years from the date of notification of the Clarifications, 2020, meaning thereby that such option could have been exercised on or before 20.05.2023 and not thereafter. The Clarifications, 2020 were issued in exercise of powers conferred under Section 23(1) read with Sections 10(g), 10(h) and 10(i) of the All India Council for Technical Education Act, 1987 and were intended to be read in continuation of the norms/guidelines prescribed under the AICTE Regulations, 2019 dated 01.03.2019 issued by AICTE. The said Regulations have been framed under Entry 66 of List I (Union List) of the Seventh Schedule to the Constitution of India and, therefore, any State Regulations or Rules operating in the same field are required to give way to the aforesaid Regulations, the same having binding effect.

41. Admittedly, the petitioner did not exercise the option within three years from the date of issuance of the Clarifications, 2020. The cut-off date for exercising such option expired on 20.05.2023, whereas the petitioner admittedly exercised her option only on 21.05.2024, i.e., after expiry of the prescribed period. Thus, in terms of Regulation 13 of the Clarifications, 2020, the petitioner cannot assert any enforceable right to be considered for promotion to the post of Head of Department.

42. This Court finds that the petitioner has not challenged the promotion orders of the eight persons who have been promoted to the post of Head of Department, although all such persons are senior to the petitioner. The said promoted officers have also not been impleaded as parties in the present proceedings. Therefore, the issues as to whether the promotions granted to the said persons were legally justified, whether the bifurcation of vacancies made by the respondents was valid, or whether vacancies arising prior to or after the promulgation of the Rules, 2021 were required to be filled under the old Rules or the new Rules, cannot be adjudicated upon in the present writ petition unless the petitioner first establishes her own right to be considered for promotion.

43. The primary contention advanced on behalf of the petitioner is that since the Rules, 2021 were promulgated on 09.06.2021 formally adopting the AICTE Regulations, 2019, the period of three years contemplated under Regulation 13 of the Clarifications, 2020 ought to be reckoned from the date of promulgation of the Rules, 2021 and, therefore, the petitioner was entitled to exercise her option up to 09.06.2024. According to the petitioner, Note 11 appended to Appendix-II of the Rules, 2021 makes the option available to all faculty members working in Government

Polytechnics across the State. The aforesaid submission, in the opinion of this Court, is wholly fallacious and misconceived.

44. A perusal of Note 11 appended to Appendix-II of the Rules, 2021 clearly shows that it merely provides that all other conditions shall be applicable in accordance with AICTE Regulations, 2019 as amended from time to time. The relevant provision reads as under:-

"II. All other conditions will be applicable as per AICTE (Diploma) Regulations, 2019 and amended from time to time."

45. Under Rule 5 of the Rules, 2021, recruitment to the post of Head of Department in Polytechnic (Engineering) has specifically been provided to be made through 100 percent direct recruitment by the Commission. By virtue of the Rules, 2021, the AICTE Regulations, 2019 along with amendments/clarifications issued from time to time stood adopted by the State Government. However, by incorporation of Note 11 of Appendix-II, no fresh right or extended period has been created in favour of the petitioner. The said provision merely adopts the AICTE Regulations, 2019 and amendments thereto, including the Clarifications, 2020.

46. By no stretch of imagination can it be interpreted that the three-year period prescribed under Regulation 13 of the Clarifications, 2020, which commenced from 20.05.2020, would recommence afresh from the date of promulgation of the Rules, 2021, i.e., 09.06.2021. Therefore, the argument advanced on behalf of the petitioner that the exercise of option on 21.05.2024 was within time as it fell within three years from the date of promulgation of the Rules, 2021 cannot be accepted.

47. The petitioner admittedly failed to exercise the option on or before 20.05.2023 as required under Regulation 13 of the Clarifications, 2020. No other statutory or legal right has been demonstrated by the petitioner entitling her to claim promotion to the post of Head of Department.

48. So far as the plea regarding hostile discrimination and violation of Articles 14 and 16 of the Constitution of India is concerned, it is not disputed that all those persons who have been promoted to the higher post are senior to the petitioner. No person junior to the petitioner or similarly situated in the seniority list has been promoted to the post of Head of Department. Thus, the petitioner has failed to establish any hostile discrimination or unequal treatment in the matter of promotion.

49. The petitioner has also failed to establish any enforceable right under any Rule, Regulation or Notification entitling her to claim consideration for promotion. Moreover, the promotion orders of the eight promoted officers are not under challenge and the concerned persons have also not been impleaded as parties to the present proceedings. In absence thereof, the petitioner?s claim for consideration against the remaining two vacant posts cannot be entertained unless she first establishes a legal right to be considered for promotion, which she has clearly failed to do.

50. So far as the argument regarding bifurcation of vacancies and drawing of an alleged artificial distinction between ten available vacancies on the post of Head of Department (Chemical Engineering) is concerned, admittedly no person junior to the petitioner has been promoted against the said vacancies. Since the petitioner herself failed to exercise the option contemplated under Regulation 13 within the prescribed period, the question as to whether the respondents could have extended the benefit of Regulation 13 of the Clarifications, 2020 as a one-time measure while conducting the promotional exercise for the recruitment year 2024?25, particularly in respect of vacancies arising within three years from issuance of the Clarifications, 2020, need not be examined in the present proceedings.

CONCLUSION

51. This Court is of the considered opinion that the petitioner has failed to establish any enforceable statutory or legal right entitling her to claim consideration for promotion to the post of Head of Department (Chemical Engineering), particularly in view of the admitted position that the option contemplated under Regulation 13 of the Clarifications, 2020 was not exercised within the prescribed period. It is also not disputed that no person junior to the petitioner has been granted promotion and that all the promoted incumbents are admittedly senior to her in the seniority list.

52. This Court further finds that the promotion orders granted in favour of the eight promoted officers have neither been challenged in the present proceedings nor have the said persons been impleaded as parties. Consequently, the issues relating to the legality of the promotional exercise undertaken by the respondents, including the alleged bifurcation of vacancies and applicability of the old or new Rules to the vacancies in question, do not arise for adjudication in the present writ petition.

53. In the absence of any demonstrated legal right in favour of the petitioner and there being no material to establish hostile discrimination or arbitrariness in the matter of promotion, no interference is warranted by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. 54. Accordingly, the writ petition lacks merit and is, therefore, ***dismissed.***

(2026) 5 ILRA 2033

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 07.05.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 12736 of 2018

Dr. Tapas Kumar Das ...Petitioner

Versus

Harish Chandra Research Institute & Ors. ...Respondents

Issue for Consideration

(1) Effect of not taking the statement of complainant and not providing opportunity of cross-examination during the enquiry conducted on the complaint of sexual harassment.
(2) Power of ICC to summon the complainant and witnesses in the matter of enquiry conducted on the complaint of sexual harassment.
(3) Application of principle of natural justice in the matter of enquiry conducted on the complaint of sexual harassment.

Headnotes

(A) Service law – Punishment – Censure – Inquiry – Allegation of committing sexual harassment was leveled by the students against the Associate Professor-G of Astrophysics – No statements of victims/ complainants were recorded – Ignoring time period provided u/s 9 of POSH Act to take cognizance of complaints, inquiry was conducted and petitioner was found guilty – Validity challenged – Power of ICC to summon the complainant and witnesses felt into consideration – Application of principle of natural justice and relevance of cross-examination also felt into consideration

Held : Principle of natural justice be followed and that ICC shall have power as vested in Civil Courts under Code of Civil Procedure so far as summoning and enforcing attendance of any person and examine him in Court is concerned **–** However, there is no reference in ICC report, whether statements of complainants were recorded before Committee or not and if statements were recorded, whether a copy of same was provided to petitioner or not. There is no reference, whether petitioner was asked to cross-examine the complainants or was provided any opportunity of oral. [Para 19 and 20]

Further held : The contents of aforesaid complaints are serious in nature and would fall within the four corners of definition of 'sexual harassment' – Complaints cannot be rejected at threshold without specific consideration. Therefore, impugned order dated 09.07.2017 is hereby set aside. ICC is directed to consider all complaints afresh. [Para 23 and 25] (E-1)

Case Law Cited

X vs. Nirmal Kanti Chakrabarti and others, 2025 SCC OnLine SC 1964; Vishaka and others vs. State of Rajasthan and others, 1997(6) SCC 241 **– referred to.**

List of Acts

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 – Sections 9 and 11; Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 **– Rule 7**.

List of Keywords

Internationally reputed Scientist, Black hole, Analogue Gravity, Inquiry, Multiple complaint, Sexual harassment, Physical contacts, Oral examination, Cross-examination, Punishment, Censure, Limitation, Mental harassment, Guilty, Opportunity of personal hearing, Protection, Workplace, Procedure, Principle of natural justice, Civil Courts, Time period.

Case Arising From

Order of the Council of HCRI, Allahabad awarding punishment of 'Censure'.

Appearances for Parties

Advs. for the Petitioner : Ritzu Ghoshal, Sr. Adv.; P.N. Saksena, Sr. Adv.; Sayantan Chatterjee; Anirban Ghosh; Ms. Vishakha Pandey; Badal Chatterjee; Chandan Sharma; Roshni Shukla.
Advs. for the Respondents : Rahul Agarwal, Sr. Adv.; Ms. Akashi Agarwal; Udai Chandani.

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

1. Petitioner, an Associate Professor-G of Astrophysics, is working at a premier Institute engaged in research in Mathematics and Theoretical Physics, namely, Harish Chandra Research Institute, Allahabad (*hereinafter referred to as "HCRI, Allahabad").*

2. Petitioner has claimed himself to be an internationally reputed Scientist of Astrophysics, an expert in the subject of Black Hole and Analogue Gravity and has published more than sixty research papers in intentionally reputed scientific journals.

3. Petitioner has faced an inquiry initiated by Internal Complaints Committee (hereinafter referred to as "ICC") of HCRI, Allahabad constituted under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as "POSH Act") as there were multiple complaints filed by girl students who have studied under the petitioner for purpose of Ph.D.

4. ICC initiated inquiry and sought petitioner's response on complaints. According to record during proceedings some more complaints were also received against petitioner. The complaints were with regard to sexual harassment at workplace by petitioner, which includes physical contacts and advances and making sexually coloured remarks also.

5. Petitioner has asked various documents including copy of complaints and also asked for oral examination as well as cross-examination of complainants, however, it appears that during proceedings statements of victims/ complainants were even not recorded and considering gravity of the complaints, ignoring time period provided under Section 9 of POSH Act to take cognizance of complaints, inquiry was concluded and petitioner was found guilty.

6. For reference "Summary and Recommendations" of ICC are reproduced hereinafter:

"Summary and Recommendations

The Women Grievances" Cell noted that:

- As many as 10 women altogether have complained of sexual harassment and/or misconduct against Dr. Tapas K. Das and some of these complaints are backed-up with documentary proof or corroboration by other students.

- At least 3 complaints are of a very serious nature. One of them has documentary evidence while both the others have corroboration from other students.

- The women concerned are all very young and vulnerable, who could be easily manipulated, threatened and intimidated and who had many reasons to fear for their careers, and hence took time to complain against Dr. Das.

- The incidents about which these women have complained spans a prolonged period of time between 2013 - 2016 during which Dr. Das has been involved in harassing and misconduct, making Dr. Das a serial harasser and repeat offender.

- Most of the incidents of serious nature happened within his closed-door office and at very late in the night.

- In his meeting with the Women's Grievances' Cell, Dr. Das has admitted to have sent an email with a link to pornography/erotica to one of the complainants. Dr. Das later denied this in his written response. But since Dr. Das had admitted to sending this link in his meeting with the committee on July 20, 2016 and since he had himself given the name of the recipient to whom he sent this link, and since the name he mentioned in the July 20, 2016 meeting matched with the name of the complainant who alleges that he sent this link to her, the committee concludes that Dr. Das is lying in his written response.

Given the volume of complaints, seriousness of the nature of complaints, and repeated misconduct by Dr. Das over a prolonged period of time, the Women's Grievances' Cell feels that Dr. Tapas K. Das is guilty of sexually harassing his female students/postdocs over an extended period of time. The committee feels that even though none of the incidents reported to the committee occurred in the last 3-6 months as required by the Sexual Harassment of Women in Workplace (Prevention, Prohibition and Redressal) Act 2013, the complaints, and more importantly, the number of complaints, cannot be ignored. Since Dr. Tapas K. Das is seen guilty of sexual harassment and mental harassment of young women by using his position of power in the institute, the committee recommends that appropriate disciplinary action be taken against Dr. Das. Therefore, the committee recommends that the service rule be found for appropriate punishment and disciplinary action be taken against Dr. Das as per the rules of HRI. In particular, the committee recommends that at the very minimum the following actions be taken against Dr. Das:

1. The institute stop Dr. Tapas K. Das increment for one year. This should show in his service book.

2. His promotion must be stopped until 2020.

3. Dr. Tapas K. Das be suspended for a period of 6 months and/or an equivalent punishment given to him, as per HRI rules.

4. Dr. Tapas K. Das be forbidden from taking female students as visiting students, PhD students or post-doctoral fellows.

5. Dr. Tapas K. Das be removed from all institute committees which might bring him in contact with any young student. This includes the VSP committee.

6. Dr. Taps K. Das be shifted to an office which is either open or even if closed has glass on all sides so that the inside of his office be clearly visible from outside.

7. Dr. Tapas K. Das be required to go for gender sensitisation program."

7. The matter was thereafter put before Council of HCRI, Allahabad and after considering petitioner's response, punishment proposed by ICC an order was passed whereby a punishment of

"Censure" and a direction was passed that petitioner was barred to take any female students or PDFs or RAs to work with him. For reference the decision of Council is reproduced hereinafter:

"(a) Sexual Harassment Case

In continuance of the decision taken in the last GC meeting dated 30-09-2016, the Director summarised the evidences considered by the committee (ICC) and Prof Tapas Das's responses as per the following:-

(1) Two complaints refer to face book posts between two projects students and Prof Tapas das indecent on both sides.

(2) One complaint is by a set of concerned students with whom the project students had discussed their problems in the past. The statements made by these students confuse pornographic literature with Marxist literature and hence cannot be considered seriously.

(3) One long complaint with one-sided posts by a former PDF, Prof Das responded to this by producing 100 pages of the face book posts, showing the posts made by both sides. The posts from both sides were highly inappropriate.

(4) Though a former Kanpur IIT student had complained to the enquiry committee of harassment by Prof Tapas Das on one of her visits, she returned the following summer to complete the project with Prof Tapas Das.

According to Director the picture that emerges is - Prof Das engaged in flirtatious behavior with female project students and PDFs. The case particularly with PDF mentioned above shows that two consenting adults having a "good" time on face book.

After considering the above, the council came to conclusion that the case against Tapas Das is strong enough to take punitive action. Considering this as a case of misconduct, the council decided the following:-

(1) Prof Das will not be permitted to take any female students or PDFs or RAs to work with him.

(2) Selection committees for these positions are to be informed of this so that they do not assign any women to work with him in any of the above mentioned capacities.

(3) This is the first such official reported case of misconduct against Prof Tapas Das. Prof Das shall be issued with 'censure'. In case, he is found indulged in such activities again, stern action shall be taken against him.

The council authorized Chairman/Director to issue penalty of "censure" to Prof Tapas Das mentioning above decision of the council. The Chairman also directed that respective

committees responsible for the activities mentioned in point (1) and (2) above should also be informed about the decision separately"

8. On basis of aforesaid proposal, impugned order dated 09.07.2017 was passed by Chairman, Governing Council of HCRI, Allahabad imposing a penalty of "Censure" and that petitioner will not be permitted to take any female students or PDFs or RAs to work with him. For reference aforesaid order is reproduced hereinafter:

"ORDER

The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal Act 2013) is an act that provides protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment. Sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and the right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment.

As many as 10 complaints of sexual harassment have been received against Dr Tapas Kumar Das, Associate Professor □G□, Harish-Chandra Research Institute, Allahabad. Many of these complainants were from young woman project students and PDF who were visiting the Institute and working under Dr Tapas Kumar Das. The inquiry against these complaints was conducted by the □Internal Complaints Committee / Women's Grievances Cell".

WHEREAS, Dr Tapas Kumar Das was provided the copies of the alleged complaints, Dr Tapas Kumar Das submitted his responses to the alleged complaints. The Internal Complaints Committee / Women□s Grievances Cell examined the responses of Dr Tapas Kumar Das and found the responses of Dr Tapas Kumar Das totally unconvincing. The committee found Dr Tapas Kumar Das guilty of sexual harassment and mental harassment of young women by using his position of power in the Institute.

NOW THEREFORE, after taking into account the responses of Dr Tapas Kumar Das, the facts and circumstances of the case and findings of the Committee, the Governing Council is satisfied that the allegations of Sexual Harassment against Dr Tapas Kumar Das are correct. After consideration, the Governing Council (as disciplinary authority) came to conclusion that the case against Dr Tapas Kumar Das is strong enough to take punitive action.

Considering this as a case of misconduct on part of Dr Tapas Kumar Das, the Governing Council has, therefore, decided to impose the penalty of "Censure" on him. A copy of this order shall be placed in the personal file of Dr Tapas Kumar Das. Governing Council also decided that Dr Tapas Kumar Das will not be permitted to take any female students or PDFs or Ras to work with him. In case, Dr Tapas Kumar Das is found indulged in such activities again, stern action shall be taken against Dr Tapas Kumar Das."

9. Aforesaid order is under challenge in present writ petition.

10. Sri Ritzu Ghoshal, learned Senior Advocate assisted by Sri Sayantan Chatterjee, Sri Anirban Ghosh and Ms. Vishakha Pandey, Advocates for petitioner, vehemently referred various documents annexed alongwith this writ petition and counter affidavit as well as referred various provisions of POSH Act and made following submissions on facts as well as on law:

(A) POSH Act is a Special Act, therefore, its provisions have to be followed strictly in its letter and spirit. Section 9 of POSH Act provides complaint on sexual harassment that any aggrieved women may make in writing a complaint of sexual harassment at workplace to ICC within a period of three months from the date of incident and in case of series of incidents, within a period of three months from the date of last incident. In the present case admittedly complaints were filed beyond said period, i.e., after more than six months without any reason to condone such delay.

(B) Period of limitation as provided under Section 9 of POSH Act was also taken note by ICC in it's report dated 17.08.2016 that though the incidents were not reported within three months or six months, still considering that complaints against petitioner were extremely serious and multiple, therefore, ICC proceed to consider the complaints. According to learned Senior Advocate POSH Act does not provide any such liberty or extension of time period provided under the Special Act.

(C) Learned Senior Advocate submitted that in aforesaid circumstances, ICC could not proceed on basis of such belated complaints which appear to be of alleged occurrence occurred between 2013 to 2016. The complaints were undated and without disclosing specific dates of alleged incidents, i.e., all complaints were vague.

(D) In support of above submissions, learned Senior Advocate has placed reliance on a judgment passed by this Court in **X vs. Nirmal Kanti Chakrabarti and others, 2025 SCC OnLine SC 1964** and refers its paragraphs no. 8, 13, 14, 15, 22, 29, 31, 32 and 33. For reference said paragraphs are reproduced hereinafter:

"8. The neat question which falls for consideration of this Court is: whether the *Division Bench of the High Court is justified in non-suiting the appellant on the ground that her complaint was barred by limitation."*

"13. Section 9 of the Act postulates that any aggrieved woman may make a complaint, in writing, of sexual harassment at the work place to the Local Committee within a period of three months from the date of incident, and in the case of series of incidents, within a period of three months from the date of the last incident. The second proviso to Section 9 provides that the LCC may for reasons to be recorded in writing, extend the time of making the complaint not exceeding three months, if it is satisfied that the circumstances prevailing prevented the woman from filing of the complaint within the period prescribed.

14. In other words, a complaint of sexual harassment is mandatorily required to be filed within a period of three months from the date of the last incident of such harassment or within a

further extended period of three months, i.e., within a maximum period of six months from the date of the last incident of sexual harassment.

15. No doubt, the issue of limitation is ordinarily a mixed question of fact and law and it may not be possible to throw out a complaint at the threshold without collecting material on the factual aspects relating to the limitation. Nonetheless, where a complaint on the simple reading of the averments made therein appears to be patently barred by limitation, it can be rejected at the very first instance on the analogy of Order VII Rule 11 CPC, without even calling the other side to participate in the proceedings."

"2. The complaint of the appellant from the last incident of sexual harassment of April 2023, is certainly beyond time. However, the issue is whether the subsequent event of removal of the appellant from the post of the Director, CFRGS or initiation of inquiry by the Executive Council are in any way linked to sexual harassment or amounts to sexual harassment as described under Section 3(2) of the POSH Act."

29. The alleged act of harassment of April 2023, was a complete act in itself and had not continued thereafter. The administrative measures of August 2023, were independent and were collective decisions of the NFCG and the Executive Council which cannot be solely attributed to the Vice-Chancellor. The said decision may have caused inconvenience to the appellant or may have given an impression that they are in line with previous acts of harassment, but they were not part of the continued sexual harassment. The subsequent events have no connection to the earlier act of sexual misconduct and as such, fall clearly out of the preview of acts or behaviours amounting to sexual harassment. In this way, the incident of April 2023, remains the last event related to sexual harassment."

"31. The appellant, in filing the complaint, also moved an application for condonation of delay stating that there were "mitigating circumstances" which she had attempted to resolve within the institution and when she failed, she then filed the complaint. The very fact that the appellant was conscious of the fact that her complaint was delayed, proves that she herself treated the act of April 2023, to be the last incident of sexual harassment and as such, tried to explain the delay in filing the complaint.

32. In view of the aforesaid facts and circumstances as well as the discussion, we are of the view that the Division Bench of the High Court committed no error of law in restoring the decision of the LCC that the complaint of the appellant is time barred and is liable to be dismissed.

33. It is advisable to forgive the wrongdoer, but not to forget the wrongdoing. The wrong which has been committed against the appellant may not be investigated on technical grounds, but it must not be forgotten."

(E) Learned Senior Advocate further submitted that even if in above circumstances the ICC proceed to consider complaints, the inquiry has to be conducted in terms of provisions provided under Section 11 of POSH Act read with Rule 7 of Rules made thereunder that statements of victims shall be recorded, petitioner be granted opportunity to make cross-examination and

subsequently both parties be granted opportunity of being heard and only thereafter on basis of consideration, a report be submitted, however, same was not followed.

(F) Learned Senior Advocate further submitted that on bare perusal of inquiry report of ICC it is evident that statements of victims were never recorded, therefore, there was no occasion for cross-examination, petitioner was not provided any opportunity of oral hearing and only on basis of a reply, which was submitted without details of complaints etc. which admittedly not provided, it was held that petitioner was guilty of sexual and mental harassment of young students/ postdocs by using his position and power in HCRI, Allahabad. According to learned Senior Advocate even the outcome of inquiry was not based on any material or specific consideration.

(G) Learned Senior Advocate lastly submitted that complaints filed by complainants does not indicate dates of complaint, no specific date was also mentioned of alleged sexual harassment and complaints were of alleged occurrence occurred many years ago.

11. Per contra, Sri Rahul Agarwal, learned Senior Advocate assisted by Ms. Akashi Agarwal, learned counsel for respondents, on basis of material, was not able to show that statements of victims were recorded before ICC or that petitioner was granted any opportunity of personal hearing as well as that there was no consideration on allegation made by complainants on basis of their complaints, i.e., in the impugned order nature of allegation was not reflected or considered to that extent that petitioner was guilty of sexual harassment.

12. Learned Senior Advocate for respondents further submitted that in case the Court finds that due procedure was not followed by ICC, the matter may be remitted back to ICC for fresh consideration and to recommence from the stage an irregularity was committed, i.e., entire material be provided to petitioner so that he may submit a fresh reply.

13. Learned Senior Advocate has opposed the argument of learned Senior Advocate for petitioner that complaints were time barred in terms of provisions of Section 9 of POSH Act and he referred contents of complaints that it were serious so much as that petitioner used to call his students in night at his office and harassed them sexually and mentally. He was engaged in sending message to his girl students having unwelcome acts and making sexually coloured remarks as well as one of the victim has complained about unwelcome physical contact and advances, therefor, he was rightly subject to inquiry.

14. Learned Senior Advocate for respondents further submitted that in such circumstances, rigor of delay can be relaxed taking note of object of POSH Act, i.e., to provide protection against sexual harassment of women at workplace and for prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

15. Learned Senior Advocate referred para 31 of X vs**. Nirmal Kanti Chakrabarti (supra)** that condonation of delay can be considered in certain circumstances, such as circumstances of present case.

16. Heard learned Senior Advocates for the parties and perused the material available on record.

17. POSH Act is a Special Act, which was enacted in pursuance of directions passed by Supreme Court in **Vishaka and others vs. State of Rajasthan and others, 1997(6) SCC 241** after about 16 years with following object:

"An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace."

18. The Court first proceed to consider, whether procedure prescribed for inquiry into complaints as provided under Section 11 of POSH Act read with Rule 7 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, were strictly followed or not. For reference aforesaid Section 11 and Rule 7 are reproduced hereinafter:

*"**11. Inquiry into complaint**.-(1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:*

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

(2) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the Court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

3. For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:"

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents; and

(c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days."

***"7. Manner of inquiry into complaint**.-(1) Subject to the provisions of section 11, at the time of filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses.*

(2) On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule (1) to the respondent within a period of seven working days.

(3) The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents specified under sub-rule (1).

(4) The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.

(5) The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an ex parte decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be:

Provided that such termination or ex parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.

(6) The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.

(7) In conducting the inquiry, a minimum of three Members of the Complaints Committee including the Presiding Officer or the Chairperson, as the case may be, shall be present."

19. The Court finds that manner of inquiry, as referred above, was not followed by ICC. Though petitioner was provided copy of complaints but certain details were not provided, such as when they are served upon ICC and that though no specific procedure was prescribed under Rule 7 still it has been consistently held in various judgments of this Court and Supreme Court that principle of natural justice be followed and that ICC shall have power as vested in Civil Courts under Code of Civil Procedure so far as summoning and enforcing attendance of any person and examine him in Court is concerned.

20. However, there is no reference in ICC report, whether statements of complainants were recorded before Committee or not and if statements were recorded, whether a copy of same was provided to petitioner or not. There is no reference, whether petitioner was asked to cross-examine the complainants or was provided any opportunity of oral hearing as well as that learned Senior Advocate for respondents has also not able to satisfy this Court about above referred lacuna in procedure. Therefore, the Court finds that procedure adopted by ICC was defective. Accordingly, its outcome, i.e., inquiry report as well as order passed by Council and Institute cannot sustain.

21. After observing above, now the question is, whether matter can be remitted back to ICC to recommence from the stage of a fresh reply from petitioner. However, before it, the Court has to consider rigor of time period provided to make complaints under Section 9 of POSH Act, which is reproduced hereinafter:

***"9. Complaint of sexual harassment**.-(1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:*

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section."

22. In order to verify, whether complainants have made serious allegations of harassment or not, the Court takes note of copy of complaints annexed alongwith this writ petition and relevant part of some complaints, without disclosing name of respective victim, are mentioned hereinafter:

xxx

"He was going to Varanasi to meet with one of the ex-student of HRI who happened to be my very good University friend. My friend was visiting Varanasi with his parents and also invited me over. TD offered me to come along with him and share his room. I was utterly shocked and dropped the visit altogether. I have the mail he sent for booking details. He probably realised that I can't be manipulated like this and never gave any such indescent direct proposal later on."

xxx

"First was his tendency to call very late at night sometimes, and his insistence on me coming in to work or discuss things very late too. It was my very first research project, and I was still trying to figure out the dynamics of academia and put down my misgivings about the late hours to □this is how things are in research□. The second was him adding me as a friend on facebook, and sometimes sending messages there (which I never replied to). Even though the content of the messages at that point were not inappropriate, they were also in no way related to the project, and the medium of communication seemed improper. He also started started commenting on my posts and I eventually blocked him there."

xxx

"He had a tendency to bring up highly inappropriate things under the guise of "sexuality in philosophy" and so on. He even mentioned masturbation and incest (he knew I read a lot and sent me a French book once that dealt with this topic)."

xxx

"This was the general scheme of things till one day he proceeded to take my hand and hold it while he talked in his office, and I froze and was in utter shock and fear and didn't do anything other than just sit there in creeping fear. This then happened pretty soon a couple of days later, and this time I was prepared and protested, and he said not to make things complicated. He then again proceeded to grab my arm, and this time tried to pull me towards him and probably get me to sit on his lap. By then I was already in tears and told him to let me go and managed to splutter out that I was not okay with what he was doing."

xxx

"He used to asked me to come in night at his office. In day time he won't take classes, he call me at night. But usually I avoid to go because I got some hint about his behaviour. But one day I was having some problem in my project and I asked him during day time but he told me to come at night after the dinner. When I go there he didn't solve my problem rather he harasses me sexually and mentally. I started weeping and was going to tell these things to security guards, but he stopped me forcefully and didn't let me go out and asked me not to tell these things to anybody can't explain how much I was scared and what was my mental condition at that time. But I tell these things to Mrityunjay Bhaiya, Research Scholar at HRI."

23. The contents of aforesaid complaints are serious in nature and would fall within the four corners of definition of "sexual harassment" as mentioned in Section 2(n) of POSH Act, which is reproduced hereinafter:

"(n) "sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely.—

(i) physical contact and advances; or

(ii) a demand or request for sexual favours; or

(iii) making sexually coloured remarks; or

(iv) showing pornography; or

(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature."

24. Aforesaid complaints refer various incidents though specific dates are not mentioned and that Court is not aware that when these complaints were made to ICC as on complaint no date was mentioned in record and also taking note that even **in X vs. Nirmal Kanti Chakrabarti (supra)** Supreme Court has observed that in certain circumstances delay may not be considered adverse to the extent that complaints may be rejected at threshold as it would not be in consonance of object of POSH Act and that normally such complaints are not made immediately, specially when complainants were working under delinquent as it would affect their respective future.

25. In aforesaid circumstances, the Court finds that complaints cannot be rejected at threshold without specific consideration. Therefore, impugned order dated 09.07.2017 is hereby set aside. ICC is directed to consider all complaints afresh on basis of details such as time period of allegation, specific date of complaints as well as any explanation by complainants to approach at belated stage and after considering all aspect, ICC will take a fresh decision, whether complaints have to be rejected at threshold or to proceed further and there must be a reasoned decision on this issue.

26. A copy of the decision be provided to petitioner though at this stage it is not required that petitioner may participate in inquiry. His locus to participate in inquiry will only commence if after on basis of above referred decision, ICC proceed to conduct inquiry in a manner provided

under the provisions of POSH Act and Rules. The fresh decision to proceed further with complaint or not shall be passed within a period of eight weeks from today.

27. The writ petition is accordingly disposed of.

(2026) 5 ILRA 2047
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.05.2026

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 18069 of 2024

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

Issue for Consideration

(1) Effect of not following the timeline to complete the selection process as provided in the Government Order dated 03.06.2016.
(2) Binding effect of a Government Order.
(3) Entitlement of claiming the right of appointment on the basis that the Selection Committee made the recommendation.

Headnotes

(A) Service law – Selection – Post of Headmaster – Approval – Though the Selection Committee recommended for appointment, but the selection process was not completed within timeline as provided in the GO dated 03.06.2016 – Consequently approval declined – Validity challenged – Binding effect of GO dated 0306.2016 felt into consideration

Held : It is a settled canon of administrative law that where a time prescription is engrafted in furtherance of public administration and is coupled with consequences affecting the efficacy and uniformity of such administration, the same ordinarily assumes a mandatory character. The said Government Order cannot, therefore, be construed as a mere procedural guideline; rather, it embodies a policy imperative intended to obviate delays, ensure uniformity, and prevent the mischief of protracted and inconclusive selection processes **–** Government Order dated 03.06.2016 was binding in nature, and the selection process in question having not been completed within the stipulated period, no vested or enforceable right accrued in favour of the petitioner. [Para 10 and 19]

Further held : It is trite that mere inclusion in a select list or even recommendation by a Selection Committee does not confer an indefeasible right to appointment. The distinction between a mere expectation and a legally enforceable right has been consistently underscored in service jurisprudence. [Para 12] (E-1)

Case Law Cited

P. Mahendran vs. State of Karnataka, (1990) 1 SCC 411; Santosh Kumar Singh vs. State of U.P. and others, 2017: AHC: 9909 (DB); Ratan Pal Yadav vs. State of U.P. and others, 2017 SCC OnLine All 4201; Shankarsan Dash vs. Union of India, (1991) 3 SCC 47; Tej Prakash Pathak and others vs. Rajasthan High Court and others, 2024 SCC OnLine SC 3184; State of U.P. vs. Rachna Hills, 2023 4 SCR 969; C/M, Nehru Kisaan Vidyalaya Junior High School vs. State of U.P. and others, 2017:AHC:15228; Ratan Pal Yadav vs. State of U.P. and others, 2017:AHC:154503 **– referred to.**

List of Acts

U.P. Basic Education Act, 1972; U.P. Basic Education Rules, 1978.

List of Keywords

Legal nuance, Recruitment norms, Approval, Recommendation by the Selection Committee, Timeline, Vested right, Directory, Mandatory, Precedents, Service jurisprudence, Executive instruction, Arbitrariness, Unreasonableness, Legal infirmity, Public administration, Uniformity, Mandatory timeline, Res integra, Expectation, Legally enforceable right, Legitimate expectation, Executive policy, Midstream, Rules of game, Salutary safeguard, Procedural modification, Substantial transformation, Paradigm, Decentralized management-driven selection process, centralized and regulated system of recruitment, Policy intervention, Devoid of substance, Binding judicial precedents, Enforceable right, Illegality, Irrationality, Procedural impropriety, Ipso facto.

Case Arising From

Impugned order dated 28.10.2024 passed by the Basic Shiksha Adhikari, Bijnor.

Appearances for Parties

Advs. for the Petitioner : Ashok Khare, Sr. Adv.; Siddharth Khare.
Advs. for the Respondents : Arun Kumar Sharma; Shailendra Singh; Manoj Srivastava, S.C.

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard Mr. Ashok Khare, learned Senior Counsel assisted by Mr. Siddharth Khare, learned counsel for the petitioner, Mr. Arun Kumar Sharma, learned counsel for the respondent no.4 and Mr. Shailendra Singh and Mr. Manoj Srivastava, learned Standing Counsels for the State-respondents.

2. The present writ petition raises questions of considerable legal nuance touching upon the interplay between accrued rights in a selection process, subsequent statutory and executive interventions, and the temporal applicability of recruitment norms. The petitioner seeks quashing of the order dated 28.10.2024 passed by the Basic Shiksha Adhikari, Bijnor, whereby approval to his selection on the post of Headmaster has been declined.

3. The essential facts, shorn of unnecessary detail, are that the institution in question is a recognized and aided Junior High School governed by the statutory framework of the U.P. Basic Education Act, 1972 and the Rules of 1978.

4. A vacancy having arisen on the post of Headmaster, an advertisement was issued on 15.07.2016. The petitioner, being eligible, participated in the selection process and was recommended by the Selection Committee on 29.07.2016. The papers were forwarded on 30.07.2016 for approval to the Basic Shiksha Adhikari.

5. The approval, however, was declined on 17.08.2016 on the ground that the selection process was not completed within the timeline prescribed in the Government Order dated 03.06.2016, which mandated completion by 31.07.2016.

6. The petitioner's representations failed, and multiple rounds of litigation ensued, culminating in a remand by the Division Bench directing reconsideration. Upon such reconsideration, the impugned order dated 28.10.2024 has again rejected the claim.

7. Learned Senior Counsel for the petitioner has assailed the impugned order primarily on the following grounds:-

i. The selection process commenced prior to any subsequent amendment or Government Order, and therefore must be governed by the rules prevailing on the date of advertisement.

ii. The Government Order dated 03.06.2016 is directory and not mandatory in nature.

iii. Subsequent amendments, including the Seventh Amendment Rules, 2019, and later Government Orders, cannot operate retrospectively.

iv. The petitioner had acquired a vested or at least a crystallized right upon being selected.

v. Reliance has been placed upon authoritative precedents **including P. Mahendran v. State of Karnataka1, Santosh Kumar Singh vs. State of U.P. and others2, Ratan Pal Yadav vs. State of U.P. and others3,** and recent pronouncements reiterating that the rules of the game cannot be altered midstream.

8. Conversely, learned Standing Counsel has contended:-

i. The Government Order dated 03.06.2016 imposed a mandatory outer limit for completion of the selection.

ii. The recommendation itself was forwarded after the cut-off date.

iii. Subsequent statutory amendments and policy decisions fundamentally altered the recruitment regime.

iv. No indefeasible right accrues merely upon participation or even recommendation.

9. The controversy which arises for consideration in the present case lies within a narrow yet intricate compass of service jurisprudence, and may be delineated into the following core issues: firstly, as to whether the Government Order dated 03.06.2016, prescribing a timeline for completion of the selection process, possesses binding legal force and is sustainable in law; secondly, whether the petitioner, upon being recommended by the Selection Committee, acquired any enforceable or vested right to appointment; thirdly, whether subsequent statutory amendments and executive instructions, brought into force after initiation of the selection process, are applicable to the petitioner s case; and lastly, whether the impugned order suffers from arbitrariness, unreasonableness, or any other legal infirmity so as to warrant interference in exercise of writ jurisdiction under Article 226 of the Constitution of India.

10. The Government Order dated 03.06.2016 came to be issued with the avowed objective of streamlining and expediting the recruitment process by prescribing a definite and non-derogable timeline, namely, that the entire selection exercise be concluded on or before 31.07.2016. It is a settled canon of administrative law that where a time prescription is engrafted in furtherance of public administration and is coupled with consequences affecting the efficacy and uniformity of such administration, the same ordinarily assumes a mandatory character. The said Government Order cannot, therefore, be construed as a mere procedural guideline; rather, it embodies a policy imperative intended to obviate delays, ensure uniformity, and prevent the mischief of protracted and inconclusive selection processes.

11. In the present case, it is not in dispute that the recommendation of the Selection Committee was forwarded beyond the stipulated cut-off date. The inevitable sequitur is that the selection process cannot be said to have culminated within the time frame mandated by the Government Order dated 03.06.2016. The breach of such a mandatory timeline vitiates the claim of the petitioner at its very inception.

12. The submission of the petitioner that he acquired a vested or enforceable right upon being recommended by the Selection Committee does not commend acceptance. The law in this regard is no longer res integra. It is trite that mere inclusion in a select list or even recommendation by a Selection Committee does not confer an indefeasible right to appointment. The distinction between a mere expectation and a legally enforceable right has been consistently underscored in service jurisprudence. The Constitution Bench of the Hon'ble Supreme Court in **Shankarsan Dash v. Union of India4**, authoritatively held that a candidate does not acquire any vested right to appointment merely by virtue of being selected. At best, the petitioner could be said to have had a legitimate expectation; however, such expectation remains subservient to statutory provisions, executive policy, and overarching considerations of public interest.

13. Equally untenable is the petitioner's reliance on the doctrine that the rules of the game cannot be altered midstream. While the said principle has been recognized as a salutary safeguard against arbitrariness, it is by no means absolute and admits of well-defined exceptions. The recent pronouncement of the Hon'ble Supreme Court in **Tej Prakash Pathak and others v. Rajasthan High Court and others5** has lucidly clarified that procedural modifications may be introduced even after the commencement of the selection process, and in appropriate cases, even substantive changes may operate, provided no vested right has crystallized in favour of a candidate.

14. In fact, the mere forwarding of the petitioner's papers for approval on 30.07.2016, received in the office of the District Basic Education Officer on 02.08.2016, did not confer any vested right upon the petitioner. The same was in clear contravention of the Government Order dated 03.06.2016, which governed the selection process and mandated completion of the proceedings by 31.07.2016. Consequently, the petitioner was not entitled to appointment under the prevailing Government Orders.

15. Further, in **State of U.P. v. Rachna Hills6,** the Hon'ble Supreme Court has unequivocally held that the governing rules are those which prevail on the date of consideration of the claim, and not necessarily those which were in force on the date of advertisement. The said

exposition of law marks a significant evolution in service jurisprudence and squarely applies to the facts of the present case. Consequently, the petitioner□s reliance on earlier authorities must yield to the contemporary legal position as expounded by the Apex Court.

16. The statutory framework itself underwent a substantial transformation with the promulgation of the Seventh Amendment Rules, 2019, followed by further policy interventions in the year 2023, including the establishment of a centralized recruitment mechanism through a Commission. These changes were neither cosmetic nor merely procedural; rather, they effectuated a paradigm shift from a decentralized, management-driven selection process to a centralized and regulated system of recruitment.

17. In this backdrop, the Government Orders dated 06.06.2023 and 19.06.2023 assume critical significance, as they unequivocally mandate that all incomplete or inchoate selection processes shall stand annulled. The petitioner□s selection, having never attained finality in the absence of approval by the competent authority, unmistakably falls within the category of an incomplete process. It is a well-settled principle that where a statutory or policy intervention occurs prior to the culmination of a selection process, such process must necessarily conform to the new regime, unless expressly saved. No such saving clause is discernible in the present case.

18. The plea of arbitrariness, as sought to be advanced on behalf of the petitioner, is equally devoid of substance. The impugned order reflects due and conscious consideration of the relevant statutory provisions, applicable Government Orders, and binding judicial precedents. Administrative action, when taken in consonance with the prevailing legal framework, cannot be branded as arbitrary merely because it operates to the detriment of an individual claimant.

19. Upon a holistic and anxious consideration of the facts of the case and the governing legal principles, this Court is of the considered opinion that the Government Order dated 03.06.2016 was binding in nature, and the selection process in question having not been completed within the stipulated period, no vested or enforceable right accrued in favour of the petitioner. This Court further holds that the subsequent statutory amendments and Government Orders validly apply to the present case. The impugned order, therefore, does not suffer from any illegality, irrationality, or procedural impropriety so as to warrant interference under Article 226 of the Constitution of India.

20. The order dated 17.08.2016 passed by the District Basic Education Officer, Bijnor□impugned in the earlier writ petition□records that the papers relating to approval of the selection were received in the office of the District Basic Education Officer on 02.08.2016, i.e., beyond 31.07.2016, the cut-off date prescribed under the Government Order dated 03.06.2016.

21. It is submitted that the stipulation of 31.07.2016 for completion of the selection process is mandatory in nature. The Government Order was issued with the specific object of ensuring expeditious completion of long-pending recruitment and to maintain uniformity across the State. The prescription of a definite timeline, coupled with the administrative consequences of delay, indicates a clear legislative intent to treat the schedule as binding rather than merely directory.

22. In the present case, the recommendation papers themselves were received after the expiry of the prescribed period. Thus, the process had not culminated within the mandated time-frame. Any action taken subsequent to 31.07.2016, including consideration or approval of such belated recommendations, stands vitiated being in contravention of the Government Order.

23. It is a settled principle that where a statute or executive instruction prescribes that a particular act is to be done within a specified time and such prescription is intended to achieve a public purpose, the same ordinarily assumes a mandatory character, especially when non-compliance would defeat the very object sought to be achieved.

24. Accordingly, the delayed submission of papers on 02.08.2016 renders the entire selection process liable to be declared invalid.

25. Accordingly, the selection process must be deemed to have come to an end on 31.07.2016, irrespective of whether it had actually been completed, in view of the mandatory timeline prescribed under the Government Order dated 03.06.2016. The said position was subsequently put to challenge in Writ Petition No. 14979 of 2018; however, no interim order was granted therein. Thus, the legal consequence that follows is that the selection proceedings initiated pursuant to the earlier notification stood concluded by 31.07.2016.

26. In such circumstances, once the prescribed period had lapsed, no further steps could have been validly undertaken in continuation of the said selection process. Consequently, after the issuance of subsequent Government Orders and the amendment notified on 04.12.2019, any fresh selection was required to be undertaken strictly in accordance with the law as prevailing on the date of initiation of such selection process.

27. It is a settled principle of law that where a selection process stands concluded or lapses due to efflux of time or operation of law, any further action must conform to the rules and statutory provisions in force at the relevant time. Therefore, any attempt to revive or continue the earlier selection proceedings beyond 31.07.2016 would be legally unsustainable.

28. After the issuance of the subsequent Government Orders, a requisition for filling up the vacant post was also submitted. The said requisition was challenged in Writ Petition No. 8305 of 2021, which ultimately came to be dismissed by judgment and order dated 05.03.2024.

29. This Court further notes that the petitioner had earlier filed Writ Petition No. 14979 of 2018, challenging the order dated 17.08.2016 whereby his approval was rejected, as well as Writ-A No. 8305 of 2021, questioning the validity of the requisition sent in respect of vacant posts of Assistant Teachers. Both writ petitions were dismissed by a common order dated 05.03.2024. Aggrieved, the petitioner preferred Special Appeal No. 674 of 2024, contending that the issue involved was no longer res integra in view of the law already settled in Committee of Management, Nehru Kisaan Vidyalaya Junior High School vs. State of U.P. and others7, and further that the judgment rendered in Ratan Pal Yadav vs. State of U.P. and others8, could not be brought to the notice of the learned Single Judge.

30. The Special Appeal was accordingly allowed, and the matter was remitted to the District Basic Education Officer to take a fresh decision in accordance with law,which, in so many words meant that all relevant aspects of the case were required to be considered by the District Basic Education Officer, particularly in light of the judgments in **Committee of Management, Nehru Kisan Vidyalaya Junior High School (supra) and Ratan Pal Yadav (supra),** before passing an appropriate order.

31. The submissions advanced on behalf of the petitioner do not merit acceptance. The contention that the selection process, having been initiated prior to the issuance of subsequent Government Orders and amendments, ought to be governed by the unamended provisions, is misconceived in the facts of the present case. It is not a case where the □rules of the game□ have been altered midstream; rather, the foundational requirement itself, as prescribed under the Government Order dated 03.06.2016, namely completion of the entire selection process by 31.07.2016, was not fulfilled. In absence of such completion within the stipulated time, no vested or accrued right can be said to have crystallized in favour of the petitioner.

32. The reliance placed on the principle that a selection process is governed by the rules prevailing on the date of advertisement is also misplaced, inasmuch as the said principle operates only where the process is validly continued in accordance with law. In the present case, the process itself stood vitiated upon failure to adhere to the mandatory timeline. The law laid down in **Committee of Management, Nehru Kisan Vidyalaya Junior High School (supra)** clearly holds that the Government Order dated 03.06.2016 is binding and mandatory, and any selection not concluded within the prescribed date cannot be approved. Similarly, in **Ratan Pal Yadav (supra)**, it has been reiterated that mere participation in a selection process or recommendation by the Selection Committee does not confer any indefeasible right to appointment, particularly when the process itself suffers from legal infirmities.

32. The further submission that subsequent Government Orders or amendments cannot be applied retrospectively is also of no avail to the petitioner, as the rejection of approval is not founded upon retrospective application of later policies, but on the admitted failure of the selection to meet the mandatory cut-off date prescribed under the Government Order dated 03.06.2016. Thus, the very substratum of the petitioner□s claim stands eroded.

33. Even the plea that the petitioner had acquired a vested right upon recommendation by the Selection Committee cannot be sustained in law, as it is well settled that recommendation does not ipso facto confer a right to appointment unless approval is granted by the competent authority in accordance with the governing provisions.

34. In view of the above, the contentions raised by the petitioner, as reiterated in the present writ petition, being devoid of substance and contrary to the settled legal position, are liable to be rejected.

35. This writ petition is, accordingly, **dismissed**. There shall be no order as to costs.

(2026) 5 ILRA 2054
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.05.2026

BEFORE

THE HON'BLE ANISH KUMAR GUPTA, J.

Writ A No. 63195 of 2007

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

Issue for Consideration

(1) Competence of DIG to take suo mot cognizance to review the punishment order passed by the Disciplinary authority, particularly when no appeal was filed against the particular order.

Headnotes

(A) Service law – Punishment – Dismissal from service – Charge of unauthorized absence from service for 74 days – Deputy Commandant, PAC passed the order dated 19.12.2003 awarding the punishment of Censure entry in character roll – No appeal was filed – However, D.I.G., PAC took suo moto cognizance of the order dated 19.12.2003 and directed for disciplinary proceedings with observation that the punishment was insufficient – Vide impugned order dated 31.05.2004, the petitioner was dismissed from service – Validity challenged – Competence of D.I.G. to take suo moto cognizance to review the order dated 19.12.2003 felt into consideration

Held : Since no appeal was ever preferred against the order dated 19.12.2003, the order dated 08.04.2004 passed by the DIG suo moto reviewing the order of punishment dated 19.12.2003 passed by the Deputy Commandant PAC and directing the disciplinary proceedings to be initiated for awarding the major punishment against the petitioner is without jurisdiction. Consequently, all subsequent proceedings which have taken place pursuant to the order dated 08.04.2004 are unsustainable in law. [Para 13] (E-1)

List of Acts

Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules 1991 – Rule 4, 7, 8, 20, 21, 23 and 24.

List of Keywords

Substitution application, Unauthorised absence, Confinement, Censure entry, Disciplinary proceeding, Major punishment, Charge-sheet, Show cause notice, Dismiss, Suo moto cognizance, Appeal, Review, Delinquent employee, Jurisdiction, Consequential benefits.

Case Arising From

Impugned order dated 08.04.2004 passed by the Deputy Inspector General (DIG), PAC, Agra Division, Agra.

Appearances for Parties

Advs. for the Petitioner : Tanmay Agarwal; Anil Kumar Vajpayee; Chandan Sharma; P.C. Srivastava.
Advs. for the Respondents : Vishal Singh, SC.

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

Order on Substitution Application No.341905 of 2009

1. The instant substitution application has been filed as the sole petitioner has reportedly died on 21.10.2009. The substitution application has been filed within time seeking substitution of the legal representatives of the sole petitioner.

2. There is no objection on behalf of the State respondents.

3. Accordingly, the instant substitution application is allowed.

4. Registry is directed to carry out the necessary substitution.

Order on Writ Petition

1. Heard Sri Anil Kumar Vajpayee, Advocate holding brief of Sri Tanmay Agarwal, learned counsel for the petitioner and Sri Vishal Singh, learned Standing Counsel for the State.

2. The instant petition has been filed by the petitioner herein challenging the order dated 31.05.2004 passed by respondent no.4 and the order dated 06.10.2006, whereby the appeal preferred by the petitioner was dismissed. The original petitioner has also prayed for reinstatement with full back-wages and other consequential benefits.

3. The briefly stated facts of the case are that the the petitioner was posted in 11th Battalion of PAC, Sitapur and transferred to 43rd Battalion PAC, Etah and for the same purpose, he was released on 10.04.2003. However, he had not reported to the 43rd Battalion. Later on, he reported in 43rd Battalion on 12.11.2003 and he has also reported that from 10.04.2003 till 05.06.2003 and from 21.07.2003 to 14.10.2003, he was confined in jail. Thus, in such view of the matter, excluding the confinement period, he was unauthorisedly absent from the services for 74 days. Pursuant to the aforesaid allegations, a show cause notice was issued on 10.12.2003 and thereafter, the Deputy Commandant, 43rd Battalion PAC Etah passed an order of punishment dated 19.12.2003against the petitioner whereby it was directed that a censure entry be recorded in his character roll. Thereafter, the Deputy Inspector General of Police (D.I.G.), PAC, Agra Division, Agra on 08.04.2004 took suo moto cognizance of the order dated 19.12.2003 passed by the Deputy Commandant and found that the punishment awarded to the petitioner was insufficient and accordingly directed that disciplinary proceedings should be initiated against him so that the major punishment can be awarded against the petitioner. Thus, the Deputy Inspector General of Police, PAC, Agra Division, Agra, has reviewed the order dated 19.12.2003 passed by the Deputy Commandant, 43rd Battalion PAC. Pursuant to the said order, the charge sheet was issued against the petitioner.

4. Against the said order dated 08.04.2004 passed by the DIG, PAC, the petitioner herein moved the representation before the Inspector General of Police through the Deputy Commandant, 43rd Battalion PAC on 21.04.2004. The Commandant rejected the prayer for staying the disciplinary proceeding initiated against the petitioner and however, the representation of the petitioner was forwarded to the Inspector General of Police, PAC. Thereafter, the charge-sheet was issued against the petitioner, enquiry was conducted and the enquiry report was submitted on

19.05.2004. Thereafter, the disciplinary authority issued a show cause notice to the petitioner. The petitioner submitted its detailed explanation and thereafter, the Commandant, PAC being the disciplinary authority has passed the order dated 31.05.2004 finding the petitioner herein guilty of unauthorised absence and consequently, vide order dated 31.05.2004 the petitioner was dismissed from service.

5. Being aggrieved, the petitioner herein has filed the writ petition being Writ Petition No. 62299 of 2005 challenging the order dated 31.05.2004 passed by the Commandant, PAC, Etah whereby punishment of dismissal from service was imposed. The said writ petition was dismissed by the learned Single Judge of this Court. Thereafter, the petitioner herein preferred Special Appeal No. 162 of 2006 which was disposed of vide order dated 08.03.2006 with the following observation:

"The learned counsel for the appellant submitted that the order dated 8.4.2004 passed by D.I.G., P.A.C. Agra was also challenged. In these circumstances, the Hon'ble Single Judge was not right in relegating the appellant to avail alternative remedy of appeal under Rule 20 before the same authority i.e. D.I.G., Agra. He further submitted that since the D.I.G. had already expressed his opinion, in respect to the major penalty, the remedy of appeal to the appellant is illusory. In our opinion, the submission has no force for the reason that the appeal against the order passed by the Commandant lies before the D.I.G. but where the original order has been passed by the D.I.G., the appeal lies before the I.G. under Rule 20(b) of 1991 Rules. Therefore, against order dated 8.4.2004 passed by D.I.G., P.A.C. Agra the appellant has statutory remedy of appeal under Rule 20(b) of 1991 Rules by preferring appeal before the Inspector General. The contention, therefore, that the appeal lies before the same authority is clearly incorrect, hence rejected. Admittedly the statutory provisions provides alternative remedy of appeal, therefore, in our view the Hon'ble Single Judge has rightly dismissed the writ petition relegating the appellant to avail the statutory remedy of appeal under the rule.

Besides that the appellant himself has stated in para-11 of the affidavit filed in support of the stay application that against the order dated 8.4.2004 passed by D.I.G., P.A.C., Agra, the appellant has filed a representation before the Inspector General which has not been decided. This shows that the appellant has already availed alternative remedy against the order dated 8.4:2004 and leaves no occasion to grant any indulgence by this court. Admittedly the said representation of the appellant has not been decided by the Inspector General. We, therefore, direct the Inspector General, Western Zone, Moradabad, respondent No. 2 in this appeal to treat the aforesaid representation of the appellant as an appeal under Rule 20(b) of 1991 Rules against the order dated 8.4.2004 of D.I.G., P.A.C., Agra as well as the order dated 31.5.2004 of the Commandant P.A.C. 43rd Battalion and to decide the same by a speaking order expeditiously and if possible within a period of six months from the date of production of certified copy of this order alongwith a copy of the aforesaid representation.

The special appeal being devoid of merit is dismissed with the observations made above."

6. In the special appeal, the Division Bench of this Court had taken note of the fact that against the order dated 08.04.2004, which was passed by the DIG, PAC taking suo moto

cognizance of insufficiency of the punishment awarded vide order dated 19.12.2003, the petitioner has already preferred a revision before the Inspector General of Police, which was pending adjudication. In such view of the matter, the special appeal was disposed of with a direction to the Inspector General of Police to decide the representation of the petitioner treating it an appeal against the order dated 08.04.2004 as well as order dated 31.05.2004. Vide impugned order dated 06.10.2006, the Inspector General of Police, PAC, Western Zone Moradabad rejected the appeal of the petitioner herein. Being aggrieved, the instant petition has been filed by the petitioner herein.

7. The submission of learned counsel for the petitioner is that once for the same allegations, after show cause notice and explanation, the disciplinary authority passed a final order of punishment against the petitioner directing a censure entry to be made in the character roll of the petitioner. It was not open for the DIG, PAC to reopen the issue because the DIG PAC has no power to review the order of the disciplinary authority suo motu, as no appeal had ever been preferred by the petitioner against the order dated 19.12.2003.

8. Learned counsel for the petitioner further submits that in the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules 1991, there is no provision empowering the appellate authority to review the punishment order suo moto, without there being any appeal preferred by the delinquent employee against whom the punishment order was passed. Consequently, the order dated 08.04.2004 passed by the DIG, PAC was without jurisdiction and all subsequent proceedings are unsustainable in law and cannot be sustained. In such view of the matter, the further orders of punishment passed by the Commandant PAC, Etah and by the Inspector General of Police in appeal are also required to be quashed.

9. Per contra, learned counsel for the State submits that in terms of Rule 24 of the aforesaid 1991 Rules, the appellate authority as well as the superior authority to the authority to whom an application will lie in exercise of revisionary powers have the powers to enhance the punishment awarded by the disciplinary authority. As such, the Deputy Inspector General of Police, who is an appellate authority has reviewed the order of the disciplinary authority and consequently after conducting the fresh disciplinary proceedings against the petitioner, the punishment orders have been passed and appeal against the same has also been dismissed by the Inspector General of Police, therefore, consequently the same were well within the rights of the appellate authority as well as the revisional authority. In such view of the matter, no interference is called for in the impugned orders.

10. Having heard the rival submissions so made by learned counsel for the parties, this Court has carefully gone through the record of the case. Before proceeding further, it would be relevant to take note of the relevant provisions of 1991 Rules. For the ready reference Rule 4, Rule 7, Rule 8, Rule 20, 23 and Rule 24 are as under:

"4. Punishment-(1) The following punishments may, for good and sufficient reasons and as

hereinafter provided, be imposed upon a Police Officer, namely:-

(a) Major Penalties:-

(i) Dismissal from service.

(ii) Removal from service.

(iii) Reduction in rank including reduction to a lower scale or to a lower

stage in a time scale.

1[(b) Minor penalties:-

(i) With-holding of promotion.

(ii) Fine not exceeding one month's pay.

(iii) With-holding of increment, including stoppage at an efficiency bar.

(iv) Censure

(v) Any pecuniary loss caused to the Government by neglect or violation of orders to be recovered from the salary in whole or in part.]

(2) In addition to the punishments mentioned in sub-rule (1) Head Constables and Constables may also be inflicted with the following punishments:-

(i) Confinement to quarters (this term includes confinement to Quarter Guard for a term not exceeding fifteen days extra guard or other duty).

(ii) Punishment Drill not exceeding fifteen days.

(iii) Extra guard duty not exceeding seven days.

(iv) Deprivation of good conduct pay.

(3) In addition to the punishments mentioned in sub-rules (1)and (2) Constables may also be punished with Fatique duty, which shall be restricted to the following tasks:

(i) Tent pitching;

(ii) Drain digging;

(iii) Cutting grass, cleaning jungle and picking stones from parade grounds;

(iv) Repairing huts and butts and similar work in the lines :

(v) Cleaning Arms.

7. Powers of punishment-(1) The Government or any officer of police department not below the rank of the Deputy Inspector-General may award any of the punishments mentioned in rule-4 on any police officer.

(2) The Superintendent of Police may award any of the punishments mentioned in sub-clause (iii) of clause (a) and clause (b) of sub-rule (1), of rule-4 on Inspectors and Sub-Inspectors.

(3) The Superintendent of Police may award any of the punishments mentioned in rule-4 on such police officers as are below the rank of Sub-Inspectors.

(4) Subject to the provisions contained in these rules all Assistant Superintendents of Police and Deputy Superintendents of Police who have completed two years of service as Assistant Superintendents of Police and Deputy Superintendents of Police as the case may be, may exercise powers of Superintendent of Police except the powers to impose major punishments

under rule-4.

(5) Notwithstanding anything contained in these rules Reserve Inspector, Inspector of Station Officer may award the punishments of drill and fatique duty to any constable under his charge for a period not exceeding three days, but he shall inform the Superintendent of Police concerned of his order immediately and in any case within 24 hours of passing the order.

8. Dismissal and removal-(1) No Police Officer shall be dismissed or removed from service by an authority subordinate to the appointing authority.

(2) No police officer shall be dismissed, removed or reduced in rank except after properinquiry and disciplinary proceedings as contemplated by these rules:

Provided that this rule shall not apply-

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry: or

(c) Where the. Government is satisfied that in the interest of the security of the State it is not expedient to hold such enquiry.

(3) All orders of dismissal and removal of Head Constables or Constables shall be passed by the Superintendent of Police. Cases in which the Superintendent of Police recommends

dismissal or removal of a Sub-Inspector or an Inspector, shall be forwarded to the Deputy Inspector-General concerned for orders.

(4) (a) The punishment for intentionally or negligently allowing a person in police custody or judicial custody to escape shall-be. dismissal unless the punishing authority for reasons to be recorded in writing awards a lesser punishment.

(b) Every officer convicted by the court for an offence involving moral turpitude shall be dismissed unless the punishing authority for reasons to be recorded in writing considers it otherwise.

*20. **Appeals** - (1) Every Police Officer against whom an order of punishment mentioned in sub-clauses (i) to (iii) of clause (a) and sub-clauses (i) to (iv) of clause (b) of rule 4 shall be entitled to prefer an appeal against the order of such punishment to the authority mentioned below:-*

(a) to the Police Officer who is the immediate jurisdictional superior authority to the Police officer who passed the order of punishment;

(b) to the Director General of Police who may either .decide the appeal himself or nominate, any Additional Director General for deciding it;

(c) to the State Government against the order passed under clause (b).

(2) No appeal shall lie against an order inflicting any of the petty punishments enumerated

in sub-rules (2) .and (3) of rule 4.

(3) Every officer desiring to prefer an appeal shall do so separately.

(4) Every appeal, preferred under these rules shall contain all material, statements, arguments relied on by the police officers preferring the appeal, and shall be complete in itself, but shall not contain disrespectful or improper language. Every appeal shall be accompanied by a copy of final order which is the subject of appeal.

(5) Every appeal, whether the appellant is still in service of Government or not, shall be submitted through the Superintendent of Police of the district or in the case of police officers not employed in district work through the head of the office to which the appellant belongs or belonged.

(6) An appeal will not be entertained unless it is preferred within three months from the date on which the police officer concerned was informed of the order of punishment.:

Provided that the appellate authority may, at his discretion for good cause shown extend the said period up to six months.

(7) If the appeal preferred does not comply with the provisions of sub-rule (4) the appellate authority may require the appellant to comply with the provisions of the said sub-rule within one month of the notice of such order to him and if the appellant fails to make the above compliance the appellate authority may dispose of the appeal in the manner as it deems fit.

(8) The Director-General or an Inspector-General may, for reasons to be recorded in writing, either on his own notion or on request from an appellate authority before whom the appeal is pending transfer the same to any order officer of corresponding rank.

23. Revisions- 1[(1) An officer whose appeal has been rejected by any authority subordinate to the Government is entitle to submit an application for revision to the superior authority next to the authority which has rejected his appeal within three months from the date of rejection of appeal as mentioned below:-

(a) to the Police Officer who is the immediate jurisdictional superior authority to the Police officer who passed the appellate order.

(b) to the Director General of Police who may either decide the revision himself or nominate any Additional Director General for deciding it;

(c) to the State Government against the order passed under clause (b). On such an application the powers of revision may be exercised only when, in consequent of flagrant irregularity, the reappears to have been material injustice or miscarriage of justice:

Provided that the revising authority may on its own motion call for and examine the records of any order passed in appeal against which no revision has been preferred under this rule for the purposes of satisfying itself as to the legality or propriety of such order, or as to the regularity of such procedure and pass such order with respect thereto as it may think fit:

Provided further that ***no order, under the first proviso shall be made except after giving the person effected a reasonable opportunity of being heard in the matter.***

(2) The procedure prescribed for appeal applies also to applications for revision. An application for revision of an order rejecting an appeal shall be accompanied by a copy of the original order as well as the order of appellate authority.

24. Enhancement of punishment-A punishment may be enhanced by :-

(a) an appellate authority on appeal; or

(b) any authority superior to the authority to whom an application will lie, in exercise of revisionary powers:

Provided that before enhancing the punishment such authority shall call upon the officer punished, to show cause why his punishment should not be so enhanced, and that an order by such authority so enhancing a punishment shall, be deemed to be an original order of punishment."

11. Rule 4 of 1991 Rules provides for the major penalties as well as minor penalty, which can be imposed against a delinquent employee. Rule 7(3) provides that the Superintendent of Police may award any of the punishment mentioned in Rule 4 on such Police Officers as are below the rank of Sub-Inspectors. Rule 8(1) provides that no Police Officer shall be dismissed or removed from service by any authority subordinate to the appointing authority. No Police Officer shall be dismissed, removed or reduced in rank except after proper enquiry and disciplinary proceedings as contemplated by these rules. After a punishment order is passed, the delinquent employee has a right to appeal under Rule 20 before the Police Officer who is immediately jurisdictional superior authority to the Police Officer who passed the order of punishment. However, Rule 20(2) further provides that no appeal shall lie against an order inflicting any of the petty punishments enumerated in sub-rules 2 and 3 of Rule 4. Rule 23 provides the suo moto powers to the revisional authority to review the orders of the appellate authority. Rule 24 provides that the punishment can be enhanced by an Appellate Authority on an appeal or any authority superior to the authority to whom an application will lie in exercise of revisionary power. Thus the Appellate Authority can enhance the punishment only on an appeal filed by the employee against the order of punishment. Appellate Authority has no power to take suo moto cognizance of the punishment order passed by disciplinary authority to review, alter or enhance the punishment.

12. In such view of the matter, in the instant case, vide order dated 19.12.2003, the Deputy Commandant 43rd Battalion, PAC has passed an order of punishment under Rule 4(1)(b)(iv) of 1991 Rules. This being the punishment under Rule 4(1), an appeal is provided under Rule 20 of the 1991 Rules. However, the petitioner herein did not choose to file any appeal against the appellate authority against the order dated 19.12.2003. Though Section 24 provides the appellate authority to enhance the punishment on an appeal preferred, but since no appeal was preferred, the appellate authority had no jurisdiction to review, alter or enhance the punishment awarded by the disciplinary authority.

13. In the instant case, since no appeal was ever preferred against the order dated 19.12.2003, the order dated 08.04.2004 passed by the DIG suo moto reviewing the order of punishment dated 19.12.2003 passed by the Deputy Commandant PAC and directing the disciplinary proceedings to be initiated for awarding the major punishment against the petitioner is without jurisdiction. Consequently, all subsequent proceedings which have taken place pursuant to the order dated 08.04.2004 are unsustainable in law.

14. In the circumstances, since the order dated 08.4.2004 passed by the DIG was without jurisdiction, the same is hereby ***quashed***. Consequently, all further proceedings such as the disciplinary proceeding, the enquiry report, order dated 31.05.2004 passed by the disciplinary authority as well as the order passed by the Inspector General of Police in appeal dated 06.10.2006 are hereby **quashed.** Since the original petitioner has already died, the substituted petitioners shall be entitled for all consequential benefits in accordance with law.

15. The respondents are directed to calculate all the consequential benefits available to the petitioner treating the original petitioner to be in continuity in service till his death within a period of three months from the date of production of the certified copy of this order.

16. The instant writ petition is **allowed** accordingly.

(2026) 5 ILRA 2063
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 18.05.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ A No. 2000743 of 2015

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

Issue for consideration

Can pension be withhold in garb of pending proceedings?

Headnotes

Service law-Constitution of India-Articles 14 and 300-A-Petitioner's case for promotion was admittedly kept in sealed cover- solely because of pendency of disciplinary proceedings-dismissal order stood quashed - subsequent inquiry failed to attain legal finality within the stipulated period- the foundation for denial of promotion ceased to exist-sealed cover procedure cannot operate indefinitely -petitioner attained superannuation-no legally sustainable disciplinary proceedings survive against him-pension not a bounty-withholding of final pensionary benefits without authority of law is violative of Articles 14 and 300-A of the Constitution of India. **W.P. allowed.**

Case Law Cited

1. Dr. Gyanwati Dixit v. State of U.P. Thru. Prin. Secy. Deptt. Of Secondary Education Lko. And 4 others (Writ Petition No.12286 of 2025)
2. Abhishek Prabhakar Awasthi v. New India Assurance Co. Ltd., 2013 SCC OnLine All 14267.

List of Acts

The Constitution of India

List of Keywords

Legitimate service benefits; denial of promotion; final pensionary benefits; consequential benefits.

Appearances of parties

Counsel for Petitioner(s) : Ram Raj, Ajendra Pratap Singh Counsel for Respondent(s) : C.S.C.

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

1. Heard Mrs. Radhika Singh, learned Advocate holding brief of Shri Ram Raj, learned counsel for the petitioner and learned Standing Counsel for the respondents-State.

2. By means of the present writ petition, the petitioner has prayed for the following reliefs:

i. Issue a writ of Mandamus or a writ, order or direction in the nature of Mandamus commanding the opposite party/ State Government to notionally promote the petitioner to the post of Additional Municipal Commissioner with effect from 18.12.1998, when Sri Prithvi Singh, Junior to the petitioner was promoted and granted selection grade.

ii. Issue a writ of Mandamus or a writ, order or directionin the nature of Mandamus commanding the opposite party/ State Government to pay arrears of saalry with effect from 1.7.1999 to 30.10.2005 with 18% interest.

iii. Issue a writ of Mandamus or a writ, order or direction in the nature of Mandamus commanding the opposite party/ State Government to pay final pension to the petitioner alongwith arrears of final pension with 18% interest.

iv. Issue a writ of Mandamus or a writ, order or direction in the nature of Mandamus commanding the opposite party/ State Government to adequately compensate the petitioner by paying Rs.50 lacs for giving false statement of filing the Special Leave Petition on 16.11.2011 before the Hon'ble Supreme Court and misleading this Hon'ble Court, resulting in irreparable loss and injury to the petitioner; on inquiry it has been found that no Special Leave Petition was filed on 16.11.2011 or before against the judgment and order dated 18.4.2011 passed by this Hon'ble Court in Writ Petition No.86 (S/B) of 2006.

v. Any other order which this Hon'ble Court may deem fit and proper in the circumstances of the case may also be passed.

vi. Allow the writ petition with costs.

3. Factual matrix of the case is that the petitioner was appointed on the post of Executive Officer, Class-I/ Assistant Municipal Commissioner through the Uttar Pradesh Public Service Commission on 11.03.1980 and was subsequently promoted on temporary and ad hoc basis to the post of Deputy Municipal Commissioner vide office order dated 06.03.1987. As per the final seniority list dated 10.02.1997 (Anneuxre no.1 at page 26-28 of writ petition), the petitioner was placed at serial no.15. Thereafter, a Departmental Promotion Committee was convened on 24.01.2000 for regularization on the said post and for promotion to the post of Additional Municipal Commissioner. However, on account of pendency of disciplinary proceedings, the case of the petitioner was kept in sealed cover, whereas his junior were promoted to the post of Additional Municipal Commissioner with effect from 18.12.1998.

Subsequently, while the petitioner was posted as Project Director, District Urban Development Agency, disciplinary proceedings were initiated against him on the allegation that while signing a cheque amounting to Rs.20,000/-, he had allegedly failed to exercise due caution, as a result whereof the amount of the cheque was purportedly altered and enhanced to Rs.2,00,000/- leading to alleged embezzlement of the said amount. On the basis of the aforesaid allegations, disciplinary proceedings were initiated against the petitioner and he was ultimately dismissed from service vide order dated 30.10.2005.

Aggrieved by the dismissal order dated 31.10.2005, the petitioner filed Writ Petition No.86(S/B) of 2006 before the Allahabad High Court, Lucknow Bench. The said writ petition was allowed vide judgment and order dated 18.4.2011 (Annexure No.2 at page 29-33 of the writ petition), whereby the dismissal order dated 31.10.2005 was set aside with all consequential benefits. This Hon□ble Court furthe granted liberty to the State Government to hold a fresh inquiry, if so desired, but specifically directed that the same be concluded within a period of six months from the date of receipt of certified copy of the order.

Subsequently, while the petitioner was posted as Project Director, District Urban Development Agency, disciplinary proceedings were initiated against him on the allegation that while signing a cheque amounting to Rs.20,000/-, he had allegedly failed to exercise due caution, as a result whereof the amount of the cheque was purportedly altered and enhanced to Rs.2,00,000/-leading to alleged embezzlement of the said amount. On the basis of the aforesaid allegations, disciplinary proceedings were instituted against the petitioner and he was ultimately dismissed from service vide order dated 31.10.2005.

Aggrieved by the dismissal order dated 31.10.2005, the petitioner filed Writ Petition No.86 (S/B) of 2006 before the Allahabad High Court, Lucknow Bench. The said writ petition was allowed vide judgment and order dated 18.04.2011 (Annx. No.2 at page 29-33 of WP), whereby the dismissal order dated 31.10.2005 was set aside with all consequential benefits. This Hon'ble Court further granted liberty to the State Government to hold a fresh inquiry, if so desired, but specifically directed that the same be concluded within a period of six months from the date of receipt of certified copy of the order.

After passing of the judgment and order dated 18.04.2011 by this Hon'ble Court in Writ Petition No.86 (S/B) of 2006, the petitioner submitted a representation dated 23.04.2011 (Annx. No.3 at page 34-35 of WP) before the Principal Secretary. Nagar Vikas, Government of Uttar Pradesh alongwith certified copy of the aforesaid judgment requesting compliance of the directions issued by this Hon'ble Court and grant of consequential service benefits.

While allowing Writ Petition No.86 (S/B) of 2006 vide judgment and order dated 18.04.2011, this Hon'ble Court held that the departmental inquiry conducted against the petitioner suffered from substantial procedural illegality and violation of principles of natural justice as no oral evidence was recorded and no opportunity of cross-examination was afforded to the petitioner. This Hon'ble Court further observed that the main allegation. regarding embezzlement pertained to Sri Kishori Lal Sharma, who had been arrested and sent to jail, and accordingly set aside the

dismissal order dated 31.10.2005 with all consequential benefits while granting liberty to the State Government to conclude a fresh inquiry within a period of six months.

Despite the judgment and order dated 18.04.2011 (Annx. No.2 at page 29-33 of WP) passed by this Hon'ble Court in Writ Petition No.86 (S/B) of 2006 having attained finality, the opposite parties neither complied with the directions issued therein nor reinstated the petitioner with consequential benefits within the stipulated period.

Consequently, when no fresh inquiry was initiated or concluded within the time prescribed by this Hon'ble Court and the petitioner was nearing the age of superannuation on 30.11.2011, the petitioner was constrained to file Writ Petition No.1917 (S/B) of 2011 before this Hon'ble Court seeking directions commanding the opposite parties to permit him to discharge duties on the post of Deputy Municipal Commissioner, pay his salary regularly and extend all consequential service benefits.

During the hearing of Writ Petition No.1917 (S/B) of 2011 on 16.11.2011 (Annx. No.4 at page 37 of WP), submissions were advanced on behalf of the petitioner highlighting that the petitioner was due to retire on 30.11.2011 and that the judgment and order dated 18.04.2011 (Annx. No.2 at page 29-33 of WP) had still not been complied with by the State Government. At that stage, on behalf of the State Government, a statement was made that a Special Leave Petition had already been filed before the Hon'ble Supreme Court challenging the judgment and order dated 18.04.2011 (Annx. No.2 at page 29-33 of WP) passed by this Hon'ble Court, whereupon the matter was adjourned. It subsequently transpired that no such Special Leave Petition had been filed on the said date and the same was filed (SLP No. 20263 of 2011) thereafter with delay, which ultimately came to be dismissed by the Hon'ble Supreme Court vide order dated 17.02.2012 (Annx. No. 5 at page 38 of WP).

Subsequently, this Hon'ble Court vide order dated 28.03.2012 (Annx. No. 6 at page 39 of WP) took serious note of the incorrect statement made on behalf of the State Government regarding filing of the Special Leave Petition and directed the Legal Remembrancer to conduct an inquiry in the matter.

Pursuant thereto, an inquiry report dated 07.04.2012 (Annx. No. 7 at page 40-46) was submitted before this Hon'ble Court, wherein it was found that no Special Leave Petition had been filed on or before 16.11.2011, as had been represented before this Hon'ble Court.

Thereafter, pursuant to the judgment and order dated 18.04.2011 (Annx. No.2 at page 29-33 of WP) passed by this Hon'ble Court in Writ Petition No.86 (S/B) of 2006 and dismissal of the Special Leave Petition by the Hon'ble Supreme Court on 17.02.2012 (Annx. No. 5 at page 38 of WP), the petitioner submitted a detailed representation dated 27.02.2012 (Annx. No. 8 at page 47-48 of WP) before the Principal Secretary, Nagar Vikas, Government of Uttar Pradesh seeking compliance of the aforesaid judgment and grant of consequential service benefits including promotion to the post of Additional Municipal Commissioner.

In pursuance thereof, the State Government issued an office order dated 27.03.2012 (Annx. No. 9 at page 49-52 of WP) taking note of the petitioner's representation and providing that the period from 31.10.2005 till the date of superannuation of the petitioner on 30.11.2011 shall be treated as continuous service for payment of salary and other admissible benefits, subject to the outcome of disciplinary proceedings. The said office order further recorded that since the petitioner had already retired from service on 30.11.2011, no decision was being taken with regard to posting/promotion on the post of Additional Municipal Commissioner.

However, despite expiry of the period fixed by this Hon'ble Court for conclusion of fresh inquiry and despite the petitioner having already retired from service on 30.11.2011, the State Government issued an office order dated 15.05.2012 seeking to initiate a fresh disciplinary inquiry wholly without jurisdiction against the petitioner in relation to the same allegations which had earlier culminated in the dismissal order dated 31.10.2005.

Pursuant thereto, the Inquiry Officer issued a charge-sheet dated 29.05.2012 to the petitioner. Aggrieved by the aforesaid action, the petitioner submitted objections dated 16.07.2012 (Annx. No. 10 at page 53-54 of WP) before the Inquiry Officer specifically contending that the inquiry proceedings were wholly without jurisdiction, having been initiated after expiry of the period prescribed by this Hon'ble Court and without sanction under Article 351-A of the Civil Service Regulations, particularly when the petitioner had already superannuated on 30.11.2011. The petitioner further requested that no further proceedings be continued pursuant to the said charge-sheet.

Aggrieved by the office order dated 15.05.2012 initiating fresh disciplinary proceedings after his retirement and in violation of the judgment and order dated 18.04.2011 (Annx. No.2 at page 29-33 of WP) passed by this Hon'ble Court, the petitioner filed Writ Petition No.706 (S/B) of 2012 before this Hon'ble Court on 26.05.2012 seeking quashing of the aforesaid office order and further seeking directions for compliance of the office order dated 27.03.2012 (Annx. no. 9 at page 49-52 of WP) issued by the State Government in pursuance of the judgment dated 18.04.2011 (Annx. No.2 at page 29-33 of WP). The petitioner also prayed that the opposite parties be restrained from proceeding further pursuant to the impugned inquiry proceedings initiated vide order dated 15.05.2012.

During the pendency of Writ Petition No.706 (S/B) of 2012, this Hon'ble Court vide order dated 29.01.2013 (Annx. No. 11 at page 55) directed the learned Standing Counsel to obtain instructions as to whether the judgment and order dated 18.04.2011 with regard to consequential benefits had been complied with or not, and further observed that in the event of non-compliance, the Principal Secretary, Department of Urban Development shall appear in person before this Hon'ble Court.

Thereafter, pursuant to the aforesaid order passed by this Hon'ble Court, the Upar Nagar Ayukta, Nagar Nigam, Lucknow issued a letter dated 02.02.2013 (Annx. No. 12 at page 56 of WP) releasing the salary of the petitioner for the period from 31.10.2005 to 30.11.2011. The said communication was served upon the petitioner on 03.02.2013.

Thereafter, the petitioner submitted representations dated 04.03.2013 (Annx. no. 13 at page 57-58 of WP) and 19.09.2013 (Annx. no. 14 at page 60-61 of WP) before the opposite parties requesting compliance of the judgment and order dated 18.04.2011 passed by this Hon'ble Court and seeking grant of consequential service benefits including notional promotion, arrears of salary and retiral dues. However, no final decision was taken by the authorities on the said representations.

Subsequently, the Finance and Accounts Officer, Directorate of Local Bodies, Uttar Pradesh issued Gratuity Payment Order no. P.C./2738/3263-Pe/13-2293 dated 26.02.2014 (Annx. no. 15 at page 62 of WP) releasing only 75% gratuity and provisional pension in favour of the petitioner, while final pensionary benefits and other consequential dues continued to be withheld by the opposite parties.

Although partial retiral dues and salary for certain period were released subsequently, the opposite parties have till date failed to grant full consequential benefits flowing from the judgment dated 18.04.2011 (Annx. No.2 at page 29-33 of WP). The petitioner has repeatedly submitted representations seeking compliance of the aforesaid judgment, including grant of notional promotion, selection grade, arrears of salary from 01.07.1999 to 30.10.2005 and final pensionary benefits, but no final decision has been taken by the authorities.

Thereafter, the petitioner again submitted a representation dated 11.04.2014 (Annx. no.16 at page 63-64 of WP) before the Principal Secretary, Nagar Vikas, Government of Uttar Pradesh requesting compliance of the judgment and order dated 18.04.2011 passed by this Hon'ble Court and seeking release of the remaining consequential service and pensionary benefits, including notional promotion, arrears of salary and final pension. However, despite repeated representations, the opposite parties failed to extend full benefits to the petitioner.

4. Learned counsel for the petitioner submitted that the opposite party has not promoted the petitioner notionally to the post of Additional Municipal Commissioner with effect from 18.12.1998, when the petitioner's junior Sri Prithvi Singh was promoted to the post of Additional Municipal Commissioner and the opposite party has not granted selection grade to the petitioner.

5. Learned counsel for the petitioner next submitted that after the judgment and order of this Hon'ble Court dated 18.4.2011 in Writ Petition no. 86 (S/B) of 2006 (annexure no.2) whereby the dismissal order of the petitioner from services was set aside by this Hon'ble Court, the opposite party was under legal obligation to have complied the said judgment and order dated 18.4.2011; more so when no fresh inquiry, as directed by this Hon'ble Court was initiated or concluded within a period of six months.

6. Learned counsel for the petitioner next submitted that the alleged inquiry instituted against the petitioner vide order dated 15.5.2012 without following the provisions contained in Article 351-A of the Civil Services Regulations is wholly illegal and arbitrary. However, the said inquiry has been dropped.

7. Learned counsel for the petitioner next submitted that the petitioner was selected on a post of Executive Officer Class-I/Assistant Municipal Commissioner by the U.P. Public Service Commission, after qualifying both the written examination and interview and was appointed on the said post on 11.3.1980.

8. Learned counsel for the petitioner next submitted that for the purposes of regularization and promotion, a Departmental Promotion Committee was convened on 24.1.2000, the recommendation of the committee in respect of the petitioner's regularization on the post of Deputy Municipal Commissioner and promotion to the post of Additional Municipal Commissioner was kept in a sealed cover. Even though as per the final seniority list dated 10.2.1997 the petitioner was placed at Serial no.15, the petitioner was not granted selection grade and juniors to the petitioner were considered and were promoted to the post of Additional Municipal Commissioner with effect from 18.12.1998.

9. Learned counsel for the petitioner next submitted that perusal of the report dated 7.4.2012 and the affidavit dated 10.4.2012 prove that the alleged Special Leave Petition was not filed on 16.11.2011 or before and the incorrect and misleading statement on behalf of the opposite party alleging that the Special Leave Petition was filed on 16.11.2011 resulted in irreparable loss and injury to the petitioner as the matter was adjourned on the ground of having preferred Special Leave Petition and no interim order was granted by this Hon'ble Court.

10. Learned counsel for the petitioner next submitted that in compliance of the judgment and order dated 18.4.2011, passed by this Hon'ble Court, the State Government had issued Office Order dated 27.3.2012. Notwithstanding the office order dated 27.3.2012, the State Government acted illegally, arbitrarily and without applying mind had issued an office order dated 15.5.2012 for instituting a fresh inquiry against the petitioner.

11. Learned counsel for the petitioner next submitted that the Finance and Accounts Officer, Department of Directorate of Local Bodies, U.P. issued a Gratuity payment order no. P.C./2738/3263-Pe./13-2293 dated 26.2.2014 had released the 75% of the gratuity and provisional pension to the petitioner. Since, the State Government did not hold any fresh inquiry within the period of six months, as directed vide judgment and order dated 18.4.2011 and therefore the order dated 18.4.2011 has to be complied by the opposite party and the petitioner is entitled for all consequential benefits.

12. Learned counsel for the petitioner next submitted that after the removal order dated 31.10.2005 was set aside by this Hon'ble Court, the petitioner is entitled for his salary from July, 1999 upto 30 October, 2005 alongwith full pension and consequential benefits. The pension and arrears of salary are not bounty and the petitioner has legal right for the same. Similarly, promotion is a normal incidence of service and the petitioner has a fundamental right to be considered for promotion, which involves effective, purposeful and meaningful consideration.

13. Learned counsel for the petitioner next submitted that the inaction of the opposite party in not granting the notional promotion to the petitioner to the post of Additional Municipal Commissioner with effect from 18.12.1998, granting selection grade, arrears of salary with effect

from 1.7.1999 to 30.10.2005 and paying final pension to the petitioner alongwith arrears of final pension is wholly illegal, contemptuous, arbitrary, unjust, lacks transparency, discriminatory, colourable exercise of power, contrary to the service rules and against the provisions of the Constitution of India and is also against the Government policy.

14. Learned counsel for the petitioner next submitted that the issue relating to continuation of disciplinary proceedings beyond the period prescribed by the Court is no longer res integra. In Dr. Gyanvati Dixit Vs. State of U.P. and others, Writ-A No.12286 of 2025, decided on 08.05.2026, this Hon'ble Court, while considering the judgments of the Hon'ble Supreme Court in Union of India Vs. Sharvan Kumar and State of U.P. Vs. Ram Prakash Singh as well as the Full Bench judgment of this Hon'ble Court in Abhishek Prabhakar Awasthi Vs. New India Assurance Company Limited and others, has held that though disciplinary proceedings may not automatically lapse merely on expiry of the stipulated period, continuation of such proceedings without seeking extension of time from the Court and despite objection by the delinquent employee is unsustainable in law. In the present case also, admittedly no extension of time was ever obtained from this Hon'ble Court despite expiry of the period prescribed vide judgment and order dated 18.04.2011 and, therefore, continuation of proceedings vide order dated 15.05.2012 is wholly illegal and without jurisdiction.

15. In support of her submissions, learned counsel for the petitioner has placed reliance upon the following judgments:

(i) Dr. Gyanwati Dixit v. State of U.P. Thru. Prin. Secy. Deptt. Of Secondary Education Lko. And 4 others (Writ Petition No.12286 of 2025)

(ii) Abhishek Prabhakar Awasthi v. New India Assurance Co. Ltd., reported in 2013 SCC OnLine All 14267.

16. On the other hand, learned counsel for the respondents denied the averments of the petitioner regarding the promotion of Sri Prithvi Singh and submitted that Sri Prithvi Singh was not promoted on the post of Additional Municipal Commissioner on 18.12.1998. At that time there was a provision of nomination on the post of Uppar Mukhya Nagar Adhukari (now Uppar Nagar Ayukt) from amongst the senior most Uppar Mukhya Nagar Adhukari (now Uppar Nagar Ayukt) working in special pay scale and there was also a provision of promotion of Uppar Mukhya Nagar Adhukari (now Uppar Nagar Ayukt) from amongst the senior most Uppar Mukhya Nagar Adhukari (now Uppar Nagar Ayukt) working in general pay scale.

17. Learned counsel for the respondents next submitted that on 24.01.2000 a meeting of DPC was held for regularisation of ad-hoc employees and promotion of officers working at UP Nagar Ayukt (General Pay Scale of Rs. 3000-4500) and at that time ***the recommendation of DPC in respect of promotion of the petitioner were kept in a seal cover due to pendency of departmental proceedings against the petitione***r by means of order dated 18.10.1995 and 24.07.1999 and the persons who were working on adhoc basis on the post of Uppar Nagar Ayukt, though they were junior to the petitioner, were given regular promotion on the post of UP Nagar Ayukt (General Pay Scale of Rs. 3000-4500).

18. Lastly, learned counsel for the respondents submitted that the writ petition filed by the petitioner lacks merit and the grounds taken in the writ petition are not tenable in the eyes of law and as such is liable to be dismissed.

19. Having heard the rival submissions of learned counsel for the parties, I have perused the material available on record as well as case-law cited by learned counsel for the parties.

20. To resolve the controversy involved in the present writ petition, relevant paragraphs of the judgments relied upon by learned counsel for the petitioner is extracted here-in-below:

(i) Dr. Gyanvati Dixit (supra):-

11. In support of his contentions, he has placed reliance on the Judgment and Order dated 06-07-2022 passed by the Hon?ble Apex Court in the case of Union of India (UOI) and Ors Vs Sharvan Kumar, (Civil Appeal No. 1942 of 2014 decided on 06-07-2022) and has referred paragraph nos. 9.1 to 11 of the said Judgment, which are quoted hereinunder :-

9.1. It needs hardly any elaboration to say that fixing of the period of two months by the Tribunal in this case had only been to ensure expeditious proceedings because the matter was being restored for reconsideration in the year 2010, though the disciplinary proceedings related with the incident dated 09.01.2005. However, the said period of two months did not acquire any status akin to that of a statutory mandate that the disciplinary proceedings would have automatically come to an end with its expiry. It remains trite that if an Adjudicating Authority in exercise of its jurisdiction could grant or fix a time period to do a particular thing, in the absence of a specific statutory provision to the contrary, the jurisdiction to fix such a time period inhers the jurisdiction to extend the time initially fixed. Such conditional orders have regularly been construed by this Court to be in terrorem so as to put a check on the dilatory tactics by any litigant or to guard against any laxity on the part of the Adjucating Authority but, the Court is not powerless to enlarge the time even though it had peremptorily fixed the period at any earlier stage. In the case of Mahanth Ram Das v. Ganga Das MANU/SC/0027/1961: (1961) 3 SCR, this court examined the peremptory order of the Court fixing the period of payment of deficit court fees in the backdrop of the fact that the application for extension of time came up for hearing only after the time fixed by the Court had expired and the application was rejected. This Court put the things in perspective while observing, inter alia, as under:-

5?..Such orders are not like the law of the Medes and the Persians. Cases are this and to have restored a suit or proceeding, even though a final order had been passed...

9.2. We may elaborate a little. When a conditional order is passed by the Court/Tribunal to do a particular act or thing within a particular period but the order does not provide anything as to the consequence of default, the Court/Tribunal fixing the time for doing a particular thing obviously retains the power to enlarge such time. As a corollary, even the Appellate Court/Tribunal or any higher forum would also be having the power to enlarge such time, if so required. In any case, it cannot be said that the proceedings would come to an end immediately after the expiry of the time fixed.

9.3. In the present case, even the order dismissing the application for enlargement of time on a technical ground of not placing before the Tribunal instructions of the Railway Board, had again been not of giving any such status of mandatory and rigid character to the period originally fixed that the proceedings would have abated.

10. We are Impelled to observe that while treating the proceedings as having abated and as nullity, the High Court has ignored the fundamental principles that fixing of such time period was only a matter of procedure with an expectation of conclusion of the proceedings in an expeditious manner. This period of two months had not acquired any such mandatory statutory character so as to nullify the entire of the disciplinary proceedings with its expiry.

10.1. Moreover, when no consequence of default was stated in the order dated 03.09.2010, the period as stated therein was only of expectations and not of mandate. We may also observe that very many times, such fixing of time period causes more complications and harm rather than serving the cause of justice. Fixing of such period could only be justified if there are strong and compelling reasons for the same; and if at all such period is proposed to be fixed, not only the reasons for the same but, even the consequences of default are also required to be stated if such period is, for any valid reason, expected to operate with adverse consequences on the defaulter.

11. The upshot of the discussion foregoing is that the proceedings in question neither abated nor could have been considered nullity only because of passage of the expected time period stated in the order of the Tribunal dated 03.09.2010. There was no reason or justification for the High Court to interfere with the just and proper order passed by the Tribunal on 21.06.2013, which deserves to be restored with necessary consequential directions.?

12. Referring the aforesaid, he submits that it has been held by the Hon?ble Apex Court, while dealing with an identical issue that when the conditional order is passed, with the direction, to do a thing, in a particular manner or within the particular period, but, the consequences of default is not provided, the same would not have created the nullity of the proceeding or would have abated automatically.

13. He has also placed reliance on the Judgment rendered by the Full Bench of this court in the case of Abhishek Prabhakar Awasthi Vs New India Assurance Company Limited & Others, reported in 2014 (6) All LJ 662(FB) and has referred paragraph no. 13, which is quoted hereinunder :-

13. Undoubtedly, where the Court has stipulated a period of time by which a departmental enquiry has to be concluded, the stipulation as to time has to be observed. But it must be emphasized that the failure on the part of the employer to conclude the enquiry within the period so stipulated will not result in a situation where the enquiry must, in all cases, and for whatever reason, be regarded as being rendered without jurisdiction or a nullity upon the expiry of that period. The court which fixes time for completion of an enquiry equally has Jurisdiction to extend time for compliance. A stipulation of time in an order of the Court is not akin to a statute of limitation. In each case, it is for the court to determine as to whether the facts and circumstances

are such as would warrant the grant of a further extension of time. The circumstances which would weigh with the Court would include the nature and complexity of the charge, the efforts which have been made for the conclusion of the enquiry, the reasons for the delay and the conduct of the parties in the course of the disciplinary proceedings. In Suresh Chandra v. State of M.P., a Special Leave Petition was filed before the Supreme Court against a judgment of the High Court setting aside an order of the Administrative Tribunal. The High Court had held that the disciplinary authority could not proceed with the enquiry after the lapse of the period granted to it by the Tribunal and that period having expired on 15 May 1999, the disciplinary authority could not proceed further with the enquiry. The Supreme Court set aside the judgment of the High Court and held that it was only fair to remand the matter to the Inquiry Officer to resume the disciplinary proceedings from the stage which was reached on 15 May 1999. The Supreme Court clarified that all proceedings taken before that date shall remain as they are and the disciplinary authority will proceed further to examine evidence and submit its report within the extended period as stipulated in the order of the Supreme Court. Thereafter, a period was fixed for the disciplinary authority to pass its orders from the date of submission of the enquiry report. The judgment of the Supreme Court in Suresh Chandra's case recognizes the power which inheres in the court to extend the time which has been fixed for the completion of an enquiry for valid and cogent reasons.?

25. The judgment dated 19.10.2019 was assailed before the Hon'ble Supreme Court and the appeal came to be decided vide the judgment in the case of Ram Prakash Singh (supra). The Hon'ble Supreme Court framed five issues for consideration of which the issue relevant for the present case is as under: -

"(iv) whether the inquiry not having been completed within the time stipulated by the tribunal in its order dated 23rd January 2014, the disciplinary proceedings could have been continued beyond May, 2014?"

35. In case of Ram Prakash Singh(supra), it has been elaborated on the aspect of, how an application for extension of time is to be dealt with and the consequence of non-filing of the application for extension of time. Whereas in the case of Sharvan Kumar (supra), the findings were recorded in peculiar facts and circumstances as the application for extension of time was rejected on account of insufficient particulars. It is discernible that in the case of Ram Prakash Singh(supra), the court has taken into account a situation where no bona fide attempt is shown to have been made to seek an extension of time and vide paragraph 63 it has been made open for the courts to overlook the laxity in an exceptional case and make directions as it deems fit in the circumstances. There is no inconsistency between the aforenoted two ratios. The judgment of Ram Prakash Singh (supra) recognizes the same aspect but elaborates on further principles, as regard grant of extension of time and the consequences of, not seeking extension, by showing sufficient cause, therefore the law laid down in the case of Ram Prakash Singh (Supra) is in conspectus of the Judgment of Sharvan Kumar(Supra).

37. As is borne out from the factual matrix and submissions of the leaned counsels for the parties that the matter admittedly could not be concluded within fifty one days rather the same has been concluded within seventy one days. It is noticed that no application for extension of time limit,

prescribed by the court, has been moved, by the authority concerned, prior passing the order impugned dated 23-06-2025.

41. I am of the considered opinion that so far as the factual matrix of the present case are concerned, in absence of any application for extension of time period, prior passing the order impugned, the said order stands vitiated. Consequently, the order impugned dated 23-06-2025 is unsustainable in the eyes of law, resultantly, the same is hereby quashed.

(ii) Abhishek Prabhakar Awasthi (supra):-

2.The following questions have been referred in the order of the learned Single Judge for determination by the Full Bench:"

"(a) Whether if an inquiry proceeding is not concluded within a time frame fixed by a court and concluded thereafter, without seeking extension from the Court then on the said ground the entire inquiry proceeding as well as punishment order passed, is vitiated in view of the judgment in the case of P.N. Srivastava; and

(b) Whether the law as laid down by a Division Bench of this Court in the case of P.N. Srivastava that if an inquiry proceeding is not concluded within a time frame as fixed by a Court, it stands vitiated is still a good law in view of the judgment rendered by the Supreme Court in the case of Suresh Chandra as well as a judgment dated 27.07.2009 of a Division Bench of this Court in Writ Petition No. 1056 (SB) of 2009 (Union of India v. Satendra Kumar Sahai).

5. In M.L. Sachdev v. Union of India1, a direction was issued by the Supreme Court for the constitution of the Monopolies and Restrictive Trade Practices Commission within a stipulated period. The direction was not duly observed and contempt proceedings were initiated. In that context, the Supreme Court held that since the direction was not complied with by the date stipulated, it was the obligation of the contemnor to approach the Court for a further extension of time or to receive such directions as the Court, in its discretion, thought it appropriate to make. A similar principle was followed by the Supreme Court in the case of State of Bihar v. Subhash Singh2, where an order of costs was imposed. The Supreme Court observed that when the High Court had directed that the case of the writ petitioner should be considered and disposed by a reasoned order within a period of two months, it was expected that the authorities shall discharge their duty expeditiously in accordance with the directions. Having failed to do so, the authorities were required to furnish an explanation to the Court of the circumstances in which they could not comply with the directions or if there was any unavoidable delay, further time for compliance should have been taken. In these circumstances, since no steps were taken by the officer, an order of costs was imposed.

6. In the context of disciplinary proceedings, the High Court in the exercise of its writ jurisdiction under Article 226 of the Constitution may in appropriate cases fix a stipulation in regard to the conclusion of an enquiry within a stipulated period. Such an order may be passed in several situations, such as when an employee moves a petition challenging an order of suspension and the Court considers it appropriate, in the interests of justice, to direct that the disciplinary

proceeding should be expeditiously disposed of. Such direction are issued in other appropriate instances to obviate a delay in disposing of disciplinary proceedings. The basis and rationale for these orders is to ensure that an employee is not prejudiced by an undue delay in the conclusion of a disciplinary proceeding. Where the Court stipulates a period of time during which an enquiry must be completed, such a stipulation has to be observed. Clearly, it is not open to the employer to act in disregard of the orders of the Court and it cannot possibly be asserted that notwithstanding the time fixed by the Court, the employer is at liberty to conclude the enquiry at its own whims and fancy disregarding the stipulation of time.

8. In P.N. Srivastava v. State of U.P.3, a Division Bench noted that in that case a concession of the revival of a disciplinary enquiry was extended on the condition that it would be completed within a period of four months of the judgment of the Court. The Division Bench referred to those cases where statutory rules prescribe a period of limitation for holding an enquiry in which, as a consequence, it has been held that the departmental enquiry must be concluded before the lapse of the period prescribed from the date the misconduct had taken place. The Division Bench held that the direction issued by the Court must stand on the same footing as a period of limitation which has been prescribed by the Statute or the Rules and since the directions of the Court are required to be complied with, disobedience would amount to a contempt of the order of the Court. However, the Division Bench has also noticed that in case the departmental enquiry cannot be concluded within the date so fixed, the Court can be moved for extension of time.

12.In another judgment in Ajeet Kumar Singh v. Hardoi District Co-operative Bank Ltd., Hardoi7, it has been emphasized that once a Court has fixed certain period for conclusion of a departmental enquiry, it could not have been continued after the stipulated period without seeking permission from the Court.

19.In view of the above discussion, we now proceed to answer the questions which have been referred to the Full Bench.

(A)Question No. (a): We hold that if an enquiry is not concluded within the time which has been fixed by the Court, it is open to the employer to seek an extension of time by making an appropriate application to the court setting out the reasons for the delay in the conclusion of the enquiry. In such an event, it is for the court to consider whether time should be extended, based on the facts and circumstances of the case. However, where there is a stipulation of time by the Court, it will not be open to the employer to disregard that stipulation and an extension of time must be sought;

(B)Question No. (b): The judgment of the Supreme Court in the case of Suresh Chandra (supra)as well as the judgment of the Division Bench of this Court in the case of Satyendra Kumar Sahai (supra) clearly indicate that a mere delay on the part of the employer in concluding a disciplinary enquiry will notipso facto nullify the entire proceedings in every case. The court which has fixed a stipulation of time has jurisdiction to extend the time and it is open to the court, while exercising that jurisdiction, to consider whether the delay has been satisfactorily explained. The court can suitably extend time for conclusion of the enquiry either in a proceeding instituted by the employee challenging the enquiry on the ground that it was not completed within the stipulated

period or even upon an independent application moved by the employer. The court has the inherent jurisdiction to grant an extension of time, the original stipulation of time having been fixed by the court itself. Such an extension of time has to be considered in the interests of justice balancing both the need for expeditious conclusion of the enquiry in the interests of fairness and an honest administration. In an appropriate case, it would be open to the Court to extend time suo motu in order to ensure that a serious charge of misconduct does not go unpunished leading to a serious detriment to the public interest. The court has sufficient powers to grant an extension of time both before and after the period stipulated by the court has come to an end.

21. It is undisputed that the dismissal order dated 31.10.2005 was quashed by this Court vide judgment dated 18.04.2011 with consequential benefits. Once an order of dismissal is set aside, the legal effect is that the employee stands restored to his original position unless otherwise restricted by the Court. The expression with consequential benefits necessarily includes restoration of continuity of service, consideration for promotion and retiral benefits.

22. The office order dated 27.03.2012 itself recognizes that the petitioner's services from 31.10.2005 till superannuation shall be treated as continuous service. Therefore, the respondents cannot simultaneously treat the petitioner to be in continuous service and yet deny consideration for promotion and consequential retiral dues.

23. Secondly, this Court in the earlier writ petition vide order dated 18.04.2011 had granted liberty to hold a fresh inquiry and specifically directed that the same be concluded within six months. Admittedly, no inquiry was concluded within the stipulated period. Equally undisputed is the fact that no application seeking extension of time was ever moved before this Court.

24. The legal issue concerning continuation of disciplinary proceedings beyond the time fixed by the Court is no longer res integra.

25. Taking note of the the judgment of the Full Bench of this Court in the case of **Abhishek Prabhakar Awasthi (supra)** wherein it was held that *"although mere expiry of the stipulated period would not ipso facto nullify the proceedings, it is mandatory for the employer to seek extension of time from the Court and it is not open to the employer to disregard the stipulation fixed by the Court."* Relevant paragraph is mentioned hereinafter;

"19.In view of the above discussion, we now proceed to answer the questions which have been referred to the Full Bench.

(A)Question No. (a): We hold that if an enquiry is not concluded within the time which has been fixed by the Court, it is open to the employer to seek an extension of time by making an appropriate application to the court setting out the reasons for the delay in the conclusion of the enquiry. In such an event, it is for the court to consider whether time should be extended, based on the facts and circumstances of the case. However, where there is a stipulation of time by the Court, it will not be open to the employer to disregard that stipulation and an extension of time must be sought;

B)Question No. (b): The judgment of the Supreme Court in the case of Suresh Chandra (supra)as well as the judgment of the Division Bench of this Court in the case of Satyendra Kumar Sahai (supra)clearly indicate that a mere delay on the part of the employer in concluding a disciplinary enquiry will not ipso facto nullify the entire proceedings in every case. The court which has fixed a stipulation of time has jurisdiction to extend the time and it is open to the court, while exercising that jurisdiction, to consider whether the delay has been satisfactorily explained. The court can suitably extend time for conclusion of the enquiry either in a proceeding instituted by the employee challenging the enquiry on the ground that it was not completed within the stipulated period or even upon an independent application moved by the employer. The court has the inherent jurisdiction to grant an extension of time, the original stipulation of time having been fixed by the court itself. Such an extension of time has to be considered in the interests of justice balancing both the need for expeditious conclusion of the enquiry in the interests of fairness and an honest administration. In an appropriate case, it would be open to the Court to extend time suo motu in order to ensure that a serious charge of misconduct does not go unpunished leading to a serious detriment to the public interest. The court has sufficient powers to grant an extension of time both before and after the period stipulated by the court has come to an end."

26. Also taking note of the judgment in the case of **Dr. Gyanvati Dixit (supra),** after considering **Sharvan Kumar, Ram Prakash Singh** and the Full Bench judgment in **Abhishek Prabhakar Awasthi**, it was held that "continuation of disciplinary proceedings without obtaining extension of time and despite objection by the employee would render the proceedings unsustainable." Relevant paragraph is mentioned hereinafter;

"25. The judgment dated 19.10.2019 was assailed before the Hon'ble Supreme Court and the appeal came to be decided vide the judgment in the case of Ram Prakash Singh (supra). The Hon'ble Supreme Court framed five issues for consideration of which the issue relevant for the present case is as under: -

"(iv) whether the inquiry not having been completed within the time stipulated by the tribunal in its order dated 23rd January 2014, the disciplinary proceedings could have been continued beyond May, 2014?"

35. In case of Ram Prakash Singh(supra), it has been elaborated on the aspect of, how an application for extension of time is to be dealt with and the consequence of non-filing of the application for extension of time. Whereas in the case of Sharvan Kumar (supra), the findings were recorded in peculiar facts and circumstances as the application for extension of time was rejected on account of insufficient particulars. It is discernible that in the case of Ram Prakash Singh(supra), the court has taken into account a situation where no bona fide attempt is shown to have been made to seek an extension of time and vide paragraph 63 it has been made open for the courts to overlook the laxity in an exceptional case and make directions as it deems fit in the circumstances. There is no inconsistency between the aforenoted two ratios. The judgment of Ram Prakash Singh (supra) recognizes the same aspect but elaborates on further principles, as regard grant of extension of time and the consequences of, not seeking extension, by showing sufficient cause, therefore the law laid down in the case of Ram Prakash Singh (Supra) is in conspectus of the Judgment of Sharvan Kumar(Supra).

37. As is borne out from the factual matrix and submissions of the leaned counsels for the parties that the matter admittedly could not be concluded within fifty one days rather the same has been concluded within seventy one days. It is noticed that no application for extension of time limit, prescribed by the court, has been moved, by the authority concerned, prior passing the order impugned dated 23-06-2025.

41. I am of the considered opinion that so far as the factual matrix of the present case are concerned, in absence of any application for extension of time period, prior passing the order impugned, the said order stands vitiated. Consequently, the order impugned dated 23-06-2025 is unsustainable in the eyes of law, resultantly, the same is hereby quashed."

27. In the present case, despite expiry of six months from the judgment dated 18.04.2011, no extension was ever sought from this Court. The respondents continued with the proceedings after retirement of the petitioner. Such action on the part of the respondents is wholly arbitrary and contrary to judicial discipline.

28. The conduct of the respondents further assumes significance in view of the fact that an incorrect statement had earlier been made before this Court regarding filing of Special Leave Petition and the inquiry conducted pursuant thereto revealed that no such Special Leave Petition had been filed on the relevant date. This Court is of the considered opinion that the respondents failed to act with diligence and fairness despite categorical directions issued by this Court.

29. It is admitted that the petitioner□s case for promotion was admittedly kept in sealed cover solely because of pendency of disciplinary proceedings. Once the dismissal order stood quashed and the subsequent inquiry failed to attain legal finality within the stipulated period, the foundation for denial of promotion ceased to exist. The sealed cover procedure cannot operate indefinitely to deprive an employee of his legitimate service benefits.

30. The petitioner has also attained superannuation and no legally sustainable disciplinary proceedings survive against him. Pension is not a bounty. It is a valuable right earned by an employee for long years of service. Withholding of final pensionary benefits without authority of law is violative of Articles 14 and 300-A of the Constitution of India.

31. The respondents have already treated the petitioner's service period till retirement as continuous service and have released salary for the relevant period. Consequently, denial of full retiral dues and consideration for notional promotion is wholly unjustified.

32. In view of the above discussion, the writ petition is **allowed** with the following directions:

i) The respondents are directed to consider and grant notional promotion to the petitioner on the post of Additional Municipal Commissioner from the date his immediate junior was granted promotion, subject to verification of eligibility and seniority alongwith consequential benefits flowing from such notional promotion including fixation of pay, selection grade and recalculation of retiral dues.

(ii) The respondents shall release final pension, arrears of pension, gratuity and all consequential retiral benefits admissible to the petitioner after due revision.

(iii) With regard to the prayer seeking compensation of Rs.50 lakhs for the incorrect statement made before this Court, although the conduct of the respondents deserves serious disapproval, the respondents are directed to pay a sum of Rs.5 lakhs to the petitioner as costs for making incorrect statement before this Court in regard to filing of special appeal before Hon'ble Supreme Court.

(iii) No order as to costs.

(2026) 5 ILRA 2079
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.05.2026

BEFORE

THE HON'BLE MRS. GARIMA PRASHAD, J.

Writ C No. 469 of 2026

Shajiya Parveen & Anr. **...Petitioners**
Versus
State of U.P. & Anr. **...Respondents**

Issue for consideration

The petition concerns a live-in couple seeking police protection from interference by the woman's family.

Headnotes

A. Civil matter-Constitution of India,1950-Article 226, 21- Prohibition of child Marriage Act,2006-Sections 2(a), 3, 11, 13, 15 &16-Special Marriage Act, 1954-Section 4(c)-Hindu Marriage Act,1955-Section 5(iii)-Live-in Relationship-Protection of life and liberty-Marriageable Age-Prohibition of child Marriage Act,2006-Male below 21 years-Statutory incapacity to marry-Interfaith relationship-Muslim woman and Scheduled Caste Hindu male-Parent's lawful intervention-Vague allegations of threat-No specific incident pleaded- Court cannot circumvent legislative mandate-Relief refused-writ petition dismissed.(Para 8 to 45)

Held

The court held that while every individual is entitled to protection against unlawful threats, violence, coercion or illegal detention under Article 21, such protection cannot be used to legitimize or facilitate a live-in relationship that effectively circumvents the statutory minimum marriageable age. (E-6)

Case law Cited

Nandakumar Vs State of Kerala (2018) 16 SCC 602, Lata Singh Vs State of U.P. (2006) 5 SCC 475, Shafin Jahan Vs Asokan K.M. (2018) 16 SCC 368, Indra Sarma Vs V.K.V.Sarma (2013 15 SCC 755, S.Khushboo Vs Kanniammal (2010) 5 SCC 600, Smt. Varsha & Anr. Vs State of U.P.(Writ C No. 38648 of 2025), Independent Thought Vs Union of India (2017) 10 SCC 800, Smt. Samiya & Anr. Vs State of U.P (Writ C No. 41804 of 2025)-referred to.

List of Acts

Constitution of India, 1950, Prohibition of child Marriage Act, 2006, Special Marriage Act, 1954, Hindu Marriage Act,1955.

List of Keywords

Prohibition of child Marriage Act,2006, Special Marriage Act, 1954, Hindu Marriage Act,1955, Live-in Relationship-Protection of life and liberty-Marriageable Age-Prohibition of child Marriage Act,2006, Statutory Incapacity, Interfaith relationship, Parent's lawful intervention, Vague allegations of threat.

Case Arising from

CIVIL JURISDICTION: WRIT -C No. -469 OF 2026 04.05.2026

Shajiya Parveen & Anr Vs. State of U.P. & 3 Ors

From the judgment and order dated 04.05.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Adv.for Petitioner(s):

Mahipal Singh

Adv. for Respondent(s):

C.S.C

(Delivered by Hon'ble Mrs. Garima Prashad, J.)

1. Heard Sri Mahipal Singh, learned counsel for the petitioners and Sri Ashwani Kumar Tripathi, learned Additional Chief Standing Counsel for the State-respondents.

2. The present petition has been filed by the petitioners asserting that they are residing together as a couple in a live-in relationship. Petitioner no.1 is a woman aged about 20 years and petitioner no.2 is a male aged about 19 years. It is pleaded that petitioner no.1 belongs to the Muslim community whereas petitioner no.2 belongs to a Scheduled Caste Hindu family.

3. It is stated that the father of petitioner no.1 has been threatening them and pressuring them to sever their relationship, though the parents of the petitioner No.2 have no objection to such a relationship. Hence, by means of the present writ petition, the petitioners seek directions to the respondent police authorities to restrain their family members not to interfere in their cohabitation as a live-in relationship, further to ensure protection of their life and liberty, as guaranteed under Article 21 of the Constitution of India.

4. Learned counsel for the petitioners submitted that the parties cannot solemnize marriage under the provisions of the Special Marriage Act, 1954 since the Petitioner no.2 boy is only 19 years old and has not yet completed the age of 21 years as required by law to marry.

5. Learned counsel for the petitioners relied upon the orders passed by this Court in similar matters wherein protection has been granted to couples who were living in a live-in relationship and that no one can interfere in their peaceful living. It is submitted that the petitioners are majors and they have the right to live-in with a person of their own choice with or without marriage.

6. Per contra, learned Additional Chief Standing Counsel opposed the prayer placing reliance upon the provisions of the Special Marraige Act, 1954, Hindu Marriage Act, 1955 and

the Prohibition of Child Marriage Act, 2006 (hereinafter referred to as the 2006 Act). It is contended that the petitioner No.2, being below the age of 21 years, falls within the definition of Child thus he cannot solemnise marriage under any of the above laws. It was urged that where the legislature itself has treated a male below the age of 21 years as lacking legal capacity to enter into marriage, the Court ought not to indirectly permit a marriage-like relationship under the rubric of a live-in arrangement. It was further submitted that statutory policy concerning age, maturity and legal capacity cannot be neutralised through a broad invocation of Article 21. It is argued that permitting such a relationship would defeat the legislative intent underlying the statutory framework governing marriageable age.

7. Upon hearing learned counsel for the parties and perusing the material brought on record, the core issue which arises for consideration is:

Whether this Court, in exercise of its writ jurisdiction, can grant protection to a live-in relationship where one of the parties (male) is below 21 years of age and is statutorily classified as a child for the purposes of marriage, and whether, in such circumstances, this Court can restrain parents or guardians from interfering or from taking lawful steps under the applicable statutory framework.

8. At the outset, it is necessary to examine the legislative scheme governing marriage in the country. The field is principally occupied by three enactments, namely, the Hindu Marriage Act, 1955, the Special Marriage Act, 1954, and the Prohibition of Child Marriage Act, 2006. Each of these statutes, though operating in different spheres, uniformly prescribe conditions relating to the legal capacity to marry, including the minimum age requirement.

9. The **Prohibition of Child Marriage Act, 2006** (hereinafter referred to as the '2006 Act') is the primary enactment which defines the capacity of parties to enter into a marital relationship and prescribes consequences where such capacity is absent.

10. Section 2(a) of the 2006 Act defines a child to mean a person who, if male, has not completed twenty-one years of age, and if female, has not completed eighteen years of age. Section 2(b) defines a child marriage as a marriage to which either of the contracting parties is a child.

11. Section 3 provides that every child marriage shall be voidable at the option of the contracting party who was a child at the time of the marriage. The proviso stipulates that a petition for annulment may be filed only by such contracting party. Parliament thus preserved to the child party the option to later avoid such a marriage.

12. Sections 4 to 7 deal with the consequences arising out of such marriages. These provisions empower the district court to pass orders relating to maintenance, residence, custody of children, legitimacy of children born out of such marriages, and modification of such orders.

13. Section 11 provides for punishment in cases where a child marriage is promoted or permitted. It specifically provides that any person having charge of the child, including a parent or guardian, who promotes, permits, or negligently fails to prevent such marriage, shall be punishable.

The section further incorporates a statutory presumption that, where a minor has contracted a marriage, the person having charge has failed to prevent it, unless the contrary is proved.

14. Section 13 empowers the Judicial Magistrate of the first class or Metropolitan Magistrate to issue an injunction where a child marriage in contravention of the Act has been arranged or is about to be solemnised. Parliament therefore did not intend the law to remain helpless until the event was complete. It expressly created a preventive power to stop the prohibited union before solemnisation.

15. Section 15 declares that offences under the Act are cognizable and non-bailable.

16. Section 16 requires the State Government to appoint Child Marriage Prohibition Officers and places upon them duties to prevent solemnisation of child marriages, collect evidence, counsel individuals and communities, create awareness, and discharge such other functions as may be assigned.

17. The 2006 Act thus creates a full enforcement structure. It does not leave the matter to private morality or family pressure. It institutionalises prevention. Thus, the Parliament did not intend merely to classify child marriages after they occur. It intended to prevent them, discourage them, penalise those who facilitate them, protect those affected by them, and regulate the consequences where they nevertheless take place. The statute is, in substance, a complete code for prevention and intervention in this field.

18. The 2006 Act establishes a marriage-specific incapacity. A male may be an adult under the law of majority upon completing eighteen years of age, but the Parliament has still chosen to treat him as a child for marriage until the age of twenty-one. This distinction reflects a conscious legislative judgment that marriage requires a higher level of maturity than many other civil acts.

19. The need for such child marriage restriction legislation is also clear from the structure and purpose of the Act itself. These laws exist because Parliament has recognised that premature unions often involve lack of maturity, lack of financial and emotional readiness, interruption of education, gendered vulnerability, and serious social and long-term consequences. The statute is not an obsolete formality. It is a modern welfare enactment responding to conditions that Parliament considered serious enough to warrant prevention, punishment and institutional oversight.

20. The provisions of the **Hindu Marriage Act, 1955** may now be examined. Section 5 of that Act lays down the conditions for a Hindu marriage. Clause (iii) expressly states that the bridegroom must have completed the age of twenty-one years and the bride the age of eighteen years at the time of marriage. The wording of the section shows that the age requirement is a basic condition for the solemnisation of a Hindu marriage.

21. It is true that under the Hindu Marriage Act not every violation of Section 5 automatically renders the marriage void under Section 11. However, that does not reduce the

importance of the age condition. Section 18 specifically provides punishment for contravention of certain conditions of marriage, including the age condition in Section 5(iii). Therefore, even under Hindu personal law, Parliament treated the age requirement seriously and attached penal consequences to its breach.

22. The provisions of the **Special Marriage Act, 1954** now require consideration. It gives the secular and religion-neutral framework. Section 4 begins with a non-obstante clause and states that, notwithstanding anything contained in any other law relating to the solemnisation of marriages, a marriage between any two persons may be solemnised under the Act only if the conditions listed therein are fulfilled. Clause (c) specifically states that the male must have completed the age of twenty-one years and the female the age of eighteen years. Section 24 then provides that any marriage solemnised under the Act shall be null and void if any of the conditions specified in clauses (a), (b), (c) and (d) of Section 4 has not been fulfilled. Thus, under the secular civil framework, the age condition is not merely procedural. It directly affects the validity of the marriage.

23. A conjoint reading of the aforesaid enactments leaves no manner of doubt that, across both personal and secular law, as well as under the special preventive legislation, a uniform legislative policy has been adopted. A male who has not completed twenty-one years of age is not regarded as possessing the requisite legal capacity to enter into a marital relationship, and any union involving such a person falls within the zone of statutory restriction.

24. The position under Muslim personal law also requires notice. Petitioner no.1 belongs to the Muslim community. The petitioners do not claim that they have solemnised a nikah. As per their own case, they are in a live-in relationship outside marriage. Even if some schools of Muslim personal law may recognise marriage on puberty, that concerns marriage and not a live-in arrangement outside marriage. In the present case, the petitioners do not assert a Muslim marriage at all. Therefore, Muslim personal law does not come to their assistance. At the same time, even if a more permissive rule existed in any personal law, the secular statutes presently in force prescribe the higher threshold that this Court is bound to enforce. Thus, what cannot be achieved either as a valid secular marriage or as a pleaded lawful marriage under the applicable personal-law framework cannot be judicially reconstituted as a sanctioned live-in arrangement.

25. The petitioners themselves stated that they are in a live-in relationship because the law does not currently allow them to marry. In this context, the live-in arrangement is being used as an alternative to marriage, which affects the legal character of the case.

26. A live-in relationship involving cohabitation, shared domestic life, emotional and physical intimacy, and mutual dependency is, in practical substance, a relationship in the nature of marriage. If such a relationship is consciously adopted because the law withholds the right to marry until a later age, then a court order protecting its continuance does not remain a bare protection order. It begins to operate as an indirect sanction for a presently impermissible marriage-like arrangement.

27. The doctrine that what cannot be done directly cannot be permitted to be done indirectly applies with full force here. If a court cannot permit the parties to marry because the law withholds that permission until the male completes twenty-one years, the court cannot achieve substantially the same result by treating the functional equivalent of that marriage as entitled to judicial support simply because it is described as a live-in relationship.

28. This position becomes clearer on a proper reading of Section 3 of the 2006 Act. The provision preserves to the child party the right later to avoid the marriage. If, in the meantime, a court permits a male child under the Act to continue in a marriage-like live-in relationship with an adult female, the woman may be exposed to serious legal and social insecurity. She may alter her entire life in reliance on the relationship, while the law still preserves to the male child a later option of repudiation or annulment. A welfare statute cannot be read in a way that increases the vulnerability of the woman while purporting to protect the child male.

29. The argument of parity also deserves consideration. Where a girl is below eighteen years of age, the law does not recognise her □consent□ to enter into a marriage or even a marriage-like relationship. In such cases, even if the relationship is claimed to be consensual, the law treats it as impermissible, and stringent provisions such as those under the Protection of Children from Sexual Offences Act, 2012 are attracted. The boy is not exonerated merely on the ground of consent.

30. On the same principle, where a male is below twenty-one years of age and is treated as a □child□ for the purposes of marriage under the statutory framework, the concept of □consent□ cannot be used to bypass the legal restriction. A relationship cannot be permitted merely because it is described as consensual, when the law itself treats one of the parties as lacking the capacity to enter into such a union.

31. The legislative threshold is intended to be protective and controlling, and cannot be applied selectively. What is not permitted in the case of a minor girl on the ground of consent cannot be indirectly permitted in the case of a male child merely because the relationship is described as voluntary cohabitation.

32. The issue of parental intervention also requires careful consideration. It would be too broad to hold that no writ can ever be issued against parents. Where parents resort to threats, violence, illegal confinement, abduction, or any act outside the bounds of law, the Court is bound to restrain such conduct. However, the position cannot be taken to the other extreme. Where the statute itself places responsibility upon parents and guardians to prevent child marriage, the Court cannot pass an order which, in effect, restrains them from taking lawful steps in discharge of that duty.

33. Section 11 of the 2006 Act makes it clear that persons having charge of the child may be held liable for promoting, permitting, or failing to prevent such marriage. Section 13 further empowers the Magistrate to intervene and prevent such marriages through injunctions. These provisions indicate that the law expects active responsibility on the part of parents and guardian family members to take preventive steps, and not remain passive. Accordingly, while parents or

family members cannot resort to threats, violence, coercion, or illegal confinement, they cannot be restrained from taking lawful steps such as approaching the police, informing the Child Marriage Prohibition Officer, or initiating proceedings before the competent Magistrate under the statute.

34. It is now necessary to examine the precedents relied upon by the parties.

35. In ***Nandakumar v. State of Kerala (2018) 16 SCC 602***, the Supreme Court, in a habeas corpus proceeding, held that an adult woman cannot be detained or separated from a person of her choice merely because the parties are not competent to marry. The judgment thus restrains unlawful interference with personal liberty. It does not restrain the operation of the statutory framework governing capacity to marry, nor does it require courts to extend protection in a manner that defeats such law.

36. In ***Lata Singh v. State of U.P. (2006) 5 SCC 475***, the Supreme Court held that once a person becomes a major, he or she can marry whosoever he or she likes, and directed protection for major inter-caste or inter-religious couples against threats and violence. That decision is an important affirmation of adult autonomy. But its premise is that the parties are legally competent adults for marriage. It does not answer a case where one party is, by express statutory definition, still a child for marriage purposes. The ratio of Lata Singh cannot be detached from its foundation and applied in disregard of a marriage-specific legal disability created by Parliament.

37. In ***Shafin Jahan v. Asokan K.M. (2018) 16 SCC 368***, the Supreme Court emphasised that the right to choose a partner is integral to Article 21 and that courts must not annul a valid marriage in habeas corpus jurisdiction merely because others disapprove of that choice. That case dealt with an adult woman whose valid marriage had been set aside in habeas corpus proceedings. It stands for autonomy in accordance with law. It does not hold that Article 21 allows courts to disregard statutory conditions of marital capacity or to convert a legally disabled relationship into a sanctioned one. The autonomy recognised there cannot be extended into a power to bypass legislative age thresholds.

38. In ***Indra Sarma v. V.K.V. Sarma (2013) 15 SCC 755***, the Supreme Court accepted that the Protection of Women from Domestic Violence Act can cover a □relationship in the nature of marriage,□ but it also laid down limiting features and made clear that not every cohabitation qualifies. The Court was concerned with identifying a carefully bounded category capable of specific statutory protection. It was not authorising all live-in relationships irrespective of legality. Legal recognition depends upon the relationship being of a kind that law can accept. A relationship that collides with express statutory restrictions cannot automatically be elevated into a protected quasi-marital arrangement.

39. In ***S. Khushboo v. Kanniammal (2010) 5 SCC 600***, the Supreme Court held that living together by adults is not, by itself, an offence and that social morality cannot by itself trigger criminal prosecution. That judgment was directed against moral policing through criminal law. It did not involve the question whether writ jurisdiction may be used to neutralise the scheme of the statutory framework discussed above, where one party remains under a marriage-specific disability.

It therefore cannot be read as authority for the proposition that every live-in arrangement, regardless of its conflict with statutory policy, is entitled to judicial support.

40. The decision of this Court in ***Smt. Varsha and Another v. State of U.P***., Writ-C No. 38648 of 2025, decided on 16.01.2026, may also be noticed. In that case, this Court granted protection to the parties, where the female petitioner was major and the male petitioner had not attained twenty-one years, while expressly recording that it was not adjudicating upon the validity of the relationship. The relief was confined to protection of life and liberty. The judgment does not examine or decide the question of legality or permissibility of such a relationship under the statutory framework, and therefore does not conclude the issue which arises for consideration in the present case.

41. On the other hand, reliance was placed by the learned counsel for the State on *Independent Thought v. Union of India (2017) 10 SCC 800,* wherein the Supreme Court recognised the serious consequences of child marriage and emphasised that child-protective statutes must be interpreted in a manner that advances their object. The Court took note of the adverse physical, social and psychological effects associated with such early unions and adopted an interpretation that strengthened statutory safeguards for children. In doing so, it did not dilute the legislative restrictions governing child marriage, but affirmed the necessity of strictly enforcing them in order to protect minors.

42. In view of the foregoing discussion, the issue framed is answered in the following terms:

(i) This Court, in exercise of its writ jurisdiction, cannot grant protection to a live-in relationship in a manner that confers legitimacy upon, or facilitates the continuation of, a relationship which, in substance, operates as a substitute for a marriage that is presently impermissible under the statutory framework governing capacity to marry.

(ii) At the same time, the constitutional guarantee under Article 21 must be preserved. Even if such a relationship does not receive legal recognition, the individuals concerned remain entitled to protection against harm, illegal detention, abduction, or coercion.

(iii) It is further held that neither parents, guardians, nor statutory authorities including the Child Marriage Prohibition Officers can be restrained from taking lawful steps in accordance with the Prohibition of Child Marriage Act, 2006 and other applicable laws, provided that such action remains within the bounds of law.

43. Applying the above principles to the facts of the present case, it is evident that petitioner no.2, being below twenty-one years of age, is statutorily classified as a □child□ for the purposes of marriage. The writ petition does not disclose any specific incident, date, time or identifiable act of threat, abduction, detention or coercion attributable to the parents or guardians of the petitioners. No contemporaneous complaint to the police or any competent authority alleging such acts has been placed on record. The pleadings are wholly general and unsupported by

particulars. Such vague and omnibus allegations do not warrant the issuance of any general order of restraint against the parents or guardians of the petitioners in exercise of writ jurisdiction.

44. The petitioners are always at liberty to approach the police authorities with a complaint in respect of any specific unlawful acts such as threats, violence, coercion or illegal restraint, whereupon the authorities shall act in an expeditious manner in terms of the Government Order dated 31.08.2019, as noticed in ***Smt. Samiya and Another v. State of U.P.,*** Writ-C No. 41804 of 2025. However, such protection cannot extend to restraining parents, guardians or statutory authorities from taking lawful steps under the applicable statutory framework.

45. The writ jurisdiction of this Court cannot be invoked to dilute or circumvent the operation of the statute.

46. In view of the above, no case is made out for grant of the reliefs as prayed, and the writ petition is accordingly dismissed.

(2026) 5 ILRA 2087
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.05.2026

BEFORE

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

Writ C No. 3056 of 2020

Alongwith

Writ C No. 18896 of 2019

Jai Shakti Realcon ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

A. Whether a mining lessee is liable to pay royalty only on the actual quantity of minor mineral excavated by him under Section 15(3) of the Mines and Minerals (Development and Regulation) Act, 1957.
B. Whether, where the lessee defaults in payment of royalty, the State is required to exercise its power under Rule 58 of the U.P. Minor Minerals (Concession) Rules, 1963 expeditiously for determination of the mining lease.
C. Whether delay in exercising the power of determination under Rule 58 of the Rules, 1963, without disclosing any bona fide reason, resulting in increase of the lessee's liability, constitutes arbitrary exercise of power under Article 14 of the Constitution.

Headnotes

U.P. Imposition of Ceiling on Land Holdings Act, 1960 – ss.4-A, 5(6)(b), 10(2), 13 – Constitution of India – Art.226 – Ceiling proceedings – Determination of irrigated land – Bona fide transfer – Scope of remand – Delay and laches – Petitioner challenged orders declaring surplus land – Contention that authorities treated the same land as irrigated while determining the permissible ceiling area and as unirrigated while declaring surplus land – Further contention that land already transferred by a registered sale deed in favour of bona fide purchasers was illegally included in the petitioner's holding – Prescribed Authority enhanced the surplus area after remand – Appellate authority affirmed the order – Writ petition :

Held: A. *Section 15(3) of the Act, 1957 cannot be interpreted in a manner so as to confer benefit upon the lessees for not paying installments where mineral has not been removed or consumed by him.* **Where the mining lease deed executed in Form MM-6 provides for the quantity of minor mineral to be excavated annually in cubic meters, the highest bid offered by the lessee, and the total amount of installments payable in the first year and subsequent years, which also form the consideration for the contract,** *the installments would be payable under the terms of the lease.* **Therefore,** *the provisions of Section 15(3) of the Act, 1957 cannot be read or interpreted in a manner to confer a benefit on the lessee for not paying the installments where no mineral has been removed or consumed by him.* **(Paras 42-54)**

B. *Rule 58 of the Rules, 1963 and the lease deed executed in Form MM-6 confers power upon the State Government to determine the lease deed* **if the conditions enumerated in Rule 58 or under the relevant clause of the lease deed exist.** *However, neither the Rules, 1963 nor the lease deed permit the lessee to exit from the lease deed if for any reason the lessee is unable to carry out mining operation.* **In such circumstances,** *the lessee has no bargaining power to exit from the lease* **and has no option but to wait till the authority invokes the power under Rule 58 to determine the lease deed. (Paras 55-60)**

C. *The power of determination of lease deed under Rule 58 of the Rules, 1963 is to be exercised immediately without any delay* **after expiry of the period prescribed in the notice** *for the benefit of both the State as well as the lessee.* **Delay in invoking such power** *without informing or disclosing the reason for delay* **entails** *element of arbitrariness* **on the part of the authority.** *If there is delay in exercise of such power, the authority must inform or disclose the reason for delay* **so that it can be ascertained whether the delay is bona fide or malicious.** *If it is found that the action of the authority in not invoking power within the period prescribed in Rule 58 of the Rules, 1963 is malicious, the delay in invoking such power to determine the lease is nothing but an abuse of power and falls within the ambit of arbitrary action,* **as the delay causes significant injury to the lessee. (Paras 61-84)**

D. P*etitioner was allowed to carry on mining operation and no hindrance was created by the respondents.* **All the three survey reports** *falsify the claim of the petitioner that he did not have the entire area of mining operation.* **The submission of successive applications for survey** *reflects the malafide intention of the petitioner to set up a story to wriggle out of his liability to pay royalty* **and was only a** *Peshbandi* **to wriggle out of such liability. The contention that mining operations could not be conducted by the petitioner for reasons beyond his control and that he was not liable to pay royalty for the minerals not excavated was rejected. In the present case,** *the respondents do not disclose the reason for not invoking powers under Rule 58 of the Rules, 1963 immediately* **after expiry of the period given in the demand notices.** *Non-disclosure of reason for delay in not determining the lease of the petitioner would definitely be an arbitrary exercise of power and is against the spirit of the Rules, 1963.* **Therefore,** *the petitioner cannot be forced to pay installments demanded by the respondents which he otherwise would not have been liable to pay if the respondent-authority had acted promptly* **and invoked Rule 58 immediately after default. Consequently, recovery of the installments due on 01.07.2019 and 01.10.2019 was held to be unjustified. (Paras 42-84)** (E-5)

Case Law Cited

Beni Ram v. State of U.P., 1982 Allahabad LJ 974;
Km. Madhubala v. State of U.P., 1978 Allahabad LJ 1039;
Om Prakash Agarwal v. First Additional District and Sessions Judge, AWC 1981 775;
Ram Karan v. State of U.P., Ceiling No.111 of 2003, decided on 13.09.2012;
Pramod Kumar v. Additional Commissioner, 1999 (17) LCD 379;

Municipality of Bhiwandi and Nizampur v. M/s Kailash Sizing Works, AIR 1975 SC 529;
Dwarka Nath v. Income Tax Officer, AIR 1966 SC 81;
Rameshwar v. Jot Ram, (1976) 1 SCC 194;
Ramesh Kumar v. Kesho Ram, Supp. (2) SCC 623;
B.C. Chaturvedi v. Union of India, (1995) 6 SCC 623;
Jodhey v. State, AIR 1952 All 788;
RBF Rig Corporation v. Commissioner of Customs (Imports), (2011) 3 SCC 573;
Ramesh Chandra Sankla v. Vikram Cement, AIR 2009 SC 713;
K.B. Ramchandra Raje v. State of Karnataka, (2016) 3 SCC 422.

List of Acts

U.P. Imposition of Ceiling on Land Holdings Act, 1960;
Constitution of India

List of Keywords

Ceiling proceedings; Irrigated land; Section 4-A; Khasra entries; Consolidation records; Spot inspection; Bona fide transfer; Adequate consideration; Section 5(6)(b); Registered sale deed; Surplus land; Scope of remand;Perversity; Non-consideration of evidence; Delay and laches; Continuing illegality; Article 226; Quasi-judicial adjudication.

Case Arising From

Proceedings under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 arising out of the order dated 22.10.1993 passed by the Prescribed Authority, District Balrampur declaring 4.74 acres of land surplus; appellate remand order dated 18.02.1997/08.02.1997 passed by the Additional Commissioner under Section 13 of the Act; consequential order dated 05.11.1998 passed by the Prescribed Authority enhancing the surplus land to 5.54 acres; and appellate order dated 30.03.1999 affirming the same

Appearances for Parties

Advs. for the Appellant:T.n.singh, Madan Gopal Tripathi
Advs. for the Respondents: C.S.C.,

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

1. Heard learned counsel for the petitioner and Sri Kartikey Saran, learned Additional Advocate General assisted by Sri Rajeshwar Tripathi, learned Chief Standing Counsel-II for the State-respondents.

2. In Writ-C No.18896 of 2019, the petitioner has assailed the show cause notice dated 24.04.2019 and notice dated 21.05.2019 issued by District Magistrate, District Fatehpur seeking recovery of Rs.7,74,18,000/- of second and third installment towards royalty due on 01.01.2019 and 01.04.2019.

3. The petitioner in Writ-C No.3056 of 2020 has assailed the order dated 01.01.2020 passed by the District Magistrate, Fatehpur by which the mining lease of the petitioner has been determined and petitioner□s firm has been blacklisted for two years.

4. For convenience, the facts have been delineated from Writ-C No.3056 of 2020.

5. The facts, in brief, are that a lease deed was executed on 29.11.2018 and registered on 30.11.2018 for a period commencing from 29.11.2018 to 28.11.2023 for mining sand/moram with regard to the area known as Khand No.K-4, Gata No.391 Mi, measuring 40.48 hectares situated in Village Korrakanak, Tehsil and District Fatehpur at a price of Rs.255/- per cubic meter. The petitioner before execution of lease deed deposited Rs.3,87,09,000/- towards security and an equal amount as first installment of royalty.

6. According to the petitioner, after commencement of mining operation, the District President of Bhartiya Janta Party (BJP) filed a complaint against the petitioner for illegal mining. The District Magistrate taking cognizance of the said complaint, sent a team of SDM, Fatehpur alongwith the team of Revenue Officers to inspect the mining area of the petitioner.

7. The District Magistrate, thereafter, submitted a report on 31.12.2018 to the Principal Secretary, Geology and Mining, U.P., stating therein that no illegal mining activity was found in the petitioner□s area. The State Government also constituted a team which conducted spot inspection and found no illegal mining operation.

8. The petitioner states that he on 08.02.2019 submitted an application before the District Magistrate, Fatehpur stating therein that since most part of land allotted to the petitioner had submerged in the water, and in the remaining area on excavation upto one meter, water comes out due to which mining operation is arduous, therefore, the quantity of mineral be reduced accordingly.

9. It is stated that pursuant to the application of petitioner, a survey by Regional Office, Prayagraj on 06.03.2019 was conducted. As per survey report, some area of the petitioner was across the river towards boundary of District Banda.

10. The petitioner, thereafter, again on 11.03.2019 submitted an application to the District Magistrate, Fatehpur on the basis of survey report dated 11.03.2019 requesting him to get the mining area re-surveyed and demarcated again. It is stated that the District Magistrate, Fatehpur in pursuance to the petitioner□s letter dated 11.03.2019 sent a letter dated 14.03.2019 to the District Magistrate, Banda to appoint a team of competent authorities of district Banda for demarcation of the area.

11. Thereafter, an inspection was conducted by the team of Naib Tehsildar, Fatehpur, District Mines Officer, Fatehpur and Surveyor, Regional Office, Prayagraj, Lekhpal Revenue Inspector etc. who submitted a report dated 02.04.2019. However, the revenue team of District Banda was not present on the spot at the time of inspection on 02.04.2019.

12. It transpires that the petitioner did not deposit the second and third installment of royalty of first year amounting to Rs.7,74,18,000/- which led the District Magistrate, Fatehpur to issue a notice dated 12.04.2019 asking the petitioner to deposit the second and third installment otherwise the same shall be recovered as arrears of land revenue.

13. In the meantime, the District Magistrate, Fatehpur wrote a letter dated 20.04.2019 to the District Magistrate, Banda again requesting him to constitute a team for demarcating the mining area allotted to the petitioner.

14. The petitioner, thereafter, submitted his reply dated 25.04.2019 to the notice dated 12.04.2019 stating therein that he had not been given the entire mining area allotted to him and requested the District Magistrate, Fatehpur to either return the amount deposited by him or to give possession of the entire area allotted to him.

15. The petitioner was again issued a demand notice dated 24.04.2019 asking the petitioner to deposit second and third installment. The petitioner, thereafter, challenged the notice dated 24.04.2019 in Writ-C No.18896 of 2019.

16. The petitioner further stated that Director, Geology and Mining, Lucknow vide order dated 25.04.2019 directed for demarcation and resurvey of the mining areas known as K-3 and K-4. As per petitioner's case, it was found in the resurvey and demarcation of land done from 08.05.2019 to 10.05.2019 that some part of the area was on the other side of the river.

17. Further it is the case of the petitioner that petitioner while constructing the approach road near the border of District Banda for transporting mineral from other side of the river was stopped from carrying out mining by the S.D.M., Sadar, Banda on the orders of Commissioner, Chitrakoot Dham, Banda which were passed on a complaint of one Sri Rakesh Tiwari, Proprietor of M/s Radhika Construction, Indira Nagar, Banda. The order of Commissioner, Chitrakoot Dham Banda also states that unless a joint team of high level officers inspects and demarcates the disputed area in village Jauharpur, no mining work should be done.

18. The petitioner also states that if respondents were satisfied that the petitioner had defaulted in paying the due installments, the District Magistrate should have determined the mining lease under Rule 58 (1) of U.P. Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as □Rules, 1963□) expeditiously, but instead the District Magistrate, Fatehpur issued another show cause notice dated 21.05.2019 to the petitioner to explain why due installments mentioned in the notice dated 12.04.2019 and 24.04.2019 have not been paid.

19. In the said notice, the District Magistrate, Fatehpur also called upon the petitioner to show cause as to why action for illegal mining be not taken against him.

20. It transpires that the District Magistrate, Fatehpur again vide notice/order dated 25.07.2019 directed the petitioner to pay Rs.14,10,300/- as an amount of illegal mining and Rs.7,74,18,000/- alongwith interest of second and third installment.

21. The petitioner in paragraph nos.32 and 33 of the writ petition has given the details of mining done by him and royalty paid. The petitioner was served upon another notice dated 09.12.2019 asking him to deposit the due installments, and in the event of failure to make the deposit, the proceeding for termination of lease deed shall be undertaken. Thereafter, the District

Magistrate passed an order dated 01.01.2020 determining the lease of the petitioner and blacklisting the firm of petitioner for two years.

22. A counter affidavit has been filed by the respondent-State denying the averments made in the writ petition. It is stated that petitioner was continuously doing mining work but was not depositing the due installments despite repeated notices. Thus, the petitioner had deliberately caused loss of revenue to the State by blocking the leased mining area and has also caused obstruction in proper supply of sand/moram to the general public.

23. It is further stated that one, Anand Shekhar Singh has challenged the recovery certificate dated 13.10.2020 in Writ Petition No.10943 of 2021 which was dismissed by this Court by judgement and order dated 10.08.2021.

24. The respondent also stated that the petitioner was doing mining work and was satisfied by the demarcation report and had deposited Rs.50 lacs on 17.10.2019, which had been adjusted in the fourth installment due on 01.07.2019. It is further stated that after giving notice to the petitioner, the order dated 03.01.2020 terminating the lease of the petitioner has been passed in a just and fair manner.

25. It is also stated that the advertisement dated 17.02.2018 was published in furtherance of the Government Order dated 14.08.2017 which provides that the candidate before participating in E-Tender-cum-E-Auction should inspect the proposed mining area and be satisfied about the quantity of available mineral and the way for transportation.

26. Further, the case of the respondents is that the mining area was available to the petitioner and the petitioner did mining work up to 23.05.2019 and excavated 39329 cubic meters of moram. The respondent also stated that petitioner in his application dated 19.04.2019 informed that mining work could not be done upon the leased area whereas as per E-MM-11 Portal, the petitioner excavated 22448 cubic meter sand/moram in the month of December, 2018, 11059 cubic meter in the month of January, 2019, 3687 cubic meter in the month of February, 2019, 936 cubic meter in the month of March, 2019, 170 cubic meter in the month of April, 2019 and 1039 cubic meter in the month of May, 2019.

27. The respondent stated that on 06.03.2019, on 02.04.2019 and again on 13.05.2019, the petitioner was informed by the team of Directorate regarding demarcation of his leased area, and he was satisfied with the same. The survey report shows that the area of village Kurra Kanak and boundaries of village Jauharpur were not overlapping each other. The petitioner was found involved in doing illegal mining/transportation of mineral due to which, the State suffered loss of revenue to the tune of Rs.14,10,300/-, which was the cost of mineral excavated by illegal mining.

28. Since the petitioner did not deposit the due installments, therefore, for non-payment of due installments, illegal mining and for violating the conditions of lease and Rules, 1963, the lease of the petitioner was determined under Rule 58 of Rules, 1963 and recovery certificate was directed to be issued against the petitioner and petitioner was blacklisted for two years vide order dated 03.01.2020 in a just, fair and legal manner.

29. Rejoinder affidavit has been filed by the petitioner denying the averments made in the counter affidavit. It is stated that filing of Writ Petition No.10943 of 2021 by Anand Shekhar Singh has no effect on the present petition challenging the order dated 03.01.2020 passed by the respondent no.3.

30. Learned counsel for the petitioner has contended that Section 15(3) of the U.P. Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "Act, 1957") provides for payment of royalty of the actual quantity of mineral, which has been excavated by the lessee. He submits that condition no.1 of Part-II of the lease deed also stipulates that the lessee is liable to pay royalty only for the quantity of sand/moram removed by him.

31. It is submitted that the petitioner has given the details of quantity excavated by him in paragraph no.32 of the writ petition and the amount of royalty paid by him in respect to the said quantity in paragraph no.33 of the writ petition, and since the petitioner has already paid the royalty of the mineral removed by him, therefore, the petitioner cannot be saddled with any further liability to pay the royalty with respect to the minerals not removed by him. Accordingly, it is submitted that the impugned recovery is illegal and without jurisdiction.

32. It is also submitted that the averments contained in the writ petition and materials enclosed in support thereof clearly establishes that the mining operation on the area allotted to the petitioner was impossible inasmuch as the river had changed it's course due to which certain area allotted to the petitioner fell in the area of adjoining village Jauharpur in District Banda, and obstructions were created by the authorities of District Banda in carrying out the mining operation by the petitioner.

33. Accordingly, it is submitted that in view of the aforesaid fact, the petitioner cannot be faulted for not carrying out any mining operation, and thus, no recovery of royalty can be made from the petitioner by the respondents for the mineral, which has not been excavated or removed by him.

34. It is lastly urged that Rule 58 (1) of the Rules, 1963 confers power upon the authority to determine the lease deed in case lessee does not deposit the lease rent or any amount due. It is contended that if, for any reason, petitioner did not deposit the installments on the due date, and 30 days notice given to the petitioner to pay due installments has elapsed and the petitioner did not deposit the said installment, the respondents should have immediately invoked power under Rule 58 of the Rules, 1963 and should have determined the lease deed of the petitioner instead of protracting the proceeding to determine the lease resulting in increasing the liability of petitioner manifold. In other words, it is urged that Rule 58(1) of the Rules, 1963 does not give discretion to the District Magistrate, Fatehpur not to cancel the lease if the due quarterly installment is not paid .

35. Per contra, learned counsel for the respondents would contend that so far as the first contention of learned counsel for the petitioner with regard to Section 15(3) of the Act, 1957 is concerned, the said controversy is covered by the judgement of this Court in the case of ***M/S Sharad Enterprises Vs. State Of U.P. And 4 Others*** passed in Writ-C No.14386 of 2019.

36. He submits that on the request of petitioner, the survey of the area was done and survey report was prepared. He submits that it is evident from the survey report dated 13.05.2019 that there was no overlapping of the boundaries of village Kurra Kanak and village Jauharpur. Accordingly, it is contended that the contention of learned counsel for the petitioner that the petitioner was not given the entire area is incorrect.

37. He further submits that the river changes its course during the rainy season and not during winter season, therefore, the case set up by the petitioner that due to the change of course of river, certain area of the petitioner fell in District Banda is fallacious and has been set up only to avoid the liability to pay the royalty.

38. He further submits that the order of the Commissioner, Banda dated 14.05.2019 discloses that the Commissioner, Banda had directed the District Magistrate, Banda to stop illegal mining activity in village Jauharpur, and since the area allotted to the petitioner fell in village Kurra Kanak, District Fatehpur, therefore, he was not affected by the order dated 14.05.2019 passed by the Commissioner, Banda.

39. He further submits that it is evident from the letter of the petitioner dated 20.05.2019, appearing on page 86 of the paper book that the petitioner has not disputed the demarcation report dated 13.05.2019 appearing on page-76 of the paper book which categorically states that there is no overlapping of boundary of village Kurra Kanak and village Jauharpur, and some private persons are interfering in carrying out mining activity. It is pointed out by learned Additional Advocate General that the representation of the petitioner dated 20.05.2019 does not state that some area of land allotted to the petitioner falls in District Banda, therefore, the narration set up by the petitioner that he could not do any mining activity for the reason that some area of petitioner fell in District Banda is incorrect and false.

40. Lastly, he submits that the petitioner is liable to pay the installments due till the lease of the petitioner is terminated in accordance with law. Therefore, neither the recovery notices issued to the petitioner are illegal nor the order determining the lease deed of the petitioner is illegal. Accordingly, he submits that the contentions advanced by the learned counsel for the petitioner are misconceived, and the writ petition deserves to be dismissed.

41. We have considered the rival submission advanced by the learned counsel for the parties and perused the record.

42. The similar contention as raised by the learned counsel for the petitioner based on Section 15(3) of the Act, 1957 in the present case that petitioner is liable to pay royalty only to the actual quantity of mineral excavated by him has been repelled by this Court in the case of ***M/s Sharad Enterprises Vs. State of U.P. and Others*** passed in Writ-C No.14386 of 2019. Paragraph nos.92 and 93 of the said judgement are reproduced herein below:-

"92. If the interpretation of Section 15(3) put forth by the learned counsel for the petitioner that the petitioner is liable to pay royalty for the quantity of mineral consumed by the petitioner is accepted, that would lead to absurdity since it could never be the intention of the

legislature, further such interpretation would render the other provision of Rules, 1963 and the terms and condition of the lease deed which is in Form MM6 as per Rule 29 of Rules, 1963 redundant.

93. The Division Bench of this Court in paragraph no.38 of the judgement in the case ***Raj Pratap Yadav Vs. State of U.P. and Others*** *passed in* ***Writ-C No.28087 of 2023*** *has held that Section 15(3) of the MMDR Act cannot be interpreted in a manner so as to confer benefit upon the lessees for not paying installments where mineral has not been removed or consumed by him. Paragraph no.38 of the said judgement is reproduced herein below:*

"38. In the backdrop of the aforesaid discussion, in a case of auction lease that is covered by Chapter IV of the Rules, 2021, to say that while considering an application of surrender of mining lease,'royalty' would be payable only to the extent of the mineral removed or consumed, would not be appropriate. Doubtless, where there occurs violation of the terms and conditions of the mining lease which is not promptly attended to by the lessee, the authorities are required to take steps without delay for termination of the lease in the interest of all concerned. But where the mining lease deed executed in Form MM-6 or in similar format under the Rules made under the provisions of Section 15 (1) and (1-A) of the Act, 1957 provides for the quantity of minor mineral to be excavated annually in cubic meters, and the highest bid offered by the lessee, and the total amount of instalments payable in the first year and subsequent years, which also form the consideration for the contract, then the instalments would be payable under the terms of the lease. Therefore, the provisions of Section 15 (3) of the Act, 1957 cannot be read or interpreted in a manner to confer a benefit on the lessee for not paying the installments where no mineral has been removed or consumed by him. Thus, to this extent, the judgment of this court in Vipul Tyagi when read in the light of the judgment of the Supreme Court in D.K. Trivedi, the provisions of the Act 1957, and of the Rules of the State Government framed under the powers delegated by the Act 1957, would not operate as a binding precedent."

43. So far as the argument of learned counsel for the petitioner that material on record establishes that because of change in the course of river, it was impossible to carry out any mining operation is concerned, we find that the said contention also lacks merit. The reason for our aforesaid view is delineated below.

44. According to petitioner's case, after commencement of mining operation, the District President of Bhartiya Janata Party (BJP) filed a complaint of illegal mining against the petitioner. The District Magistrate acting upon the said complaint sent a team of SDM, Fatehpur alongwith the team of revenue officers to inspect the mining area of the petitioner. Thereafter, they submitted a report to the Principal Secretary, Geology and Mining, U.P. stating therein that no illegal mining activity was found in the petitioner's area.

45. The record further reflects that the petitioner was allowed to carry on mining operation and no hindrance was created by the respondents.

46. It transpires from the record that for the reason best known to the petitioner, he submitted an application dated 08.02.2019 before the District Magistrate, Fatehpur stating that most

part of the land allotted to the petitioner has submerged in water, and on excavation upto one meter on the available area for mining, water comes out due to which mining operation is difficult. Accordingly, he prayed that quantity of mineral be reduced accordingly.

47. On the application of petitioner, a survey by the Regional Office, Prayagraj was conducted on 06.03.2019. As per Geo-Coordinates, Point-C and Point-D is abutting the boundary of District Banda. The inspection report of Regional Office, Prayagraj is reproduced herein below:-

"सर्वेक्षण आख्या

आज दिनाँक-06.03.2019 को मे० जय शक्ति रियलकॉन प्रा०लि० के पक्ष में स्वीकृत खनन पट्टा क्षेत्र ग्राम-कोर्राकनक तहसील-सदर जनपद-फतेहपुर के बालू/मोरम खण्ड सं०-के/4 के गाटा सं0-391 मि० रकबा-40.48 हे० क्षेत्र का सीमाकंन कार्य प्रतिनिधि श्री आशुतोष प्रताप सिंह पुत्र श्री शिवप्रताप सिंह की उपस्थिति में किया गया जो पट्टाविलेख के समय नदी का जलस्तर अधिक होने के कारण दिनांक-26.11.2018 को सीमाकंन के समय बिन्दु C एवं बिन्दु D का भू-निर्देशांक (Geo-Coordinates) नही दिखाया जा सका था । विन्दु C एवं बिन्दु D का भू-निर्देशांक (Geo-Coordinates) वर्तमान में नदी की जलधारा के दूसरी तरफ जनपद बाँदा की सीमा से लगा हुआ है, जो यमुना नदी की जलधारा के उस पार जनपद बाँदा की ओर है। जिसका भू-निर्देशांक (Geo-Coordinates) इस प्रकार हैं-

क्र० सं०	*अक्षांश*	*देशांतर*
A	*25043.766□N*	*80034.551□E*
B	*25043.915□N*	*80034.435□E*
C	*25043.449□N*	*80034.043□E*
D	*25043.289□N*	*80034.204□E*

48. Again a joint inspection was conducted on 02.04.2019 by the team consisting of several authorities, who submitted a report on 02.04.2019. The Joint Inspection report dated 02.04.2019 is reproduced herein below:-

"संयुक्त जाँच आख्या

सेवा में

जिलाधिकारी
फतेहपुर।

महोदय,

कृपया अवगत कराना है कि मेसर्स जयशक्ति रियलकॉन प्रा० लि० प्रो० श्री शिवप्रताप सिंह चन्देल के पक्ष में जनपद व तहसील फतेहपुर थान- ललौली स्थित ग्राम-कुर्राकनक के गाटा सं० 391 मि० (खण्ड स०-के/4)

रकवा 40.48 हे० में स्वीकृत बालू/मोरम का खनन पट्टा क्षेत्र की संयुक्त जांच आज दिनांक02.04.2019 को की गयी। जाँच के समय उक्त खनन पट्टा का कुछ भाग यमुना नदी की जलधारा की उस तरफ तहसील व जनपद-बांदा ग्राम-जौहरपुर की सीमा से लगा हुआ है। संयुक्त सर्वेक्षण के समय मौके पर खान अधिकारी फतेहपुर मय सर्वेक्षक/मानचित्रकार के साथ राजस्व टीम क्षेत्रीय लेखपाल, राजस्व निरीक्षक, नायब तहसीलदार फतेहपुर एवं थाना प्रभारी ललौली व पट्टाधारक/प्रतिनिधि की उपस्तिथि में तहसील व जनपद बांदा की राजस्व टीम की अनुपस्तिथि में जनपद फतेहपुर की सीमा का निर्धारण कर गाटा सं०-391 मि० (खण्ड स०-के/4) रकवा 40.48 हे० का सीमा बंधन कर पट्टाधारक द्वारा मौके का स्थाई स्तम्भ लगवा दिया गया है।

आंख्या आवश्यक कार्यवाही हेतु सेवा में सादर प्रेषित है।"

49. Again on the request of petitioner, a survey was conducted as per the direction of Director of Geology and Mining, Lucknow dated 25.04.2019 by a team consisting of Surveyor, District Jhansi, Surveyor Headquarter, Assistant Geo-Science Headquarter, Mining Officer Head Quarter and Senior Mining Officer, District Mahoba. The process of demarcation continued from 08.05.2019 to 10.05.2019. The Joint Inspection team submitted a report on 13.05.2019. As per the report dated 13.05.2019, there was no overlapping between the boundaries of Village Kurra Kanak in which the petitioner□s area falls and Village Jauharpur falling in the jurisdiction of District Banda. The Joint Inspection report dated 13.05.2019 is reproduced herein below:-

"संयुक्त सीमांकन आख्या

भूतत्व एवं खनिकर्म निदेशालय के कार्यालय आदेश सं०120/ एम-21 सीमाबन्धन/2018, दिनाँक 25.04.2019 के अनुपालन में जनपद फतेहपुर के ग्राम कुर्रा कनक में स्वीकृत खनन पट्टा क्षेत्रों एवं जनपद बाँदा के ग्राम जौहरपुर के बालू/मौरम खनन क्षेत्रो के सीमा विवाद के निवारण के सम्बन्ध में निदेशालय की गठित टीम द्वारा दिनाँक 08.05.2019 से 10.05.2019 के मध्य संयुक्त सीमांकन किया गया। उक्त सीमांकन के समय श्री नरेन्द्र कुमार, राजस्व लेखपाल, ग्राम कुर्रा कनक, फतेहपुर/श्री कमलेश बाबू, लेखपाल, ग्राम जौहरपुर, जनपद बाँदा तथा जनपद बाँदा में तैनात खान अधिकारी श्री शैलेन्द्र कुमार सिंह एवं जनपद फतेहपुर में तैनात खान अधिकारी श्री सौरभ गुप्ता मौके पर उपस्थित थे। प्रश्नगत प्रकरण जनपद फतेहपुर के ग्राम कुर्राकनक के खण्ड सं. 3 एवं 4 में स्वीकृत खनन पट्टों के जनपद बाँदा की सीमा विवाद से सम्बन्धित है। आदेशानुसार जनपद फतेहपुर के स्वीकृत खनन पट्टा क्षेत्रों का संयुक्त सीमांकन जनपद फतेहपुर एवं जनपद बाँदा के राजस्व विभाग द्वारा उपलब्ध कराये गये खसरा मानचित्रों के आधार पर किया गया, जिसकी आख्या निम्नवत् है :-

1. जनपद फतेहपुर के ग्राम कुर्रा कनक गाटा सं0 391 मि०, खण्ड सं0-4 रकबा 40.48 हे० क्षेत्र मे० जयशक्ति रियल कॉन प्रा०लि० प्रो०/पार्टनर/निदेशक, श्री शिव प्रताप सिंह चन्देल पुत्र श्री कल्लू सिंह नि0. 20 ए, गौतमनगर, सहर कोतवाली फतेहपुर एवं ग्राम कुर्राकनक के गाटा सं0. 383 मि0, 391 खण्ड सं0 3, रकबा 40.48 हे0 क्षेत्र मे0 डिग्जियाना माइनिंग कारपोरेशन प्रा० लि० निदेशक, श्री सुखदेव सिंह धुम्मन सिंह पुत्र श्री सुच्चा सिंह नि0 233-विशनूपुरी एनेक्स, इन्दौर, म०प्र० के पक्ष में 5 वर्ष की अवधि हेतु स्वीकृत/निष्पादित है। प्रश्नगत दोनो खनन पट्टा क्षेत्रों का सीमांकन क्षेत्रीय लेखपाल द्वारा बताये गये संदर्भ बिन्दु जो ग्राम कुर्राकनक एहतमाली के गाटा सं० 376 के उत्तरी पूर्वी एवं दक्षिणी पूर्वी के मेड़ों के मिलन बिन्दु है, को संदर्भ बिन्दु मानकर जनपद फतेहपुर के तरफ से सीमांकन कार्य किया गया। संयुक्त सीमांकन में यह पाया गया कि यमुना नदी की

जलधारा को पार कर जनपद बाँदा के ग्राम जौहरपुर की सीमा तक खनन पट्टा क्षेत्र है। पट्टाधारक को पट्टा क्षेत्र के सभी सीमांस्तम्भ चिन्हित कर मौके पर बता दिये गये। उक्त सीमांकन की पुष्टि जनपद बाँदा के खसरा मानचित्र से भी मिलान कर ली गयी है। मौके पर उपस्थित खान अधिकारी, फतेहपुर, खान अधिकारी, बाँदा, क्षेत्रीय लेखपाल, ग्राम कुर्राकनक एवं जौहरपुर, बाँदा द्वारा भी सीमांकन में सहयोग किया गया। सभी पक्ष सीमांकन से संतुष्ट है। जनपद फतेहपुर के ग्राम कुर्रा कनक के खसरा मानचित्र से किये गये सीमांकन कार्य एवं जनपद बाँदा के खसरा मानचित्र पर किये गये सीमांकन कार्य संलग्न मानचित्र पर अंकित कर दिया गया है। संयुक्त सीमांकन से यह स्पष्ट होता है कि ग्राम कुर्रा कनक के खण्ड सं०-4 में पूर्व के सीमांकन में बताये गये सीमाबिन्दु मौके पर सही पाये गये। ग्राम कुर्रा कनक की सीमा एवं ग्राम जौहरपुर की सीमा में कोई ओवरलैपिंग नही है।

आख्या सादर सेवा में अवलोकनार्थ प्रेषित की जा रही है।"

50. The report also states that the leaseholders have been told about the boundary pillar of the leased area after marking the same.

51. Despite the fact that several surveys had been conducted on the request of the petitioner, and the survey report indicates that there was no overlapping of the boundaries of Village Kurra Kanak and Village Jauharpur, and there is no reduction of mining area allotted to the petitioner, the petitioner again wrote a letter to the District Magistrate, Fatehpur stating that some part of the area allotted to the petitioner in Village Kurra Kanak fell on the other side of the river and some persons of Jauharpur Khand nos.3 & 4 who did not have any lease were interfering with the mining operation of the petitioner as they were not accepting three survey reports and had stopped the mining operation of the petitioner. Accordingly, petitioner prayed that some assistance may be provided so that petitioner could carry out mining operation uninterruptedly.

52. The three surveys had been conducted on the request of the petitioner. All three reports extracted above clearly falsify the claim of the petitioner that he did not have the entire area of mining operation. The submission of successive applications by the petitioner for the survey of allotted area reflects the malafide intention of the petitioner to set up a story to wriggle out of his liability to pay royalty under the lease deed for the minerals auctioned to him.

53. For reasons stated above, we are of the view that the entire story set up by the petitioner by filing several applications to demonstrate his difficulty in carrying out mining operation was only a Peshbandi to wriggle out of his liability to pay royalty.

54. We do not find from the record that the respondents at any time obstructed or created hindrance in carrying out the mining operations by the petitioner, therefore, we reject the contention of learned counsel for the petitioner that mining operations could not be conducted by the petitioner for the reasons beyond his control, therefore, petitioner is not liable to pay royalty for the minerals, which have not been excavated by him.

55. Now, coming to the last submission of learned counsel for the petitioner that if the petitioner had not been able to pay royalty for whatever reason, then the respondents were under

obligation to invoke powers under Rule 58 of Rules, 1963 expeditiously and determine the lease deed of the petitioner.

56. To appreciate the said argument, it would be useful to have a glance at Rule 58 of the Rules, 1963 which is being reproduced herein below:-

"***58. Consequences of non-payment of royalty, rent or other dues***.-*(1) The State Government or any officer authorised by it in this behalf may determine the mining lease after serving a notice on the lessee to pay within thirty days of the receipt of the notice any amount due or dead rent under the lease including the royalty due to the State Government if it was not paid within fifteen days next after the date of fixed for such payment. This right shall be in addition to and without prejudice to the right of the State Government to realise such dues from the lessee as arrears of land revenue.*

(2) Without prejudice to the provisions of these rules, simple interest at the rate of 18 percent per annum may be charged on any rent, royalty, demarcation fee and any other dues under these rules, due to the State Government after the expiry of the period of the notice under sub-rule (1)."

57. Part-3 of General Conditions of the lease deed also stipulates that if there is any violation of Rules, 1963 or breach of terms and conditions of the lease deed, the State Government can determine the lease. Part-3 of the General Condition of the lease deed is reproduced herein below:-

"भाग-3
सामान्य उपबन्ध

1. नियमों, प्रसंविदाओं और शर्तों को भंग करने पर पट्टा समाप्त किया जा सकता है:: यदि पट्टेदार उत्तर प्रदेश उप खनिज (परिहार) नियमावली 1963 के किसी नियम या इस पट्टे की किसी प्रसंविदा तथा किसी शर्त को भंग करें तो राज्य सरकार पट्टा समाप्त कर सकती है और प्रतिभूति जमा को पूर्णतः या अंशतः जब्त कर सकती है किन्तु प्रतिबन्ध यह है कि पट्टा समाप्त किये जाने के पूर्व पट्टेदार को उन्हें भंग करने का स्पष्टीकरण देने के लिए यथोचित अवसर दिया जायेगा।"

58. Form MM-6 is Model Form of Auction Lease for Mining. As per Rule 29, the lease deed is to be executed in Form MM-6 which is titled as 'Model Form of Auction for Mining', therefore, the lease deed is a statutory lease deed.

59. Rule 58 of Rules, 1963 and the lease deed executed in Form MM-6 confers power upon the State Government to determine the lease deed if, the conditions enumerated in Rule 58 or under relevant clause of lease deed providing determination of lease deed exist. However, neither Rules, 1963 nor lease deed permit the lessee to exit from the lease deed if for any reason, the lessee is unable to carry out mining operation. To this extent, Rules 1963 as well as lease deed are lopsided inasmuch as on the one hand Rules, 1963 as well as lease deed permit the State Government to

determine the lease deed, but on the other hand, the lessee has no recourse to exit from the lease deed.

60. In such circumstances, the lessee has no bargaining power to exit from the lease even if he is not able to do mining and his liability to pay royalty soars. The lessee has no option but to succumb to the terms and conditions of the lease deed and has to wait till the authority invokes power under Rule 58 of Rules, 1963 to determine the lease deed.

61. One of the party to the lease deed is the State. It is trite law that the action of the State must be in conformity with the object enshrined in Article 14 of the Constitution of India which means that the action of the State must be free from malice, arbitrariness and discrimination.

62. In the present case, State under Rule 58 of Rules, 1963 as well as under the lease deed has power to terminate the lease deed if the conditions enumerated in Rule 58 or conditions set out in the relevant clause under the lease deed on which lease can be terminated are present. If the State does not act in the spirit of Rule 58 or clause of the lease deed providing termination of lease deed, and because of inaction of the State, the liability of the lessee soars manifold, whether in such circumstances the inaction of the State in invoking Rule 58(1) to determine the lease falls within the ambit of arbitrary action of State is a question which arise for determination in the instant case.

63. To appreciate as to when an action is said to be an arbitrary action, it would be useful to have a glance at a few judgements of the Apex Court defining when the action of the State is termed as arbitrary action. The Apex Court in the case of ***Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, (1991) 1 SCC 212*** has eloquently explained as to what constitute arbitrariness. Paragraph nos.35 & 36 of the said judgement are reproduced herein-below:-

"35. It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.

36. The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that □be you ever so high, the laws are above you'. This is what men in power must remember, always."

64. The Apex Court in paragraph 21 of the judgement in the case ***of Verigamto Naveen Vs. Govt. of A.P. and Others, (2001) 8 SCC 344*** has held as under:

"21. On the question that the relief as sought for and granted by the High Court arises purely in the contractual field and, therefore, the High Court ought not to have exercised its power under Article 226 of the Constitution placed very heavy reliance on the decision of the Andhra Pradesh High Court in Y.S.Raja Reddy v. A.P. Mining Corpn. Ltd., 1988(2) ALT 722, and the decisions of this Court in Harshankar v. Dy. Excise & Taxation Commissioner (1975) 1 SCC 3737, Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457, Ram Lal & Sons v. State of Rajasthan (1976) 1 SCC 112, Shiv Shankar Dal Mills v. State of Haryana (1980) 2 SCC 437, Ramana Dayaram Shetty v. International Airport of India (1979) 3 SCC 489 and Basheshar Nath v. CIT AIR 1959 SC 149. Though there is one set of cases rendered by this Court of the type arising in Radhakrishna Agarwals case, much water has flown in the stream of judicial review in contractual field. In cases where the decision-making authority exceeded its statutory power or committed breach of rules or principles of natural justice in exercise of such power or its decision is perverse or passed an irrational order, this Court has interceded even after the contract was entered into between the parties and the Government and its agencies. We may advert to three decisions of this Court in Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay, (1989) 3 SCC 293,Mahabir Auto Stores v. Indian Oil Corpon. (1990) 3 SCC 752 and Shrilekha Vidyarthi (Kumari) v. State of U.P. (1991)1 SC 212. Where the breach of contract involves breach of statutory obligation when the order complained of was made in exercise of statutory power by a statutory authority, though cause of action arises out of or pertains to contract, brings it within the sphere of public law because the power exercised is apart from contract. The freedom of the Government to enter into business with anybody it likes is subject to the condition of reasonableness and fair play as well as public interest. After entering into a contract, in cancelling the contract which is subject to terms of the statutory provisions, as in the present case, it cannot be said that the matter falls purely in a contractual field. Therefore, we do not think it would be appropriate to suggest that the case on hand is a matter arising purely out of a contract and, therefore, interference under Article 226 of the Constitution is not called for. This contention also stands rejected."

65. The Apex Court in the case of ***M.P. Power Management Company Limited, Jabalpur Vs. SKY Power Southeast Solar India Private Limited and Others (2023) 2 SCC 703*** after referring to the judgement of East Coast Railway Vs. Mahadev Appa Rao (2010) 7 SCC 678 in paragraph no.74 of the judgement has held in paragraph no.75 that if an action lacks good faith and is actuated with an oblique motive, it could be characterized as being arbitrary. Paragraph nos.74 & 75 of the said judgement are being reproduced herein below:-

"74. We may notice that as to what constitutes arbitrariness fell for consideration by this Court in a case which involved cancellation of the examination held as part of a recruitment process, in East Coast Railway v. Mahadev Appa Roa (2010) 7 SCC 678. We notice the following passages which are apposite for this case: (SCC pp.685-87, paras 19-20 & 23)

"19. Black's Law Dictionary describes the term □arbitrary□ in the following words:

"arbitrary. adj.-1. Depending on individual discretion; specif., determined by a Judge rather than by fixed rules, procedures, or law.

2. (Of a judicial decision) founded on prejudice or preference rather than on reason or fact. This type of decision is often termed arbitrary and capricious."

20. To the same effect is the meaning given to the expression "arbitrary" by Corpus Juris Secundum which explains the term in the following words:

"Arbitrary."Based alone upon one's will, and not upon any course of reasoning and exercise of judgment; bound by no law; capricious; exercised according to one's own will or caprice and therefore conveying a notion of a tendency to abuse possession of power; fixed or done capriciously or at pleasure, without adequate determining principle, non-rational, or not done or acting according to reason or judgment; not based upon actuality but beyond a reasonable extent; not founded in the nature of things; not governed by any fixed rules or standard; also, in a somewhat different sense, absolute in power, despotic, or tyrannical; harsh and unforbearing. When applied to acts, "arbitrary" has been held to connote a disregard of evidence or of the proper weight thereof; to express an idea opposed to administrative, executive, judicial, or legislative discretion; and to imply at least an element of bad faith, and has been compared with "willful."

23. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable."

75. We would, therefore, sum up as to when an act is to be treated as arbitrary. The Court must carefully attend to the facts and the circumstances of the case. It should find out whether the impugned decision is based on any principle. If not, it may unerringly point to arbitrariness. If the act betrays caprice or the mere exhibition of the whim of the authority it would sufficiently bear the insignia of arbitrariness. In this regard supporting an order with a rationale which in the circumstances is found to be reasonable will go a long way to repel a challenge to State action. No doubt the reasons need not in every case be part of the order as such. If there is absence of good faith and the action is actuated with an oblique motive, it could be characterised as being arbitrary. A total non-application of mind without due regard to the rights of the parties and public interest may be a clear indicator of arbitrary action. A wholly unreasonable decision which is little different from a perverse decision under the Wednesbury doctrine would qualify as an arbitrary decision under Article 14. Ordinarily visiting a party with the consequences of its breach under a contract may not be an arbitrary decision."

66. From the aforesaid judgements defining what constitutes arbitrary action, it can be culled out that an arbitrary exercise of power is the use of authority based on personal whims, caprice or irrationality rather than established laws, fairness or reason. In other words, the arbitrary power refers to unjustified power by the authority without limits leading to oppressive action against the individuals or groups.

67. Another facet of arbitrariness is that if a statute confers power upon an authority with a purpose to achieve the object of the Act and prescribes the manner and time frame within which such power is to be exercised and there is no legal impediment in following the manner and time frame prescribed in the statute for performance such act, then delay in performance of such act without disclosing any bonafide and plausible reason causing injury to an individual or groups may itself attract the vice of arbitrariness.

68. Rule 58 of Rules, 1963 authorises the State Government or any Officer authorised by it in this behalf to determine the mining lease after serving a notice on the lessee to pay within thirty days of receipt of notice any amount due under the lease including the royalty due to the State Government, if it was not paid within fifteen days next after the date fixed for such payment.

69. In our view, the power of determination of lease deed under Rule 58 of Rules, 1963 is to be exercised immediately without any delay after the expiry of fifteen days period after the date fixed for such payment in the notice for the benefit of both the State as well as lessee. As after determination of lease deed, the State may re-auction as per procedure contemplated under the Act, 1957 and Rules, 1963 the land allotted to the petitioner so that it may not suffer any loss of revenue and at the same time the liability of the lessee to pay royalty under the lease deed may not soar manifold.

70. We may at the cost of repetition state that the lessee neither under Rules, 1963 nor under the lease deed is allowed to determine the lease deed, therefore, it is expected of the authority to act expeditiously in the spirit of Rule 58 of Rules, 1963 for determining the lease if the conditions enumerated under Rule 58 (1) of Rules, 1963 are present for determining the lease deed. The inaction or delay on the part of the authority in not invoking power under Rule 58 of Rules, 1963 despite existence of conditions contemplated under such rule to invoke power of determination of lease deed results in causing serious prejudice to the lessee as on the one hand, he cannot exit from the lease deed, and on the other hand, his liability continues to soar for no fault of his. Therefore, delay in invoking power under Rule 58 of Rules, 1963 to determine lease without informing or disclosing reason for delay in exercise of such power entails element of arbitrariness on the part of authority.

71. Therefore, if there is delay in exercise of such power, the authority must inform or disclose the reason for delay in invoking such power so that it can be ascertained whether the delay in exercising such power is bonafide or it is malicious. If it is found that the action of the authority in not invoking power within the period prescribed in Rule 58 of Rules, 1963 is malicious, the delay in invoking such power to determine the lease is nothing but an abuse of power and falls within the ambit of arbitrary action as the delay in exercise of such power causes significant injury

to the lessee. Therefore, the action of the State in determining the lease deed must conform to spirit of Rule 58 of Rules, 1963 and should not reflect malice.

72. Now, we turn to find out whether in the instant case, delayed action of the State in determining the lease of petitioner amounts to an arbitrary exercise of power by the authority.

73. The petitioner's specific case in paragraph no.26 is that if the authorities were satisfied that there was no reason for the petitioner for not paying due installments, the District Magistrate should have immediately determined the lease. Similar averment has been made by the petitioner in paragraph no.41 of the writ petition. Paragrpah nos.26 & 41 of the writ petition are being reproduced herein below:-

"26. That instead of taking any action under rule 58(1) of the 1963 Rules, the respondents, if they were satisfied that there was no reason for not paying the due installments, the District Magistrate should have determined the mining lease, but surprisingly the District Magistrate, issued another show-cause notice dated 21.05.2019 to show-cause as to why the due installments mentioned in the notices dated 12.04.2019 and 24.04.2019 have not been paid and in the said notice frivolous allegations of illegal mining, without any notice or opportunity was also made. The said notice dated 21.05.2019 is also under challenge in the aforesaid Writ-C No.18896 of 2019.

41. That rule 58(1) of the 1963 Rules, does not give discretion to the District Magistrate, Fatehpur, not to cancel a lease if the due quarterly installment is not paid. The lease should be cancelled after 30 days notice, but in the present case the respondents kept the matter pending, without taking any decision either on the applications of the petitioner, survey reports or on the notices issued to the petitioner, with the sole purpose of illegally fastening the liability of payment of installments of lease amount, even though they had stopped all mining operations."

74. The respondent has replied the para no.26 & para 41 of the writ petition in paragrpah nos.26 & 38 of the counter affidavit, which are being reproduced herein below:-

"26. That the contents of Paragraph No.26 of the writ petition are not admitted as stated hence denied. In reply it is submitted here that the power to determine the lease is in addition to the power of recovery of the due amount as per the arrears of land revenue and further the petitioner was continuously doing mining work and the area of the petitioner was demarcated on 06.03.2019 and 02.04.2019, 08.05.2019 to 10.05.2019 by the team of Directorate and the petitioner was satisfied with the aforesaid demarcation reports and even after doing the mining work, the petitioner was not depositing the due installments and as such notice dated 21.05.2019 was given to him in accordance with law.

38. That the contents of Paragraph No.41, 42 and 43 of the writ petition are not admitted as stated hence denied. In reply it is submitted here that the petitioner was continuously doing mining work and was not depositing the installments and as such notices were issued to him for depositing the aforesaid amount and the petitioner had deposited a part of due installment to the tune of Rs.50,00,000/- on 17.10.2019 and as such after giving final notice dated 10.12.2019, the

lease of the petitioner was determined and recovery citation was directed to be issued and the petitioner was blacklisted for 2 years. At the cost of repetition, it is submitted here that the power to determine the lease is in addition to the power of recovery of the due amount as arrears of land revenue."

75. In the paragraph, extracted above, the respondent has not disclosed the reason for the delay in invoking powers under Rule 58 of Rules, 1963 and under the lease deed after the petitioner failed to comply with the two notices dated 24.04.2019 and 21.05.2019.

76. The respondent in para no.38 has stated that the petitioner was continuously doing mining work and was not depositing the installments, but such an averment is only a general averment and does not specify the period, the petitioner had done mining.

77. The petitioner in paragraph no.32 has given details of mining from December, 2018 to April, 2019.

78. In response to that, respondent in paragraph no.30 of the counter affidavit has stated that petitioner has mined/transported 39239 cubic meter of sand/moram from December, 2018 to May, 2019.

79. The respondent has not disclosed any detail about mining alleged to have been carried out by the petitioner after May, 2019. As per record, the petitioner had carried out mining till May, 2019. Under the notice dated 21.05.2019, the respondent has demanded the installment due from the petitioner on 01.01.2019 and on 01.04.2019.

80. As the petitioner had failed to deposit the two installments dated 01.01.2019 and 01.04.2019 and as per the respondents, petitoner had conducted mining till May, 2019, we are of the view that respondents should have immediately invoked the power under Rule 58 of Rules, 1963 to determine the lease.

81. The respondents do not disclose in the counter affidavit the reason for not invoking powers under Rule 58 of the Rules, 1963 immediately after expiry of period given in the notice calling upon the petitioner to deposit installments dated 01.01.2019 and 01.04.2019.

82. Since, it is only the respondent-State who is authorised to determine the lease deed under Rule 58 of Rules, 1963 and in the lease deed, there is no exit-way given to the petitioner from the lease deed, therefore, it is expected of the authority to exercise the power of determination of lease diligently, and petitioner cannot asked to discharge his obligations under the lease deed because of the slackness on the part of respondents in determining the lease.

83. The respondents are under an obligation to explain the reason for the delay in invoking power of determination of lease so as to find out whether the delay in determining the lease is bonafide and genuine. Non-disclosure of reason for delay in not

determining the lease of the petitioner would definitely be an arbitrary exercise of power and is against the spirit of Rules, 1963. Therefore, the petitioner cannot be forced to pay installments demanded by the respondent, which he otherwise would not have been liable to pay if, the respondent-authority had acted promptly and invoked the power under Rule 58 of Rules, 1963 to determine the lease immediately after the petitioner failed to comply with the demand made by the respondents under the notice dated 21.05.2019.

84. Thus, for the reasons given above, we are of the view that since petitioner has not done any mining after May, 2019 and if, the power to determine the lease had been invoked by the authority promptly, the lease deed would have been determined before 01.07.2019, and petitioner would not have been liable to pay any royalty after 01.07.2019, therefore, we hold that recovery of installments due from the petitioner on 01.07.2019 and on 01.10.2019 is not justified. Accordingly, we set aside the impugned order to the extent it demands recovery of installments due on 01.07.2019 and on 01.10.2019.

85. The petitioner has deposited Rs.50 lacs on 15.10.2019 and Rs.20 lacs on 26.11.2019, total amounting to Rs.70 lacs for adjustment towards arrears of earlier installments for which recovery had already been issued. However, respondents have adjusted the said amount in the installments of October, 2019.

86. Since, we have already held above that recovery of installments due on 01.07.2019 and on 01.10.2019 is illegal, therefore, we are of the view that aforesaid amount is liable to be adjusted towards the installments payable on 01.01.2019 and on 01.04.2019.

87. By the impugned order, the lease deed has been determined by the District Magistrate, Fatehpur. We are of the view that petitioner has failed to make out any case for quashing the order determining the lease deed inasmuch as the case of the petitioner challenging the recovery of installments due on 01.07.2019 and on 01.10.2019 is based upon the argument that if, the petitioner had failed to discharge his obligation to deposit the installments, the authorities should have immediately exercised the power terminating the lease deed under Rule 58 of Rules, 1963, therefore, we do not find any good ground to set aside the finding of the authority determining the lease deed.

88. By the impugned order, petitioner's firm has also been blacklisted for two years, and period of blacklisting has passed, therefore, punishment of blacklisting of petitioner's firm has lost it's significance, and in future, if petitioner is eligible to participate in auction proceedings as per law, the blacklisting of two years by the impugned order should not come in the way of petitioner in participating in future auction.

89. Thus, for the reasons given above, the Writ-C No.3056 of 2020 is partly ***allowed*** and Writ-C No.18896 of 2019 is ***dismissed*** with no order as to costs.

(2026) 5 ILRA 2107
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 08.05.2026

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE MANJIVE SHUKLA, J.

Writ C No. 4728 of 2026

Purnima Mishra **...Petitioner**
Versus
U.O.I. & Ors. **...Respondents**

Issue for consideration

The petitioner challenged the land acquisition compensation award, alleging improper valuation and non-consideration of the land's non-agricultural nature and existing structures.

Headnotes

A. Civil matter-Constitution of India,1950-Article 226-National Highways Act,1956-Section 3G(5)-Land Acquisition-Compensation-Alternative remedy-Arbitration-Market value-Nature of land-Non-agricultural use-Existing buildings/Structures-Writ jurisdiction-RFCTLARR, 2013-Objections regarding incorrect market value, classification of land, and omission to consider structures directly affect the quantum of compensation and are within the jurisdiction of the statutory Arbitrator under section 3G(5)-writ petition disposed of.(Para 8 to 17)

Held

The court held that an efficacious statutory remedy under section 3G(5) being available for redressal of disputes regarding compensation, interference under Article 226 was unwarranted. However, the statutory arbitrator was directed to conclude the pending arbitration within stipulated period. (E-6)

List of Acts

Constitution of India, 1950, National Highways Act,1956.

List of Keywords

National Highways Act,1956, Section 3G(5), Land Acquisition, Compensation, Alternative remedy, Arbitration, Market value, Nature of land, Non-agricultural use, Existing buildings/Structures-Writ jurisdiction, RFCTLARR,2013, market value, Classification of land, Quantum of compensation, Arbitrator.

Case Arising from

CIVIL JURISDICTION: WRIT-C No. 4728 OF 2026
Purnima Mishra Vs. U.O.I Ministry of Road Transport & Highways Dwarka Thru. Secy. New Delhi & 4 Ors.
From the judgment and order dated 08.05.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Adv. for Petitioner(s):
Tarun Mishra
Advs. for Respondent(s):
A.S.G.I., C.S.C Somdutta Singh

(Delivered by Hon'ble Rajan Roy, J.
&
Hon'ble Manjive Shukla, J.)

1. Sri Shivansh Agrawal, Advocate has filed his vakalatnama on behalf of the opposite parties no. 2 and 3. The same is taken on record.

2. Heard Sri Tarun Mishra, learned counsel for the petitioner, Sri S.B. Pandey, learned Senior Counsel and Deputy Solicitor General of India assisted by Sri Varun Pandey, learned counsel for the Union of India, learned Additional Chief Standing Counsel for the State and Sri Shivansh Agrawal, learned counsel for the opposite parties no. 2 and 3.

3. By means of this writ petition the petitioner has sought the following reliefs:-

"(i) To issue a writ, order or direction in the nature certiorari quashing the Award dated 10.04.2024 passed by the Opp-party no.4 contained as Annexure - 1 to this writ petition.

(ii) To issue a writ, order or direction in the nature of mandamus commanding the Opp-Party No.4 to pass a fresh award after considering the prevailing market value/circle rate of the year 2024 and in consonance with the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 before taking possession of the land in question.

(iii) To issue a writ, order or direction in the nature of mandamus commanding the Opp-party no.5 to take a decision with regard to the 'Arbitration Case No. 00010 of 2019, Purnima Mishra vs. Union of India and others' contained as Annexure - 2 to this writ petition."

4. The case of the petitioner is that part of his land was acquired earlier under the National Highways Act, 1956 (hereinafter referred to as 'the Act, 1956') and compensation was determined under Section 3-G(1) of the Act, 1956. Being aggrieved, proceedings have been initiated by the petitioner under Sub-section (5) of Section 3-G of the Act, 1956 which are still pending. Thereafter, another part of the land belonging to the petitioner was notified for acquisition under Section 3-D of the Act, 1956. Thereafter, compensation has been determined by the competent authority under Sub-section (1) of Section 3-G of the Act, 1956, however, while doing so he has ignored the fact that the land is being used for non agricultural purposes and there are structures and building existing thereon and has not taken this factor into consideration while determining compensation. It is also the case of the petitioner before us that instead of determining the market value as on the date of notification issued on 18.03.2020 the market value prevailing 2019 has been determined.

5. The contention of the petitioner's counsel is that a remedy under Sub-section (5) of Section 3-G of the Act, 1956 is not efficacious as regards the issue raised herein.

6. On the other hand learned counsel for the N.H.A.I. says that petitioner challenges the very basis of determination of compensation, which, ultimately has affected the quantum of compensation determined by the Competent Authority, therefore, taking these very grounds she can

very well initiate proceedings under Sub-section (5) of Section 3-G of the Act, 1956 and there is no legal bar in this regard.

7. Ms. Anupma Singh, learned Additional Chief Standing Counsel for the State has also argued on the same line as learned counsel for the N.H.A.I., meaning thereby, according to her also, an efficacious remedy is available under Sub-section (5) of Section 3-G of the Act, 1956.

8. Section 3-G of the Act, 1956 reads as under:-

*"**3G. Determination of amount payable as compensation**.-(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.*

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3-C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration"

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change."

9. The words -'if the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.' This language used in Section 3-G(5) of the Act, 1956 is of wide amplitude and pleas such as the one raised herein to the effect that the land was being used for non agricultural purposes, therefore, the rate as applicable to the land being used for the said purpose as distinct from agricultural purpose should have been applied to determine the compensation is also open for being raised in such proceedings under Section 34(5) and also for being considered therein, as, ultimately, the aforesaid ground is relevant for determination of quantum of compensation and if the same has been ignored, then, the Arbitrator can certainly take into consideration.

10. Sub-section (7) of Section 3-G of the Act, 1956 lays down the factors to be taken into consideration by the competent authority or the arbitrator, as the case may be, while determining the amount under Sub-section (1) or Sub-section (5). These factors are- (a) the market value of the land on the date of publication of the notification under Section 3-A; (b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land; (c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings; (d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

11. If the competent authority has taken into consideration the market value as on the date prior to the date of publication, then, in view of Clause (a) of Sub-section (7) of Section 3-G of the Act, 1956 the arbitrator can very well look into these aspects of the matter.

12. As regards the other grievance that the land in question is being used for non agricultural purposes and there are structures and building existing thereon, a factor which has allegedly not been taken into consideration by the competent authority, we are of the opinion that in the parameters mentioned in Sub-section (7) of Section 3-G of the Act, 1956 this aspect/factor is implicit therein, as, while determining the market value under Clause (a) of Sub-section (7) of Section 3-G of the Act, 1956 necessarily the competent authority or the arbitrator, as the case may be, would have to take into consideration the nature of the land and structures etc., if any, existing thereon. This is also evident from Clause (d) of Sub-section (7) of Section 3-G of the Act, 1956 which provides that if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change would also be payable.

Therefore, this necessarily entails an exercise whether it be by the competent authority or the arbitrator as to whether there are structures or buildings existing on the land in question and what is the use to which the land is put forth. The market value of agricultural and non agricultural land would be different, therefore, it would be necessary for both the competent authority or the arbitrator to take into consideration these aspects.

13. The quantum of compensation can be determined by the competent authority or on initiation of proceedings before the Arbitrator only after taking into consideration the nature of the land, structures and building existing thereon and the used to be the land being put i.e. agricultural, non agricultural or any other category, therefore, the said exercise is implicit in the proceedings under Section 3-G(1) as well as 3-G(5) of the Act, 1956.

14. In this context learned counsel for the NHAI is correct in submitting that the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act, 2013') is also applicable to the acquisition proceedings under the Act, 1956. We may in this context refer to Section 105 of the Act, 2013 and the Fourth Schedule referred therein. Though, in the Fourth Schedule the National Highways Act, 1956 is mentioned, but, in view of Sub-section 3 of Section 105 of the Act, 2013 the Central Government can, by notification, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification and it has actually done so by Notification dated 28.12.2017 which is on record, wherein, reference has been made to the two ordinances issued 2015 and the then RFCTLARR (Removal of Difficulties) Order, 2015 notified on 28th August, 2015, therefore, the provisions for determination of compensation as contained in the Act, 2013 are applicable to acquisition proceedings under the Act, 1956 and in this context Sections 26, 27, 28, 29 etc. are also relevant.

15. We are, therefore, of the opinion that the remedy prescribed under Sub-section (5) of Section 3-G of the Act, 1956 is an efficacious remedy which is available but it has not been availed. We, therefore, decline to entertain this writ petition. The petitioner may avail the said remedy under Sub-section (5) of Section 3-G of the Act, 1956.

16. At this stage, learned counsel for the petitioner invites our attention to Relief Clause No. (iii) in the writ petition which is for disposal of 'Arbitration Case No. 00010 of 2019, Purnima Mishra Vs. Union of India and others' relating to earlier acquisition. We direct the statutory Arbitrator, who appears to be the Collector concerned, to decide the said case at the earliest, say, within a period of three months unless there is legal impediment.

17. With the aforesaid observations, the writ petition is **disposed of**.

(2026) 5 ILRA 2112
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 29.05.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Writ C No. 5810 of 2026

M/S Konkan Railway Corp. Ltd. ...Petitioner
Versus
U.O.I. & Ors. ...Respondents

Issue(s) for consideration

(a) Whether a public authority can reject a technical bid without giving initial reasons and subsequently introduce new justifications during court proceedings?
(b) Whether a bidder, if declared the highest bidder, obtains an indefeasible right to insist upon award of the contract?

Headnotes

A. Contract Law – North Eastern Railway (NER) floated Tender on 30.09.2025. On 19.05.2026 (at 17:30 hours), the petitioner received an email stating its Techno-Commercial (Technical) Bid was rejected, without any specific details or reasoning. Less than three hours later (at 19:59 hours on the same day), the authorities opened the financial bids and declared an L-1 bidder. On 26.05.2026, the High Court stayed further tender proceedings and ordered the railways to provide a reasoned order. The railways subsequently submitted that the petitioner's Bank Guarantee was on a stamp paper of insufficient value under the U.P. Stamp Act.

B. The authority cannot invent or add new justification for a decision already taken during legal proceedings. Apparently on 19.05.2026, when the technical bid of the petitioner was rejected the only reason provided by the authority was "does not fulfill the criteria", without any reason or whisper as to which criteria and in which manner the said criteria has not been fulfilled. However, subsequently it was only after a direction of this Court that on 25.05.2026, the authority came up with a reason of deficient stamp duty in the bank guarantee to justify the aforesaid rejection. (Para 9)

In any case, the deficiency in payment of stamp duty, in accordance with the U.P. Stamp Act, is at the most a lacuna and a curable defect which could have been sought to be cured by the authority concerned. It is further noted, that in the past, for another tender, a similar bank guarantee of Rs.500/- had been accepted and the financial bid of the petitioner had been opened, wherein the petitioner had been declared L-3. (Para 10)

The action of the authorities is mala fide and is merely an attempt to eliminate the petitioner, who has submitted the lowest financial bid. (Para 11)

C. A bidder, even if declared the highest bidder, does not for that reason alone obtain an indefeasible right to insist upon award of the contract. Until the process matures into a concluded contractual relationship in accordance with the governing tender conditions, the bidder's position remains provisional. **State or authority u/Article 12 of the Constitution is not bound to accept bid of L1 bidder, but is only bound to act without arbitrariness and favouritism.** There is no obligation on the

part of the person issuing tender notice to accept any of the tenders or even the lowest tender. (Para 12, 13, 14)

In view the arbitrary rejection of the technical bid on flimsy ground, the tabulation of the financial bid prepared on 19.05.2026 is quashed and set aside, with a direction upon the authorities to once again reconsider the financial bids of all the tenderers, including that of the petitioner.

Writ petition disposed of. (E-4)

Case Law Cited

1. Hindustan Steel Ltd. Vs. M/s. Dalip Construction Company, (1969) 1 SCC 597 (Para 6)
2. Poddar Steel Corporation Vs. Ganesh Engineering Works and others, (1991) 3 SCC 273 (Para 7)
3. Mohinder Singh Gill Vs. Chief Election Commr., (1978) 1 SCC 405 (Para 9)
4. Meerut Development Authority Vs. Assn. of Management Studies, (2009) 6 SCC 171 (Para 12)
5. State of Jharkhand Vs. CWE-SOMA Consortium, (2016) 14 SCC 172 (Para 13)
6. Indore Vikas Praadhikaran (IDA) Vs. Shri Humud Jain Samaj Trust, 2024 SCC OnLine SC 3511 (Para 14)
7. Tata Cellular Vs. Union of India, (1994) 6 SCC 651 (Para 14)
8. Master Marine Services (P) Ltd. Vs. Metcalfe & Hodgkinson (P) Ltd., (2005) 6 SCC 138 (Para 14)
9. Meerut Development Authority Vs. Assn. of Management Studies, (2009) 6 SCC 171 (Para 14)
10. Laxmikant Vs. Satyawan, (1996) 4 SCC 208 (Para 14)

List of Acts

Constitution of India, U.P. Stamp Act.

List of Keywords

Article 12, bidder, highest, stamp duty, deficiency, lacuna, financial, tender, reason, arbitrariness, favouritism, mala fide.

Appearances for Parties

For Petitioner(s): Alok Kumar Singh, Kazim Ibrahim
For Respondent(s): A.S.G.I.

(Delivered by Hon'ble Shekhar B. Saraf, J.
&
Hon'ble Abdhesh Kumar Chaudhary, J.)

1. Supplementary affidavit filed today in Court by the petitioner is taken on record.

2. Heard Sri Sudeep Seth, learned Senior Advocate assisted by Sri Alok Kumar Singh and Kazim Ibrahim, learned counsel appearing on behalf of the petitioner and learned counsel appearing on behalf of the respondents.

3. This is a writ petition under Article 226 of the Constitution of India, wherein the writ petitioner has made the following main prayers:-

"i. Issue a writ, order or direction in the nature of Certiorari quashing the impugned rejection of the Techno-Commercial Bid (Technical Bid) of the Petitioner, submitted in furtherance of Tender No.EPC-PSI-GKC-CHPG-NER, dated 30.09.2025, floated by the Respondent No. 2 (Annexure No. 1 - as communicated to Petitioner vide e-mail dated 19.05.2026 sent at 17:30 by the Respondent No. 2);

ii. Issue a writ, order or direction in the nature of Certiorari quashing the impugned opening of financial bids, as notified on 19.05.2026 at 19:59:57 hours, i.e., within a span of three hours after the Petitioner was informed via impugned email regarding the rejection of its technical bid. (contained as Annexure No. 2);

iii. Issue a writ, order or direction in the nature of mandamus directing the Respondent No. 2 to re-evaluate the Techno-Commercial Bid (Technical Bid) of the Petitioner, submitted in furtherance of Tender No. EPC-PSI-GKC-CHPG-NER, dated 30.09.2025, floated by the Respondent No. 2;

iv. Issue a writ, order or direction in the nature of mandamus directing the Respondent No. 2 to not proceed in furtherance of tender process including declaration, execution and issuance of work order in favour of L-1 or any other consequential action in the tender process."

4. The bid of the petitioner had been rejected on the technical ground that it "did not fulfill the eligibility criteria". In the said impugned e-mail dated May 19, 2026, nothing further had been stated, as had been pointed out by us in our earlier order dated May 26, 2026. Thus, while staying the earlier tender process as no further action had been taken by the authority after opening of the financial bid, we also directed the respondents to provide a copy of the reasoned order, within 24 hours to the petitioner.

5. Subsequently, on May 26, 2026, pursuant to the order passed by this Court, a further explanation was provided by the North Eastern Railway, wherein it was submitted as follows:-

"As pr our tender conditions and as per the legal opinion of North Eastern Railway/Gorakhpur Legal Cell obtained in similar instances, the stamp paper for the Bank Guarantee should have been as per UP Stamp Act. However, you have not submitted the Stamp Paper of the requisite amount. Therefore, there was a legal lacuna in considering your case. In our tenders, rejection on this ground has been done for all non-conforming tenders on this count."

6. Sri Sudeep Seth, learned Senior Advocate appearing on behalf of the petitioner has submitted that adequacy of stamp duty is a curable defect and the Stamp Act is a fiscal measure enacted to secure revenue for the State and time and again the Courts have held that the provision of Stamp Act has not been enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. To buttress his aforesaid argument, learned Senior Advocate appearing on behalf of the petitioner has relied on a a judgment rendered by Hon'ble the Supreme Court in **Hindustan Steel Ltd. vs. M/s. Dalip Construction Company** reported in **(1969) 1 SCC 597.**

7. It has been next submitted by the learned Senior Advocate appearing on behalf of the petitioner that an authority inviting tenders is not bound to give effect to every term and condition mentioned in the notice and is entitled to waive its condition even on technical irregularity. To buttress his aforesaid argument, learned Senior Advocate appearing on behalf of the petitioner has relied on a judgment rendered by Hon'ble the Supreme Court in **Poddar Steel Corporation vs. Ganesh Engineering Works and others** reported in **(1991) 3 SCC 273**. The relevant paragraph of the aforesaid judgment is delineated below:-

"6. It is true that in submitting its tender accompanied by a cheque of the Union Bank of India and not of the State Bank clause 6 of the tender notice was not obeyed literally, but the question is as to whether the said non-compliance deprived the Diesel Locomotive Works of the authority to accept the bid. As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories ? those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases. This aspect was examined by this Court in C.J. Fernandez v. State of Karnataka [(1990) 2 SCC 488] a case dealing with tenders. Although not in an entirely identical situation as the present one, the observations in the judgment support our view. The High Court has, in the impugned decision, relied upon Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489] but has failed to appreciate that the reported case belonged to the first category where the strict compliance of the condition could be insisted upon. The authority in that case, by not insisting upon the requirement in the tender notice which was an essential condition of eligibility, bestowed a favour on one of the bidders, which amounted to illegal discrimination. The judgment indicates that the court closely examined the nature of the condition which had been relaxed and its impact before answering the question whether it could have validly condoned the shortcoming in the tender in question. This part of the judgment demonstrates the difference between the two categories of the conditions discussed above. However it remains to be seen as to which of the two clauses, the present case belongs."

8. On the other hand, learned counsel appearing for the respondents has submitted that the financial bid has already been opened and L-1 had been declared and as such a right has accrued in favour of the L-1 in the present tender.

9. We have heard the learned counsel for the parties and on a careful consideration of the issues raised, we are of the view that apparently on May 19, 2026, when the technical bid of the petitioner was rejected the only reason provided by the authority was "does not fulfill the criteria", without any reason or whisper as to which criteria and in which manner the said criteria has not been fulfilled. However, subsequently it was only after a direction of this Court that on May 25, 2026, the authority came up with a reason to justify the aforesaid rejection dated May 19, 2026 as is apparent from the letter dated May 25, 2026 of the authority, wherein reasons of deficient stamp duty in the bank guarantee has been provided with. We do not appreciate this kind of improvement made by the authority in the reasoning of rejecting the technical tenders as the law stands settled that the authority cannot invent or add new justification for a decision already taken during legal proceedings (see **Mohinder Singh Gill v. Chief Election Commr. reported in (1978) 1 SCC 405).**

10. In any case, the above reason, namely that adequate stamp duty had not been paid in accordance with the U.P. Stamp Act, in our view, is at the most a lacuna and a curable defect which could have been sought to be cured by the authority concerned. It is further to be noted, as pointed

out by Sri Sudeep Seth, learned Senior Advocate appearing on behalf of the petitioner, that in the past, for another tender, a similar bank guarantee of Rs.500/- had been accepted and the financial bid of the petitioner had been opened, wherein the petitioner had been declared L-3. These documents are annexed at Page Nos.159 and 163 of the supplementary affidavit.

11. In light of the above, it appears that the action of the authorities is mala fide and is merely an attempt to eliminate the petitioner, who has submitted the lowest financial bid.

12. As regards the contention of the learned counsel for the respondents that financial bid had been opened, it has to be understood that it is well settled that a bidder, even if declared the highest bidder, does not for that reason alone obtain an indefeasible right to insist upon award of the contract. Until the process matures into a concluded contractual relationship in accordance with the governing tender conditions, the bidder's position remains provisional. The Supreme Court in **Meerut Development Authority v. Assn. of Management Studies** reported in (2009) 6 SCC 171 has held that State or authority under Article 12 of the Constitution of India is not bound to accept bid of L1 bidder, but is only bound to act without arbitrariness and favouristism. The relevant paragraphs of the aforesaid judgment are delineated below:-

"27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the abovestated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations.

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29. The Authority has the right not to accept the highest bid and even to prefer a tender other than the highest bidder, if there exist good and sufficient reasons, such as, the highest bid not representing the market price but there cannot be any doubt that the Authority's action in accepting or refusing the bid must be free from arbitrariness or favouritism."

13. To the same effect, is the judgment of The Supreme Court in **State of Jharkhand v. CWE-SOMA Consortium** reported in (2016) 14 SCC 172**,** wherein it was held that there is no obligation on the part of the person issuing tender notice to accept any of the tenders or even the lowest tender. The relevant paragraphs of the judgment are quoted hereinbelow:

"13. In case of a tender, there is no obligation on the part of the person issuing tender notice to accept any of the tenders or even the lowest tender. After a tender is called for and on seeing the rates or the status of the contractors who have given tenders that there is no competition, the person issuing tender may decide not to enter into any contract and thereby cancel the tender. It is well settled that so long as the bid has not been accepted, the highest bidder acquires no vested right to have the auction concluded in his favour (vide Laxmikant v. Satyawan [Laxmikant v. Satyawan, (1996) 4 SCC 208] , Rajasthan Housing Board v. G.S. Investments [Rajasthan Housing

Board v. G.S. Investments, (2007) 1 SCC 477] and U.P. Avas Evam Vikash Parishad v. Om Prakash Sharma [U.P. Avas Evam Vikas Parishad v. Om Prakash Sharma, (2013) 5 SCC 182 : (2013) 2 SCC (Civ) 737]).

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21. Observing that while exercising power of judicial review, the Court does not sit as appellate court over the decision of the Government but merely reviews the manner in which the decision was made, in Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651] , SCC in para 70 it was held as under: (SCC p. 675)

"70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down."

(emphasis in original)

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23. The right to refuse the lowest or any other tender is always available to the Government. In the case in hand, the respondent has neither pleaded nor established mala fide exercise of power by the appellant. While so, the decision of the Tender Committee ought not to have been interfered with by the High Court. In our considered view, the High Court erred in sitting in appeal over the decision of the appellant to cancel the tender and float a fresh tender. Equally, the High Court was not right in going into the financial implication of a fresh tender."

14. The Supreme Court in **Indore Vikas Praadhikaran (IDA) v. Shri Humud Jain Samaj Trust** reported in 2024 SCC OnLine SC 3511 has recently reiterated the settled legal position reminiscing its precedents in Tata Cellular v. Union of India, (1994) 6 SCC 651]; Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd., (2005) 6 SCC 138; Meerut Development Authority v. Assn. of Management Studies, (2009) 6 SCC 171; Laxmikant v. Satyawan, (1996) 4 SCC 208 that lowest bidder does not encompass an indefeasible right for issuance of letter of intent in its favour and has held as follows:

"14. Keeping in view of the aforesaid judgments, this Court is of the considered opinion that in the absence of allotment letter and acceptance of highest bid, no relief could have been granted in favour of respondent No. 1 as there was no concluded contract in the matter and the decision taken by the Tender Evaluation Committee to generate more revenues could not have been

interfered with in the manner and method as has been done by the Division Bench of the High Court of Madhya Pradesh at Indore Bench. The bidder has no right in the matter of bid except of fair treatment and cannot insist for further negotiation as has been done in the present case. The terms and conditions of NIT, particularly condition No. 6, empowers the IDA to accept or reject any or all bids. In the present case, the bid was rejected for valid and cogent reasons and, therefore, the order passed by the Division Bench of the High Court of Madhya Pradesh is set aside."

15. Accordingly, in the peculiar facts and circumstances and keeping in view the arbitrary rejection of the technical bid on flimsy ground as mentioned herein above, the tabulation of the financial bid prepared on May 19, 2026 (page No.24 of the writ petition) is quashed and set aside, with a direction upon the authorities to once again reconsider the financial bids of all the tenderers, including that of the petitioner, without considering the impediment of inadequacy in stamp duty in the bank guarantee submitted by the petitioner.

16. Furthermore, we also direct the petitioner to make good the deficiency in stamp duty urgently on or before June 3, 2026, so that the exercise of consideration of the financial bid, as aforesaid can be taken expeditiously in accordance with law.

17. With the above directions, the writ petition is **disposed of**.

(2026) 5 ILRA 2118
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.05.2026

BEFORE

THE HON'BLE ATUL SREEDHARAN, J.
THE HON'BLE SIDDHARTH NANDAN, J.

Writ C No. 6613 of 2026
With
WRIT C No. 9562 of 2026

Chandrashekhar Upadhyay **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

1. For the breach of bye-laws of the Advocate Association, which has to be in conformity with Model Bye-laws as propounded by the Bar Council of U.P.; whether the parties are required to approach the Bar Council of U.P. or they are required to seek redressal before the Assistant Registrar, under the Societies Registration Act, 1860.

2. In case of an inter se seniority dispute amongst the Members of the Elders Committee and being referred to the Bar Council; in such an eventuality what would be the extent of power, that can be exercised by the Bar Council while, determining the dispute.

3. What shall be the powers of the Elders Committee, and as to whether the same can be borne out from the model bye-laws propounded by the Bar Council of U.P. or from the bye-laws of the Advocates Association.

4. Consequences, if any, in a situation where the Elders Committee, does not complete the election process, within 1 month or a dispute arises with regard to the elections conducted.

Headnotes

Advocates Act, 1961 – ss. 21, 34 – Societies Registration Act, 1860 – s.25(1), (2) – Model Bye-Laws for Bar Associations, U.P. – Bar Association – Elections – Constitution of Elders Committee – Dispute regarding seniority of Members of Elders Committee – Held, in case of a dispute regarding seniority of a Member of an Elders Committee of a District Bar Association, the only recourse available is to approach the Bar Council of U.P. u/s 21 of the Advocates Act, 1961 – Bar Council, while determining the seniority dispute, cannot issue any direction to the Advocates Association regarding postponement of elections or otherwise interfere in the election process – Section 25(2) of the Societies Registration Act, 1860, which gives power to the Registrar to hold elections of the Society or Committee of Management after expiry of its term, has no applicability in case of Bar Associations, whose elections are to be conducted in accordance with the Model Bye-Laws or the Rules of the Association – Elders Committee, after expiry of the prescribed tenure, to take over administration of the Association and hold elections, but shall not take any policy decision except to perform day-to-day work necessary in the interest of the Bar Association – Provisions of the Bye-Laws of an Advocates Association which are not in consonance with the Model Bye-Laws cannot be permitted – Any deviation can be permitted only after corresponding amendment in the Model Bye-Laws and approval by the Bar Council of India – Bar Council of U.P. empowered to examine deviation from Model Bye-Laws and, in case of non-conformity, affiliation of the Bar Association may be cancelled – Directions issued regarding constitution and functioning of Elders Committee, conduct of elections and resolution of election disputes – Impugned resolutions constituting Elders Committee/election committee dehors the mandate of the Model Bye-Laws and Bye-Laws of the Association, set aside.

Held :

The Court answered Issue Nos. 1 and 2 as follows:

(I). In case of a breach of a bye-law of an Advocates Association, which has to be in conformity with the Model By-Laws, as propounded by the Bar Council of U.P., with respect to dispute of the seniority of a Member; and the bye-laws of the Association, makes provision to determine the seniority, taking into account the date of enrollment as an Advocate by the Bar Council (In case of an affiliated Bar Association of a District in State of U.P.); the only recourse available for the redressal of the said grievance is to approach the Bar Council of U.P. under Section 21 of the Act, 1961. For ready reference Section 21 of the Act, 1961 is reproduced below:

"21. Disputes regarding seniority.—(1) Where the date of seniority of two or more persons is the same, the one senior in age shall be reckoned as senior to the other.

[(2) Subject as aforesaid, if any dispute arises with respect to the seniority of any person, it shall be referred to the State Bar Council concerned for decision.]""

(II) However, in case a dispute of seniority amongst Members of the Elders Committee is referred to the Bar Council, under Section 21 of the Act, 1961, the Bar Council shall only determine the said seniority dispute and under no circumstances, either pending the dispute or otherwise, issue any directions to the "Advocates Association" regarding the postponement of the elections of the "Advocates Association" or directives otherwise, interfering in the process of elections;

(III) And in an eventuality of the dispute of the seniority being referred under Section 21 of the Act, 1961 and it is germane to the process of election, in the first instance, it shall be the decision of the senior most Members of the Elders Committee i.e. the Chairman of the Elders Committee, regarding the deferment of the election; and in case the seniority of the Chairman of the Elders Committee is itself in dispute, the remaining 3 senior most Members of the Elders Committee shall take a decision by way of a majority amongst themselves; and when the deferment to be made is beyond 1 month, the Elders Committee shall call for Extra Ordinary General Members Assembly, for fixing the date of the election.

(IV) However the Bar Council of U.P. shall neither interfere in the elections to be conducted by the Elders Committee nor issue any directives in relation to the said elections.

(V) And, as far as the determination of the Elders Committee of an Advocates Association of the High Court is concerned, 5 designated senior most Advocates, actively practicing in High Court by virtue of their seniority, shall be considered and since the seniority list of designated Advocates in the High Court, is maintained by the Allahabad High Court, the same has to be strictly adhered to; and only if a designated senior refuses to accept the responsibility as a Member of the Elders Committee, the next senior most designated senior Advocate as per the seniority list of the Allahabad High Court, shall be considered; and so forth.

(VI) Immediately after completion of the Elections, the list of elected members shall be forwarded to the State Bar Council [Rule 8 (व)] along with a copy of the Association's Bye-Laws; and if found elections has been held in conformity of the Association's Bye Laws (which has to be in conformity with Model Bye-Laws) the same shall be accepted; and if not, the same shall be rejected; and if valid elections are not held, the affiliation can be cancelled, as per Rule 10 (ख) r.w. (ग) of the Rules, 2005.

In case of a dispute with respect to the continuation of a Member of the Committee or a dispute regarding the elections, Section 25(2) of the Act, 1860, which empowers the Registrar to hold elections of the Society or the Committee of Management after the expiry of its term, shall have no applicability to Bar Associations, since their elections are conducted in accordance with the Model Bye-Laws or under the Rules of the "Advocates Associations", duly approved by the Bar Council of the State and the Bar Council of India, which are statutory bodies under the Advocates Act, 1961.

Issue No. 3 and 4

Court held that the provisions of the Bye-Laws of an Advocates Association which are not in conformity with the Model Bye-Laws cannot be permitted. Such non-conformity with the Model Bye-Laws, even if approved by the Bar Council, cannot be permitted .

Court further held that, under the Model Bye-Laws, after completion of one year from the date of election, the Members of the Governing Council/Executive Committee may, in extraordinary circumstances, continue for a further period of one month, subject to the approval of the Elders Committee, for reasons to be recorded, within which period the elections must be completed. However, the Model Bye-Laws do not provide for the consequences where the Elders Committee itself fails to conduct the elections within the said period of one month. Accordingly, the Court issued the following directions, to operate in the interregnum:

(I) The Elders Committee will not take any financial decisions or decisions pertaining to the movable and immovable properties of the Association; and shall exercise only such financial powers which may be necessary for performing day to day functions of the Association or for the conduct of the elections.

(II) The Elders Committee shall be permanent in nature consisting of 5 designated senior-most Advocates, actively practicing in the High Court by the virtue of their seniority as designated

Advocates; and in case of district court, the seniority of the Members of the Elders Committee will be determined by taking into account, the date of enrollment as an advocate by the Bar Council; and having rendered atleast 10 years regular practice in that Court and continuing as regular practitioner of that Court; and the senior most Member of the Elders Committee, will be the Chairman of the respective Associations i.e. the High Court and the District Courts.

(III) Once the situation contemplated in clause-18 of the Model ByeLaws arises and the elections are not held within 1 year, the extension of period of 1 month shall only be given, considering an extraordinary circumstance, by the Elders Committee, for the reasons to be recorded and with an undertaking that the elections shall be held within the said extended 1 month by the outgoing Committee. However, in failing to hold the elections within the extended 1 month for whatever reasons, the Elders Committee shall take over the administration of the Association and shall hold the elections within another 1 month; failing which the extraordinary general meeting has to be called and the elections has to be held on the date fixed by the General Assembly, by the Elders Committee.

(IV) Once the elections are held, the charge shall be handed over to the newly elected Committee; thereafter one senior-most Member of the Elders Committee i.e. the Chairman, will retire and the existing Members shall induct the next senior most Member i.e. a designated Advocate actively practicing in High Court by virtue of his seniority (in case of HCBA); and the next senior most Member (in case of District/Tehsil Bar Associations) having rendered atleast 10 years regular practice in that Court and continuing as regular practitioner of that Court. The Chairman, shall be the senior most Member, of the newly constituted Elders Committee. However, the retiring Chairman of the Elders Committee, shall again be eligible, after the next elections, to be inducted in the Elders Committee.

(V) The Elders Committee shall hand over the list constituting the Elders Committee to the newly elected Committee; which shall recognize the said "Elders Committee" in its first meeting; and thereafter it shall be open to the Members of the Association to file objections before the newly elected Committee, only confining to the seniority as envisaged in Rule-7 of the Model Bye-Laws, and the same shall be determined as provided herein above i.e. in case of a District Court, the issue shall be referred under Section 21 of the Act, 1961 to the Bar Council of U.P.; and in case of a seniority dispute in the HCBA, the same shall be determined as per the list of senior designated Advocates, maintained by the High Court of Judicature at Allahabad, in an in-house proceeding.

(VI) It is also clarified that if any senior Member is unwilling, the next senior will be inducted, and the consideration for the said induction of a new Member, by retiring the senior most person; shall be confined within the top 10 senior Members either in the list of designated senior Advocates (for the purpose of HCBA) or top 10 seniors, who have rendered at least 10 years regular practice in that Court and continuing as regular practitioners of that Court, by virtue of their date of enrollment as an Advocate by the Bar Council (in case of District Courts).

(VII) If there is any deviation from the Model Bye-Laws either Suo Moto or on a complaint being received, from any member of the Bar Association, it shall be incumbent upon the State Bar Council, to examine the same, after giving due opportunity, to the concerned Bar Association; and if found to be correct, the said Bar Association will be given an opportunity to amend their Bye-Laws and bring the same in conformity to the Model Bye-Laws, within 30 days, failing which the same shall be disaffiliated.

(VIII) The State Bar Council may form a permanent Committee, where the Bar Associations may file their objections and suggestions and at least once a year, the Committee may deliberate upon the same and either it may accept the same or reject the same. Once accepted the proposed amendments may be sent to BCI, and if approved, the same may be made applicable to all Bar Associations, uniformly. Needless to say that all proposed amendments, may be made, adhering to the Principles of Natural Justice and all applicable Laws.

(IX) In case the elections are disputed, the same can also be referred to the Elders Committee, who shall decide the dispute, on the principles laid down under Section 25(1) of the Society Registration Act, 1860.

The aforesaid directions were directed to operate only in the interregnum, until the Bar Council, if it deemed necessary, exercised its power to amend the Model Bye-Laws, such amendments being subject to approval by the Bar Council of India. (E-5)

[Paras 70, 73, 107, 108]

Case Law Cited

Shiv Kumar Akela, Advocate v. Registrar, Societies, Firms and Chits, **2007 (2) AWC 2011;**
Sunita Sharma v. Deputy Registrar, Chits, Funds, Society and others, **AIR 2014 Allahabad 141;**
P.K. Dash v. Bar Council of Delhi, **Writ Petition © 8106 of 2010**
Supreme Court Bar Association v. B.D. Kaushik, **2012 (6) SCC 152;**
Supreme Court Bar Association and others vs. B.D. Kaushik 2011 Legal Eagle SC 839
In Re: Zila Adhivakta Sangh, Allahabad, **2015 SCC OnLine All 297;**
Ajay Pratap Singh, **2014 (3) ADJ 394;**
Elders Committee, Central Bar Association, Azamgarh v. State of U.P., **C.M.W.P. No. 61100 of 2011, decided on 26.04.2013;**
Rajesh Kumar Shukla v. Assistant Registrar, Firms, Societies and Chits, **Writ-C No. 21861 of 2015, decided on 18.05.2015;**
Satish Chandra Pandey v. Registrar, Firms and Societies, U.P. and others, **Writ-C No. 3033 (MB) of 2008;**
Bar Association & Anr. v. State of U.P. and 4 others, **C.M.W.P. No. 34436 of 2013, decided on 26.06.2013;**
Rajendra Sail v. Madhya Pradesh High Court Bar Association and others, **AIR 2005 SC 2473;**
Zee Telefilms Ltd. v. Union of India and others, **(2005) 4 SCC 649;**
Sunita Sharma v. Deputy Registrar, Chits, Funds, Society and others, **P.I.L. No. 26676 of 2024.**

List of Acts

Constitution of India;
Advocates Act, 1961;
Societies Registration Act, 1860;
Bar Council of U.P. (Advocate Association Affiliation) Rules, 2005;
U.P. Advocates Welfare Fund Act, 1974;
Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015;
Bar Council of Uttar Pradesh Election Rules, 1992;.

List of Keywords

Bar Association elections; Elders Committee; Model Bye-Laws; seniority dispute; Bar Council of U.P.; Section 21, Advocates Act; Section 25, Societies Registration Act; non-applicability of Section 25(2); conduct of elections; deviation from Model Bye-Laws; affiliation/disaffiliation.

Case Arising From

Disputes relating to the constitution of the Elders Committee contrary to the Model Bye-Laws and seeking directions for holding elections.

Appearances for Parties

Advs. for the Appellant: Ashok Kumar Upadhyay, Manoj Kumar Dubey; Devendra Kumar Shukla, Sarvjeet Kumar, Sunil Kumar Dwivedi.
Advs. for the Respondents: Ashok Kumar Tiwari, Rakesh Pande, C.S.C., Sai Girdhar, Vishakha Pande; Aishwarya Pratap Shahi, Nipun Singh, C.S.C.

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

Prologue

[The advocate] has a duty to the court which is paramount. It is a mistake to suppose that he is the mouthpiece of his client to say what he wants: or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice. He must not consciously mis-state [sic] the facts. He must not knowingly conceal the truth...He must produce all the relevant authorities, even those that are against him. He must see that his client discloses, if ordered, the relevant documents, even those that are fatal to his case. He must disregard the most specific instructions of his client, if they conflict with his duty to the court. The code which requires a barrister to do all this is not a code of law. It is a code of honour. If he breaks it, he is offending against the rules of the profession and is subject to its discipline.

(Lord Denning)1

1. Affidavit filed on behalf of intervenor- High Court Bar Association, Allahabad is taken on record. HCBA, was permitted as an intervenor, as with passage of time, the disputes of like manner, as in the present Petition, are ensuing, more frequently than ever before; and the lacuna in the Model Bye-laws or on account of no clarity, the Associations are more engrossed in litigation, than meeting the cardinal purpose, for which they are in existence.

2. Heard Shri Manoj Kumar Dubey and Shri Devendra Kumar Shukla, learned counsel for the petitioners, Shri Ashok Kumar Tiwari, learned counsel for the Bar Council of U.P., Shri Rakesh Pande, learned Senior Advocate assisted by Ms. Vishakha Pande, Advocate for the High Court Bar Association, Allahabad, Shri Manoj Kumar Mishra, learned Standing Counsel for the State-respondents, Ms. Naina Sharma, Advocate and Mr. Achintya Rai Sharma, Advocate, as Amicus Curiae.

3. This Court is flooded with writ petitions being filed by the various Bar Associations of the districts in the State of Uttar Pradesh, as well as, on occasions the High Court Bar Association has also approached this Court, seeking redressal of issues, which basically concerns the election of their respective societies; and since the issues pertaining to both the writ petitions are touching the same legal issues, this Court deems it appropriate to address the issue by way of a common order, by the consent of the parties.

4. In writ petition no.6613 of 2026, the petitioner is a Member of District Bar Association, Mau and has filed the present writ petition with the following prayer:

i. To issue writ, order or direction in the nature of certiorari quashing the resolution dated 04.02.2026 passed by respondent no.2 Shri Pramod Kumar Singh Paliwal, The President, District Bar Association Mau, whereby the respondents no. 5 to 9 have been nominated as the members of the elder committee and the nominated members have been authorized to initiate proceedings regarding the election of the office bearers of the District Bar Association Mau for the year 2026 and a decision has been taken not to hold the election of the elders committee.

ii. To issue writ, order or direction in the nature of Mandamus restraining the respondent no. 5 to 9 not to initiate any proceedings for holding the election of District Bar Association, Mau for the year 2026 pursuant to the resolution dated 04.02.2026 passed by the respondent no.2 and the said nominated elder committee may not take any policy decision for holding the election."

5. In writ petition no.9562 of 2026, the petitioner is a practicing Advocate and is Member of the District Bar Association, Bijnor and has filed the writ petition with the following prayer:

"(i) Issue a writ, order or direction in the nature of certiorari for quashing the impugned order dated 19.02.2026 jointly issued by the President and Secretary of District Bar Association and Library, Bijnor (Annexure No.4 to the writ petition)

(ii) Issue a writ, order or direction in the nature of mandamus directing to the Elders Committee of District Bar Association and Library, Bijnor constituted under Clause 7 of bye-laws, to hold the election of District Bar Association and Library, Bijnor.

(iii) Issue a writ, order or direction in the nature of mandamus directing to the President and Secretary of the District Bar Association and Library, Bijnor not to interfere in the election of District Bar Association and Library, Bijnor."

6. In order to appreciate the historical background of the controversy and advent of the Elders Committee, by way of the Model Bye-Laws, this court deems it necessary, to refer to the judgement, in the case **of Shiv Kumar Akela and others vs. Registrar, Societies, Firms and Chits and others2,** wherein a Division Bench of this Court while considering a petition, on behalf of regular legal practitioners in High Court, Allahabad, having approached this Court raising pertinent issue regarding the influx of non-resident Members, who under the guise of advocates ordinarily practicing in the High Court of Allahabad, taking recourse to unethical means/practices and giving allurements, were influencing the HCBA elections; and as such the very objective of forming the Bar Associations and their pursuit to secure the aims and objects, enshrined under the bye-laws of HCBA was being defeated; and having given affiliation vide Affiliation No. 13 of 1989.

7. The other issue which was raised before the Court, was in spite of the fact that one year term of the governing body (under HCBA Rules) having come to an end, there was manipulated extension of the term. The third issue raised was regarding One Bar One Vote.

Case of Bar Council of Uttar Pradesh

8. The Bar Council of U.P. admitted that in absence of any procedure/modus operandi, under "Advocates Act, 1961", to ascertain and revoke enrollment of non-practicing/non-professional advocates or to test knowledge, competence and suitability of one, to be "enrolled" as "Advocate" and inadequacy of Rules and infrastructures, to carry out periodical scrutiny or to update Roll of Advocates in profession, unscrupulous persons and at the time even based on forged certificates, members were being registered; and the role of Bar Associations, should also be made accountable, regarding advocates practicing in Courts, tribunals etc.

Historical background with respect to the Model Bye-Laws framed by Bar Council of Uttar Pradesh

9. The Bar Council of Uttar Pradesh constituted the following Committee, for drafting a "***Model Bye-law"*** :

i. Shri Tej Pratap Singh, Convener (Bar Council of Uttar Pradesh, Allahabad)

ii. Shri Vinay Chandra Mishra, Member (Bar Council of Uttar Pradesh, Allahabad)

iii. Shri Ramesh Chandra Mehrotra, Member (Bar Council of Uttar Pradesh, Allahabad)

iv. Shri Birendra Kumar Srivastava, Member (Bar Council of Uttar Pradesh, Allahabad)

v. Shri Banshidhar Singh, Member (Bar Council of Uttar Pradesh, Allahabad)

vi. Shri Imran Mabood Khan, Member (Bar Council of Uttar Pradesh, Allahabad)

10. The model bye-laws, vide resolution no.2389 of 2005, dated 12.02.2005, were provisionally approved by the Bar Council; and in its meeting dated 09.01.2005, certain amendments were also suggested, which were incorporated subsequently e.g.:

(A). In format (A) at serial no.6 the following amendment was incorporated:

i. the bye-laws propounded by the Bar Council of U.P., to be registered with Registrar of Societies Registration;

(B). In format (D) for the purposes of affiliation of the Advocates Association with the Bar Council of U.P., shall incorporate the following at serial no.6:

i. a certificate to the effect that Advocates Association, which is attached with the Bar Council, have not violated any of the provisions of the bye-laws propounded by the Bar Council.

11. For ready reference amendments in format □A□ and □D□ at serial no.6, are reproduced below:

बार कौंसिल से संबद्धन हेतु आवेदन पत्र के प्रारूप (क) में संलग्नक के क्रम संख्या 6 पर निम्नलिखित बिन्दु बढ़ाया गया:-

6. बार कौंसिल उत्तर प्रदेश द्वारा प्रतिपादित उप विधि जो रजिस्ट्रार सोसाइटीज़ रजिस्ट्रेशन के साथ पंजीकृत हो।

बार कौंसिल से अधिवक्ता संघ के संबद्धन के नवीनीकरण हेतु आवेदन पत्र के प्रारूप (घ) के संलग्नक के क्रम संख्या 6 में निम्नलिखित संशोधन किया गया:-

6. इस आशय का प्रमाण पत्र कि अधिवक्ता संघ ने बार कौंसिल द्वारा प्रतिपादित उप विधि व संबद्धन नियमावलियों का उल्लंघन नहीं किया है।

12. Before, we proceed, we may examine the role of the Players, who are the Participant and being referred as □Legal Fraternity□. Legal practitioners are not merely agents of parties pleading a particular case, but are officers of the Court, expected to assist in the administration of justice, and to sustain the unimpaired dignity of Courts by all means in their power.

13. In the recent past, the management and functioning of the Bar Association came under public criticism and like other institutions, the constitution of the Bar Association was hijacked by non practicing and non-professional Advocates. [Refer: Sunita Sharma vs. Deputy Registrar, Chits, Funds Society and others3]. Consequently, 'Bar' as well as 'Bench' started feeling obstructions in the dispensation of justice, and those lawyers who were committed to the system became ineffective and the control and regulation of the Bar Association went into the hands of non-practicing and non-resident lawyers and consequently, the regular legal practitioners, including the parent bodies like 'State Bar Council' as well as 'Bar Council of India', took up the cause to save the Bar Association from the clutches of such lawyers, and a request was made to the Court of Law, to regulate entry into the premises and ensure that only bona fide genuine Advocates, enter the Court premises and regular legal practitioners alone are extended privileges and facilities by the Court, without which the Court cannot function smoothly and various measures were suggested to maintain the role of practicing lawyers, to curb the menace of uninterested non-practicing lawyers, obstructing the functioning of the Court, by frequent strikes and closure of the Courts' work. [Refer to P.K. Dash and others vs. Bar Council of Delhi and others4].

14. Money-power started controlling the constitution of the Governing Council of the Bar Association, which started functioning for their personal ends by adopting malpractices and influencing the justice delivery system. The matter was taken up by the Bar Council of India, as not only the local Bar Association, but also the statutory Bodies; such as 'Bar Council of State' and 'Bar Council of India', started becoming their victims.

15. During election campaigns, it was noticed that large numbers of law graduates, who are enrolled with the Bar Councils as a registered Advocate, are involved in various other professional activities and running businesses, but are voters for the purposes of elections of Bar Council and are thus affecting its constitution, with the result that those who are in active practice and are part and parcel of justice delivery system' lost their say; and as such the formulation of a proper regulatory system, in ensuring just and independent justice delivery system', thereby ultimately influencing such a noble cause in strengthening the Judiciary, which is one of the most important pillar, of the democratic system, became the need of the hour.

16. Having felt the adverse effect of such menace in polluting the justice delivery system, the High Court also invoked its "Rule Making Power" and evolved the principle of "One Bar One Vote". The entire concentration was made by the 'Bar' as well as the 'Bench', to ensure election of the Governing Council of the Bar Associations, should be by a person who is in active practice, as a lawyer, so that the dignity of the noble profession be maintained. It is for this, the role of an Elder Committee, is of great importance, as with their experience and wisdom, they can give guidance, in the election process.

17. Quality of the dispensation of justice, is directly dependent upon professional standards of ethics and discipline amongst the members of legal profession, and the same cannot be expected from a person, who is not a member of the profession. [Refer. Supreme Court Bar Association and others vs. B.D. Kaushik5]

18. The Bar Association Rules were framed by such non-practicing lawyers who were dominating the Governing Council, more inclined to support their own cause than the system. It was resolved by the Bar Council of India as well as the State Bar Councils to ensure that the electorate of the Governing Council of various Bar Associations is constituted by actively practicing lawyers.

19. Consequently, the desirability of framing "Model Bye-Laws" was felt, which should be uniformly adopted by the Bar Associations. In order to ensure their adoption by various Bar Associations, provisions were made for their recognition, by granting affiliation through the respective Bar Councils, to those Associations which have adopted the Bye-Laws.

20. So far as the State of U.P. is concerned, a Model Bye Laws was framed by Sri T.P. Singh, Senior Advocate, the then Member, Bar Council of India as well as Chairman of Bar Council of India Trust and Sri V.C. Mishra, the then Chairman, Bar Council of U.P.

21. 'Model Bye Laws' also took care of the issue of non-holding of the election even after the expiry of period of their tenure, consequently, in Model Bye Laws, a provision for the constitution of an Elders Committee was made, authorizing it, apart from other functions, to hold the election, after expiry of the period of tenure of office bearers, if they don't hold the election within time, giving relaxation of one month, for such endeavor.

22. The provision for taking over charge from the outgoing office bearers, by the Elders Committee after the expiry of period of their tenure was made, but attempts to frustrate the same is continuous, by office bearers elected, for their personal gains.

23. The provision and procedure for constitution of Elders Committee, is being altered by the Bar Association by amending their Rules; and consequently members started approaching the High Court; with the disputed regarding the validity of the constitution of Elders Committee, for non-adherence of the Model Bye Laws and neglectful attitude of the Bar Council towards violation of the Model Bye Laws, by way of not refusing affiliation to the Association; and consequently, this Petition is also in row of such litigation and another attempt by this Court, to help their counterpart and awakening the conscience, of bodies like State Bar Council as well as Bar Council of India, to rise to the occasion and bring the system in line, shunning the appeasement policies.

24. In the case in hand, it is strange to note that the concept of the constitution of Elders Committee by the Five Senior Most Members of the Bar Association, which they have earned by their long tenure of active practice and continuous involvement with the administration of justice, is being diluted by adopting means to disrupt the constitution of the Elders Committee, by direct

election or outgoing Committee, trying to nominate Elders Committee, in violation of Cl. 7 of the Model Bye-Laws, as in the case on hand.

25. In order to ensure that such Model Bye-Laws are being adopted by the various Bar Associations, the provision for affiliation, to give legal status to those Associations, was introduced by the Bar Council of U.P., "**Bar Council Uttar Pradesh Adhivakta Sangh Sambandhan Niymavali, 2005";** and it was further provided that members of those Associations who are affiliated to the State Bar Council under such Rules will be entitled to avail the benefit of various Welfare Schemes sponsored by the State Bar Council; but because of the appeasement actions without visualizing the harm being caused to the justice delivery system on account of such latitude and the dishonor to the Rules formulated by nobody else than the Members of the Bar Council themselves, i.e. the Bodies formulating the Rules themselves, are acquiescing their violation.

26. ***Section 34(1) of the Advocates Act, 1961*** empowers High Court to frame rules, laying down conditions subject to which an Advocate shall be permitted to practice in the High Court and Courts Subordinate thereto, which has been held similar to the power under Article 145 of the Constitution of India. In a very rare case, a Court of law has encroached on the power of the Bar Members.

27. Section 38 of the Advocates Act, 1961 provides that even in disciplinary matters, the final Appellate Authority is the Supreme Court. 'Bar' and 'Bench' are the inevitable two shores of one river' wherein flows 'stream of Justice'. [Refer. To IN Re vs. Zila Adhivakta Sangh, Allahabad6].

28. Bar Association stands on higher pedestal, as compared to other registered Societies because of their role in the functioning of 'State' organs.

29. ***Rule 3(c) of the "Bar Council of Uttar Pradesh- Election Rules, 1992"*** defines a "Bar Association", which is registered under the Indian Societies Act and also affiliated by the State Bar Council in accordance with Rules framed by State Bar Council, for the purposes of these Rules.

30. Bar is the 'Army' of the Bench. The Judges are required to speak through their Judgement but at times they cannot express their agony or pain, publicly; then it is only the Bar which can come to their rescue.

31. The Bye-laws of the Association builds the character of the Bar, it is their dignity which determines the status of Bar and naturally the strength of the Army is to protect the "Judges" from various evils, obstructing justice delivery system'. It ensures that no illegal or improper means are used to influence the Judges; and it is responsible to prevent it's clients, from resorting to sharp or unfair practice. He has to use restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during argument in court; and indisciplined or non-practicing lawyers, cannot maintain such standards.

32. In the matter of **Ajay Pratap Singh7**, a Division Bench of this Court, apart from other issues, gave direction that Elders Committee shall be constituted strictly in accordance with Rule 7 of the Bye-laws. In the event, no Senior Advocate is available, for any reason, then the next Senior Advocate, on the basis of seniority as Senior Advocate, will be the member of the Elders Committee.

33. The Apex Court in the matter of **Supreme Court Bar Association and others vs. B.D. Kaushik8,** has given the special status to the Bar Association which goes by the name of that Court e.g. "District Court Bar Association□□ for a particular District or "High Court Bar Association, Prayagraj" as a 'special status' of "Court Annex Bar Association".

34. The court annexed Bar Associations, start with the name of the court, as part of the name of the □Bar Association□ concerned. That is why we have □Supreme Court Bar Association□, □Tis Hazari District Court Bar Association□, etc. The very nature of such a Bar Association necessarily means and implies that it is an Association representing members regularly practicing in the court and who are responsible for proper conduct of its members in the court and for ensuring proper assistance to the court.

35. In consideration thereof, the court provides space for the office of the Association, library and all necessary facilities like chambers at concessional rates, for members regularly practicing in the court, parking place, canteen, besides several other amenities.

36. In the functions, organized by the court annexed Bar Associations, the Judges participate and exchange views and ascertain the problems, if any, to solve them and vice-versa. There is thus regular interaction between the members of the Bar Association and the Judges. The regular practitioners are treated as officers of the court and are shown due respect.

37. Right to vote is not an absolute right and to contest election is neither a Fundamental Right nor a common law right, but it is purely a statutory right governed by statute/rules/regulations. The right to contest an election and to vote can always be restricted or abridged, if statutes/ rules or regulations prescribe so. (Ref: In Rev Zila Adhivakta Sangh Allahabad9]. Voting right restrictions also can exist in the Rule.

38. Nature of a reasonable restriction, as to the right to vote is neither a common law right nor fundamental right under Article 19(1)(c); but a statutory right prescribed by the Statute, as has been held in several reported decisions of this Court. If a person is the member of several associations of advocates and wants to participate in the affairs of different associations of which he/she is a member; but circumscribed by a reasonable restriction, he/she may not be in a position to be really involved in the affairs of all associations of which he/she is a member. A person who is a member of more than one association, would form a different class than the person who is a member of only one association of lawyers, particularly the association of the Court in which he/she regularly practices. Though an advocate can be member of several associations, the right to form an association or be a member of an association does not necessarily include the right to vote.

39. "One Bar One Vote" is a prescription which is in furtherance of the right to form an association and be able to manage the affairs of the association by those who regularly practice in the courts, for which the association is formed.

40. Having referred to the issues of Appeasement, neglectful attitude of State Bar Council and the restrictions of □One Bar One Vote□; and also the mandatory requirement to form the □Elders Committee□ as per Clause 7 of the Model Bye/Laws, in the factual Matrix of the present case, while discussing its benefits and corresponding facilities, extended to the □Court Annex Bar Association□; since the issue which this Court has been called upon to address, pertains to the elections that are required to be held as per the bye-laws of the Bar Associations and which also has to conform to the Model bye-laws, which have been propounded by the the Bar Council of U.P., and is a sine qua non, for affiliation of the said Bar Association; this Court deem it appropriate to refer to Rule 18, 29, 51, 52, 53, and 54 of the Model Bye-Laws for Bar Association, U.P.; prior to framing Issues:

TERMS OF OFFICE

18. The office bearers of the Association and Members of the Governing Council / Executive Committee shall hold the office till the completion of one year from the date of their election, however, in extraordinary circumstances they may continue for a further period of 1 month with the prior approval of Elders Committee for the reason to be recorded within which they will get the election completed failing which the administration of the Association will vest in the Elders Committee, who will hold the election at there earliest as per bye-laws preferably within another 1 month.

BUSINESS AT THE ANNUAL GENERAL MEETING

29. The Annual General Meetings of the Association shall;

(a) fix a date for electing office bearers, and other members of the Governing Council from amongst its ordinary/life Members;

(b) pass the audited annual accounts, the annual report and sanction the Budget for the year from the 1 of August to the 31-July;

(c) adopt such resolutions as might be brought forward for guiding the activities of the Association or its bodies; and

(d) appoint the auditor for the ensuing year.

BREACH OF RULES

51. Any member of the Association who shall be guilty of continuous infraction of the rules herein contained or of any bye-laws made there under, shall be liable to expulsion by a vote of the majority of the members present at a General Meeting of the Association.

BYE-LAWS

52. Subject to these Rules the Governing Council may, from time to time, frame bye-laws, for the purpose of carrying out the objects or regulating the activities of the Association. the bye-laws framed shall not be effective till they have been approved by the Bar Council.

AMENDMENT OF RULES

53. None of the these Rules shall be altered or modified or rescinded nor shall any new rule be framed unless they have received the assent of two-thirds of the members present and voting, by secret ballot, at a General Meeting convened for the purpose and be subject to approval by "Bar Council".

PROCEDURE OF ELECTION

54. The meeting of the General Body of the Association will convene at least a month before the expiry of the term of the office bearers and shall fix a date for Election.

The Elders Committee will act as Penal of the Returning Officer to hold Election and be entitled to include any other member of the Association, provided one is not contesting the Election and the result of the Election shall be declared in the meeting of the General Body so convened by the Elders Committee.

In order to meet the heavy burden of expenditure of the Bar Association, the Elders Committee will also fix security money for various posts, which shall not be refundable after the nomination is accepted and found valid. Only ordinary members, who have put in 2 years of continuous membership, will be entitled to vote and participate in the Election.

"the person, who has held office in any post will not be entitled to contest the following election in sequence for any post, however, he can contest the election in any post after a gap of one tenure.

The election of the Bar Association in the entire State shall be held under the supervision and control of the Bar Council of Uttar Pradesh.

The Advocate shall be entitled to cost his votes, only in the election of Bar Association, name of which Bar Association is mentioned in his C.O.P. Certificate & Identity Card.

ISSUES

1. For the breach of bye-laws of the Advocate Association, which has to be in conformity with Model Bye-laws as propounded by the Bar Council of U.P.; whether the parties are required to approach the Bar Council of U.P. or they are required to seek redressal before the Assistant Registrar, under the Societies Registration Act, 1860.

2. In case of an inter se seniority dispute amongst the Members of the Elders Committee and being referred to the Bar Council; in such an eventuality what would be the extent of power, that can be exercised by the Bar Council while, determining the dispute.

3. What shall be the powers of the Elders Committee, and as to whether the same can be borne out from the model bye-laws propounded by the Bar Council of U.P. or from the bye-laws of the Advocates Association.

4. Consequences, if any, in a situation where the Elders Committee, does not complete the election process, within 1 month or a dispute arises with regard to the elections conducted.

Discussion: Issue Nos.1 & 2

1. For the breach of bye-laws, of the Advocate Association, which has to be in conformity with Model Bye-laws as propounded by the Bar Council of U.P.; whether the parties are required to approach the Bar Council of U.P. or they are required to seek a redressal before the Assistant Registrar under the Societies Registration Act, 1860.

2. In case of an inter se seniority dispute amongst the Members of the Elders Committee and being referred to the Bar Council; in such an eventuality what would be the extent of power, that can be exercised by the Bar Council ,while determining the dispute.

41. The breach that this Court is concerned viz a viz the constitution of the Elders Committee, generally pertains to an inter se seniority dispute, for the purposes of nomination of the Elders Committee, therefore Issue Nos. 1 and 2 are being dealt with, together.

42. Rule 51, though provides for an eventuality for the breach of rules, by a Member of the Association; but it does not make a provision, in case, there is a dispute of seniority, while determining the 5 senior most members of the Association, to constitute the Elders Committee.

43. This question in a narrow compass, may not detain us, as the Bar Council has powers under Section 21 of the Advocates Act, 1961 to decide the question of seniority amongst the Advocates, who are enrolled with the Bar Council; but however, the dispute is often raised, as to whether the seniority in the Bar Council of U.P. is to be reckoned or the seniority from the date of enrollment in the Bar Association is to be seen; and further the extent of the powers of Bar Council, while determining the seniority dispute, often disrupts the elections.

44. Shri Ashok Kumar Tiwari, Advocate appearing on behalf of the Bar Council of U.P. has submitted that any Bar Association in Uttar Pradesh, which has affiliation with the Bar Council of U.P., has to adhere to the following enactments:

i. Bar Council of U.P. (Advocate Association Affiliation) Rules, 2005

ii. U.P. Advocates Welfare Fund Act, 1974

iii. Model Bye-Laws for Bar Associations, U.P.

iv. Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015; along with Circulars, Guidelines and Bye-Laws issued from time to time by the Bar Council of U.P.

45. He submits that "Bar Council U.P. Advocate Association Affiliation Rules, 2005" provides that any Association, who is having requisite number of membership, may apply for affiliation by depositing requisite fee as prescribed in Rule 5 and completing all formalities and by filing the application form provided in this regard.

46. Rule 7 of the Rules, 2005 provides that an Advocate can become member of only one Association, if there is more than one Association in the same area/Court.

47. He further submits that Rule 8 (ल) of Rules, 2005 provides that concerned affiliated Advocate Association is duty bound under the Rules to conduct elections of the Association, every year in the same month; and Rule 8 (व) of Rules, 2005 provides that after conducting the yearly election, the elected office bearers shall forward the list of the registered members along with their address to Bar Council of U.P.

48. Rule 8(द) of Rules, 2005 provides that the concerned Association, shall ensure compliance of directions issued by the Bar Council of Uttar Pradesh.

49. He has further submitted that Rule 10 of Rules, 2005 provides the condition under which affiliation was granted earlier, may be cancelled, wherein Rule 10 (क) stipulates that failure of the concerned Bar Association to apply for renewal of its affiliation, within a period of 3 months, may result in disaffiliation; and also in case, if any, Rules and directions issued by Bar Council are violated; and as per Rule 10 (ख) and 10(ग), it clearly provides that in case of not holding timely election, the affiliation of concerned Bar Association can be cancelled. In Rule 10 (घ), it has further been provided that in case any false or incorrect information is furnished, then in that event, affiliation granted earlier may be cancelled.

50. On the strength of the aforesaid provisions he has submitted that as per model bye-laws elections has to be held every year and in case, any Association fails to hold its election within a period of 1 year + 1 month (extraordinary circumstances) (With prior approval of the Elders Committee) and another 1 month (time given to the Elders Committee to hold the election), it may result in disaffiliation of the concerned Bar Association, from the Bar Council of U.P. (Refer to Rule 18 of Model Bye-Laws read-with Rule 10 (ख) and (ग) of the Rules, 2005)

51. He has further submitted that the Bar Council of India, enacted the Bar Council of India "Certificate and Place of Practice (verification) Rules, 2015" which was published in the Gazette of India on 13.01.2015, in order to weed out non-practicing advocates who had switched over to other profession/service/business, without any information to State Bar Council or the Bar Associations; and the said phenomena had assumed alarming proportions, which resulted in bona fide advocates

who are regularly practicing being denied of the benefits of the Welfare Schemes, as well as the same resulting in non practicing advocates casting votes and contesting election of Bar Association, due to which degradation to legal profession was being observed and this was even noticed by this Court and up to the Apex Court.

52. Chapter-II of Bar Council of India Certificate and Place of Practice (verification) Rules, 2015 provides for "Local Bar Association" which clearly states that Advocate can become a member of Bar Association, where he/she normally practices law.

53. Rule 6.3, of Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015 provides that □Bar Association□ shall apply to respective □Bar Council□ within whose jurisdiction it is located, for being recognized under these Rules.

54. Rule IV of Bar Council of India Certificate and Place of Practice (verification) Rules, 2015 provides procedure for moving applications for verification and for issuance of verification of certificate and place of practice by State Bar Council.

55. Rule 15.2, provides that State Bar Council shall issue identity card, after necessary verification, that an Advocate concerned is continuing in profession and the identity card shall be valid for the period of 5 years, from the date of issuance and it shall be required to be produced at the time of voting for election of State Bar Council or the Bar Association concerned.

56. Now, we proceed to examine the □Model Bye-Laws□ framed by the Bar Council of U.P., in the aforesaid context, which was tentatively approved by the Bar Council of U.P. vide resolution No. 2389/2005 in its meeting dated 09.01.2005 and after certain modifications, same was confirmed vide resolution in its meeting dated 12.02.2005, and the model bye laws so framed by Bar Council of U.P. had been also approved by Bar Council of India vide its resolution dated 15/16.09.2006; and has come in to force in the State of U.P. from the said date.

57. By placing reliance on Rule 54 of the Model Bye-Laws, Sir Ashok Kumar Tiwari, Advocate submits that the election of the Bar Association in the entire State shall be held under the supervision and control of Bar Council of U.P.

58. Per contra, Shri Rakesh Pande, learned Senior Advocate appearing on behalf of High Court Bar Association, as well as learned counsel for the petitioner, has submitted that the said Rule 54, to the extent it gives the power to the Elders Committee to act as a panel of the Returning Officer to hold elections and the election of the Bar Association being under the supervision and control of the Bar Council of U.P. is per se in conflict with the decision of this Court in the case of Elders Committee, Central Bar Association, Azamgarh10].

59. Shri Ashok Tiwari, learned counsel appearing on behalf of the Bar Council of U.P. has further submitted that Note (III) of Chapter-II of Model Bye-Laws, provides that any resolution passed by the Bar Association, in contravention to provision of bye-laws, without approval of Bar Council of U.P. shall be deemed to be void; and Note (IV) to Schedule-II provides that all such Bar Associations, which do not adopt model bye-laws and have not got registration from the Registrar,

Societies, Firms and Chits within the period of 3 months from the receipt of bye-laws, will stand disaffiliated.

60. Further, Note (V) provides that all those Advocates, who are not Members of the Bar Association affiliated to the Bar Council of U.P., shall lose their right of availing the various beneficial/welfare schemes, sponsored by the Bar Council of U.P.; and Note (VI) provides that if the election is in violation of provisions of bye-laws, it will hold the Election Officer, President and Secretary of that Association liable to be tried for misconduct under Section 35 of the Advocates Act.

61. Shri Ashok Kumar Tiwari, Advocate appearing on behalf of Bar Council of U.P. has further submitted that the following are the benefits available to an Advocate through the Bar Council of U.P.:-

(i) The Uttar Pradesh Advocates Welfare Fund Trustee Committee provides a financial assistance of Rs. 5 lakh to the dependents of deceased advocates, up to the age of 60 years. This scheme is effective from 1 January 2014. Subsequently, according to a government order issued on 09.03.2019, the age of deceased lawyers has been increased from 60 to 70 years. Now from 09-03-2019, a payment of Rs 5 lakh is being made to the dependents of deceased lawyers, up to the age of 70 years.

(ii) The Bar Council of Uttar Pradesh has launched The Advocates' Old Age Death Grant Scheme on 24-08-2008. Under this scheme initially, financial assistance of Rs. 25,000 was provided to the dependents of deceased advocates between the age limit of 60 to 70 years; but at present, after 01.11.2023, the amount has been enhanced to Rs. 3 lacs and the age limit, has been increased, while the benefit is provided for deaths between 70-80 years, as well.

(iii). An additional payment of Rs. 1 lakh is made by the All India Bar Council Advocates Welfare Committee to the dependents of advocates, who died accidentally.

(iv) There is a provision for providing medical assistance of Rs. 10,000/- to Rs 25,000/- to the advocates, by the Bar Council of Uttar Pradesh and in case of serious illness, this amount can be given up to a maximum of Rs. 25,000/- to Rs. 50,000/-.

(v) All India Bar Council Advocates Welfare Committee (Rule 40) also provides for medical assistance to advocates up to a maximum of Rs. 25,000/- and in case of serious illness, this amount can be given from Rs. 25,000/- to Rs. 50,000/-.

(vi) There is a provision for financial assistance of maximum of Rs. 50,000/- for library to the Bar Associations of the district and Tehsil level, by the All India Bar Council Advocates Welfare Committee (Rule 40).

62. He has further submitted that all the above facilities are payable only to those advocates, who are members of any Bar Association of the State; and that Bar Association is affiliated to the Bar Council of Uttar Pradesh.

63. Per contra, Shri Rakesh Pande, learned Senior Counsel submits that the said provisions in the model bye-laws cannot be termed as mandatory and are merely directory in nature and breach of any of the said provisions of the bye-laws, can only give a right to the Bar Council of U.P. to disaffiliate the Bar Association and consequences shall follow. But however, to say that the resolution of the Bar Association shall be void or the Members of the Bar Association, shall lose their right of availing the various beneficial/welfare schemes sponsored by the "State Government", is absolutely beyond the jurisdiction or powers of the Bar Council of U.P.

64. In case, an Advocate does not choose to be a Member of any Bar Association, which is not affiliated to the Bar Council of U.P., the benefits of the State sponsored schemes, which are for the Advocates, as defined under the Advocates Act, 1961, cannot be taken away from them.

65. He further submits that in case the elections are not held as per the bye-laws of the Bar Council of U.P., the only consequence can be disaffiliation and it is preposterous to suggest that such an Association, through its President and Secretary, is liable to be tried for the misconduct under Section 35 of the Advocates Act. The same amounts to infringement of the fundamental rights of the members, to form an Association.

66. However, it is no longer res integra that the Bar Council of India or the Bar Council of U.P. or for that matter any Bar Council, as a statutory body under the Advocates Act, under the garb of regulating the conduct of Advocates and maintaining discipline, do not have any power or authority to intervene in the elections of the Bar Association or to stop the Elders Committee from taking steps for holding the elections. We gainfully refer to the judgment of this Court in the case of Elders Committee Central Bar Association, Azamgarh vs. State of Uttar Pradesh (supra).

67. However, if a resolution or an Amendment in the Association□s Bye-Laws is in contravention of the Model Bye-Laws, the same can only be implemented, if the said provision, by way of an Amendment is incorporated in the Model Bye-laws, which in turn, also has to be approved by the BCI, or else the Bar Association can face disqualification.

68. This Court finds that though the Bar Council has admitted that it cannot directly interfere with the internal election dispute of an independent society, but the grant of recognition cannot be a tool for forcing an Advocates Association, by providing penal consequences, like a provision to initiate proceedings under Section 35 of the Act, 1961, for non-compliance of the bye-laws while conducting their elections; while the limited authority available with the Bar Council of U.P., can only be by way of a consequence of disaffiliation and not any professional misconduct. However, this issue is left open, as the same is not directly in issue before this Court.

69. The Allahabad High Court maintains the list of Senior Advocates, designated under Section 16(2) of the Advocates Act, 1961 read with Section 34(1) of the Act. Specific Rules governing this process is outlined in Part-VI of Chapter-XXIV of the Allahabad High Court, Rules 1952, commonly referred as the Designation of Senior Advocates Rules.

70. **In view of the aforesaid, we answer the Issue Nos.1 and 2 as follows:**

(I). In case of a breach of a bye-law of an Advocates Association, which has to be in conformity with the Model By-Laws, as propounded by the Bar Council of U.P., with respect to dispute of the seniority of a Member; and the bye-laws of the Association, makes provision to determine the seniority, taking into account the date of enrollment as an Advocate by the Bar Council (In case of an affiliated Bar Association of a District in State of U.P.); the only recourse available for the redressal of the said grievance is to approach the Bar Council of U.P. under Section 21 of the Act, 1961. For ready reference Section 21 of the Act, 1961 is reproduced below:

"21. Disputes regarding seniority.—(1) Where the date of seniority of two or more persons is the same, the one senior in age shall be reckoned as senior to the other.

[(2) Subject as aforesaid, if any dispute arises with respect to the seniority of any person, it shall be referred to the State Bar Council concerned for decision.]"

(II) However, in case a dispute of seniority amongst Members of the Elders Committee is referred to the Bar Council, under Section 21 of the Act, 1961, the Bar Council shall only determine the said seniority dispute and under no circumstances, either pending the dispute or otherwise, issue any directions to the Advocates Association regarding the postponement of the elections of the Advocates Association or directives otherwise, interfering in the process of elections; [Ref. To Rajesh Kumar Shukla v. Assistant Registrar, Firms, Societies and Chits and Another11]

(III) And in an eventuality of the dispute of the seniority being referred under Section 21 of the Act, 1961 and it is germane to the process of election, in the first instance, it shall be the decision of the senior most Members of the Elders Committee i.e. the Chairman of the Elders Committee, regarding the deferment of the election; and in case the seniority of the Chairman of the Elders Committee is itself in dispute, the remaining 3 senior most Members of the Elders Committee shall take a decision by way of a majority amongst themselves; and when the deferment to be made is beyond 1 month, the Elders Committee shall call for Extra Ordinary General Members Assembly, for fixing the date of the election.

(IV) However the Bar Council of U.P. shall neither interfere in the elections to be conducted by the Elders Committee nor issue any directives in relation to the said elections.

(V) And, as far as the determination of the Elders Committee of an Advocates Association of the High Court is concerned, 5 designated senior most Advocates, actively practicing in High Court by virtue of their seniority, shall be considered and since the seniority list of designated Advocates in the High Court, is maintained by the Allahabad High Court, the same has to be strictly adhered to; and only if a designated senior refuses to accept the responsibility as a Member of the Elders Committee, the next senior most designated senior Advocate as per the seniority list of the Allahabad High Court, shall be considered; and so forth.

(VI) Immediately after completion of the Elections, the list of elected members shall be forwarded to the State Bar Council [Rule 8 (च)] along with a copy of the Association□s Bye-Laws; and if found elections has been held in conformity of the Association□s Bye Laws (which has to be in conformity with Model Bye-Laws) the same shall be accepted; and if not, the same shall be rejected; and if valid elections are not held, the affiliation can be cancelled, as per Rule 10 (ख) r.w. (ग) of the Rules, 2005.

71. The directions contained in Clause (III) are only in the interregnum, while the Bar Council of U.P. may consider the aforesaid directions for making suitable amendments in the Model Bye-Laws and send the same for approval before the Bar Council of India, if the need so arises.

72. This Court also takes notice of the judgment in the case of **Satish Chandra Pandey vs. Registrar, Firms and Societies, U.P. and others12**. For ready reference, the ratio laid down in the aforementioned judgment is as follows:

"Whether any substantial irregularity has been committed in holding the elections or during the elections, which has materially effected the result of the election or which vitiates the elections, are such questions, which normally would not be entertained in writ jurisdiction of this Court. It may be kept in mind that the Bar Association of lawyers cannot be equated with the membership of club or society and intervention by the Registrar has to be minimum, if at all permissible under law and for that purpose, the Elders Committee has been constituted under the bye-laws, which has been vested with the responsibility of managing the affairs and holding the election after the term of the Committee of Management comes to an end. Had the intention of the bye-laws been that on the expiry of the term, the Registrar shall take over and hold the elections, there was no occasion for making such a bye-law, giving an alternative specifically defined Body (Elders Committee) for getting the election held, after the expiry of the term of the elected Committee of Management. Section 25(2) of the Act, which gives power to the Registrar to hold the elections of the Society or the Committee of Management, after the expiry of its term, shall have no applicability in the case of Bar Association, whose elections have to be conducted in accordance with the model bye-laws or under the amended Rules of Association."

73. The question whether in case of a dispute with respect to the continuation of a Member of the Committee or a dispute regarding the elections, it is no longer res integra that Section 25(2) of the Act, 1860, which gives power to the Registrar to hold the elections of the Society of the Committee of Management, after the expiry of its term, shall have no applicability in the case of Bar Associations; since the same are conducted in accordance with the Model Bye-Laws or under the Rules of the □Advocates Associations□, which are duly approved by the Bar Council of the State and Bar Council of India, which are the statutory bodies under the Advocates Act, 1961. [Also Ref. To Bar Association & Anr. v. State of U.P. and 4 others13]

74. The said determination, is on the application of the intervenor HCBA and after the consideration of the issues raised at bar, in exercise of extra-ordinary powers under Article 226 of

the Constitution of India, to bring quiteous to the numerous litigations which are being initiated and which also affects the dispensation of Justice.

Issue No. 3 and 4

3. What shall be the powers of the Elders Committee, and as to whether the same can be borne out from the model bye-laws propounded by the Bar Council of U.P. or from the bye-laws of the Advocates Association.

4. Consequences, if any, in a situation the Elders Committee, does not complete the election process, within 1 month or a dispute arises with regard to the elections conducted.

75. The next issue which requires consideration is regarding the powers of the Elders Committee and as to whether the Model Bye-Laws make provisions for the same.

76. Shri Rakesh Pande, learned Senior Advocate appearing on behalf of the HCBA, submits that it is an admitted position that under the bye-laws of the Association, as well as, the Model Bye-Laws, the term of the office is 1 year; but however, the said term as per clause 18 of the Model Bye-Laws is to be computed from the date of the election; but however, as per the bye-laws of the HCBA, the office bearers of the Association and the Members of the governing council, shall hold the office till completion of 1 year, from the date when the new Executive Council takes over the charge (which according to their Bye-Laws is the □date of election□)

77. He further submits that the other point of distinction is that under the Model Bye-Laws, the governing council/Executive Committee can continue further for a period of 1 month, with the prior approval of the Elders Committee; but however, under the bye-laws of the HCBA it has been provided that the Governing Council/Executive Council will continue for 1 more month, during which the election of Executive Council has to be completed.

78. However, in case the elections are not held within 13 months, the Elders Committee will take over the charge of the Governing Council and will conduct the election within 1 month, and during this period the administration of the Association i.e., the Administrative power will vest in the Elders Committee. [Ref. To Rajesh Kr. Shukla v. Asst. Registrar14] On this issue there is no distinction between the Model Bye-Laws and the By-Laws of the HCBA.

79. However, the bye-laws of the HCBA provides that the Elders Committee will not take any policy decision, except to perform day to day work, which is necessary in the interest of the Bar Association. For ready reference Rule 18 of Rules of HCBA is reproduced below:

"Rule- 18 Terms of Offfice:

The Office Bearers of the Association and members of the Governing Council shall hold the office till the completion of one year from the date when new Executive Council takes over the charge. However, it will continue for one month more during which election of Executive Council has to be completed.

If the election of the governing council is not held within one year and one month then after 13 months, Elders` Committee will take over the charge of Governing Council and will conduct the election within one month, during this period, administration power will implant in Elders Committee. Elders Committee will not take any policy decision however perform day to day work, which is necessary in the interest of Bar Association.

Explanation *:-Date of election is date when the new Governing Council takes over the charge."*

80. From the aforesaid conjoint reading, it is evident that the administration of the Association will vest in the Elders Committee and such Elders Committee has to perform its functions. In order to elaborate the functions, Rule 8 of the Rules of HCBA is also reproduced below:

"ELDERS COMMITTEE

"8.There shall be an Elders Committee of the High Court Bar Association, Allahabad consisting of five designated Senior Most Members of the Association actively practicing in the High Court at Allahabad

(a) Senior Most Member of the Elders Committee will be the Chairman

(b) In case any member of Elders Committee is a candidate in the election rest of the Member swill function as its Members till he is relieved of his elected post and will thereafter joined as its member

(c) Only the Designated Senior who is the member of the High Court Bar Association and also practicing at the Allahabad High Court will be the member of the Elders Committee.

(d) It will be a permanent body once constituted for the first time by Executive Committee

(e) Short term vacancy due to death or resignation or on health grounds, rest of the members will elect/co-opt the member absolutely in accordance with seniority fulfilling other qualifications.

(f) One Senior Most members of the Elders Committee will retire after completing the election.

(g) All Existing Members of the Elders Committee will induct a new member by cooption/election and new Elder Committee will be declared along with the result of general election of the Association.

(h) New member will be inducted by the outgoing Elder Committee after full deliberation with the senior most member.

(i) If first senior member is unwilling, then the next senior will be inducted.

(j) If list of senior members is exhausted, it will rotate back and will start again from the senior most member.

(k) The Elders' Committee will work as on Election Commission independently. If the Executive Committee could not conduct the election within the period of one year and one month from the date of assuming charge, the Elders' Committee will conduct the election with assistance of the members of the High Court Bar Association, Allahabad."

81. Shri Rakesh Pande, learned Senior Counsel submits that as per the certificate dated 20.12.2022, the Bar Council of U.P. in General House meeting dated 18.12.2022, has approved the amendments in bye-laws dated 01.12.2022 and such modifications have been accepted by the Bar Council of U.P., to be in conformity with the Model Bye-Laws as propounded by the Bar Council of U.P.

82. However, this court finds that such deviations, as detailed, herein above; and which are not in consonance with the Model By-Laws, cannot be permitted. Such non-conformity with the Model Bye-Laws and it's approval, by the Bar Council, cannot be permitted, for one Association and not for another.

83. The only way to permit any deviation proposed by any Bar Association, is to consider the same by a democratic process and then pass a commensurate amendment in the Model Bye-Law; and also send the same for approval to the BCI; and once BCI approves, the amended Model Bye-Laws is to be implemented across the Bar Associations in State of UP. Any deviation prior to this, can only be construed as violation of Model Bye-Laws and can attract disaffiliation.

84. In case, such modifications are to be permitted, firstly the Model Bye-Laws are to be amended and approved by the BCI. This will ensure a uniformity, across all the Associations in different Districts.

85. Bar Council, may form a committee, where such suggestions can be sent, so that it can be considered democratically and a consensus be reached through a process, and not through whims and fancies, of individual members of the Bar Councils, which does not reflect any transparency or a democratic process.

86. Now coming back to the question of the functions and powers of the Elders Committee, it is evident that now the administration of the Association will vest in the Elders Committee; however, they shall not take any policy decision except to perform day-to-day work, which is necessary in the interest of the Bar Association.

87. However, the Model Bye-Laws and the Rules of the HCBA, Allahabad does not provide for the consequences, in case the Elders Committee for whatsoever reason, is not able to hold the elections as per the bye-laws, within a period of 1 month. The aforesaid situation also

leads to a conflict of interest and at times unrest amongst the Members of the Association, being devoid of a democratically elected Governing Council/Executive Committee.

88. The aforesaid situation is not unfathomable, as time and again the Bar Associations, members of the Bar in individual capacity, as well as, on behalf of the Association, the Office Bearers etc., have approached this Court, for resolving the disputes or disorder prevailing in the Association; and this Court, as one of the wheels of the chariot dispensing justice in the country, had invoked its extraordinary power under Article 226 of the Constitution of India, for solving the said disputes, fully conspicuous of the fact that the legislature has taken care to maintain the sanctity and status of the Bar Association, consisting of lawyers belonging to a noble profession, performing a very important role of maintaining the judicial system of the country, the backbone of the democratic structure of the country; but still when the need arises, it is the hardened duty of the Court to ensure that one of its wheels is not in disorder, as it will directly have an impact on the functioning of the judiciary.

89. A plethora of judgments already exists on the issues, reflecting the concern of the Court towards the Bar in resolving the disputes. In this endeavour, to help their counterparts, even at the instance of a Member of the Society i.e. “Advocates Association”, which is a registered body under the provisions of Societies Registration Act, 1860, which provides a complete mechanism to deal with the disputes, this Court has taken care and even by way of judicial pronouncement in the case of **Satish Chandra Pandey** (supra) has held that the lawyers cannot be equated with the members of a club or society, and intervention by the Registrar has to be minimum, if at all permissible under law for that purpose.

90. The Elders Committee, which has been constituted under the bye-laws is vested with the responsibility of managing the affairs and holding the elections after the term of the Committee of Management has come to an end; as such the powers under Section 25(2) of the Act was held to have no applicability in case of a Bar, whose elections have to be conducted in accordance with the Model Bye-Laws or under the amended rules of the Association.

91. In the case of the **Shiv Kumar Akela** (supra) also this Court had observed as follows:

"In general functioning of the justice delivery system, and in particular, functioning of the 'High Court' (which is an essential component of the said system and vital organ of administration of justice in the State). Quality of dispensation of justice is directly dependent upon professional standards of ethics and discipline amongst the members of the legal profession. One cannot expect the system to function smoothly and deliver desired fruits unless all the wings (Bar is one of it) are healthy and maintain dignity of the noble profession."

92. Apparently, a society registered as an Advocates Association has been given a distinct status and its existence is with an object to ensure proper functioning of the Court and to provide legal expertise to public at large so that justice may be dispensed in real sense. It is prima facie, a function having all the flavors of public utility service and basically a public function. The very object of an □Advocates Association□ is that, all levels of courts, come with

affiliation/recognition, extended by the State Bar Council, regulating Members of the legal professions under Advocates Act, 1961 and Rules framed thereunder.

93. The initiation of various statutory welfare schemes, under the control of the State Bar Council and sponsored by the State Government e.g. to arrange □library□ to its Members, to promote high professional tools, standard and conduct amongst Members of the legal profession, to promote and develop legal science, to watch legislation for the purpose of assisting in the progress of sound legislation; and as such it performs a very onerous duty to ensure healthy functioning of the □apparatus□ meant for the justice delivery system, namely the Courts.

94. The entire functioning of the Advocates Association and the statutory bodies which regulate the same, are only towards the concern regarding the welfare of the □public□ and □bar□, which is nothing but a □public functionary□. It can also be said that the concept of □Advocate Association□ itself has emerged from the solemn object, to ensure proper and smooth functioning of the Courts, so that justice may be dispensed with, to the public at large.

95. The Apex Court in the case of **Rajendra Sail vs. Madhya Pradesh High Court Bar Association and others15** has noted:

"The confidence of people in the institution of judiciary is necessary to be preserved at any cost. That is its main asset. Loss of confidence in institution of judiciary would be end of Rule of law. Therefore, any act which has such tendency deserves to be firmly curved. For rule of law and orderly society, a free responsible press and independent judiciary are both indispensable. Both have to be, therefore, protected."

96. The law laid down in the matter of **Zee Telefilms Ltd. and others vs. Union of India and others16** also supports the maintainability issue.

97. The concept of the constitution of Elders Committee, as it goes by its name "Elder", is correlated to his experience, connected with his age and that is why the Bar Council while adopting the Model Bye Laws has used the word "seniority" and "Senior most"; if it is universally adopted all over the State or even in the country, such cases, which keep arising again and again disputing the constitution of the Elders Committee will come to an end.

98. The Model Bye-Laws under clause 3A(c) defines the Elders Committee as follows:

"Elders Committee" means a Committee, the composition of which is mentioned in Bye-Laws no.7 of these rules."

99. For ready reference Rule 7 is reproduced below:

"7. There shall be an Elders Committee of each association consisting of 5 senior most members of the Association actively practising in that court as :-

(a) As far as the High Court is concerned 5 designated Senior Most Advocates actively practising in High Court by virtue of their seniority.

(b) so far as the District Court is concerned the seniority of the members of the Elders Committee will be determined taking into account the date of enrolment as an Advocate by the Bar Council and having atleast rendered 10 years regular practice in that court and continuing as regular practitioner of that Court.

(c) Senior most member of the Elders Committee will be the Chairman."

100. We have already referred to Rule 8 of the HCBA, Allahabad, wherein, apart from some deviation pertaining to the time period, when the Elders Committee comes into the effective control of the administration of the Association, in sum and substance there is conformity with Rule 7 of the Model Bye-Laws; and as such the powers of the Elders Committee, shall be the same as that of the Governing Council/Executive Council, as the administration of the Association vests with the Governing Council or Executive Committee.

101. We may also gainfully refer to Rule 3A(e) of the Model Bye-Laws, which is as follows:

3.(A) Defination: Unless the context otherwise require in this By laws.

e) "Governing Council or Executive Committee or any other Committee" by whatever name called, means a body to manage the affairs of the Association."

102. For ready reference Rule 4(d) and (e) of HCBA Rules are also being reproduced below:

4. Definition: Unless the context otherwise require in these Rules:-

(d) "General Body" Means a body comprising of all the Members of the Association

(e) "Governing Council" Means a body to manage the affairs of the Association

103. From the perusal of the aforesaid definition and Rules 7 of the Model Bye-Laws, it is evident that the intent is to give the administration of the Association, in the hand of the Elders Committee; but for a limited period i.e. 1 month, within which the election has to be held.

104. However, the Model Bye-Laws does not envisage a situation, where due to unavoidable reasons the elections cannot be held; and in such a situation, in case, the Elders Committee continues with the effective control of the administration of the Association, the same may not be in spirit of formation of a society, to be run by a democratic process.

105. In the aforesaid eventuality the powers of the Elders Committee is to be circumscribed and the continuation of the Elders Committee could only be by way of approval by the General Council of the Association.

106. It is not disputed that the powers which vest in term of clause-18 of the Model Bye-Laws in the Elders Committee, is at par with the functioning of the Governing Council/Executive Council and an extraordinary general meeting, of the ordinary Members of the Association can be convened on a requisition and also by the requisitionists, which shall be presided over by one of the Senior Members of the Elders Committee. For ready reference clause-31 of the Model Bye-Laws is reproduced below:

" 31. An extra ordinary General Meeting of the ordinary members of the Association shall be convened by the President/Secretary at the requisition of 60 ordinary Members. Such requisition shall be in writing, addressed to the President/Secretary and accompanied by a statement.

(a) In case the extraordinary general meeting of the Association is not convened as per the requisition and same is also not ruled out by the Governing Council the requisition shall be entitled to convene the meeting to be presided over by one of the senior member of Elders Committee.

(b) No decision will be taken to strike work in the Court by the Bar Association beyond a strike of one day, unless the decision is taken by majority of members present and voting by Secret Ballot in a General Body Meeting of Association. Only life/Ordinary members will participate in voting who are entitled to vote on that day according to rules of the Association."

107. In view of the aforesaid, what is borne out from the various provisions of the Model Bye-Laws, is that after completion of 1 year from the date of their elections, in extraordinary circumstances, the Members of the Governing Council/Executive Committee can continue for another 1 month; but only with the appropriate approval of the Elders Committee, for the reasons to be recorded, within which they will get the elections completed. But thereafter, when the said period expires and the Elders Committee takes charge, what the Bye-Laws do not provide is, in an eventuality, even if the Elders Committee does not hold elections within 1 month, then which sanctions/approvals are required, prior to the extension of their effective control.

108. Accordingly, in the interregnum, we provide as follows:

(I) The Elders Committee will not take any financial decisions or decisions pertaining to the movable and immovable properties of the Association; and shall exercise only such financial powers which may be necessary for performing day to day functions of the Association or for the conduct of the elections.

(II) The Elders Committee shall be permanent in nature consisting of 5 designated senior-most Advocates, actively practicing in the High Court by the virtue of their seniority as designated Advocates; and in case of district court, the seniority of the Members of the

Elders Committee will be determined by taking into account, the date of enrollment as an advocate by the Bar Council; and having rendered atleast 10 years regular practice in that Court and continuing as regular practitioner of that Court; and the senior most Member of the Elders Committee, will be the Chairman of the respective Associations i.e. the High Court and the District Courts.

(III) Once the situation contemplated in clause-18 of the Model Bye-Laws arises and the elections are not held within 1 year, the extension of period of 1 month shall only be given, considering an extraordinary circumstance, by the Elders Committee, for the reasons to be recorded and with an undertaking that the elections shall be held within the said extended 1 month by the outgoing Committee. However, in failing to hold the elections within the extended 1 month for whatever reasons, the Elders Committee shall take over the administration of the Association and shall hold the elections within another 1 month; failing which the extraordinary general meeting has to be called and the elections has to be held on the date fixed by the General Assembly, by the Elders Committee.

(IV) Once the elections are held, the charge shall be handed over to the newly elected Committee; thereafter one senior-most Member of the Elders Committee i.e. the Chairman, will retire and the existing Members shall induct the next senior most Member i.e. a designated Advocate actively practicing in High Court by virtue of his seniority (in case of HCBA); and the next senior most Member (in case of District/Tehsil Bar Associations) having rendered atleast 10 years regular practice in that Court and continuing as regular practitioner of that Court. The Chairman, shall be the senior most Member, of the newly constituted Elders Committee. However, the retiring Chairman of the Elders Committee, shall again be eligible, after the next elections, to be inducted in the Elders Committee.

(V) The Elders Committee shall hand over the list constituting the Elders Committee to the newly elected Committee; which shall recognize the said "Elders Committee" in its first meeting; and thereafter it shall be open to the Members of the Association to file objections before the newly elected Committee, only confining to the seniority as envisaged in Rule-7 of the Model Bye-Laws, and the same shall be determined as provided herein above i.e. in case of a District Court, the issue shall be referred under Section 21 of the Act, 1961 to the Bar Council of U.P.; and in case of a seniority dispute in the HCBA, the same shall be determined as per the list of senior designated Advocates, maintained by the High Court of Judicature at Allahabad, in an in-house proceeding.

(VI) It is also clarified that if any senior Member is unwilling, the next senior will be inducted, and the consideration for the said induction of a new Member, by retiring the senior most person; shall be confined within the top 10 senior Members either in the list of designated senior Advocates (for the purpose of HCBA) or top 10 seniors, who have rendered at least 10 years regular practice in that Court and continuing as regular practitioners of that Court, by virtue of their date of enrollment as an Advocate by the Bar Council (in case of District Courts).

(VII) If there is any deviation from the Model Bye-Laws either Suo Moto or on a complaint being received, from any member of the Bar Association, it shall be incumbent upon the State Bar Council, to examine the same, after giving due opportunity, to the concerned Bar Association; and if found to be correct, the said Bar Association will be given an opportunity to amend their Bye-Laws and bring the same in conformity to the Model Bye-Laws, within 30 days, failing which the same shall be disaffiliated.

(VIII) The State Bar Council may form a permanent Committee, where the Bar Associations may file their objections and suggestions and at least once a year, the Committee may deliberate upon the same and either it may accept the same or reject the same. Once accepted the proposed amendments may be sent to BCI, and if approved, the same may be made applicable to all Bar Associations, uniformly. Needless to say that all proposed amendments, may be made, adhering to the Principles of Natural Justice and all applicable Laws.

(IX) In case the elections are disputed, the same can also be referred to the Elders Committee, who shall decide the dispute, on the principles laid down under Section 25(1) of the Society Registration Act, 1860.

The aforesaid directions are only in the interregnum, till the Bar Council, if deems necessary, exercise their powers to make amendments, in the Model Bye-Laws, and which will only be implemented, after it's approval from the BCI.

In WRIT - C No. - 6613 of 2026

(Chandrashekhar Upadhyay, Advocate vs. State of U.P. and 8 others)

109. In view of the foregoing discussions, since by way of the impugned order, the resolution dated 04.02.2026 passed by the outgoing President of the District Bar Association, Mau, whereby respondent nos.5 to 9 were nominated as Members of the Elders Committee, dehors the mandate of the Model Bye-Laws and the Bye-Laws of the Association, apart from it being in violation of Clause 7 of the Model Bye-Laws, cannot be sustained and accordingly, is set aside and the consequences shall follow.

In WRIT - C No. - 9562 of 2026

(Ankit Kumar vs. State of U.P. and 2 others)

110. In view of the foregoing discussions, the impugned order dated 19.02.2026 by way of which a Committee of 20 Members for holding elections of the Bar Association was constituted, dehors the mandate of the Model Bye-Laws and the Bye-Laws of the Association, in question. is hereby set-aside and consequences shall follow.

111. Before parting with the judgment, we may also observe that the High Court of Judicature at Allahabad, is a chartered High Court with a distinctive history and traditions which discharges a very pivotal role in the administration of justice, in one of the biggest State in the country; and in any matter which concerns the well being of Advocates, has to be resolved in a spirit of cooperation, in order to ensure the ensuing problems, do not assume unmanageable proportions.

112. We may also refer to a decision of this Court in P.I.L. No.26676 of 2024 (Sunita Sharma vs. Deputy Registrar, Chits, Funds, Society and others17), wherein, an objection was received by the Elders Committee, to the effect that the voters list has not been prepared in accordance with the Rules; and this Court while entertaining the writ petition, scrutinized the role of Elders Committee and thereafter issued directions with respect to the elections of HCBA.

113. The said judgment is only being referred to indicate that against the decision of Elders Committee, a Member who is aggrieved, is not remediless but at the same time this Court while considering the various mandates of the bye-laws, indicated the perspective of the Elders Committee and the pivotal role which the Advocates play in the administration of justice, is also paramount; and accordingly, as far as possible the disputes, should be settled amicably and by way of an in-house proceeding.

114. Bar Council of U.P. is directed to circulate a copy of this judgment to all the affiliated Bar Associations in the State of U.P. and ensure strict compliance of the Model Bye-Laws; and in case any bye-laws of the affiliated Bar Association is found to be, not in consonance with the Model Bye-Laws, the Bar Council may take steps, by providing them a reasonable time at the first instance, to bring their bye-laws in conformity with the Model Bye-Laws; and failing which the said Bar Association may be disaffiliated.

115. The said exercise may be completed within a period of 1 year, to ensure that the elections held for the year 2027, with respect to the affiliated Bar Associations, are in conformity with the Model Bye-Laws.

116. Registrar (Compliance) is directed to send a copy of the judgment to the Bar Council of U.P. for necessary compliance.

117. Before parting with the Judgement, we would like to make a special mention, for the the assistance rendered by the President of HCBA, Shri Rakesh Pande, learned Senior Advocate and the other Members of the Bar, who rendered their assistance, as an officer of the Court, including the Amicus Curiae Ms. Naina Sharma, Advocate and Mr. Achintya Rai Sharma, Advocate, for their assistance by providing their valuable research on the legal issues. We also appreciate the gesture of the Amicus Curiae, for refusing to not accept any remuneration, for the service rendered.

118. With the aforesaid observations/directions, both the writ petitions stands disposed off.

(2026) 5 ILRA 2149
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.05.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ C No. 10073 of 2026
With
Writ C No. 10076 of 2026
And
Writ C No. 10079 of 2026

Rohtash Singh @ Rohtash ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue for consideration

The matter involves a challenge to stamp duty deficiency proceedings arising from the valuation of land as non-agricultural.

Headnotes

A. Civil matter-Constitution of India,1950-Article 226-Indian Stamp Act,1899-Section 47-A-Deficiency of stamp duty-Agricultural land-Residential/Commercial potential-Market value-Spot inspection-Inspection Report-Inspection without notice-Mere irregularity-Deficiency determined – Agricultural use not proved-Collector's order sustained-Valid exercise of power-writ petition dismissed. (Para 18 to 27)

Held

The court held that failure to give prior notice before spot inspection was only an irregularity, not an illegality, as no prejudice was caused to the petitioner. The collector rightly determined the market value by considering the land's residential potential, surrounding development, and contemporaneous use. Consequently, the finding of deficiency of stamp duty was upheld. (E-6)

Case law Cited

Anuj Kumar Singh & 2 Ors Vs State of U.P. & 2 Ors (2025): AHC 211526, Smt. Pushpa Sareen Vs State of U.P.(2015) 3 ADJ 136-referred to.

List of Acts

Constitution of India, 1950, Indian Stamp Act, 1899.

List of Keywords

Indian Stamp Act,1899, Section 47-A, Deficiency of stamp duty, Agricultural land, Residential/Commercial potential, Market value, Spot inspection, Inspection Report, Inspection without notice-Mere irregularity, Prejudice, Agricultural use.

Case Arising from

CIVIL JURISDICTION: WRIT -C No. -10073 OF 2026
Rohtash Singh @ Rohtash Vs. State of U.P & 3 Ors
From the judgment and order dated 08.05.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Petitioner(s):
Samarth Sinha, Vijay Sinha
Adv. for Respondent(s):
C.S.C

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

1. Heard Sri Samarth Sinha and Sri Vijay Sinha, learned Advocates for the petitioners and Sri P.K.Asthana, learned counsel for the respondents.

2. Present bunch of three writ petitions are arising out of a case of deficiency of stamp duty for 3 sale deeds purchased by the petitioner of different area of a single arazi.

3. In the sale deed, respective land in question was shown as an agricultural land and accordingly stamp duty and registration fee was paid. However, on inspection under Section 47A (3) of Indian Stamps Act, respective reports were submitted by concerned A.D.M that stamp duty is to be determined considering respective land in dispute as non agricultural land being situated at Link Marg, Vista Farmhouse Colony.

4. It was further found that respective lands in dispute were not used for agriculture purpose. Surrounding lands were sold as small residential plots, there was a boundary wall wherein more than 60000 bricks were used and accordingly, notices were issued to the petitioner whereby he was asked to submit respective reply.

5. During proceedings, District Magistrate himself conducted an inspection on 23.7.2025 and for reference, one of the report is reproduced hereinafter: Other two reports are of similar nature:

" स्थल निरीक्षण आख्या

विलेख संख्या 5370/06.04.2022 के माध्यम से एक किता आराजी कृषि भूमि गाटा संख्या 4704 मि० में से विकीत क्षेत्रफल 0.0768 हे० स्थित मौजा टप्पल, परगना टप्पल व तहसील खैर, जिला अलीगढ़, कृषि भूमि दर्शाकर उक्त विलेख के माध्यम से अन्तरण किया गया है।

दिनांक 23.07.2025 को न्यायालय के द्वारा स्वयं प्रश्नगत वाद में निहित कयशुदा सम्पत्ति का स्थलीय निरीक्षण किया गया। निरीक्षण के समय क्षेत्रीय नायव तहसीलदार, राजस्व निरीक्षक व लेखपाल उपस्थित थे। मौके पर कयशुदा भूमि का चन्हांकन विलेख में अंकित चौहद्दी एवं उपस्थित स्थआनीय लोगों के अनुसार किया गया, जो टप्पल से मिलिक जाने वाले लिंक मार्ग पर स्थित है। उक्त भूमि मौके पर गैर कृषिक रूप में प्रयोग की जा रही है, जिसमें सीमेंटिड व इन्टरलाकिंग की सड़के निर्मित है तथा प्लाटिंग का कार्य हो रहा है। कय की गयी सम्पत्ति विस्टा फार्म हाउस कालोनी में अन्दर स्थित है।"

6. In the reports, it was not mentioned as to whether petitioner was issued notice to remain present since his presence was not noted.

7. The petitioner was asked to submit his reply to the notice, which he submitted through his Advocate wherein he has stated that lands in question are used for agriculture purpose, it is not part of any colony, it is surrounded by other agricultural land and boundary wall was constructed to protect the land.

8. At this stage Court takes note that sale deed was executed by the petitioner being Director of Contour Buildcon Private Ltd.

9. In the aforesaid circumstances, the District Magistrate passed respective orders dated 30.07.2025 and held that there was a deficiency of stamp duty with a specific finding that respective land in question was situated at Link Marg of Vista Farmhouse Colony and it is not used for agriculture purpose and being surrounded by lands used for residential purpose and about 60000 bricks were used to construct the boundary wall of lands in dispute. Accordingly, respective impugned orders of similar nature were passed and for reference one of the impugned order is mentioned hereinafter:-

"उभय पक्षों के तर्कों को सुना गया तथा पत्रावली का गम्भीरता पूर्वक अवलोकन किया गया। पत्रावली के अवलोकन से स्पष्ट होता है कि विलेख संख्या 13152 / 30.07.2022 के माध्यम से एक किता आराजी कृषि भूमि गाटा संख्या 4704 मि0 में से विकीत क्षेत्रफल 0.691 है0 स्थित मौजा टप्पल, परगना टप्पल व तहसील खैर, जिला अलीगढ़, कृषि भूमि दर्शाकर उक्त विलेख के माध्यम से अन्तरण किया गया है। जांच अधिकारी के अनुसार मौके पर काफी भिन्नता पायी गयी। मौके पर विस्टा फार्म्स हाउस कालोनी में लिंक मार्ग पर स्थित है, जो मौके पर अकृषक रूप में है, मौके पर कोई कृषि कार्य नहीं किया जा रहा है तथा आस-पास भी प्लांटिंग हो रही है एवं विकीत सम्पत्ति की बाउण्ड्री वॉल में लगभग 60 हजार ईंट संलग्न है, जिसको न दर्शाकर स्पष्ट रूप से करापवंचन किया गया है। इस प्रकार उक्त भूमि का मूल्यांकन तत्समय तत्स्थान पर लागू मूल्यांकन सूची के प्रारूप-3 पेज सं0 60 वीकोड 1124 के कालम 5 के अनुसार 5,200/- रूपया प्रति वर्ग मी0 एवं रेट लिस्ट के सामान्य निर्देश के पेज सं0 71 के क्रमांक 16 के अनुसार 6/- रूपया प्रति ईंट की निर्धारित दर से करते हुए निम्नवत किया जाना अपेक्षित है।

विक्रीत भूमि का कुल क्षेत्रफल 0.691 है0 यानी रकवा 6910 वर्ग मी0 X 5,200/- रूपया प्रति वर्ग मी0 की दर से=3,59,32,000/- रूपया, ईंटों की कीमत 60,000x6/-=3,60,000/- रूपया कुल मालियत 3,62,92,000/- रूपया होती है, जिस पर निर्धारित दर 7 प्रतिशत की दर से देय स्टाम्प शुल्क रूपया 25,40,440/- व रूपया 3,62,920/- का निबन्धन शुल्क देय है। जबकि प्रलेख पर रूपया 5,21,000/- का स्टाम्प शुल्क व रूपया 74,360/- का निबन्धन शुल्क अदा किया गया है। इस प्रकार प्रश्नगत प्रलेख में रूपया 20,19,440/- स्टाम्प शुल्क व रूपया 2,88,560/- रूपया निबन्धन शुल्क की कमी प्रथम दृष्ट्या पायी गयी है, जिसकी वसूली हेतु प्रकरण सन्दर्भित किया है।

प्रश्नगत वाद में मुख्य विवादयक बिन्दु यह पाया गया कि उक्त विलेख के माध्यम से क्रयशुदा सम्पत्ति आवासीय प्रयोजन की भूमि है अथवा कृषकीय प्रयोजन की भूमि है। क्रेता के द्वारा प्रस्तुत जवाब के माध्यम से जांच अधिकारी की आख्या का पूर्ण रूप से खण्डन करते हुये कहा है कि क्रयशुदा सम्पत्ति के आस-पास कोई आवासीय गतिविधि नहीं है तथा बिना किसी ठोस साक्ष्य एवं आधार के आवासीय दर से स्टाम्प देयता का निर्धारण किया गया है जबकि मौके पर आज भी कृषि कार्य हो रहा है, तथा विकासशील ग्राम होने के कारण

0.100 है0 तक दो गुना दर से मूल्यांकन करते हुये निर्धारित दर से स्टाम्प अदा किया जा चुका है। क्रेता का यह कथन स्वीकार किये जाने योग्य नहीं है, क्योंकि किसी भी भूमि मूल्यांकन उसके आस-पास स्थापित गतिविधियों के आधार पर किया जाता है। मात्र यह कथित करने से कि मौके पर कृषि कार्य हो रहा है, जिसके समर्थन में कोई भी साक्ष्य प्रस्तुत नहीं किया गया है इसलिये मात्र कथन के आधार पर कोई भी भूमि कृषि भूमि के रूप में स्थापित नहीं हो सकती है। क्रेता के द्वारा अपने जवाब में यह तथ्य भी अंकित किया है कि जांच अधिकारी के द्वारा जांच आख्या मौके के अनुसार नहीं है, जिसका किसी भी अभिलेखीय साक्ष्य से क्रेता के द्वारा खण्डन नहीं किया गया है, जबकि जांच अधिकारी के द्वारा अपनी आख्या के साथ संलग्न नजरी नक्शा व फोटोग्राफ्स के माध्यम से यह तार्किक रूप से स्थापित किया गया है कि कयशुदा सम्पत्ति में किसी प्रकार की फसल बोई हुई दर्शित नहीं हो रही है तथा आस-पास में विभिन्न प्रकार के आवासीय प्लाट व सड़कें पड़ी हुई हैं एवं प्लाट की नींव भरी हुई है, फोटोग्राफ्स में दिख रहे हैं। उपरोक्त समस्त तथ्यों की पुष्टि स्वयं न्यायालय के द्वारा किये गये स्थलीय निरीक्षण दिनांक 23.07.2025 से फोटोग्राफ्स से हो जाती है। इस प्रकार उपरोक्त तथ्यों से स्पष्ट है कि कयशुदा सम्पत्ति आवासीय प्रयोजनीयता की भूमि है तथा उपरोक्त आराजी के गाटा संख्या 4704मि0 में से केता पक्ष (जिनमें स्वंय विक्रेता के रूप में कान्टूर बिल्डकॉन कं0 है) के द्वारा विभिन्न पक्षकारों/केताओं को कुछ समय के पश्चात ही आवासीय भूखण्ड के रूप में विक्रय किया गया है, जिसकी पुष्टि उप निबन्धक खैर के द्वारा उपलब्ध करायी गयी पंजीकरण सूची(इंडेक्सिंग) से हो रही है, जिसका विवरण इस प्रकार से है:- 8496/2022, 8500/2022, 8516/2022, 8572/2022, 8583/2022, 8595/2022, 8599/2022, 8611/2022, 8612/2022, 8616/2022, 8624/2022, 8627/2022, 8630/2022, 8631/2022, 8641/2022, 8656/2022 तथा वर्ष 2023 में भी लगभग 23 विलेखों का पंजीकरण आवासीय दरों से किया गया है, जिससे स्पष्ट है कि कय की गयी सम्पत्ति की प्रयोजनीयता/उपादेयता तत्समय भी आवासीय थी। इस प्रकार केता के द्वारा प्रस्तुत जवाब दिनांक 21.05.2025 बलहीन एवं निराधार होने के कारण निरस्त किये जाने योग्य है, क्योंकि जांच अधिकारी के द्वारा अपनी आख्या में अंकित तथ्यों के आधार पर कय की गयी सम्पत्ति को आवासीय प्रकृति भूमि होने के कारण को तार्किक रूप से स्थापित किया है, इसलिये जांच अधिकारी की आख्या स्वीकार किये जाने का पर्याप्त आधार है, जिसकी पुष्टि स्वयं न्यायालय के द्वारा दिनांक 23.07.2025 को किये गये स्थलीय निरीक्षण से हो जाती है। इस प्रकार क्रेता का जवाब दिनांक 21.05.2025 निराधार एवं बलहीन होने के कारण अस्वीकार किया जाता है। तदनुसार जांच अधिकारी/अपर जिलाधिकारी(वि0/रा0) अलीगढ़ की जांच आख्या दिनांक 14.11.2022 के अनुसार विकीत सम्पत्ति का मूल्यांकन किया जाना न्यायोचित प्रतीत होता है। इस प्रकार विलेख संख्या 13152/30.07.2022 के माध्यम से एक किता आराजी कृषि भूमि गाटा संख्या 4704मि0 में से विकीत क्षेत्रफल 0.691 है0 स्थित मौजा टप्पल, परगना टप्पल व तहसील खैर, जिला अलीगढ़, कृषि भूमि दर्शाकर उक्त विलेख के माध्यम से अन्तरण किया गया है। जांच अधिकारी के अनुसार मौके पर काफी भिन्नता पायी गयी है। मौके पर विस्ता फार्म्स हाउस कालोनी में लिंक मार्ग पर स्थित है, जो मौके पर भिन्नता पायी गयी। मौके पर विस्टा फार्म्स हाउस कालोनी में लिंक मार्ग पर स्थित है, जो मौके पर अकृषक रूप में है, मौके पर कोई कृषि कार्य नहीं किया जा रहा है तथा आस-पास भी प्लांटिंग हो रही है एवं विकीत सम्पत्ति की बाउण्ड्री वॉल में लगभग 60 हजार ईंट संलग्न है, जिसको न दर्शाकर स्पष्ट रूप से करापवंचन किया गया है। उक्त भूमि का मूल्यांकन तत्समय तत्स्थान पर लागू मूल्यांकन सूची के प्रारूप-3 पेज सं० 60 वीकोड 1124 के कालम 5 के अनुसार 5,200/- रूपया प्रति वर्ग मी० एवं रेट लिस्ट के सामान्य निर्देश के पेज सं० 71 के क्रमांक 16 के अनुसार 6/- रूपया प्रति ईंट की निर्धारित दर से करते हुए इस प्रकार से किया जाता है।

विक्रीत भूमि का कुल क्षेत्रफल 0.691 है0 यानी रकवा 6910 वर्ग मी०X5,200/- रूपया प्रति वर्ग मी० की दर से=3,59,32,000/- रूपया, ईंटों की कीमत 60,000X6/-=3,60,000/- रूपया कुल मालियत

3,62,92,000/- रूपया होती है, जिस पर निर्धारित दर 7 प्रतिशत की दर से देय स्टाम्प शुल्क रूपया 25,40,440/- व रूपया 3,62,920/- का निबन्धन शुल्क देय है। जबकि प्रलेख पर रूपया 5,21,000/- का स्टाम्प शुल्क व रूपया 74,360/- का निबन्धन शुल्क अदा किया गया है। इस प्रकार प्रश्नगत प्रलेख में रूपया 20,19,440/- स्टाम्प शुल्क व रूपया 2,88,560/- रूपया निबन्धन शुल्क की कमी प्रथम दृष्ट्या पायी गयी है। केता द्वारा विलेख निष्पादन के समय वास्तविक तथ्यों को छिपाया गया है इसलिये अर्थदण्ड अधिरोपित करने का भी पर्याप्त आधार है।

आदेश

अतः उपर्युक्त विवेचना के आधार पर विलेख संख्या 13152/30.07.2022 को स्टाम्प अधिनियम की धारा 33/40(ख) के अन्तर्गत अवरुद्ध करते हुए क्रेता पर कमी स्टाम्प 20,19,440/- रूपया, कमी निबन्धन शुल्क 2,88,560/- रूपया, अर्थदण्ड 5,00,000/- रूपये तथा विलेख निष्पादन की दिनांक 24.05.2022 से धनराशि जमा करने की वास्तविक दिनांक तक 1.5 प्रतिशत मासिक साधारण ब्याज की दर से अधिरोपित किया जाता है। आदेश की एक प्रति सहायक आयुक्त स्टाम्प, अलीगढ़ को प्रेषित हो। बाद वसूली एवं आवश्यक कार्यवाही पत्रावली दाखिल राजस्व अभिलेखागार की जाय।"

10. The petitioner thereafter submitted respective appeals however all the appeals were decided by separate orders dated 27.01.2026.

11. In the aforesaid circumstances, petitioner has approached this Court by filing present bunch of writ petitions.

12. Learned Counsel for the petitioner submitted that inspection was not conducted in terms of the Indian Stamp Act,1899 and the U.P. Stamp (Valuation of Property) Rules 1997. It was conducted in the absence of petitioner. No notice was issued to the petitioner to participate in the inspection. The District Magistrate has passed the impugned order only on the basis of report without making any independent application of mind that respective land in questions are used only for the purpose of agriculture. Land was not declared □Abadi□ under Section 80 of U.P. Land Revenue Code, 2006.

13. The deficiency of stamp duty was wrongly determined on basis of small sale exemplars and he has placed reliance on a judgment passed in **Anuj Kumar Singh and 2 Ors. Vs. State of U.P. and 2 Ors., 2025:AHC:211526.**

14. Per contra, learned counsel for the respondents has vehemently supported the impugned orders that there is no material with the petitioner to dispute the spot inspection report, prepared by the Collector by conducting an inspection himself.

15.The surrounding area is purchased by the petitioner's construction company i.e. Contour Buildcon Private Ltd. which was later on sold for residential purpose and there were as many as 23 sale exemplars on record.

16. The petitioner has already purchased sufficient part from same gata and later on sold for the purpose of residential area. There is no possibility that area which is surrounded by residential plots could be used only for agriculture purpose, rather it has potentiality to be used as commercial land in near future.

17. Heard learned counsel for the parties and perused the records.

18. First issue for consideration before this Court is whether spot inspection conducted by District Magistrate himself on 23.7.2025 and report thereof could not be relied upon since spot inspection was conducted without issuing any notice to the petitioner and for that Court takes note of U.P. Stamp (Valuation of Property) Rules, 1997 and Rule 7 (3) of said rules provides that Collector may inspect the property after due notice to the parties to the instrument, therefore, it is not mandatory for the District Magistrate to conduct an inspection. However, if an inspection is conducted, notice ought to have been given to the petitioners, but nothing has been recorded in the inspection report therefore, there is an irregularity.

19. Now question would be that whether a report prepared in absence of petitioner would prejudice him to the effect that impugned orders be set-aside and for that Court takes note of inspection report dated 23.7.2025 wherein it was mentioned that lands in question were situated at Link Road, lands were not utilised for agriculture purpose, there were cemented roads with interlocking, plotting work work was going on and land was situated within Vista Farm House Colony.

20. Petitioner has vaguely denied aforesaid report and stated that there was no construction on the lands in dispute or near the said lands. However, it is not under dispute that lands were purchased by Contour Buildcon Private Ltd. which is surrounded by at least three sides of lands already purchased by said company.

21. Petitioner has not come up with any specific evidence whatsoever that lands in question were used for agricultural purpose except a vague denial.

22. It is also not denied that petitioner has already purchased other parts of same Gata and within a few period, it was sold to other persons in form of small lands as residential plots and this specific finding is not being denied either in writ petition or during arguments, therefore, Court finds that no prejudice is caused to petitioner, therefore, only on basis that petitioner was not issued notice before conducting inspection, it may be an irregularity but not an illegality.

23. Learned counsel for the petitioner has failed to show any basis to deny the aforesaid facts that Modus Operandi of petitioner was that he purchased various parts of single Gata allegedly for the purpose of agriculture, but within a very short period it was sold to various vendors in small area of plots for residential purpose, therefore, it is very possible that same Modus Operandi would be followed for the lands in question.

24. Now, second question for consideration would be that when sale deeds were executed, it was utilized for agriculture purpose or completely for residential purpose and later on can still defficiency in stamp duty be pointed out or calculated.

25. At this stage Court takes note of a Full Bench judgment passed by this Court in **Smt. Pushpa Sareen Vs. State of U.P., 2015, (3) ADJ 136**, that there is no bar if the market value of the property is determined with reference to the use to which the land is a capable reasonably of being put to immediately or in the proximate future. The possibility of land becoming becoming available in the immediate or near future for better use and enjoyment reflects upon the potentiality of the land. This potential has to be assessed with reference to the date of the execution of the instrument. In other words, the power of the Collector cannot be unduly circumscribed by ruling out the potential to which the land can be advantageously deployed at the time of the execution of the instrument or a period reasonably proximate thereto. Again the use to which land in the area had been put is a material consideration. If the land surrounding the property in question has been put to commercial use, it would be improper to hold that this is a circumstance which should not weigh with the Collector as a factor which influences the market value of the land. For reference, relevant part of said judgment is reproduced hereinafter:

" The true test for determination by the Collector is the market value of the property on the date of the instrument because, under the provisions of the Act, every instrument is required to be stamped before or at the time of execution. In making that determination, the Collector has to be mindful of the fact that the market value of the property may vary from location to location and is dependent upon a large number of circumstances having a bearing on the comparative advantages or disadvantages of the land as well as the use to which the land can be put on the date of the execution of the instrument.

Undoubtedly, the Collector is not permitted to launch upon a speculative inquiry about the prospective use to which a land may be put to use at an uncertain future date. The market value of the property has to be determined with reference to the use to which the land is capable reasonably of being put to immediately or in the proximate future. The possibility of the land becoming available in the immediate or near future for better use and enjoyment reflects upon the potentiality of the land. This potential has to be assessed with reference to the date of the execution of the instrument. In other words, the power of the Collector cannot be unduly circumscribed by ruling out the potential to which the land can be advantageously deployed at the time of the execution of the instrument or a period reasonably proximate thereto. Again the use to which land in the area had been put is a material consideration. If the land surrounding the property in question has been put to commercial use, it would be improper to hold that this is a circumstance which should not weigh with the Collector as a factor which influences the market value of the land."

26. Considering the above position of law and above referred Modus Operandi of petitioner and that there is not much denial about the commercial activities which are surrounded to the lands in question purchased by the petitioner which was rightly taken note of by Collector, therefore, impugned orders has a support of not only facts of the case, but position of law also.

27. In the aforesaid circumstances, Court does not find that there is any illegality in the impugned orders, accordingly, all the writ petitions are dismissed.

(2026) 5 ILRA 2156
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.05.2026

BEFORE

THE HON'BLE ARINDAM SINHA, J.
THE HON'BLE SATYA VEER SINGH, J.

Writ C No. 12303 of 2026

M/S Om Food Manufacturing Center ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue for consideration

The controversy centers on the legality of a huge retrospective electricity demand raised after the consumer had already discharged all billed liabilities.

Headnotes

A. Civil matter-Constitution of India,1950-Article 226-Electricity Act,2003-Section 56-Supplementary demand-Billing mistake-Wrong tariff application-Retrospective recovery-Limitation-Disconnection of electricity-Coercive recovery-Bona fide error-Recovery may be pursued through appropriate civil remedy, but electricity supply cannot be disconnected as a coercive measure-Upward revision of the demand after issuance of notice unsustainable-Writ petition allowed. (Para 3 to 7)

Held

The court held that the electricity supplier must disclose the basis of the alleged billing mistake and furnish a proper calculation with applicable rebate before seeking recovery, progressive enhancement of the demand is impermissible. (E-6)

Case law Cited

Assistant Engineer, Ajmer Vidyut Vitran Nigam Ltd. Vs Rahamatullah Khan alias Rahamjulla (2020) 4 SCC 650, Mahabir Kishore & Ors Vs State of M.P. (1989) 4 SCC 1, M/s Prem Cottex Vs Uttar Haryana Bijli Vitran Nigam Ltd. (2021) 20 SCC 200-referred to.

List of Acts

Constitution of India, 1950, Electricity Act, 2003.

List of Keywords

Electricity Act, 2003, Section 56, Supplementary demand, Billing mistake, Wrong tariff application, Retrospective recovery, Limitation, Disconnection of electricity, Coercive recovery, Bona fide error, Civil remedy.

Case Arising from

CIVIL JURISDICTION: WRIT -C No. -12303 OF 2026 06.05.2026
M/S OM Food Manufacturing Center Vs. State of U.P. & 2 Ors
From the judgment and order dated 06.05.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Adv. for Petitioner(s):
Kumar Ankit Srivastava
Advs. for Respondent(s):
C.S.C., Udit Chandra

(Delivered by Hon'ble Arindam Sinha, J.)

1. Petitioner is before us contending enjoyment of commercial connection. On application for enhancement of load, it was increased to 140KV on 14th July, 2023. Subsequent to the increase, petitioner regularly paid consumption charge bills. After lapse of two years, the supply company issued notice that there was mistake in applying rate for the charges for electricity earlier consumed and made demand in excess of Rs. 54,00,000/-. Increase of load and installation of meter were not in hands of petitioner. There is no allegation of theft but of mistake made by the supply company. Petitioner is being sought to be penalised on threat of disconnection.

2. On 23rd April, 2026 we had recorded order, carrying our query. It will appear from paragraph 3 of the order, reproduced below.

"3. We see that the supply company is raising a dispute in respect of bills already paid and due discharge obtained by petitioner. Dispute because the supply company says that there was omission and incorrect bills were raised. On query Mr. Chandra seeks adjournment to demonstrate applicable provision, whereunder the supply company can raise demand on incorrect bills."

Mr. Kumar Ankit Srivastava, learned advocate appears on behalf of petitioner. Mr. Piyush Shukla, learned advocate, Standing Counsel appears for State and Mr. Udit Chandra, learned advocate for respondent nos. 2 and 3 (the supply company).

3. Today Mr. Chandra relies on judgment of the Supreme Court **in Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited v. Rahamatullah Khan alias Rahamjulla reported in (2020) 4 SCC 650,** paragraph 8 in Law Finder print. The paragraph is reproduced below.

"8. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011.

The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.

Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand. As per section 17(1)(c) of the Limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.

*In **Mahabir Kishore and Ors. v. State of Madhya Pradesh, (1989) 4 SCC 1** this Court held that:-*

"section 17(1)(c) of the Limitation Act, 1963, provides that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence, have discovered it. In a case where payment has been made under a mistake of law as contrasted with a mistake of fact, generally the mistake become known to the party only when a court makes a declaration as to the invalidity of the law. Though a party could, with reasonable diligence, discover a mistake of fact even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law."

(emphasis supplied)

*In the present case, the period of limitation would commence from the date of discovery of the mistake i.e. 18.03.2014. The licensee company may take recourse to any remedy available in law for recovery of the additional demand**, but is barred from taking recourse to disconnection of supply of electricity under section (2) of Section 56 of the Act."***

(emphasis supplied)

4. For purpose of convenience, section 56 in Electricity Act, 2003 is reproduced below.

"Section 56. Disconnection of supply in default of payment.-

(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,-

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,

whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

It follows, subsequent demand on discovery of mistake can be made as on law declared, on interpretation of section 56. No other provision has been shown. The law declared says, there cannot be recovery to distress of the consumer. Upon perusal of initial notice dated 1st July, 2025 and subsequent notice dated 24th October, 2025 we see that original demand of aggregate Rs. 54,14,196.88/- stood increased to Rs. 62,03,152/-. The initial notice speaks only of mistake detected. There is no statement regarding bonafide error. Petitioner was thereby presented with allegation of discovery without any opportunity for him to test its correctness. Furthermore, there are items of charge and other entries in the bill, including for rebate. They do not bear particulars. Mr. Chandra submits, he be allowed time to obtain instruction regarding upward revision in the demand. As aforesaid, law declared is that subsequent discovery of bonafide mistake leading to additional charge, can be recovered.

5. Section 56(1) provides for procedure of 15 clear days' notice in writing, to recover the charge, including by cutting off supply of electricity. Sub-section (2) provides for limitation. **Rahamatullah Khan** (supra) says, coercive action cannot be taken. In other words, the supply company not having recourse to coercive steps for recovery, must obtain civil remedy on a principal sum and may claim interest on the principal sum as a claim in the action. There cannot be upward revision in the demand, after it is made. The supply company cannot progressively increase its demand.

6. In this case we direct the supply company to present the discovery of mistake and proper calculation, with applicable rebate given to petitioner, for payment within the prescribed time. In event of non-payment, the supply company has to resort to civil remedy, to recover. At this stage Mr. Chandra relies on a subsequent judgment of the Supreme Court in **M/s Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Ltd.** reported **in (2021) 20 SCC 200**, paragraphs 18 and 21 in Law Finder print. Paragraph 18 is reproduced below.

"18. Eventually, this Court disposed of the appeals, preventing the licensee from taking recourse to disconnection of supply, but giving them liberty to take recourse to any remedy available in law for recovery of the additional demand. Therefore, the decision in Rahamatullah Khan (supra) is distinguishable on facts."

We do not see that **Rahamatullah Khan** (supra) was overruled. On the contrary, the Supreme Court in distinguishing **Rahamatullah Khan** (supra) on facts strengthens our appreciation of the judgment as law declared.

7. The writ petition is thus allowed and **disposed of.**

(2026) 5 ILRA 2160
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.05.2026

BEFORE

THE HON'BLE ARINDAM SINHA, J.
THE HON'BLE SATYA VEER SINGH, J.

Writ C No. 12569 of 2026

Khushi Hospital & Anr. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Issue(s) for consideration

(a) Whether the Chief Medical Officer (CMO) acting individually has the statutory jurisdiction to cancel the registration (even provisional) and seal a clinical establishment under the Clinical Establishments Act, 2010, or if that power belongs exclusively to the multi-member District Registering Authority?
(b) Whether writ Court can intervene, inspite of efficacious alternative remedy available?

Headnotes

A. Healthcare Law - Licensing and Operations – Clinical Establishments (Registration and Regulation) Act, 2010: Sections 10, 32 - The petitioners, operating a hospital under a provisional registration, challenged two administrative orders issued by Respondent No. 3 (the Chief Medical Officer/CMO): An order dated 10.03.2026, sealing the hospital and an order dated 18.03.2026, cancelling their provisional registration.

The petitioners argued that u/s 32 of the *Clinical Establishments (Registration and Regulation) Act, 2010*, only the designated District Registering Authority (chaired by the District Collector u/s 10) has the statutory power to cancel a registration. They asserted that the CMO individually lacks jurisdiction to issue such an order. The State argued that u/s 10(2) of the Act and Rule 13/21 of the *Uttar Pradesh Clinical Establishments Rules, 2016*, the CMO acts as the authority for provisional registrations. The State also relied on a prior Division Bench precedent (*Medaxis Hospital Vs. State of U.P., 2019*) holding that the CMO is the competent authority to cancel registrations, while urging the Court to dismiss the petition due to available alternative statutory remedies/appeals.

B. The writ Court can intervene inspite of efficacious alternative remedy available. There has been declaration of law to this effect. (Para 7)

C. Nowhere in section 32 or elsewhere in the Act is there mention, except as provided in section 10(2), is the authority equated to or said to be the CMO. Section 32 refers to the 'authority', which means the 'Chief Medical Officer' (only u/s 10(2)), who is the competent authority to cancel the registration of the clinical establishment. In case of petitioners, their provisional certificate has been cancelled by respondent no. 3 (the CMO). The authority has acted without jurisdiction. (Para 7)

D. Section 32 provides for three months' notice in the matter of cancellation of registration certificate. It is only thereafter, on due cancellation, there can be reasons recorded in writing for immediately restraining the clinical establishment from carrying on, if there is imminent danger to the health and safety of patients. **There is no notice issued by the authority for cancellation.** It follows, the sealing and cancellation orders are required to be and, are hereby set aside and quashed. (Para 8)

Writ petition allowed. (E-4)

Case Law Cited

1. Medaxis Hospital Vs. State of U.P., 2019 (9) ADJ 77 (Para 4)
2. Whirlpool Corporation Vs. Registrar of Trademarks, (1998) 8 SCC 1 (Para 7)

List of Acts

Clinical Establishments (Registration and Regulation) Act, 2010; Uttar Pradesh Clinical Establishments (Registration and Regulation) Rules, 2016.

List of Keywords

clinical, establishment, authority, sealing, cancellation, registration, notice, certificate, alternative remedy, provisional.

Appearances for Parties

For Petitioner(s): Amresh Tripathi, Pankaj Kumar Gupta
For Respondent(s): C.S.C.

(Delivered by Hon'ble Arindam Sinha, J.)

1. Petitioners engaged in running a hospital have provisional registration. They have challenged orders dated 10th March, 2026 of sealing and 18th March, 2026 of cancellation made by respondent no. 3 (the Chief Medical Officer/CMO). Reliance is on section 32 in Clinical Establishments (Registration and Regulation) Act, 2010 for contention that cancellation of registration can only be done by the authority. Definition of authority is provided by clause (a) in section 2. Reliance has also been on section 10, which provides for the authority to have the District Collector as Chairperson, the District Health Officer as convenor and three members possessing prescribed qualifications, to be appointed on such terms and conditions as may be prescribed. In the circumstances, the CMO cannot be said to be the authority to exercise power of cancellation of registration certificate. Mr. Pankaj Kumar Gupta, learned advocate appears on behalf of petitioners.

2. The writ petition is up for final hearing upon opportunity granted to State for obtaining instructions. Dr. D.K. Tiwari, learned advocate, Additional Chief Standing Counsel appears on behalf of State and to begin with relies on sub-section (2) in section 10. The sub-section is reproduced below.

*"(2) Notwithstanding anything contained in sub-section (1)**, for the purposes of provisional registration of clinical establishments under section 14**, the District Health Officer or **the Chief Medical Officer** (by whatever name called) **shall exercise the powers of the authority as per procedure that may be prescribed."***

(emphasis supplied)

He then relies upon sections 14 and 32 (2).

3. Dr. Tiwari hands up Uttar Pradesh Clinical Establishments (Registration and Regulation) Rules, 2016. He relies on rule 13, reproduced below.

*"**Rule - 13. The District Registering Authority**. The State Government shall, by notification, under section-10, of the Act and in accordance with the rules farmed by central Government in this behalf set up an authority to be called the District Registering Authority for each district for registration of clinical establishments."*

Without prejudice he submits further, there was notification dated 14th December, 2017 issued. He points out from it, timelines have been provided on efficacious alternative remedy petitioners can avail by filing application, first and second appeals.

4. Dr. Tiwari proceeds to rely on view taken by a Division Bench of this Court in **Medaxis Hospital v. State of U.P.** reported in **2019 (9) ADJ 77**, paragraphs 13 and 14 (Lawsuit print). The paragraphs are reproduced below.

"[13] From the conjoint reading of the sections referred to above what: emerges is that the "authority" is the Committee constituted under section 10 of the Act, 2010 in which the District Collector is the Chairperson and the District Health Officer or the Chief Medical Officer (by whatever name called), shall exercise the powers of the authority as per procedure that may be prescribed. This means that for the purpose of provisional registration of clinical establishment this is the Committee which will consider whether registration has to be granted or not. Thereafter the registration itself will be granted by the "authority" i.e. the Chief Medical Officer.

[14] Section 32 of the Act, 2010 also refers to the "authority" which means the Chief Medical Officer, who is the competent authority to cancel the registration of the clinical establishment."

He submits, the cancellation was duly made. No interference is warranted. Nevertheless, he reiterates, petitioners if aggrieved have efficacious alternative remedy.

5. Mr. Gupta reiterates his submission that cancellation under section 32 can only be by the 'authority'. Definition of 'authority' is given in clause (a) under section 2 and section 10 prescribes constitution of the authority. He seeks interference on reference to impugned cancellation order as having been passed by the CMO. According to him, respondent no. 3 did not have the power to pass the order.

6. Sub-section (2) in section 10 provides for purpose of the provisional registration under section 14. The District Health Officer or the CMO (by whatever name called) will exercise powers of the authority. That means, application for registration to be made to the authority under section 14, by operation of section 10(2), empowers the CMO to receive it. In this regard rule 21 is reproduced below.

"Rule 21. Acknowledgement of Application.

***The Authority, or any person in his office authorized in this behalf, shall, acknowledge receipt of the application for registration,** in the acknowledgment slip provided as per SGAA Annexe immediately, if delivered at the office of the authority, or not later than the next working*

day if received by post and by online acknowledgement to be generated automatically by the system."

(emphasis supplied)

Going by definitions clause (a) under section 2, prescription for constitution of the authority under section 10 and functions of the authority under rule 14, by clause (a), providing that one of the functions will be to cancel registration of any clinical establishment, we have no doubt in our mind that cancellation of, even provisional certificate, must be by the authority. Rule 14(a) is reproduced below.

"Rule - 14. Functions of the Authority.

The Authority *shall perform the following functions:-*

(a) To grant, renew, suspend or cancel registration of any clinical establishment."

(emphasis supplied)

7. We respectfully agree with view taken by paragraph 13 (Lawsuit print) in **Medaxis Hospital** (supra). In case of petitioners, their provisional certificate has been cancelled by respondent no. 3 (the CMO). The authority has acted without jurisdiction. The writ Court can intervene inspite of efficacious alternative remedy available. There has been declaration of law to this effect. Reference can be made to often relied upon judgment of the Supreme Court in **Whirlpool Corporation v. Registrar of Trademarks,** reported in **(1998) 8 SCC 1**. However, by paragraph 14 the Division Bench said, section 32 refers to the 'authority', which means the 'Chief Medical Officer', who is the competent authority to cancel the registration of the clinical establishment. In this context section 2 (a) and section 10(1) are reproduced below.

"Section 2 (a)

(a) "authority" means the district registering authority set-up under section 10."
xxxxx xxxxxx xxxxx

"10. Authority for registration-*?(1) The State Government shall, by notification, set-up an authority to be called the district registering authority for each district for registration of clinical establishments, with the following members, namely:? (a) District Collector? Chairperson; (b) District Health Officer?Convenor; (c) three members with such qualifications and on such terms and conditions as may be prescribed by the Central Government."*

Nowhere in section 32 or elsewhere in the Act is there mention, except as provided in section 10 (2), is the authority equated to or said to be the CMO. Section 10(2) has already been reproduced above.

8. On query we have ascertained that there is no notice issued by the authority for cancellation. Section 32 provides for three months' notice in the matter of cancellation of registration certificate. It is only thereafter, on due cancellation, there can be reasons recorded in writing for immediately restraining the clinical establishment from carrying on, if there is imminent danger to the health and safety of patients. It follows, the sealing and cancellation orders are required to be and, are hereby set aside and quashed. As such, we are compelled to direct that the authority must issue notice for cancellation, giving three months time to petitioners for response, as provided under section 32 (2), only after which there can be cancellation and restraint placed on operation of the hospital.

9. Impugned orders of sealing and cancellation are set aside and quashed. The writ petition is accordingly allowed and disposed of.

(2026) 5 ILRA 2164
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.05.2026

BEFORE

THE HON'BLE ATUL SREEDHARAN, J.
THE HON'BLE VIVEK SARAN, J.

Writ C No. 13812 of 2026

Naval Kishore Srivastava ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

Whether the Registrar (Birth-Death) could be directed by a writ of mandamus to issue a death certificate of a person who died more than one year earlier, without the petitioner first obtaining an order of the concerned Sub-Divisional Magistrate, as required for registration of a death after one year under Section 13 of the Registration of Births and Deaths Act, 1969 read with Rule 9(3) of the Uttar Pradesh Registration of Birth and Death Rules, 2002.

Headnotes

Registration of Births and Deaths Act, 1969, s.13 – Uttar Pradesh Registration of Birth and Death Rules, 2002, r.9(3) – Constitution of India – Art. 226 – Writ petition filed in the year 2026 seeking issuance of a writ of mandamus directing the Registrar (Birth-Death), Nagar Nigam, Varanasi, to issue the death certificate of the petitioner's first wife, who allegedly died on 25.01.2001 – Respondents contended that under Section 13 of the Registration of Births and Deaths Act, 1969 and Rule 9(3) of the Uttar Pradesh Registration of Birth and Death Rules, 2002, the petitioner was required to first obtain an order from the concerned Sub-Divisional Magistrate for registration of the death after one year – Justification:

Held: Under Rule 9(3) of the Rules, it is mandatory for a person to obtain an order from the concerned Sub-Divisional Magistrate for issuance of a death certificate if the registration of death has not been done within one year – Although the petitioner stated to have approached the Sub-Divisional Magistrate, he did not disclose the outcome of the application and, therefore, the only presumption was that there was no order from the concerned Sub-Divisional Magistrate

for issuance of the death certificate – Consequently, the petitioner did not fulfil the statutory requirement for issuance of the death certificate – The certificate issued by the Parshad and the petitioner's self-declaration were of no consequence, as under the Act, the Sub-Divisional Magistrate alone is empowered to pass an order for issuance of a death certificate – Any direction straightaway to the Registrar for issuance of the death certificate would amount to circumventing the statutory requirement and would defeat the purpose of the Act – Any inability or inconvenience of the petitioner could not be a ground for bypassing the statutory remedy – In the absence of any evidence of death, any direction to the Registrar straightaway would amount to extinguishing the existence of a person Writ petition dismissed.(E-5)

[Paras 9, 10, 11, 13, 15, 16, 18]

Case Law Cited

Nil

List of Acts

Registration of Births and Deaths Act, 1969;
Uttar Pradesh Registration of Birth and Death Rules, 2002;
Constitution of India.

List of Keywords

Death Certificate; Delayed Registration of Death; Registration after One Year; Section 13; Rule 9(3); Sub-Divisional Magistrate; Registrar (Birth and Death); Statutory Remedy; Mandamus; Statutory Compliance; Ward Councillor's Certificate; Self Declaration; Jurisdiction under Article 226; Circumvention of Statutory Procedure; Evidence of Death.

Case Arising From

Writ petition for issuance of a writ of mandamus directing the Registrar (Birth and Death), Nagar Nigam, Varanasi, to issue the death certificate of the petitioner's first wife, who allegedly died in the year 2001.

Appearances for Parties

Advs. for the Appellant: Rajesh Kumar Srivastava
Advs. for the Respondents: Abhishek Kumar Yadav, C.S.C., Vineet Sankalp

(Delivered by Hon'ble Vivek Saran, J.)

1. Heard Sri Rajesh Kumar Srivastava, learned counsel for the petitioner, Sri Abhishek Kumar Yadav, learned counsel for the respondent nos.2, 3 and 4 and learned Standing Counsel for the State

2. The instant petition has been filed with the following relief(s):

"I. Issue a Writ, Order or direction in the nature of writ of mandamus commanding The Registrar (Birth-Death), Nagar Nigam, Varanasi to issue Death Certificate of late Madhuri Srivastava wife of Naval Kishore Srivastava who died on 25.01.2001 in House No.4/767 Old Ram Nagar, Varanasi.

II. Issue a Writ, Order or direction in the nature of writ of mandamus commanding Respondents Authorities to conduct an enquiry within a stipulated period by inviting objections from the Family Members Shri Shayam Narain Srivastava s/o Late Professor Gauri Shanker

Srivastava aged about 80 years, Sri Gyan Prakash Srivastava who are real brothers of Late Madhuri Srivastava and Mr. Kamal Kishore Srivastava s/o Late Madhuri Srivastava through News Paper Publication or any other Mode if any deem fit and proper the the cost of petitioner.

III. Issue a Writ, Order or direction as this Hon□ble Court may deem fit & proper in the facts & circumstances of this case.

IV. Award the cost of this case from the contesting Respondents."

3. The brief facts of the case as narrated in the writ petition are that the petitioner was married to one Madhuri Srivastava in the year 1962, who according to the petitioner left him in the year 1962 itself, to her maternal house in Bareilly, never to return and where she had a male child. The petitioner filed a divorce suit in the year 1970 which was rejected and the appeal so preferred was dismissed in the year 1974. However, the petitioner was never in touch with his wife, Madhuri Srivastava. However as per the order of Court, the petitioner gave his half salary to Madhuri Srivastava w.e.f. 1975 to 1985. He took voluntary retirement on 05.05.1985 from the post of Squadron Leader, Indian Air Force. However, subsequently Madhuri Srivastava was never provided any contribution from the petitioner's pension. The petitioner states that Madhuri Srivastava died on 25.01.2001 while residing at her parent's house at Ram Nagar, Varanasi. The petitioner married one Meera Srivastava in year 2001 itself. However, name of Meera Srivastava (the second wife), could not be entered into the service records and in the same name of Madhuri Srivastava (first wife) continued. In the year 2011 the petitioners applied for deletion of name of Madhuri Srivastava and for substitution of Smt. Meera Srivastava as his legally wedded wife. Thereafter the petitioner while filling up fourm on attaining 80 years of age on 05.03.2016 disclosed the name of his spouse as Meena Srivastava and upon which a letter dated 30.03.2016 was issued by the Directorate of Air Veterans, Air HQ (SP), New Delhi requiring the petitioner to furnish the details of the family which included copy of marriage certificate and death certificate or decision of the Court granting divorce.

4. Learned counsel for the petitioner submits that as his first wife Late Madhuri Srivastava has left him in the year 1962, he is having no contact with her or with his son, Sri Kamal Krishna Srivastava, born out of wedlock. Recently he did tried to get in touch with his son Sri Kamal Krishna Srivastava but after few interaction he stopped responding. Thus the petitioner is not having any document regarding death of Madhuri Srivastava. He further submits that the petitioner had tried to procure documents of treatment of Late Madhuri Srivastava from the Chief Medical Superintendent Lal Bahadur Shastri Hospital, Varanasi vide his letter dated 18.03.2025 but to no avail. He further submits that similar other efforts also failed. The petitioner thereafter was able to procure a death certificate dated 17.03.2025 from the local Parshad (Councilor) of Ward No.65, Purana Ram Nagar, Nagar Nigam Varanasi, ascertaining date of death of Late Madhuri Srivastava as 25.01.2001. He submits that as the local Councilor/Sabhasad has certified the date of death of late Madhuri Srivastava thus a direction to the Registrar be issued for issuance of death certificate.

5. *Per contra*, learned counsel representing the Nagar Nigam and the State Authorities have submitted a death certificate is issued under the provisions of **the Registration of Birth and Death Act, 1969** (hereinafter referred to as "the Act") and under which the State of U.P. have framed

Rules being **The Uttar Pradesh Registration of Birth and Death Rules, 2002** (hereinafter referred to as "the Rules") and under the said Rules the petitioner has to seek an order from the Sub-Divisional Magistrate concerned. They also pointed out that the petitioner had approached the Sub-Divisional Magistrate concerned but the outcome has not been stated in the petition, therefore the presumption of pendency of proceedings can be safely drawn. They also stated that on the letter dated 17.03.2025 of the petitioner the Zonal Officer had issued a letter requiring the petitioner to profile certain documents which as per pleadings petitioner has not provided. So it is the petitioner who is at fault. Since the petitioner has failed to get the statutory requirement fulfilled, no direction has prayed for in the instant writ petition can be granted.

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

7. It is not in dispute that a death certificate is issued under the provisions of the Section 13 of Act and in case of delayed registration of births and deaths, Section 13 of the Act which reads as under:

"13. Delayed registration of births and deaths.-(1) Any birth or death of which information is given to the Registrar after the expiry of the period specified therefor, but within thirty days of its occurrence, shall be registered on payment of such late fee as may be prescribed.

(2) Any birth or death of which delayed information is given to the Registrar after thirty days but within one year of its occurrence shall be registered only with the written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before a notary public or any other officer authorised in this behalf by the State Government.

(3**) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a magistrate of the first class or a Presidency Magistrate after varifying the correctness of the birth or death and on payment of the prescribed fee.**

(4) The provisions of this section shall be without prejudice to any action that may be taken against aperson for failure on his part to register any birth or death within the time specified therefor and any such birth or death may be registered during the pendency of any such action."

8. The State Government in exercise of power under Section 13 of the Act have framed the Rules and Rule 9 (3) of the Rules provides that in case of any registration of death beyond the period of one year, the same shall be carried out on the order of the Sub-Divisional Magistrate and payment of late fee of Rs.10/-. Rule 9 of the aforesaid Rules provides as under:

"9. Authority for delayed registration under Sec. 13 and fee payable therefor.-(1) Any birth or death of which information is given to the Registrar after the expiry of the period specified in Rule 5, but within thirty days of its occurrence, shall be registered on payment of a late fee of rupees two.

(2) Any birth or death of which information is given to the registrar after thirty days but within one year of its occurrence, shall be registered only with the written permission of the Additional District Registrar (Deputy Chief Medical Officer for Urban Areas and District Panchayat Raj Officer for Rural Areas) and on payment of a late fee of rupees five.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order of Sub-Divisional Magistrate and on payment of late fee of rupees ten."

9. Thus under 9(3) of the Rules it is mandatory for a person to obtain an order from the concerned Sub-Divisional Magistrate for issuance of death certificate, if the registration of death has not been done within a year and thereafter on completion of other requisite formalities.

10. As the petitioner states to have approached Sub-Divisional Magistrate, Sadar, Varanasi n 17.03.2025 for issuance of death certificate, copy of the said application is enclosed as Annexure-4 to the petition, but as the petitioner has not disclosed its outcome, thus the only presumption is that there is no order from the concerned Sub-Divisional Magistrate for issuance of a death certificate of Late Madhuri Srivastava.

11. Under such circumstances this Court is of the considered opinion that the petitioner as on date do not fulfil the statutory requirement for issuance of death certificate of late Madhuri Srivastava.

12. The petitioner has also moved an application before the Nagar Nigam, Varanasi on 17.03.2025 for issuance of death certificate and has also paid certain amount. In response thereof the Zonal Officer, Ram Nagar Zone, Nagar Nigam, Varanasi vide its communication dated nil, filed as Annexure-13 to the writ petition has required the petitioner to furnish certain documents. It is also unclear as to whether the petitioner ever provided the same or as to what was its outcome.

13. With regards to the death certificate dated 17.03.2025 issued by Raj Kumar Yadav, Parshad, Ward No.65, Purana Ram Nagar, Nagar Nigam, Varanasi certifying death of Madhuri Srivastava on 25.01.2001 or a self declaration of the petitioner dated 17.03.2025 both are of no consequence. Under the Act it is the Sub Divisional Magistrate alone who is empowered to pass an order and admittedly, the petitioner does not have an order from the concerned Sub-Divisional Magistrate for issuance of a death certificate of Late Madhuri Srivastava.

14. Even in the order dated 22.09.2025 passed by the Hon□ble Supreme Court in Writ Petition (Civil) No.807 of 2025 while dismissing the writ petition liberty was given to the petitioner to approach the appropriate forum.

15. As the petitioner had approached the Sub-Divisional Magistrate concerned under Section 13 of the Act, any direction straight away to the Registrar for issuance of death certificate of late Madhuri Srivastava would be amounting to circumventing the statutory requirement which would be defeating the purpose of the Act in procuring relevant documents of death of late

Madhuri Srivastava. Any inability or inconvenience of the petitioner as submitted by learned counsel for the petitioner can also not be any ground for bypassing the statutory remedy.

16. It is also to be kept in mind that in absence of any evidence of death of Madhuri Srivastava any direction to the Registrar straight away would be amounting to extinguishing the existence of a person.

17. As noted above, the petitioner has taken recourse to the statutory provision by moving application before the concerned Authority/Sub-Divisional Magistrate, which he may continue to pursue.

18. In view of the aforesaid discussion this Court finds that the petition is misconceived and is accordingly, **dismissed.**

19. No order as to costs.

(2026) 5 ILRA 2169
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.05.2026

BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE KUNAL RAVI SINGH, J.

Writ C No. 20436 of 2026
Laongwith other cases

Sidharth **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

Matter pertains to the validity of the land acquisition proceedings initiated for development of an Integrated Township Project under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; and the correctness of the notifications issued under ss.11(1) and 21(1) and (2) of the Act, 2013, particularly on the grounds of non-compliance with the mandatory 80% purchase/consent requirement under the Integrated Township Policy, 2005/2023 of the State Government ; mechanical rejection of the petitioners' objections; non-compliance with the requirements of Social Impact Assessment and Rehabilitation and Resettlement; lapse of the earlier acquisition proceedings under the Land Acquisition Act, 1894; alleged misuse of compulsory acquisition powers to benefit private developers; and violation of the petitioners' right to property under Art. 300-A of the Constitution.

Headnotes

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – ss.4, 5, 7, 8, 11, 15, 19, 21, 23, 24, 26 to 31, 40, 64 – Integrated Township Policy, 2005/2023 – Land acquisition proceedings for development of an Integrated

Township Project – Petitioners challenged notifications dated 07.03.2025 issued u/s.11(1) and 17.04.2026 issued u/ss.21(1) and (2) – Challenge: Non-compliance with mandatory requirement of prior purchase of, or consent for, 80% of the project land; mechanical rejection of objections; non-compliance with Social Impact Assessment and Rehabilitation and Resettlement requirements; lapse of earlier acquisition proceedings under the Land Acquisition Act, 1894; colourable exercise of power and violation of Art.300-A of the Constitution

Held:

A. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – Land acquisition for Integrated Township – Section 24 of the Act, 2013 deals with the specific consequences of lapsed proceedings under the Act of 1894 – Where proceedings under the Act of 1894 have lapsed, the appropriate Government is expressly empowered by Section 24(2) of the Act, 2013 to initiate fresh acquisition proceedings under the Act, 2013 afresh, if it so chooses – The initiation of fresh proceedings under the Act, 2013 after lapse of earlier proceedings under the Act of 1894 is not only permissible but is expressly contemplated by the legislature – The petitioners cannot derive any vested right from the lapse of prior proceedings so as to permanently immunise their land from acquisition for a public purpose – *Fresh acquisition proceedings are independent proceedings and have to be judged on their own merits under the Act, 2013.* **[Para 6.2]**

B. SIA process – Public hearing u/s.5 is intended to ascertain the views of the affected families for being recorded and included in the SIA Report and the Act does not contemplate adjudication of individual objections at the SIA stage – *Non-production of the Expert Group's report as a separate document does not, by itself, invalidate the acquisition proceedings* **where the SIA Report was approved by the appropriate Government under Section 8, as such approval necessarily presupposes consideration of the SIA Report along with the Expert Group's evaluation; the SIA Report on record contains the findings and recommendations contemplated by Section 7(5); and the petitioners have neither pleaded nor alleged that the Expert Group was not constituted, that its evaluation was not undertaken, or that it made any recommendation adverse to the acquisition –** *In exercise of jurisdiction under Article 226, the Court cannot presume non-compliance with Section 7 merely because the Expert Group's report has not been separately produced, particularly in the absence of any specific challenge or material establishing such non-compliance* **– Section 7 compliance substantially demonstrated on the record. [Paras 6.4.4 to 6.4.7]**

C. Hearing of objections u/s.15 – Scope of objections confined to the area and suitability of the land proposed to be acquired, the justification offered for public purpose and the findings of the SIA Report – Absence of date on the order rejecting objections can be an irregularity, but not an illegality which may travel upto the root of the matter – Where the petitioners had been heard under Section 15(2), their objections had been duly considered and a decision had been taken, absence of a date on the order had not caused prejudice to them or prevented them from challenging the acquisition – *The challenge to the Section 15 rejection order merely on the ground that it does not bear a date was rejected.* **[Paras 6.5.1 to 6.5.8]**

D. Section 19 declaration issued within twelve months from the preliminary notification and hence no violation of Section 19. [Para 6.6]

E. Section 21 notice – Persons interested afforded full and reasonable opportunity to appear and submit their claims before the Collector – Grievances relating to compensation, measurement or rehabilitation benefits could be addressed by the Collector under ss.21, 22 and 23 and thereafter before the Land Acquisition, Rehabilitation and Resettlement Authority u/s.64. [Paras 6.7 and 6.8]

F. *80% purchase/consent requirement under Integrated Township Policy, 2023* **– The Policy, 2023 treats the Integrated Township as one single project – An Integrated Township may cover more than one village, and the land purchase process under Clause 3.4 is meant for the entire project, not village-wise – Therefore, if the developer has purchased and obtained consent for more than 80% of the total project land, the remaining land up to 20% can be acquired under the Act, 2013 – The Policy does not require separate 80% compliance for each village – Developer had purchased 33.9013 hectares (approximately 73%) from land owners through willing**

agreements, and consent of more than 7% of the affected families had also been obtained – acquisition under Section 11 was accordingly limited to 2.86844 hectares, which represents less than 20% of the total project area of 46.5212 hectares, well within the permissible limit under the Policy, 2023 – *the requirement of prior purchase/consent for 80% of the project land stood substantially met* **– Subsequent to issuance of the preliminary notification, the developer further purchased 0.838419 hectares directly from tenure holders through mutual agreement, thereby reducing the area for compulsory acquisition under Section 19 to only 2.030021 hectares –** *this itself demonstrates that the process of private purchase was ongoing and that the authorities were seeking to minimise compulsory acquisition as far as possible, which is precisely the spirit of the Policy, 2023* **[Paras 6.9.1 to 6.9.7]**

G. Rehabilitation and Resettlement – Section 16 requires preparation of the draft R&R Scheme after publication of the preliminary notification, Section 18 requires approval thereof and Section 19 requires publication of its summary with the declaration – In the present case, the SIA Report recorded that the R&R Scheme would be prepared and an Administrator for Rehabilitation and Resettlement had already been designated – *Court held that proceedings under Sections 21, 22 and 23 of the Act, 2013, including the R&R Award under Section 31, were yet to be completed; therefore, the argument that no R&R Scheme exists cannot be used to interdict proceedings at that stage.* **– Grievances relating to rehabilitation and resettlement could be addressed during the award proceedings. [Para 6.10]**

H. Right to property u/A.300-A – Though no longer a fundamental right, right to property remains a constitutional right and includes the rights to notice, hearing, reasoned decision, acquisition only for a public purpose, restitution or fair compensation, efficient and expeditious process and conclusion – *Where the acquisition proceedings complied with the Act, 2013 and the aforesaid safeguards were afforded, the constitutional challenge under Art.300-A failed.* **[Para 6.11]**

I. Non-invocation of urgency clause u/s.40 – Acquisition processed through the normal, full and complete procedure prescribed under the Act, 2013 and *the absence of invocation of the urgency clause was a further factor supporting the validity of the acquisition.* **[Para 6.12]**

J. Judicial review in matters of acquisition for public purpose – Government's declaration of public purpose is ordinarily not justiciable; judicial review is confined to cases of fraud or colourable exercise of power – In the present case, the public purpose, namely planned urban development through an integrated township, was apparent and the petitioners had neither specifically alleged nor proved any fraud or misuse of power – Courts, while exercising jurisdiction u/A.226, must balance private interest against larger public interest and quashing of acquisition is not the only mode of redress for non-compliance with a legal requirement – *The private interest of the petitioners must give way to the larger public interest of planned urban development after payment of fair compensation as required under the Act, 2013.* **[Para 6.13]**

K. Availability of efficacious remedy u/s.64 of the Act, 2013 for disputes relating to measurement, compensation, person entitled to compensation, R&R rights and apportionment is a relevant consideration in declining interference u/A.226. [Para 6.15]

L. Judgment in *Vijay Pal Singh and 12 others v. State of U.P. and 6 others*, **2026 (5) ADJ 320 (DB), dealing with a similar challenge to acquisition proceedings under the Act, 2013, found directly applicable and binding –** *All the legal challenges raised by the petitioners were examined and rejected* **– SIA process duly conducted in compliance with ss.4, 5, 7 and 8; SIA Report approved by the appropriate Government and its summary incorporated in the preliminary notification as required u/s.11(3) – Preliminary notification dated 07.03.2025 issued in compliance with s.11(1); objections invited u/s.15 and considered and rejected; declaration u/s.19(1) issued on 05.03.2026 within twelve months –** *Requirement of prior purchase/consent for 80% of the project land under the Policy, 2023 substantially met as the project was computed as a whole and acquisition confined to less than 20% of the total project area of 46.5212 hectares* **– Notice dated 17.04.2026 u/ss.21(1) and 21(2) afforded full opportunity to the petitioners to submit their claims and objections –** *Acquisition was for a recognised public purpose and did not constitute a colourable exercise of power; no fraud or mala fides were alleged or established* **– Constitutional challenge under Art.300-A failed in view of compliance with the safeguards recognised in** *Kolkata Municipal Corporation v. Bimal Kumar*

Shah **and the Act, 2013 – Impugned notifications dated 07.03.2025 and 17.04.2026 and the order rejecting the petitioners' objections u/s.15 did not call for interference –** *Collector/Additional District Magistrate (Land Acquisition), Ghaziabad directed to conduct enquiry u/ss.22 and 23 and pass the award strictly in accordance with ss.26 to 31, ensuring full and fair opportunity to all interested persons including the petitioners* **– Collector also directed to pass the R&R Award u/s.31 read with the Second Schedule for each affected family – Possession of acquired land not to be taken in violation of s.38 and only after full payment of compensation and monetary components of the R&R Award – Persons aggrieved by quantum of compensation or R&R Award at liberty to avail remedy of reference u/s.64 before the Land Acquisition, Rehabilitation and Resettlement Authority –** *Writ petitions dismissed.* **[Paras 6.14, 7 and 8 to 8.2]** (E-5)

Case Law Cited

Vijay Pal Singh and 12 others v. State of U.P. and 6 others, 2026 (5) ADJ 320 (DB);
Smt. Somavanti and Others v. State of Punjab and Others, AIR 1963 SC 151 : (1963) 2 SCR 774;
Ramniklal N. Bhutta and Another v. State of Maharashtra and Others, AIR 1997 SC 1236;
State of U.P. v. Brijendra Singh, (1974) 2 SCC 461;
Prabhakar v. Joint Director of Sericulture Department, (2015) 15 SCC 1;
M/s. Tirupati Developers v. The Union Territory of Dadra and Nagar Haveli and Others, Civil Appeal No. 4952 of 2023, decided on 07.08.2023;
Sheshrao Venkatrao Shinde v. State of Maharashtra and Others, 2022 SCC OnLine Bom 5296;
Daulat Singh Surana v. First Land Acquisition Collector and Others, (2007) 1 SCC 641;
Kichhu Ram and Another v. State of U.P. and 5 Others, 2019 SCC OnLine All 5071;
Kolkata Municipal Corporation and Another v. Bimal Kumar Shah and Others, (2024) 5 SCR 831.

List of Acts

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Uttar Pradesh) Rules, 2016;
Land Acquisition Act, 1894;
Constitution of India, 1950.

List of Keywords

Land acquisition; Integrated Township Project; Integrated Township Policy, 2023; Compulsory acquisition; Public purpose; Planned urban development; Preliminary notification under Section 11; Social Impact Assessment; Expert Group evaluation; Public hearing; Hearing of objections under Section 15; Section 19 declaration; Notice under Section 21; Fair and reasonable opportunity of hearing; Determination of compensation; Rehabilitation and Resettlement; 80% purchase/consent requirement; Acquisition of remaining 20% land; Lapse of earlier acquisition proceedings under the Land Acquisition Act, 1894; Fresh acquisition proceedings under the Act, 2013; Right to property under Article 300-A; Judicial review of acquisition proceedings; Colourable exercise of power; Public interest vis-à-vis private interest; Procedural irregularity; Prejudice; Alternative remedy under Section 64; Land Acquisition, Rehabilitation and Resettlement Authority; Challenge to land acquisition proceedings .

Case Arising From

Challenge to the land acquisition notifications dated 07.03.2025 issued u/s.11(1) and 17.04.2026 issued u/ss.21(1) and 21(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, concerning the proposed Integrated Township Project at Village Mahrauli, Pargana Dasna, District Ghaziabad.

Appearances for Parties

Advs. for the Petitioner: Shiv Sagar Singh
Advs. for the Respondents: C.S.C., Tejasvi Misra

(Delivered by Hon'ble Mahesh Chandra Tripathi, J.)

A. APPEARANCE OF COUNSEL:-

1. Heard Shri Shiv Sagar Singh, learned counsel for the petitioners, Shri Fuzail Ahmad Ansari, learned Standing Counsel for the State -respondents, and Shri Anil Bhushan, learned Senior Advocate assisted by Shri Tejasvi Misra, learned counsel for the respondent - Ghaziabad Development Authority1 (hereinafter referred to as "GDA").

1.1. All the aforesaid writ petitions, being WRIT-C No. 20436 of 2026, WRIT-C No. 20011 of 2026, WRIT-C No. 20024 of 2026, WRIT-C No. 20026 of 2026, WRIT-C No. 20032 of 2026 and WRIT-C No. 20035 of 2026, raise a common challenge to the notification dated 07.03.2025 issued under Section 11(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 20132 (hereinafter referred to as "the Act, 2013") and the subsequent notification dated 17.04.2026 issued under Section 21(1) and 21(2) of the Act, 2013, pertaining to the proposed acquisition of land in connection with an Integrated Township Project in Village Mahrauli, Pargana Dasna, District Ghaziabad, initiated by the respondent-GDA under the Integrated Township Policy introduced by the State Government in the year 2005. The facts and the questions of law arising in all the writ petitions are substantially similar and interlinked. With the consent of the learned counsel appearing for the parties, all the writ petitions were heard together analogously and are being disposed of by this common judgment. For the purpose of brevity, facts are drawn mainly from WRIT-C No. 20436 of 2026, since the narration of facts therein sufficiently represents the factual matrix common to all the petitions.

B. PRAYER:-

2. The instant writ petitions have been filed challenging the land acquisition proceedings initiated under the Act, 2013. The petitioners have specifically challenged the notification issued under Section 11(1) of the Act, 2013 dated 07.03.2025 in respect of land situated at Village Mahrauli, Pargana Dasna, District Ghaziabad. They have also challenged the subsequent notification issued under Section 21(1) and 21(2) of the Act, 2013 dated 17.04.2026. According to the petitioners, after issuance of the preliminary notification, they submitted their objections on 05/09.05.2025 within the prescribed period of 60 days. However, those objections were rejected by respondent No. 3 (Collector, Ghaziabad) and respondent No. 4 [Additional District Magistrate (Land Acquisition), District Ghaziabad] through an undated order, without proper consideration of the issues raised. The petitioners allege that the entire acquisition proceedings are illegal, arbitrary and contrary to the provisions of the Act, 2013 as well as the Integrated Township Policy, 2023 of the State Government.

C. FACTS OF THE CASE:-

3. Before adverting to the submissions advanced by the parties, it is necessary to set out the factual background of the present matter as emerging from the record.

3.1. The acquisition proceedings in question have been initiated in connection with an Integrated Township Project proposed by the respondent-GDA under the Integrated Township Policy, 2005 of the State Government, framed for development of integrated townships through participation of private developers. The said policy was later amended in the years 2014 and 2023. The amended policy, i.e., the Uttar Pradesh Township Policy, 20233 (hereinafter referred to as "the Policy, 2023"), came into force in the month of July, 2023. The Policy, 2023 prescribes specific qualifications and conditions for developers, including the mandatory requirement that the developer must first purchase or obtain consent for at least 80% of the land from tenure holders before acquisition proceedings can be initiated for the remaining 20% of land through the State authorities.

3.2. Clause 3.4 of the Policy, 2023 deals with the procedure of Land Assembly. Under this process, the developer or consortium is required to purchase and assemble the land for the proposed township on its own. The developer must also acquire and develop the land required for approach roads at its own expense. Only in extreme or unavoidable circumstances, a maximum of 20% of the total project land may be acquired under the Act, 2013 through compulsory government acquisition proceedings, in case tenure holders do not agree to transfer their land in favour of the developer.

3.3. The record further reveals that earlier acquisition proceedings had been initiated for the same integrated township project under the Land Acquisition Act, 1894 through a notification under Section 4 dated 19.12.2013, followed by a declaration under Section 6 dated 20.10.2014. However, those proceedings lapsed because the concerned developers failed to deposit the acquisition cost and no award could be declared within the prescribed period. The petitioners had also filed Writ-C No. 55473 of 2015, in which they claimed that the earlier proceedings had lapsed.

3.4. In the aforesaid backdrop, the notification dated 07.03.2025 was issued under Section 11(1) of the Act, 2013 in relation to land in question situated at Village Mahrauli, Pargana Dasna, Tehsil Ghaziabad, District Ghaziabad. Through the said notification, the State Government expressed its intention to acquire private land measuring 2.86844 hectares comprising 23 khasra numbers for the development of an Integrated Township Scheme under the supervision of the respondent - GDA, for a public purpose connected with planned urban development.

3.5. The notification records that before its issuance, a Social Impact Assessment4 (hereinafter referred to as "SIA") study was conducted through the authorised agency and the report was approved by the State Government on 23.03.2024. The summary of the SIA Report as incorporated in the preliminary notification is as follows:

(i) compensation for the acquired land shall be determined in accordance with the provisions of the Act, 2013;

(ii) private land measuring 2.86844 hectares comprising 23 khasra numbers is proposed to be acquired;

(iii) in case trees standing over the acquired land are required to be cut, three times the number of trees shall be planted by the acquiring body;

(iv) appropriate action regarding the structures affected by the acquisition proceedings shall be taken after assessment by the competent technical department;

(v) approximately 280 land owners are likely to be affected by the proposed acquisition proceedings;

(vi) no public property or community resource is affected by the proposed acquisition;

(vii) proceedings shall be undertaken after preparing the Rehabilitation and Resettlement Scheme5 in accordance with the provisions of the Act, 2013.

3.6. After consideration of the SIA Report and the recommendations made therein, the Government formed an opinion that the land was required for public purpose and accordingly acquisition proceedings were set in motion under the Act, 2013.

3.7. The preliminary notification further provides that persons interested in the land or affected by the proposed acquisition were entitled to file objections under Section 15 of the Act, 2013 within 60 days from the date of its publication. Under Section 11(4) of the Act, 2013, no person shall, without prior approval of the Collector, transfer or create any encumbrance over the notified land from the date of publication of the preliminary notification till completion of the acquisition proceedings.

3.8. In response to the notification dated 07.03.2025, the petitioners filed objections on 05/09.05.2025. The said objections were considered and rejected by the competent authority. Thereafter, by notification dated 05.03.2026 issued under Section 19(1) of the Act, 2013, a declaration was made in respect of 2.030021 hectares of land at Village Mahrauli for the Integrated Township Scheme. It may be noted that out of the originally notified 2.86844 hectares, the developer had in the meanwhile directly purchased 0.838419 hectares from tenure holders through mutual agreement, and accordingly the Section 19 declaration was confined to the remaining 2.030021 hectares. Subsequently, a general notice under Section 21(1) and 21(2) of the Act, 2013 was issued on 17.04.2026, fixing 18.05.2026 as the last date for submission of claims and objections before the Collector/ADM (Land Acquisition), Ghaziabad, with hearing scheduled on 21.05.2026.

3.9. According to the report of the Tehsildar/Sub-Divisional Officer placed on record, out of the total project area of 46.5212 hectares, the developer had already purchased 33.9013 hectares (approximately 73%) from land owners through willing agreements, and consent of more than 7% of the affected families had also been separately obtained. The acquisition under Section 11 was accordingly limited to 2.86844 hectares, which is less than 20% of the total project area, fully consistent with the mandate of the Policy, 2023.

3.10. Aggrieved by the notifications dated 07.03.2025 and 17.04.2026, the aforenoted writ petitions have been filed.

D. SUBMISSIONS ON BEHALF OF PETITIONERS:-

4. Shri Shiv Sagar Singh, learned counsel for the petitioners, argued that the entire acquisition proceedings are illegal, arbitrary and contrary to the Integrated Township Policy, 2005 as well as the provisions of the Act, 2013. He submitted that the developers had not fulfilled the mandatory pre-condition of prior purchase of, or consent for, 80% of the land before initiating compulsory acquisition proceedings.

4.1. He states that the present dispute relates to an integrated township project known as "Park Town" situated in Village Mahrauli. The petitioners are owners and tenure holders of plots in question situated in the said village. The total area of the proposed project in Village Mahrauli was only about 3.2827 hectares, whereas acquisition proceedings have been initiated for about 2.86844 hectares. This itself clearly shows that 80% land had never been purchased by the developers in respect of Village Mahrauli. He contended that the respondents wrongly clubbed lands purchased by different developers in different villages in order to falsely show compliance of the 80% requirement, whereas the project in Village Mahrauli was separate and independent and could not be merged with acquisitions relating to other villages.

4.2. Learned counsel further argued that the objections filed by the petitioners were rejected mechanically without proper consideration and without recording any findings on the issues raised. He pointed out that the rejection order does not even bear any date, which reflects total non-application of mind. He submitted that the petitioners had specifically objected that no valid 80% consent existed, that the market value had not been properly revised, and that the petitioners were residing upon and using the land for their livelihood.

4.3. It was also argued that many consent deeds and sale transactions were executed only after issuance of the notification and therefore such documents could not be considered for satisfying the mandatory 80% requirement under the policy. Learned counsel further submitted that the earlier acquisition proceedings had already lapsed due to non-deposit of acquisition cost, and the present proceedings are merely an attempt to benefit private developers by misusing the powers of compulsory acquisition. He contended that no R&R scheme was prepared as required under the Act, 2013.

4.4. In the backdrop of these grounds, learned counsel submitted that the entire acquisition proceedings smacks a colourable exercise of power, violating the constitutional right of the petitioners guaranteed under Article 300-A of the Constitution of India, and prayed for quashing of the impugned notifications dated 07.03.2025 and 17.04.2026.

E. SUBMISSIONS ON BEHALF OF THE STATE-RESPONDENTS:-

5. Shri Fuzail Ahmad Ansari, learned Standing Counsel for the State-respondents, vehemently opposed the writ petitions and submitted that the acquisition proceedings have been initiated strictly in accordance with the provisions of the Act, 2013 and there is no illegality in the process adopted by the authorities. He submitted that the State Government, through the respondent-GDA, initiated acquisition proceedings for development of an Integrated Township Scheme in Village Mahrauli, Pargana Dasna, which is a project undertaken for planned urban development and a genuine public purpose.

5.1. He submitted that a preliminary notification under Section 11(1) was first issued on 07.03.2025, followed by a declaration under Section 19 on 05.03.2026, and thereafter a general notice under Section 21(1) and 21(2) was issued on 17.04.2026, granting all interested persons an opportunity to submit their claims and objections before the Collector. The notice fixed 18.05.2026 as the deadline and 21.05.2026 as the hearing date.

5.2. Learned counsel submitted that the Social Impact Assessment study was duly conducted in accordance with the Act, 2013, and the report was approved by the appropriate Government on 23.03.2024 before the preliminary notification was issued. All statutory requirements including publication of notifications, invitation of objections, grant of hearing, and appointment of Administrator for Rehabilitation and Resettlement have been complied with by the State authorities.

5.3. He submitted that the petitioners have an adequate remedy for claiming compensation and raising their grievances before the competent authority under the provisions of the Act, 2013 and urged that no interference is called for in exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India.

EE. SUBMISSIONS ON BEHALF OF THE RESPONDENT GDA:-

5.4. Shri Anil Bhushan, learned Senior Advocate assisted by Shri Tejasvi Misra, learned counsel for the respondent -GDA, while opposing the writ petitions precisely submitted that the very purpose of issuing a notice under Section 21 of the Act, 2013 is to give a fair and reasonable opportunity to all interested persons to submit their claims with respect to compensation for the acquired land, and such claims are required to be considered on the basis of all relevant factors pertaining to the acquisition proceedings.

5.5. Learned counsel submitted that pursuant to the notice under Section 21, interested persons are also entitled to make submissions before the Collector under Section 22 of the Act, 2013, whereupon the Collector is required to conduct an enquiry and pass an award with regard to: (a) the true area of the land; (b) compensation determined under Section 27 along with the Rehabilitation and Resettlement Award under Section 31; and (c) apportionment of compensation amongst all persons interested. He also drew the Court's attention to Sections 26, 27, 28 and 29 of the Act, 2013 governing determination of market value and compensation.

5.6. He submitted that under the Integrated Township Policy, the project is to be treated as one unit. The developers had already purchased more than 80% of the land under the entire project of 46.5212 hectares through mutual negotiations with tenure holders, and acquisition proceedings under the Act, 2013 were initiated only for the remaining 2.86844 hectares, which constituted less than 20% of the total project area, which is fully in consonance with the Policy, 2023.

5.7. In support of his submissions, learned counsel placed reliance upon the judgment and order dated 28.04.2026 passed by this Court in **WRIT-C No. 41339 of 2025 (Vijay Pal Singh and 12 others v. State of U.P. and 6 others)6** reported in **2026 (5) ADJ 320 (DB),** wherein this Court, after exhaustively examining an identical range of issues including SIA compliance, consent

satisfaction, Section 15 objection procedure, R&R scheme adequacy, and the right to property under Article 300-A, dismissed similar challenges to land acquisition proceedings under the Act, 2013.

F. DISCUSSION AND FINDINGS:-

6. Having heard the learned counsel for the parties at length and having carefully perused the record, the pleadings, the documents placed on record, and the judgment cited at bar, this Court proceeds to consider and examine the respective contentions.

I. Nature and Purpose of the Project:-

6.1. The acquisition in question has been undertaken for the development of an Integrated Township Scheme in Village Mahrauli, Pargana Dasna, District Ghaziabad, through the respondent-GDA under the Integrated Township Policy, 2005/2023 of the State Government. The record clearly shows that the land was acquired for public purposes such as planned urban development, housing, and urban infrastructure to meet the growing needs of the National Capital Region, and this Court finds no valid ground to dispute it. The Act, 2013 itself recognises, in Section 2(1)(e), that project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas constitutes a public purpose. As held by the Hon'ble Supreme Court in **Ramniklal N. Bhutta and Another v. State of Maharashtra and Others7**, the courts, while balancing competing interests in matters of land acquisition, must also bear in mind that the public, which is the greater beneficiary, is a silent party in all such proceedings, and extraordinary reasons must exist for quashing an acquisition for public benefit.

II. Effect of Earlier Lapsed Proceedings Under the Land Acquisition Act of 1894:-

6.2. The petitioners have sought to bank upon the lapse of the earlier acquisition proceedings under the Land Acquisition Act, 1894 as a ground to impugn the present proceedings. This contention is wholly untenable in law. Section 24 of the Act, 2013 deals with the specific consequences of lapsed proceedings under the Act of 1894. Where proceedings under the Act of 1894 have lapsed, the appropriate Government is expressly empowered by Section 24(2) of the Act, 2013 to initiate fresh acquisition proceedings under the Act, 2013 afresh, if it so chooses. The initiation of fresh proceedings under the Act, 2013 after lapse of earlier proceedings under the Act of 1894 is therefore not only permissible but is expressly contemplated by the legislature. The petitioners cannot derive any vested right from the lapse of prior proceedings so as to permanently immunise their land from acquisition for a public purpose. The fresh proceedings are independent proceedings initiated under the Act, 2013, and must be judged entirely on their own merits under that Act, 2013.

III. Section 11 □ Preliminary Notification and its Legal Effect:-

6.3. Section 11 of the Act, 2013 governs the publication of the preliminary notification and its effects thereafter. Sub-section (1) requires the appropriate Government, when it appears that any

land is required or is likely to be required for a public purpose, to publish a preliminary notification along with details of the land to be acquired, in the Official Gazette, in two daily newspapers (one regional language), in the local language in the offices of the District Collector, SDM and Tehsil, on the website, and in the affected areas. Section 11 provides as under:

"11. Publication of preliminary notification and power of officers-*(1) Whenever, it appears to the appropriate Government that land in any area is required or likely to be required for any public purpose, a notification (hereinafter referred to as preliminary notification) to that effect along with details of the land to be acquired in rural and urban areas shall be published in the following manner, namely:"*

(a) in the Official Gazette;

(b) in two daily newspapers circulating in the locality of such area of which one shall be in the regional language;

(c) in the local language in the Panchayat, Municipality or Municipal Corporation, as the case may be and in the offices of the District Collector, the Sub-divisional Magistrate and the Tehsil;

(d) uploaded on the website of the appropriate Government;

(e) in the affected areas, in such manner as may be prescribed.

(2) Immediately after issuance of the notification under sub-section (1), the concerned Gram Sabha or Sabhas at the village level, municipalities in case of municipal areas and the Autonomous Councils in case of the areas referred to in the Sixth Schedule to the Constitution, shall be informed of the contents of the notification issued under the said sub-section in all cases of land acquisition at a meeting called especially for this purpose.

(3) The notification issued under sub-section (1) shall also contain a statement on the nature of the public purpose involved, reasons necessitating the displacement of affected persons, summary of the Social Impact Assessment Report and particulars of the Administrator appointed for the purposes of rehabilitation and resettlement under section 43.

(4) No person shall make any transaction or cause any transaction of land specified in the preliminary notification or create any encumbrances on such land from the date of publication of such notification till such time as the proceedings under this Chapter are completed:

Provided that the Collector may, on the application made by the owner of the land so notified, exempt in special circumstances to be recorded in writing, such owner from the operation of this sub-section:

Provided further that any loss or injury suffered by any person due to his wilful violation of this provision shall not be made up by the Collector.

(5) After issuance of notice under sub-section (1), the Collector shall, before the issue of a declaration under section 19, undertake and complete the exercise of updating of land records as prescribed within a period of two months."

6.3.1. In the present case, the preliminary notification dated 07.03.2025 was issued under Section 11(1) of the Act, 2013 in respect of land measuring 2.86844 hectares at Village Mahrauli. The notification was published in newspapers including Dainik Jagran and Amar Ujala on 12.03.2025. It contains the summary of the SIA Report as required under Section 11(3). The restriction on transactions under Section 11(4) started from the date of publication, and this Court finds that all the requirements of Section 11 were fully complied with.

IV. The SIA Process Statutory Framework and Compliance:-

6.4. The Social Impact Assessment process is the first and foundational requirement of the Act, 2013 before any land acquisition can be initiated. It serves the vital purpose of ensuring that the impact of acquisition on affected communities is properly assessed, minimised and mitigated. Section 4 of the Act, 2013 sets out the mandatory framework for conduct of the SIA study. It provides as under:

***"4. Preparation of Social Impact Assessment study**.-(1) Whenever the appropriate Government intends to acquire land for a public purpose, it shall consult the concerned Panchayat, Municipality or Municipal Corporation, as the case may be, at village level or ward level, in the affected area and carry out a Social Impact Assessment study in consultation with them, in such manner and from such date as may be specified by such Government by notification.*

(2) The notification issued by the appropriate Government for commencement of consultation and of the Social Impact Assessment study under sub-section (1) shall be made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and in the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed, and uploaded on the website of the appropriate Government:

Provided that the appropriate Government shall ensure that adequate representation has been given to the representatives of Panchayat, Gram Sabha, Municipality or Municipal Corporation, as the case may be, at the stage of carrying out the Social Impact Assessment study:

Provided further that the appropriate Government shall ensure the completion of the Social Impact Assessment study within a period of six months from the date of its commencement.

(3) The Social Impact Assessment study report referred to in sub-section (1) shall be made available to the public in the manner prescribed under section 6.

(4) The Social Impact Assessment study referred to in sub-section (1) shall, amongst other matters, include all the following, namely:"

(a) assessment as to whether the proposed acquisition serves public purpose;

(b) estimation of affected families and the number of families among them likely to be displaced;

(c) extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition;

(d) whether the extent of land proposed for acquisition is the absolute bare- minimum extent needed for the project;

(e) whether land acquisition at an alternate place has been considered and found not feasible;

(f) study of social impacts of the project, and the nature and cost of addressing them and the impact of these costs on the overall costs of the project vis-a-vis the benefits of the project:

Provided that Environmental Impact Assessment study, if any, shall be carried out simultaneously and shall not be contingent upon the completion of the Social Impact Assessment study.

(5) While undertaking a Social Impact Assessment study under sub-section (1), the appropriate Government shall, amongst other things, take into consideration the impact that the project is likely to have on various components such as livelihood of affected families, public and community properties, assets and infrastructure particularly roads, public transport, drainage, sanitation, sources of drinking water, sources of water for cattle, community ponds, grazing land, plantations, public utilities such as post offices, fair price shops, food storage godowns, electricity supply, health care facilities, schools and educational or training facilities, anganwadis, children parks, places of worship, land for traditional tribal institutions and burial and cremation grounds.

(6) The appropriate Government shall require the authority conducting the Social Impact Assessment study to prepare a Social Impact Management Plan, listing the ameliorative measures required to be undertaken for addressing the impact for a specific component referred to in sub-section (5), and such measures shall not be less than what is provided under a scheme or programme, in operation in that area, of the Central Government or, as the case may be, the State Government, in operation in the affected area."

6.4.1. Section 5 of the Act, 2013 mandates a public hearing at the stage of Social Impact Assessment. It provides as under:

"5. Public hearing for Social Impact Assessment.-*Whenever a Social Impact Assessment is required to be prepared under section 4, the appropriate Government shall ensure that a public hearing is held at the affected area, after giving adequate publicity about the date, time and venue for the public hearing, to ascertain the views of the affected families to be recorded and included in the Social Impact Assessment Report."*

6.4.2. Section 7 of the Act, 2013 requires the appropriate Government to get the SIA Report evaluated by an independent multi-disciplinary Expert Group. The composition of the Expert Group under Section 7(2) includes two non-official social scientists, two representatives of Panchayat/Gram Sabha, two experts on rehabilitation and a technical expert. Section 7(5) provides that if the Expert Group is of the opinion that the project will serve a public purpose and the potential benefits outweigh the social costs, it shall make specific recommendations, within two months, as to whether the extent of land proposed to be acquired is the absolute bare minimum needed for the project and whether there are no less displacing options available. Section 8 of the Act, 2013 then requires the appropriate Government to examine the SIA Report along with the Expert Group's report and satisfy itself that there is a legitimate and bona fide public purpose, and that only the minimum area required for the project is proposed to be acquired.

6.4.3. In the present case, the SIA study was conducted through the authorised State Social Impact Assessment Agency and the report was submitted to the State Government. A public hearing was held as required under Section 5 of the Act, 2013. The SIA Report was then considered and approved by the appropriate Government on 23.03.2024 as mandated under Section 8 of the Act, 2013. The summary of the SIA Report was duly incorporated in the preliminary notification dated 07.03.2025 as required under Section 11(3). The SIA Report found that: (i) the proposed acquisition serves the public purpose; (ii) 2.86844 hectares comprising 23 khasra numbers is the minimum land required; (iii) no public property or community resource is affected; (iv) approximately 280 land owners are affected; (v) no family is likely to be displaced; and (vi) R&R Scheme shall be prepared as required under the Act, 2013. This Court finds that the SIA process was conducted in full compliance with Sections 4, 5, 7 and 8 of the Act, 2013 and the corresponding provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Uttar Pradesh) Rules, 20168 (hereinafter referred to as “the Rules, 2016”). No specific infirmity in the conduct of the SIA process has been pointed out.

6.4.4. This Court is fortified in this conclusion by the judgment of this Court in **Vijay Pal Singh** (supra), wherein, while examining the SIA process in a similar land acquisition matter, it was observed that Section 5 of the Act, 2013 limits the purpose of public hearing only to ascertain the views of the affected families for inclusion in the SIA Report, and that the Act, 2013 does not contemplate adjudication of individual objections at the SIA stage. It was further held in paragraph 6.3.4 of the judgment that:

"6.3.4. A perusal of the record reflects that the Section 4 Notification was duly issued on 30.06.2023, nominating Gautam Buddha University as the SIA Agency, and was published in three newspapers on 06.07.2023. Public hearings were conducted on 19.12.2023 at Village Khwajpur and on 21.12.2023 at Village Neemka Shahjahanpur. Under Section 5, the purpose of the public hearing is limited to ascertaining the views of the affected families to be recorded in the SIA Report; the Act does not contemplate adjudication of individual objections at the SIA stage. Insofar as the Expert Group's recommendation for a re-survey is concerned, the record reveals that PwC, the technical consultant, was specifically asked to examine whether displacement could be avoided. PwC confirmed by letter dated 22.02.2024 that Villages Thora and Neemka Shahjahanpur fall within the proposed runway alignment and that no alternative alignment exists. Village Khawajpur was confirmed to lie between the taxiways of two runways and the proposed aircraft parking area,

making its retention a threat to aviation safety. The Expert Group's suggestion was thus duly acted upon. The State Government, in compliance with Section 8(3) of the Act, 2013, read with Rule 11(3) of the Rules, 2016, granted approval to the SIA Report on 08.01.2025. The challenge to the SIA process is accordingly rejected."

6.4.5. The above principle applies with full force to the present case. The challenge to the SIA process is accordingly rejected.

Expert Group's Report (Section 7) and Section 8 Compliance:-

6.4.6. This Court has also considered the question whether the mandatory requirement of appraisal of the SIA Report by an independent Expert Group under Section 7 of the Act, 2013 has been complied with in the present case. Section 7(1) requires the appropriate Government to ensure that the SIA Report is evaluated by an independent multi-disciplinary Expert Group constituted by it. Section 7(2) prescribes the composition of such Expert Group, which must include two non-official social scientists, two representatives of the Panchayat or Gram Sabha, two experts on rehabilitation, and a technical expert in the subject relating to the project. Section 7(4) and 7(5) require the Expert Group to make its recommendations within two months from the date of its constitution, specifying whether the project serves a public purpose, whether the potential benefits outweigh the social costs, whether the extent of land proposed to be acquired is the absolute bare minimum needed, and whether there are no less displacing options available.

6.4.7. In the present case, the Expert Group's report has not been separately produced on record as a distinct document. However, this Court is of the considered view that the absence of the Expert Group's report as a separate document before this Court does not by itself invalidate the acquisition proceedings, for the following reasons. Firstly, the preliminary notification dated 07.03.2025 records that the SIA Report was approved by the appropriate Government on 23.03.2024 under Section 8 of the Act, 2013. The approval of the SIA Report by the appropriate Government under Section 8 necessarily presupposes and implies that the Expert Group's evaluation under Section 7 was completed before such approval was granted, since Section 8 itself requires the appropriate Government to examine the SIA Report along with the Expert Group's report before taking a decision to proceed with acquisition. Secondly, the SIA Report on record contains all the findings and recommendations that are required to be made under Section 7(5), namely: that the project serves a public purpose; that the potential benefits outweigh the social costs and adverse social impacts; that the extent of land proposed to be acquired is the absolute bare minimum needed; and that no less displacing alternative is available. Thirdly, and most importantly, the petitioners have not specifically pleaded or alleged before this Court that no Expert Group was constituted, or that the Expert Group's evaluation was not carried out, or that the Expert Group made any recommendation adverse to the acquisition under Section 7(4). In the absence of any such specific challenge supported by any material, it is not open to this Court, at this stage of judicial review under Article 226, to presume non-compliance with Section 7 merely from the non-production of the Expert Group's report as a separate document. The Hon'ble Supreme Court in **State of U.P. v. Brijendra Singh9**, has held that in writ jurisdiction the Court does not sit as a Court of appeal over the decision of the acquiring authority and must proceed on a presumption of regularity of official acts unless the contrary is specifically pleaded and established. This Court

accordingly holds that Section 7 compliance has been substantially demonstrated on the record and the challenge, if any, on this ground is not available to the petitioners at this stage.

V. Section 15 □ Hearing of Objections:-

6.5. Section 15 of the Act, 2013 provides for hearing of objections to the proposed acquisition. It confers a statutory right upon any person interested in the land to raise objections within sixty days from the date of publication of the preliminary notification. Section 15 of the Act, 2013 provides as under:

***"15. Hearing of objections**.- (1) Any person interested in any land which has been notified under sub-section (1) of Section 11, as being required or likely to be required for a public purpose, may within sixty days from the date of the publication of the preliminary notification, object to-*

(a) the area and suitability of land proposed to be acquired;

(b) justification offered for public purpose;

(c) the findings of the Social Impact Assessment report.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objection an opportunity of being heard in person or by any person authorised by him in this behalf or by an Advocate and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under sub-section (1) of Section 11, or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him along with a separate report giving therein the approximate cost of land acquisition, particulars as to the number of affected families likely to be resettled, for the decision of that Government.

(3) The decision of the appropriate Government on the objections made under sub-section (2) shall be final."

6.5.1. In the present case, the petitioners filed their objections on 05/09.05.2025, within the prescribed period of 60 days from the date of publication of the preliminary notification on 12.03.2025. Those objections were considered by the competent authority. Thereafter, the declaration under Section 19 was issued on 05.03.2026 and the notice under Section 21 was issued on 17.04.2026.

6.5.2. The petitioners have raised a precise contention that the order rejecting their objections filed under Section 15 of the Act, 2013 does not bear any date, and was therefore passed without proper application of mind and in a mechanical manner. This Court has carefully considered this submission.

6.5.3. Section 15(2) of the Act, 2013 casts a clear duty upon the Collector to give the objector an opportunity of being heard in person or through an authorised representative or advocate, and thereafter to make a report to the appropriate Government containing his recommendations on the objections, together with the record of the proceedings, along with a separate report giving the approximate cost of land acquisition and particulars as to the number of affected families likely to be resettled. Section 15(3) then requires the appropriate Government to take a final decision on the objections, and provides that such decision shall be final.

6.5.4. The sequence of events in the present case is as follows. The preliminary notification under Section 11(1) was issued on 07.03.2025 and published in newspapers on 12.03.2025. The petitioners filed their objections on 05/09.05.2025 within the prescribed period of 60 days. The declaration under Section 19(1) was issued on 05.03.2026. This sequence itself establishes that the Section 15 process was undertaken and completed before the Section 19 declaration was issued, since Section 19(1) expressly provides that the appropriate Government shall be satisfied, "after considering the report, if any, made under sub-section (2) of section 15", before making the declaration. The issuance of the Section 19 declaration on 05.03.2026 is therefore conclusive evidence that the Collector's report under Section 15(2) had been submitted and the appropriate Government had taken a decision on the objections under Section 15(3) before that date.

6.5.5. The absence of a date on the face of the rejection order can be an irregularity, but not an illegality which may travel upto the root of the matter. The distinction between an irregularity and an illegality in administrative proceedings is well established. In **Prabhakar v. Joint Director of Sericulture Department10**, the Hon'ble Supreme Court held that an administrative act does not become void merely because of a procedural irregularity, unless the irregularity has caused prejudice to the party complaining of it. In the present case, the petitioners have been heard under Section 15(2), their objections have been duly considered, and a decision has been taken. The absence of a date on the order has not prevented the petitioners from knowing the outcome of their objections, nor has it caused any prejudice to them in challenging the acquisition. They have, in fact, been able to prefer these writ petitions and have been heard at length by this Court.

6.5.6. Furthermore, the scope of objections under Section 15(1) is limited to only three issues: (a) the area and suitability of land proposed to be acquired; (b) the justification offered for public purpose; and (c) the findings of the Social Impact Assessment Report. Section 15(3) makes the decision of the appropriate Government on such objections final. The petitioners have not demonstrated before this Court that any of their objections fell within these three categories and was wrongly rejected on merits. The petitioners' real grievance is about the amount of compensation they will receive and the terms on which their land is being taken. These issues do not come under the ambit of Section 15. These issues are to be decided by the Collector in the award proceedings under Sections 21 to 23 of the Act, 2013. If the petitioners are not satisfied with the award, they have a remedy to challenge it before the Land Acquisition, Rehabilitation and Resettlement Authority under Section 64 of the Act, 2013.

6.5.7. In **Vijay Pal Singh** (supra), this Court, after examining the Section 15 procedure in full detail, including the text of Section 15 and Rule 23 of the Rules, 2016, held in paragraph 6.6.2 as follows:

"6.6.2. From the record, it is evident that notices dated 03.07.2025 were duly issued under Rule 23 of the Rules, 2016 fixing 08.07.2025 for hearing of objections from Village Neemka Shahjahanpur and 10.07.2025 for Villages Khwajpur and Thora. The public notice was published in newspapers on 03.07.2025 and local public announcements were made. Some of the petitioners, including representatives of the Sangharsh Samiti, appeared and were afforded a personal hearing. After due consideration, the Collector passed a reasoned order dated 11.07.2025, dismissing the objections on the ground that they fell outside the limited statutory scope of Section 15(1), which confines objections only to the area and suitability of land, justification for public purpose, and findings of the SIA Report. The Collector's report was forwarded to and approved by the State Government on 29.07.2025 under Section 15(3). ***The decision of the appropriate Government under Section 15(3) is final****. This Court finds no infirmity in the procedure followed under Section 15 of the Act, 2013. ....."*

(Emphasis supplied)

6.5.8. The principles laid down in **Vijay Pal Singh** (supra) are fully applicable here. The challenge to the Section 15 rejection order merely on the ground that it does not bear a date is therefore rejected.

VI. Section 19 - Declaration of Acquisition:-

6.6. Section 19 of the Act, 2013 governs the publication of the declaration of acquisition. Sub-section (1) provides that when the appropriate Government is satisfied, after considering the report under Section 15(2), that any particular land is needed for a public purpose, a declaration shall be made to that effect. Sub-section (6) provides that such declaration shall be conclusive evidence that the land is required for a public purpose. Section 19(7) provides that where no declaration is made under sub-section (1) within twelve months from the date of the preliminary notification, the notification shall be deemed to have been rescinded. In the present case, the preliminary notification was issued on 07.03.2025 and the declaration under Section 19(1) was issued on 05.03.2026, i.e., within twelve months. This Court finds no violation of Section 19 of the Act, 2013.

VII. Section 21 - Notice to Persons Interested and the Opportunity of Hearing:-

6.7. Section 21 of the Act, 2013 provides for issuance of a general notice to all persons interested in the acquired land, granting them an opportunity to appear before the Collector and submit their claims regarding compensation, rehabilitation and resettlement. Section 21 provides as under:

*"**21. Notice to persons interested**.-(1) The Collector shall publish the public notice on his website and cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensations and rehabilitation and resettlement for all interests in such land may be made to him.*

(2) The public notice referred to in sub-section (1) shall state the particulars of the land so needed, and require all persons interested in the land to appear personally or by agent or advocate before the Collector at a time and place mentioned in the public notice not being less than thirty days and not more than six months after the date of publication of the notice, and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, their claims to rehabilitation and resettlement along with their objections, if any, to the measurements made under section 20.

(3) The Collector may in any case require such statement referred to in sub-section (2) to be made in writing and signed by the party or his agent.

(4) The Collector shall also serve notice to the same effect on the occupier, if any, of such land and on all such persons known or believed to be interested therein, be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situated.

(5) In case any person so interested resides elsewhere, and has no such agent, the Collector shall ensure that the notice shall be sent to him by post in letter addressed to him at his last known residence, address of place or business and also publish the same in at least two national daily newspapers and also on his website."

6.7.1. In the present case, a general notice under Section 21(1) and 21(2) of the Act, 2013 was duly issued on 17.04.2026, fixing 18.05.2026 as the last date for submission of claims and objections, with hearing scheduled on 21.05.2026 before the Collector/ADM (Land Acquisition), Ghaziabad. All affected persons were thus afforded a full and reasonable opportunity to appear and submit their claims before the Collector in accordance with the Act, 2013.

6.7.2. The importance of the Section 21 notice as a cornerstone of the fair procedure under the Act, 2013 was authoritatively stated by the Hon'ble Supreme Court in **M/s. Tirupati Developers v. The Union Territory of Dadra and Nagar Haveli and Others11**, wherein the Supreme Court held in paragraphs 5 and 8 as under:

"5. It appears to us that the very object of issuing notice under Section 21 of the 2013 Act is to give a fair and reasonable opportunity to the interested persons to submit their claim with respect to the compensation for the acquired land. Such compensation can be claimed on the basis of various factors that may be relevant in the context of acquisition. The interested persons are further entitled to make a statement before the Collector in terms of Section 22 of the 2013 Act, whereupon the Collector is obligated to hold an inquiry on the objections submitted by the interested persons and pass an award with respect to: (a) the exact area of the acquired land; (b) the compensation as may be determined under Section 27 of the Act; and (c) the apportionment of the said compensation among all the persons known or believed to be interested in the land.

8. For a fair and just determination of compensation within the statutory scheme of the 2013 Act, it is imperative that a fair opportunity of hearing is given to the persons whose rights are affected. This requires that the interested person is given an effective opportunity to put forth his or

her claim. Any deviation to the prescribed procedure, especially when it has seemingly affected the interested person, would militate with the very object of legislative mandate."

6.7.3. The Bombay High Court, in **Sheshrao Venkatrao Shinde v. State of Maharashtra and Others,12** also held as under, while dealing with a challenge at the stage of notice under Section 21 of the Act, 2013:

"2. On 31-01-2022 the notice has been issued by the Sub-Divisional Officer/Land Acquisition Officer, Nilanga under Section 21 of the Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "Act of 2013"). After the notice under Section 21 of the Act of 2013, the petitioner has got every right to raise objection and demonstrate his interest and/or claim. Section 21 prescribes for publication of notice stating that the Government intends to take possession of the land, and that claims to compensations and rehabilitation and resettlement for all interests in such land may be made to him. Sub-section (2) to Sub-section (5) of Section 21 of the Act of 2013 provides the procedure of referring the statement to be made in writing and signed by the party. Section 22 of the Act of 2013 further imposes obligation on the person to make statement containing so far as may be practicable, the name of every other person possessing any interest in the land. Under Section 23 of the Act of 2013, the Collector has to proceed to enquire into the objections, if any, which any person interested has stated pursuant to a notice given under Section 21 of the Act of 2013, the same has to be decided.

3. The petitioner has earlier raised objection, petitioner may again raise objection to the said notice. The authority has to consider the objections on its own merits and consider the stand of all parties, documents on record, the representations, earlier decisions by adhering to the provisions of Sections 21 and 22 of the Act of 2013."

6.7.4. In the present case, a notice under Section 21 has already been issued, giving the petitioners full opportunity to place their claims and objections before the Collector. Therefore, the petitioners are not without a legal remedy. Any issue relating to compensation, land measurement, or rehabilitation benefits can be effectively and adequately decided by the Collector under Sections 21, 22 and 23 of the Act, 2013.

VIII. Sections 23 and 26 to 31 – Enquiry, Award and Compensation:-

6.8. Section 23 of the Act, 2013 requires the Collector to hold an enquiry on the day fixed and to consider all objections stated pursuant to the notice under Section 21, and to pass an award specifying: (a) the true area of the land; (b) the compensation determined under Section 27 along with the Rehabilitation and Resettlement Award under Section 31; and (c) the apportionment of compensation among all interested persons. Sections 26 to 30 govern determination of market value and compensation. Section 26 requires the Collector to determine the market value of the land on the date of notification under Section 11, taking the highest of: (a) the market value specified under the Indian Stamp Act, 1899 for the registration of sale deeds; (b) the average sale price for similar land in the nearest village/vicinity, determined on the basis of half the sale deeds showing highest sale prices in the preceding three years; or (c) consented compensation in case of PPP/private company acquisitions. Section 30(1) requires that solatium equivalent to 100% of the

total compensation be added to the final award. Section 31 requires the Collector to pass a Rehabilitation and Resettlement Award for each affected family in terms of the Second Schedule to the Act, 2013.

6.8.1. In the present case, proceedings under Sections 21, 22 and 23 of the Act, 2013 are at the stage of enquiry and award, the Section 21 notice having been issued on 17.04.2026, with hearing having been scheduled on 21.05.2026 before the Collector/ADM (Land Acquisition), Ghaziabad. The petitioners were at liberty to appear before the Collector and submit their claims in accordance with law. The Collector is directed to consider all claims and objections on their merits and to pass the award strictly in accordance with the provisions of Sections 23 to 31 of the Act, 2013.

IX. The 80% Purchase/Consent Requirement Under the Integrated Township Policy, 2023:-

6.9. The principal ground of challenge raised by the petitioners is that the mandatory precondition under the Policy, 2023 of prior purchase of or consent for 80% of the land had not been fulfilled in respect of Village Mahrauli before the preliminary notification was issued. This Court has carefully examined this contention in the light of the material on record.

6.9.1. According to the report of the Tehsildar/Sub-Divisional Officer and the instructions dated 14.05.2026 sent by Additional District Magistrate (Land Acquisition), Ghaziabad, the total area of the Integrated Township Project is 46.5212 hectares. Out of this, the developer had purchased 33.9013 hectares (approximately 73%) from land owners through willing agreements, and an additional 7% of the affected families had given their consent. The acquisition under Section 11 was accordingly limited to 2.86844 hectares. This represents less than 20% of the total project area of 46.5212 hectares, well within the permissible limit under the Policy, 2023.

6.9.2. The said compliance is not merely asserted by the respondents in their pleadings. It is independently and contemporaneously documented by a letter dated 03.03.2025 addressed by M/s Utility Estates Private Limited - the developer of the Integrated Township "Park Town" to the Secretary, Ghaziabad Development Authority, Ghaziabad, specifically in the context of providing consent-related information prior to initiation of compulsory acquisition proceedings. The said letter, which is on record before this Court, specifically states that the total area of the project is 46.5212 hectares. The developer has purchased 33.9013 hectares, i.e., 73% of the land, from the affected families through their consent. From the remaining land, consent of more than 7% of the affected families has been obtained. Thus, in the project as a whole, purchase/consent of more than 80% of the affected families has been obtained. The list of the remaining 2.86844 hectares of land to be acquired was enclosed therewith.

6.9.3. This letter dated 03.03.2025 is a significant piece of documentary evidence for three reasons. First, it establishes that the developer's declaration of 80% compliance preceded the Section 11 preliminary notification dated 07.03.2025 by four days, confirming that the mandatory precondition was satisfied before the compulsory acquisition was set in motion. Second, it demonstrates that the 80% computation was made with reference to the total project area of

46.5212 hectares and not village-wise, which is the correct approach under the Policy, 2023 as already held above. Third, it identifies the acquiring body as the GDA and confirms that the land after acquisition is to be transferred to the GDA for the Integrated Township Scheme, establishing beyond doubt that the acquisition is for a public purpose and not for the private benefit of the developer.

6.9.4. The argument of the petitioners that the 80% calculation should be made only for Village Mahrauli cannot be accepted. The Policy, 2023 treats the Integrated Township as one single project. An Integrated Township may cover more than one village, and the land purchase process under Clause 3.4 is meant for the entire project, not village-wise. Therefore, if the developer has purchased and obtained consent for more than 80% of the total project land, the remaining land up to 20% can be acquired under the Act, 2013. The Policy does not require separate 80% compliance for each village.

6.9.5. Moreover, as is apparent from the record, subsequent to issuance of the preliminary notification for 2.86844 hectares, the developer further purchased 0.838419 hectares directly from tenure holders through mutual agreement, thereby reducing the area for compulsory acquisition under Section 19 to only 2.030021 hectares. This itself demonstrates that the process of private purchase was ongoing and that the authorities were seeking to minimise compulsory acquisition as far as possible, which is precisely the spirit of the Policy, 2023.

6.9.6. This aspect of the matter has been considered by the Court in the judgment in **Vijay Pal Singh (supra).** In that case, while dealing with the requirement of 70% consent under Section 2(2) of the Act, 2013 for a PPP project, the Court held that consent has to be calculated on the basis of the total number of affected families in the entire project, and not separately village-wise on the basis of landholdings. The Court further approved the earlier judgment in ***Kichhu Ram and Another v. State of U.P. and 5 Others,13*** wherein, it was held as under:

"11. According to the petitioners, consent has not been obtained from atleast 70% of the affected families in terms of Section 2(2) of the Act. The counsel for the respondents, on the basis of information received, have placed reliance upon a report of the Collector dated 05.01.2019 to contend that there are six villages that would fall within the area covered for the purpose of the project and the number of families to be affected would be 5926 out of which 4235 families have already given their consent for the project. The percentage of affected families which have given consent comes to 72%, which is more than 70%. Thus, the argument of the learned counsel for the petitioners that no consent has been obtained and atleast consent of 70% of the affected families is required under Section 2(2) of the Act, is not sustained."

6.9.7. The principle that consent or purchase percentage must be calculated for the entire project, and not separately for each village, fully applies in the present case. Therefore, the objection that the 80% requirement of prior purchase/ consent was not fulfilled, is rejected.

X. Rehabilitation and Resettlement (R&R Scheme) Compliance with Statutory Requirements:-

6.10. The petitioners have argued that no R&R Scheme has been prepared as required under the Act, 2013. This argument is misconceived. Section 16 of the Act, 2013 requires the Administrator for Rehabilitation and Resettlement to prepare the draft R&R Scheme upon publication of the preliminary notification under Section 11. Section 18 requires the Commissioner's approval of the R&R Scheme, and Section 19 requires that the summary of the R&R Scheme be published simultaneously with the declaration. In the present case, the SIA Report itself records that the R&R Scheme will be prepared in accordance with the Act, 2013 and that no family is likely to be displaced due to the acquisition. The Government Order dated 06.08.2014 has already designated the Sub-Divisional Officer/Deputy Collector as the Administrator for Rehabilitation and Resettlement for all acquisitions within the relevant tehsil.

6.10.1. The proceedings under Sections 21, 22 and 23 of the Act, 2013, including the R&R Award under Section 31, are yet to be completed. The argument that no R&R Scheme exists cannot therefore be used to interdict proceedings at this stage. The petitioners' grievances regarding rehabilitation and resettlement entitlements can be fully addressed during the award proceedings under Section 23 read with Section 31 of the Act, 2013. This Court directs that when passing the award, the Collector shall also pass the R&R Award in terms of the Second Schedule to the Act, 2013 for each affected family.

XI. The Right to Property Under Article 300-A and the Safeguards Under the Act, 2013:-

6.11. The petitioners have invoked Article 300-A of the Constitution of India, which provides that no person shall be deprived of his property save by authority of law. This Court fully recognises that the right to property, though no longer a fundamental right after the 44th Constitutional Amendment, remains a constitutional right under Article 300-A and is entitled to the full protection of law. The right to property under Article 300-A has been expansively interpreted by the Hon'ble Supreme Court in **Kolkata Municipal Corporation and Another v. Bimal Kumar Shah and Others14,** wherein it was held that the constitutional protection under Article 300-A comprises at least seven intersecting sub-rights or procedural safeguards, namely: (i) the right to notice; (ii) the right to be heard; (iii) the right to a reasoned decision; (iv) the duty to acquire only for a public purpose; (v) the right of restitution or fair compensation; (vi) the right to an efficient and expeditious process; and (vii) the right of conclusion. The Supreme Court held that all these sub-rights must be satisfied before a person is deprived of his property.

6.11.1. In the present case, upon detailed examination, this court finds that the entire acquisition process has been carried out in accordance with the Act, 2013. Specifically: (i) notice was given under Section 11 (right to notice); (ii) objections were invited under Section 15 and heard, and a fresh opportunity has been given under Section 21 (right to be heard); (iii) a reasoned declaration has been issued under Section 19 (right to a reasoned decision); (iv) the acquisition is for planned urban development which is a recognised public purpose under Section 2(1)(e) of the Act, 2013 (acquisition only for public purpose); (v) compensation is to be determined under Sections 26 to 30 of the Act, 2013 with 100% solatium under Section 30(1) (right to fair compensation); (vi) strict timelines under Sections 14, 19(7) and 25 are being followed (efficient and expeditious process); and (vii) the award and possession will be taken upon completion of

proceedings under Sections 23 to 38 of the Act, 2013 (right of conclusion). All seven sub-rights as articulated in **Kolkata Municipal Corporation** (supra) are thus not merely present in the statutory scheme of the Act, 2013 but have been and are being complied with in the present acquisition. Thus, the constitutional challenge under Article 300-A accordingly fails.

XII. Non-Invocation of the Urgency Clause Under Section 40 of the Act, 2013:-

6.12. This Court deems it appropriate to record that the present acquisition was not carried out under the urgency clause provisions of Section 40 of the Act, 2013. Section 40 of the Act, 2013 confers special power upon the appropriate Government, in cases of urgency, to enable the Collector to take possession of land even before the award is passed. On the contrary, the entire acquisition in the present case has been processed through the normal, full and complete procedure prescribed under the Act, 2013, beginning from the SIA Notification under Section 4, through the Expert Group's appraisal under Section 7, the Government's examination under Section 8, the preliminary notification under Section 11, the hearing of objections under Section 15, the preparation of the R&R Scheme under Section 16, the declaration under Section 19, and the general notice under Section 21, i.e. each step having been duly completed before proceeding to the next.

6.12.1. Far from disclosing any procedural shortcut or undue haste, the non-invocation of the urgency clause under Section 40 is, in fact, conclusive evidence of the bona fide intent of the respondent authorities to follow the complete due process of law without curtailing the rights of the petitioners at any stage. As held by this Court in **Vijay Pal Singh** (supra): "*The very fact that no urgency clause was invoked means that the fullest possible statutory procedure was followed without any curtailment of the petitioners' rights at any stage. Far from disclosing any illegality, the absence of the urgency clause is conclusive evidence of the bona fide intent of the respondent authorities to follow the complete due process of law."* This circumstance is a further factor supporting the validity of the acquisition.

XIII. Judicial Review of Acquisition for Public Purpose Governing Principles:-

6.13. The scope of judicial review in matters of land acquisition for public purpose is well-settled. The Hon'ble Supreme Court in **Smt. Somawanti and Others v. State of Punjab and Others15,** (a Constitution Bench judgment) held as under:

"40. ..... If the purpose for which the acquisition is being made is not relatable to a public purpose, then a question may well arise whether, in making the declaration, there has been, on the part of the Government, a fraud on the power conferred upon it by the Act. In other words, the question would then arise whether that declaration was merely a colourable exercise of the power conferred by the Act, and, therefore, the declaration is open to challenge at the instance of the party aggrieved. To such a declaration the protection of Section 6(3) will not extend. For, the question whether a particular action was the result of a fraud or not is always justiciable, ..."

6.13.1. The ratio of the Constitution Bench is clear, i.e. the Government's declaration of public purpose is final and is not ordinarily justiciable; judicial review is confined to cases of fraud or colourable exercise of power. In the present case, the public purpose, namely planned urban

development through an integrated township, is apparent. The petitioners have neither specifically alleged nor proved any fraud or misuse of power.

6.13.2. In **Ramniklal N. Bhutta** (supra), the Hon'ble Supreme Court emphasised the need for courts to balance public and private interests in matters of acquisition and observed as under:

"*10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with china economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and Singapore.* ***It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country.*** *The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenge the acquisition proceedings in courts. These challenges are generally in shape of writ petitions filed on High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made.* ***Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power or grant in stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public purposes, the interests of justice and the public interest coalesce. They are very often one and the same****. Even in civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary.* ***The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226*** *- indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lumpsum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings."*

(emphasis supplied)

6.13.3. In **Daulat Singh Surana v. First Land Acquisition Collector and Others,16,** the Supreme Court held:

"40. Public purpose will include a purpose in which the general interest of community as opposed to the interest of an individual is directly or indirectly involved. Individual interest must give way to public interest as far as public purpose in respect of acquisition of land is concerned."

6.13.4. Applying these principles to the present case, the land acquisition is for planned urban development, which is a public purpose. The legal procedure under the Act, 2013 has also been properly followed. No special or exceptional circumstances have been shown for interference by this Court under Article 226 of the Constitution. Therefore, after payment of fair compensation as required under the Act, 2013, the private interest of the petitioners must give way to the larger public interest of planned urban development.

XIII. The Precedent in WRIT-C No. 41339 of 2025 (Vijay Pal Singh and 12 others v. State of U.P. and 6 others) reported in 2026 (5) ADJ 320 (DB):-

6.14. This Court has carefully considered the judgment and order dated 28.04.2026 passed in **Vijay Pal Singh** *(supra),* which has been heavily relied upon by the respondents, wherein similar challenges to land acquisition proceedings initiated under the Act, 2013 were examined and dismissed after a comprehensive analysis of the entire statutory process under the Act, 2013 and the Rules, 2016, including the SIA process, the Section 15 objection procedure, the consent and purchase threshold requirement, the R&R framework, the Section 19 declaration, and the right to property under Article 300-A of the Constitution of India. We find that the legal principles laid down and the findings recorded in that judgment on each of these issues are directly applicable to the present case and have been applied by this Court at the appropriate places in the preceding discussion. Since the judgment in **Vijay Pal Singh** (supra) directly applies to the present case and is binding on this Court, it also provides an additional and separate reason for dismissing these writ petitions.

XV. The Remedy Under Section 64 of the Act, 2013:-

6.15. Section 64 of the Act, 2013 provides a proper and effective legal remedy to any person who is dissatisfied with the award passed by the Collector. A person who has not accepted the award can ask for the matter to be referred to the Land Acquisition, Rehabilitation and Resettlement Authority regarding disputes relating to (a) measurement of land, (b) amount of compensation, (c) the person entitled to receive compensation, (d) Rehabilitation and Resettlement (R&R) rights, and

(e) apportionment of compensation. Section 74 provides for an appeal to the High Court against the award of the Authority. This complete statutory mechanism provides an efficacious remedy for all compensation and R&R related grievances. In light of the principles laid down by the Hon'ble Supreme Court in **Whirlpool Corporation** (supra), the existence of an efficacious alternative statutory remedy is a ground for restraint in the exercise of writ jurisdiction under Article 226, except in cases involving enforcement of fundamental rights, violation of principles of natural justice, acts wholly without jurisdiction, or challenge to the vires of a statute. None of these exceptional circumstances are present in the instant case. The petitioners are thus not without remedy in law, and their specific grievances relating to compensation and measurement are appropriately redressable before the statutory reference authority.

G. CONCLUSION:-

7. In the light of the foregoing analysis, the legal framework of the Act, 2013 and the Integrated Township Policy, 2023, the statutory provisions set out above, the judicial precedents considered herein, and the material available on record, this Court holds as follows:

(i) The SIA process was duly conducted in compliance with Sections 4, 5, 7 and 8 of the Act, 2013. The SIA Report was approved by the appropriate Government and its summary was incorporated in the preliminary notification as required under Section 11(3). No infirmity in the SIA process has been established.

(ii) The preliminary notification dated 07.03.2025 was issued in compliance with Section 11(1) of the Act, 2013. Objections were duly invited under Section 15 and the petitioners' objections filed on 05/09.05.2025 were considered and rejected by the competent authority. The declaration under Section 19(1) was issued on 05.03.2026, within twelve months as required.

(iii) The requirement of prior purchase/consent for 80% of the project land under the Policy, 2023 has been substantially met as the project is computed as a whole. The acquisition is confined to less than 20% of the total project area of 46.5212 hectares, in accordance with the Policy, 2023.

(iv) The petitioners have been provided a full opportunity to submit their claims and objections under Section 21 of the Act, 2013 through the notice dated 17.04.2026. Any grievance regarding compensation, measurement or rehabilitation entitlements may be raised before the Collector in the award proceedings and, thereafter, before the Land Acquisition, Rehabilitation and Resettlement Authority under Section 64 of the Act, 2013.

(v) The acquisition is for a recognised public purpose and does not constitute a colourable exercise of power. No fraud or malafides have been alleged or established. The constitutional challenge under Article 300-A of the Constitution fails in view of meticulous compliance with all seven sub-rights identified in **Kolkata Municipal Corporation (**supra) and the provisions of the Act, 2013.

(vi) All the legal challenges raised by the petitioners have been examined and rejected for the reasons set out above.

H. FINAL ORDERS:-

8. In view of the foregoing discussion and for the reasons stated hereinabove, this Court finds no merit in the challenge raised by the petitioners to the impugned notifications dated 07.03.2025 and 17.04.2026, and to the order rejecting the petitioners' objections under Section 15 of the Act, 2013. This Court declines to interfere in the acquisition proceedings, which have been conducted in conformity with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

8.1. It is, however, directed that:

(a) The Collector/Additional District Magistrate (Land Acquisition), Ghaziabad, shall conduct the enquiry under Sections 22 and 23 of the Act, 2013 and pass the award strictly in accordance with the provisions of Sections 26 to 31 of the Act, 2013, ensuring that full and fair opportunity is given to all interested persons including the petitioners to submit their claims and to be heard.

(b) The Collector shall also pass the Rehabilitation and Resettlement Award in terms of Section 31 of the Act, 2013 read with the Second Schedule thereto for each affected family.

(c) Possession of the acquired land shall not be taken by the respondents in violation of the provisions of Section 38 of the Act, 2013. Possession shall be taken only after full payment of the compensation as determined and the monetary components of the R&R Award, in accordance with Section 38(1) of the Act, 2013.

(d) Any petitioner or affected person aggrieved by the quantum of compensation or the R&R Award shall be at liberty to avail the remedy of reference under Section 64 of the Act, 2013 before the competent Land Acquisition, Rehabilitation and Resettlement Authority

8.2. All the six writ petitions, being WRIT-C No. 20436 of 2026, WRIT-C No. 20011 of 2026, WRIT-C No. 20024 of 2026, WRIT-C No. 20026 of 2026, WRIT-C No. 20032 of 2026 and WRIT-C No. 20035 of 2026, are hereby **dismissed**. No order as to costs.

(2026) 5 ILRA 2196
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.05.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE INDRAJEET SHUKLA, J.

Writ C No. 21876 of 2021

Mohd. Yunus Ansari **...Petitioner**
Versus
U.O.I. & Ors. **...Respondents**

Issue for Consideration

Whether conviction recorded against the petitioner (the then Juvenile) having been found in conflict with law and tried by Juvenile Justice Board can be treated as a legal impediment for issuance of a valid passport in favour of the petitioner.

Headnotes

Passports Act, 1967, s.6 – Juvenile Justice (Care and Protection of Children) Act, 2015, ss.3(xiv), 24 – Juvenile Justice (Care and Protection of Children) Act, 2000, s.19 – Constitution of India, Arts.21, 43 – Passport – Refusal of passport to juvenile convict – – Petitioner convicted by the Juvenile Justice Board as a juvenile in conflict with law in a case under ss.363, 366 and 376 IPC

– Admitted to probation for six months – Petitioner maintained good conduct and was issued Character Certificate by the District Probation Officer – Application for issuance of passport rejected on the basis of police report indicating pendency of criminal case – Petitioner asserted that no criminal case was pending – Justification:

Held: By virtue of the non-obstante clause contained in s.19 of the Act of 2000, any disqualification attaching to the conviction recorded by the Juvenile Justice Board stands removed notwithstanding anything contained in any other law – Juvenile convict being a minor at the time of commission of offence, the conviction cannot be read against him particularly when the law mandates the *"principle of fresh start"* – The law mandates not to attach any stigma with juvenile convicts and the "principle of fresh start" read with the "right to be forgotten" is the essence of s.19 of the Act of 2000.

The Principle of Fresh Start under s.3(xiv) of the Act of 2015 mandates that all past records of any child under the juvenile justice system should be erased except in special circumstances – The language employed in s.24 of the Act of 2015 is not only for excluding or erasing the criminal antecedent record, but goes a step forward by providing that the criminal antecedent record of a juvenile be erased/destroyed completely so that such previous conviction or criminal delinquency would not be carried forward so as to prevent any adverse impact upon his future prospects – Such conviction cannot be said to be stigmatic and would not inhere any disqualification either for employment or for any other purpose.

Right to travel abroad is encompassed within the ambit of the right to life and personal liberty and is a fundamental right – Travel abroad for livelihood is also a necessary concomitant to Arts.21 and 43 of the Constitution – Refusal of issuance of passport entails civil consequences and due application of mind with cogent reasons is sine qua non for such refusal.

In the instant case Union of India failed to demonstrate pendency of any criminal case against the petitioner – Recording of pendency of criminal case in the impugned order exhibits complete non-serious attitude of the respondent authorities – Conviction recorded against the petitioner by the Juvenile Justice Board cannot be read as a disqualification for future recourses – Regional Passport Officer directed to process the petitioner's application for issuance of passport afresh notwithstanding the conviction recorded by the Juvenile Justice Board and issue the requisite passport if there is no other legal impediment or hurdle. [Paras 30, 32, 35, 38, 40, 41, 48, 49, 51] (E-5)

Case Law Cited

State of Rajasthan Vs. Rajendra Prasad Jain, **(2008) 15 SCC 711;**
Chandana Impex Pvt. Ltd. Vs. Commissioner of Customs, New Delhi, **2011(269) E.L.T. 433 (S.C.);**
Jorawer Singh Mundy @ Jorawar Singh Mundy Vs. Union of India and Ors., **WP(C)3981/2011;**
Rahimuddin vs. Union of India, **Writ-C No.34412 of 2025;**
Maneka Gandhi v. Union of India, **(1978) 1 SCC 248;**
Satwant Singh Sawhney Vs. D. Ramarathnam, Asstt. Passport Officer, **AIR 1967 SC 1836;**
Satish Chandra Verma Vs. Union of India & others, **2019 SCC OnLine SC 2048;**
State Of Orissa vs Dr. (Miss) Binapani Dei & Ors, **1967 AIR 1269;**
Union of India and others vs. Ramesh Bishnoi, **(2019) 19 SCC 710;**
Mahesh Kumar Agarwal Vs. Union of India, **2025 SCC OnLine SC 2887.**

List of Acts

Constitution of India;
Passports Act, 1967;
Juvenile Justice (Care and Protection of Children) Act, 2000;
Juvenile Justice (Care and Protection of Children) Act, 2015;
Probation of Offenders Act, 1958;
Indian Penal Code, 1860;
Uttar Pradesh Juvenile Justice (Care and Protection of Children) Rules, 2004;

Uttar Pradesh Juvenile Justice (Care and Protection of Children) Rules, 2007.

List of Keywords

Passport; Refusal of issuance of passport; Issuance of passport; Juvenile; Juvenile Justice Board; Juvenile in conflict with law; Conviction; Removal of disqualification attaching to conviction; Principle of fresh start; Right to be forgotten; Stigma; Criminal antecedent record; Child in conflict with law; Right to travel abroad; Right to life and personal liberty; Article 21; Article 43; Civil consequences; Due application of mind; Pendency of criminal case; Adverse police report; Character Certificate; Probation; Future employment; Future prospects; Rehabilitation; Reintegration; Legal impediment; Passport Authority; Regional Passport Officer.

Case Arising From

From the order of the Regional Passport Officer, refusing issuance of passport in favour of the petitioner.

Appearances for Parties

Advs. for the Appellant: Shailendra Singh
Advs. for the Respondents: A.S.G.I. Arun Kumar Pal

(Delivered by Hon'ble Indrajeet Shukla, J.)

For the convenience of exposition, this judgement is divided into the following parts:

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1. Heard Shri Shailendra Singh, learned counsel for the petitioner and Shri Arun Kumar Pal, learned counsel for the respondent-Union of India.

2. The petitioner has knocked the doors of this Court invoking prerogative writ jurisdiction seeking a writ in the nature of certiorari to quash the impugned order dated 19.03.2021 (Annexure No.8 to the writ petition) refusing issuance of passport in favour of the petitioner, precisely assigning the reason that petitioner failed to respond to the notice dated 31.12.2020 disclosing the final outcome of criminal cases pending against him and further it has been asserted that in view of adverse police report, issuance of passport is not possible. The petitioner further prayed for issuance of writ of mandamus commanding and directing the second respondent/Regional Passport Officer, Gomti Nagar, Lucknow to issue passport in his favour.

A. FACTUAL MATRIX

3. The facts giving rise to institution of the instant writ petition are, petitioner applied for issuance of passport by submitting an application on 29.01.2020 and, thereafter, instituted Civil Misc. Writ Petition No.12922 of 2020 before this Court, which was decided vide order dated 31.08.2020 with a direction that if petitioner approaches second respondent, he shall communicate the decision taken by him at the earliest qua the application pending before him for issuance of passport.

4. Since no decision was taken as such petitioner filed a Contempt Application bearing No.684 of 2021 before this Court alleging non-compliance of order dated 31.08.2020 and it is during pendency of said Contempt Application but the impugned decision refusing passport to the petitioner was taken vide order dated 19.03.2021, which is under challenge before this Court.

5. Pleadings in present proceedings have been exchanged. The reason set-out by the respondent-authorities for refusal of passport as mentioned in the order impugned as well as in the counter affidavit is, petitioner had faced criminal trial in Case Crime No.219 of 2010, under Sections 363, 366, & 376 IPC, Police Station Gagha, District Gorakhpur has been convicted.

6. The petitioner having been found to be minor in conflict with law was tried as juvenile by the Juvenile Justice Board, Gorakhpur and was ultimately convicted in Case Crime No.219 of 2010, under Sections 363, 366, & 376 IPC vide judgement and order dated 13.08.2013. The said judgement has been brought as Annexure No.4 to the writ petition. While recording the conviction, learned Juvenile Justice Board admitted the petitioner for probation of six months with the condition that petitioner would offer surety and bonds for maintaining good conduct and behaviour.

7. In furtherance of judgment and order dated 13.08.2013, petitioner maintained good conduct and behaviour for the period specified by learned Juvenile Justice Board, as such petitioner has been issued the Character Certificate on 20.03.2014 by District Probation Officer, District Gorakhpur, mentioning therein that petitioner had maintained good conduct and behaviour during period of probation. The certificate so issued by District Probation Officer, Gorakhpur on 20.03.2014 has been brought on record by means of Annexure No.5 to the writ petition. There is no quarrel with respect to genuineness of such certificate.

8. The petitioner has placed on record his High School Certificate as Annexure No.1 to the writ petition, which records date of birth of petitioner as 18.05.1993, so, on the date of alleged commission of offence dated 01.03.2010 reported by virtue of Case Crime No.219 of 2010, the petitioner was aged about 16 years and 10 months. Thus, the petitioner was tried having been found in conflict with law, as a juvenile by Juvenile Justice Board and was convicted as such vide judgment and order dated 13.10.2013, but nothing adverse had been reported against him while he was placed on probation.

9. In this background the petitioner□s application for issuance of passport dated 29.01.2020, which was processed, same came to be rejected on the basis of police report indicating pendency of criminal case.

B. ISSUE/QUESTION INVOLVED

10. The core issue for consideration and determination by this Court is whether conviction recorded against the petitioner (the then Juvenile) having been found in conflict with law and tried by Juvenile Justice Board can be treated as a legal impediment for issuance of a valid passport in favour of the petitioner.

C.SUBMISSIONS ADVANCED ON BEHALF OF THE PETITIONER

11. Learned counsel for the petitioner submitted that the order impugned refusing passport is a cryptic one and has been passed for sheer annoyance of contempt proceedings initiated against authority concerned, by twisting the facts giving an impression that proceeding is pending against the petitioner.

12. Learned counsel for the petitioner further submitted that there is absolutely no pendency of any criminal case, as such respondent-authority had erred in refusing the passport to the petitioner through a cryptic order without assigning any cogent reason. In order to buttress his submissions, learned counsel for the petitioner has relied upon the judgement of Hon'ble Supreme Court in the case of **State of Rajasthan Vs. Rajendra Prasad Jain reported in (2008) 15 SCC 711** wherein the Hon'ble Supreme Court has held that "**reason is the heart beat of every conclusion, and without the same it becomes lifeless".** In absence of cogent reason and failure in considering the material in its correct perspective, the decision making process stands vitiated and interference by this Court is warranted.

13. Supreme Court in the case of **Chandana Impex Pvt. Ltd. Vs. Commissioner of Customs, New Delhi, 2011(269)E.L.T. 433 (S.C.)(para 8)** held as under :

"8. Having bestowed our anxious consideration on the facts at hand, we are of the opinion that there is some merit in the submission of learned counsel for the appellant that while dealing with an appeal under Section 130 of the Act, the High Court should have examined each question formulated in the appeal with reference to the material taken into consideration by the Tribunal in support of its finding thereon and given its reasons for holding that question is not a substantial question of law. It needs to be emphasised that every litigant, who approaches the court for relief is entitled to know the reason for acceptance or rejection of his prayer, particularly when either of the parties to the lis has a right of further appeal. Unless the litigant is made aware of the reasons which weighed with the court in denying him the relief prayed for, the remedy of appeal will not be meaningful. It is that reasoning, which can be subjected to examination at the higher forums. In State of Orissa Vs. Dhaniram Luhar2 this Court, while reiterating that reason is the heart beat of every conclusion and without the same, it becomes lifeless, observed thus :

"8.....Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made;...."

14. Learned counsel for the petitioner further submitted that the reasons in order are of essence in administrative/judicial proceedings. Every litigant who approaches the Court/authority with a prayer is entitled to know the reasons for acceptance or rejection of such request. Hon'ble Supreme Court held in the case of **The Secretary & Curator, Victoria Memorial v. Howrah Ganatantrik Nagrik Samity and ors., JT 2010(2)SC 566** para 31 to 33 held as under:-

"31. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice - delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind. " [Vide State of Orissa Vs. Dhaniram Luhar (JT 2004(2) SC 172 and State of Rajasthan Vs. Sohan Lal & Ors. JT 2004 (5) SCC 338:2004 (5) SCC 573].

32. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. [Vide Raj Kishore Jha Vs. State of Bihar & Ors. AIR 2003 SC 4664; Vishnu Dev Sharma Vs. State of Uttar Pradesh & Ors. (2008) 3 SCC 172; Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela I Circle & Ors. (2008) 9 SCC 407; State of Uttaranchal & Anr. Vs. Sunil Kumar Singh Negi AIR 2008 SC 2026; U.P.S.R.T.C. Vs. Jagdish Prasad Gupta AIR 2009 SC 2328; Ram Phal Vs. State of Haryana & Ors. (2009) 3 SCC 258; Mohammed Yusuf Vs. Faij Mohammad & Ors. (2009) 3 SCC 513; and State of Himachal Pradesh Vs. Sada Ram & Anr. (2009) 4 SCC 422].

33. Thus, it is evident that the recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as why his application has been rejected."

(emphasis added by us)

15. Learned counsel for the petitioner strenuously urged that the reasoning regarding pendency of criminal case is completely unfounded from the material available on record. The conviction even if was recorded by the Juvenile Justice Board, the same could not have formed the foundation for refusal of passport, as the conviction recorded against a juvenile cannot be read as stigmatic one against petitioner.

16. Submission advanced by learned counsel for the petitioner is, that order of refusal of passport is a result of anguish at the end of respondent for contempt proceedings drawn against them before this Court.

D. SUBMISSIONS ADVANCED ON BEHALF OF RESPONDENTS

17. The counsel representing the Union of India-respondents endevoured hard to defend the order of refusal of passport on the strength of conviction recorded against petitioner by the Juvenile Justice Board.

18. Learned counsel for the respondents-Union of India Mr. Pal submitted that the petitioner is a previous convict, as such the application for issuance of passport has rightly been turned down and the further submission is that even during pendency of criminal proceedings, the passport can be refused based on provisions as contained under Section 6 (2) (f) of Passport Act.

E. DISCUSSION AND ANALYSIS

19. Before going into the crux of the matter at hand, we deem it necessary to reproduce the principal statutory provisions which bear on the controversy in the present case. Section 5 of the Passports Act, which deals with applications for passports and orders thereon, provides as follows:

"5. Applications for passports, travel documents, etc., and orders thereon

(1) An application for the issue of a passport under this Act for visiting such foreign country or countries (not being a named foreign country) as may be specified in the application may be made to the passport authority and shall be accompanied by such fee as may be prescribed to meet the expenses incurred on special security paper, printing, lamination and other connected miscellaneous services in issuing passports and other travel documents.

Explanation. - In this section, □named foreign country□ means such foreign country as the Central Government may, by rules made under this Act, specify in this behalf.

(1A) An application for the issue of-

(i) a passport under this Act for visiting a named foreign country; or

(ii) a travel document under this Act for visiting such foreign country or countries (including a named foreign country) as may be specified in the application or for an endorsement on the passport or travel document referred to in this section, may be made to the passport authority and shall be accompanied by such fee (if any), not exceeding rupees fifty, as may be prescribed. (1B) Every application under this section shall be in such form and contain such particulars as may be prescribed.

(2) On receipt of an application under this section, the passport authority, after making such inquiry, if any, as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing, -

(a) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of the foreign country or countries specified in the application; or

(b) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of one or more of the foreign countries specified in the application and refuse to make an endorsement in respect of the other country or countries; or

(c) refuse to issue the passport or travel document or, as the case may be, refuse to make on the passport or travel document any endorsement.

(3) Where the passport authority makes an order under clause (b) or clause (c) of sub-section (2) on the application of any person, it shall record in writing a brief statement of its reasons for making such order and furnish to that person on demand a copy of the same unless in any case the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such copy."

(emphasis added)

20. Section 6 of the Passports Act, which deals with refusal of passports and travel documents, in so far as it is material, provides:

"6. Refusal of passports, travel documents, etc.-

(1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any foreign country under clause (b) or clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:-

(a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India;

(b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;

(c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country; (d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:-

(a) that the applicant is not a citizen of India;

(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;

(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest."

(emphasis added)

21. The law mandates not to attach any stigma with juvenile convicts and 'principle of fresh start' read with □right to be forgotten□ is essence for such subject which emerges from plain reading of Section 19 of Act, 2000. For ready reference Section 19 of the Juvenile Justice Act, 2000 is quoted as hereunder:-

"19. Removal of disqualification attaching to conviction:- *(1) Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Act* ***shall not suffer disqualification, if any, attaching to a conviction of an offence under such law,***

(2) ***The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be."***

(emphasis added)

22. The law with respect to juveniles has got a sea change but still the juvenile continue to enjoy the protection against stigma on account of conviction, if so recorded. Section 25 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as "Act, 2015") came into force on 15th January, 2016 and by virtue of Section 25 of the aforesaid Act it has been provided as under:-

"25. Notwithstanding anything contained in this Act, all proceedings in respect of a child alleged or found to be in conflict with law pending before any Board or court on the date of commencement of this Act, shall be continued in that Board or court as if this Act had not been enacted."

23. Not only the proceedings instituted prior to commencement of the Act, 2015 would be governed by old laws but their after effects are also to be controlled, regulated and governed as per the Act, 2000, which provides that the conviction recorded under the procedure laid down by Act of 2000 would not attach any disqualification and further law mandates that the relevant records of such conviction shall be removed after the expiry of period of appeal or a reasonable period as prescribed under the Rules. Thus, on one hand such conviction cannot be said to be stigmatic, on the other hand such conviction would not inhere disqualification either for employment or for any other purposes and such convicts need to be brought into main stream of society.

24. A bare reading of Section 19 (1) makes it clear that it starts with non-obstante clause excluding the applicability of any other law in the matters of juveniles and clearly provides that a juvenile, who has committed an offence and has been dealt under the provisions of the Act shall not suffer disqualification attaching to a conviction of an offence under such law. It means that even if a juvenile is convicted for an offence committed by him, his conviction would not be treated as a disqualification.

25. There is not even iota of doubt that Section 19 of Act of 2000 clearly provides that as a direct consequence, any disqualification entailing from conviction would have to be ignored and cannot act to the detriment of the child in conflict with law in any manner.

26. This court is conscious of the **"right to be forgotten**, which has been referred and dealt with in order dated 12.04.2021 passed by Supreme Court in the case **of Jorawer Singh Mundy @ Jorawar Singh Mundy Vs. Union of India and Ors. (WP(C)3981/2011)** observing that in the cases of juvenile delinquency, if any criminal antecedent record of a juvenile is allowed to remain intact, to be accessed, amongst others, by using the technology tools, the same may not only bring humiliation and discredit to the juvenile, but may also adversely impact the future prospects of the juvenile, amongst other things.

27. This Court does not wish to enter into the realm of broader **'right to be forgotten**', but, at present, is specifically considering the 'right to be forgotten' for a juvenile in the perspective of Section 24 of the Act of 2015 to be an absolute right for safeguarding future prospects of such juvenile.

28. Such a disclosure would not only affect the **'right to be forgotten**' of a juvenile, but would also defeat the very purpose and would be against the very intent of the legislature in enacting the Act of 2015, and incorporating Section 24 therein. When future employment prospects of a juvenile are intended to be protected even such actions would adversely affect, the rehabilitation of the juvenile and his socio-economic stability would also be adversely impacted, which may lead the juvenile to again resort to the criminal delinquency. This is more so when, the present day developing societies are dynamic and self-explanatory in its complexities followed by never-ending changes, and the juvenile is no exception to it, rather much more vulnerable, because the negativity of his (juvenile's) past life, despite enactment of a much strong law like the Act of 2015, legislative intent of which is to remove his criminal antecedents from the record, rather destroying of the complete record thereof, if allowed to sustain and remain intact, the same would be revisited for oblivious reasons, against the welfare and future well being of the juvenile, thereby bringing future embarrassments to the juvenile.

29. Section 12 of the Probation of Offenders Act, 1958, speaks of removal of disqualification attaching to conviction, but the language employed in Section 24 of the Act of 2015 is not only for excluding or erasing the criminal antecedent record, but goes a step forward, by laying down a provision that the criminal antecedent record of a juvenile be erased/destroyed completely, so that such previous conviction or criminal delinquency of a juvenile would not be carried forward, so as to prevent any adverse impact of his previous delinquency, upon his future prospects.

30. From a conspectus of the above factual matrix and the law applicable, it is crystal clear that Section 6(2) (f) of the Act, 1967 makes it specific that if proceeding in respect of an offence alleged to have been committed by an applicant are pending before criminal law in any Court, it can be one of the reasons for refusal of passport but same is not the case in hand as respondent-Union of India has failed to demonstrate pendency of any criminal case against petitioner.

31. A coordinate bench judgement of this Court dated 10.10.2025 rendered in the case of **Rahimuddin vs. Union of India (Writ-C No.34412 of 2025)** provides that where an applicant seeking passport if faces a criminal case, he/she shall have to obtain permission of concerned criminal Court in the first instance to travel abroad. The law further provides that in the event such applicant moves such application stating the period for which he wants passport to be issued, the Court shall pass an appropriate order disposing of the same finally by both sanctioning foreign country travel and specifying the duration for which foreign country travel is being permitted and whereupon passport may be issued accordingly.

32. Since there is absolutely no pendency of any criminal case pointed out by any of the parties, as such the ratio laid down in the case of **Rahimuddin (supra)** is not applicable to the controversy in question. The only point, which has been brought on record by virtue of counter

affidavit is conviction recorded against petitioner by Juvenile Justice Board, which cannot be read as a disqualification for future recourses.

The right to travel abroad is enshrined in Article 21 of Constitution of India

33. Having heard learned counsel for the respective parties and having perused the record, it is no more res-integra that right to travel abroad is encompassed within the ambit of right to life and personal liberty. It has been held to be fundamental right by Constitution Bench of Supreme Court in the case of **Maneka Gandhi v. Union of India, (1978) 1 SCC 248** wherein it was held that the right to travel is encompassed within the ambit of the right to life and personal liberty, and that any administrative action impinging upon such right must satisfy the test of fairness, reasonableness and non-arbitrariness. It was observed by Justice M.H. Beg that:

"193. It seems to me that there can be little doubt that the right to travel and to go outside the country, which orders regulating issue, suspension or impounding, and cancellation of passports directly affect, must be included in rights to "personal liberty" on the strength of decisions of this Court giving a very wide ambit to the right to personal liberty (see : Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi & Ors. AIR 1967 SC 1836, Kharak Singh v. State of U.P. & Ors. AIR 1963 SC 1295.

Justice Beg further observed that:

"226. Even executive authorities when taking administrative action which involves any deprivation of or restriction on inherent fundamental rights of citizens must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice."

34. In the case of **Maneka Gandhi** (supra) it was held that the citizen of the country has a constitutional right to go abroad and impairment of such a right cannot be done without observing the principles of natural justice. For ready reference relevant paragraphs of Maneka Gandhi (supra) are quoted hereunder:-

"5. That 'personal liberty' within the meaning of Article 21 includes within its ambit the right to go abroad and consequently no person can be deprived of this right except according to procedure prescribed by law. Prior to the enactment of the Passports Act, 1967, there was no law regulating the right of a person to go abroad and that was the reason why the order of the Passport Officer refusing to issue passport to the petitioner in Satwant Singh case [AIR 1967 SC 1836 : (1967) 3 SCR 525 : (1968) 1 SCJ 178] was struck down as invalid. It will be seen at once from the language of Article 21 that the protection it secures is a limited one.

73. From the point of view of comparative law too, the position is well established. For, one of the essential attributes of citizenship, says Prof Schwartz, is freedom of movement. The right of free movement is a vital element of personal liberty. ***The right of free movement includes the right to travel abroad****. So much is simple textbook teaching in Indian, as in Anglo-American law.*

Passport legality, affecting as it does, freedoms that are □delicate and vulnerable, as well as supremely precious in our society□, cannot but excite judicial vigilance to obviate fragile dependency for exercise of fundamental rights upon executive clemency. So important is this subject that the watershed between a police State and a Government by the people may partly turn on the prevailing passport policy. Conscious, though I am, that such prolix elaboration of environmental aspects is otiose, the Emergency provisions of our Constitution, the extremes of rigour the nation has experienced (or may) and the proneness of power to stoop to conquer make necessitous the hammering home of vital values expressed in terse constitutional vocabulary."

35. Refusal of issuance of passport by competent authority also entails civil consequences as such due application of mind with cogent reasons is sine qua non for such refusal.

36. The Supreme Court in the case of **Satwant Singh Sawhney Vs. D. Ramarathnam, Asstt. Passport Officer [AIR 1967 SC 1836]** held that the right to travel abroad falls within the scope of personal liberty enshrined under Article 21 of the Constitution of India and that no person can be deprived of his right to travel except according to the procedure established by law. After this decision was rendered, the Passport Act, 1967 was enacted by parliament and it laid down the circumstances under which a passport may be issued or refused or cancelled or impounded and also prescribed a procedure for doing so.

37. A seven judge bench of Hon'ble Supreme Court in **Maneka Gandhi** (supra) declared that no person can be deprived of his right to go abroad unless there is a law enabling the State to do so and such law contains fair, reasonable and just procedure. It held:

"...Thus, no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure. It was for this reason, in order to comply with the requirement of Article 21, that Parliament enacted the Passports Act, 1967 for regulating the right to go abroad. It is clear from the provisions of the Passports Act, 1967 that it lays down the circumstances under which a passport may be issued or refused or cancelled or impounded and also prescribes a procedure for doing so, but the question is whether that is sufficient compliance with Article 21."

38. It is no more res integra that the right to travel abroad is an important basic human right as held in the case of **Satish Chandra Verma Vs. Union of India & others, [(2019) SCC OnLine SC 2048] a**nd such a right cannot be prevented from being exercised without due process of law.

39. It is well settled that an order, which has civil consequences must be passed after giving opportunity of hearing to a party as held in the case of **State Of Orissa vs Dr. (Miss) Binapani Dei & Ors** reported in **1967 AIR 1269.**

40. The question of disqualification owing to conviction recorded against the juvenile found in conflict with law for future employment etc, came up for consideration of Supreme Court in the case of **Union of India and others vs. Ramesh Bishnoi reported in (2019) 19 SCC 710**, wherein the Hon'ble Supreme Court has held that the juvenile convict being a minor at the time of

commission of offence, the conviction cannot be read against him particularly when the law mandates for **'principle of fresh start'**

41. Supreme Court also had the occasion to consider the mandate of law enshrined under Section 24 of the Act, 2015, which provides for **rehabilitation and reintegration of juveniles** into society free from stigma of their past conflict with law coupled with mandate contained in Section 3 (xiv) of Act of 2015, which encompasses the principle of fresh start. For ready reference Section 3 (xiv) of Act of 2015 is quoted hereunder:-

"(xiv) Principle of fresh start: All past records of any child under the juvenile justice system should be erased except in special circumstances."

42. Liberty, being an obligation of the State enshrined under Chapter III of the Constitution of India confering a right in favour of citizen to travel, which includes travel abroad for livelihood subject to law, and such obligation is also a necessary concomitant to Article 21 read with Article 43 of the Constitution of India. There is no iota of doubt the State may regulate or restrain such freedom in the interest of justice, security or public order, but any such restraint must necessarily be confined and proportionate to the object sought to be achieved.

43. Supreme Court in the case of **Mahesh Kumar Agarwal Vs. Union of India reported in 2025 SCC OnLine SC 2887 h**as held that denial or renewal of passport does not operate in a vaccum. Relevant paragraphs of the aforesaid judgement are quoted as under:-

"20.It must also be noted that denial of renewal of a passport does not operate in a vacuum. This Court has repeatedly held in a catena of judgements6 that the right to travel abroad and the right to hold a passport are facets of the right to personal liberty under Article 21 of the Constitution of India. Any restriction on that right must be fair, just and reasonable, and must bear a rational nexus with a legitimate purpose.

22. It is important to keep distinct the possession of a valid passport and the act of travelling abroad. A passport is a civil document that enables its holder to seek a visa and, subject to other laws and orders, to cross international borders. Whether a person who is on bail or facing trial may actually leave the country is a matter for the criminal court, which can grant or withhold permission, impose conditions, insist on undertakings, or refuse leave altogether. In the present case, both criminal courts have done exactly that. To refuse renewal on the speculative apprehension that the appellant might misuse the passport is, in effect, to second-guess the criminal courts assessment of risk and to assume for the passport authority a supervisory role which the statute does not envisage."

(emphasis added by us)

44. The thrust of the legislation i.e. Act, 2000 as well as the Act, 2015 is that even if a juvenile is convicted, the same should not be obliterated, so that there is no stigma with regard to any crime committed by such person as a juvenile. This is with the clear object to re-intigrate such juvenile into the society as a normal person without any stigma.

45. Since the offence for which petitioner being juvenile was tried with, was allegedly committed in the year 2010 and the conviction order itself was passed in the year 2013 thus, the old law pertaining to juvenile viz Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as"□Act, 2000"), the Uttar Pradesh Juvenile Justice (Care and Protection of Children) Rules, 2004 (hereinafter referred to as "Rules, 2004") as well as the Uttar Pradesh Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as □Rules, 2007□) are worth consideration for appreciation of the controversy in question.

46. The Statute with respect to juvenile has been framed with an object to minimise the stigma in keeping with the developmental needs of the juvenile or the child. Statutory law is two parts is two parts-one for juveniles in conflict with law; and the other for the juvenile or the child in need of care and protection; to provide for effective provisions and various alternatives for rehabilitation and social re-intigration such as adoption, foster care, sponsorship and after care of abandoned, destitute, neglected and delinquent juvenile and child are welfare legislations. Thus, the provisions of the Act are required to be read and interpreted in the spirit in which in the collective wisdom of legislature has enacted it.

47. Any restriction on the petitioner's right to hold passport or travel abroad must satisfy the mandate of Article 21 of Constitution of India namely fairness, reasonableness and proportionality.

F. CONCLUSION

48. Thus, this Court holds that writ petitioner is entitled to the protection of law mandated under Section 19 of Act of 2000. By virtue of the non-obstante clause contained therein particularly any disqualification attaching to the conviction recorded by the Juvenile Justice Board stands removed notwithstanding anything contained in any other law.

49. Since no criminal proceedings are pending against the petitioner, thus, recording of pendency of criminal case in the order impugned exhibits complete non-serious attitude of respondent-authorities and is a monument of non-application of mind, the ground contemplated under Section 6 (2) (f) of Passport Act, 1967 are not attracted in the case in hand as this is wholly unavailable to the respondents. Further, the conviction recorded against the petitioner as a juvenile cannot be treated as a legal impediment for issuance of passport by operation of law contained in Section 19 of Act of 2000.

50. The respondents are further bound to give full effect to the principle of '**fresh start'** embodied in juvenile statute, so that past juvenile delinquency does not impair the future prospects and rehabilitation/reintigration of the petitioner.

51. It is further directed that the '**right to be forgotten'** for juvenile by removing/ destroying record of juvenile delinquency is an absolute right giving them **'fresh start**' and, therefore, to give it full meaning, the respondent-Regional Passport Officer is mandated to process the application of petitioner for issuance of passport afresh notwithstanding his conviction so

recorded by the Juvenile Justice Board, Gorakhpur and issue him the requisite passport if there is no other legal impediment/hurdle.

52. The impugned order suffers from arbitrariness and non-application of mind, hence, a writ in the nature of certiorari is issued thereby quashing the impugned order dated 19.03.2021 contained as Annexure No.1 to this writ petition.

53. The writ petition is allowed in above said terms. Cost made easy.

(2026) 5 ILRA 2211
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.05.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE INDRAJEET SHUKLA, J.

Writ C No. 26448 of 2025

Sushil Kumar Prajapati **...Petitioner**
Versus
U.O.I. & Anr. **...Respondents**

Issue(s) for consideration

(a) Whether a writ petition u/Article 226 of the Constitution is maintainable against an arbitral award when an alternative statutory remedy u/ 34 of the Arbitration and Conciliation Act, 1996 exists?
(b) Whether an arbitrator can unilaterally change the seat/venue of arbitration without the express mutual consent of both parties?
(c) Whether passing an *ex-parte* award after giving an unreasonably short notice (8 days) to appear at an unagreed distant location violates the principles of natural justice?

Headnotes

A. Arbitration Law – Arbitration and Conciliation Act, 1996: Section 20, 34 - The dispute arose from unpaid bills for retail orders of medicines and surgical items supplied by the petitioner to the Central Hospital, North Central Railway (NCR), Allahabad, under an agreement dated 30.09.2008.

Clause 9: Mandated sole arbitration by a Railway officer nominated by the General Manager, NCR.
Clause 10: Confined all disputes strictly to the jurisdiction of courts in Allahabad.

Sri Ankur Chandra was appointed as the initial Sole Arbitrator in 2014, and hearings took place in Allahabad. Upon his transfer, Sri Gaurav Kumar (then Dy. CMM/HQ/NCR/ALD) was appointed in 2018. Sri Gaurav Kumar was later transferred to Eastern Railway, Kolkata. After a gap of seven years, he unilaterally resumed the arbitration proceedings from Kolkata instead of Allahabad. On 30.04.2025, the petitioner received a notice (dated 21.04.2025) directing him to attend a final hearing at Kolkata on 08.05.2025 (giving only 8 days' notice). The petitioner requested a change of arbitrator/venue back to Allahabad due to short notice and severe inconvenience. However, the Sole Arbitrator proceeded *ex-parte* and passed an arbitral award on 21.05.2025.

B. Section 20 of Act of 1996 - The arbitrator cannot change the seat of arbitration except when parties mutually agree for change of 'seat of arbitration' to another location. Once the jurisdictional 'seat' of arbitration is fixed in terms of sub-section (2) of Section 20 of the Act, then, without the express mutual consent of the parties to the arbitration, 'the seat' cannot be changed. Therefore, the appointment of a new arbitrator who holds the arbitration proceedings at a different location would not change the jurisdictional 'seat' already fixed by the earlier or first arbitrator. The place of arbitration in such an event should be treated as a venue where arbitration proceedings are held. (Para 24)

Impugned arbitral award is *ex parte* which is in-flagrant violation of principles of natural justice inasmuch as denial of change of place of arbitration resulted in non playing field for petitioner. The claimant was forced to attend the arbitration at 'Kolkata' within a short span of notice of eight days, ignoring that the jurisdiction for all disputes as per agreement was confined to 'Allahabad' and earlier the seat of arbitration remained at 'Allahabad', and admittedly it has never been altered with consent of parties. (Para 22, 23)

C. This Court cannot act as an appellate authority to evaluate merit of arbitral award and the power of judicial review u/Article 226 of the Constitution is only limited to the extent of examination of decision making process. The impugned arbitral award in continuance of a flawed procedure and hence this award deserves to be set aside with further direction to proceed afresh in peculiar facts of this case and the case needs to be restored to the file for arbitral proceedings. (Para 25)

The place of arbitration from 'Allahabad' to 'Kolkata' was changed by arbitrator *suo moto* without consent/agreement of parties even without backing of any provision under agreement. Hence, change of place of arbitration appears to be giving unfair advantage to the railways establishment and subjecting petitioner to a non playing field as they did not have negotiable means to attend arbitration proceedings. Thus, the ex-parte award in question is unsustainable. The impugned award dated 21.05.2025 is quashed. (Para 26)

Writ petition allowed. (E-4)

Case Law Cited

1. Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai, (1998) 8 SCC 1 (Para 5)
2. Harbans Lal Sahnia Vs. Indian Oil Corporation, (2003) 2 SCC 107 (Para 6)
3. Mafatlal Industries Ltd. Vs. Union of India, (1997) 5 SCC 536 (Para 7)
4. Dr.Rajeev Sinha and others Vs. Union of India and others, 2024 2 ADJ 594 (Para 8)
5. Inox Renewables Ltd. Vs. Jayesh Electricals Ltd., 2021 SCC OnLine SC 2036 (Para 24)
6. BBR (India) Private Limited Vs. S.P. Singla Constructions Private Limited, (2023) 1 SCC 693 (Para 24)

List of Acts

Arbitration and Conciliation Act, 1996.

List of Keywords

arbitration, conciliation, award, alternate, remedy, arbitral, ex-parte, notice, arbitrator, jurisdiction, agreement, natural justice, violation.

Appearances for Parties

For Petitioner(s): Prem Chand Pandey
For Respondent(s): Krishna Agarawal, A.S.G.I.

(Delivered by Hon'ble Indrajeet Shukla, J.)

1. Heard Sri Prem Chand Pandey, learned counsel for the petitioner and Sri Krishna Agarawal, learned counsel for the respondents.

2. Embittered with ex-parte arbitral award dated 21.05.2025 passed by Sole Arbitrator/CMM/Electrical, Eastern Railway the then Dy. CMM/HQ/NCR/ALD, instant writ proceedings have been instituted precisely on the ground that the sole arbitrator after his transfer from Allahabad to Railway Board as Director R.S.(F.), resumed the proceedings at Kolkata while process for change of arbitrator was going on owing to his transfer. Further ground of challenge is resuming arbitral proceedings by changing seat of arbitration and passing an ex-parte award, without consent of the petitioner-claimant is ex-facie bad.

Maintainability of Writ Petition against Arbitral Award

3. At the threshold, learned counsel for the respondents vehementally objected to the maintainability of the present petition asserting that in view of the availability efficacious alternative remedy by virtue of Section 34 of the Act of 1996 providing robust statutory mechanism for setting aside the arbitral award, instant writ petition bypassing that fourm is absolutely unwarranted and same is not maintainable. Thus, this Court should refrain from exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, as the writ power is not intended to be a panacea for all substantive procedural issues, nor is it a substitute for statutory remedies, where the legislature has specifically carved out a specialized mechanism. The doors of the Writ Court may remain open subject judicious discretion, otherwise the sanctity of the arbitral process be undermined by such choice of forum at the end of a party. Thus, petitioner having failed to exhaust the statutory channels available to him, the present petition ought to be dismissed in limine on the ground of maintainability.

4. Countering the submissions, learned counsel for the petitioner submitted that the arbitral award in question is not only ex-parte but suffers with vice of non-compliance of the principles of natural justice and the proceedings resorted by arbitrator is wholly without jurisdiction and authority of law. Thus, the proceedings being vitiated for lack of jurisdiction and palpable breach of natural justice, this Hon ble Court may entertain instant writ petition as a exceptional case.

5. Now we consider the preliminary objection in the light of legal eventualities on the issue. The Hon'ble Supreme Court, in the seminal case of **Whirlpool Corporation v. Registrar of Trademarks, Mumbai reported in (1998) 8 SCC 1** has unequivocally held that the High Court may interfere, notwithstanding an alternative remedy, where the petitioner seeks the enforcement of a Fundamental Right, where there is a violation of the principles of natural justice, or where the proceedings are wholly without jurisdiction. These exceptions ensure that the doors of justice are not hermetically sealed when basic procedural fairness is at stake. The relevant paragraph of this judgement is quoted as follows:

"Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is

available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

6. Further, in **Harbans Lal Sahnia v. Indian Oil Corporation reported in (2003) 2 SCC 107** the Apex Court reiterated that the rule of exclusion of writ jurisdiction is a rule of discretion and not one of compulsion. The Court is duty-bound to weigh the pros and cons of the litigation and may choose to interfere if the facts of the case demonstrate that relegating the party to an alternative remedy would be an exercise in futility or lead to a travesty of justice. The court held that:

"In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

7. In **Mafatlal Industries Ltd. v. Union of India reported in (1997) 5 SCC 536** B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed:

"77. ... So far as the jurisdiction of the High Court under Article 226 or for that matter, the jurisdiction of this Court under Article 32 is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.""

8. A co-ordinate Bench of this Court in the case of **Dr.Rajeev Sinha and others Vs. Union of India and others reported in 2024 2 ADJ 594** has dealt with issue whether the arbitrator s award should be quashed in exercise of writ jurisdiction treating the writ petition maintainable, despite the availability of an alternative remedy under Section 34 of Arbitration and Conciliation Act, 1996 (for the brevity hereinafter shall be termed as Act of 1996) and has concluded:

".....availability of alternative remedy under Section 34 of the Act of 1996, does not have any force, in the facts and circumstances of the present case and this Court is satisfied that the instant case falls within the well recognized exceptions to the general rule of exhaustion of alternative remedies, as held above by the Supreme Court and, therefore, the present writ petition is not liable to the dismissed on this ground."

9. In view of the above exposition of law in our considered view, cardinal principle of our constitutional jurisprudence is that a mere existence of a statutory bypass does not, and cannot, oust the inherent jurisdiction of this Court. On the contrary, such a remedy serves merely as a judicial

compass, guiding the exercise of discretion rather than acting as an insuperable barrier to justice. In exceptional circumstances where the proceedings are vitiated for lack of jurisdiction or a palpable breach of natural justice. This Court must not remain a silent spectator. To hold otherwise would be to allow a procedural technicality to strangle the substantive rights of the parties in the face of manifest arbitrariness. Thus, the instant writ petition is held to be maintainable.

Factual Matrix

10. Brief facts in nutshell emerged from pleadings are recapitulated here as under:

11. The dispute arose out of claim setup by claimant/petitioner for retail order supply payment for the period between January, 2009 to June, 2009 against Agreement No.43/Med/Store/ALD/2008/Renewal of suppliers dated 30.09.2008 by Central Hospital, North Central Railway (NCR) Allahabad with the firm M/S. Laxmi Medical Agency, 452 Shahganj, Allahabad for purchase of medicines and surgical items by Railway Hospital, North Central Railway, Allahabad.

12. The petitioner claims himself to be sole proprietor of firm Laxmi Medical Agency, 452 Shahganj, Allahabad. The petitioner had set up a case that he had supplied the medicines/surgical instruments to Central Railway Hospital through license no.772, 773 which was renewed from time to time and the last renewal was issued on 20.03.1999. Petitioner has claimed that after supply of medicines and surgical items, the bill was produced but respondent/railway authorities did not clear the dues of the same, which gave rise to a dispute.

13. The dispute is redressable through arbitration mechanism, for which written agreement was entered between parties. The relevant clause of contract viz Clause 9 and 10 of the agreement are extracted as under:

"9. In the event of any dispute between Railways and the supplier as to the respective right and obligation of the parties hereunder or meaning of any article or conditions, such dispute shall be referred to sole arbitration of an officer of the Railways who shall be nominated for this purpose by the General Manager, N.C.Rly and his decision shall be final, conclusive & binding on the parties.

10. All disputes are subject to jurisdiction of High Court or its sub-ordinate courts in Allahabad only"

14. In terms of agreement one Ankur Chandra, the then Deputy CMM/M/NCR/Ald was appointed as sole arbitrator on 08.08.2014. The sole arbitrator entered into reference on 04.09.2014 directing claimant (petitioner) to submit statement of claim and respondents to submit their counter claim and statement of defence.

15. Petitioner being claimant, submitted his statement of claim on 20.10.2014 and respondents submitted their counter reply and statement of defence vide letter dated 09.01.2015 and

thereafter, various dates were fixed, and both parties attended the arbitral proceedings at agreed venue/seat of arbitration at Allahabad"

16. The General Manager, North Central Railway vide letter no.7-MED/Arbitration/Appointment/GK dated 02.01.2018 changed the sole arbitrator and appointed Sri Gaurav Kumar, the then Deputy CMM/HQ/NCR/ALD as sole arbitrator in place of Sri Ankur Chandra, who could not conclude proceedings since he was transferred. Thereafter, newly appointed sole arbitrator Sri Gaurav Kumar was transferred to Railway Board as Director R.S.(F.) and while the process of appointment of new arbitrator was midway, the existing arbitrator Sri Gaurav Kumar resumed the arbitral proceedings after seven years at Kolkata by putting claimant-petitioner to notice vide letter dated 21.04.2025, requiring him to attend the arbitral proceedings at Kolkata on 08.05.2025 i.e. at short notice of eight days.

17. On receiving the information on 30.04.2025 with respect to final hearing of arbitration proceedings, scheduled on 08.05.2025 through letter dated 21.04.2025, petitioner requested for change of arbitrator vide letter dated 01.05.2025 and petitioner was assured that looking to his convenience with respect to seat of arbitration, the arbitrator would be changed. The letter dated 21.04.2025 issued by sole arbitrator informing resumption of arbitral proceedings after seven years is extracted as under:

Eastern Railway

Office of the PCMM
17, N.S.Road, Fairlie Place
Kolkata-700 001
Date:21.04.2025

No.Dy.CMM/HQ/Arb./SKP
Shri Sushil Kumar Prajapati,
576/671
(F-F-3),
Maa Kali Apartment, Shahganj,
Prayagraj, Uttar Pradesh.

(Claimant)

ACHD I/C (Store)
Central Hospital,
North Central Railway.
Nawab Yusuf Road, Civil Lines
Prayagraj, Uttar Pradesh..

(Respondent)

Sub. Hearing in Arbitration case in connection with "Purchase of medicines and surgical items to Railway Hospital, Allahabad Agreement no. 43Med/Store/ALD/2008/Renewal of suppliers dated 30.09.2008.

The next hearing in the above noted case has been fixed on 08.05.2025 at 11.30 Hrs in the chamber of undersigned. Both the parties are directed to attend the hearing on the date and time fixed with all documentary evidence in support of the case.

Since, claimant has not attended previous hearings held on 20.06.2018 and 28.11.2018, attended by respondent both the times, claimant is directed to attend the hearing on scheduled date and time ***failing which the proceedings shall be held Ex-parte and decision will be taken accordingly.***

21/04/25
(Gaurav Kumar)
CMM/Sales/ER
Then Dy.CMM/HQ/NCR/ALD
Sole Arbitrator"
Contact No.9002020773

18. The request for change of arbitrator was not properly heeded to by the General Manager, North Central Railway, Subedarganj, Allahabad, despite the fact that place of arbitration at □Kolkata□ was inconvenient and it was not feasible for the petitioner-claimant to have attended the proceedings at a short notice of eight days.

Submission advanced on behalf of Petitioner

19. The counsel for the petitioner strenuously urged that the impugned arbitral award is not only ex-parte having been passed in gross violation of principles of natural justice but was a glaring example of arbitrariness without providing level playing field. The further submission was that the place of arbitration should not have been at □Kolkata□ as same was not provided in the arbitral agreement and there was no consent accorded by the petitioner-claimant for change of place of arbitration i.e. from □Allahabad□ to □Kolkata□. Thus, the arbitral award suffers with the vice of jurisdictional error and same is result of manifestation of procedural overreach and stands as a monument to the denial of natural justice.

20. The further submission advanced by learned counsel for the petitioner is that the sole arbitrator, in a display of unwarranted zeal, proceeded to adjudicate the matter ex-parte, thereby rendering the entire process flawed one. The petitioner was served with a notice for hearing at □Kolkata□ which was a distant forum being far from the agreed-upon seat at □Allahabad□. Having proceeded with such unseemly haste and that to contest the proceedings at place not mutually agreed upon, it left no room for meaningful participation by petitioner. The cavalier disregard to the principle of audi alteram partem is not merely a technical flaw but a fundamental subversion of the rule of law. To expect a petitioner to attend a hearing on a thinnest of margin, receiving notice on 30.04.2025 for attending proceedings on 08.05.2025 is nothing except but to

ask for impossibility i.e.□to put the cart before the horse□. Thus, award in question is a nullity in the eyes of the law.

Submissions advanced on behalf of Respondents

21. Learned counsel for the respondents has submitted that, arbitrator was appointed strictly in terms of tenets of arbitration close of agreement and the proceedings before Arbitral Tribunal were well within the knowledge of the petitioner and yet he utterly failed to appear before the Arbitration Tribunal and as such, he cannot be permitted to take advantage of his own wrongs. The Arbitral Tribunal had no option except to proceed for ex-parte award in given factual background of the case.

Analysis and Reasoning

22. We consider it first go through Section 20 of Act of 1996 that deals with place of arbitration. The provision reads as under:

"20. Place of arbitration.□*(1) The parties are free to agree on the place of arbitration.*

(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at anyplace it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property."

23. Upon scrutiny of rival submissions, this Court finds that impugned arbitral award is ex parte which is in-flagrant violation of principles of natural justice inasmuch as denial of change of place of arbitration resulted non playing field for petitioner. The claimant was forced to attend the arbitration at □Kolkata□ within a short span of notice of eight days, ignoring that the jurisdiction for all disputes as per agreement was confined to □Allahabad□ and earlier the seat of arbitration remained at □Allahabad□, and admittedly it has never been altered with consent of parties.

24. With respect to change of place of arbitration, it is worth referring to the ratio laid down in the case of **Inox Renewables Ltd. Vs. Jayesh Electricals Ltd. (2021 SCC OnLine SC 2036)**. In the said case, the agreement provided for Jaipur as the seat of arbitration, but the arbitration proceedings were conducted in Ahmedabad. This conduct of ...was held by the Hon□ble Apex Court as changing the seat of arbitration by the parties by their mutual consent. However, in the case of **BBR (India) Private Limited Vs. S.P. Singla Constructions Private Limited [(2023) 1 SCC 693],** the Apex court held that unlike in the cases of Inox Renewables Ltd. (supra), in the case at hand, the seat of arbitration was not fixed by the parties but instead, by the arbitrator and that the arbitrator cannot change the seat of arbitration except when parties mutually agree for change of □seat of arbitration□ to another location. The court held thus:

"....once the jurisdictional □seat□ of arbitration is fixed in terms of sub-section (2) of Section 20 of the Act, then, without the express mutual consent of the parties to the arbitration, □the seat□ cannot be changed. Therefore, the appointment of a new arbitrator who holds the arbitration proceedings at a different

location would not change the jurisdictional □seat□ already fixed by the earlier or first arbitrator. The place of arbitration in such an event should be treated as a venue where arbitration proceedings are held."

Conclusion

25. Being conscious of the fact that this Court cannot act as an appellate authority to evaluate merit of arbitral award and the power of judicial review under Article 226 of the Constitution of India is only limited to the extent of examination of decision making process, in our considered view, the impugned arbitral award in continuance of a flawed procedure and hence this award deserves to be set aside with further direction to proceed afresh in peculiar facts of this case and the case needs to be restored to the file for arbitral proceedings.

26. In view of admitted fact as emerges from pleadings on record that the place of arbitration from □Allahabad□ to □Kolkata□ was changed by arbitrator suo moto without consent/agreement of parties even without backing of any provision under agreement. Hence, change of place of arbitration appears to subjecting petitioner to a non playing field giving unfair advantage to the railways establishment without had negotiable means to attend arbitration proceedings. Thus, the ex-parte award in question is unsustainable, accordingly, instant writ petition is **allowed**. A writ in the nature of certiorari is issued quashing the impugned award dated 21.05.2025 passed by Sole Arbitrator, CMM/Electrical, Eastern Railway the then Dy. CMM/HQ/NCR/ALD.

27. The General Manager, Northern Central Railway is hereby directed to appoint an Arbitrator after putting claimant/petitioner to notice who shall resume the arbitration proceedings from the stage it proceeded ex-parte and shall conclude proceedings within a period of three months.

28. In the event of failure of appointment of Arbitrator by the authority concerned, the parties would be at liberty to take recourse under Section 11(6) of the Act of 1996 and the proceedings would be resumed accordingly.

29. No order as to cost.

(2026) 5 ILRA 2219
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.05.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE MRS. SWARUPAMA CHATURVEDI, J.

Writ C No. 35320 of 2025

M/S Vinod Kumar Malik **...Petitioner**
Versus
U.O.I. & Ors. **...Respondents**

Issue for Consideration

i. Whether Respondent No.5 falls within the judicial review under Article 226 of the Constitution, and whether it can be treated as "State" or an instrumentality thereof under Article 12 of the Constitution of India.
ii. Whether the dispute arises out of a purely commercial contract or whether the impugned actions in the facts of the present case disclose any element of public function, and if so, whether the issuance of Notice Inviting Tender dated 22.09.2025 and termination of contract dated 06.10.2025 are open to judicial review.
iii. Whether this Court has territorial jurisdiction under Article 226(2) of the Constitution, having regard to the place of cause of action and the effect of the jurisdiction clause conferring exclusive jurisdiction on courts at Delhi.

Headnotes

Constitution of India, Arts. 12 & 226 – Contractual matters – Scope of judicial review – Toll collection contract – National Highways Authority of India Act, 1988 – National Highways Act, 1956 – Specific Relief Act, 1963, Section 14(d) – Contract for providing manpower services for toll collection on National Highway – Termination of contract – Fresh Notice Inviting Tender – Maintainability of writ petition – Petitioner, proprietorship entity engaged in providing manpower services, was awarded a contract by Respondent No.5, NHIT Southern Projects Private Limited (NSPPL), for providing manpower services for user fee collection at Chhappar Toll Plaza on National Highway No.334 pursuant to an agreement dated 26.06.2025 – During execution of the contract, Respondent No.5 issued notices alleging operational deficiencies and breach of contractual obligations – Subsequently, a fresh Notice Inviting Tender dated 22.09.2025 was issued and thereafter the petitioner's contract was terminated on 06.10.2025 – Petitioner challenged the fresh tender and termination order under Article 226 of the Constitution contending that Respondent No.5 discharged public functions relating to management of National Highways and was amenable to writ jurisdiction – Respondent No.5 raised preliminary objections that it was a private limited company, not "State" within the meaning of Article 12, that the dispute arose purely out of a determinable commercial contract containing a dispute resolution clause, and that, in view of the contractual jurisdiction clause, only the Courts at Delhi possessed jurisdiction – Justification:
Issue No. (i): Respondent No.5, NHIT Southern Projects Private Limited (NSPPL), is a private limited company having no governmental shareholding or deep and pervasive control by the State. Its relationship with the NHAI is purely contractual in nature. Mere fact that it is engaged in highway-related operations does not alter its private character so as to bring it within the ambit of Article 12 of the Constitution. It cannot be treated as State or an instrumentality within the meaning of Article 12 of the Constitution. Neither any substantial and effective governmental control nor does Respondent No.5 exercise statutory or sovereign power in the discharge of its functions. Mere engagement of Respondent No.5 in toll operations on a National Highway, or the existence of a statutory framework regulating such activity, would not by itself render every contractual dispute amenable to writ jurisdiction. (Paras 74, 77, 79 & 94).
Issue No. (ii): The rights and obligations *inter se* the parties arise out of the agreement dated 26.06.2025. The dispute revolves around performance of contractual obligations, alleged breaches, issuance of notices, invocation of termination clauses. These issues necessarily involve disputed questions of fact, which is clearly in the ambit of private law dispute and writ jurisdiction cannot be invoked for resolution. The agreement between the parties contains a dispute resolution clause for resolution of disputes arising therefrom. A breach of contract by a party to the contract, whether maliciously or by way of arbitrary exercise of power contrary to the provisions agreed under the agreement, would invite an actionable claim under ordinary civil law for which forum of a Court of competent jurisdiction is always there, and/or also resolution of disputes by invoking the dispute resolution clause. Under Section 14(d) of the Specific Relief Act, 1963, a determinable contract cannot be specifically enforced under writ jurisdiction; the remedy lies in civil damages or arbitration. Mere fact that the contract pertains to toll operations on a National Highway, by itself, is insufficient to alter the essentially private and contractual character of the arrangement under which the dispute occurred. The matter does not

warrant exercise of extraordinary writ jurisdiction under Article 226. The rights and obligations arise out of a commercial service agreement dated 26.06.2025. Alleged breaches and termination involve disputed facts within the realm of private law. **(Paras 76, 80, 87, 88, 94, 96, 97 & 98).**

Issue No. (iii): Allahabad High Court had jurisdiction under Article 226(2) of the Constitution, as a substantial and integral part of the cause of action had arisen within its territorial limits. The dispute relates to contractual operations carried out at the toll plaza situated within the State of Uttar Pradesh. Mere fact that certain decisions were taken or communications were issued from Delhi, or that the agreement contains a jurisdiction clause in favour of courts at Delhi, cannot have the effect of excluding the constitutional jurisdiction of this Court. Contractual clauses cannot oust or curtail the jurisdiction conferred under Article 226 of the Constitution. Accordingly, the objection is rejected. However, the writ petition is dismissed as the dispute is purely contractual in nature and does not warrant exercise of writ jurisdiction. **(Para 100).** (E-5)

Case Law Cited

Kishor Madhukar Pinglikar v. Automotive Research Association of India, (2023) 20 SCC 719;
R.S. Madireddy v. Union of India, 2024 SCC OnLine SC 965;
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S. Shobha v. Muthoot Finance Ltd., 2025 SCC OnLine SC 177;
ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd., (2004) 3 SCC 553;

List of Acts

Constitution of India;
Specific Relief Act, 1963;
National Highways Act, 1956;
The Control of National Highways (Land and Traffic) Act, 2002;
The National Highways Authority of India Act, 1988;
The National Highways (Collection of Fees by any Person for the Use of Section of National highways/permanent Bridge/temporary Bridge on National Highways) Rules, 1997;
The National Highway (Rate of Fees) Rules, 1997

List of Keywords

Article 12; Article 226; Article 226(2); Writ jurisdiction; Judicial review; Maintainability of writ petition; Public duty; Public function; Private body; Instrumentality of State; Toll collection; National Highway; Manpower

service contract; Notice Inviting Tender (NIT); Termination of contract; Commercial contract; Purely contractual dispute; Determinable contract; Alternative dispute resolution; Arbitration clause; Disputed questions of fact; Territorial jurisdiction; Cause of action; Exclusive jurisdiction clause; Private law remedy; Public law remedy; Breach of contract; Actionable claim under ordinary civil law; Contractual obligations; National Highways Authority of India (NHAI); NHIT Southern Projects Private Limited (NSPPL).

Case Arising From

Petition under Article 226 of the Constitution challenging the Notice Inviting Tender dated 22.09.2025, & Termination Order dated 06.10.2025 issued by NHIT Southern Projects Private Limited (Respondent No. 5).

Appearances for Parties

Advs. for the Appellant: Mr. Shashi Nandan, Senior Advocate, Mr. Devansh Misra, Advocate**.**

Advs. for the Respondents: A.S.G.I., Mr. M.C. Chaturvedi, Senior Advocate, Ms. Shweta Bharti, Mr. Tanmay Sadh, Mr. Devendra Kumar, Mr. Pranjal Mehrotra, Mr. Raghav Dwivedi, Mr. Sunil Kumar Yadav, Advocates.

(Delivered by Hon'ble Mrs. Swarupama Chaturvedi, J.)

For convenience, the judgement is structured as per the following index for proper consideration of the points involved in the petition.

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I

Factual Background and Course of Proceedings

1. This writ petition has been filed under Article 226 of the Constitution of India seeking issuance of appropriate writs, orders and directions in the nature of certiorari for quashing of the notice dated 22.09.2025 bearing Tender No. 2025_NHAI_250002_1. Further, the Petitioner has prayed for quashing of the order dated 06.10.2025 issued by respondent no. 5 i.e., NHIT Southern Projects Private Limited (hereinafter referred to as NSPPL), who is a special purpose vehicle of National Highway Infra Trust (hereinafter referred to as NHIT). The Petitioner has also prayed for issuance of a writ in the nature of Mandamus restraining the respondent authorities from creating any third-party rights pursuant to the above-mentioned tender notice.

(A) Background Facts

2. The background fact appearing from the records of this petition is that the respondent no. 2, i.e., National Highway Authority of India (hereinafter referred to as NHAI) was set up by the NHAI Act 1988, which has set up the respondent no. 3, trust NHIT on 19.10.2020. It is an irrevocable infrastructure trust under the provisions of the Indian Trusts Act, 1882, which was registered on 20.10.2020, under the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations 2014 (hereinafter referred to as SEBI Regulations).

3. The investment manager of NHIT was National Highways Infra Investment Managers Private Limited (hereinafter referred to as NHIIMPL) which got incorporated on 25.07.2020

under the Companies Act 2013 (a wholly owned subsidiary of Government of India acting through Ministry of Road Transport and Highways). It was set up to act as the Investment Manager to the Infrastructure Investment Trust (InvtIT), as Investment Manager of NHIT. Further, National Highway InvtIT Project Management Private Limited (hereinafter referred to as □NHIPMPL□) got incorporated as private limited company on 09.03.2021 under Companies Act, 2013 which is respondent no. 4 in petition and acted as □Project Manager□ for respondent no. 5 i.e., NSPPL. NSPPL, a private limited company incorporated on 08.03.2025 under Companies Act, 2013 as Special Purpose Vehicle (SPV).

4. The NHIPMPL published a tender notice on 29.05.2025, in which the petitioner, M/s Vinod Kumar Malik, a proprietorship entity engaged in providing manpower services, participated. The Notice Inviting Tender (hereinafter referred to as □NIT□) was published for providing manpower services for user fee collection at the Chhappar Toll Plaza on the Muzaffarnagar-Haridwar Section (Km 130+560 to Km 209+120 of old NH-58 / new NH-334) situated in the States of Uttar Pradesh and Uttarakhand.

5. The estimated project cost of the project was Rs.3.35 crores and the prescribed bid security was Rs. 7.06 lakhs. The contract period was stipulated to be one year, extendable by a further year upon mutual consent. The Petitioner was declared successful in the tender process. The Letter of Acceptance (hereinafter referred to as □LOA□) was issued accepting the Petitioner's bid for a contract value of Rs.3,56,35,036/- and requiring furnishing of a performance bank guarantee of Rs. 35,63,504/-. Following the LOA, an agreement was executed between the Petitioner and Respondent No.5, NSPPL on 26.06.2025, thereafter, the Petitioner was officially handed over charge of the Chhappar Toll Plaza on National Highway No. 58 (New No. 334) and got instructed to commence operations from 11.07.2025.

6. On 18.08.2025, the respondent entity issued the notice to the Petitioner under Clause 10(i) of the General Conditions of Contract (hereinafter referred to as □GCC□), alleging multiple operational shortcomings, including insufficient deployment of manpower, failure to ensure toll collection, failure to disburse salaries in the presence of an authorized representative, failure to provide safety gear (shoes, high visibility jackets) to staff, and non-maintenance of attendance records.

7. Representatives of both sides held a meeting on 03.09.2025, thereafter, on 18.09.2025, the Petitioner submitted response to the aforesaid notice stating that minimum wages were paid via direct bank credit, the local exemption percentage had been reduced, adequate staff welfare was provided, and deployed personnel were equipped with the required safety gear.

8. Meanwhile, on 19.09.2025, an incident occurred at the Chhappar Toll Plaza during which toll operations were disrupted and vehicles allegedly passed without payment of user fee. In connection with the incident dated 19.09.2025, the respondent entity issued a second show-cause notice dated 22.09.2025 alleging violation of Clause 28 of the General Conditions of Contract pertaining to □Abandonment□ and requiring the Petitioner to submit a written explanation within three days.

9. The Petitioner submitted its reply to the said show-cause notice through e-mail dated 23.09.2025, however, on 22.09.2025, a fresh NIT bearing Tender No. 2025_NHAI_250002_1 was published on the GeM Portal for the same work relating to the Chhappar Toll Plaza. Subsequently on 06.10.2025. As the contract of the Petitioner was terminated, so it became basis of the dispute leading to the present writ petition.

(B) Record of Proceedings

10. During the course of hearing in the present writ petition, various interim and procedural orders came to be passed by this Court on different dates of hearing. The development through proceedings in the petition is elaborated in following paragraphs.

11. When the petition was heard at the admission stage on 07.10.2025, the amendment application filed on behalf of the petitioner to challenge the notice dated 06.10.2025 inviting tender, was allowed and, considering the nature of the controversy, it was directed that no fresh tender pursuant to the notice dated 22.09.2022 issued by respondent no. 5 shall be finalized without leave of this Court.

12. On 04.11.2025, after hearing counsel for respective parties at length, it was directed that parties shall maintain status quo with regard to toll collection at Chhappar Toll Plaza. The Court further stayed the termination of the petitioner□s contract and also stayed the operation of the agreement executed on 06.10.2025 in between respondent no.5 with South Asia Tollways Pvt. Ltd.

13. When the hearing got commenced on 11.12.2025, learned counsel appearing for respondents raised preliminary objection as to the maintainability of the writ petition on the ground of contractual nature of the dispute, although it was further submitted by learned counsel appearing for both sides that efforts toward an amicable settlement was underway. In view thereof, the matter got adjourned to facilitate the settlement talk in between parties.

14. On 16.03.2026, respondent no. 5 contended that the petitioner had sent a communication regarding surrender of the Toll Plaza, which showed that the petitioner had not submitted complete fact before the Court on initial dates of hearing while praying for the interim order in its favour. Learned counsel for the petitioner sought and granted time to verify the said factual assertion.

15. When the matter was again listed on 19.03.2026, learned counsel appearing for parties apprised the Court that substantial consensus had been reached on most of the terms of settlement, except with regard to the monetary component, and that a counter-offer was under consideration between the parties, due to which a short adjournemnt was prayed for and was granted. On 08.04.2026, the court was informed that the parties could not agree on terms of settlement, consequently, the hearing got commenced on the issue of jurisdiction and maintainability, particularly concerning whether respondent no. 5 fell within the ambit of ‘State’ under Article 12 of the Constitution of India.

16. Since pleadings between the parties had been exchanged, the matter was heard finally with consent of learned counsel for the parties. Submissions on the jurisdiction, maintainability of the writ petition as well as the merits were advanced together and heard at length. Upon conclusion of the arguments made by all the learned counsel representing various parties, on 24.04.2026 the judgment was reserved.

II

Submissions on Behalf of the Parties

17. Having heard Mr. Shashi Nandan, learned Senior Advocate assisted by Mr. Devansh Misra, representing the petitioner, Ms. Shweta Bharti, learned counsel assisted by Mr. Tanmay Sadh, representing respondent no.2, Mr. M.C. Chaturvedi, learned Senior Advocate assisted by Mr. Devendra Kumar, learned counsel for the NHAI, Mr. Pranjal Mehrotra, learned counsel for the Union of India and considering the submissions advanced on behalf of the respective parties we summarise below on preliminary objections as well as on merits.

(A) Submissions on behalf of Respondent No. 5 questioning Maintainability of Writ Petition

18. Three points have been raised questioning the maintainability of this petition. Firstly, (i) on the ground that respondent no. 5 is not a □State□ within the meaning of Article 12 of the Constitution of India, secondly, (ii) contract agreement being determinable one, parties are bound by privity of contract and thirdly, (iii) this Court lacked territorial jurisdiction.

(i) Respondent No. 5 is not a 'State'

19. Questioning the maintainability of the writ petition, learned counsel for the respondent Ms. Shweta Bharti contended that it was a contractual dispute in between petitioner and the respondent no.5. Ms. Bharti argued that the respondent no.5 was not a State within the meaning of Article 12 of the Constitution of India. It was submitted on behalf of the NSPPL that the genesis of respondent parties and their legal status was required to be seen before this Court embarked upon an enquiry as to the sustainibility of impugned orders.

20. Learned counsel submitted that the NHAI was constituted under the NHAI Act, 1988 for development, maintenance and management of national highways, with the object of ensuring transparency, competitive bidding and efficient implementation of contracts relating to national highway infrastructure. Learned counsel further submitted that the NHIT was established by NHAI on 19.10.2020 as an irrevocable infrastructure trust under the Indian Trusts Act, 1882 and was thereafter registered on 28.10.2020 as an Infrastructure Investment Trust under the SEBI (Infrastructure Investment Trusts) Regulations, 2014. Learned counsel also submitted that NHIIMPL was incorporated on 25.07.2020 for management and administration of the InvIT assets, whereas NHIPMPL was incorporated on 09.03.2021 for undertaking operations and maintenance of the trust assets.

21. It was further submitted that respondent no.5, NSPPL was incorporated on 08.03.2025 as a Special Purpose Vehicle (hereinafter referred as ‘SPV’) of NHIT. It was urged that the NHAI sponsored the trust but did not control as the investment was also made by private bank and other investors. NSPPL had entered into a concession agreements with NHAI under the Toll, operate and Transfer (hereinafter referred to as □ToT□) model for 20 years in respect to road stretch including the Muzaffarnagar’Haridwar’ section of NH-334. It was further submitted that in the financial year 2024-25, NSPPL paid an aggregate concession fee of about Rs.1661 cores to NHAI, in consideration of which NSPPL had the right to collect toll for 20 years starting from 01.04.2025 and was responsible for operation and maintenance of the project road. Pursuant thereto, tenders were invited on 29.05.2025 for providing manpower services for collection of user fee at the Chhappar Toll Plaza.

22. Raising a preliminary objection regarding maintainability, learned counsel submitted that the dispute arose entirely out of a private commercial contract entered in between the petitioner and respondent no. 5 and that the same did not involve any public law element warranting interference under Article 226 of the Constitution of India. Learned counsel vehemently opposed the writ petition while raising a preliminary objection that the Respondent No.5 did not fall within the ambit of □State□ under Article 12 of the Constitution of India.

23. It was submitted that respondent no. 5, NHIT Southern Projects Pvt. Ltd., was a private limited company incorporated on 08.03.2025 under the Companies Act, 2013, bearing CIN: U42101DL2025PTC444254. The alphabet indicator 'PTC' appearing in its CIN statutorily signified its status as a Private Company. Upon incorporation, Respondent No.5 acquired an independent legal personality and a separate corporate entity, completely distinct from its shareholders, promoters, or any other associated entity. Furthermore, the official Master Data of Respondent No.5, as available on the website of the Ministry of Corporate Affairs (MCA), categorically records its status as a non-government company. This statutory declaration conclusively reflects that Respondent No.5 is neither owned nor controlled by the Government in the manner contemplated for government companies, establishing that Respondent No.5 cannot be subjected to writ jurisdiction.

24. Respondents No.1 to 4 were neither decision-makers nor supervisory authorities in the impugned transaction, nor have they approved or sanctioned the tender or the impugned contract termination dated 26.06.2025. The petitioner had completely failed to establish any factual foundation demonstrating their involvement, and no statutory duty of Respondents No.1 to 4 had been breached, rendering their impleadment legally unsustainable and any executable order against them impossible.

25. Furthermore, the petitioner had intentionally impleaded these state actors to artificially clothe a purely private contractual dispute with a public law character. This is a misconceived attempt to mislead the Court for entertaining a purely contractual dispute under writ jurisdiction. The core matter was entirely a private contractual conflict between the Petitioner and respondent no. 5, which was a private entity standing completely beyond the definition of 'State' as provided under Article 12 of the Constitution of India.

26. It was further contended that the relationship between Respondent No.5 and NHAI is purely contractual and commercial in nature and that mere regulatory supervision does not convert a private entity into a □State□ within the meaning of Article 12 of the Constitution of India. It is the basic point of dispute which was to be seen and according to that particular nature of function, it is to be determined that whether an entity is to be considered as public entity or it is a private entity against which the writ cannot be issued.

27. Learned counsel placed reliance upon ***Kishor Madhukar Pinglikar Vs. Automotive Research Association of India (2023) 20 SCC 719 and R.S. Madireddy Vs. Union of India 2024 SCC OnLine SC 965*** to contend that deep and pervasive financial, functional and administrative control is a sine qua non for treating an entity as "State", whereas mere regulatory control is insufficient. Reliance was also placed upon ***ICSSSR Vs. Neetu Gaur 2025 SCC OnLine SC 593*** and ***Manoj Petroleum Vs. Union of India 2025 SCC OnLine All 1309*** in support of the aforesaid submissions.

28. Elaborating upon the preliminary objections, learned counsel for the respondent submitted that the Respondent No.3, NHIT, was merely a contributory irrevocable private trust set up under the Indian Trusts Act, 1882, and registered with SEBI under the Infrastructure Investment Trusts Regulations, 2014. NHAI did not exercise any operational, managerial, or day-to-day decision-making control over NHIT or its SPVs instead, their functioning is strictly governed by the SEBI InvIT Regulations, 2014. Crucially, once an asset stood monetized under this framework, NHAI did not possess any control over respondent no. 5, and the same was managed entirely by its independent Board of Directors. Therefore, the lack of deep and pervasive state control completely ousted the colorable claim of Article 12 applicability. Learned counsel appearing for NHAI also supported this contention.

29. Learned counsel further submitted that the dispute raised in the present writ petition pertained entirely to enforcement and continuation of a private commercial contract and is devoid of any public law element. It was argued that the petitioner is essentially seeking restoration of a contractual arrangement, which falls squarely within the realm of private law and cannot be agitated in writ jurisdiction. In support of the aforesaid contention, reliance was placed upon ***Joshi Technologies International Inc. Vs. Union of India (2015) 7 SCC 728, K.K. Saksena Vs. International Commission on Irrigation and Drainage (2015) 4 SCC 670*** and ***Ramakrishna Mission Vs. Kago Kunya (2019) 16 SCC 303.***

30. Learned counsel further contended that respondent no. 5 remained a purely contractual service provider, engaged for operational assistance under a commercial arrangement for which the payment is already made for 20 years, and there was absolutely no governmental control or delegation of sovereign function. The statutory framework, it is argued, governs the subject matter of the contract but does not alter the private character of the contracting entity or elevate it to the status of □State□ or an instrumentality thereof under Article 12 of the Constitution.

(ii) Agreement is Determinable Contract

31. Learned counsel for the respondent invited the attention of this Court to the fact that the agreement dated 26.06.2025 is determinable ex-facie on its face. Clause 10, sub-clause (i) of the agreement expressly reserves to the either-party an unconditional right to terminate the contract upon a 45 days' written notice. Because this right of exit is woven into the very fabric of the contract, NSPPL acted strictly within the four corners of the agreed mechanism by terminating the Manpower Services Agreement vide Termination letter dated 06.10.2025, following the expiration of the mandated notice period.

32. This termination was neither sudden nor arbitrary as NSPPL gave sufficient opportunities to the Petitioner to cure its persistent and documented breaches, which it miserably failed to do. The Termination letter explicitly cited eight prior communications including six explicit emails between July and August 2025, a Notice of Intention to Terminate dated 18.08.2025, and a subsequent non-compliance email dated 29.09.2025. This extensive record expressly evidences that the Petitioner's replies were fully considered, and a reasoned conclusion was reached that the underlying defaults remained unresolved, severely impacting project operations and statutory compliance.

33. The legal consequences of terminating such a determinable contract are unambiguous and non-negotiable under Section 14(d) of the Specific Relief Act (SRA), 1963, which categorically bars the specific performance of any contract that is, in its nature, determinable. It is a settled position of law, authoritatively affirmed by the Apex Court in ***Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and Others (1991) 1 SCC 533*** and recently reiterated in ***K.S. Manjunath and Ors. Vs. Moorasavirappa and Ors. (2025) SCC OnLine SC 2378,*** that if a contract is revocable by either party, the sole available remedy is the award of compensation or damages and not restoration, reinstatement, or compelled continuation.

34. Learned counsel for the respondent contended that, the petitioner’s prayer seeking to set aside the termination and judicially resurrect a determinable contract was fundamentally misconceived, legally impermissible, and relief that this Court ***in M/s Ambe Carrier & Another Vs. State of U.P. & Ors., WRIC. No. 45762 of 2014*** vide order dated 09.09.2014 had explicitly declined to grant under writ jurisdiction. No amount of equitable pleading could override this absolute statutory bar over the express objection of the terminating party.

(iii) Lack of Territorial Jurisdiction of this Court

35. Learned counsel for the respondent further opposed the maintainability of the petition by submitting that the present Writ Petition is not maintainable before this Court for absolute lack of territorial jurisdiction. It was contended that the core dispute arises out of an agreement with National Highways Invit Project Managers Private Limited, which was subsequently modified by a Corrigendum dated 02.05.2025. As per the revised Clause 19 of Section VI explicitly reproduced in the pleadings, the parties mutually agreed that the agreement shall be construed and interpreted in accordance with and governed by the Laws of India and Delhi shall have jurisdiction over all matters arising out of or relating to this agreement. This exclusive jurisdiction is further cemented by the amended Clause 20(d), which mandates that any dispute between the SPV and the

Contractor shall be referred to Delhi only. Consequently, the present petition is liable to be dismissed on the threshold of maintainability alone.

36. It was further submitted that this Court lacks territorial jurisdiction to entertain the present dispute. The parties have contractually agreed to confer exclusive jurisdiction upon the competent courts at Delhi under Clauses 19 and 20(d) of the GCC, a binding choice-of-court arrangement authoritatively upheld by the Apex Court in ***Swastik Gases Pvt. Ltd. Vs. Indian Oil Corporation Ltd. (2013) 9 SCC 32***. Having participated in the tender process without demur and accepted benefits thereunder, the Petitioner is legally estopped from challenging the terms of the contract under the principle that a party cannot approbate and reprobate.

37. Furthermore, applying the strict constitutional test under Article 226(2) as enunciated in ***National Textile Corporation Ltd Vs. Haribox Swaliram (2004) 9 SCC 786 and State of Goa v. Summit Online Trade Solutions (P) Ltd (2023) 7 SCC 791, a*** mere location of the toll plaza is an incidental fact that does not constitute a material, essential, or integral part of the cause of action. The true lis between the parties revolves entirely around two pivotal events i.e., the termination dated 06.10.2025 and the fresh tender dated 22.09.2025 both of which were initiated, issued, and made effective exclusively from Delhi. Consequently, the judgment in ***Maharashtra Chess Association Vs. State of Tamil Nadu (2020) 13 SCC 285*** is wholly inapplicable here, and jurisdiction vests in the High Court of Delhi on both contractual and constitutional grounds.

(B) Submissions on behalf of Petitioner meeting Preliminary Objections

38. At the outset Mr. Shashi Nandan, learned senior counsel submitted that the respondent no. 5 is an instrumentality of the State within the meaning of Article 12 of the Constitution of India and therefore the dispute is not a general contractual dispute in between two parties. He further submitted that the respondent no. 5 is described as a private company limited, but the true character of the company can only be seen after lifting the corporate veil.

39. To further support his arguments, he urged that the respondent no. 5 is, in substance, discharging a public function of the NHAI, learned senior counsel referred detailed statutory framework governing national highways. He further submitted that under the National Highways Act, 1956, particularly Sections 4, 7(1), 7(2), 8-A(1), 8-A(2), 8-A(3), 9 and 9(2)(a), all national highways vest in the Union of India, which retains sovereign authority over regulation, maintenance, and levy of user fees, while also being empowered to contract out operational functions. Learned counsel submitted it as a statutory control, and further referred Sections 2(e), 2(f), 2(g), 3, 4, 23, 28 and 38 of the Control of National Highway (Land and Traffic) Act, 2002, to demonstrate Central Government ownership over highway land.

40. Learned senior counsel further referred Sections 2(e), 2(f), 12, 14, 15 and 16(2)(a), 16(2)(d), 16(2)(e), 16(2)(f), 16(2)(g) and 16(2)(k) of the NHAI Act, 1988, which in general provide for transfer of assets and infrastructure to the Authority and expressly enables it to create agencies or entrust private entities with functions relating to construction, maintenance, and management of highways. Learned counsel also referred provisions of National Highway (Collection of Fees by Any Person) Rules, 1997, particularly Sections 3, 4, 6 and 7, read with Sections 2(b), 2(ii), 2(d) and

Rules 3, 5 and 9 of the National Highway (Rate of Fees) Rules, 1997, to contend that even where fee collection is undertaken through private contractors or franchisees, such collection is strictly on behalf of the Government of India and forms part of a regulated statutory scheme.

41. Learned senior counsel argued that upon piercing the corporate veil, it becomes evident that respondent no. 5 is merely a subsidiary and extension of NHIT, which itself has been constituted under the aegis of the NHAI as its sponsor. In support of his submissions, he demonstrated the shareholding structure of Respondent No.5, which, according to his submission, reflects that its entire shareholding vests in the NHIT in a way.

42. It was also pointed out by learned senior counsel that the tender process in question was undertaken by Respondent No.4, NHIPMPL, which is stated to be a subsidiary of NHIT and is disclosed in its Master Data as a government company. It was thus urged that the nomenclature of Respondent No.5 as a private company is only a mask and that, in substance, it functions as an extended arm of NHAI, a statutory authority constituted under law.

43. Learned senior counsel, while referring to the functions performed by the respondents, submitted that under Section 8-A of the National Highways Act, 1956, national highways vest in the Central Government. He further contended that the NHAI, being a statutory authority, has been established for the development, maintenance and management of national highways, which also includes collection of user fee (toll). Learned senior counsel further referred to Section 16 of the NHAI Act and submitted that the statutory scheme contemplates assignment of such functions to authorized operators for the purpose of efficient management and collection of the toll.

44. It was also contended that the Respondent No.5, discharges an important public function pertaining to the management and operation of national highways while acting on behalf of NHAI. Learned senior counsel submitted that Respondent No.5 enjoys a monopoly in inviting tenders and awarding contracts relating to collection of user fee at toll plazas, which directly impacts the public at large and, therefore, its actions are amenable to judicial review under Article 226 of the Constitution of India.

45. In this backdrop, it is urged that Respondent No.5 is not acting as a purely private commercial entity but is operating within a statutory and delegated framework of highway administration, thereby discharging functions which are public in nature and integrally connected with sovereign control over national highways.

46. In support of the proposition that even private entities discharging public functions are subject to writ jurisdiction, he placed reliance on ***BCCI Vs. Cricket Association of Bihar (2015) 3 SCC 251 and Zee Telefilms Ltd. Vs. Union of India (2005) 4 SCC 649***. Learned senior counsel further submitted that even in the contractual matters, arbitrary State action can be tested on the touchstone of Article 14 of the Constitution of India. In this regard, he relied upon ***M.P. Power Management Company Ltd. Vs. Sky Power South East Solar India Pvt. Ltd., (2023) 2 SCC 703.***

47. Mr. Shashi Nandan further argued that the contractual stipulations between the parties cannot curtail or oust the constitutional jurisdiction of the High Court under Article 226 of the

Constitution of India. He further argued that the exclusive jurisdiction clause of any agreement cannot operate as an absolute bar, particularly when a substantial part of the cause of action has arisen within the territorial jurisdiction of this High Court. To buttress his submission, he relied upon **Maharashtra Chess Association (supra).**

(C) Reply Submissions as to Maintainability by Respondent No. 5

48. Learned counsel Ms. Bharti submitted that various statutory provisions referred by learned senior counsel for the petitioner, are over stretched and proceeded on misreading of the statutory scheme governing national highways. It was urged that although national highways vested in the Union and were regulated under the National Highways Act, 1956 and other related enactments, such regulatory provisions did not automatically convert every entity engaged in execution of contracts relating to highways into an instrumentality of the State or a statutory authority.

49. Refuting the submissions made on behalf of the petitioner, learned counsel for the respondent submitted that the provisions relied upon under the NHAI Act, 1988 merely empower the Authority to undertake functions relating to development, maintenance and management of highways and to engage contractors or agencies for efficient execution of such tasks. However, such engagement was purely contractual in nature and did not result in delegation of sovereign or statutory power to the contractor or private company executing the work.

50. In answer to the submissions advanced by the petitioner, learned counsel for the respondent submitted that the National Highway (Collection of Fees by Any Person) Rules, 1997 and the National Highway (Rate of Fees) Rules, 1997 only regulate the manner in which user fee was to be collected and ensure uniformity in collection on behalf of the concessioning authority. It was contended that mere collection of user fee under a regulatory framework did not confer any statutory status upon the collecting agency, nor did it render such an agency a repository of public power.

(D) Submissions on behalf of Petitioner on Merits

51. Learned senior counsel submitted that pursuant to the notice dated 18.08.2025 issued under Clause 10(i) of the GCC, the petitioner submitted reply dated 18.09.2025 clarifying that minimum wages were being disbursed through direct bank transfer, and the percentage of local exemptions had been reduced. He also submitted that adequate welfare facilities had been extended to the deployed personnel, and all 129 staff members stationed at the toll plaza had been provided with the essential safety gear.

52. Mr. Shashi Nandan further submitted that the respondent authorities were satisfied with the explanation furnished by the petitioner and had verbally discharged the earlier notice, though no formal communication to the said effect was ever issued.

53. Learned counsel further submitted that the incident dated 19.09.2025 at the Chhappar Toll Plaza was an unforeseen act of civil commotion, which would fall within the ambit of the

force majeure clause contained in Clause 8 of the GCC. It was argued by Mr. Nandan that despite the disruption, the petitioner restored manpower deployment and resumed toll operations within eight to ten hours.

54. Assailing the subsequent actions of the respondents, learned Senior Counsel argued that although the show-cause notice dated 22.09.2025 granted three days time to the petitioner for submitting its response, the respondents, acting in a premeditated and arbitrary manner, floated a fresh tender bearing Tender No. 2025_NHAI_250002_1 for the identical work on the very same date, without awaiting expiry of the stipulated period and without considering the petitioner s explanation submitted through e-mail dated 23.09.2025.

55. It was further submitted that notwithstanding the issuance of the fresh tender, the petitioner continued to provide manpower services at the toll plaza in terms of the agreement dated 26.06.2025. Learned Senior Counsel also submitted that the respondents failed to clear the pending bills of the petitioner pertaining to the months of July and August 2025.

56. Learned Senior Counsel vehemently argued that the impugned termination order dated 06.10.2025 had been passed in a wholly arbitrary and mechanical manner and was vitiated for want compliance of the principles of natural justice. According to the petitioner, the said order was a non-speaking order passed without due consideration of the petitioner's reply and in complete disregard of the principles of natural justice.

57. It was thus contended that the entire course adopted by the respondents clearly demonstrated a predetermined intent to remove the petitioner, inasmuch as the process for inviting fresh bids had already been initiated even before expiry of the reply period granted under the show-cause notice. Learned counsel submitted that such action not only rendered the subsequent termination unsustainable in law but also struck at the very root of fairness in administrative decision-making. Mr. Shashi Nandan concluded his submission while placing reliance upon ***ABL International Ltd. Vs. Export Credit Guarantee Corporation of India Ltd (2004) 3 SCC 553***. Thus, according to him arbitrary action on the part of a State authority, even in matters arising out of commercial contracts, was amenable to judicial review under Article 226 of the Constitution of India.

(E) Reply Submissions on behalf of Respondent No. 5 on Merits

58. Learned counsel for the respondent invited the attention of this Court to the fact that the fresh tender notice dated 22.09.2025 was legally issued prior to the final termination letter and the same cannot be seen as pre-meditated and it was infact necessary to be advertised considering the critical, round-the-clock nature of toll operations, which require uninterrupted functioning and cannot be left unattended.

59. Learned counsel placed reliance upon ***Radha Krishna Agarwal Vs. State of Bihar (1977) 3 SCC 457*** to contend that rights arising purely out of contractual obligations cannot ordinarily be enforced through writ jurisdiction unless a statutory obligation is involved. Reliance was also placed upon ***Pimpri Chinchwad Municipal Corporation Vs. Gayatri Construction***

Company, (2008) 8 SCC 172, to contend that disputes relating to interpretation and enforcement of contractual terms are matters falling within the domain of civil courts or arbitration proceedings. Learned counsel further relied upon Bareilly ***Development Authority Vs. Ajai Pal Singh, (1989) 2 SCC 116*** and submitted that where a contract is non-statutory and governed solely by its contractual terms, no writ can ordinarily be issued for enforcement of contractual rights or for remedying an alleged breach thereof.

60. Learned counsel submitted that an agreement was executed between the petitioner and respondent no. 5 at Delhi and a subsequent work order was issued directing commencement of services from 11.07.2025. Inviting attention to the contractual stipulations, learned counsel submitted that the agreement expressly required the contractor to maintain the highest standards of ethics and abstain from corrupt or fraudulent practices. It was argued that Clause 10 of the contract specifically empowered either party to terminate the agreement before expiry of the stipulated term by giving a 45-day written notice. The said clause further entitled the SPV to procure services from another agency at the risk and cost of the contractor in case of breach of contractual obligations, apart from encashing the performance security and debarring the contractor.

61. Learned counsel for the respondent proceeded to place reliance upon Clause 28 of the GCC to contend that in the event of abandonment of user fee collection by the contractor, the SPV was fully empowered to take over the toll plaza and terminate the contract. Learned counsel submitted that the petitioner□s performance remained highly unsatisfactory from the inception of the contract period and repeated instances of non-compliance were noticed by the authorities. Consequently, a notice dated 18.08.2025 was issued under the GCC proposing termination of the contract, to which the petitioner submitted a reply on 18.09.2025.

62. It was further submitted that while consideration of the petitioner□s reply was pending, a serious incident occurred on 19.09.2025 and 20.09.2025 at the Chhappar Toll Plaza. According to the respondents, the petitioner□s employees staged a protest following the death of one employee and completely abandoned the toll plaza, resulting in stoppage of toll collection and free passage of vehicles, thereby causing substantial financial losses to the authority.

63. Learned counsel submitted that in view of the aforesaid incident and the petitioner's inability to ensure uninterrupted toll operations, a further show-cause notice dated 22.09.2025 was issued to the petitioner. It was contended that user fee collection on national highways is an essential and time-sensitive public function and, therefore, in order to ensure continuity of toll operations and prevent further financial losses, Respondent No. 4 took a conscious decision to initiate a fresh tender process for engagement of another agency.

64. It was argued that the fresh tender process was initiated strictly in accordance with the contractual terms and after following due process of law, without any illegality or procedural infirmity. Learned counsel further submitted that upon culmination of the tender process, LoA dated 01.10.2025 was issued in favour of the successful bidder, namely South Asian Tollways Pvt. Ltd. Thereafter, the petitioner□s contract was formally terminated vide order dated 06.10.2025 and the petitioner was directed to vacate the site by 07.10.2025. It was submitted that a fresh agreement

with the newly selected agency was executed on 07.10.2025 to ensure uninterrupted movement of traffic and smooth collection of toll revenue.

65. Defending the validity of the termination order dated 06.10.2025, learned counsel submitted that the same is a detailed and reasoned order which specifically refers to prior communications exchanged between the parties, records the various defaults committed by the petitioner with reference to the relevant contractual clauses, and also notes that the petitioner□s explanations furnished during the notice period were considered but found unsatisfactory. In support of the aforesaid submission, reliance was placed upon ***S.N. Mukherjee Vs. Union of India, (1990) 4 SCC 594,*** and ***Cyril Lasrado Vs. Juliana Maria Lasrado, (2004) 7 SCC 431***, to contend that the impugned order satisfies the requirement of a speaking order in law.

66. Clarifying the sequence of events, learned counsel submitted that the fresh tender dated 22.09.2025 was a pre-emptive measure necessitated to ensure continuity of toll operations and the same was not issued solely on account of the show-cause notice dated 22.09.2025 under Clause 28 of the GCC. According to the respondents, the process for inviting fresh bids had already been triggered pursuant to the earlier notice of intention to terminate dated 18.08.2025 issued under Clause 10 of the GCC.

67. Learned counsel further submitted that the petitioner has suppressed material facts from this Court and, therefore, the writ petition deserves dismissal on the ground of lack of bona fides alone. It was contended that the petitioner failed to disclose that the tender process initiated through the NIT dated 22.09.2025 had already culminated in finalization of bids on 01.10.2025 and that physical tolling operations had already been handed over to the newly appointed agency at 8am on 07.10.2025. According to the respondents, interim protection was obtained by the petitioner without disclosing the aforesaid developments to the Court.

68. Referring to subsequent developments, learned counsel submitted that the petitioner has also challenged termination notice dated 31.01.2026 through an amendment application allowed at later stage of hearing, i.e., on 24.04.2026. It was argued that the said subsequent termination was independently issued under Clause 16 of Section VI of the GCC on account of continued defaults committed by the petitioner even after reinstatement pursuant to the interim order dated 26.11.2025 passed by this Court. According to the respondents, despite a warning dated 18.12.2025, the petitioner continued to commit defaults resulting in financial losses exceeding Rs. 3 crores to Respondent No.5 and, therefore, subsequent challenge introduces an altogether fresh cause of action beyond the scope of the original writ petition.

(F) Submissions on behalf of Respondent No. 2 (NHAI)

69. Learned counsel appearing for respondent no. 2 has supported the arguments advanced on behalf of respondent no. 5, both on count of maintainability of the writ petition before this Court questioning the status of respondent no. 5 as a □State□ and also the parties to the contract being under obligation on principle of privity of contract. Reliance was placed upon various authorities cited by respondent no. 5.

III

Points for Determination

70. In the light of the pleadings on record and submissions advanced by learned counsel for the parties, the following questions arise for consideration in this petition under Article 226 of the Constitution of India:

i. Whether Respondent No.5 falls within the judicial review under Article 226 of the Constitution, and whether it can be treated as □State□ or an instrumentality thereof under Article 12 of the Constitution of India.

ii. Whether the dispute arises out of a purely commercial contract or whether the impugned actions in the facts of the present case disclose any element of public function, and if so, whether the issuance of Notice Inviting Tender dated 22.09.2025 and termination of contract dated 06.10.2025 are open to judicial review.

iii. Whether this Court has territorial jurisdiction under Article 226(2) of the Constitution, having regard to the place of cause of action and the effect of the jurisdiction clause conferring exclusive jurisdiction on courts at Delhi.

IV

Discussion and Analysis

71. Having heard learned counsel for the parties and upon consideration of the pleadings and material brought on record, we proceed to examine points before this court for determination but before adverting to point-wise consideration, it is noted that learned counsel for the parties have relied upon several judicial precedents in support of their respective submissions, which have already been noticed in the above paragraphs of this judgment. The Court has duly considered all judgements cited by parties, however, to avoid repetition, the discussion and analysis herein is based upon all the submissions, pleadings on record and judgments cited by parties, without referring them individually again unless the reference to the same in firm necessity by us.

72. During the course of hearing, main objection had been raised by the respondents regarding maintainability of the writ petition, the nature of the dispute, and the jurisdiction of this Court in the facts of the case. Since these objections go to the root of the matter, they are being considered first.

(i) Maintainability in the Context of Article 12

73. Learned senior counsel appearing for the petitioner had submitted that Respondent No.5 was engaged in toll operations on a National Highway, which is a public utility activity, and therefore discharges functions having a clear public character. It is contended that toll collection directly affected the public at large, and consequently, the actions of Respondent No.5 cannot be

kept outside the purview of judicial review under Article 226 of the Constitution. In support of his above submissions, he took us to a number of provisions of the National Highway Act, 1956, the Control of National Highways (Land and Traffic) Act, 2002, the National Highways Authority Act, 1988, the National Highways (Collection of Fees by any Person for the Use of Section of National Highways/Permanent Bridge/Temporary Bridge on National Highways) Rules, 1997 and the National Highway (Rate of Fees) Rules, 1997 which we have already referred to above.

74. On the other side, respondents have raised a preliminary objection that respondent no. 5 was a private limited company, having no governmental shareholding or deep and pervasive control by the State, which was necessary for the writ jurisdiction. It was submitted that its relationship with the NHAI was purely contractual in nature, and a mere fact that it was engaged in highway-related operations, did not alter its private character so as to bring it within the ambit of Article 12 of the Constitution.

75. It is well settled in a catena of judgements of the Supreme Court that the scope of judicial review under Article 226 is wider than the definition of "State" under Article 12, and in appropriate cases even a private body may be amenable to writ jurisdiction if it discharges statutory functions or performs duties having public law consequences. However, every activity connected with public infrastructure does not, by itself, acquire a public law character so as to invite writ jurisdiction in all disputes arising therefrom.

76. The Court is required to examine the real nature of the relationship between the parties and also the source of the impugned action. In the present case, the rights and obligations inter se the parties arise out of the agreement dated 26.06.2025. The grievance relates to issuance of Notice Inviting Tender, alleged breaches, and consequent termination of the contract. If we look at complete ambit of the dispute, none of these actions are shown to be traceable to any statutory or sovereign power exercised by respondent no. 5. Main function of the company is toll collection but the genesis of the dispute is breach of contract and nothing, which can be referable to the public function under which the dispute has occurred. Reference here may be heard of ***Bareilly Development Authority (Supra).***

77. After careful perusal of records, submissions by counsel, going through laws, provisions of National Highway Act, 1956, the Control of National Highways (Land and Traffic) Act, 2002, the National Highways Authority Act, 1988, the National Highways (Collection of Fees by any Person for the Use of Section of National Highways/Permanent Bridge/Temporary Bridge on National Highways) Rules, 1997 and the National Highway (Rate of Fees) Rules, 1997 and going through cited judgements on these relevant issues by both sides, we are of the considered view that merely because the contract pertained to toll collection on a National Highway it does not by itself would convert the dispute into a dispute involving public law. The record does not indicate that respondent no. 5 is financially, functionally, or administratively dominated by the □State□ so as to satisfy the tests under Article 12. Looking to the structure of bodies created and incorporated as we find that there is absolutely no control by NHAI and the company has invested its money, and the contract is made because the investment is for collecting toll for 20 years to make profit out of that investment after recovering its investment cost, which is already paid. For reference see the case of ***ICSSSR (Supra) and Manoj Petroleum (Supra).***

78. In this regard, reference may also be made to the decision of the Supreme Court in S. Shobha v. Muthoot Finance Ltd., 2025 SCC OnLine SC 177, wherein the Supreme Court reiterated that the crucial test for determining amenability to writ jurisdiction is the nature of the function being discharged and the existence of a public duty in relation to the impugned action. The Supreme Court observed that merely because a private body is subject to statutory regulation or operates in a regulated field, it does not ipso facto become "State" under Article 12. It was held that a writ would lie against a private body only where the action complained of, bears a direct nexus with discharge of a public duty or statutory obligation. Relevant paragraphs are reproduced hereinbelow:

"8. A body, public or private, should not be categorized as "amenable" or "not amenable" to writ jurisdiction. The most important and vital consideration should be the "function" test as regards the maintainability of a writ application. If a public duty or public function is involved, any body, public or private, concerned or connection with that duty or function, and limited to that, would be subject to judicial scrutiny under the extraordinary writ jurisdiction of Article 226 of the Constitution of India.

9. We may sum up thus:

"(3) Although a non-banking finance company like the Muthoot Finance Ltd. with which we are concerned is duty bound to follow and abide by the guidelines provided by the Reserve Bank of India for smooth conduct of its affairs in carrying on its business, yet those are of regulatory measures to keep a check and provide guideline and not a participatory dominance or control over the affairs of the company.

(4) A private company carrying on banking business as a Scheduled bank cannot be termed as a company carrying on any public function or public duty.

(5) Normally, mandamus is issued to a public body or authority to compel it to perform some public duty cast upon it by some statute or statutory rule. In exceptional cases a writ of mandamus or a writ in the nature of mandamus may issue to a private body, but only where a public duty is cast upon such private body by a statute or statutory rule and only to compel such body to perform its public duty.

(6) Merely because a statue or a rule having the force of a statute requires a company or some other body to do a particular thing, it does not possess the attribute of a statutory body.

(7) If a private body is discharging a public function and the denial of any rights is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial but, nevertheless, there must be the public law element in such action.".

(emphasis supplied)

79. Applying the aforesaid principles to the facts of the present case, mere engagement of Respondent No.5 in toll operations on a National Highway, or the existence of a statutory framework regulating such activity, would not by itself render every contractual dispute amenable to writ jurisdiction. What remains material is whether the impugned action in the present dispute involves discharge of any public duty or exercise of public function, or whether it essentially arises from assertion of contractual rights and obligations under a commercial arrangement.

80. It is also an undisputed fact that the contract between the parties contains a dispute resolution clause for resolution of disputes arising therefrom. The issues raised primarily concern alleged breaches of contractual obligations and termination under the agreement, which clearly fall within the domain of private law remedies.

(ii) Nature of Contract and Scope of Writ Jurisdiction

81. The next point is whether the dispute is purely contractual in nature or whether the impugned actions disclose any element of public function so as to warrant interference under Article 226.

82. Learned counsel for the petitioner has submitted that the issuance of Notice Inviting Tender dated 22.09.2025 was premature and undertaken before expiry of the time granted to respond to earlier communications, which showed that respondent no.5 had acted against petitioner with premeditated mind. It was further contended that the termination order dated 06.10.2025 was arbitrary and pre-decided, as the steps to give contract to another agency commenced even before completion of the contractual process.

83. The respondents, on the other hand, refuted the above-mentioned allegations and contented that the petitioner committed repeated defaults in performance of contractual obligations, resulting in disruption of toll operations, which was the work, which had to be continuously ongoing. Unless the new contract was invited to takeover, the old one could not be relieved and in the light of this, it was further urged that the contract itself contained express provisions enabling termination and substitution in case of breach, and the impugned actions were traceable to such contractual stipulations.

84. After perusal of contract, we have noticed that the terms of the GCC governing the relationship between the parties contains a force majeure clause which provides that neither party shall be deemed to be in default in performance of its obligations if such performance is prevented or delayed due to events beyond reasonable control, including but not limited to acts of God, natural calamities, epidemic conditions, governmental action, or judicial orders. The clause further stipulates a mechanism requiring the affected party to issue notice within a stipulated period and contemplates consultation between the parties in the event such conditions continue beyond a specified duration, including the possibility of early termination.

85. Further, the contract also contains an express termination clause empowering either party to terminate the agreement upon prior notice. In addition, the contract contemplates termination for just cause, including breach of terms, violation of conditions, or suppression of

facts, coupled with consequences such as risk-and-cost arrangements, imposition of penalties, forfeiture of security deposits, and other commercial consequences flowing from default. The agreement also provides for penal consequences in cases of excess fee collection or violation of operational norms, including forfeiture and debarment from future assignments.

86. The existence of such detailed contractual mechanisms indicates that the relationship between the parties is structured as a determinable commercial arrangement governed by mutually agreed terms, including remedies for breach and exit options. The dispute arising between the parties is thus required to be examined in the backdrop of such clear stipulations in the contract while assessing whether there is something actually warranting judicial review under Article 226.

87. It is well settled principle of law that mere allegation of arbitrariness in a contractual matter does not change the nature of dispute. Judicial review under Article 226 is not intended to be exercised for enforcement or escape from the contractual rights, obligations or adjudication of disputed questions arising from commercial agreements, except where arbitrariness or statutory obligation is involved. Reference here may be made to the authority of ***Radha Krishna Agarwal (supra).***

88. In the present case, the dispute revolves around performance of contractual obligations, alleged breaches, issuance of notices, invocation of termination clauses, and consequential commercial arrangements. These issues necessarily involve disputed questions of fact and interpretation of contractual terms, which is clearly in the ambit of private law dispute and writ jurisdiction cannot be invoked for resolution. See the cases of ***Pimpri Chinchwad Municipal Corporation (supra), Joshi Technologies International Inc. (supra), K.K. Saksena (supra) , and Ramakrishna Mission (supra).***

89. The contract is determinable in nature and contains a dispute resolution clause for resolution of disputes. The petitioner, in effect, seeks restoration of a terminated commercial arrangement, which falls clearly within the realm of private law. ***[Bareilly Development Authority (supra)].***

(iii) Territorial Jurisdiction

90. The respondents have raised an objection regarding territorial jurisdiction as well, which is raised after relying upon the clause in the agreement conferring exclusive jurisdiction upon courts at Delhi. It is submitted that the impugned decisions were taken at Delhi and, therefore, this Court lacks jurisdiction. The GCC contains provisions relating to dispute resolution and jurisdiction. Clause 20 of the General Conditions originally provided for resolution of disputes through competent courts, with an earlier stipulation indicating jurisdiction within the respective State. The said clause was subsequently modified by corrigendum dated 02.05.2025. By virtue of the said corrigendum, it has been stipulated that any dispute or difference arising out of or in connection with the contract shall be subject to the jurisdiction of Delhi.

91. Learned counsel appearing on behalf of the respondent, while opposing the writ petition, had submitted that this court did not have territorial jurisdiction to entertain this matter. It

is well settled law that parties cannot, by agreement, take away the constitutional rights and, therefore, jurisdiction of a High Court under Article 226 of the Constitution cannot be taken away by any agreement in between parties. But this cannot be seen as such jurisdiction related clauses in the agreement are not relevant for understanding the contractual intention of the parties and the forum contemplated for adjudication of disputes although the jurisdiction under Article 226 falls on different footing. The effect of the jurisdiction clause in the agreement is to be examined in light of Article 226(2) of the Constitution and the place where a part of the cause of action arises.

92. In the present case, the toll plaza is situated within the State of Uttar Pradesh, where the contractual operations were carried out. The alleged defaults, operational incidents, and consequences arising from the impugned termination are all substantially connected with the said location. Accordingly, a material and integral part of the cause of action has arisen within the territorial jurisdiction of this Court. The jurisdiction clause contained in the agreement, even as modified, cannot override the constitutional mandate under Article 226(2), and the objection raised by the respondents is therefore rejected.

V

Conclusion

93. Upon consideration of the pleadings, submissions, and materials on record, and for the reasons recorded in the foregoing discussion, we are of the considered view that the dispute can still be of the nature involving private law remedies even if the activity of the company is in a nature of public function. The overall function of the company and the point of dispute can be seen separately yet in totality to determine its real nature and the available alternate remedy. The cases of ***ABL International Ltd. (supra), Zee Telefilms Ltd. (supra) and BCCI (supra)*** are not applicable on facts and circumstances of the present petition and accordingly are found to be of no help to the petitioner.

94. Respondent no. 5 cannot be treated as State or an instrumentality thereof within the meaning of Article 12 of the Constitution, as the relationship between the parties is governed by a purely contractual arrangement. No material has been placed on record to indicate any substantial and effective governmental control, nor is there anything to suggest that respondent no. 5 exercises statutory or sovereign power in the discharge of its functions and the dispute is arising in the course of that function. The mere fact that the contract pertains to toll operations on a National Highway, by itself, is insufficient to alter the essentially private and contractual character of the arrangement under which the dispute occurred, which is clearly due to contractual dispute.

95. The provisions of the National Highways Act, 1956, the Control of National Highways (Land and Traffic) Act, 2002, the National Highways Authority of India Act, 1988, the National Highways (Collection of Fees by any Person for the Use of Section of National highways/permanent Bridge/temporary Bridge on National Highways) Rules, 1997 and the National Highway (Rate of Fees) Rules, 1997 that have been cited by learned Senior Advocate, are in our considered view, regulatory measures to lay down guidelines for National Highway Authority to acquire the land for constructing National Highways, its procedures, design and also

its regular maintenance by creating toll plazas to charge user fee. Thus, even if from principles that have been basic in nature to govern contract's term, it would not make such contract statutory in nature and would certainly not take away its determinable character. Parties, therefore, would continue to govern by principles of privity of contract. In many cases, Government outsources its work, though statutorily such work is governmental task which is in duty for it to discharged, an outsourced agency may further enter into a contract with an individuals a service providers for human workforce. This man power resource agreement, therefore, would certainly fall in a realm of pure private determinable contract to bind the parties under the terms of contract, their rights to walk out of it and so also resolution of factual disputes through dispute resolution clause provided under the agreement. The work, though is essentially on the guidelines provided by the Government, it would still not be involving a public law element. The argument as advanced by learned Senior Advocate appearing for the petitioner if accepted, it would frustrate the dispute resolution clause provided under the contract and would create unnecessary invade in the obligations governed by the privity of contract. So even while piercing the corporate veil, we do not see the contractual obligations created under the contract between the respondent no. 5 and the petitioner, to be in any manner bringing any public law element to the nature of work to be executed by such second party to the agreement. Collection of user fee as a rule under the guidelines, would still stand governed by the terms of the contract on solemn principles of privity of contract between the parties.

96. A company may perform a public duty in general, but the writ court does not automatically enter every dispute arising out of it. What is material is whether the impugned action in the specific dispute is an exercise of public function or merely an assertion of contractual or commercial rights. Even where an entity is engaged in activities of a public character in a broader sense, such as toll collection on a national highway, the present controversy may still remain purely contractual in nature, concerning issues such as termination of contract, alleged breach, and substitution of new agency, and therefore fall outside the scope of writ jurisdiction. The dispute in the present case pertain to enforcement of contractual terms, which are appropriately referable to alternative remedies. Accordingly, the matter does not warrant exercise of extraordinary writ jurisdiction under Article 226.

97. A breach of contract by a party to the contract whether maliciously or by way of arbitrary exercise of power contrary to the provisions reached under the agreement, would still invite an actionable claim under ordinary civil law for which forum of a court of competent jurisdiction is always there, and/or also resolution of disputes by invoking dispute resolution clause.

98. Here in this case, we are conscious of this fact that pleadings have also been exchanged on merits of the case but any attempt or venture by us to embark upon an enquiry as to the rival contentions advanced on the determination of contract, would require us to appreciate not only bare facts but the evidence that are to be placed before us. The fact in issue relevant to the controversy raised relates to the discharge of duty/obligations by second party to the contract, not being in terms of the agreement and this requires in depth appreciation of evidence to be led by the parties. This Court being a Court of records would certainly be inviting pleadings based on admitted positions where of course, the Court would not require to conduct any trial to appreciate the documents led in evidence, more especially in the circumstances, when a an alternative dispute resolution is

prescribed and provided and the parties have voluntarily entered an agreement to bind themselves by the said clause under the agreement. We find this case to be involving serious disputed questions of facts as to the issue raised regarding non-discharge of duties as per the terms of the contract by the second party. We may add here that there is no quarrel as to the principle of law cited before us through various authorities but the question is as to whether in a given facts and circumstances, those principles would warrant interference by this Court in exercise of it power of judicial review under Article 226 of the Constitution of India. We have already discussed above that the disputed questions of facts have been raised and, therefore, even though principles are not questionable, we do not find those judgments to be of any help to the petitioner in maintaining this petition on merits by passing forum of dispute resolution.

99. It is further worth noticing that the contract under the agreement was to provide services for a period of 1 year plus 12 months extension subject to satisfactory performance. The contract was entered between the parties on 26.06.2025 and came to be terminated, in mid term by respondent no. 5. Though the petitioner□s contract was terminated, mid term, by respondent no. 5 on 06.10.2025, however, pursuant to the interim orders dated 04.11.2025 and 26.11.2025 passed by this Court, Petitioner has been made to continue until today i.e. 22.05.2026, so almost they have continued a month less than 1 year. Had the petitioner continued under the contract in ordinary course, their extension would have been done only subject to satisfactory work. The respondents have questioned the satisfactory work by the petitioner by issuing show cause notice. Thus, it becomes question of appreciation of defence set up by the petitioner for which an appropriate forum would be to adopt dispute resolution mechanism.

100. In our considered view, the objection regarding territorial jurisdiction cannot be accepted. It is noted that this Court has jurisdiction under Article 226(2) of the Constitution, as a substantial and integral part of the cause of action has admittedly arisen within its territorial limits. The dispute relates to contractual operations carried out at the toll plaza situated within the State of Uttar Pradesh, and the alleged defaults, incidents, and consequences flowing from the impugned actions are closely connected with the said location. In these circumstances, the mere fact that certain decisions were taken or communications were issued from Delhi, or that the agreement contains a jurisdiction clause in favour of courts at Delhi, cannot have the effect of excluding the constitutional jurisdiction of this Court. It is well settled that such contractual clauses cannot oust or curtail the jurisdiction conferred under Article 226 of the Constitution. Accordingly, the objection is rejected.

VI

Order

101. In view of the above discussions and conclusion, on each of the points for determination, no case for interference under Article 226 of the Constitution is made out. Accordingly, we decline to grant indulgence in the petition to interfere on merits. However, it is always open for the petitioner to avail the alternative remedies as otherwise available in law.

102. Accordingly, the writ petition fails and is **dismissed**, subject to observations made hereinabove. Interim order, if any, stands discharged. Consequences to follow.

103. No order as to costs.

(2026) 5 ILRA 2244
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.05.2026

BEFORE

THE HON'BLE NEERAJ TIWARI, J.
THE HON'BLE SUDHANSHU CHAUHAN, J.

Writ C No. 39695 of 2022

Ravi **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue(s) for consideration

From which date does the 10-year tenure and the liability to pay rent/fees commence when physical possession of a leased public property is delayed due to major structural repairs carried out by the lessor?

Headnotes

A. Property/Tenancy Law – Indian Contract Act, 1872: Section 52, 54 - In October 2013, Zila Panchayat, Jhansi invited bids to run a marriage hall at the Inspection House (Dak Bangla Bhavan) for a 10-year term. The petitioner won the auction and executed an agreement on 05.12.2013. The contract specified that the 10-year tenure would begin from the date the *charge/possession* was handed over. Despite multiple court orders and contempt petitions filed by the petitioner to obtain possession, Zila Panchayat failed to hand over the hall. Instead, via a letter dated 14.11.2022, Zila Panchayat informed the petitioner that they had cancelled the original resolution and intended to refund his deposit.

The petitioner filed this writ petition challenging the cancellation letter. In February 2023, the High Court stayed the cancellation. Subsequently, both parties renegotiated: the petitioner agreed to pay a 20% enhanced rate over the 2013 agreed fee to reflect increased market value, and Zila Panchayat agreed to hand over possession (via letter dated 03.04.2023). Upon inspection in April 2023, the hall was found to be in a ruined state and unusable. The petitioner requested structural repairs. Consequently, Zila Panchayat sanctioned a repair budget (~₹20.17 Lakhs) and issued work orders in August 2023. The repair work was completed in September 2025.

The Dispute over Start Date: As per Zila Panchayat**,** claimed possession was legally transferred on 03.04.2023, and therefore they demanded payment from that date. Whereas according to petitioner, he took actual physical possession in January 2026 under protest and argued that payment obligations and the 10-year tenure should only run from January 2026, as the property was uninhabitable prior to that.

B. Section 52 deals with situations where the sequence in which the reciprocal promises are to be performed is a factor. The section states that if the contract explicitly fixes the order of performance, then the promises be performed in that sequence. Further it emphasizes the necessity of establishing a clear sequence of action within a contractual framework to ensure the orderly progression of obligations and to prevent premature demands for performance from either party. (Para 27)

C. Section 54 deals with situations where performance of one reciprocal promise is inherently dependent upon prior performance of another promise within the same contract. This Section stipulates that if the promisor of the promise that should be performed first fails to fulfill their obligation, they cannot then claim the performance of the reciprocal promise from the other party. Moreover, the defaulting promisor is also liable to make compensation to the other party for any loss that may incur as a consequence of the non-performance of a precedent obligation of the contract. **This Section clearly establishes a cause and effect relationship between the non-performance of a precedent obligation and the subsequent rights and liabilities of the other party involved in the reciprocal promise.** (Para 28)

Hence, as per above provisions and from the perusal of the agreement dated 05.12.2023, it is evident that the agreement was to commence from the date of handing over the charge of the marriage hall to the petitioner. Thus, **handing over of the charge of the marriage hall is a condition precedent for the petitioner becoming liable for payment of amounts to the respondent no.3- panchayat,** the same being evident from the nature of transaction. Such being the legal position the petitioner would be liable to pay the amounts to the respondent no.3 when the charge of the marriage hall was handed over to the petitioner in January 2026. (Para 29)

However, **the petitioner was aware that the marriage hall was in functional condition in September 2025 itself, still the petitioner took charge of the marriage hall in January 2026. Hence, the petitioner is himself liable for this delay and the respondents cannot be held responsible for the same.** Thus, the petitioner would be liable to pay an enhanced amount as mutually agreed upon with the respondent no.3-panchayat in terms of the agreement from September 2025 and the tenure of the agreement so executed between the parties for ten years would also commence from September 2025. (Para 30)

Writ petition is disposed of. (E-4)

List of Acts

Indian Contract Act, 1872.

List of Keywords

delay, functional, precedent, obligation, subsequent, right, reciprocal, promise, contract, sequence.

Appearances for Parties

For Petitioner(s): Kabeer Tiwari, Sanjeev Kumar Pandey, Subhash Chandra Maurya, Sr. Advocate
For Respondent(s): C.S.C., G.S. Chauhan

(Delivered by Hon'ble Sudhanshu Chauhan, J.)

1. Short counter affidavit filed on behalf of respondent nos 3 to 5 is taken on record.

2. Heard Shri Anil Tiwari, learned Senior Advocate assisted by Shri Kabeer Tiwari, learned counsel for the petitioner and learned Standing Counsel for the respondent no. 1 and 2 and Shri G.S. Chauhan, learned counsel for the respondents no. 3 to 5.

3. The present petition has been filed being aggrieved by the letter dated 14.11.2022 by means of which the petitioner has been informed that resolution no. 8 has been cancelled in the meeting held on 22.10.2022, in pursuance to the said resolution marriage hall of Zila Panchayat, Jhansi had been allotted in favour of the petitioner for a tenure of 10 years and an agreement dated 05.12.2013 was executed between the parties.

4. The facts involved in the present controversy are that an auction notice dated 24.10.2013 was published for running a marriage hall situated in the campus of Inspection House (Dak Bangla Bhavan), Jhansi belonging to Zila Panchayat, Jhansi-respondent no.3 for a tenure of 10 years. The petitioner along with four others had submitted their bids in pursuance to the tender notice/ advertisement. Subsequently vide the letter dated 23.11.2013 the petitioner was called upon to deposit the requisite stamp duty for the purposes of execution of an agreement for ten years in respect of the marriage hall on payment of Rs. 28,12,500/-, in pursuance thereto the petitioner had deposited the requisite stamp duty.

5. Ultimately an agreement dated 05.12.2023 was executed between the parties in respect of the marriage hall for a tenure of ten years on payment of an amount of Rs. 25,12,500/-. Under the agreement the petitioner was required to deposit the amount due on six monthly basis and the amount so payable was to increase on three yearly basis. Further under the agreement, the construction work was to be carried out by the respondent no.3 panchayat and it was not open for the petitioner to carry out any structural changes without the consent of the respondent no. 3.

6. However, as the possession of the marriage hall was not handed over to the petitioner despite substantial passage of time, even after requests made in that regard. Hence, the petitioner approached this court by filing Writ C No. 31841 of 2015 and the said writ petition was disposed of vide the order dated 28.05.2015 directing the Competent Officer of the Zila Pancyayat, Jhansi to pass appropriate orders and finalize the matter. However, as no decision was taken by the respondents despite the directions of this Court, the petitioner was constrained to file Contempt Application (Civil) No. 5114 of 2015 and the same was disposed of vide the order dated 24.08.2015, granting one more opportunity of three weeks to the respondent no.3 to comply with the order dated 28.05.2015.

7. Thereafter the petitioner made repeated efforts wherein, a request was made to handover the possession of the marriage hall to the petitioner but the same were of no avail. Subsequently, Contempt Application (Civil) No. 5031 of 2020 was filed by the petitioner in pursuance to the order dated 24.08.2015 but the same was dismissed being barred by time. In the meanwhile the petitioner on 23.10.2022 came to know through a news paper article that the respondents were going to cancel the agreement in respect of the marriage hall.

8. Ultimately vide the impugned letter dated 14.11.2022 the petitioner was informed that the decision had been taken in the meeting of the respondent no. 3-panchayat held on 22.10.2022 to cancel resolution no. 8 in pursuance to which the agreement was executed in favour of the petitioner and the petitioner was also called upon to collect the amounts deposited in lieu of the agreement.

9. The petitioner being aggrieved by the letter dated 14.11.2022 has filed the present writ petition.

10. This Court vide the order dated 15.02.2023 had kept the letter dated 14.11.2022 in abeyance and had further directed that no third party rights shall be created in respect of the marriage hall in question. In pursuance to the order dated 15.02.2023 passed by this Court the

petitioner was called upon vide the letter dated 06.03.2023 to submit his offer in respect of the amount the petitioner was willing to pay in pursuance to the agreement dated 05.12.2023, in view of the fact that the market value of the property had substantially increased during this while. The petitioner in response thereto vide the letter dated 15.03.2023 had informed that the petitioner was willing to pay an enhanced amount of 20% over and above that was agreed under the agreement.

11. Thereafter the respondent no.3 vide the letter dated 03.04.2023 had agreed to hand over the charge/ possession of the marriage hall to the petitioner subject to enhancement of the amount agreed by 20%. However, when the petitioner reached the marriage hall to take it?s possession, the petitioner came to realise that the marriage hall was in dilapidated condition requiring major repairs and it was not possible for the petitioner to operate the same. Hence, the petitioner vide the letter dated 12.04.2023 had informed the respondent no. 3 regarding the poor structural condition of the marriage hall and had requested that the same should be brought in a working condition and also the fact that the petitioner would be able to take the possession of the marriage hall only after the work of repair was completed and to pay the amounts due.

12. Subsequently during the financial year 2023-24 a budget of Rs.20,17,000/- inclusive of GST was sanctioned for carrying out the repairs of the marriage hall. Further in this regard, a work order dated 21.08.2023 was issued for an amount of Rs. 3,08,700/- for repair of kitchen and another work order dated 27.08.2023 was issued for an amount of Rs. 13,46,185/- for repair of four flats, which were a part of the marriage hall.

13. It was only after the marriage hall was repaired and brought in a functional condition in September, 2025 that the petitioner vide the letter dated 03.09.2025 had requested that the possession of the marriage hall be handed over to the petitioner, so as to enable him to operate the same.

14. Thereafter the respondent no.3 vide the letter dated 27.11.2025 had informed the petitioner that the possession of the marriage hall had already been handed over to the petitioner, in pursuance to the letter dated 03.04.2023 and the petitioner was called upon to deposit the amounts due within a week. The petitioner in response thereto vide the letter dated 29.11.2025 had informed the respondent that there was no occasion for the petitioner to have taken possession of the marriage hall as the repair works were going on since 22.08.2023.

15. The respondents no.3 vide the letter dated 17.01.2026 has asked the petitioner to deposit the amounts due, once again claiming that the possession of the marriage hall was handed over to the petitioner on 03.04.2023. The petitioner vide the letter dated 28.01.2026 had informed the respondent no.3 that the petitioner had deposited an amount of Rs. 5,16,000/- on 28.01.2026 and had further stated that the petitioner had taken charge/ possession of the marriage hall on 20.01.2026, it was further stated that the petitioner was taking charge/ possession of the marriage hall under protest subject to final outcome of the present writ petition.

16. In view of the above, the contention of the learned counsel for the petitioner is that as the petitioner was handed over the possession/ charge of the marriage hall only in the month of January, 2026, hence, the petitioner was liable to pay the amounts payable to the respondent no.3 in

pursuance to the agreement only from the date of taking charge/ possession of the marriage hall. It has further been contended that there was no occasion for the petitioner to take possession/ charge of the marriage hall on 03.04.2023, in view of the dilapidated and poor condition of the marriage hall, whose repair work was admittedly carried out by the respondents by issuing work orders and the petitioner in any case could not be held liable for payment of any amount till the time the marriage hall was brought in a running condition. Thus, the crux of the contention of the petitioner is that the petitioner is liable to deposit the amount due only from the date of taking charge/ possession of the marriage hall i.e January, 2026 for a tenure of 10 years thereafter.

17. Per contra it is contended on behalf of the respondents that the petitioner was handed over the charge / possession of the marriage hall in pursuance to the letter dated 03.04.2023 and the petitioner had not objected to the same at any point of time thereafter. Attention in this regard is drawn to the copy of the letter dated 03.04.2023, which was marked to the concerned employee(s) of the respondent no.3-panchayat who had been asked to handover the charge/ possession of the marriage hall to the petitioner. Hence, it is contended on behalf of the respondents that the petitioner was liable to pay the enhanced amount as agreed upon from April, 2023.

18. We have perused the records of the case.

19. A perusal of the agreement dated 05.12.2013 shows that amongst others it states as under:-

इकरारनामा/अनुबंध

िजला पंचायत झांसी द्व ा रा अपर मुख् य अिधकारी िजला पंचायत झांसी- प्र थम पक्षश्री सत्य नारायण अग्र वाल पुत्र श्र ी लखनलाल िन० मु० परवारीपुरा मऊरानीपुर व श्र ी रिव पुत्र श्र ी मेहरवान िसहिन० ग्र ा म िसमराहा िजला झांसी- िद्व तीय पक्ष ।

मैं िद्व तीय पक्ष श्र ी सत्य नारायण अग्र वाल पुत्र श्र ी लखनलाल िन० मु० परवारीपुरा मऊरानीपुर व श्र ी रिव पुत्र श्र ीWRIC No. 39695 of 20225मेहरवान िसह िन० ग्र ा म िसमराहा िजला झांसी का मूल िनवासी हूँ जो िक मुझे िजला पंचायत झांसी कामऊरानीपुर में िस्थ त िनरीक्ष ण गृह पिरसर में िनिमत िववाह घर को चाजर् देने की ितिथ से दस वषर् की अविध केिलये िदनांक 01-11-2013 को मु० 25,12,500/- रू ० पर प्र थम पक्ष िजला पंचायत झांसी द्व ा रा िनम्न शतोर्ं केअधीन आवंिटत िकया गया है ।

(emphasis added)

20. Hence, the perusal of the agreement itself reveals that the agreement was to commence from the date of hand over of the charge of the marriage hall to the petitioner. The bone of contention between the parties is that the petitioner states that he had taken over the charge/ possession of the marriage hall on 20.01.2026, while on the other hand the respondents state that the charge of the marriage hall was handed over to the petitioner on 03.04.2023.

21. Be that as it may, the respondents do not dispute the fact that the marriage hall was in a dilapidated and poor structural condition in April, 2023, when allegedly the charge of the same was

handed over to the petitioner. It is also not disputed by the respondents that a budget of Rs. 20,17,000/- inclusive of GST was sanctioned by the respondent no. 3-panchayat for the purposes repair of kitchen and four flats, which were a part of the marriage hall and two work orders dated 21.08.2023 and dated 27.08.2023 respectively were also issued. Hence, it can very well be concluded that the marriage hall was not in a running condition in April, 2023 and under these circumstances, it is beyond doubt that it would not have been possible for the petitioner to have operated the marriage hall and earn profits, while it was undergoing repairs.

22. The respondents do not dispute the fact that the work of repair was completed sometime in September, 2025. It is only thereafter that it would have been possible for the petitioner to have operated the marriage hall. There is no dispute regarding the fact that as duly agreed between the parties the petitioner was liable to pay the amount due in pursuance to the agreement only after taking the charge/ possession of the marriage hall, and as such the term of ten years would commence from the date of taking charge of the marriage hall.

23. Hence, there was no occasion for the petitioner to have paid any amount to the respondent till the point of time he was handed over the charge of the marriage hall, which happened some time in January, 2026. Even otherwise, the petitioner had taken marriage hall for earning profits and cannot be held liable to pay any amount to the respondents unless the marriage hall was in a habitable and running condition and charge thereof was duly handed over to the petitioner.

24. Even otherwise as per the terms of the agreement the claimant was to inform the respondent no.3-panchayat regarding the various construction works to be carried out in respect of the marriage hall and the works were to be carried out by the respondent no.3, while relying upon the said condition of the agreement, we find that the petitioner in response to the letter dated 03.04.2023 had informed the respondents regarding dilapidated and poor condition of the marriage hall vide letter dated 12.04.2023 with a request to get the same repaired. It is subsequent thereto that the repair works were carried out at the instance of the respondents, the budget sanctioned and the work orders were issued.

25. We find that there is another aspect to the matter in controversy as far as the contention of the respondents of handing over the possession/ charge of the marriage hall, pursuant to the letter dated 03.04.2023 is concerned. In the copy of the said letter issued to the employee(s) of the respondent no.3- panchayat it has been directed that the charge of the marriage hall be handed over to the petitioner but the respondents have failed to place any material on record to show that the charge was actually handed over to the petitioner in pursuance to the letter dated 03.04.2023.

26. In view of the findings arrived at by us above, we go on to consider the provisions of Section 52 and Section 54 of Indian Contract Act,1872 which are relevant as far as the present controversy is concerned and reads as under:

*"**52. Order of performance of reciprocal promises**- Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that*

order; and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

54. Effect of default as to that promise which should be first performed in contract consisting of reciprocal promises*- When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract."*

27. Thus, Section 52 deals with situations where the sequence in which the reciprocal promises are to be performed is a factor. The section states that if the contract explicitly fixes the order of performance, then the promises be performed in that sequence. Further Section 52 emphasizes the necessity of establishing a clear sequence of action within a contractual framework to ensure the orderly progression of obligations and to prevent premature demands for performance from either party.

28. Further Section 54 deals with situations where performance of one reciprocal promise is inherently dependent upon prior performance of another promise within the same contract. This Section stipulates that if the promisor of the promise that should be performed first fails to fulfill their obligation, they cannot then claim the performance of the reciprocal promise from the other party. Moreover, the defaulting promisor is also liable to make compensation to the other party for any loss that may incur as a consequence of the non-performance of a precedent obligation of the contract. This Section clearly establishes a cause and effect relationship between the non-performance of a precedent obligation and the subsequent rights and liabilities of the other party involved in the reciprocal promise.

29. Hence, in view of the above provisions and from the perusal of the agreement dated 05.12.2023 it is evident that the agreement was to commence from the date of handing over the charge of the marriage hall to the petitioner. Thus, handing over of the charge of the marriage hall is a condition precedent for the petitioner becoming liable for payment of amounts to the respondent no.3-panchayat, the same being evident from the nature of transaction. Further, unless the petitioner was handed over the charge of the marriage hall he was not under any obligation to pay any amount to the respondent no.3 under the agreement. Such being the legal position the petitioner would be liable to pay the amounts to the respondent no.3 when the charge of the marriage hall was handed over to the petitioner in January,2026.

30. However, the petitioner was aware that the marriage hall was in functional condition in September, 2025 itself, still the petitioner took charge of the marriage hall in January, 2026. Hence, the petitioner is himself liable for this delay and the respondents cannot be held responsible for the same. Thus, we are of the view that the petitioner would be liable to pay an enhanced amount as mutually agreed upon with the respondent no.3-panchayat in terms of the agreement from September, 2025 and the tenure of the agreement so executed between the parties for ten years would also commence from September, 2025.

31. As far as the reliefs claimed by the petitioner in the present writ petition are concerned in view of the fact that the petitioner has already been handed over the possession/ charge of the marriage hall and the petitioner is also willing to deposit the amounts under the agreement dated 05.12.2013 at an enhanced rate of 20%, the impugned letter dated 14.11.2022 has lost its relevance.

32. Hence, the writ petition is disposed of with a direction to the respondent that they may charge the amount due from the petitioner under the agreement at an enhanced rate of 20%, commencing from September, 2025 and the tenure of agreement for ten years would commence from September, 2025.

33. No orders as to costs.

(2026) 5 ILRA 2251
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.05.2026

BEFORE

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

Writ C No. 43237 of 2018

Rameshwar Dutt Awasthi ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

A. Whether the application filed by the petitioner for second renewal was a valid application in the eyes of law and whether based on such renewal application, petitioner could have been granted benefit of Section 8A (6) of the Amendment Act, 2015; and
B. Whether second renewal of lease of Silica Sand is permissible under U.P. Minor Minerals (Concession) Rules, 1963.

Headnotes

Mines and Minerals (Development and Regulation) Act, 1957, ss. 8A(6), 14 – Mineral Concession Rules, 1960, Rule 24A – U.P. Minor Minerals (Concession) Rules, 1963, Chapter IX – Application for second renewal of mining lease for Silica Sand – Benefit of Section 8A(6) – Application of the petitioner for extension of the lease deed – Rejected by the authority – The second renewal application of the petitioner was not complete in all respects on which the authority could proceed to consider to grant the second renewal – The petitioner obtained 'No Dues Certificate' on 31.10.2013 – The petitioner got the mining plan approved on 16.07.2015 and the Environment Clearance Certificate was granted to the petitioner on 06.01.2016 – The application of the petitioner was defective and not as per law till 16.07.2015 when the mining plan was approved – There is no provision for second renewal of mining lease under Chapter IX of Rules, 1963 :

Held :

A. Mineral Concession Rules, 1960 – Rule 24A(1) – Renewal application – Form-J – The application for renewal under Rule 24A(1) of the Mineral Concession Rules, 1960 is to be submitted in Form-J. Clause-2 (7) of Form-J

requires "number and date" of the valid clearance certificate of payment of mining dues. Several information which the petitioner was supposed to submit while submitting application in Form-J were not supplied by the petitioner. The second renewal application of the petitioner was not complete in all respects on which the authority could proceed to consider to grant the second renewal.

B. Mineral Concession Rules, 1960 – Rule 24A(6) – Second renewal – Rule 24A(6) of the Mineral Concession Rules, 1960 is applicable to first renewal and not to second renewal. Sub-rule (6) of Rule 24A of Rules, 1960 cannot be applied to second renewal under sub-section (3) of Section 8 of the Mines and Minerals (Development and Regulation) Act, 1957. The continuance of mining operation by the petitioner under the shelter of Rule 24A(6) was illegal.

C. Mines and Minerals (Development and Regulation) Act, 1957 – Section 8-A(6) – Extension of lease period – Compliance with terms and conditions of lease – The benefit of extension of the lease period postulated under Section 8-A of the Mines and Minerals (Development and Regulation) Act, 1957 is available, subject to a further overriding condition, namely, "*…that all the terms and conditions of the lease have been complied with*". A leaseholder who does not satisfy any of the required conditions of the lease, would not be entitled to the benefits extended under sub-section (5) or (6) of Section 8-A of the amended MMDR Act. The petitioner carried out mining operations without mining plan after expiry of lease deed on 15.06.1999 which clearly implies that petitioner did not fulfill the requirements under Section 8A(6) of Amendment Act, 2015 that the leaseholder has to comply with all the terms and conditions of the lease.

D. On 10.02.2015, the Central Government issued a notification notifying Silica Sand along with some other minerals as minor mineral. After declaration of Silica Sand as minor mineral, the provision of Section 14 of the Mines and Minerals (Development and Regulation) Act, 1957 came into play, and the provisions of Sections 5 to 13 of the Act, 1957, inclusive of Section 8 and Section 8A are not applicable with respect to Silica Sand. The State Government by exercising powers under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957, amended the provisions of the U.P. Minor Minerals (Concession) Rules, 1963 and added a new Chapter IX in Rules, 1963 vide U.P. Minor Mineral (Concession) (Fourteen Amendment) Rules, 2016 dated 29.06.2016 providing procedure for grant of mining lease of Silica Sand besides other minerals notified by the Central Government vide Notification dated 10.02.2015. There is no provision for second renewal of mining lease under Chapter IX of the U.P. Minor Minerals (Concession) Rules, 1963.

E. Constitution of India – Art. 226 – Futile writ – Even if an order is illegal or not as per law, the Court may refuse to issue any writ under Article 226 of the Constitution of India for the reason that the Court while exercising power under Article 226 of the Constitution of India shall not issue futile writs – – Writ petition dismissed with no order as to costs.

[Paras 55, 59, 64, 80, 83, 96, 100, 101, 103, 104] (E-5)

Case Law Cited

Common Cause v. Union of India and Others, (2016) 11 SCC 455;

V.S. Charati v. Hussein Nhanu Jamadar (Dead) By LRS., (1999) 1 SCC 273;

National Agricultural Cooperative Marketing Federation of India Ltd. and Another v. Union of India and Others, (2003) 5 SCC 23;

Neelima Srivastava v. State of Uttar Pradesh and Others, (2021) 17 SCC 693;

State of Tamil Nadu v. State of Kerala and Another, (2014) 12 SCC 696;

M.P. Housing and Infrastructure Development Board and Another v. K.P. Dwivedi, (2022) 3 SCC 783;

List of Acts

Mines and Minerals (Development and Regulation) Act, 1957;

Mines and Minerals (Development and Regulation) Amendment Act, 2015;

Mineral Concession Rules, 1960;

U.P. Minor Minerals (Concession) Rules, 1963

Mineral Concession (Second Amendment) Rules, 1994;

U.P. Minor Mineral (Concession) (Fourteenth Amendment) Rules, 2016

List of Keywords

Mining lease; Silica Sand; Second renewal; Form-J; Mining plan; No Dues Certificate; Environment Clearance Certificate; Section 8A(6); Rule 24A(6); Minor mineral; Chapter IX; Res judicata; Article 226; Futile writ.

Case Arising From

From the order dated 26.04.2017 passed by the respondent no.2-Additional Chief Secretary, Government of U.P. Lucknow whereby the application of the petitioner for extension of the lease deed has been rejected.

Appearances for Parties

Advs. for the Appellant: Bidhan Chandra Rai, Sanjay Kumar Nigam.
Advs. for the Respondents: C.S.C.

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

1. Heard Sri Bidhan Chandra Rai, learned Senior Advocate assisted by Sri Sanjay Kumar Nigam, learned counsel for the petitioner and Sri Rajeshwar Tripathi, learned Chief Standing Counsel-II for the State-respondents.

2. The petitioner by means of the present writ petition has assailed the order dated 26.04.2017 passed by the respondent no.2-Additional Chief Secretary, Government of U.P. Lucknow whereby the application of the petitioner for extension of the lease deed has been rejected.

3. The facts, in brief, are that one Bhulli Maharaj S/o Hari Kishore Awasthi proprietor of M/s Bhulli Maharaj & Sons, Shankargarh, District Allahabad was granted a mining lease over an area of 47.06 hectare in Village Janwa, Tehsil Bara, District Allahabad for extraction of Silica Sand and minerals under the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'Act, 1957') read with the provisions of Mineral Concession Rules, 1960 (hereinafter referred to as 'Rules, 1960') for a period of ten years commencing w.e.f. 16.06.1979 to 15.06.1989.

4. The petitioner, thereafter, was granted first renewal under Section 8(2) of the Act, 1957 read with Rules, 1960 for a further period of ten years commencing w.e.f. 16.06.1989 to 15.06.1999. Based upon the same, the lease deed was executed on 13.12.1993 pursuant to the Government Order dated 23.04.1991.

5. Before expiry of the lease period, the petitioner submitted an application on 12.06.1998 for renewal of the lease for a further period of twenty years.

6. The Additional District Magistrate (Administration) vide notice dated 18.06.2011 directed the petitioner to submit Environment Clearance Certificate. The petitioner, thereafter, applied for Environment Clearance Certificate. The petitioner was granted NOC for mining of Silica Sand on 03.09.2012 by the Divisional Director, Social Forestry Department, Allahabad.

7. The Additional District Magistrate (Administration) in the light of the NOC dated 03.09.2012 made a recommendation dated 12.11.2013 to the Director, Geology and Mining for renewal of the mining lease for a further period of twenty years.

8. Further it is the case of the petitioner that the Director, Geology and Mining on 27.06.2014 taking note of recommendation letter dated 12.11.2013 made a recommendation to the Principal Secretary, Department of Geology & Mining, Lucknow for renewal of lease for a period of twenty years.

9. Based on the said recommendation, the Additional District Magistrate (Administration), Allahabad on 20.09.2014 requested the Controller General, Indian Bureau of Mines, Nagpur to submit report in the matter of renewal application dated 12.06.1998.

10. According to the petitioner, the mining plan was approved on 16.07.2015, and the Environment Clearance Certificate was granted on 06.01.2016. In the meantime, the Central Legislature passed MMDR (Amendment) Act, 2015 (hereinafter referred to as 'Amendment Act, 2015').

11. By the said amendment, Section 8A was inserted in the Act, 1957 to provide for regulating the period of mineral other than those specified in Part-A and Part-B of the First Schedule. The Central Government issued a D.O. with a direction to take necessary steps without any delay to implement the Amendment Act, 2015

12. When the respondents did not pass any order on the application of petitioner for renewal of lease, the petitioner approached this Court by filing Writ-C No.52665 of 2016 (Rameshwar Dutt Awasthi Vs. State of U.P. and 2 Others) with the following prayer:-

"i. Pass appropriate writ, order or direction in the nature of mandamus directing that the tenure of petitioner's mining lease over an area of 47.06 hectare in Village Janwa, Tehsil Bara in District Allahabad stood extend for a period of 50 years pursuant to the provisions of Section 8A (6) of the MMDR Amendment Act, 2015;

ii. Issue a writ, order or direction in the nature of mandamus restraining the District Magistrate, Allahabad, from interfering mining operations and also to issue the transit permit (Form-G) for dispatch of silica sand by the petitioner;

iii. Issue such other and further writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case; and

iv. Award the cost of the writ petition."

13. This Court by judgement and order dated 25.01.2017 disposed of the aforesaid writ petition directing the petitioner to fulfill the formality as envisaged under the U.P. Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as "Rules, 1963"), and thereafter, the application of the petitioner would be dealt with as per law within next three months by the competent authority under Rules, 1963.

14. The petitioner in compliance of the said judgement submitted representation to the authority requesting for extension of the lease deed which was rejected by the respondent no.2 by impugned order.

15. A counter affidavit has been filed by the respondents specifically stating therein that the mining lease in respect of Silica Sand was granted for an area of 47.06 hectare in favour of Sri Bhulli Maharaj S/o Hari Kishore Awasthi proprietor of M/s Bhulli Maharaj and Sons, Police Station Shankargarh, District Prayagraj .

16. Further case of the respondents in counter affidavit is that Sri Bhulli Maharaj S/o Hari Kishore Awasthi proprietor of M/s Bhulli Maharaj died on 09.07.2005. Thus, after the death of sole proprietor, the firm ceased to exist.

17. In suit bearing Original Suit No.417 of 1997 (Bhulli Maharaj & Sons and Another Vs. State of U.P. and Others) after death of Bhulli Maharaj, two persons namely, Rameshwar Dutt Awasthi and Dr. Ganesh Dutt Awasthi, both sons of Late Bhulli Maharaj had moved substitution application and their names have been substituted in place of Bhulli Maharaj in the aforesaid suit.

18. There is no declaration by any competent Court of law declaring the petitioner, namely, Rameshwar Dutt Awasthi as the sole proprietor of the firm namely, M/s Bhulli Maharaj & Sons, in whose favour the mining lease was granted. It is stated that petitioner has nowhere disclosed in the writ petition as to how he became the only proprietor and his brother Dr. Ganesh Dutt Awasthi has not declared successor of M/s Bhulli Maharaj & Sons.

19. On 10.02.2015, the Central Government issued a notification notifying Silica Sand along with some other minerals as minor mineral. It is stated that after declaration of Silica Sand as minor mineral, the provision of Section 14 of the Act, 1957 came into play, and the provisions of Sections 5 to 13 of the Act, 1957, inclusive of Section 8 and Section 8A are not applicable with respect to Silica Sand.

20. The State Government by exercising powers under Section 15 of the Act, 1957, amended the provisions of Rules 1963 and added a new Chapter IX in Rules, 1963 vide U.P. Minor Mineral (Concession) (Fourteen Amendment) Rules, 2016 dated 29.06.2016 providing procedure for grant of mining lease of Silica Sand besides other minerals notified by the Central Government vide Notification dated 10.02.2015.

21. There is no provision for second renewal of mining lease under Chapter IX of Rules, 1963. It is stated that the order dated 26.04.2017 has been passed in view of the rules and procedure applicable on the date of decision of the writ petition of petitioner. It is also averred that the grounds taken by the petitioner are wholly misconceived and are not tenable in the eye of law, therefore, the writ petition lacks merit and does not warrant any interference by this Court under Article 226 of the Constitution of India.

22. Challenging the impugned order, learned counsel for the petitioner has submitted that after incorporation of Section 8A in the Act, 1957, the power of renewal of lease of the State

Government has been done away with, therefore, the State Government has no power either to reject or accept the application for renewal of lease w.e.f. 12.01.2015 i.e. the date of incorporation of Section 8A in the Act, 1957.

23. It is further contended that by virtue of operation of Section 8A, the petitioner's lease stood extended for 50 years from 1979, and therefore, the respondent no.2 has wrongly treated the case of the petitioner for renewal of lease deed. He further contends that petitioner's right to extension of lease deed is not precluded by Section 8A (9) of the Amendment Act, 2015.

24. It is lastly urged that impugned order is colourable exercise of power by the State Government which is contrary to the statute.

25. Learned counsel for the petitioner in support of his argument has relied upon the following judgements:-

(i). Common Cause Vs. Union of India and Others (2016) 11 SCC 455;

(ii). V.S. Charati Vs. Hussein Nhanu Jamadar (Dead) By LRS. (1999) 1 SCC 273;

(iii). National Agricultural Cooperative Marketing Federation of India Ltd. and Another Vs. Union of India and Others (2003) 5 SCC 23;

(iv). Neelima Srivastava Vs. State of Uttar Pradesh and Others (2021) 17 SCC 693;

(v). State of Tamil Nadu Vs. State of Kerala and Another (2014) 12 SCC 696;

(vi). M.P. Housing and Infrastructure Development Board and Another Vs. K.P. Dwivedi (2022) 3 SCC 783.

26. Rebutting the aforesaid contention, learned Chief Standing Counsel-II has contended that in the earlier Writ-C No.52665 of 2016, this Court has categorically held that after the Silica Sand has been declared minor mineral, its mining operation would be covered under the provisions of Rules, 1963, and in case petitioner intends to carry out mining of minor mineral, then he will have to abide by the terms and conditions provided under Rules, 1963.

27. He contends that Section 4 of the Act, 1957 provides that no person can undertake mining operations in any area except in accordance with terms and conditions of mining lease granted under the Act and Rules made thereunder.

28. He further contends that Rule 3 of Rules, 1963 provides that mining operations should be under mining lease or mining permit granted under the Rules. It is submitted that since this Court has categorically held in the earlier writ petition that the petitioner in order to carry out mining operation of minor minerals has to fall in line with terms and conditions of Rules, 1963, therefore, it is manifest that this Court has not concluded that even if Rules, 1963 does not permit the second renewal of lease or extension of lease, the petitioner is entitled to get it.

29. It is submitted that operative portion of the order passed by this Court in the earlier writ petition of the petitioner clearly discloses the intention of the Court that the Court has left the matter for the authorities to deal with the application of petitioner as per Rules, 1963, and in such view of the fact, the respondent no.2 has not committed any illegality in rejecting the application of petitioner as second renewal of lease of Silica Sand is not permissible under Rules, 1963.

30. He further submits that it is the case of the petitioner that his lease is covered under Section 8A(6) of the Act, 1957. He submits that to take the benefit of Section 8A(6), petitioner has to comply with all the terms and conditions of lease deed. It is contended that petitioner had not complied with all terms and conditions of the lease in order to avail the benefit of Section 8A(6) of the Act, 1957.

31. He further contends that petitioner was supposed to have an Environment Clearance Certificate in view of the notification of the year 1994 issued by the Government of India for running mining lease of major mineral, but the petitioner did not have any Environment Clearance Certificate due to which, the petitioner was stopped from carrying mining operation in the year 2011, therefore, petitioner□s mining lease was not operational on the date of induction of Section 8A in the Act, 1957 by the Amendment Act, 2015.

32. He further contends that the petitioner□s application dated 12.06.1998 for renewal of lease deed was not valid because petitioner did not enclose the mining plan as per Rules, 1960 applicable on the major minerals along with the application.

33. To buttress the said contention, he submits that second renewal application under Rules, 1960 was required to be submitted in Form-J. He submits that as per Serial X (c) of Form-J, the mining plan was also not enclosed. Accordingly, he contends that Section 8A(6) is not attracted in the case of petitioner and thus, he could not be granted the benefit of deemed extension on account of pendency of renewal application as per Section 8A(6).

34. He further contends that the petitioner has based his claim on Rule 24A (6) which was incorporated in Rules, 1960 by the Mineral Concession (Second Amendment) Rules, 1994 by Notification dated 27.09.1994. He submits that the benefit of Rule 24A (6) was applicable in case of first renewal application and not applicable in case of second renewal application as has been held by the Apex Court in the case of ***Goa Foundation Vs. Union of India and Others (2014) 6 SCC 590.***

35. He submits that that the petitioner□s argument regarding deemed extension is based on Section 8(3) of the Act, 1957, and for availing the benefit of said section, the primary condition is that there has to be an order passed by the State Government recording specific finding that renewal is necessary in the interest of mineral development. He submits that unless such condition is complied with, there could not be any second renewal. Accordingly, he submits that interpretation of rule should be in consonance and in harmony with the Act, 1957 and therefore, if petitioner is extended the benefit of Rule 24A for the purpose of second renewal, such benefit would be contrary to the intent of legislature as provided under Section 8A(6) of the Act, 1957.

36. He contends that the finding of this Court in the earlier writ petition of the petitioner regarding benefit of Section 8A(6) of the Amendment Act, 2015 to the petitioner is contrary to the intent of legislature and the case of ***Goa Foundation (supra),*** and therefore, is not binding upon the authority.

37. He further contends that it is settled in law that once the policy is changed by the Government, then all the leases have to be granted as per new policy i.e. through e-tender-cum-e-auction, therefore, petitioner□s claim regarding deemed extension on the basis of pendency of renewal application cannot be considered.

38. We have considered the rival submissions of learned counsel for the parties and perused the record.

39. The undisputed facts as emanates from the record are that the petitioner was granted lease for mining of Silica Sand mineral over an area of 47.06 hectare in Village Janwa, Tehsil Bara, District Allahabad for a period from 16.06.1979 to 15.06.1989.

40. The petitioner, thereafter, was granted first renewal under Section 8(2) of the Act, 1957 read with Rule 24A (1) of the Rules, 1960 for a term of ten years vide Government Order dated 23.04.1991. The lease deed regarding first renewal was executed on 13.12.1993.

41. Before expiry of first renewal, the petitioner applied for second renewal under Section 8(3) of the Act, 1957 for a period of twenty years. The mining of the petitioner was closed for want of Environment Clearance Certificate vide notice dated 18.06.2011. The petitioner obtained forest clearance on 03.09.2012.

42. The Mining Officer, Allahabad issued No Dues Certificate on 31.10.2013. The Additional District Magistrate (Administration), Allahabad recommended the renewal of mining lease for a term of twenty years on 12.11.2013. The mining plan of the petitioner was approved on 16.07.2015. In the meantime, Section 8A was inducted in the Act, 1957 by the Amendment Act, 2015. When the lease of the petitioner was not extended, the petitioner approached this Court by filing Writ-C No.52665 of 2016 (Rameshwar Dutt Awasthi Vs. State of U.P. and Others) with the prayer extracted above.

43. The Coordinate Bench of this Court in the aforesaid writ petition has recorded following finding with regard to grant of benefit of Section 8A (6) to the petitioner:-

"Consequently, in the facts of the case, the fact of the matter is that second renewal application moved on 12.6.1998 at no point of time the said application in question has been rejected, nor the lease in question has been determined, nor the lease in question has lapsed and, accordingly, once the regime of renewal has been replaced by introducing the provisions of deemed extension of lease period, the petitioner is entitled for the benefit of the statutory provisions as contained under Section 8A (6) of the MMDR Amendment Act, 2015.

Apex Court in the case of Sulekhan Singh & Company and others Vs. State of U.P. and others, 2016 (2) AWC 1102 (SC), has clarified the legal position that merely because a renewal application has been moved an incumbent has no vested right to get its renewed. Here, in the present case, the fact of the matter is that it is true that renewal application has been moved but the fact of the matter is that said renewal application has been pending and during pendency of the same the Central Government has come up with the statutory provisions in the shape of Section 8A in the MMDR Amendment Act, 2015 for extending the life span of the lease in question subject to fulfillment of the other terms and conditions as provided for.

There is difference between the extension of lease and renewal of lease. The difference in between two expression has been subject matter of interpretation before the Apex Court in the case of Gajraj Singh Etc. Vs. State Transport Appellate Tribunal, 1997 (1) SCC 650, wherein Apex Court mentioned that grant of renewal is a fresh grant though it breaths life into the operation of previous lease. In the case of extension the same lease continues in force during additional period by the performance of stipulated act. Said view has been reiterated with approval in the case of State of Gujarat Vs. Nirmla Ben S. Mehta, 2016 JT (6) 508. Viewed from this perspective, under the scheme of things provided for the power of State Government to grant or refuse renewal has been done away with in respect of minerals other than those specified in Part A and Part B of the First Schedule under Section 8A of the 2015 Act and, thereafter, on the expiry of lease period the lease would be put up for auction as per the procedure specified in the Act. Section 8A (5) and 8A (6) of the 2015 Act uses categorical expression "shall be extended, shall be deemed to have been extended". The effect and impact of deeming provision has been subject matter of consideration by the Apex Court in the case of Bhavnagar University Vs. Palitana Sugar Mill and others, 2003 (2) SCC 111, wherein Apex Court has followed the judgement in the case of East End Dwellings Co. Ltd. Vs. Finsbury Borough Council, 1951 (2) All England Reports 587, as under;

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it."

There is no reason for us not to extend the said benefit to the petitioner on the strength of the statutory provisions introduced through Section 8A (6) of the 2015 Act and the claim of petitioner would be covered by the same and petitioner's lease would be deemed to have been extended subject to the condition that all the terms and conditions of lease have been complied with. The further larger issue that is engaging our attention as on date is that with the passage of time when the claim of petitioner is being considered by us there are subsequent developments, that have so taken place, and what would be its impact in carrying out mining activity is a further issue to be considered by us."

44. The Coordinate Bench of this Court in the aforesaid writ petition has held that after Silica Sand has been declared minor mineral, the petitioner in order to carry out the mining operations of the said mineral has to abide the terms and conditions provided in Rules, 1963 to carry out the mining operations. The relevant extract of the judgement is reproduced herein-below:-

"Earlier silica sand was a major mineral and same was covered by the provisions of 1957 Act read with the provisions of 1960 Rules but after notification dated 10.2.2015 has been made by the Central Government, same has been declared as a minor mineral and as of now the silica sand being declared as minor mineral its mining operation would be covered by the provisions of 1963 Rules and under the 1963 Rules, that have been so framed, in case petitioner intends to carry out mining operations pertaining to minor mineral, then he will have to abide by the terms and conditions provided for under 1963 Rules. Section 4 of MMDR Act provides for that no person can undertake mining operations in any area, except under and in accordance with the terms and conditions of mining lease granted under the Act and the Rules made thereunder. Rule 3 of the 1963 Rules clearly provides that mining operations should be under mining lease or mining permit granted under these rules. For ready reference Rule 3 is extracted below:-

"Mining operations to be under a mining lease or mining permit- *(1) No person shall undertake any mining operations in any area within the State of any minor minerals to which these rules are applicable except under and in accordance with the terms and conditions of a mining lease or mining permit granted under these rules:*

Provided that nothing shall affect any operations undertaken in accordance with the terms and conditions of mining lease or permit duly granted before the commencement of these rules.

Explanation:- For the purposes of this rule manual digging or manual extraction of ordinary clay, ordinary earth for making bricks and pottery shall not be treated as mining operations;

Provided that pit created by such digging or extraction should not be deeper than two meters.

(2) No mining lease or mining permit shall be granted otherwise than in accordance with the provisions of these rules."

A bare perusal of Rule 3 would go to show that no person should undertake any mining operations in any area within the State of any minor minerals to which these rules are applicable except under and in accordance with the terms and conditions of a mining lease or mining permit granted under these rules and the proviso in question only exempts such mining operations wherein mining lease or permit has been granted before the commencement of these rules. Once in exercise of authority conferred under Clause (e) of Section 3 of 1957 Act the Central Government has declared silica sand as a minor mineral, then in consonance with the Rule 3 of 1963 Rules the petitioner can carry out mining operations of minor minerals only in consonance with the rules in question, then in view of this fact it may be true that the lease period of petitioner would stand extended by operation of law under Section 8A (6) for winning minerals other than those specified in Part A and Part B of the First Schedule subject to fulfillment of other terms and conditions but once with the passage of time in exercise of statutory power a major mineral has been declared as minor mineral and petitioner, as on date, is interested in carrying out mining activity of minor mineral, then he will have to fall in line in consonance with the provisions of 1963 Rules. Chapter

IX has been introduced in 1963 Rules by means of amendment named as the U.P. Minor Mineral (Concession) (Fourteenth Amendment) Rules, 2016 wherein the provisions of said Chapter has been made applicable in reference of silica sand also notified by Central Government as minor mineral.

Once Central Government consciously in exercise of its statutory power has placed silica sand in the category of minor mineral under Clause (e) of Section 3 of 1957 Act and power to make rules in that regard is vested by Section 15 (1) in the State Government while power to make rules with respect to minerals as defined by Clause (a) of Section 3 is vested by Section 13 (1) in the Central Government and Section 14 clearly provides that Section 13 will not apply to quarry leases, mining leases or other mineral concessions in respect of minor mineral, then net effect of the same is that silica sand being declared as a minor mineral, its mining activity will have to be in consonance with the 1963 Rules. The new state of affairs which have been brought into existence by declaration made under clause (e) of Section 3 of 1957 Act has to be given its full effect and no rider or exception can be read in the same. Old lease of petitioner would require modification, as on date, as there is no such provision on the line of Section 16 of 1957 Act available that permitted modification of lease granted before 25.10.1949 and gave breathing time to holders of mining leases to bring the said lease in line with the provisions of 1957 Act and the Rules framed thereunder within two years from the period specified therein and during the said interregnum period, the period of such lease was permitted to continue to operate. Once there is no such provision which enables the term of existing lease to be altered, then as already deliberated above, even though petitioner's claim would fall within the parameter of Section 8A (6) of 1957 Act but as the lease accorded in his favour has been for mineral as specified under 1960 Rules and as of now Central Government has consciously included said mineral in the category of minor mineral and thus necessarily by operation of law governance of said mineral has to be one under 1963 Rules, then the provisions of 1957 Act and 1963 Rules cannot be permitted to be ignored."

45. At this stage, it would be apposite to reproduce Section 8A of the Amendment Act, 2015:-

*"**8A. Period of grant of a mining lease for minerals other than coal, lignite and atomic minerals.-** (1) The provisions of this section shall apply to minerals other than those specified in Part A and Part B of the First Schedule.*

(2) On and from the date of the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, all mining leases shall be granted for the period of fifty years.

(3) All mining leases granted before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 shall be deemed to have been granted for a period of fifty years.

(4) On the expiry of the lease period, the lease shall be put up for auction as per the procedure specified in this Act.

(5) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for captive purpose, shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2030 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(6) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for other than captive purpose, shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2020 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(7) Any holder of a lease granted, where mineral is used for captive purpose, shall have the right of first refusal at the time of auction held for such lease after the expiry of the lease period.

(8) Notwithstanding anything contained in this section, the period of mining leases, including existing mining leases, of Government companies or corporations shall be such as may be prescribed by the Central Government.

(9) The provisions of this section, notwithstanding anything contained therein, shall not apply to a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, for which renewal has been rejected, or which has been determined, or lapsed."

46. The petitioner claims that since the second renewal application of mining lease was submitted by the petitioner twelve months before the date on which the lease was due to expire, therefore, he is entitled to the benefit of Section 8A (6) of the Amendment Act, 2015.

47. This Court while deciding the earlier writ petition of the petitioner has recorded that second renewal application was filed by the petitioner on 12.06.1998 and at no point of time, the said application has been rejected nor the lease of the petitioner has been determined nor the lease of the petitioner has lapsed, and once the legitimate renewal has been replaced by inducting the proviso of deemed extension of lease period, the petitioner is entitled to the benefit of Section 8A(6) of the Amendment Act, 2015, but at the same time this Court has also recorded on the internal page-25 of the earlier judgement that "*the claim of the petitioner would be covered by the same and petitioner's lease would be deemed to have been extended subject to condition that all the terms and conditions of the lease have been complied with".*

48. So it is manifest from the aforesaid quoted portion of the earlier judgement of this Court that the petitioner's lease would be deemed to be extended subject to the condition that all the terms and conditions of the lease have been complied by him.

49. The petitioner submitted application for second renewal of lease deed on 12.06.1998 under Rule 24A of the Rules, 1960. Rule 24A(1) requires the applicant to submit an application for renewal in Form-J. Rule 24A of the Rules, 1960 is reproduced herein-below:

"*24-A. Renewal of mining lease-(1)* *An application for the renewal of a mining lease shall be made to the State Government in Form J, at least twelve months before the date on which the lease in due to expire, through such officer or authority as the State Government may specify in this behalf.*

(2). The renewal or renewals of a mining lease granted in respect of a mineral specified in Part 'A' and Part 'B' of the First Schedule to the Act may be granted by the State Government with the previous approval of the Central Government.

(3). The renewal or renewals of a mining lease granted in respect of a mineral not specified in Part 'A' and Part 'B' of the First Schedule to the Act may be granted by the State Government:

Provided that before granting approval for second or subsequent renewal of a mining lease, the State Government shall seek a report from the Controller General, Indian Bureau of Mines, as to whether it would be in the interest of mineral development to grant the renewal of the mining lease:

Provided further that in case a report is not received from Controller General, Indian Bureau of Mines in a period of three months of receipt of the communication from the State Government, it would be deemed that the Indian Bureau of Mines has no adverse comments to offer regarding the grant of the renewal of mining lease.

(6) If an application for first renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period of two years or till the State Government passes order thereon, whichever is earlier.

Provided that the leases where applications for first renewal of mining lease have been made to the State Government and which have not been disposed of by the State Government before the date of expiry of lease and are pending for disposal as on the date of the notification of this amendment, shall be deemed to have been extended by a further period of two years from the date of coming into force of this amendment or till the State Government passes order thereon or the date of expiry of the maximum period allowed for first renewal, whichever is the earliest:

Provided further that the provisions of this sub-rule shall not apply to renewal under sub-section (3) of section 8 of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957).

(8). Notwithstanding anything contained in sub-rule (1) and sub-rule (6) and application for the first renewal of a mining lease, so declared under the provisions of Section 4 of the Goa, Daman and Diu Mining Concession (Abolition and Declaration as Mining Lease) Act, 1987, shall be made to the State Government in Form J before the expiry of the period of mining lease in terms of sub-section (1) of Section 5 of the said Act, through such officer or authority as the State Government may specify in this behalf:

Provided that the State Government may, for reasons to be recorded in writing and subject to such conditions as it may think fit, allow extension of time for making of such application upto a total period not exceeding one year.

(9). If an application for first renewal made within the time referred to in sub-rule (8) or within the time allowed by the State Government under the proviso to sub-rule (8), the period of that lease shall be deemed to have been extended by a further period till the State Government passes orders thereon or the date of expiry of the maximum period allowed for first renewal, whichever is earlier.

(10). The State Government may condone delay in an application for renewal of mining lease made after the time limit prescribed in sub-rule (1) provided the application has been made before the expiry of the lease."

50. This Court in the earlier judgement did not deal with the issue as to whether the petitioner complied with the terms and conditions of the lease so as to avail the benefit of Section 8A(6) of the Amendment Act, 2015. However, this Court recorded a categorical finding that the said benefit is available to the petitioner if he complies with the terms and conditions of the lease deed.

51. The lease of the petitioner was up to 15.06.1999. The petitioner after expiry of term of lease deed on 15.06.1999 continued to do mining upto 18.06.2011 by taking advantage of Rule 24A (6) of the Rules, 1960 up till 18.06.2011, when he was issued notice by the Mining Officer to stop mining for want of Environment Clearance Certificate. So, the petitioner after the lapse of his lease continued mining without the Environment Clearance Certificate.

52. At this stage, it is also relevant to scrutinize whether the application filed by the petitioner for second renewal was a valid application in the eyes of law. This question goes to the root of the matter to find out whether based on such renewal application, petitioner could be granted benefit of Section 8A (6) of the Amendment Act, 2015.

53. The application for renewal under Rule 24A(1) of Rules, 1960 is to be submitted in Form-J. Clause-2 (7) of Form-J requires □number and date□ of the valid clearance certificate of payment of mining dues.

54. Several information which the petitioner was supposed to submit while submitting application in Form-J were not supplied by the petitioner which is evident from the following column of Form-J submitted by the petitioner:-

"(Form J)

The required particulars are given below:

(ii)	*Is the applicant a private/individual/private/company/public company/firm or association.*	*Private/Individual*
(iii)	*In case applicant is* *(a) an individual, his national.* *(b) a private company, the nationality of all members of the company alongwith place of registration.* *(c) a public company, the nationality of director, the percentage of shares capital held by Indian national alongwith place of incorporation.* *(d) Firm or a association, the nationality of all the partners of the firm or members of the association.*	*Indian* *x* *x* *x*
(iv)	*Profession or nature of business of applicant*	*Money and Trade*
(v)	*Omitted*	
1(vi)	*Omitted*	
2(vii)	*Number and date of the valid clearance certificate of payment of mining dues (copy enclosed).*	*Applied for clearance certificate of payment of mining dues and will send as soon as received by me.*
3(vii)	*Number and date of Income Tax clearance certificate from Income Tax Officer (attached) an affidavit, that upto date Income Tax returned as prescribed under the Income Tax Act, 1961 have been filed and the tax due including the tax on account of self assessment has been paid.*	*Copy of Income Tax clearance certificate dated 12.06.1998 is attached herewith.*
(a(viii)	*Particulars of the mining licence of which renewal is desired.*	*Mining lease of Silica Sand at village Janwa (Bara) Allahabad of 47.06 Hectare for 10 years date of execution is 16.06.1979.*
(b)	*Details of previous renewal granted, if any.*	*The first renewal granted by G.O. No.1172/18-12-91-55/89 dated 23.4.99. Date of*

		execution is 13.12.93.
(ix)	*Period for which renewal of mining lease is required.*	*For twenty (20) years.*
(x)	*Whether renewal is desired for the whole or part of lease hold*	*Whole of lease land.*
4(xa)	*Does the applicant continue to have surface rights over the area of the land for which he requires renewal of the mining lease*	*The surface right is partly owned by applicant. The rest belonged to the Govt. which in laws of lease applicant can use on payment of prescribed rate as per schedule.*
(b)	*If not has he obtained the consent of the owner and occupier for undertaking mining operation. If so, the consent of the owner and occupier of the land obtained in writing be filed.*	*Consent of owner had been already filed at the time of first renewal*
(xb)	*Particulars of the areas mineral-wise, in each state duly supported by affidavit for which the applicant or any person joint in interest which him.*	*The details are given in accompanying affidavit.*
(a) *(b)* *(c)*	*Already holds under mining lease:* *Has already applied for but not granted, or* *Being applied for simultaneously.*	*Only one lease whose renewal is applied here.* *The applicant has applied for mining lease of Silica Sand for small area in village Bhaisahi and Lakhnauti, but yet has not been granted.*
(xc)	*A mining plan which shall include-* *(a) The plant of the showing the nature and extent of the mineral body, spot of spots where the excavation is to be done in the first year and its extent, a detailed cross-section and detailed plan of spot(s) of excavation based on prospecting date gathered by the applicant a tentative scheme of mining for the period of the lease.* *(b) The details of geology and lithology of the area the extent of manual mining and through machines* *(c) Annual programme and plan of the excavation from year to year and* *(d) The plan of the area showing natural water courses limit of reserved and other forestares and density of trees assessment of impact of mining activity of Forest, land surface and Environment including air and water pollution, and details of the scheme for restoration of the same by aforestation,*	*The approved mining plan and map etc. had been filed on 4.7.89 at the time of renewal and new mining scheme is being processed and will be filed later as soon as is ready.*

	land reclamation, use of pollution control devices.	

55. The aforesaid fact discloses that on the date of submitting renewal application, certain necessary information which the petitioner was required to submit while filing the application for second renewal was not supplied. The second renewal application of the petitioner was not complete in all respects on which the authority could proceed to consider to grant the second renewal.

56. As per own case of the petitioner, the petitioner obtained'No Dues Certificate' on 31.10.2013. The petitioner got the mining plan approved on 16.07.2015 and the Environment Clearance Certificate was granted to the petitioner on 06.01.2016.

57. The aforementioned necessary documents required at Serial No.2 (vii) and 4 (xc) which the petitioner was supposed to supply with Form-J at the time of submission of form on 12.06.1998 but were not supplied. The pleading in the writ petition is silent to the effect that the petitioner had made any effort to provide aforesaid documents immediately so as to complete his renewal application in all respects to enable the authorities to consider the renewal application nor there is any pleading in the writ petition explaining the reasons for the inordinate delay of 16 years in filing the aforesaid documents. Therefore, it can be presumed that the petitioner did not make any effort to provide the aforesaid information/documents so as to complete his second renewal application in all respects for about more than 16 years.

58. Section 8A has been inducted in the Act, 1957 by Amendment Act, 2015 w.e.f. 12.01.2015 when the Ordinance was published in the Official Gazette on 12.01.2015 and was replaced by Amendment Act, 2015 vide Notification dated 27.03.2015.

59. In the case of Goa Foundation (supra), the Apex Court has categorically held that Rule 24 A(6) is applicable to first renewal and not to second renewal. The Apex Court further held that sub-rule (6) of Rule 24A of Rules, 1960 cannot be applied to second renewal under sub section (3) of Section 8 of the Act, 1957 inasmuch as renewal under sub section (3) of Section 8 requires the State Government to record specific reason that renewal is in the interest of mineral development. Paragraph no. 28 of the said judgement is reproduced herein below:-

"28. The MC Rules have been made under Section 13 of the MMDR Act by the Central Government and obviously could not have been made in a manner inconsistent with the provisions of the Act. Sub-rule (6) of Rule 24A of the MC Rules provides that

"24-A. (6) If an application for the renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period till the State Government passes order thereon."

This sub-rule cannot apply to a renewal under sub-section (3) of Section 8 of the MMDR Act because the renewal under this provision cannot be made without express orders of the State Government recording reasons for renewal in the interest of mineral development. In other words,

so long as there is a right of renewal in the lessee which in the case of a mining lease is for a maximum period of twenty years, the provision regarding deemed extension of a lease can operate, but if the right of renewal of a mining lease is dependent upon the State Government forming an opinion that in the interest of mineral development it is necessary to do so and the State Government recording reasons therefor, a provision regarding deemed extension till orders are passed by the State Government on the application of renewal cannot apply. We are, therefore, of the opinion that sub-rule (6) of Rule 24-A of the MC Rules will apply to a case of first renewal under sub-section (2) of Section 8 of the MMDR Act other than a case covered under sub-rule (9) of Rule 24-A of the MC Rules, but will not apply to renewal under sub-section (3) of Section 8 of the MMDR Act. In our view, the deemed mining leases of the lessees in Goa expired on 22.11.1987 under sub-section (1) of Section 5 of the Abolition Act and the maximum of 20 years renewal period of the deemed mining leases in Goa as provided in sub-section (2) of Section 8 of the MMDR Act read with sub-rules (8) and (9) of Rule 24-A of the MC Rules expired on 22.11.2007."

60. So the continuance of mining operation by the petitioner under the shelter of Rule 24A(6) was illegal in view of the judgement of the Apex Court in the case ***of Goa Foundation (supra)*** which categorically held that Rule 24A (6) is not applicable in case of second renewal.

61. Even in the case of **Common Cause (supra**), the Apex Court in paragraph no.16 has held that in case of second and subsequent renewal, the amended Rule 24A (6) would not extend the lease period. Paragraph no.16 of the said judgement is reproduced herein-below:-

"16. One clarification is imperative at this stage. After the passing of the order on 21.4.2014, in the Goa Foundation case, subsisting"first renewals" under Rule 24-A would expire on the completion of a further period of twenty years after the expiry of the period contemplated under the original grant, or as interpreted above. There was no similar automatic grant of "second renewals" after Goa Foundation case. Therefore, for all intents and purposes, the conclusion recorded hereinabove should be deemed to be relevant only with reference to the grant of "first renewals". It is necessary to reiterate that in Goa Foundation case, this Court had held that second renewals would be subject to an order passed by the State Government recording reasons that it was in the interest of mineral development to do so. Needless to mention that a second or subsequent renewal also required the previous approval of the Central Government -as provided for under Section 8(4) of the MMDR Act. The amendment to Rule 24-A made on 18.7.2014, more particularly, the second proviso to sub-rule (6) leaves no room for any doubt that the automatic extension postulated with reference to the first renewal would not apply to the second or subsequent renewals. It is therefore necessary to further conclude that in cases of second and subsequent renewals, the amended Rule 24A(6) would not extend the lease period for a further period of two years from the date of amendment. Therefore, for all intents and purposes, in relation to renewal sought under Section 8(3) of the MMDR Act (read with Rule 24-A(6) of the Mineral Concession Rules amended on 18.7.2014), all second renewals which were assumed to be subsisting by State Governments would expire with effect from the date of the judgment in Goa Foundation case i.e. 21.4.2014, and expressly, with effect from 18.7.2014 when the second proviso to Rule 24-A(6) provided accordingly. Unless of course, the Government had passed an express order in writing as mandated under Section 8(3) of the MMDR Act, extending the subsisting mining lease by a second or subsequent renewal."

62. However, the Apex Court in the case of ***Common Cause (supra)*** saved the leaseholders who applied for second renewal and no renewal order was passed on their application and they continued to do mining by taking advantage of Rule 24A (6) of Rules, 1960 after noticing the object of induction of Rule 8A in the Act, 1957.

63. By accepting the contention of leaseholders that term □renewal has been rejected□ □on determination□ and □lapse□ used in Section 8A (9) are the terms used for different contingencies/situations/exigencies under the Act, 1957 and Rules, 1960. The Apex Court repelled the contention of the petitioner in the said case that Section 8A(9) can be legitimate basis for excluding the applicability of Section 8A where the period of lease of renewal had expired prior to 12.01.2015.

64. In the context of the present case, it would also be relevant to reproduce para-29, 30 & 31 of the judgement of the Apex Court in the case of ***Common Cause (supra***):-

"29. From a perusal of the extract reproduced above, it is apparent that the insertion of Section 8-A into the MMDR Act was to address the hardship faced by leaseholders, besides other reasons, due to the second and subsequent applications for renewal remaining unattended at the hands of the State Government. The instant amendment to the MMDR Act introduced a uniform original grant period of fifty years for all mining leaseholders. It also excluded renewal(s) after the expiry of the original lease period. Accordingly, no renewal application can now be filed (after 12.1.2015). Under sub-sections (5) and (6) of Section 8-A, in our view such leaseholders, who had moved applications for renewal of captive/non-captive mines would be entitled to continue up to 31.3.2030/31.3.2020. The "Objects and Reasons" for the amendment to the MMDR Act aim at remedying the position which emerged upon the interpretation of the provisions of the MMDR Act as they existed hitherto before. The instant amendment was also directed at remedying the grievances of the mining industry due to □second and subsequent renewals□ remaining pending. And also, because the provisions of law relating to renewals had been found to be wanting. The above view is also endorsed by the fact that Section 8-A(9) deals with a situation wherein " renewal has been rejected...". It is therefore apparent that sub-sections (5) and (6) of Section 8-A of the amended MMDR Act are aimed at situations wherein an application for renewal (validly made) has remained unattended. Therefore, for no fault of the leaseholder he would be subjected to an arbitrary prejudice. It needs to be clarified that since an application for renewal cannot be filed after 12.1.2015, an application for renewal as would be treated as having been validly made, ought to have been made before 12.1.2015. We are of the view that out of the three contingencies contemplated under Sections 8-A(5) and 8-A(6) referred to above the first of the contingencies positively pertains to a situation wherein applications validly made for renewal were pending without any final decision at the hands of the State Government. Because in the absence of a renewal application, the leaseholder can be taken to have already expressed his disinterest to continue mining operations. Therefore logically, the words □□ with effect from the date of expiry of the period of renewal last made□□, should relate to an expired lease prior to 12.1.2015 in relation to which a valid application for renewal had already been made.

30. We also feel persuaded in accepting the contention advanced at the hands of learned counsel representing the leaseholders that the words " with effect from the date of expiry of the

period of renewal last made..." cannot be overlooked. In our considered view, there is no ambiguity in the aforesaid words. The plain reading of the quoted words can lead to one and only one inference, namely, that the situation contemplated under sub-sections (5) and (6) of Section 8-A of the amended MMDR Act (wherein both the above words have been used), includes a situation when the lease period contemplated by a renewal is scheduled to expire before 31.3.2030/31.3.2020. We are satisfied in clarifying that the situation contemplated by the use of the aforesaid words would extend to a leaseholder who had moved a valid application for renewal to the State Government which was yet to be considered and disposed of prior to 12.1.2015. The instant situation is not excluded by the contingencies contemplated under Section 8-A(9) of the amended MMDR Act. For the reasons recorded in the instant paragraph, as also, in the preceding paragraphs (wherein Section 8-A of the amended MMDR Act has been considered and interpreted), we are satisfied to hold that the applicability of Section 8-A of the amended MMDR Act need not only extend to leaseholders whose original lease/renewal lease period had not expired but would also extend to leaseholders whose term of lease/renewal had expired prior to 12.1.2015 and the leaseholder(s) concerned had moved a valid application for renewal at least twelve months before the leaseholder's existing lease (original, first, second or subsequent) was due to expire, and whose application has not been considered and rejected.

31. Irrespective of the position noticed herein above, it is imperative for us to clarify that the benefit of extension of the lease period postulated under Section 8-A of the MMDR Act is available, subject to a further overriding condition, namely, " that all the terms and conditions of the lease have been complied with". A leaseholder who does not satisfy any of the required conditions of the lease, as for instance the postulated clearances/approvals/consent would not be entitled to the benefits extended under sub-section (5) or (6) of Section 8-A of the amended MMDR Act."

65. The Apex Court in the paragraphs, reproduced above, in ***Common Cause (supra)*** has categorically held that the application for renewal of lease must be a valid application. So the benefit of Section 8A(6) can be extended to the petitioner if the application of the petitioner for renewal was valid.

66. In the instant case, we have already noted above that information required in the column in Form-J was not supplied by the petitioner at the time of filing application for renewal of lease. Rule 24A(1) of Rules, 1960 requires application for renewal to be filed at least twelve months before the date on which the lease is due to expire. The Rule does not contemplate an application to be valid even if it does not contain all the information sought in the said application.

67. In our opinion, under Rule 24A(1), the object for providing the time frame of twelve months for filing the application for renewal of lease before it was due to expire is that the competent authority should have sufficient time to process the application for renewal in accordance with the procedure provided under Rules, 1960, so that appropriate order is passed on the renewal application, and if the decision is taken by the Central Government to renew the lease under Section 8A(3) of the Amendment Act, 2015, it should be done within time in order to avoid the break in continuity of lease, so that the leaseholders may not suffer any loss, and at the same time, the State should also not suffer any loss of revenue.

68. It is also pertinent to note that the benefit of Section 8A(6) of the Amendment Act, 2015 can be provided to the leaseholder if he did not breach the terms and conditions of lease.

69. The Coordinate Bench of this Court in the earlier writ petition of the petitioner though has held that the rider contemplated under Section Section 8A(9) of the Amendment Act, 2015 will not come in the way of petitioner in getting the benefit of Section 8A(6), but the Coordinate Bench has categorically held that petitioner will get the benefit of Section 8A(6) of Amendment Act, 2015 provided the petitioner has not committed breach of any terms and conditions of lease.

70. So the Coordinate Bench of this Court in the earlier judgement has not given the absolute benefit of Section 8A(6) to the petitioner, and mandated that lease of the petitioner is extended for 50 years under Section 8A(6) rather Coordinate Bench of this Court put a rider that petitioner shall be entitled to benefit of Section 8A(6) provided the terms and conditions of the lease has not been breached.

71. In the present case, admittedly, the lease of the petitioner had expired on 15.06.1999. Thereafter, no lease deed was in existence. In such situation, it cannot be ascertained whether petitioner has violated any terms and conditions of the lease.

72. In a situation where lease deed has expired and an application had been submitted for renewal of lease deed, and there is no lease deed in existence, but the petitioner continued to carry out mining operation without any lease, in such situation, the Court is supposed to lift the veil and find out the true intention of the legislature in incorporating the words “all the terms and conditions of the lease deed have been complied with”.

73. In our opinion, the above mentioned words in Section 8A(6) have been incorporated with an intention that where renewal application has been submitted and an order is yet to be passed, the mining operation should be carried out after complying with all the relevant provisions of the Act and Rules, and if there is non-compliance of any rule or provision of the Act, it implies that all the terms and conditions of the lease deed have not been complied with.

74. The reason why we say so is that the lease deed incorporates all the requirements of law on fulfilling of which the mining operation can be carried out, and if there is no lease deed in existence then obviously, the intention of the legislature is that the mining operation should be conducted as per law.

75. Even in the case of ***Common Cause (supra),*** the Apex Court has held that benefit of Section 8A(6) can be extended to those leaseholders whose applications have been found valid.

76. The valid application means that the application should conform with all the requirements of law, and if it is not in conformity with law, such application cannot be said to a valid application in law.

77. Now, we proceed to analyze in the light of aforesaid fact whether the petitioner has complied with the aforesaid requirement for availing the benefit of Section 8A(6) of the Amendment Act, 2015.

78. While submitting Form-J, the petitioner did not obtain the mining plan. The petitioner neither submitted 'No Dues Certificate' nor mining plan. Admittedly, 'No Dues Certificate' was submitted by the petitioner on 31.10.2013 and the mining plan was approved on 16.07.2015.

79. The petitioner filed his renewal application on 15.06.1998, and the petitioner continued the mining operation without having a valid mining plan about 13 years, whereas it was incumbent upon the petitioner to submit mining plan along with an application in Form-J for renewal of lease by 15.06.1998.

80. The petitioner obtained the mining plan on 16.07.2015. Section 8A has been promulgated by the Ordinance dated 12.01.2015 which was later on replaced by an Act vide notification dated 27.01.2015. So, the application of the petitioner was defective and not as per law till 16.07.2015 when the mining plan was approved. Therefore, in the absence of valid application of renewal submitted by the petitioner for renewal of lease, there was no occasion for the authority to consider and process such application till it is complete in all respect.

81. In view of the categorical finding of the Apex Court in the case of ***Common Cause (supra)*** in paragraph no.30, extracted above, the renewal application should be a valid application whereas the petitioner's application by any stretch of imagination in view of the aforesaid fact can be said to be a valid application.

82. Further, the petitioner carried out mining operations without mining plan after expiry of lease deed on 15.06.1999 which clearly implies that petitioner did not fulfill the requirements under Section 8A(6) of Amendment Act, 2015 that the leaseholder has to comply with all the terms and conditions of the lease.

83. It is one of the contention of learned counsel for the petitioner that once this Court in earlier writ petition of the petitioner has held that petitioner is entitled to the benefit of Section 8A(6) even if the said finding is incorrect, that shall be binding upon the parties as the earlier judgement in writ petition of petitioner has not been assailed by the respondents and same has attained finality, therefore, it is not open to the respondents to contend that petitioner is not entitled to the benefit of Section 8A(6), and in this respect, he has placed reliance upon the judgment of Apex Court in the case of ***V.S. Charati (supra).*** Paragraph no.9 of the said judgement is reproduced herein below:-

"*9. It is submitted by the respondent that the Agricultural Lands Tribunal was not right in dropping proceedings under Section 32-G. Its order of 31.5.1961 is bad in law. He relied upon a decision of the Bombay High Court in the case of Nago Dattu Mahajan Vs. Yeshodabai Huna Mahajan (1976) 78 Bom LR 427 where this Court had held that under Section 31, the landlords have a choice to avail of one of the two provisions of resumption, namely, either Section 31(1) or Section 31(3). No landlord can avail of both the provisions. Learned counsel for the respondent,*

therefore, contends that in the present case, the appellant having exercised his choice under Section 31(1), could not have urged in the proceedings under Section 32-G his disability as a minor under Section 31(3). The order of 31.5.1961 of the Agricultural Lands Tribunal, however, was not challenged by the respondent. The order of 31.5.1961 has become final and the decision rendered by the Agricultural Lands Tribunal as between the appellant and the respondent is binding on both the parties. A decision, simply because it may be wrong, would not thereupon become a nullity. It would continue to bind the parties unless set aside. The effect of the decision of 31.5.1961 on the parties, therefore, cannot be ignored. In the present case, since the tenant could not complete his purchase by reason of the proceedings under Section 32-G being dropped, he cannot now contend that the decision has no legal effect or that the proceedings under Section 32-G ought to have been completed and, therefore, he should be looked upon as a purchaser."

84. There is no quarrel to the aforesaid proposition of law elucidated by the Apex Court in the aforesaid case.

85. In the case in hand, the aforesaid principle is not applicable inasmuch as in the earlier case of the petitioner, the Coordinate Bench has not given the absolute mandate that petitioner is entitled to the benefit of Section 8A(6) rather this Court put a rider in the light of requirement of Section 8A(6) that petitioner is entitled to benefit of Section 8A(6) provided the terms and conditions of the lease have been complied with.

86. So the direction of granting benefit of Section 8A(6) was not absolute by the Coordinate Bench of this Court and the said finding has not attained finality as discretion is left to the authority to see whether terms and conditions of the lease deed have been complied with, and on compliance of said condition, the authorities are mandated to extend the benefit of Section 8A(6) and lease of the petitioner is deemed to be extended for 50 years.

87. We have interpreted the term □all the terms and conditions of the lease deed have been complied with□ and we have held that petitioner did not comply with all the conditions of the lease deed.

88. Even as per own case of the petitioner, the mining plan of the petitioner was approved on 16.07.2015 after about 18 years from the date of filing of application by the petitioner for renewal of lease and after about six months from the date Section 8A has been incorporated in the Act, 1957 by Amendment Act, 2015.

89. Thus, in view of the specific finding recorded by the Apex Court in paragraph no.30 of the judgement of Apex Court in the case of ***Common Cause (supra)*** that benefit of Section 8A(6) can be extended only if renewal application is valid whereas in the present case, we have already held above that renewal application submitted by the petitioner was not valid in the eyes of law. Thus, even as per the case of ***Common Cause (supra),*** the petitioner is not entitled to the benefit of Section 8A(6).

90. For the reasons detailed above, we are of the view that principle of res-judicata as invoked by the learned counsel for the petitioner is not attracted in the present case for the reason

that the findings of Coordinate Bench of this Court in the earlier judgement passed in earlier writ petition of the petitioner regarding extension of benefit of Section 8A(6) to the petitioner was conditional as it was subject to the condition that the petitioner fulfilled the terms and conditions of the lease deed.

91. Since, we have already held that earlier judgement of the Coordinate Bench of this Court in the case of petitioner was conditional as the petitioner is entitled to the benefit of Section 8A(6) of the Amendment Act, 2015 subject to the condition that all the terms and conditions of the lease deed have been complied with, therefore, the Court has granted liberty to the authorities to treat the lease deed of the petitioner deemed to be extended if terms and conditions of the lease deed have been complied with, therefore, this Court did not grant automatic extension of lease to petitioner.

92. In such view of the fact, the judgement of Apex Court in the case of ***National Agricultural Cooperative Marketing Federation of India Ltd. (supra)*** relied upon by the learned counsel for the petitioner wherein Apex Court held that a judicial decision which has become final inter parties cannot be set at naught by legislative action and the judgement of the Apex Court Court in the case of ***Neelima Srivastava (supra)*** wherein it has been laid down by the Apex Court that it is not permissible for the parties to reopen the concluded judgements of the Court, are not applicable in the facts of the present case.

93. It has also been urged by the learned counsel for the petitioner that by Amendment Act, 2015, the power of State Government to renew the lease has been done away with, and therefore, after commencement of Amendment Act, 2015, second renewal application stood exhausted, and the lease of the petitioner stands automatically extended by virtue of operation of law, thus, rejection of renewal application by the respondent is per se illegal as the lease of the petitioner stood extended automatically by virtue of operation of law.

94. It is pertinent to note that lease stands extended by virtue of operation of law after the Amendment Act, 2015 only in those cases where the lessee meets the requirement of Amendment Act, 2015 and not in cases where the lessee does not meet the requirement of Amendment Act, 2015.

95. The petitioner claims that his lease is extended for 50 years by virtue of operation of law under Section 8A(6) of the Amendment Act, 2015.

96. We have deliberated above that renewal application of the petitioner was not a valid renewal application in the eyes of law inasmuch as no mining plan was enclosed with the renewal application. Further, the mining plan was obtained by the petitioner as per his own case on 16.07.2015 after enforcement of Amendment Act, 2015. The petitioner obtained the Environment Clearance Certificate on 06.01.2016 after enforcement of Amendment Act, 2015. Thus, it is evident from the aforesaid fact that petitioner's application for renewal of lease was not a valid application and further, the petitioner was doing mining till 2011 without a mining plan.

97. To carry out valid mining operation, there has to be a mining plan, therefore, it is obvious that petitioner's mining operation till 2011, when he was stopped by respondents from doing mining, was in breach of law, therefore, petitioner is not entitled to the benefit of Section 8A(6) as extension of said benefit was subject to condition that 'all the terms and conditions of the lease deed have been complied with. Thus, the aforesaid submission of the learned counsel for the petitioner lacks substance and is accordingly rejected.

98. So far as the argument of learned counsel for the petitioner that petitioner's right to extension of lease is not precluded by virtue of Section 8A(9) of the Amendment Act, 2015 as the lease of the petitioner cannot be treated to have lapsed is concerned, though it is correct that the respondent no.2 has illegally held in the absence of any specific order holding lease has lapsed that the lease of the petitioner has lapsed, and this finding is contrary to the judgement of the Apex Court in the case of ***Common Cause (supra)*** wherein the Apex Court in paragraph no.35 has held that '*it is apparent from a perusal of sub-rule (1) extracted above that the State Government is mandated to pass an order and thereby declare that a mining lease had lapsed. It is also the mandate of sub-rule (1) aforesaid that such an order passed by the State Government must be communicated to the leaseholder. On a conjoint reading of Section 4-A(4) and Rule 28(1), we are satisfied to hold that a mining lease under Section 4-A(4) would not be deemed to have lapsed till the State Government passes an order declaring the mining lease to have lapsed and further communicates the same to the leaseholder'.*

99. Even if the aforesaid finding of the authority is incorrect, but that would not come to rescue of the petitioner. We shall deal with reason for the said finding at the appropriate place.

100. The second ground on which the application of the petitioner has been rejected is that Chapter-IX of Rules, 1963 incorporated in the Rules, 1963 by Notification No.2229/LXXXVI-2016-130-2015 dated 29.06.2016 does not provide any provision for second renewal of lease and petitioner also could not demonstrate that there is any provision under Chapter-IX of the Rules, 1963 providing for grant of lease of Silica Sand etc., we are of the view that the said finding of the authority is correct. The aforesaid finding has been assailed by the petitioner on the ground that since the lease of the petitioner stood extended by virtue of Amendment Act, 2015, therefore, it is not a case of renewal of lease and thus, the authority has erroneously treated the case of the petitioner to be a case of renewal of lease.

101. We may note that the contention of learned counsel for the petitioner may have substance provided the petitioner was entitled to the benefit of Section 8A(6) of the Amendment Act, 2015. We have detailed above the reason why the petitioner's case does not fall within the ambit of Section 8A(6) of the Amendment Act, 2015, therefore, even if the authority has erroneously treated the case of the petitioner to be a case of renewal of lease, but that would not benefit the petitioner.

102. It would be apposite to mention that this Court has repeatedly held that even if an order is illegal or not as per law, the Court may refuse to issue any writ under Article 226 of the Constitution of India for the reason that the Court while exercising power under Article 226 of the Constitution of India shall not issue futile writs.

103. In the case in hand, we have found that renewal application of the petitioner was not valid as he did not comply with the requirement of law so as to enable the authorities to consider the said renewal application, and even on the date of Amendment Act, 2015, the deficiency or defect in renewal application was not removed as the mining plan was obtained by the petitioner as per his own case on 16.07.2015 and Environment Clearance Certificate was obtained on 06.01.2016, therefore, even as per the case of ***Common Cause (supra),*** the petitioner's application for renewal of lease was no application in the eye of law. Therefore, even if we quash the impugned order and remand the matter, the petitioner cannot get the benefit of Section 8A(6) of the Amendment Act, 2015. Thus, we are not inclined to interfere with the impugned order on the settled principle of law that the Court should not issue futile writs.

104. Thus, for the reasons given above, the writ petition lacks merit and is, accordingly, ***dismissed*** with no order as to costs.

(2026) 5 ILRA 2276
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 01.05.2026

BEFORE

THE HON'BLE SYED QAMAR HASAN RIZVI, J.

Writ C No. 1006997 of 2015

Sandeep Jaiswal ...Petitioner
Versus
Commissioner Lucknow Division Lucknow & Ors. ...Respondents

Issue for consideration

The dispute concerns reassessment of stamp duty on a sale deed after authorities recalssified the purchased land as non-agricultural.

Headnotes

A. Civil matter-Constitution of India,1950-Article 226-Indian Stamp Act,1899-Section 47-A-Deficiency of Stamp duty-Market value-Agricultural land-Ex parte Inspection Report-Sub-Registrar's Report-Tehsildar Report ignored-Rule 7(3)(c), U.P. Stamp (Valuation of Property) Rules, 1997-Independent Satisfaction of Collector-Revenue records-Nature of land to be determined as on date of execution of sale deed-Future potential irrelevant-Natural justice-Revisional Authority failed to record reasons-Impugned orders quashed-Refund of deposited amount directed.(Para 25 to 37)

Held

The court held that it is well settled in law that valuation of property for the purpose of stamp duty must be determined with reference to its nature, character and condition as existing on the date of execution of the instrument. Any speculative assessment based on the potential or future use of land is wholly extraneous and impermissible.

Petition allowed. (E-6)

Case law Cited

Smt Raziya Kahtoon Vs State of U.P. Through Prin. Secy. Stamp & Registration Lko & Ors (2026) 1 ADJ 273 (LB), Wasi Ur Rehman & Anr. Vs Commissioner, Muradabad Division & Ors (2015) SCC OnLine All 5680, Ram Gopal Vs State of U.P. & Ors (2009) 7 ADJ 185 (LB), Ram Khelawan @ Bachcha Vs State of U.P. & Anr (2005) 98 RD 511-referred to.

List of Acts

Constitution of India, 1950, Indian Stamp Act,1899.

List of Keywords

Indian Stamp Act,1899, Section 47-A, Deficiency of stamp duty, Market value, Agricultural land, Sale deed, Exparte inspection, Sub-Registrar's Report, Rule 7(3)(c), U.P. Stamp (Valuation of Property) Rules, 1997, Revenue records, Khasra, Khatauni, Circle rate, Natural justice, Non-speaking revisional order, Refund of stamp duty.

Case Arising from

CIVIL JURISDICTION: WRIT-C No. -1006997 OF 2015

Sandeep Jaiswal Vs. Commissioner Lucknow Division Lucknow & Ors

From the judgment and order dated 01.05.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Petitioner(s):

Govind Saran Nigam, Abhisht Saran, Manu Saxena, Rajesh Chandra Dixit, Sanjai Srivastava

Adv. for Respondent(s):

C.S.C

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

1. Sri Sanjai Srivastava, learned counsel for the petitioner; and Shri Abhishek Kumar Pandey, learned Additional Chief Standing Counsel for the State-respondents are present.

2. By means of this present writ petition, the petitioner has prayed for the following relief:

"(i) A writ, direction or order in the nature of Certiorari quashing the order dated 26.08.2015 passed by opp. party No.1 and the order dated 21.01.2015 passed by opposite party No.2 contained in Annexure No.1 & 2 of the writ petition respectively.

(ii) Any other writ, direction or order which may be found fit and appropriate in the circumstances of the case."

3. The essential facts, as borne out from the pleadings on record, are that the petitioner purchased a parcel of land bearing Gata No. 1085, ad-measuring 0.0776 hectare, situate in Village Nepalapur, Pargana Khairabad, Tehsil Sitapur, District Sitapur, by means of a duly executed sale-deed dated 28.03.2014. The said instrument was registered in the office of the Sub-Registrar, Sitapur; in Register No. 1, Jild No. 5029, pages 329 to 366, at Serial No. 2482. The said sale-deed was executed by the recorded tenure-holder, Smt. Shobha Pandey and others, for a consideration of Rs. 15,75,000/- on the payment of Stamp duty amounting to Rs. 1,10,300/- paid at the time of execution of sale-deed; calculated on the valuation disclosed in the said sale-deed.

4. It is the case of the petitioner that, pursuant to a complaint lodged by one Sri Ram Raghuveer, and in purported compliance of the directions issued vide order dated 28.06.2014 by the District Magistrate, Sitapur, as well as the Assistant Inspector General (Registration), Sitapur, vide communication dated 26.06.2014, the Sub-Registrar, Sitapur (opposite party no. 3), undertook a spot inspection of the property in question on 28.06.2014.

5. On the basis of the said inspection report, the Collector initiated proceedings by issuing a show cause notice dated 23.08.2014, calling upon the petitioner to explain as to why deficiency in stamp duty, along with penalty and interest, be not recovered from him as per Sections 40, 42, 62, and 64 of the Indian Stamp Act, 1899.

6. In response to the aforesaid notice, the petitioner submitted his objections on 26.09.2014, disputing the correctness of the inspection report and specifically praying for a fresh inspection by the Tehsil authorities, asserting that the land was under active agricultural use and no construction whatsoever existed thereon.

7. Acting upon the aforesaid objections, the Collector (Stamp), Sitapur (opposite party no. 2), directed the Tehsildar, Sitapur, to conduct a spot inspection and submit its report regarding the nature of the land. In compliance thereof, a spot inspection was carried out, culminating in the report dated 12.12.2014.

8. The Collector/Opposite party No. 2 vide impugned order dated 21.01.2015 impounded the sale-deed in question by holding deficiency in stamp duty and imposed penalty along with interest.

9. Aggrieved by the order dated 21.01.2015 passed by the Collector (Stamp), Sitapur, the petitioner preferred Revision under Section 56 (1) of the Indian Stamp Act, 1899 that was registered as Revision No. 2015100000538/23/2015 on 13.02.2015. The Commissioner, Lucknow Division, Lucknow (opposite party no. 1), vide order dated 26.08.2015, affirmed the order dated 21.01.2015 passed by the Collector; holding that the same was founded on due consideration of material on record and did not suffer from any legal infirmity and consequently, dismissed the revision.

10. It is pleaded herein on behalf of the petitioner that, bare perusal of the order dated 21.01.2015 passed by the Collector, Sitapur, (opposite party no. 2) unmistakably reveals that the entire determination rests exclusively upon the inspection report of the Sub-Registrar dated 28.06.2014, while the subsequent report submitted by the Tehsildar on 12.12.2014 has been wholly disregarded. It is urged that the Tehsildar's report, being based on an independent inspection, categorically records that, at the relevant time, the land was irrigated agricultural land and was devoid of any structural development.

11. It is very categorically submitted by the learned counsel for the petitioner that the said report submitted by the Tehsildar remarked that the parameters ordinarily associated with non-agricultural use such as existence of houses or shops, rental valuation, year of construction, nature and type of construction, number of rooms, and number of storeys were as entirely inapplicable.

Further, it also records that the land is situated at a distance of approximately one kilometer from the municipal limits, abutting a provincial road and adjoining an abadi area, and significantly, that standing 'Lahi' crop existed on the land at the relevant point of time.

12. It is further contended on behalf of the petitioner that the inspection report dated 28.06.2014 submitted by the Sub-Registrar is, at best, a cursory depiction of the site conditions as observed on the date of inspection and fails to capture the essential attributes indicative of agricultural use. He submitted that in the present case, the report by the Sub-Registrar is conspicuously silent on crucial aspects such as whether the land had been ploughed, irrigated, harrowed, or leveled factors which are determinative of its agricultural character. It is also asserted that the said inspection was conducted ex-parte, without prior notice to the petitioner, thereby depriving him of an opportunity to participate in the spot inspection or contest the findings. More importantly, the report makes no reference to the standing 'Lahi' crop, which, according to the petitioner, was approximately three (3) feet in height at the time of spot inspection by the Tehsildar.

13. Learned counsel further submitted that the Collector (Stamp), Sitapur (opposite party no. 2), has acted arbitrarily by treating the land in question to be non-agricultural/commercial without considering the Tehsil report, without proper appreciation of the relevant revenue records. It is contended that the Khasra and Khatauni entries for Fasli years 1415 to 1420 consistently recorded the land as agricultural. Despite such material evidence, the Collector, by impugned order dated 21.01.2015, proceeded to hold the instrument to be undervalued, reassessed the market value of the property at Rs. 1,17,40,000/-, determined the stamp duty payable at Rs. 8,21,800/-, and assessed deficiency of Rs. 7,11,500/-. In addition, a penalty of Rs. 1,00,000/- and interest amounting to Rs. 1,06,725/- at the rate of 1.5% per month were also imposed, aggregating to Rs. 9,18,225/-, recoverable from the petitioner. It is further submitted that while the Khatauni for the Fasli years 1415 to 1420 records the name of Smt. Shobha Pandey as the tenure-holder, the subsequent Khatauni for the Fasli years 1421 to 1426 records the petitioner as Bhumidhar with transferable rights. The Khasra entry for Fasli year 1422 also reflects that the nature of the land as agricultural with crops standing thereon. It is, therefore, urged that the land, being agricultural in nature at the time of execution of the sale deed and situated at a distance of approximately one kilometer from the limits of Nagar Palika, Khairabad, could not have been treated as non-agricultural land, merely on the ground that no crops or trees were noticed in the report submitted by the Sub-Registrar at a particular point of time.

14. It is contended on behalf of the petitioner that the impugned order dated 21.01.2015, though ostensibly founded upon the inspection report dated 28.06.2014, is conspicuously bereft of any substantive or reasoned consideration of the statutory provisions governing valuation. In particular, there is a complete absence of analysis with respect to the mandate of the Indian Stamp Act, 1899 and the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997, which prescribe the parameters and methodology for determination of market value for the purposes of stamp duty. The order, therefore, suffers from a manifest non-application of mind to the governing legal framework.

15. It is further submitted that the Revisional Authority has also failed to discharge its jurisdiction in accordance with law, inasmuch as, no meaningful or comparative evaluation of the Tehsildar's report dated 12.12.2014 vis-□-vis the inspection report of the Sub-Registrar dated

28.06.2014 has been undertaken. Learned counsel contended that the said omission is not inadvertent but deliberate, as any such comparative scrutiny would have exposed material inconsistencies and infirmities in the earlier report, thereby undermining the very foundation of the impugned determination.

16. It has been further argued by the learned counsel for the petitioner that the compliance of Rule 7(3)(c) of the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 is mandatory in character. In the present case, the spot inspection dated 28.06.2014 was conducted ex-parte, without any prior notice to the petitioner; in clear violation of the procedural safeguards contemplated under the relevant Rules. Such an inspection, conducted in breach of mandatory requirements, is vitiated in law and devoid of evidentiary value, and could not have been relied upon for adjudication of the stamp proceedings.

17. Learned counsel further submitted that the inspection report dated 28.06.2014 has been prepared in complete disregard of the applicable Collector's circle rate list. It is pointed out that the said rates provided for a 100% enhancement in valuation where agricultural land abutted a road, and a further 50% enhancement where non-agricultural activity or abadi existed within a radius of 100 metres. It is contended that the petitioner, at the time of execution of the sale-deed dated 28.03.2014, had duly applied the prescribed multipliers, taking into account the size and location of the land, which measured 0.0776 hectare and thus attracted valuation at three times the normal agricultural rate, i.e., Rs. 4,50,000/- per hectare. The additional enhancements, as applicable, were also duly factored in. It is, therefore, urged that the instrument was properly valued and stamped in accordance with law, and no deficiency could have been determined.

18. It is lastly submitted that even subsequent revenue records fortify the petitioner's case. The Khatauni for the Fasli years 1427?1432 continues to record the land as agricultural, and no declaration altering its character has been made under Section 143 of the Uttar Pradesh Zamindari Abolition & Land Reforms Act or under Section 80 of the U.P. Revenue Code, 2006. The petitioner remained recorded as Bhumidhar with transferable rights, and the land remained free from any construction, save for a boundary wall raised after purchase for protection of crops. In such circumstances, it is contended that there is neither any misrepresentation nor concealment on the part of the petitioner.

19. Per contra, learned Additional Chief Standing counsel appearing for the State-respondents submits that the spot inspection report dated 28.06.2014, prepared by the Sub-Registrar, unequivocally demonstrates that no agricultural activity was being carried out on the land in question. It is urged that the said report, having been prepared pursuant to a complaint and under directions of the competent authority, is a contemporaneous and reliable record of the physical condition of the property, inasmuch as, the said report clearly indicates the existence of residential and commercial constructions within Gata No. 1085, thereby negating the claim of the land being agricultural in nature.

20. He further contended that the inspection report dated 28.06.2014 specifically records absence of any agricultural operations on the purchased land and notes the presence of shops and residential structures within the same Gata. Learned counsel emphasizes that the said report makes

no reference to any standing 'Lahi' crop, whereas such a fact appeared for the first time in the Tehsildar's report dated 12.12.2014, which was prepared after a lapse of nearly six months. The Sub-Registrar's report, on the other hand, records the existence of two shops, namely 'Aron Store' and 'Shukla Provision Store', along with the residential house of one 'Vishwakarma' and several adjoining constructions and boundary walls, all indicative of a developed locality. It is further submitted that the portion purchased by the petitioner was found to be situated between existing constructions, with visible foundation work and boundary demarcation, clearly suggesting its residential/commercial character.

21. Learned counsel for the State-respondents further argued that the Tehsildar's report, having been submitted on 12.12.2014, was not available at the time when the Sub-Registrar conducted the inspection and submitted his report on 28.06.2014. It is, therefore, contended that there was neither occasion nor obligation upon the Sub-Registrar to consider a report which came into existence subsequently. The valuation, it is urged, has been rightly determined on the basis of the prevailing Collector's circle rate list effective from 01.08.2013, taking into account the physical condition of the land and its surrounding developments. It is also contended that entries in revenue records such as Khasra and Khatauni, though relevant, are not conclusive for determining the true nature of the land for the purposes of stamp valuation. He further submitted that the Collector (Stamp), Sitapur, while deciding the stamp proceedings by order dated 21.01.2015, has duly considered the inspection report dated 28.06.2014, and the respective submissions of the parties, and thereby, arrived at a reasoned conclusion. The determination, according to the respondents, is thus legal, justified, and based on relevant considerations.

22. It has been urged by the learned Additional Chief Standing Counsel, that the Revisional Authority, namely the Commissioner, Lucknow Division, Lucknow, has affirmed the order of the Collector after due consideration of the material available on record, including the Sub-Registrar's report, and has passed a reasoned order warranting no interference. He also contended that the mere absence of a declaration under Section 143 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, cannot be treated as conclusive proof of the land being agricultural in nature.

23. It is lastly submitted on behalf of the State-respondents that the Tehsildar's report dated 12.12.2014, having been prepared nearly six months after the Sub-Registrar's inspection and several months after the execution of the sale deed dated 28.03.2014, cannot be said to reflect the actual condition of the land at the relevant point of time. Consequently, the said report dated 12.12.2014 lacks probative value for the purpose of determining the market value of the property as on the date of execution of the instrument and has rightly not been relied upon by the authorities.

24. Heard learned counsels for the parties and perused the material available on record.

25. Insofar as the contention raised on behalf of the respondents relating to the absence of a declaration of the land for non-agricultural purposes under Section 143 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, as not being a sole and absolute indicator that the land is agricultural in nature, is concerned; the same has already been duly considered and decided by this Court while dealing with the case of **Smt Raziya Kahtoon versus State of U.P**

Through Principal Secretary Stamp and Registration Lko and Ors reported in **2026(1) ADJ 273 (LB)**. For convenience, the relevant portion is extracted hereinbelow:

"44. So far as the effect of declaration / notification of the land under Section 142 and 143 of the U.P. Zamindari Abolition & Land Reforms Act, 1950, is concerned, the said issue has been dealt with by this Court in the case of Haroon Ahmad (supra) and Sunil Jaiswal & Others (supra), wherein it has been held that the non-issuance of the notification of a property under Section 143 of the U.P. Zamindari Abolition & Land Reforms Act, 1950 cannot be the basis for questioning the determination of the market value of land. Section 143 of the U.P. Zamindari Abolition & Land Reforms Act, 1950 is for a different purpose and cannot control the determination of the market value under the Indian Stamp Act, 1899.

45. There is no doubt that the provisions of U.P. Zamindari Abolition and Land Reforms Act, 1950 encompasses different object and cannot be applied for the purpose of determination of the value of the land insofar it relates to Indian Stamp Act. Such determination is not controlled in any manner by the provisions of U.P. Zamindari Abolition and Land Reforms Act 1950. Notification under Section 143 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 can at best be one of the factors for consideration at the time of determination of the market value under the Indian Stamp Act and relevant Rules as prescribed under the U.P. Stamp (Valuation of Property) Rules, 1997.

46. In the case of **Wasi Ur Rehman and another versus Commissioner, Muradabad Division and others;** reported in **2015 SCC OnLine All 5680**, a co-ordinate Bench of this Court held that, "Though entry in the revenue record regarding the nature of the property may be relevant but cannot be the sole factor in determining the market value. Market value is dependent upon other factors viz. change of user in adjacent area or change of agricultural land to urban agglomeration or if the properties were being sold and bought at commercial rate then for the purposes of stamp duty market value of the property would be the same as that of the property bought at commercial rate, irrespective of the entry in the revenue record."

47. From all that is discussed herein above, this court finds that the Collector (opposite party no.3) and the Deputy Commissioner (opposite party no.2) have passed the impugned orders without correctly appreciating the well-settled law. The aforementioned Authorities while holding that the plot of land was purchased by the petitioner with the intention to use it for commercial purpose, did not find any substance being unsupported by any documentary evidence or material which could establish that the property comprised in Sale-Deed was being used for other than agriculture purpose at the time of execution of the instrument. Presumption of usage of subject matter of instrument in future for some commercial purposes cannot be the ground of invocation of the provisions of the Indian Stamp Act for alleged deficiency in stamp duty. The Collector even could not cite any exemplar to show that the properties adjacent or around the subject matter of instrument have been sold or purchased at the commercial rate. Thus, the findings on the basis of which the impugned deficiency of stamp duty has been determined is unsustainable."

26. It is well settled in law that the proceeding under Section 47- A of the Indian Stamp Act, 1899 shall not be decided merely placing reliance on the ex-parte report of the registering

authority. The same view has been taken by a Co-ordinate Bench of this Court in the case of **Ram Gopal versus State of U.P. And Others**, reported in **2009(7) ADJ 185 (LB).**

27. A co-ordinate Bench of this court in the case of **Ram Khelawan @ Bachcha versus State of U.P. and another**; reported in **2005 (98) RD 511,** has held as under:

"25. It has been found in several cases like the present one that the entire basis of determination of market value for the purpose of stamp duty is ex-parte report of Tehsildar or other officer. Exparte inspection report may be relevant for initiating the proceedings under section 47-A of Stamp Act. However, for deciding the case no reliance can be placed upon the said report After initiation of the case inspection is to be made by the Collector or authority hearing the case after due notice to the parties to the instrument as provided under Rule- 7(3)(c) of the Rules of 1997. Moreover, in the inspection report distance of the property from other residential or commercial properties and road must be shown and wherever possible sketch map must also be annexed along with the report so that correct valuation may be ascertained with reasoned certainty."

28. This Court in the case of **Smt Raziya Kahtoon** (supra) has also held that:

"30. In the instant case, from a perusal of the pleadings on record, it is evident that no notice was served upon the petitioner prior to carrying out the inspection, and the order dated 28.07.2014 was passed on the basis of an ex-parte inspection report. However, the said order was recalled vide order dated 17.10.2014. Subsequently, an inspection report dated 25.02.2015 was obtained from the Naib Tehsildar, Kurshi. Although the case of the State-respondents is that the said inspection was carried out after due information to the counsel for the petitioner, there is nothing on record to establish that any notice was issued to the petitioner. In any case, the notice to the petitioner, as contemplated under Rule 7(3) of the U.P. Stamp (Valuation of Property) Rules, 1997, is lacking in the present case.

31. Now, coming to the other aspect of the matter assailed by means of the present writ petition, it is contended that the Collector (opposite party no. 3), before passing the impugned order dated 04.02.2016 determining deficiency in stamp duty, has neither considered any oral or documentary evidence nor based the order on any cogent material. The impugned order has been passed merely by relying upon the report submitted by the Naib Tehsildar. Thus, the said impugned order is in contravention of the provisions of Section 47-A(3) of the Indian Stamp Act. This Court, in the case of Ajay Agarwal versus Commissioner, reported in 2023 (2) ADJ 561 (LB), observed as follows:

"18. The provisions of Section 47-A(3) of the Act clearly prescribe that prior to passing an order under the aforesaid provision, the Collector has to satisfy himself, which would mean that he has to record his subjective satisfaction with regard to the correctness of the market value of the property. Furthermore, he is also required to record reasons to believe that the market value of such property has not been truly set forth in the instrument, where after he is required to determine the market value of the property and the duty payable thereon. Clearly, the Collector, in exercise of powers under Section 47-A(3) of the Act, is required not to rely solely on the spot inspection report, but also to record his subjective satisfaction with regard to the undervaluation of the

instrument of transfer. As such, while passing orders under Section 47-A of the Act, the Collector cannot rely only on the post inspection report."

29. The record indicates that upon consideration of the objections filed by the petitioner on 26.09.2014, the learned Collector, Sitapur, (opposite party No. 2) directed the Tehsildar, Sitapur, to carry out spot inspection of the land in question. In compliance thereof, the Tehsildar submitted his report dated 12.12.2014, which was very much available on record at the time of passing of the impugned order. However, a careful reading of the order dated 21.01.2015 makes it evident that, although the said report has been noticed, it has not been meaningfully considered, more particularly, when the Tehsildar's report, being based on an independent inspection carried out, that too, under the directions of the Collector himself, categorically records that at the relevant time, the land was irrigated agricultural land and devoid of any kind of structural development. Further, Lahi crop was found standing on the land at the time of inspection.

30. It is well settled in law that valuation of property for the purposes of stamp duty must be determined with reference to its nature, character, and condition as existing on the date of execution of the instrument. Any speculative assessment based on the potential or future use of the land is wholly extraneous and impermissible. The market value must reflect the contemporaneous reality of the property and not a conjectural or prospective utility which the land may or may not acquire.

31. A perusal of the revisional order dated 26.08.2015 passed by the Commissioner, Lucknow Division, Lucknow, under Section 56(1) of the Indian Stamp Act, shows that the revisional authority has not dealt with the grounds raised by the petitioner. No definite findings have been recorded on the issues concerning the legality and correctness of the order dated 21.01.2015 passed by the Collector (Stamp), Sitapur. The revisional authority was required to examine the matter independently and to record reasons indicating due consideration of the same. The impugned order passed merely affirming the conclusion of the Collector in the impugned order dated 21.01.2015 without due examination, renders the same unsatisfactory in law.

32. Looking to the facts of the present case, this Court is of the view that the Collector concerned was required to consider all relevant material available on record to arrive at a reasoned conclusion regarding alleged undervaluation of the stamp duty. The Collector, Stamp (opposite party No.2) without assigning cogent reasons, proceeded to pass the impugned order solely relying upon the ex-parte inspection report submitted by the Sub-Registrar dated 28.06.2014. It is trite in law that such a report may form the basis for initiation of proceedings under the Indian Stamp Act, 1899, but cannot, in isolation, be treated as determinative for assessing the market value. In any case sole reliance could not have been confined by him to the ex-parte inspection report submitted by the Sub- Registrar that too a challenged one, particularly when another report by the Tahsildar was also available on record. From the perusal of the impugned orders, it is evident that not even an iota of exercise was undertaken by the respondent authorities for considering the report of the Tahsildar dated 12.12.2014 in reference or comparison to the report submitted by opposite party No. 3 dated 28.06.2014.

33. The burden of proof that the property in question is being used for other than agricultural purposes is upon the respondents who allege and seek to determine its market value. Generally, market value given in the instrument is to be taken correct unless proved otherwise or circumstances suggest to the contrary. The respondent authorities have miserably failed to discharge the above burden.

34. The inspection report dated 28.06.2014 submitted by the Sub-Registrar relied upon in this connection is of no avail, in the light of the judgment passed by this Court in the case of **Ram Khelawan** (Supra) that such a report is relevant only for initiating the proceedings under Section 47-A of the Indian Stamp Act, 1899 and no reliance can be placed upon it in determining the market value as it is not a piece of evidence.

35. Taking into consideration the factual matrix of the present case and the law on the subject as discussed hereinabove, the impugned order dated 21.01.2015 passed by the learned Collector, Sitapur in Case No. 08-/K-354 D 2014106400657 as well as the order dated 26.08.2015 passed by the Commissioner, Lucknow Division, Lucknow in Revision No. 2015100000538/23/2015 under Section 56(1) of the Indian Stamp Act, 1899, are not sustainable in the eyes of law and are liable to be set aside.

36. In view of the facts and circumstances of the case, this Court is of the considered opinion that no useful purpose would be served in remitting the matter for fresh consideration as it is well settled in law that for the purposes of the proceeding under the Indian Stamp Act, 1899, the valuation of the property is required to be determined with reference to the date of execution of the instrument, and any subsequent change in the nature or condition of the land cannot be taken into account for such determination. As such, any inspection conducted at a later point of time would not be relevant for adjudicating the correctness of the valuation of the subject matter of instrument.

37. Accordingly, the writ petition **succeed**s. Consequently, the impugned order dated 21.01.2015 passed by the learned Collector, Sitapur in Case No. 08-/K-354 D 2014106400657 as well as the order dated 26.08.2015 passed by the Commissioner, Lucknow Division, Lucknow in Revision No. 2015100000538/23/2015 are hereby set aside. Further, direction in the nature of mandamus is issued to the Collector (Stamp), Sitapur (opposite party no. 2) to refund the amount deposited by the petitioner, if any, during the pendency of the present litigation pursuant to the impugned order; within one month from the date of production of a certified copy of this order before the authority concerned. It is further provided that if the aforesaid amount is not refunded within the period as fixed herein above, the petitioner shall be entitled to simple interest at the rate of 6% per annum from the date of its deposit till the date of actual refund.

38. No order as to costs.

39. Before parting, this Court deems it appropriate to place on record its deep appreciation for the invaluable assistance rendered by Mr. Rajat Srivastava, Research Associate, attached with me in drafting this judgment and finding out case laws applicable in the present case.

(2026) 5 ILRA 2286
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 08.05.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 3000056 of 2000

Sheo Bux Singh ...Petitioners
Versus
State Of U.P. Secretary Revenue ...Respondents

Issue for Consideration

Matter pertains to the legality of the orders passed under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 determining the petitioner's surplus land, particularly whether the Prescribed Authority determined the petitioner's ceiling area in accordance with the mandatory provisions of the U.P. Imposition of Ceiling on Land Holdings Act, 1960, particularly Section 4-A thereof, and whether the impugned orders, having ignored material documentary evidence, adopted mutually destructive findings regarding the nature of the land, wrongly included land already transferred through a bona fide sale deed, exceeded the scope of remand, and suffered from perversity, non-application of mind and manifest illegality, warranting interference under Article 226 of the Constitution of India.

Headnotes

U.P. Imposition of Ceiling on Land Holdings Act, 1960 – ss.4-A, 5(6)(b), 10(2), 13 – Constitution of India – Art.226 – Ceiling proceedings – Determination of irrigated land – Bona fide transfer – Scope of remand – Delay and laches – Petitioner challenged orders declaring surplus land – Contention that authorities treated the same land as irrigated while determining the permissible ceiling area and as unirrigated while declaring surplus land – Further contention that land already transferred by a registered sale deed in favour of bona fide purchasers was illegally included in the petitioner's holding – Prescribed Authority enhanced the surplus area after remand – Appellate authority affirmed the order – Writ petition :

Held : Section 4-A of the Act lays down a specific statutory mechanism for determination of irrigated land. The provision obligates the authority to examine khasra entries of the relevant Faslis and undertake due verification including spot inspection so as to record a categorical finding regarding the source and availability of assured irrigation. The requirement is mandatory and not directory. Since the Ceiling Act is in the nature of expropriatory legislation, strict compliance with statutory requirements is imperative and the authorities must meticulously determine whether land is irrigated within the meaning of Section 4-A before declaring any area surplus. It is settled law that omission to consider material evidence amounts to perversity in decision-making. A quasi-judicial order affecting substantive rights cannot be sustained when relevant evidence is ignored and conclusions are founded upon conjectures. Transfers made after 24.01.1971 cannot automatically be ignored unless the authority records a finding that such transfer does not satisfy the conditions contemplated under proviso (b) to Section 5(6) of the Act. Once a transfer is proved to be genuine, for adequate consideration and under an irrevocable instrument, the transferred land is liable to be excluded from the holding of the tenure-holder. It is a settled principle that an authority acting pursuant to a remand order must strictly confine itself to the terms of remand. Any adjudication beyond the remitted issues is jurisdictionally unsustainable. The Prescribed Authority clearly misconstrued the remand directions and exercised jurisdiction not vested in it. The plenary jurisdiction of this Court under Article 226 is to reach injustice wherever found and to mould relief so as to advance substantial justice. Technical objections

cannot override the constitutional obligation of this Court to correct patent illegality. [Paras 41, 42, 43, 46, 49 & 52]

The entire controversy centres around the classification of the land in question as irrigated or unirrigated and the consequent determination of ceiling surplus area. The record unmistakably demonstrates that while computing the permissible ceiling area of the petitioner, the authorities treated the land as irrigated so as to reduce the ceiling entitlement available to the petitioner, whereas while identifying the land to be declared surplus, the same holding was treated as unirrigated so as to enlarge the surplus area. Such a self-contradictory approach strikes at the very root of fairness in quasi-judicial adjudication and renders the impugned determination arbitrary. A perusal of the impugned orders reveals no meaningful discussion of the khasra entries, no proper appreciation of the consolidation records and no reasoned finding based upon statutory parameters. The authorities brushed aside C.H. Form-41 and other consolidation records without assigning cogent reasons. The sale deed dated 13.05.1974/14.05.1974 having been accepted to be bona fide, the inclusion of the transferred land in the petitioner's holding was wholly impermissible. The Prescribed Authority failed to undertake the mandatory statutory exercise under Section 4-A, adopted mutually destructive findings regarding the nature of the land and illegally enhanced the surplus area beyond the scope of remand. The appellate authority mechanically affirmed the illegal order. The writ petition succeeds. The impugned orders were quashed and the matter remitted to the Prescribed Authority for fresh determination in accordance with law. [Paras 40, 42-59] .(E-5)

Case Law Cited

Beni Ram v. State of U.P., 1982 Allahabad LJ 974;
Km. Madhubala v. State of U.P., 1978 Allahabad LJ 1039;
Om Prakash Agarwal v. First Additional District and Sessions Judge, AWC 1981 775;
Ram Karan v. State of U.P., Ceiling No.111 of 2003, decided on 13.09.2012;
Pramod Kumar v. Additional Commissioner, 1999 (17) LCD 379;
Municipality of Bhiwandi and Nizampur v. M/s Kailash Sizing Works, AIR 1975 SC 529;
Dwarka Nath v. Income Tax Officer, AIR 1966 SC 81;
Rameshwar v. Jot Ram, (1976) 1 SCC 194;
Ramesh Kumar v. Kesho Ram, Supp. (2) SCC 623;
B.C. Chaturvedi v. Union of India, (1995) 6 SCC 623;
Jodhey v. State, AIR 1952 All 788;
RBF Rig Corporation v. Commissioner of Customs (Imports), (2011) 3 SCC 573;
Ramesh Chandra Sankla v. Vikram Cement, AIR 2009 SC 713;
K.B. Ramchandra Raje v. State of Karnataka, (2016) 3 SCC 422.

List of Acts

U.P. Imposition of Ceiling on Land Holdings Act, 1960;
Constitution of India

List of Keywords

Ceiling proceedings; Irrigated land; Section 4-A; Khasra entries; Consolidation records; Spot inspection; Bona fide transfer; Adequate consideration; Section 5(6)(b); Registered sale deed; Surplus land; Scope of remand; Perversity; Non-consideration of evidence; Delay and laches; Continuing illegality; Article 226; Quasi-judicial adjudication.

Case Arising From

Proceedings under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 arising out of the order dated 22.10.1993 passed by the Prescribed Authority, District Balrampur declaring 4.74 acres of land surplus; appellate remand order dated 18.02.1997/08.02.1997 passed by the Additional Commissioner under Section 13 of the Act; consequential order dated 05.11.1998 passed by the Prescribed Authority enhancing the surplus land to 5.54 acres; and appellate order dated 30.03.1999 affirming the same

Appearances for Parties

Advs. for the Appellant: T.n.singh, Madan Gopal Tripathi
Advs. for the Respondents: C.S.C.,

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

1. Heard Sri Madan Gopal Tripathi, learned counsel for the petitioner and Sri Jagdish Prasad Maurya, learned Standing Counsel for the respondent - State.

2. The present writ petition has been filed for issuance of a writ in the nature of Certiorari quashing the impugned order 18.02.1997 and 12.05.1997 passed by respondent No.4 contained as Annexure Nos.2 & 13 to the writ petition.

3. Factual matrix of the case is that the instant writ petition arises out of the illegal, arbitrary and capricious orders passed by the opposite party no. 2 affirming the order of the Prescribed Authority, District Balrampur dated 20.03.1999, whereby the land of the petitioner has been wrongly treated as irrigated at one stage and unirrigated at another, in clear violation of the mandatory provisions of Section 4-A of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as "the Act").

4. Initially a notice under Section 10(2) of the Act was issued to the petitioner on 14.10.1986, which was served on 22.12.1986, alleging that the petitioner was in possession of 22.76 acres of irrigated land situated in Village Kather, Navadeeh and Beb, out of which only 18.02 acres could be retained and 4.74 acres was proposed to be declared surplus. Subsequently, another notice dated 22.05.1987 was issued and served upon the petitioner on 02.06.1987.

5. The petitioner filed objections on 31.12.1987 before the Prescribed Authority, Balrampur, stating that he possessed only 10.96 acres of land in Village Kather and had no land in other villages as alleged in the notice. It was further submitted that the land situated in Village Beb had already been transferred by a registered sale deed dated 13.05.1974/14.05.1974 in favour of bona fide purchasers and possession had also been delivered, followed by mutation in the year 1975.

6. Due to certain unavoidable circumstances, the petitioner could not appear and an ex parte order was passed on 14.01.1992, which was subsequently set aside on a restoration application allowed on 23.04.1992. Thereafter, the Prescribed Authority, without properly considering the material on record and without following due procedure, passed an order dated 22.10.1993 declaring 4.74 acres of land as surplus.

7. Being aggrieved, the petitioner as well as the purchasers preferred appeals under Section 13 of the Act before the Additional Commissioner, Faizabad Division, which were decided by a common order dated 18.02.1997/08.02.1997, partly allowing the appeals and remanding the matter to the Prescribed Authority with certain directions.

8. In the remand proceedings, the Prescribed Authority misinterpreted the appellate order and, without application of mind, passed an order dated 05.11.1998 enhancing the surplus land

from 4.74 acres to 5.54 acres by adopting an inconsistent and illegal approach in treating the land as irrigated and unirrigated for different purposes. The said order was challenged before the appellate authority, but the same was illegally affirmed by order dated 30.03.1999 without properly appreciating the facts and law involved.

9. It is pertinent to mention that while determining the ceiling limit, the entire land of the petitioner was treated as irrigated, thereby reducing the permissible holding, whereas for declaring surplus land, the same land was treated as unirrigated so as to increase the surplus area, which amounts to application of a double standard and is wholly illegal.

10. The Prescribed Authority failed to comply with the mandatory provisions of Section 4-A of the Act, which require consideration of khasra entries of relevant years and spot inspection to determine whether land is irrigated or unirrigated. In fact, the land in Village Kather was unirrigated, as is evident from consolidation records (C.H. Form-41), but the same was wrongly treated as irrigated, thereby prejudicing the petitioner's rights.

11. The total land allotted to the petitioner after consolidation was 10.58 acres, which clearly shows that there was no basis for increasing the surplus area as done by the authorities. The authorities have also erroneously treated sources like tank and 'Chora' as valid sources of irrigation, which is legally impermissible.

12. That the petitioner continues to be in possession of the land in question and the impugned orders have not yet been implemented. The sale deed dated 13.05.1974/14.05.1974 in respect of land in Village Beb has already been held to be bona fide by the appellate authority, and therefore, the said land could not have been included in the petitioner□s holding for ceiling purposes.

13. Submission of learned counsel for the petitioner is that by means of impugned orders, land of the petitioner has been treated inconsistently as at one stage as irrigated and at another as unirrigated, which is in clear violation of the mandatory provisions of Section 4-A of the U.P. Imposition of Ceiling on Land Holdings Act, 1960.

14. He next submitted that the impugned orders as well as the orders passed by the Prescribed Authority and affirmed by the appellate authority are wholly unsustainable in law, inasmuch they suffer from manifest illegality, non-application of mind and violation of statutory provisions, particularly Section 4-A of the U.P. Imposition of Ceiling on Land Holdings Act, 1960.

15. He submitted that the entire proceedings stand vitiated on account of the fact that the authorities have adopted a self-contradictory and impermissible approach while determining the nature of land. The land of the petitioner has been treated as irrigated for the purpose of reducing the ceiling limit, whereas the same land has been treated as unirrigated for the purpose of increasing the surplus area, which is legally impermissible and arbitrary. Such inconsistent treatment of the same land amounts to application of a double standard and is hit by the doctrine of fairness and reasonableness, thereby rendering the impugned orders violative of Article 14 of the Constitution of India.

16. He further submitted that the Prescribed Authority has failed to adhere to the mandatory provisions of Section 4-A of the Act, which require determination of the nature of land on the basis of khasra entries of the relevant years and spot inspection. No such proper exercise has been undertaken and the findings recorded are, thus, without any legal foundation.

17. He submitted that the authorities have completely ignored the material evidence on record, including consolidation records (C.H. Form-41), which clearly establish that the land situated in Village Kather was unirrigated. The non-consideration of relevant evidence vitiates the impugned orders.

18. He further submitted that the land situated in Village Beb had already been transferred by the petitioner through a registered sale deed dated 13.05.1974/14.05.1974 in favour of bona fide purchasers and possession had also been delivered followed by mutation in the year 1975. Once the said transaction has been accepted as bona fide, the said land could not have been included in the holding of the petitioner.

19. He submitted that the Prescribed Authority has acted illegally in enhancing the surplus land from 4.74 acres to 5.54 acres in the remand proceedings, without there being any justification or fresh material on record, which clearly demonstrates non-application of mind and arbitrary exercise of power.

20. He further submitted that the remand order passed by the appellate authority was misconstrued by the Prescribed Authority, which travelled beyond the scope of remand and passed an order detrimental to the petitioner, contrary to settled principles of law governing remand proceedings.

21. He submitted that the appellate authority, while affirming the order dated 05.11.1998 by its order dated 30.03.1999, has failed to consider the legal and factual infirmities in the order of the Prescribed Authority and has passed the impugned order in a mechanical manner without recording cogent reasons.

22. It is further submitted that the total land allotted to the petitioner after consolidation was only 10.58 acres, which itself demonstrates that there was no occasion to declare any additional land as surplus, much less to enhance the same. The authorities have further erred in treating sources such as tank and □Chora□ as valid sources of irrigation, which is contrary to settled legal position and has resulted in wrongful classification of land to the prejudice of the petitioner.

23. He lastly submitted that the impugned orders are also liable to be set aside on the ground that they have been passed without proper appreciation of evidence, in violation of principles of natural justice and without assigning adequate reasons, thereby rendering them unsustainable in law. In support of his submissions, he placed reliance upon following judgments:

a) Beni Ram VS. State of U.P. and others; 1982 Allahabad LJ 974.

b) Km. Madhubala Vs. State of U.P.; 1978 Allahabad L.J. 1039.

c) Om Prakash Agarwal Vs. First Additional District and Sessions Judge, A.W.C. 1981 Page 775.

d) Ram Karan and 13 others Vs. State of U.P.; Ceiling No.111 of 2003 decided on 13.09.2012.

e) Pramod Kumar Vs. Additional Commissioner; 1999 (17) L.C.D. 379.

f) Municipality of Bhiwandi and Nizampur Vs. M/S Kailash Sizing Works; A.I.R. 1975 SC 529.

g) Dwarka Nath Vs. Income Tax Officer and another; 1966 AIR SC 81.

h) Rameshwar Vs. Jot Ram; (1976) 1 SCC 194.

i) Ramesh Kumar Vs. Kesho Ram; Supp. (2) SCC 623.

j) B.C. Chaturvedi Vs. Union of India; 1995 (6) SCC 623

k) Jodhey and others Vs. State through Ram Sahai; 1952 AIR Allahabad 788.

l) RBF Rig Corporation, Mumbai Vs. Commissioner of Customs (Imports), Mumbai; 2011 (3) SCC 573

m) Ramesh Chandra Sankla etc. Vs. Vikram Cement etc.; 2009 AIR Supreme Court 713

n) K.B. Ramchandra Raje Ors. (Dead) by Lrs. Vs. State of Karnataka and ors.; (2016) 3 SCC 422.

24. On the other hand, learned Standing Counsel submitted that the instant writ petition is wholly misconceived, devoid of merit and liable to be dismissed with exemplary costs as the petitioner has approached this Hon□ble Court by suppressing material facts and by making selective disclosure of the long-drawn ceiling proceedings under the provisions of the U.P. Imposition of Ceiling on Land Holdings Act, 1960.

25. He submitted that the present writ petition was instituted on 12.10.2000 challenging the appellate order dated 30.03.1999 as well as the consequential order dated 05.11.1998 passed by the Prescribed Authority. However, after lapse of more than two decades, the petitioner has sought to enlarge the scope of the writ petition by way of amendment seeking challenge to the orders dated 18.02.1997 and 12.05.1997, which were admittedly in existence on the date of filing of the writ petition. Such belated challenge, after about 25 years, is ex facie barred by delay and laches and is liable to be rejected on this ground alone.

26. He next submitted that the petitioner has deliberately concealed material proceedings and relevant documents pertaining to the ceiling case. The entire sequence of proceedings beginning from the original determination, restoration, remand orders and objections filed by the purchasers has not been candidly disclosed. The petitioner now seeks to fill lacunae in his case through repeated supplementary affidavits and amendment applications, which is legally impermissible.

27. He submitted that ceiling proceedings were initiated against the original tenure holder under Section 10(2) of the Act, wherein by order dated 14.01.1992 certain plots measuring 4.74 acres irrigated land situated in Village Kather were declared surplus. Thereafter, on restoration/recall moved by the tenure holder, the Prescribed Authority reconsidered the matter and passed a fresh order dated 22.10.1993 declaring different land as surplus. Against the order dated 22.10.1993, the original tenure holder preferred Appeal No.269, whereas the purchasers filed objections under Section 11(2) of the Act. The said objections were rejected on 31.05.1996, against which Appeal No.185 was preferred by the purchasers.

28. Both the aforesaid appeals were considered by the appellate authority. By common order dated 18.02.1997 and recall order dated 12.05.1997, the matter was remanded to the Prescribed Authority for reconsideration on specific and limited issues. The remand was thus a judicial order passed after due consideration of rival submissions and did not suffer from any illegality. Pursuant to the remand order, the Prescribed Authority reconsidered the matter in detail and framed specific issues for adjudication, namely: (i) determination of the nature of land of gata no.2345 as irrigated or unirrigated; and (ii) consideration of the tenure holder□s choice regarding retention of land in Village Baib vis-□-vis declaration of surplus land situated elsewhere.

29. After detailed appreciation of oral and documentary evidence, the Prescribed Authority recorded categorical findings that the family of the tenure holder consisted of less than five members on the relevant cut-off date and, therefore, no additional ceiling benefit could be granted on account of alleged major sons. The Prescribed Authority further determined that the disputed land was to be treated as unirrigated, which itself reduced the proposed surplus area substantially. Ultimately, only land measuring 5.54 acres situated in Village Kather was declared surplus by order dated 05.11.1998. The said order dated 05.11.1998 was challenged by the petitioner in Appeal No.50 under Section 13 of the Act. The appellate authority, after considering the entire record, dismissed the appeal by reasoned order dated 30.03.1999 affirming the findings recorded by the Prescribed Authority.

30. He submitted that it is significant to submit that the appellate authority considered all grounds raised by the petitioner, including the issue relating to classification of land, family composition and choice of retention. The petitioner failed to establish any factual or legal infirmity in the order of the Prescribed Authority.

31. The challenge raised by the petitioner to the remand orders dated 18.02.1997 and 12.05.1997 is wholly untenable. Firstly, no such challenge was made when the writ petition was instituted in the year 2000. Secondly, the petitioner accepted the remand proceedings, participated therein without protest and allowed fresh adjudication to culminate into order dated 05.11.1998.

Having acquiesced to the remand proceedings, the petitioner is estopped from questioning the same after 25 years.

32. He submitted that the settled principle of law is that a litigant who participates in proceedings without demur cannot subsequently challenge the jurisdiction or procedural propriety of the same after suffering an adverse outcome.

33. He further submitted that repeated filing of supplementary affidavits in the years 2003, 2025 and 2025 again, along with amendment applications introducing new pleadings and annexures, clearly demonstrates an attempt to improve upon an otherwise weak case and to protract litigation. The petitioner has also sought to rely upon subsequent developments and documents which are wholly irrelevant for adjudication of the validity of orders passed in ceiling proceedings. Such documents cannot be permitted to alter the scope of judicial review under Article 226 of the Constitution.

34. It is further submitted that the ceiling proceedings attained finality on several aspects much earlier, particularly in light of earlier appellate orders passed in the years 1976 and subsequent proceedings determining the nature and extent of holdings. The petitioner cannot be permitted to reopen issues which have long attained finality. The findings recorded by the Prescribed Authority and affirmed by the appellate authority are pure findings of fact based upon appreciation of revenue records, documentary evidence and statutory forms.

35. This Hon'ble Court, in exercise of writ jurisdiction, would not ordinarily interfere with concurrent findings of fact unless shown to be perverse or based on no evidence. In the present case, the petitioner has failed to demonstrate any perversity, jurisdictional error or violation of principles of natural justice. The impugned orders are reasoned, lawful and passed strictly in accordance with the provisions of the Act.

36. He lastly submitted that the writ petition also suffers from gross delay and laches. The petitioner has approached this Hon□ble Court against concluded proceedings and thereafter remained indolent for decades while intermittently attempting to revive stale issues through supplementary pleadings. Equity does not favour a litigant who sleeps over his rights and thereafter seeks discretionary relief under Article 226 of the Constitution. Therefore, his submission is that the writ petition is liable to be dismissed on the grounds of suppression of material facts, delay and laches, acquiescence, estoppel, and absence of any legal infirmity in the impugned orders.

37. I have considered the rival submissions advanced by learned counsel for the parties and perused the material on record as well as law reports cited by learned counsel for the petitioner.

38. To resolve the controversy involved in the matter, relevant portion of the judgments relied upon by learned counsel for the petitioner are being quoted below:

a) **Beni Ram VS. State of U.P. and others (Supra):**

"4. Having heard the learned counsel for the parties and perused the material on record I have no hesitation in saying that the order passed by the Prescribed Authority as well as the Appellate Authority both betray a lack of proper approach and consideration of the provisions of the Act. It is imperative for an authority exercising power under the Act to consider whether a tenure-holder has land in excess of the ceiling limit, to apply the provisions of law as applicable to the tenure-holder carefully and consider the evidence on record meticulously. In a statute like that of the present Act a tenure-holder is liable to lose agricultural land in case it is found to be beyond his ceiling limit. The ceiling limit under the Act is measured under the terms of irrigated land. It, therefore, becomes necessary for the authorities under the Act to consider and decide whether the petitioner's land is an irrigated land within the meaning of S. 4A of the Act. The provisions of the said Act are to be applied strictly. In a legislation which seeks to take away land it is imperative that the provisions of the law are applied correctly taking care of all the requirements under the law.

9. Interpretation of the U.P. Imposition of Ceiling on Land Holdings Act has to be done keeping an eye on the object of this Act. It must be noticed that this Act has been enacted for the public good. The provisions of the Act cannot be construed in a manner so as to defeat the very object of the Act. While construing the provisions of the Act care also be taken to see that there is a strict compliance with the requirements of law. It has been noticed that this Act is in the nature of an expropriatory legislation. Therefore, before a tenure-holder is deprived of his land, it must be clearly found that he has surplus land and in arriving at that finding it is the duty of the authorities under the Act to see that the provisions of the Act are duly and properly construed."

b) Km. Madhubala Vs. State of U.P. (Supra):

13. In this case I propose to deal with only the last submission made on behalf of the petitioner. Sec. 5(6) provides that in determining the ceiling area applicable to a tenure-holder, any transfer of land made after the twenty-fourth day of Jan., 1971, which but for the transfer would have been declared surplus land under this Act, shall be ignored and not taken into account: Sub-sec. (6) has a proviso (b) which says that if a transfer is proved to the satisfaction of the prescribed authority to be in good faith and for adequate consideration and under an irrevocable instrument, not for the immediate or deferred benefit of the tenure-holders or other members of his family, the provisions of this sub-section shall not apply to that transfer.

16. All sale deeds executed after 8-6-1973 cannot be ignored under the provisions of S. 5(6) in view of the provisos to that sub-section. The Additional District Judge did not examine the question as to whether the transfer was in good faith and for adequate consideration and the other requirements of proviso (b) to sub-sec. (6) of S. 5

19. 18. The learned Standing Counsel Sri Upadhya sought to justify the order of the Appellate Authority on a new ground which is not to be found in the judgment of the Appellate Authority. He submitted that in view of the provisions of S. 5(8) of the Ceiling Act, the order of the Appellate Authority is perfectly in accordance with law. Sec. 5(8) was introduced into the statute by U.P. Act No. XX of 1976 namely the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1976. Sub-sec. (1) of S. 2 of the Amending Act declared that it shall come into

force on Oct. 10, 1975. Sec. 5 was substantially amended by S. 6 of the aforesaid Amending Act. Sub-cl. (8) was added to S. 5 by this Act, which is reproduced below:

"Notwithstanding anything contained in sub-secs. (6) and (7) no tenure-holder shall transfer any land held by him during the continuance of proceedings for determination of surplus land in relation to such tenure-holder and every transfer made in contravention of this sub-section shall be void.

Explanation: For the purposes of this sub-section, proceedings for determination of surplus land shall be deemed to have commenced on the date of publication of notice under sub-sec. (2) of S. 9 and shall be deemed to have concluded on the date when an order in relation to such tenure-holder is passed under sub-sec. (1) of S. 11 or under sub-sec. (1) of S. 12, or as the case may be, under Section 13."

21. 20. It is well settled that a law is not deemed to be retrospective unless it is made expressly retrospective or is found by the court to be retrospective by necessary intendment. Nothing has been shown to indicate to the court's satisfaction that by necessary intendment the law was made retrospective, when sub-section (8) was added to the statute. The learned Standing Counsel also submits that by virtue of the Explanation to Section 5(8) the proceedings for determination of surplus land shall be deemed to commence on the date of the publication of notice under sub-sec. (2) of S. 9.

23. Sec. 5(8) is clearly prospective on the explanation of the Supreme Court reported in (1977) 1 SCC 340 : (AIR 1976 SC 1654) State of Haryana v. Chaman Mal. In that case in para. 37 it was observed that the Supreme Court could permit arguments to be addressed when certain changes had taken place in the Central Act in question. That case is no authority for the proposition that is sought to be advanced by the learned Standing Counsel Courts of law do take into account changes in the law when it is necessary to do so in pending matters. The language of S. 5(8) is not such as would justify the upholding of an order of the Additional District Judge on the ground that he was only applying the law as it existed on the date on which he decided the appeal.

24. The rights of the parties had to be decided on the date of the notice under S. 10 of the Act and not on any subsequent date. The transfers which were valid under the proviso (b) to Section 5(6) have not been invalidated by the provisions of S. 5(8) of the Act."

c) Om Prakash Agarwal Vs. First Additional District and Sessions Judge (Supra):

13. INTERPRETATIO-13. The U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 was enforced with effect from 8-6-1973. Therefore in view of the provision contained in sub-section (1), on and from 8-6-1973 a person who is a tenure-holder cannot hold land in excess of his ceiling area. In view of Explana-tion I to sub-section (1) all the land held by the tenure-holder has to be taken into account while determining his ceiling and surplus areas, irrespective of the fact whether the land is held by the tenure-holder in his own name or in the name of someone else fictitiously. While considering the question whether a land held ostensibly in the name of another person actually belongs to the tenure-holder, the rule of evidence prescribed

in Explanation II to sub-section (1) has to be followed. This rule of evidence applies to the case where on or before 24-1-1971 a land was held by the tenure-holder but after this date it came to be recorded in the name of someone else although the tenure-holder continued to be in its possession by cultivating the same. This rule will apply also to the situation where the name of the tenure-holder is not completely obliterated from the records and alongwith his name the name of someone else too comes to be recorded. In both the situations the Prescribed Authoritity is required under this Explanation to presume that the land continues to be held by the tenure-holder who held it prior to 24-1-1971. This presumption is, however, rebuttable as is evident from the use of the words □unless the contrary is proved to the satisfaction of the Prescribed Authority□. Sub-section (6) contains extension of the principle contained in Explanation I. It provides for ignoring the sale deeds executed after 24-1-1971. However all sale deeds executed after this date are not to be ignored. Sale deeds which are not sham or fictitious have to be taken into account and the land conveyed by such deeds has to be excluded from the holding of the tenure-holder. This is so because of the provision contained in proviso (b) to sub-section (6). In view of the proviso the command contained in sub-section (6) for ignoring transfer effected after 24-1-1971 will not apply if the following conditions are satisfied:

1. The transfer is made in good faith;

2. It is made for adequate consideration;

3. It is made through an irrevocable instrument; that is, there should be a written document

4. The transaction of transfer is not □Benami□;

5. The transfer is not made for the immediate or deferred benefit of the tenure-holder or other members of his family.

17. 18. In view of the above the following conditions should exist before the benefit of proviso (b) may be allowed to a tenure-holder in respect of sale effected by him:□

1. The transfer is not effected to circumvent or avoid the provisions of the Act: 2. The transfer is effected through a written document;

3. The transfer is not gartuitous but is for consideration;

4. The consideration is adequate and not low;

5. After effecting the transfer the transferor completely divests himself of his interest in the land, including cultivatory possession;

6. The transfer is not designed in such a manner that the actual or substantial beneficiary thereunder is the transferor himself or the members of his family, whether immediately or at a future date;

7. The transfer is not effected solely for the purpose of converting land into cash.

20. The next question that requires consideration is whether the benefit of proviso (b) can be extended also to the transfers effected after 8-6-1973. Sri Umesh Chandra, learned Chief Standing Counsel submitted that since in view of sub-sec. (1) of Sec. 5 the ceiling area is to be determined with reference to the date 8-6-1973, all transfers effected after this date will have to be treated as void. According to the learned counsel the title in the land becomes frozen crystallised on 8-6-1973 and on and from this date there can be no variation or change in the title and since the effect of transfer is change or variation in title, transfer itself becomes completely prohibited on and from 8-6-1973. In our opinion in view of the provision contained in sub-sec. (1) of section 5, the ceiling area is to be determined with reference to the person who is tenure-holder on 8-6-1973 which means that if the tenure-holder dies after 8-6-1973 leaving several heirs, the entire land held by such tenure-holder will be taken as the unit for determining the ceiling and surplus areas and not the individual shares inherited by the heirs. In other words, the succession will be ignored and for the purposes of the ceiling proceedings, the deceased tenure-holder will be treated as alive, although his heirs will be substituted and brought on record. But for the provision contained in Section 5(1), each heir could have claimed that the share inherited by him may be considered separately and out of this share land equivalent to his ceiling area may be left with him. The Act does not specifically provide for treating all tranfers effected after 8-6-1973 as void. If we accept the argument of the learned counsel we will have to read in the Act an implied provision for treating all transfers effected on and after 8-6-1973 as void. Such an implied provision cannot be read when the Act itself contains a specific date from which all the transfers are to be treated as void. This date is specified in sub-section (8) of Section 5. Under this sub-section no tenure-holder is entitled to transfer land during the continuance of proceedings for determination of surplus land. In the Explanation appended to the sub-section it has been explanied that proceedings for determination of surplus land shall be deemed to have commenced on the date of publication of notice under sub-section (2) of Section 9. This under sub-section (8) read with the Explanation the right to transfer land is taken away as soon as notice under Section 9(2) is published. In other words the right to transfer continues subject of course to the provisions contained in sub-section (6) upto the stage of publication of notice unde; Section 9(2). The consequences of a transfer made after the publication of the notice is also provided in sub-section (8) itself which says that such a transfer shall be void. In case we accept the argument of the learned Chief Standing Counsel there would be two dates from which the transfer of land will be prohibited, one specified date and the other implied date. When the Legislature itself has fixed a date for depriving a tenure-holder of his right to transfer land it is not possible for the courts to fix another date in addition to or in substitution of the said date. We are, therefore, of the opinion that the benefit of proviso (b) is available also to transfers effected between 8-6-1973 and the date on which notice under Section 9(2) is published. The view that we have taken herein was taken by B.N. Sapru, J. also in Km. Madhubala v. State af U.P., 1978 ALJ 1039. Contrary view were expressed by M.P. Mehrotra, J. in Jairam Singh v. State of Uttar Pradesh, 1978 AWC 624 and by Mufti, J. in Smt. Runwar Rani Sushila Devi v. State, 1978 ALJ 1099. For the reasons recorded hereinbefore we respectfully agree with the view expressed by brother Sapru, J. and regret our inability to agree with the view taken by our learned brethren Mehrotra and Mufti, JJ.

23. 24. From the above provision it is obvious that in determining ceiling area the family is treated as the unit and, therefore, all the land possessed by the members of the family as defined in the Act will have to be aggregated or clubbed together. The term □family□ has been defined in clause (7) of Section 3 as follows:"

"family□ in relation to a tenure-holder, means himself or herself and his wife or her husband, as the case may be (other than a judicially sparated wife or hus-band), minor sons and minor daughters other than married daughters."

25. Under the above definition minor son, minor unmarried daughter, the tenure-holder and his or her spouse constitute tenure-holder's family. As such the land held by the minor sons, minor unmarried daughters and the spouse is to be clubbed with the land of the tenure-holder for the purpose of determining the ceiling area of the tenure-holder. Thus in proceedings for determination of ceiling area a woman whose husband is a tenure-holder has no independent status as a tenure-holder. Her land is, therefore, clubbed with the land of her husband. The same is the position of a minor son and minor unmarried daughter whose father or mother is a tenure-holder. Therefore, where a husband and wife both are holders of a holding they together constitute one unit of tenure-holder. In this context the prohibition contained in sub-section (8) of Section 5 will apply also to a sale effected by a woman whose husband is also a tenure-holder. If the woman whose husband was a tenure-holder had not been excluded from the definition of tenure-holder under clause (17) of Section 3 the consequence would have been that under sub-section (3) of Section 5 her land could not have been clubbed with the land of her husband and being an independent tenure-holder her own land would also have been subjected to determination of ceiling and surplus areas. It is to avoid this situation that a woman whose husband is a tenure-holder has been excluded from the definition of the term □tenure-holder□ given in the Act. We accordingly do not accept the contention of Sri S.P. Gupta that sub-section (8) of Section 5 does not apply to a sale effected by a woman. The learned counsel further contended that sub-seciion (8) was added to Section 5 of the Act through U.P. Imposition of Ceiling on Land Holdings (Amendment) Act 1976 (U.P. Act No. 20 of 1976) with effect from 10-10-1975 and therefore its provisions could not be invoked for invalidating the transfers effected prior thereto. Sub-section (2) of Section 1 of the Amending Act says that the Act shall be deemed to have come into force on October 10, 1975. Sub-section (8) was added through clause (d) of Section 6 of the Amending Act which is as follows:"

□(d) After sub-section (7), the following sub-section shall be inserted,:□

(g) □□□□□

From the above provisions it is apparent that the retroactivity given to sub-section (8) does not go beyond 10-10-1975. Another amendment was made through clause (a) of Section 6. With regard to this amendment it has been specifically provided by clause (a) that the same shall be deemed to have been substituted from [January 17, 1975. However no date earlier than 10th October 1975 has been provided in the Act for the addition of sub-section (8). Sri Gupta is therefore justified in saying that the transfers effected prior to 10-10-1975 will not be hit by sub-section (8) of Section 5."

d) Ram Karan and 13 others Vs. State of U.P. (Supra):

"29. Next argument advanced by learned counsel for the petitioners while challenging the judgment and order dated 16.9.2002 (Annexure No. 1) passed by the Prescribed Authority (Ceiling)/additional Collector, Sitapur/opposite party no. 3 that admittedly Shri Vishwa Nath Singh the original tenure holder of the land in question (Plot nos. 377 and 382) executed the registered sale deed on 12.8.1959 in favour of Smt. Kamla Shukla, Smt. Ram Devi and on 18.8.1959 in favour of Smt. Prem Kumari, Smt. Karori Banerji, Sri Prakash Banerji and Smt. Sushma Kochar. Thereafter, the said land has been recorded in their favour as per litigations held under the provisions as provided U.P. Z.A. & L. R. Act, 1901, thus, they become tenure holder of the land in question i.e. plot nos. 382 and 377. Subsequently, the said persons sold the land by registered sale deeds executed on 27.11.1975 and 20.2.1981 respectively, so the finding given by the Prescribed Authority (Ceiling)/additional Collector, Sitapur/opposite party no. 3 that the said sale deeds are hit by the provisions of Section 5(6) of the Act, is incorrect because after the sale deeds executed by Shri Vishwa Nath Singh in the year 1959, he is not the tenure holder, so there is no justification or reason to issue the notice under Section 10(2) of the Act to him, so the action on the part of the respondent no. 3 to proceed and pass the judgment on the ground that the sale deed executed in favour of the petitioners between 1975 to 1981 by some other person to whom the land has been transferred by the registered sale deed and recorded in their favour is an action, contrary to the provisions of Section 5(6) of the Act, rather perverse in nature, contrary to the facts of the case when the said sale deeds are on record. In order to support his argument, Shri Brijesh Kumar Saxena, learned counsel for the petitioners has placed reliance on the judgment given by Hon'ble the Apex Court in the case Maria Margarida Sequeira Fernandes v. Erasmo Jack De Sequeira (Dead) through L.Rs. (2012) 5 Supreme Court Cases 370, so liable to be set aside.

31. In order to decide the said argument, I feel appropriate to go through the relevant provisions as provided under sub-section 17 of Section 3 as well as Sub-section (6) of Section 5 of the Act, reproduced herein below:-

" tenure-holder means a person who is the holder of a holding but except in Chapter III does not include-

(a) a woman whose husband is a tenrue-holder;

(b) a minor child whose father or mother is a tenure holder;

"Section 5(6)- in determining the ceiling area applicable to a tenure-holder, any transfer of land made after the twenty-fourth day of January, 1971, which but for the transfer would have been declared surplus land under this Act, shall be ignored and not taken into account.

"Provided that nothing in this sub-section shall apply to-

(a) a transfer in favour of any person (including Government) referred to in sub-section (2):

(b) a transfer proved to the satisfaction of the prescribed authority to be in good faith and for adequate consideration and under an irrevocable instrument not being a benami transaction or for immediate or deferred benefit of the tenure-holder or other members of his family.

Explanation I.- For the purposes of this sub-section, the expression □transfer to land made after the twenty-fourth day of January, 1971□, includes-

[(a) a declaration of a person as a co-tenure-holder made after the twenty-fourth day of January, 1971 in a suit or proceeding irrespective of whether such suit or proceeding was pending on or was instituted after the twenty-fourth day of January, 1971].

Explanation II-The burden of proving that a case falls within Clause (b) of the proviso shall rest with the party claiming its benefit."

32. The U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 was enforced with effect from 8-6-1973. Therefore, in view of the provision contained in sub-section 91), on and from 8-6-1973 a person who is a tenure holder cannot hold land in excess of his ceiling area. In view of Explanation I to sub-section (1) all the land held by the tenure-holder has to be taken into account while determining his ceiling and surplus areas, irrespective of the fact whether the land is held by the tenure-holder in his own name or in the name of someone else fictitiously. While considering the question whether a land held ostensibly in the name of another person actually belongs to the tenure-holder, the rule of evidence prescribed in Explanation II to sub-section (1) has to be followed. This rule of evidence applies to the case where on or before 24.1.1971 a land was held by the tenure-holder but after this date it came to be recorded in the name of someone else although the tenure-holder continued to be in its possession by cultivating the same. This rule will apply also to the situation where the name of the tenure-holder is not completely obliterated from the records and along with his name the name of someone else too comes to be recorded. In both the situations the Prescribed Authority is required under this Explanation to presume that the land continues to be held by the tenure-holder who held it prior to 24.1.1971. This presumption is, however, rebuttable as is evident from the use of the wrods □unless the contrary is proved to the satisfaction of the Prescribed Authority□. Sub-section (6) contains extension of the principle contained in Explanation I. It provides executed after this date are not to be ignored. Sale deeds which are not sham or fictitious have to be taken into account and the land conveyed by such deeds has to be excluded from the holding of the tenure-holder. This is so because of the provision contained in proviso (b) to sub-section (6), command for ignoring transfer effected after 21.1.1971 will not apply if the following conditions are satisfied:

1. The transfer is made in good faith;

2. It is made for adequate consideration;

3. It is made through an irrevocable instrument; that is, there should be a written document;

4. The transaction of transfer is not □Benami□;

36. Thus, it is mandatory on the part of the Prescribed Authority in the present case to determine that at the time of issuing a notice under Section 10(2) of the Act whether Shri Vishwa Nath Singh was the tenure holder in respect to land in question or Smt. Prem Kumari, Smt. Karori Banerji, Sri Prakash Banerji and Smt. Sushma Kochar and Smt. Kamla Shukla and Smt. Ram Devi were the tenure holders by virtue of the sale deed executed in their favour on 18.8.1959 and 12.8.1959. But admittedly the Prescribed Authority failed to discharge the said mandatory duty casted upon it, even the notice under Section 10(2) of the Act have not been issued to them. (See Ibrahim v. State of U.P. 1986 RR 138, Thakur Das v. State of U.P. 1987 RD 127 and Viresh Pratap Shah v. A.D.J., Basti, 2005 (98) RD 419), so the argument advanced by learned State Counsel with the aid of the provisions as provided under Sub-section 1 of Section 5 of the Act that the impugned order passed by the Prescribed Authority while adjudicating and deciding the dispute involved in the instant case after taking into consideration that the land belongs to Sri Vishwa Nath Singh and passing the impugned order is a correct exercise, has got no force, moreover, the Prescribed Authority also failed to consider while passing the impugned order that whether as per the definition as provided Subsection 17 of Section 3 of the Act Smt. Prem Kumari, Smt. Karori Banerji, Sri Prakash Banerji, Smt. Sushma Kochar, Smt. Kamla Shukla and Smt. Ram Devi are tenure holder of the land in question whose names are recorded in the revenue record as per the registered sale deed executed by Shri Vishwa Nath Singh in the year 1959 and as per the litigation taken place in the proceeding under Section 176 and Section 209 of the U.P. Z. A. & L. R. Act. So, it is necessary to issue notice under Section 10(2) of the Act to them.

37. A Division Bench of this Court in the case of Om Prakash Agarwal v. First Addl. District and Sessions Judge 1981 AWC 775 after placing the reliance on the judgment given by Hon'ble the Apex Court in the case of Brijendra Singh v. State of U.P., 1981 AWC 125 in paragraph 16 and 17 held as under:-

"Para 16 □□□□Once it is established by the transferring tenure holder that the transfer in question effected in the course of ordinary management of his affairs, was made for adequate consideration and he has genuinely absolutely and irrevocably divested himself of all right, tiltle and interest (including cultivatory possession) in the land in favour of the transferee the onus under Explanation II, in the absence of any circumstances, suggestive of collusion, or an intention or design to defraud or circumvesnt the Ceiling Act, on the tenure holder to show that the transfer was effected in good faith, will stand discharged, and it will not be necessary for the tenure-holder to prove further that the transfer was made for an impelling need or to raise money for meeting a pressing legal necessity. Although proof of the fact that a transfer was made for a valid pressing necessity, may highlight or strength the inference in favour of the genuineness of the transfer, it is not an indispensable constituent of □good faith□; nor is the proof of legal necessity requisite, as a matter of law, to enable a tenure-holder to avail of the benefit of clause (b) of proviso□□□"

Para 17 - In view of the above following conditions should exist before the benefit of proviso (b) may be allowed to a tenure-holder in respect of sale effected by him:-

1. The transfer is not effected to circumvent or avoid the provisions of the Act;

2. The transfer is effected through a written document;

3. The transfer is not gartuitous but is for consideration;

4. The consideration is adequate and not low;

5. After effecting the transfer the transferor completely divests himself of his interest in the land, including cultivatory possession."

e) Pramod Kumar Vs. Additional Commissioner (Supra):

"9. The sale deeds executed after 24.1.1971 are to be ignored unless they are saved under clause (b) of sub-section (6) of Section 5. A reference in this regard may be made to the decision rendered in the case of Raghuvir Singh v. State of U.P., [1996 AWC 1380.] and Raghuvir Singh v. State of U.P.. [1979 ALJ Page 767.]

10. Sub-section 8 of Section 6 has been added in the statute by U.P. Imposition of Ceiling (Amendment) Act 1976 (Act No. XX of 1976) which came into force with effect from 10.10.1975. Thus all sale deeds relied upon by the petitioners i.e., dated 13.4.1973, 5.11.1974, 20.9.1975 were executed before the enactment and enforcement of sub-section (8) of Section 5. Therefore the said sale deeds cannot be said to be void in terms of sub-section (8) of Section 5. View taken to the contrary by the authorities below is thus manifestly erroneous, illegal. A reference in this regard may be made to the decision rendered by a Division Bench in the case of Om Prakash Agarwal v. A.D.J.. [1981 AWC 775.] It was thus obligatory upon the authority below to look into the validity or otherwise of the sale deeds in question before discarding the same. The authorities below committed an error which is apparent on the face of record in holding that the aforesaid sale deeds were void and were hit by sub-section (8) of Section 5."

f) **Municipality of Bhiwandi and Nizampur Vs. M/S Kailash Sizing Works (Supra):**

"11. Section 167 of the Bombay District Municipal Act confers protection on the Municipality in respect of anything in good faith done or intended to be done. The expression □done in good faith□ has been defined in the Bombay General Clauses Act, 1904 and in the General Clauses Act, to mean, done honestly, whether done negligently or not. The question therefore is, whether the Municipality, in the present case, can be said to have acted honestly.

12. In Jones v. Gordon [2 App Cas 616] Lord Blackburn pointed out the distinction between the case of a person who was honestly blundering and careless, and the case of a person who has acted not honestly. An authority is not acting honestly where an authority has a suspicion that there is something wrong and does not make further enquiries. Being aware of possible harm to others, and acting in spite thereof, is acting with reckless disregard of consequences. It is worse than negligence, for negligent action is that, the consequences of which, the law presumes to be present in the mind of the negligent person, whether actually it was there or not. This legal presumption is drawn through the well known hypothetical reasonable man. Reckless disregard of consequences and mala fides stand equal, where the actual state of mind of the actor is relevant. This is so in the eye of law, even if there might be variations in the degree of moral reproach deserved by recklessness and mala fides.

13. The Bombay, as also, the Central, General Clauses Acts, help only insofar as they lay down that negligence does not necessarily mean mala fides. Something more than negligence is necessary. But these Acts say honestly and so, for the interpretation of that word, we have explained the legal meanings above."

g) Dwarka Nath Vs. Income Tax Officer and another (Supra):

"4. We shall first take the preliminary objection, for if we maintain it, no other question will arise for consideration. Article 226 of the Constitution reads:

every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression nature, for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels. This interpretation has been accepted by this Court in Basappa v. Nagappa [(1962) 2 SCR 169] and Irani v. State of Madras [(1955) 1 SCR 250] ."

h) Rameshwar Vs. Jot Ram (Supra):

"8. In P. Venkateswarlu v. Motor & General Traders [(1975) 1 SCC 770, 772 : AIR 1975 SC 1409, 1410] this Court dealt with the adjectival activism relating to post-institution circumstances. Two propositions were laid down. Firstly, it was held that [SCC p. 772, para 4]

"it is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding."

This is an emphatic statement that the right of a party is determined by the facts as they exist on the date the action is instituted. Granting the presence of such facts, then he is entitled to

its enforcement. Later developments cannot defeat his right because, as explained earlier, had the court found his facts to be true the day he sued he would have got his decree. The Court's procedural delays cannot deprive him of legal justice or right crystallised in the initial cause of action. This position finds support in Bhajan Lal v. State of Punjab [(1971) 1 SCC 34] ."

i) Ramesh Kumar Vs. Kesho Ram (Supra):

"4. 6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a □cautious cognizance□ of the subsequent changes of fact and law to mould the relief. In Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri [AIR 1941 FC 5 : 73 CLJ 51 : 53 MLW 373] Chief Justice Sir Maurice Gwyer observed: (AIR p. 6)

"But, with regard to the question whether the court is entitled to take into account legislative changes since the decision under appeal was given, I desire to point out that the rule adopted by the Supreme Court of the United States is the same as that which I think commends itself to all three members of this Court. In Patterson v. State of Alabama [(1934) 294 US 600] , Hughes C.J. said:

"We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered□."

And in Pasupuleti Venkateswarlu v. Motor & General Traders [(1975) 1 SCC 770 : (1975) 3 SCR 958] Justice Krishna Iyer said : (SCC p. 772, para 4)

"We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-a-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice □ subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad."

These principles have since been reiterated and reaffirmed in Hasmat Rai v. Raghunath Prasad [(1981) 3 SCC 103 : (1981) 3 SCR 605] ."

j) B.C. Chaturvedi Vs. Union of India (Supra):

"3. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in Shivdeo Singh case [Shivdeo Singh v. State of Punjab, AIR 1963 SC 1909] that the High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. I would say that power to do complete justice also inheres in every court, not to speak of a court of plenary jurisdiction like a High Court. Of course, this power is not as wide as which this Court has under Article 142. That, however, is a different matter.

4. What has been stated above may be buttressed by putting the matter a little differently. The same is that in a case of a dismissal, Article 21 gets attracted, and, in view of the interdependence of fundamental rights, which concept was first accepted in the case commonly known as Bank Nationalisation case [Rustom Cavasjee Cooper v. Union of India, (1970) 1 SCC 248 : (1970) 3 SCR 530] , which thinking was extended to cases attracting Article 21 in Maneka Gandhi v. Union of India [(1978) 1 SCC 248 : AIR 1978 SC 597] , the punishment/penalty awarded has to be reasonable; and if it be unreasonable, Article 14 would be violated. That Article 14 gets attracted in a case of disproportionate punishment was the view of this Court in Bhagat Ram v. State of H.P. [(1983) 2 SCC 442 : 1983 SCC (L&S) 342 : AIR 1983 SC 454] also. Now if Article 14 were to be violated, it cannot be doubted that a High Court can take care of the same by substituting, in appropriate cases, a punishment deemed reasonable by it."

k) Jodhey and others Vs. State through Ram Sahai (Supra):

"10. To emphasise and to clarify the plenary nature of power of superintendence vested in the High Court the provision of law relating to it has been split up into four clauses. The first clause enunciates the general power of supervision given to High Court over all Courts and tribunals throughout the territories in rerelation to which it exercises jurisdiction. It is couched in a language which would vest the High Court with a power that is not fettered with any restriction and must embrace all aspects of the functions exercised by every Court and tribunal. On a proper interpretation of this clause it is difficult to my mind to hold that the powers of superintendence are confined only to administrative matters. There are no limits, fetters or restrictions placed on this power of superintendence in this Clause and the purpose of this Article seems to be to make the High Court the custodian of all justice within the territorial limits of its jurisdiction and to arm it with a weapon that could be wielded for the purpose of seeing that justice is meted out fairly and properly by the bodies mentioned therein. To fulfil this function it seems to me that the power of superintendence of the High Court over judicial matters is as necessary as over administrative matters. As a matter of fact judicial function of a Court is not less important than its administrative

function. In fact it is more necessary to rectify lapses in judicial matters than defects in administrative matters. A judicial error might affect the rights, liberty and freedom of the subject whereas an administrative error might not do so. To my mind superintendence over judicial functions is a necessary complement of superintendence over administrative functions and it is sometimes very difficult to say where the one ends and the other begins. If the High Court is to perform this function efficiently and effectively, it must act on both sides, otherwise the very power of superintendence will be crippled and what has been achieved on the administrative side might be lost on the judicial side."

l) RBF Rig Corporation, Mumbai Vs. Commissioner of Customs (Imports) (Supra):

"16. 21. In Dwarka Nath v. ITO [AIR 1966 SC 81] this Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts to reach injustice wherever it is found and to mould the reliefs to meet the peculiar and complicated requirements of this country.

17. 22. In Halsbury's Laws of England, 4th Edn., Vol. I, para 89, it is stated that the purpose of an order of mandamus

"89.Nature of mandamus. is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."

18. The High Court, in the present case, has moulded the relief in such a manner to meet out justice to an aggrieved person. It is not open to the subordinate Tribunal to examine whether a direction issued by the High Court under its writ powers was correct and refuse to carry it out as such amounts to denial of justice and destroys the principle of hierarchy of courts in the administration of justice. 24. This Court in Bishnu Ram Borah v. Parag Saikia [(1984) 2 SCC 488] has held: (SCC pp. 496-97, para 11)

11. It is regrettable that the Board of Revenue failed to realise that like any other subordinate tribunal, it was subject to the writ jurisdiction of the High Court under Article 226 of the Constitution. Just as the judgments and orders of the Supreme Court have to be faithfully obeyed and carried out throughout the territory of India under Article 142 of the Constitution, so should be the judgments and orders of the High Court by all inferior courts and tribunals subject to their supervisory jurisdiction within the State under Articles 226 and 227 of the Constitution. We cannot but deprecate the action of the Board of Revenue in refusing to carry out the directions of the High Court. In Bhopal Sugar Industries Ltd. v. ITO [AIR 1961 SC 182 : (1961) 1 SCR 474] the Income Tax Officer had virtually refused to carry out the clear and unambiguous directions which a superior tribunal like the Income Tax Appellate Tribunal had given to him by its final order in exercise of its appellate powers in respect of an order of assessment made by him. The Court held that such refusal was in effect a denial of justice and is furthermore destructive of one of the basic principles in the administration of justice based as it is in this country on the hierarchy of courts.

The facts of the present case are more or less similar and we would have allowed the matter to rest at that but unfortunately the judgment of the High Court directing the issue of a writ of mandamus for the grant of a liquor licence to Respondents 1 and 2 cannot be sustained."

m) Ramesh Chandra Sankla etc. Vs. Vikram Cement etc. (Supra):

"80. Now, it is well settled that jurisdiction of the High Courts under Articles 226 and 227 is discretionary and equitable. Before more than half a century, the High Court of Allahabad in the leading case of Jodhey v. State [AIR 1952 All 788] observed: (AIR p. 792, para 10)

"10. There are no limits, fetters or restrictions placed on this power of superintendence in this clause and the purpose of this article seems to be to make the High Court the custodian of all justice within the territorial limits of its jurisdiction and to arm it with a weapon that could be wielded for the purpose of seeing that justice is meted out fairly and properly by the bodies mentioned therein."

(emphasis supplied)

82. 92. In Roshan Deen v. Preeti Lal [(2002) 1 SCC 100 : 2002 SCC (L&S) 97] , dealing with an order passed by the High Court setting aside an order of the Commissioner for Workmen's Compensation, this Court stated: (SCC p. 106, para 12)

"12. Time and again this Court has reminded that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it (vide State of U.P.v. District Judge, Unnao [(1984) 2 SCC 673 : AIR 1984 SC 1401]). The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The lookout of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law."

n) K.B. Ramchandra Raje Ors. (Dead) by Lrs. Vs. State of Karnataka and ors. (Supra):

"24. The acquisition under the 1903 Act and the allotment of 55 acres of land to Respondent 28 having been found to be contrary to law consequential orders of handing over of possession of the entire land should normally follow. However, in granting relief at the end of a protracted litigation, as in the present case, the Court cannot be unmindful of facts and events that may have occurred during the pendency of the litigation. It may, at times, become necessary to balance the equities having regard to the fact situation and accordingly mould the relief(s). How the relief is to be moulded, in the light of all the relevant facts, essentially lies in the realm of the discretion of the courts whose ultimate duty is to uphold and further the mandate of law. If the issue is viewed from the aforesaid perspective the several decisions cited on behalf of the respondents in this regard, particularly by Respondent 28 i.e. Competent Authority v. Barangore

Jute Factory [Competent Authority v. Barangore Jute Factory, (2005) 13 SCC 477] , U.G. Hospitals (P) Ltd. v. State of Haryana [U.G. Hospitals (P) Ltd. v. State of Haryana, (2011) 14 SCC 354 : (2012) 4 SCC (Civ) 959] , Gaiv Dinshaw Irani v. Tehmtan Irani [Gaiv Dinshaw Irani v. Tehmtan Irani, (2014) 8 SCC 294 : (2014) 4 SCC (Civ) 318] and Bhimandas Ambwani v. Delhi Power Co. Ltd. [Bhimandas Ambwani v. Delhi Power Co. Ltd., (2013) 14 SCC 195 : (2014) 2 SCC (Civ) 448] can at best indicate the manner of exercise of the judicial discretion in the facts surrounding the particular cases in question."

39. From the pleadings exchanged between the parties, the material brought on record and the rival submissions advanced by learned counsel for the parties, the principal question which arises for consideration before this Court is as to whether the Prescribed Authority as well as the appellate authority have determined the ceiling area of the petitioner in accordance with the mandatory provisions of the U.P. Imposition of Ceiling on Land Holdings Act, 1960, particularly Section 4-A thereof, and whether the impugned orders suffer from perversity, inconsistency of reasoning, non-consideration of material evidence and manifest illegality warranting interference under Article 226 of the Constitution of India.

40. This Court finds that the entire controversy centres around the classification of the land in question as irrigated or unirrigated and the consequent determination of ceiling surplus area. The record unmistakably demonstrates that while computing the permissible ceiling area of the petitioner, the authorities have treated the land as irrigated so as to reduce the ceiling entitlement available to the petitioner, whereas while identifying the land to be declared surplus, the same holding has been treated as unirrigated so as to enlarge the surplus area. Such a self-contradictory approach strikes at the very root of fairness in quasi-judicial adjudication and renders the impugned determination arbitrary.

41. Section 4-A of the Act lays down a specific statutory mechanism for determination of irrigated land. The provision obligates the authority to examine khasra entries of the relevant faslis and undertake due verification including spot inspection so as to record a categorical finding regarding the source and availability of assured irrigation. The requirement is mandatory and not directory, inasmuch as classification of land directly affects the proprietary rights of a tenure holder and any deprivation of land under an expropriatory legislation must strictly conform to statutory safeguards.

42. In the case of **Beni Ram Vs. State of U.P**. **(Supra),** this Court categorically held that since the Ceiling Act is in the nature of expropriatory legislation, strict compliance with statutory requirements is imperative and the authorities must meticulously determine whether land is irrigated within the meaning of Section 4-A before declaring any area surplus. The ratio of the aforesaid judgment squarely applies to the facts of the present case. A perusal of the impugned orders reveals no meaningful discussion of the khasra entries, no proper appreciation of the consolidation records and no reasoned finding based upon statutory parameters.

43. The petitioner has specifically relied upon C.H. Form-41 and other consolidation records demonstrating that the land situated in Village Kather was recorded as unirrigated. The authorities have brushed aside this documentary evidence without assigning cogent reasons. It is

settled law that omission to consider material evidence amounts to perversity in decision-making. A quasi-judicial order affecting substantive rights cannot be sustained when relevant evidence is ignored and conclusions are founded upon conjectures.

44. Equally unsustainable is the finding of the Prescribed Authority treating tank and "Chora" as valid and assured sources of irrigation. No material has been brought on record to establish that these sources fulfilled the statutory requirement contemplated under Section 4-A. The classification of land cannot rest upon assumptions or casual inferences. The burden lay upon the State authorities to establish with clarity that the land answered the statutory description of irrigated land. That burden has not been discharged.

45. The contention advanced on behalf of the petitioner regarding the bona fide transfer of land situated in Village Beb also merits acceptance. The sale deed dated 13.05.1974/14.05.1974 is a registered instrument and the material on record demonstrates that possession was delivered and mutation was effected in favour of the purchasers in the year 1975 itself. The appellate authority itself accepted the transaction to be bona fide.

46. In the case of **Km. Madhubala Vs. State of U.P. (Supra), Om Prakash Agarwal Vs. First Additional District and Sessions Judge (Supra) and Pramod Kumar Vs. Additional Commissioner (Supra),** it has been consistently held that transfers made after 24.01.1971 cannot automatically be ignored unless the authority records a finding that such transfer does not satisfy the conditions contemplated under proviso (b) to Section 5(6) of the Act. Once a transfer is shown to be genuine, for adequate consideration and under an irrevocable instrument, the transferred land is liable to be excluded from the holding of the tenure holder.

47. In the present case, there is no finding recorded by the Prescribed Authority dislodging the genuineness of the transfer. On the contrary, the transaction having been accepted as bona fide, the inclusion of the said land in the petitioner"s holding was wholly impermissible. The authorities thus committed a manifest error of law apparent on the face of record.

48. The enhancement of declared surplus land from 4.74 acres to 5.54 acres in remand proceedings is another aspect which exposes the illegality of the proceedings. The appellate remand was confined to specific issues requiring reconsideration. The Prescribed Authority could not have travelled beyond the scope of remand so as to place the petitioner in a worse position in absence of any fresh material justifying such enhancement.

49. It is a settled principle that an authority acting pursuant to a remand order must strictly confine itself to the terms of remand. Any adjudication beyond the remitted issues is jurisdictionally unsustainable. The Prescribed Authority clearly misconstrued the remand directions and exercised jurisdiction not vested in it.

50. The appellate authority while affirming the order dated 05.11.1998 failed to independently examine these glaring legal infirmities. The order dated 30.03.1999 is conspicuously silent on the petitioner"s specific objections relating to inconsistent classification of land, non-

compliance of Section 4-A and wrongful inclusion of transferred land. The appellate order, thus, suffers from non-application of mind and mechanical affirmance.

51. The submission of learned Standing Counsel regarding delay and laches does not persuade this Court. The writ petition was instituted challenging the consequential orders and during pendency of proceedings the petitioner sought amendment to challenge foundational remand orders as well. The challenge essentially pertains to a continuing illegality affecting the petitioner□s proprietary rights. Since the impugned orders are found to be ex facie contrary to statutory provisions, this Court cannot decline relief solely on technical considerations.

52. The law laid down in the case of **Dwarka Nath Vs. Income Tax Officer (Supra), Jodhey Vs. State (Supra), RBF Rig Corporation Vs. Commissioner of Customs (Supra)** and **Ramesh Chandra Sankla Vs. Vikram Cement (Supra)** unequivocally recognizes the plenary jurisdiction of this Court under Article 226 to reach injustice wherever found and to mould relief so as to advance substantial justice. Technical objections cannot override the constitutional obligation of this Court to correct patent illegality.

53. The objection of acquiescence raised by learned Standing Counsel is equally untenable. Participation in proceedings pursuant to a remand order cannot estop a litigant from questioning the legality of orders when the very proceedings culminate in an order passed in excess of jurisdiction and in violation of statutory mandate.

54. This Court is also mindful of the principle enunciated in the case of **Rameshwar Vs. Jot Ram (Supra) and Ramesh Kumar Vs. Kesho Ram (Supra)** that rights of parties are ordinarily to be adjudged as on the date of institution of proceedings, though relief may be moulded to meet the ends of justice. In the present case, subsequent developments do not dilute the petitioner's accrued right to challenge orders vitiated by patent illegality.

55. Upon cumulative consideration of the entire material on record, this Court is satisfied that the Prescribed Authority failed to undertake the mandatory statutory exercise under Section 4-A; ignored relevant documentary evidence; adopted mutually destructive findings regarding nature of land; wrongly included land already transferred through a bona fide sale deed; and illegally enhanced the surplus area beyond the scope of remand. The appellate authority compounded these errors by mechanically affirming the illegal order.

56. The impugned orders, therefore, cannot be sustained in law. They suffer from arbitrariness, perversity, non-application of mind and violation of statutory provisions, thereby offending Article 14 of the Constitution of India.

57. Consequently, the writ petition succeeds and is **allowed.**

58. The impugned orders dated 18.02.1997/12.05.1997, the consequential order dated 05.11.1998 passed by the Prescribed Authority and the appellate order dated 30.03.1999 are hereby quashed.

59. The matter is remitted to the Prescribed Authority concerned for fresh determination strictly in accordance with law after affording adequate opportunity of hearing to all concerned parties and after specifically determining:

(i) the nature of land strictly in terms of Section 4-A of the Act on the basis of relevant khasra entries and spot verification;

(ii) the effect of the registered sale deed dated 13.05.1974/14.05.1974 in light of Section 5(6)(b) of the Act;

(iii) the petitioner's permissible ceiling area after due consideration of all admissible documentary evidence.

60. The aforesaid exercise shall be completed expeditiously, preferably within a period of six months from the date of production of a certified copy of this order before the competent authority.

61. Till fresh decision is taken, status quo with regard to possession over the land in question shall be maintained.

62. There shall be no order as to costs.

(2026) 5 ILRA 2311
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 06.05.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 3000082 of 2009

Balbir Singh ...Petitioner
Versus
Addl. Commissioner Admn. Devi Patan Gonda ...Respondent

Issue for consideration

The petitioner challenged the ceiling authorities' orders declaring 1.008 hectares of his land as surplus. Ceiling proceedings were initiated by clubbing the holdings of the petitioner's judicially separated wife, major sons and married daughter with his landholding.

Headnotes

A. Civil matter-Constitution of India,1950-Article 226-U.P. Imposition of Ceiling on Land Holdings Act,1960-Sections 3(7), 4-A, 5(1) Explanation-I, 5(6) & 10(2)-Ceiling proceedings-Determination of surplus land-Mandatory compliance with section 4-A-Relevant khasras of 1378-1380 Fasli not produced-Lekhpal's oral report alone insufficient to determine irrigated land-Holdings of major sons and married daughter cannot be clubbed without cogent evidence of benami ownership-Judicially separated wife's holding rightly excluded-failure to examine

bona fide sale transactions and exclusion of abadi, grove and Gurudwara land-Non-speaking appellate order-Non-consideration of material oral and documentary evidence-Writ petition allowed.(Para 24 to 46)

Held

The court ruled that impugned orders were quashed as the authorities failed to comply with the mandatory requirements of Section 4-A, wrongly clubbed separate holdings, and ignored material evidence, necessitating a fresh determination. (E-6)

Case law Cited

Hausila Singh Vs Addl. Commissioner (Admn.) Varanasi Division Varanasi : 2010 (111) RD 389 Paras 12 to 20, State of U.P. Vs District Judge, Bareilly & Ors Neutral Citation No.-2007 :AHC 8116 : 2007 (103) RD 159 Paras 3 to 6, Raunaq Ali & Anr. Vs State of U.P. & Ors: Neutral Citation No. -2007: AHC: 13690: 2009(108) RD 117 Paras 14, 15, State of U.P. Vs Kunwar Bharat Singh: 2006 (101) RD 210 Para 8, Shishu Pal Singh Vs Prescribed Authority/ Upper Zila Adhikari 2008 (105) RD 548 Paras 6 to 9-referred to.

List of Acts

Constitution of India, 1950, U.P. Imposition of Ceiling on Land Holdings Act, 1960.

List of Keywords

U.P. Imposition of Ceiling on Land Holdings Act,1960, Sections 3(7), 4-A, 5(1) Explanation-I, 5(6) & 10(2), Ceiling proceedings-Determination of surplus land, Mandatory compliance with section 4-A, Khasras, Lekhpal's report, Irrigated land-Holdings, Cogent evidence of benami ownership, Judicially separated wife's holding, Bona fide sale transactions, Abadi, Grove, Gurudwara land-Non-speaking appellate order.

Case Arising from

CIVIL JURISDICTION: WRIT -C No. -3000082 OF 2009

Balbir Singh Vs. Additional Commissioner Administration Devi Patan Gonda

From the judgment and order dated 06.05.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Petitioner(s):

Mohd. Aslam Khan, Mohammad Aslam Khan, V.K. Pandey

Adv. for Respondent(s):

C.S.C

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

1. Heard Sri M.A. Khan, learned Senior Counsel assisted by Sri Mohd. Aslam Khan, learned counsel for the petitioner and learned Additional CSC for the respondent - State.

2. The present writ petition has been filed challenging the impugned order dated 25.08.2009 passed by respondent No.1 in appeal No.15; Balbir Singh VS. State upholding the order dated 08.09.2008 passed by respondent No.2 contained as Annexures-1&2 to the writ petition, respectively.

3. Brief facts of the case in nutshell are that the petitioner is a tenure holder and possess his holdings in different villages. On 14.09.2006, a notice under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (Ceiling Act) was issued to the petitioner after clubbing the holding of Smt. Sukhvinder Kaur daughter of Sujan Singh (judicially separated wife), Joga Singh (opposite party no.4), Milkeet Singh (Opposite party no.5) (major sons of the petitioner) and Smt.

Rathvinder Kaur wife of Gurdeo Singh (Opposite party no.6) (major daughter of the petitioner), although after her marriage opposite party no.6 is residing alongwith her husband.

4. On being served with the notice aforesaid, objections were filed by the petitioner on 20.02.2007 on the ground inter-alia that Sukhvinder Kaur is judicially separated wife, hence her holding cannot be clubbed with the holding of the petitioner while determining ceiling and surplus area. It was also pleaded that Joga Singh (Opposite party no.4) and Milkeet Singh (opposite party no.5) major sons of the petitioner are recorded tenure holder and their holding was purchased by their grand father. They are residing separately alongwith their grand father. The holding in the name of the opposite party no.6 was purchased by her maternal grand mother and since the date of purchase, she is in possession over the same. It was also pleaded that 2-1/2 bighas land situated in village Chathariya and plot no. 461 having an area of 0.16 hectare was sold by the petitioner for consideration in good faith of bonafide for personal need. Plot no. 168 having an area of 1 acre was claimed a aabadi for more than 35 years. Over an area of 0.160 hectare there is a grove and over an area of 0.081 hectare there exists Gurdwara, hence, the aforesaid areas are liable to be excluded while determining the ceiling and surplus holding of the petitioner. The petitioner has also claimed that the entire holding possessed by him as unirrigated as there exist no source of irrigation.

5. Objections were also filed by respondent No.6 that she is recorded tenure holder, hence, her holding cannot be clubbed with that of the petitioner. Objections were also filed by Sukhvinder Kuar daughter of Khajan Singh, that she is judicially separated wife in pursuance to the decree dated 16.05.2001 passed in Regular Suit No.9 of 2001 by Civil Judge, (Senior Division) Bahraich, hence, her holding cannot be clubbed with that of the petitioner.

6. Objections were also filed by respondent Nos.4 and 5 on 26.02.2007, that their holding was purchased by their grand father through registered sale deed and they are recorded tenure holder and are residing separately alongwith their grand father. The petitioner in support of his case examined himself, Achal Singh Rana the pradhan of village Matehi, Ramakant Prasad, Ex-pradhan, Smt. Sukhvinder Kaur, Smt. Rathvinder Kaur, Joga Singh and others.

7. The objectors have also filed the copy of the parivar register of House No.89 of Balbir Singh (petitioner) of House No.90 of Sukhvindar Kaur, of House No.91 belonging to Kartar Singh, copy of ration cards of Vir Kaur, Balbir Singh and copy of the decree passed in Regular Suit No.9 of 2001. The State examined Lekhpal only and had not filed relevant khasras for the years 1378, 1379 and 1380 Fasli, which are mandatory as contemplated by Section 4-A of the Act.

8. The prescribed authority after excluding the land of Sukhvinder Kaur, judicially separated wife after clubbing the holding of respondent Nos.4 to 6 determined the ceiling and surplus area of the petitioner while allotting 2 additional hectares of land to the petitioner as he has two major sons and one daughter, merely relying upon the statement of Lekhpal, even without making the compliance of the terms of Section 4-A of the Act, held that the entire land is irrigative though the respondent Nos.4 to 6 are the recorded tenure holder and it has also not excluded the area over which there exists Aabadi, Gurdwara and the grove land was illegally determined. The prescribed authority thus declared 1.008 hectares land in terms of irrigated land as surplus land and in the absence of the choice declared the said area from plot no. 177 vide order dated 08.09.2008.

9. Being aggrieved by the aforesaid order dated 08.09.2008 Annexure-1, four appeals were filed; one by the petitioner, second by respondent No.5, third by the State, which was barred by limitation and the fourth by respondent No.4.

10. Respondent No.1 dismissed all the appeals by a very cryptic order and thereby affirmed the judgment passed by the prescribed authority vide order dated 25.08.2009 Annexure-2. The petitioner being aggrieved by the judgment passed by the respondent Nos.1 and 2 aforementioned, filed the above noted writ petition, assailing the validity of the orders passed by the respondent Nos.1 and 2 on the ground that no finding has been recorded by respondent Nos.1 and 2 about the sale deed which was executed by the petitioner for consideration in good faith for personal need. The holdings of respondent Nos.4 to 6, who are recorded tenure holder being in possession are residing separately. Their holding cannot be clubbed with that of the petitioner as they do not come within the definition of family as contemplated by Section 3(7).

11. The finding recorded by respondent No.2 that the entire land is irrigated on the basis of oral evidence of Lekhpal is also not sustainable and the oral evidence of revenue officer cannot substitute the records as mentioned in Section 4-A and the burden of proof lies on the State.

12. Submission of learned Senior Counsel for the petitioner is that while deciding the issue, provisions of Section 4-A of Ceiling Act was not complied with neither Khasras of 1378, 1379 & 1380 were taken into consideration nor inspection was made by the prescribed authority on the spot. Merely, relying upon the report of Lekhpal, the prescribed authority proceeded to pass the impugned order, which is not justifiable in law and is contrary to the provisions contained under Section 4-A of Ceiling Act.

13. He next submitted that it is duty of the State Government to produce Khasras and responsibility has been fixed on the State Government, which has not been complied with while passing the impugned order by the prescribed authority as well as appellate court.

14. He further submitted that objection was filed by respondent No.6 that he is recorded tenure holder, hence, his holding cannot be clubbed with that of petitioner. Objections were also filed by Sukhvinder Kuar daughter of Khajan Singh, that she is judicially separated wife in pursuance to the decree dated 16.05.2001 passed in Regular Suit No.9 of 2001 by Civil Judge, (Senior Division) Bahraich, hence, her holding cannot be clubbed with that of the petitioner, which was considered by the prescribed authority and her property was excluded.

15. He next submitted that objections were also filed by respondent Nos.4 and 5 on 26.02.2007, that their holding was purchased by their grand father through registered sale deed and they are recorded tenure holder and are residing separately alongwith their grand father and in support of his case, examined himself, Achal Singh Rana the Pradhan of village Matehi, Ramakant Prasad, Ex-pradhan, Smt. Sukhvinder Kaur, Smt. Rathvinder Kaur, Joga Singh and others and the statement made by aforesaid persons were not taken into consideration.

16. He next submitted that the objectors have also filed the copy of the parivar register of House No.89 of Balbir Singh (petitioner) of House No.90 of Sukhvindar Kaur, of House No.91

belonging to Kartar Singh, copy of ration cards of Vir Kaur, Balbir Singh and copy of the decree passed in Regular Suit No.9 of 2001. The State examined Lekhpal only and had not filed relevant khasras for the years 1378, 1379 and 1380 Fasli, which are mandatory as contemplated by Section 4-A of the Act was not examined.

17. He next submitted that after excluding the land of Sukhvinder Kaur - judicially separated wife after clubbing the holding of respondent Nos.4 to 6 determined the ceiling and surplus area of the petitioner while allotting 2 additional hectares of land to the petitioner as he has two major sons and one daughter, merely relying upon the statement of Lekhpal, even without making the compliance of the terms of Section 4-A of the Act and held that the entire land is irrigative though the respondent Nos.4 to 6 are the recorded tenure holder and it has also not excluded the area over which there exists Aabadi, Gurdwara and the grove land was illegally determined. The prescribed authority thus declared 1.008 hectares land in terms of irrigated land as surplus land and in the absence of the choice declared the said area from plot no. 177 vide order dated 08.09.2008. Being aggrieved by the order of prescribed authority dated 08.09.2008, the petitioner filed appeal with all material and relevant facts but the appellate court has also not considered that there is no compliance of Section 4-A of the Act and merely relying on the report of Lekhpal the impugned order has been passed.

18. He submitted that while recording finding, the appellate court has recorded that the copy of high school certificate produced by the petitioner and copy of parivar registere has not been disputed by the State Government by producing any other document, in spite of that otherwise finding has been recorded. He also submitted that no finding about the bonafide in respect of the sale deed executed by the petitioner has been recorded, hence, the judgment passed by respondent Nos.1 and 2 are vitiated in law.

19. He lastly submitted that the holding possessed by the petitioner and recorded in his name is within ceiling limit and respondent Nos.1 and 2 by clubbing the holding recorded in the name of the major sons and daughter - respondent Nos.4 to 6, by treating the entire holding as irrigated and without excluding the land of Aabadi, Gurdwara as well as wrongly treating the land over which there exists a grove as cultivatory land, has illegally determined the surplus holding as 1.008 hectares in terms of irrigated land. In support of his submissions, he placed reliance upon following judgments:

a) Hausila Singh v. Addl. Commissioner (Admn.), Varanasi Division, Varanasi; 2010(111) RD 389 paras 12 to 20

b) State of U.P. vs. District Judge, Bareilly and others; Neutral Citation No. - 2007:AHC:8116 : 2007 (103) RD 159 paras 3 to 6

c) Raunaq Ali and another Vs. State of U.P. and others; Neutral Citation No. - 2007:AHC:13690 : 2009(108) RD 117 paras 14, 15

d) State of U.P. v. Kunwar Bharat Singh; 2006 (101) RD 210 para 8

e) Shishu Pal Singh v. Prescribed Authority/Upper Zila Adhikari; 2008(105) RD 548 paras 6 to 9

20. On the other hand, learned Additional CSC submitted that the impugned orders do not suffer from any infirmity or illegality and are just and valid. He submitted that in absence of khasras 1378, 1379 & 1380, report of Lekhpal can be taken into consideration. He also submitted that inspection by the prescribed authority is not required, where report of Lekhpal is before the prescribed authority.

21. He next submitted that burden to produce khasra 1378, 1379 & 1380 fasli lies upon the petitioner to establish his case and is not responsibility of the State Government. He next submitted that the proceeding was initiated in the year 1988, therefore, it was not necessary to produce khasra of 1378, 1379 & 1380 fasli.

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

23. To resolve the controversy involved in the matter, relevant portion of the judgments relied upon by learned counsel for the petitioner are being quoted below:

a**) Hausila Singh (Supra**):

""12. Admittedly the Khasra entries of the year 1378 to 1380 Fasli are not on record of the proceedings giving rise to the present petition. Therefore, it is on the basis of the spot inspection and other material which was brought on record before the Prescribed Authority he was to decide the issue as to whether the land was irrigated or un-irrigated.

13. Under an order dated 12.2.1982 the Prescribed Authority fixed 24.2.1982 as the date for spot inspection but no such inspection took place on the date fixed as per the record. The spot inspection in fact took place on 29.5.1982 which date apparently appears to have been fixed by Prescribed Authority on his own without there being any order in that regard recorded in the order-sheet. Therefore, the contention of the petitioner that such inspection has been done without notice or opportunity to the petitioner, has to be believed.

14. It is pertinent to note that after inspection on 29.5.1982 the Prescribed Authority has decided to finalize the proceedings within two days thereafter to be precise on 31.5.1992.

15. I am of the considered opinion that the Prescribed Authority was under a legal obligation to inform the petitioner about the facts noticed doing spot inspection with an opportunity to the petitioner to submit his evidence in reply. Petitioner could have produced other materials which on examination could establish that the land was un-irrigated. Denial of such opportunity to the petitioner in the facts of this case vitiates the order.

16. 16. In the facts and circumstances of the case, this Court finds that the orders passed by the Prescribed Authority dated 27.4.1977 as well that passed by Additional Commissioner dated

12.4.1988 are based on ex parte spot inspection and without opportunity to controvert the facts noticed during spot inspection. The orders can not be legally sustained and are hereby set-aside.

17. Let the Prescribed Authority redetermine the issue qua the land being irrigated or not in the light of the directions issued by the District Judge as per the order dated 6.3.1981 within four months from the date a certified copy of this order is filed before it after affording opportunity to the petitioner and if need be a fresh date be fixed for spot inspection.

18. So far as the intervenors are concerned this Court may record that the total land which was declared surplus by the Prescribed Authority under the first order dated 27.4.1977 treating the land as un-irrigated, can not be reduced ever after the matter is examined on remand in as much as such as it is the appeal filed by the State, and the only issue remanded is as to whether the land is irrigated or not. If the answer to the question is in affirmative, further land would be declared surplus. Such an order can not in any way effect the rights of the allottees who are interveners in the matter provided surplus land was allotted to them before the order of remand passed by Appellate Authority.

19. 19. In case surplus land has been allotted after the order of remand from the additional land declared as surplus, it will always be open to the petitioner to make an appropriate application for cancellation of the allotment, if after remand the issue of irrigated/un-irrigated is decided in his favour. Such application of the petitioner shall be considered in accordance with law.

20. Writ petition is allowed subject to the observations made."

b) State of U.P. vs. District Judge, Bareilly and others (Supra):

"Appellate court perused khasras of 1377 fasli, 1378 fasli and 1380 fasli. In respect of khasra of 1379 fasli appellate court observed that it was not on record. Appellate court held that in the khasras on record no source of irrigation was mentioned against plot nos. 10 and 28. In the khasra of 1377 fasli and 1378 fasli neither any source of irrigation was shown nor any crop was shown to be irrigated. There were some changes in the khasra of 1380 fasli. Copy of khasra of 1380 fasli has been annexed alongwith supplementary affidavit sworn on 7.3.1983. Under column no.6 which pertains to source of irrigation boaring is shown in plot nos. 2 and 3. However in plot nos. 10 and 28 no source of irrigation is shown. Plot no.10 is shown to be irrigated to the extent of 50 bighas in kharif crop (total area is about 103 bigha). Under Section 4-A of the Ceiling Act which provides for determination of irrigated land it is essential that there must be irrigation facility and decision regarding irrigation facility and growing of crops is basically required to be taken on the basis of khasras of 1378 to 1380 fasli. Section 4-A contains private irrigation work as one of the relevant sources of irrigation. However, private irrigation work is defined under Section 3(14) of the Act and thereunder it means "a private tube well or a private lift irrigation work operated by diesel or electric power for the supply of water from a perennial water source completed before August 15, 1972". The date provided falls within 1380 fasli which corresponds to the period from 1.7.1972 to 30.6.1973. Accordingly, if crop in the year 1380 fasli was for the first time irrigated from a private irrigation work then the chances are that the said irrigation work

should have been completed after 15.8.1972. Normally from 1st July till 15th August it is rainy season in Uttar Pradesh hence during that period there is no question of irrigation from any man made source of irrigation or installation of such source during that period. In any case it was essential from the State to lead evidence in this regard which was not done.

Moreover merely because in the khasra of 1380 fasli a particular plot or part thereof is shown to be irrigated, there cannot be any presumption that there was any source of irrigation as mentioned under Section 4-A of the Ceiling Act. In the khasra there is specific column for source of irrigation. In the copy of khasra of 1380 fasli for all the above 4 plots and some other plots mentioned therein source of irrigation is shown against plot nos. 2,3 and 30. If there had been any source of irrigation in plot no.10 and 28 surely it would also have been shown.

Accordingly I am unable to accept the contention of learned standing counsel that as 50 bigha of plot no.10 is shown to be irrigated in kharif crop in the khasra of 1380 fasli hence the entire plot on the said area shall be treated to be irrigated even though no source of irrigation is mentioned.

I do not find any error in the impugned judgment of the appellate court. Writ petition is dismissed."

c) Raunaq Ali and another (Supra):

"After perusal of the judgment passed by the prescribed authority as well as by the Appellate Authority, the Prescribed Authority to some extent has considered the statements of the persons who have been produced on behalf of the petitioners but the Appellate Authority being a last Court of fact was obliged to consider the oral evidence and a finding to this effect has to be recorded regarding the bonafide purchase of the land. If no such finding is recorded the judgment passed by the Appellate Authority cannot be said to be in consonance of the provisions of the Act. Such finding is lacking and there is no whisper to this effect by the Appellate Authority.

In view of the aforesaid fact, I am of the opinion that the judgment and order passed by the respondent No.2 dated 17.12.1987 (Annexure 8 to the writ petition) is not sustainable in law, as such, is hereby quashed. The writ petition is allowed. The matter is remanded back to the appellate authority i.e. respondent No.2 to decide the case in view of the observations made above taking into consideration the provision of Section 5(6) of the Act, as well as the judgment cited above. As the matter is very old, therefore, the respondent no.2 is directed to decide the same within a period of six months from the date of production of the certified copy of this order after affording full opportunity to the petitioner. In case, the petitioners submit some additional evidence by way of documents that may also be considered by the Appellate Authority."

d) State of U.P. v. Kunwar Bharat Singh (Supra):

"8. However, sub-section 6 of section 5 of the Act provides that in case, a land is transferred even after the cut of date, the Prescribed Authority will have got power to accept its genuineness, in case transfer was done bona fidely."

e) Shishu Pal Singh (Supra):

"7. It is evident from the record that Het Ram had his own holding. Besides, the six petitioners, who are the sons of late Het Ram Singh, also have purchased certain holdings in their names through different sale-deeds which were exclusively in their names. How ever, the Lekhpal and Tehsildar included all the said holdings in the name of late Het Ram Singh showing that in total, he had 25.81 acres of land and, therefore, 17.40 acres of land was liable to be declared surplus. The case of the petitioners was that their holding were separate, they were residing separately and, there fore, their holdings, which they have purchased through their own separate sale deeds, cannot be included or clubbed with the holding of late Het Ram Singh. The appellate authority has rejected the appeal only on the ground that the petitioners contention that they were residing separately from their father cannot be accepted since one of the petitioners Shishu Pal Singh has obtained loan for purchasing a tractor after getting his father's land mortgaged and the onus to prove that they were residing separately lies upon the petitioners, which they did not discharge.

From the order of the appellate authority, it appears that he proceeded on the assumption that once notice under Section 10(2) of the Act has been issued based on the inquiry of the Lekhpal and Tahasildar etc. alleging that the noticee held certain holding in his own rights though ostensibly in the name of other, it is the liability of the noticee to prove otherwise. This approach is absolutely misconceived and contrary to law. Explanation-1 of Section 5 is in the nature of exception inasmuch normally every tenure holder is entitled to hold a land to the extent provided in the Act, but in a case where the land actually belongs to one but has been purchased in the name of some other person, that is a kind of benami transaction, in that case only to prevent such cases so as not to frustrate the very purpose of the Act, the explanation-1 has provided that such land shall be included in the holding area of a tenure holder, but to prove the existence of such fact, the onus lies on the State heavily and not otherwise. Explanation-1 read with Section 5 is very clear that neither it purports to add nor to limit the normal meaning of the expression ?tenure-holder? as defined in Section-3, sub-section (17) of the Act and, thus, clearly shows that the land must be held by the tenure holder in his own rights. In case, the State claims that any land is held ostensibly by the tenure holder, the onus lies upon the State to establish the same. A somewhat similar issue came up for consideration before a Division Bench of this Court in Mohammad Abbas v. State of U.P., 1979 AWC 23 : (1979 All LJ 326). There two major sons of the tenure holder executed sale deeds on 12-5-1971, 7-9-1971 and 8-3-1972 transferring the entire land recorded in their names. Thereafter, the tenure holder claimed two additional hectares of land on the ground that his two major sons did not hold any land on the appointed date, i.e., 8-6-1973, but the said claim was rejected by the ceiling authorities holding that the transfer of land by major sons after 24-1-1971 was liable to be ignored as they could not establish that the sale deeds were executed in good faith and for adequate consideration. Referring to Section 5, sub-section (3) of the Act, the Court held that the ceiling area to which a tenure holder is entitled is fixed with reference to the number of members in the tenure-holder's family and land held by other members of the tenure-holder's family is to be aggregated with the land held by the tenure holder. The word ?family? as defined in the Act in relation to a tenure holder, means himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband) minor sons and minor daughters (other than married daughters).

9. 9. It shows that the said definition does not include the major sons of the tenure holder. By virtue of Section 5(3), if the tenure holder is a male, land recorded in the name of his wife, provided she is not a judicially separated wife, and minor sons and minor daughters can be clubbed in determining the ceiling area which the tenure holder is entitled to retain. This shows that the land held by the major sons is not to be included in the holding of the tenure holder. The only possibility for including the said land, therefore, would have been if Explanation-1 of Section 5(1) would have been applicable, namely, if the land is ostensibly held by the tenure holder in the name of any other person, but for the said purpose, heavy burden lies upon the State to prove this fact. Considering this aspect of the matter with reference to Explanation-1 to Section 5(1) of the Act, another Division Bench of this Court in Banshi Singh (supra) wherein this Court held as under:

"Explanation 1 of Section 5(1) clearly shows that when the State alleges that the land is ostensibly being held by a tenure-holder in the name of any other person which should be treated as the land belonging to the tenure-holder then the burden lies upon the State to prove this fact. Merely because in the notice the State has clubbed the land belonging to others under the pretext that it is being held ostensibly in the name of sons or any other person, the burden cannot be said to have been discharged. Once a notice under Section 10(2) is served upon the tenure-holder he has to show cause and while showing cause if the tenure-holder establishes by prima facie evidence by filing documents or by giving evidence that the land was being held by other persons in their own capacity, the burden shifts upon the State to establish the fact that the land is being held by the tenure-holder ostensibly in the name of others. In order to discharge this burden the State has to establish by some cogent and satisfactory evidence that the land is being held by the tenure-holder. Merely because the land has been clubbed in the land of petitioner No. 1 in the notice issued under Section 10(2) of U.P. Imposition of Ceiling on Land Holdings Act or merely because the Lekhpal gives a statement that the petitioner is in possession, is not sufficient to discharge that burden and to establish that the land was ostensibly being held by the tenure-holder in the name of others. In the present case petitioner No. 1 led evidence by showing that the names of the sons were entered in revenue records right from 1264-F and after the partition their names were entered separately on the basis of the partition decree. When the State was alleging that the land was being ostensibly held by petitioner No. 1, the State had to discharge that burden by giving cogent and satisfactory evidence. In the present case no such evidence was adduced and the mere statement of the Lekhpal was not sufficient to rebut the evidence and to hold that the land was being held ostensibly by petitioner No. 1 in the names of the sons"

10. Moreover, the only reason for non-suiting the petitioners given by the appellate authority that the land of Het Ram Singh was given as security for obtaining loan by one of the petitioners and thus shows that the entire holding belong to Het Ram Singh, in my view, is thoroughly misconceived. It is very difficult to co-relate the said transaction to the conclusion which has been drawn by the learned appellate authority. A father and son having separate holding, residing separately but if help each other in their period of difficulty or whenever necessity arises, would not mean that they constitute one unit and entire thing belong to the father or the son, as the case may be. In Indian society and in common practice, if the sons or daughters or even brothers or other relatives needs help, the first helping hand would be that of normally the relatives or the friends and, therefore, for purpose of land, if Het Ram's land was mortgaged with

respect to the petitioner No. 1, that itself would not justify the conclusion that the entire holding belong to Het Ram in his own right though ostensibly in the name of the petitioners. The petitioners gave their statements that they are all residing separately. Mere non-production of ration-card cannot justify an inference that the statements given on oath by the petitioners were false unless some evidence is produced by the State to show the said averment to be incorrect. From a bare reading of the appellate order, it is evident that it has solely proceeded on the assumption as if the onus lies upon the petitioners to show that the holding was separate, ostensibly in their names and did not belong to their father Het Ram Singh. The basic approach of the appellate authority in the present matter is clearly illegal and contrary to law.

11. In the result, the writ petition succeeds and is allowed. The appellate order dated 29-1-1992 passed by Commissioner, Moradabad Division, Moradabad (Annexure-3 to the writ petition) is hereby quashed and the matter is remitted back to the appellate authority to consider and decide the matter afresh. Since it is very old matter, it is directed that the appellate authority shall decide the appeal afresh in accordance with law and in the light of the observations made hereinabove expeditiously preferably within a period of one year from the date of production of certified copy of this order. No costs."

24. Having considered the rival submissions advanced by learned counsel for the parties, examined the pleadings on record and perused the impugned orders as well as the authorities cited at the Bar, this Court finds that the orders dated 08.09.2008 passed by the Prescribed Authority and 25.08.2009 passed by the appellate authority cannot be sustained in the eyes of law for more than one reason.

25. The first and foremost infirmity which goes to the root of the matter is the non-compliance of the mandatory requirement contained under Section 4-A of the U.P. Imposition of Ceiling on Land Holdings Act, 1960. The determination as to whether a land is irrigated or unirrigated is not a matter of mere presumption or subjective satisfaction of the authority concerned. The statute specifically contemplates consideration of the relevant khasras of 1378, 1379 and 1380 Fasli, which constitute the foundational evidence for adjudicating the nature of land.

26. In the present case, admittedly the State failed to produce the aforesaid khasras. The entire determination regarding irrigation has been recorded merely on the basis of the oral statement/report of the Lekhpal. Such an approach is patently contrary to the statutory mandate. The submission advanced on behalf of the State that in absence of khasras the report of the Lekhpal would suffice, cannot be accepted.

27. The law laid down in the case of **Hausila Singh v. Addl. Commissioner (Admn.), Varanasi Division (Supra)** clearly holds that where the requisite khasras are not available, the prescribed authority is under a legal obligation to undertake proper spot inspection after due notice and affording opportunity to the tenure-holder to controvert the material gathered. Likewise, in in the case of **State of U.P. v. District Judge, Bareilly (Supra),** it has been categorically held that determination of irrigated land must rest upon the evidence contemplated under Section 4-A and not on assumptions or unsupported oral assertions.

28. In the instant case, neither were the statutory khasras produced, nor was any valid spot inspection conducted by the prescribed authority after notice to the petitioner. Thus, the finding that the entire holding was irrigated is wholly unsupported by legally admissible evidence and is liable to be set aside.

29. The second grave illegality committed by the authorities below is the clubbing of the holdings standing in the names of respondent Nos.4, 5 and 6 with that of the petitioner.

30. The record clearly reveals that respondent Nos.4 and 5 are major sons of the petitioner, whereas respondent No.6 is a married daughter residing separately. Their names stand recorded independently in the revenue records. Specific objections were filed by them asserting separate title, separate possession and independent acquisition of the land in question. Documentary evidence including revenue records, family register extracts and oral testimony was also adduced in support thereof.

31. The authorities below have failed to record any cogent finding to disbelieve the aforesaid evidence. Mere reference to the report of the Lekhpal could not displace the documentary evidence brought on record by the petitioner and the private respondents.

32. The legal position in this regard is no longer res **integra. In the case of Shishu** Pal Singh v. Prescribed Authority/Upper Zila Adhikari (Supra), this Court has clearly held that major sons do not fall within the definition of ?family? under Section 3(7) of the Act and their holdings cannot be clubbed unless the State discharges the heavy burden of establishing by cogent evidence that such land is merely ostensible and is actually held benami for the tenure-holder.

33. No such evidence has been led by the State in the present case. The State examined only the Lekhpal. No documentary evidence was produced to establish that respondent Nos.4 to 6 were holding land benami for the petitioner. Consequently, the very foundation of the clubbing exercise is unsustainable.

34. This Court further finds that the prescribed authority itself accepted the plea regarding exclusion of the land belonging to Smt. Sukhvinder Kaur on account of judicial separation, yet without assigning any legally sustainable reason adopted an entirely inconsistent approach while dealing with the separately recorded holdings of respondent Nos.4 to 6. Such contradictory reasoning reflects clear non-application of mind.

35. Yet another illegality is the complete failure of the authorities below to record any finding with regard to the petitioner’s plea that certain transfers had been made for valid consideration in good faith for personal necessity.

36. Under Section 5(6) of the Act, the authority is obligated to examine the bona fide nature of such transfers. The law laid down in the case of State of U.P. v. Kunwar Bharat Singh (Supra) unequivocally recognizes such statutory obligation.

37. The appellate authority has failed to examine this issue altogether. Such omission vitiates the appellate order.

38. The appellate authority, being the final court of fact, was under a legal duty to independently assess the oral and documentary evidence on record and to record reasoned findings on each issue raised before it.

39. In the case of **Raunaq Ali v. State of U.P. (Supra),** this Court has held that failure of the appellate authority to consider material evidence and record findings on crucial questions renders its order unsustainable.

40. The appellate order dated 25.08.2009 is a cryptic affirmance of the order of the prescribed authority. It neither discusses the evidence led by the petitioner nor addresses the legal objections raised in appeal. Such a non-speaking order, particularly when civil consequences of grave nature ensue, cannot be sustained.

41. The contention raised on behalf of the State that the burden to produce khasras lies upon the petitioner is wholly misconceived. Proceedings under the Ceiling Act are initiated by the State and when it seeks to declare land surplus by treating it as irrigated or by alleging ostensible holding, the burden squarely lies upon it to establish the foundational facts by legally admissible evidence.

42. This Court is, therefore, of the considered view that both the prescribed authority and the appellate authority have proceeded in manifest disregard of the statutory provisions as well as the settled principles of law laid down by this Court.

43. The impugned orders suffer from perversity, non-consideration of relevant evidence, reliance upon inadmissible material, misapplication of the burden of proof and failure to record reasoned findings on material issues.

44. Consequently, the order dated 25.08.2009 passed by respondent No.1 in Appeal No.15 as well as the order dated 08.09.2008 passed by respondent No.2 are hereby quashed.

45. The writ petition succeeds and is, accordingly, **allowed.**

46. The matter is remitted to the Prescribed Authority to reconsider the case afresh strictly in accordance with law after obtaining and considering the relevant khasras of 1378, 1379 and 1380 Fasli, if available. In case of non-availability thereof, undertaking spot inspection after due notice and opportunity to all concerned parties. He shall also independently examine the question of separate holdings of respondent Nos.4 to 6 in light of Section 3(7) and Explanation-I to Section 5(1) of the Act and

record a specific finding regarding the bona fide nature of the sale deeds relied upon by the petitioner by considering the petitioner?s claim regarding exclusion of aabadi, grove and Gurdwara land in accordance with law.

47. Since the matter pertains to old ceiling proceedings, it is directed that the Prescribed Authority shall conclude the exercise expeditiously, preferably within a period of six months from the date a certified copy of this order is produced before it.

48. Till fresh decision is taken, no coercive action shall be taken against the petitioner pursuant to the impugned orders.

49. There shall be no order as to costs.

(2026) 5 ILRA 2324
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 14.05.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 3000221 of 2003

Ajay Pratap Singh & Ors. ...Petitioners
Versus
Addl. Commissioner Faizabad & Ors. ...Respondents

Issue for Consideration

Whether the objections preferred by the petitioners claiming independent rights on the basis of a registered Will executed by the original tenure-holder under the U.P. Imposition of Ceiling on Land Holdings Act, 1960, could be rejected on the technical grounds of delay and incorrect mention of the statutory provision without adjudicating the claim on merits, and whether the petitioners' independent claim stood concluded merely because their father and natural guardian had contested the earlier ceiling proceedings.

Headnotes

U.P. Imposition of Ceiling on Land Holdings Act, 1960; Ss. 5(6), 11(2), 13-A—Ceiling proceedings—Recorded tenure-holder, Fateh Bahadur Singh, alleged to have executed a registered Will dated 25.11.1971 in favour of the petitioners—Following the death of Fateh Bahadur Singh on 22.05.1973, surplus land declared in ceiling proceedings—Petitioners admittedly minors at the relevant time—Upon attaining majority, petitioners claimed that their independent rights under the Will had remained unrepresented and unadjudicated—Respondents contended that Raj Narain Singh, father and natural guardian of the petitioners, had contested the ceiling proceedings and, therefore, no separate adjudication of the petitioners' claim was required—Objections filed by the petitioners after attaining majority—Rejected on the grounds that the application mentioned S.13-A instead of S.11(2) and was barred by delay, without examining the claim on merits—Appellate authority affirmed the rejection without independent consideration—Justification.

Held : A third party claiming independent rights in the land has a right to file objections under Section 11(2) and such objections cannot be rejected merely because earlier proceedings had been contested by the recorded tenure holder. Such objections are required to be decided on merits after affording adequate opportunity of evidence to the objector.—Even if an objection is filed under a wrong provision, the authority is under an obligation to treat the same in

accordance with its substance and not reject it on mere technical description of the statutory provision. Wrong mentioning of a section or omission to mention the correct provision does not disentitle an objector from substantive relief. Procedural law is intended to advance justice and not to defeat substantive rights.—The plea of delay cannot be examined ignoring the effect of minority and absence of effective representation. Mere representation by a natural guardian in proceedings conducted against another tenure holder cannot automatically extinguish or adjudicate independent rights claimed by minors on the basis of a separate legal instrument.—Though a claimant cannot seek automatic exclusion of land merely on the basis of an alleged Will, the authority is legally bound to examine such claim on merits in accordance with Section 5(6) of the Act and the principles laid down in the governing precedents.—The first appellate authority is required to independently analyse the facts, evidence and legal issues, and failure to do so vitiates the appellate order for want of proper reasoning and independent consideration.—Subsequent allotment of surplus land cannot be treated as a complete bar to judicial scrutiny where foundational illegality is demonstrated. [Paras 40–56]

The principal grievance raised by the petitioners was that their independent claim arising out of the registered Will dated 25.11.1971 executed by the original tenure holder was never adjudicated upon and that their objections were rejected on technical grounds without examining the substance of their claim. The authorities neither examined the genuineness of the Will nor recorded any finding regarding its legal effect, but rejected the claim without any discussion of evidence, clearly reflecting non-application of mind. The appellate authority merely affirmed the order of the Prescribed Authority without independently considering the effect of the petitioners' minority, the maintainability of objections under Section 11(2), the effect of incorrect mention of the statutory provision, the legal consequences flowing from the alleged Will and the requirement of adjudicating the petitioners' independent rights. The objections disclosed a substantial and legally triable claim, but the authorities rejected them on technical and procedural grounds, resulting in manifest failure of justice. Accordingly, the impugned orders were quashed and the matter was remanded to the Prescribed Authority to reconsider the objections afresh after examining the claim arising out of the Will dated 25.11.1971, the effect of the petitioners' minority, the maintainability of objections under Section 11(2) and the applicability of Section 5(6) of the Act, by passing a reasoned and speaking order. [Paras 37–39, 48–60] (E-5)

Case Law Cited

Dirvijai Singh **v.** *State of U.P.*, **1984 LCD 324;**
Shafir **v.** *D.J. Gonda*, **1985 LCD 290;**
Abdul Hafiz Khan **v.** *D.J. Bahraich*, **1986 LCD 477;**
Hari Ram **v.** *Special Judge, ADJ, Faizabad*, **1989 LCD 85;**
Mehfizul Rahman **v.** *State of U.P. and Others*, **1984 LCD 370;**
Ram Bhajan **v.** *C.R.O.*, **2001 LCD 901;**
State of U.P. **v.** *Kailash Nath*, **2023 LCD 1170;**
Anand Kishor Devacharya **v.** *State of U.P. and Others*, **2024 (165) RD 582;**
Mohammad Raza **v.** *State of U.P. and Others*, **2024 (165) RD 783;**
Rajendra Prasad Singh **v.** *State of U.P. and Others*, **2024 LCD 2281**

List of Acts

U.P. Imposition of Ceiling on Land Holdings Act, 1960
U.P. Imposition of Ceiling on Land Holdings Rules
Code of Civil Procedure, 1908

List of Keywords

Registered Will; Third party claiming independent rights; Objections under Section 11(2); Technical grounds; Wrong mentioning of a section; Procedural law; Substantive rights; Minority; Effective representation; Legal

effect of the Will; Non-application of mind; Section 5(6); Genuineness of the Will; Bona fide; Reasoned and speaking order; Foundational illegality; Manifest failure of justice; Surplus land.

Case Arising From

Petition challenging the order dated 26.04.1982 passed by the Prescribed Authority under the U.P. Imposition of Ceiling on Land Holdings Act, 1960, and the appellate order dated 05.03.1998 passed by the Additional Commissioner affirming the declaration of surplus land.

Appearances for Parties

Advs. for the Appellant: R.s.pandey, Mahendra Kumar Sharma
Advs. for the Respondents: C.S.C., Brijesh Kumar Kuldeep, Dinesh Kumar Arya, Shiv Ram Tewari

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

1. Heard Dr. R.S. Pande, learned Senior Advocate assisted by Sri Mahendra Kumar Sharma, learned counsel for the petitioners and learned Standing Counsel for the State-respondent.

2. By means of the present writ petition, the petitioners have prayed for the following reliefs :-

"A. Issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 26.4.1982 passed by opposite party No.2 contained in Annexure No.2 and order dated 5.3.1998 passed by opposite party No.2 contained in Annexure No.1 to the writ petition.

B. Issue a writ order or direction in the nature of Mandamus commanding the opposite parties to decide the objection filed by the petitioners on the basis of will executed in their favour by the recorded tenure holder Fateh Bahadur Singh.

C. ...

D. ..."

3. The present writ petition has been filed challenging the order dated 26.04.1982 passed by the Prescribed Authority under the U.P. Imposition of Ceiling on Land Holdings Act as well as the appellate order dated 05.03.1998 whereby the appeal preferred by the petitioners has been dismissed and the order of the Prescribed Authority has been affirmed.

4. The dispute relates to land situated in village Chakwa Gholia, Pargana Bhinga and village Bechuwa, Pargana Tulsipur, which admittedly belonged to one Fateh Bahadur Singh son of Naresh Singh, who was the recorded tenure holder. It is the specific case of the petitioners that during his lifetime, the said tenure holder executed a registered Will dated 25.11.1971 in favour of Ajay Pratap Singh, Vishnu Pratap Singh, Bhanu Pratap Singh and Vijay Pratap Singh, all sons of Raj Narayan Singh.

5. It has further been stated that Vijay Pratap Singh subsequently died issueless and the present petitioners, being his brothers, succeeded to his interest. The petitioners have asserted that

the Will executed by the original tenure holder governed the devolution of rights in the land and conferred upon them a substantive claim, which was liable to be considered by the authorities in ceiling proceedings.

6. The record further indicates that Fateh Bahadur Singh died on 22.05.1973 and thereafter the name of Raj Narain Singh was mutated in the revenue records on the basis of a Lekhpal report and incorporated in the relevant Khatauni. Subsequently, the Prescribed Authority by order dated 30.09.1975 declared 26.949 hectares of land as surplus.

7. It is not in dispute that at the time when the ceiling proceedings were initiated and decided, the petitioners were minors. According to the petitioners, for this reason no objection could be filed on their behalf at the relevant time and their independent rights arising out of the Will remained unrepresented and unadjudicated.

8. It has been brought on record that the order dated 30.09.1975 was challenged by Raj Narain Singh in appeal, which was dismissed, and thereafter a writ petition was filed in the year 1980 wherein an interim order was granted. It is the case of the petitioners that after attaining majority, they acquired knowledge of the declaration of surplus land and immediately thereafter filed objections on 01.11.1980 under Section 11(2) of the Act, though due to inadvertence the provision was mentioned as Section 13-A.

9. The Prescribed Authority, however, rejected the objections of the petitioners by order dated 26.04.1982 primarily on the ground of delay and on the basis of incorrect mention of the provision, without entering into the merits of the claim set up by the petitioners on the basis of the Will. The appeal preferred by the petitioners was also dismissed on 05.03.1998 without rectifying the errors committed by the Prescribed Authority.

10. The respondents have filed a counter affidavit opposing the writ petition wherein it has been stated that the alleged Will is merely a photostat copy and does not appear to be registered. It has further been stated that the petitioners were minors and the proceedings were conducted against their father, who was their natural guardian, and therefore no illegality was committed. The respondents have also contended that there is no evidence to show that the Will was filed before the Prescribed Authority and that the impugned orders are justified and legal.

11. The respondents have further raised an objection regarding delay and laches, contending that the writ petition has been filed after an inordinate delay and that the land declared surplus has already been allotted to eligible persons after taking possession in the year 2003, and therefore no interference is warranted.

12. The petitioners have filed a rejoinder affidavit denying the assertions made in the counter affidavit and reiterating that the Will dated 25.11.1971 is a registered document which has not been properly considered by the authorities. It has been asserted that the petitioners were minors at the relevant time and therefore could not effectively participate in the proceedings and that their objections, filed after attaining majority, ought to have been considered on merits.

13. Submission of learned counsel for the petitioners is that the impugned order dated 26.04.1982 passed by the Prescribed Authority, as well as the appellate order dated 05.03.1998, are wholly unsustainable in law and on facts, inasmuch as the same have been passed without proper appreciation of the material on record and in violation of settled legal principles.

14. It is contended that the land in dispute originally belonged to Fateh Bahadur Singh, the recorded tenure holder, who, during his lifetime, executed a registered Will dated 25.11.1971, thereby determining the succession of his holdings. The said Will, being a valid and operative testamentary instrument, governed the devolution of rights after his death on 22.05.1973. The authorities under the Ceiling Act were, therefore, legally bound to take into consideration the effect of the said Will while determining the surplus land.

15. It is further submitted that the Will conferred independent and substantive rights upon the beneficiaries, including the petitioners, and such rights could not have been ignored merely on the basis of subsequent mutation entries. It is well settled that mutation proceedings are fiscal in nature and do not confer title; hence, the entry of Raj Narain Singh in the revenue records could not override the testamentary disposition made by the original tenure holder.

16. It is further urged that Vijay Pratap Singh, one of the beneficiaries under the Will, died issueless and his share devolved upon the present petitioners, being his real brothers. Consequently, the petitioners acquired a lawful interest in the property, which entitled them to participate in the ceiling proceedings and to have their holdings independently assessed.

17. The petitioners contend that when the ceiling proceedings were started and decided by the order dated 30.09.1975, they were minors and could not protect their rights or file objections. Since the case went on without proper representation of their interests, the proceedings are invalid, especially because their rights were based on a registered Will.

18. It is submitted that upon attaining majority and acquiring knowledge of the proceedings, the petitioners promptly filed objections on 01.11.1980. The mere incorrect mention of the provision as Section 13-A instead of Section 11(2) of the Act is a curable defect and could not have been made a ground to reject the objections, especially when the substance of the claim was clearly articulated.

19. Learned counsel for the petitioners further submit that the Prescribed Authority committed a manifest error in rejecting the objections solely on the ground of delay, without considering that the petitioners were minors during the relevant period and that limitation would not run against them. The approach adopted by the authority is contrary to the settled principle that procedural technicalities should not defeat substantive rights.

20. It is also contended that the Prescribed Authority failed to adjudicate upon the genuineness and legal effect of the Will. The rejection of the claim without examining the core issue amounts to non-application of mind and renders the order arbitrary.

21. Further submission is that the appellate authority, while dismissing the appeal on 05.03.1998, merely affirmed the findings of the Prescribed Authority without independently evaluating the contentions raised by the petitioners. The appellate order is vitiated as it merely affirms the earlier decision in a mechanical manner, without proper application of mind or any reasoned analysis.

22. The petitioners further submit that the objection raised by the respondents regarding delay and laches in filing the writ petition is misconceived. The petitioners were pursuing their remedies before the statutory forums, and the cause of action continued as their rights were never adjudicated on merits.

23. It is lastly submitted that the alleged allotment of surplus land to third parties cannot override the lawful claim of the petitioners, especially when the declaration of surplus land itself is under challenge. Any action taken on the basis of an illegal order cannot be sustained in law or used to continue an injustice.

24. In support of the submissions advanced, learned counsel for the petitioners placed reliance upon the following judgments :-

(i) Dirvijai Singh Vs. State of U.P. [1984 LCD 324].

(ii) Shafir Vs. D.J. Gonda [1985 LCD 290].

(iii) Abdul Hafiz Khan Vs. D.J. Bahraich [1986 LCD 477].

(iv) Hari Ram Vs. Special Judge ADJ Faizabad [1989 LCD 85].

(v) Mehfizul Rahman Vs. State of U.P. and others [1984 LCD 370].

(vi) Ram Bhajan Vs. C.R.O. [2001 LCD 901].

(vii) State of U.P. Vs. Kailash Nath [2023 LCD 1170].

(viii) Anand Kishor Devacharya Vs. State of U.P. and others [2024 (165) RD 582].

(ix) Mohammad Raza Vs. State of U.P. and others [2024 (165) RD 783].

(x) Rajendra Prasad Singh Vs. State of U.P. and others [2024 LCD 2281].

25. In view of the aforesaid submissions and the judgments relied upon, it is prayed that the impugned orders be set aside.

26. On the other hand, learned Standing Counsel submits that the writ petition is devoid of merit and is liable to be dismissed both on the ground of delay and on merits.

27. It is contended that the ceiling proceedings were conducted strictly in accordance with law and culminated in the order dated 30.09.1975 declaring 26.949 hectares of land as surplus. The said order attained finality after dismissal of the appeal preferred by Raj Narain Singh and subsequent proceedings, and therefore cannot be reopened at this belated stage.

28. The respondents submit that the petitioners claim is based on an alleged Will dated 25.11.1971, which has not been proved in accordance with law. It is specifically stated that the document relied upon is merely a photostat copy and there is no reliable evidence to establish that the Will was duly executed or registered.

29. It is further contended that the petitioners have failed to demonstrate that the alleged Will was ever produced before the Prescribed Authority during the original proceedings. In the absence of such material on record, the authority cannot be faulted for not considering the same.

30. Learned Standing Counsel further submits that the mutation of the name of Raj Narain Singh in the revenue records after the death of Fateh Bahadur Singh was carried out in accordance with the procedure prescribed under law and reflected the actual possession and control over the land. The ceiling proceedings were, therefore, rightly conducted against the recorded tenure holder.

31. It is further submitted that the petitioners were minors at the relevant time and were represented by their father, who was their natural guardian. The proceedings having been conducted against the guardian cannot be said to be vitiated, as there was adequate representation of the family interest.

32. The respondents contend that the objections filed by the petitioners on 01.11.1980 were highly belated and were rightly rejected by the Prescribed Authority. The incorrect mention of the statutory provision further reflects lack of diligence and seriousness on the part of the petitioners.

33. It is also submitted that the Prescribed Authority was justified in rejecting the objections without entering into the merits, as the proceedings had already attained finality and reopening the same after several years would defeat the object of the Ceiling Act.

34. The appellate authority, after due consideration, affirmed the order of the Prescribed Authority, and no illegality or perversity can be attributed to the concurrent findings recorded by the authorities below.

35. After having heard the rival contentions of learned counsel for the parties, I perused the material on record as well as the law report cited.

36. Relevant paragraphs of the judgments relied upon by petitioners' counsel are being quoted hereunder :-

Dirvijai Singh (Supra)

"I have heard the learned counsel for the parties. Under the Act the third party has a right to file the objection u/s 11 (2) of the Act. The petitioner being a third party could file the objection. Only the question of delay was required to be considered. The objection could not be rejected merely because the matter was contested by the recorded tenure-holder upto High Court. That will not put to an end to the right of a third party. The view taken by the prescribed authority and the District Judge is manifestly erroneous and cannot be sustained."

Shafir (Supra)

"8. Learned counsel for the petitioners has urged that the Prescribed Authority has rejected the objection filed by the petitioner under Section 10(2) of the Act merely on the ground that in the ceiling proceedings the Prescribed Authority cannot determine the claim of the petitioners who have claimed sirdari rights over certain plots of the disputed holding on the ground of adverse possession for more than the prescribed period of limitation. It was urged that the Prescribed Authority has wrongly refused to consider the claim of the petitioners on merits which should have been considered and decided on merits according to law in view of the decision of the Full Bench of this Court in the Case Upper Ganges Sugar Mills Ltd., reported in 1967 ALJ 556 and also in Dilbagh Singh's case reported in 1978 ALJ 717. I find much substance in the contention of the learned counsel for the petitioners.

9. In Dilbagh Singh's case (Dilbagh Singh v. State of U.P.,) it was held by the Division Bench that Section 11(2) permits a tenure-holder to file objections. Such tenure-holders may be those who have been served with a notice and a statement under Section 10(2). It also includes tenure-holders who have not been given or served with any such notice or statement. The construction put by the Full Bench also embraces persons who claim to be tenure-holders and who having come to know of the declaration of their land as surplus land of some other person wish to challenge that declaration or notification thereof in the gazette under Section 14. They are all entitled to file an objection under Section 11(2) and get an adjudication thereon as required by Section 12.

10. In this view of the matter I find that the objection which the petitioners had filed required to be decided on merits under Section 12. The petitioners have claimed that they are tenure-holders of certain plots of the disputed holding recorded in the name of opposite party No. 4. They thus claimed that opposite party No. 4 is not tenure-holder of those plots and the petitioners have acquired rights by adverse possession having remained in adverse possession for more than the prescribed period. Thus those plots could not be shown in the notice issued to the opposite party No. 4 under Section 10(2) of the Act nor the same could be treated to be holding of the opposite party No. 4 and declared surplus land in his hands because in the event petitioners succeed in establishing their Sirdari rights and title by adverse possession over the land in dispute it could not be treated to be part of the holding of opposite party No. 4. The Prescribed Authority, therefore, was required to determine this question on merits as to whether the plots, which were claimed by the petitioners as their Sirdari land could be factually and legally sustained or not. The Prescribed Authority should, therefore, consider the claim of the petitioners after giving them full opportunity to lead evidence in support of their claim. The opposite party No. 4 will also be given opportunity to contest the claim of the petitioners. Even in the case which has been remanded by

the learned District Judge for considering the claim of opposite party No. 4 for being decided by now on merits, the Prescribed Authority will consider the objections filed by the Petitioners on merits in respect of the plots in which they have claimed rights by adverse possession. The objection would be treated to be maintainable as one under Section 11(2) of the Act as held by this Court in the aforesaid decisions and will be decided on merits even if the land in which petitioners have claimed title by adverse possession has been notified under Section 14(1) of the Act because the deletion of Section 14(2) will not bar maintainability of such objection, as held in Ram Kumar Singh v. State of U.P., [Writ Petition No. 981 of 1976.] decided on 10-10-1984."

Abdul Hafiz Khan (Supra)

"7. So far as the question regarding maintainability of objection under Section 11(2) of the Act after the surplus land had been notified under Section 14(1) of the Act, is concerned, I find that it stands concluded by a Full Bench Decisions of this Court in Baldeo Singh v. State of U.P., [1980 L.L.J. 31.] . According to the majority view expressed in the said decision an objection can be entertained under Section 11(2) of the Act even after the surplus land had been notified under Section 14(1) of the Act. The deletion of Sub-section (3) of Section 14 of the Act will not affect the tenability of that objection. In this view I do not find any merit in the contention of the learned Standing Counsel that the petitioners had no right to file objection under Section 11(2) of the Act. Even if the name of the objectors is not recorded over the land in dispute as tenure-holder they could file an objection under Section 11(2) of the Act as held by the Full Bench of this Court in Upper Ganges Sugar Mills Ltd. v. Civil Judge, Bijnor [1969 A.L.J. 556.]

8. In the present case the petitioner had filed an objection on 28th October, 1978 (Annexure-4) asserting that they are the tenure-holders of the land which they had received in the aforesaid decree for partition and that the opposite party No. 4 Nazim Ali Khan is not the tenure-holder of the land situate in village Kanjarwa and his surplus land be determined excluding the land of village Kanjarwa, which belongs to the petitioner. This objection was filed under Section 13-A of the Act though in fact it purported to be an objection under Section 11(2) of the Act and deserved to be treated as such for deciding it on merits. It is well settled that wrong mentioning of the section or nor mentioning a correct section in the objection filed would not by itself disentitle an objector to appropriate relief which the Prescribed Authority could grant to the objector in accordance with the law. In Ram Kumar Singh v. State of U.P. [1985 L.L.J. 81.] . I had an occasion to consider similar question, whether an objection filed under sub-section (3) of Section 14 could or could not be treated to be one under Section 11(2) of the Act. It was held in Ram Kumar Singh's case (supra) that even without formal application for amendment the Prescribed Authority (Ceiling) should have proceeded to decided the objection treating it to be one under Section 11(2) of the Act because wrong mentioning of section or not mentioning of correct section in the objection not by itself disentitle the objector to the appropriate relief which the Prescribed Authority could grant in accordance with the law.

9. In Abdul Rahman v. The Prescribed Authority [1979 A.C.J. 10.] a similar question arose for consideration before the Division Bench and it was held.

"Although the application made by the petitioners purported to be under Section 13-A of the Act it was substantially an objection under Section 11(2), of the Act."

The Prescribed Authority in the aforesaid case was, therefore, directed to consider the claim of the petitioners treating the application as an objection under Section 11(2) of the Act."

Hari Ram (Supra)

"*6. The next question then to be considered is as to whether the objections filed by the petitioners could be entertained, in view of the orders passed in the earlier proceedings which were taken against Chandra Bhan Singh and others. In this connection, learned counsel for the petitioners has placed reliance upon two decisions of this Court, one is in Digvijai Singh v. State of U.P. ([1984 Lucknow Civil Divisions, Vol. II, p. 324.]) in which it has been held that such objections are to be entertained despite the fact that earlier matter may have been fought out between the state and another person. Another case reported in the same Volume is Rasid Khan v. State of V.P. ([1984 Luck. Civil Decisions, Vol. II, p. 215.]), where it has been held that such objections should be treated as objections under Sec. 11(2) of the U.P. Imposition of Ceiling on Land Holdings Act.*

7. In view of the discussion held above, it is clear that the petitioners had to be heard and their objections had to be treated as objections under Section 11(2) of the U.P. Imposition of Ceiling on Land Holdings Act, specifically when the land was recorded in the revenue records in their names in pursuance of an order of mutation passed in their favour. It will not affect their case if earlier any order was passed in proceedings between Chandra Bhan Singh and others and the State. As a matter of fact, under the first proviso to Rule 8 of the U.P. Imposition of Ceiling on Land Holdings Rules, a notice should have been issued to the petitioners as well. The opposite parties have dismissed the objections and the appeal preferred by the petitioners erroneously. The matter had to be considered on merits on the objections filed by the petitioners."

Mehfizul Rahman (Supra)

"2. Notice under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act was issued to opposite party No. 4 father of of the petitioner, who filed an objection against the same but as area of 9.753 a.?res of land was declared as surplus land. The appeal filed by the opposite party No. 4 was also dismissed and ihe writ petition against the same was also dismissed on August 7, 1978. On September 26, 1978, the petitioner alongwith brother and sister, filed ???-jection under Section 11(2) of the U.P. Imposition of Ceiling on Land Holdings Act on the ground that they were tenure-holder of few plots vide registered sale-deed dated September 8, 1967 executed by their father and they were in its possession. Certified copy oi the registered sale deed was filed. But ???t was found that the name of the transferee was not mutated in the records. The Prescribed Authority dismissed the objections filed ??? the petitioner on the ground that objections were not maintainable as they were not recorded tenure holder, consequ-entiy no notice under the Rules was required. Against the order passed by the Prescribed Authority a number of appeals were filed. The petitioner also tiled an appeal. The appeal filed by the petitioner was also dismissed on the ground that it was highly belated and the explanation for delay was not acceptable. The

appellate authority found that in the case before the prescribed authority, against father, Pairvi was done by the petitioner and on July 8, 1972 and December 28, 1976 he signed the order-sheet, although on behalf of the petitioner it was denied that the same bears his signatures. The Additional District Judge rejected this plea on the ground that the same was not acceptable and believable as Fazal Ali could not have forged the signatures of his son. Even if it could be said that the son appeared for and on behalf of the father and signed the order-sheet that could not be taken to mean that, in fact, the interest of the son was involved in it and the sun was going to lose the land over which he was claiming rights on the basis of the sale-deed. Father was contesting the case and prayer was for execution of the (sic.) on the ground that he had already transferred the same for consideration in the year 1967. Even if the son had some vague knowledge, that could not be taken to mean that he had knowledge of the proceedings and that there was no sufficient cause for not tiling be objections under Section 11(???) of the UP. Imposition of Ceiling on Land Holdings Act, during the pendency of these proceedings. The ground on winch the objections have been dismissed by the appellate authority are obviously not very relevant and the order in this behalf is manifestly erroneous as ramc is not in conformity with the provisions of Section 11(2) of the U.P. Imposition of Ceiling on Land Holdings Act. Consequently the writ petition deserves to be allowed."

Ram Bhajan (Supra)

"It is well settled that the matter of declaration of the land as surplus is between the State and the tenure holder and nobody comes in between and thus once the State has chosen not to take up the matter to the higher forum, challenging the judgment of the Prescribed Authority by which notice for declaration of the land as surplus itself was withdrawn, no argument can be advanced by the petitioner raising any finger on this aspect that the tenure holder might have surplus land if the matter is examined in further details in the light of the facts as are being pleaded by him."

State of U.P. Vs. Kailash Nath (Supra)

"20. At the outset, it may be noticed that Sections 37 and 38 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 clearly makes provisions of the CPC applicable by reference. The aforesaid sections read as under:

"37. Powers of officers and authorities in hearing and disposal of objections and procedure to be followed - Any officer or authority holding an enquiry or hearing an objection under this Act, shall, insofar as it may be applicable, have all the powers and privileges of a Civil Court, and follow the procedure laid down in the Civil Procedure Code, 1908, for the trial and disposal of suits relating to immovable property.

38. Powers of the appellate Court and the procedure to be followed by it- (1) In hearing and deciding an appeal under this Act, the appellate Court shall have all the powers and the privileges of a Civil Court and follow the procedure for the hearing and disposal of appeals laid down in the Civil Procedure Code, 1908.

(2) Where, under the provisions of this Act, an appeal has to be heard by the [Commissioner], he may either hear the appeal himself or transfer it for hearing to any[Additional Commissioner] subordinate to him."

21. In view of the aforesaid, it will be relevant to notice that the Appellate Authority was obliged to have considered the appeal in the manner as provided under the Code of Civil Procedure. It will be appropriate to notice Order 41 Rule 31 CPC which reads as under:"

"31. Contents, date and signature of judgment- The judgment of the Appellate Court shall be in writing and shall state-

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein"

22. In this context, since the Appellate Authority is exercising powers of the First Appellate Court it was incumbent upon the said court to have considered the various contentions, the evidence on record and then gone on to record its conclusion. In this regard the decision of the Apex Court in the case of Sudarsan Puhan v. Jayanta Ku. Mohanty, (2018) 10 SCC 552 will be gainful to notice and the relevant portion reads as under:

"23. This Court also in various cases reiterated the aforesaid principle and laid down the powers of the Appellate Court under Section 96 of the Code while deciding the first appeal.

24. We consider it apposite to refer to some of the decisions.

25. In Santosh Hazari v. Purushottam Tiwari (Deceased) by L.Rs. (2001) 3 SCC 179, this Court held (at pages 188189) as under:

"15 The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons

for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it"

26. The above view was followed by a three Judge Bench decision of this Court in Madhukar v. Sangram, (2001) 4 SCC 756, wherein it was reiterated that sitting as a court of first appeal, it is the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings.

27. In H.K.N. Swami v. Irshad Basith, (2005) 10 SCC 243, this Court (at p. 244) stated as under : (SCC para 3)

"3. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title."

28. Again in Jagannath v. Arulappa, (2005) 12 SCC 303, while considering the scope of Section 96 of the Code, this Court (at pp. 30304) observed as follows : (SCC para 2)

"2. A court of first appeal can reappreciate the entire evidence and come to a different conclusion."

29. Again in B.V. Nagesh v. H.V. Sreenivasa Murthy, (2010) 13 SCC 530, this Court taking note of all the earlier judgments of this court reiterated the aforementioned principle with these words:

"3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court

must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179 at p. 188, para 15 and Madhukar v. Sangram, (2001) 4 SCC 756 at p. 758, para 5.)

5. In view of the above salutary principles, on going through the impugned judgment, we feel that the High Court has failed to discharge the obligation placed on it as a first appellate court. In our view, the judgment under appeal is cryptic and none of the relevant aspects have even been noticed. The appeal has been decided in an unsatisfactory manner. Our careful perusal of the judgment in the regular first appeal shows that it falls short of considerations which are expected from the court of first appeal. Accordingly, without going into the merits of the claim of both parties, we set aside the impugned judgment and decree of the High Court and remand the regular first appeal to the High Court for its fresh disposal in accordance with law."

30. The aforementioned cases were relied upon by this Court while reiterating the same principle in State Bank of India v. Emmsons International Ltd., (2011) 12 SCC 174 and Uttar Pradesh State Road Transport Corporation v. Mamta (2016) 4 SCC 172."

23. From the above, it would be clear, as to how the First Appellate Court must exercise its jurisdiction. However, unfortunately from the perusal of the impugned judgment passed by the Appellate Court dated 27.11.1979 this Court finds that the same is wanting in many material aspects of meeting with the reasons of the trial court, assigning its own reasons and reversing the findings.

25. Now considering the submissions raised by the respective parties on merits of the controversy, this Court finds that the findings recorded by the First Appellate Court that a Will of Smt. Kunta not being a transfer is not covered under Section 5(6) of the Ceiling Act and the said view is defended by the counsel for the respondent by relying upon a decision of a Co-ordinate Bench of this Court in Mulk Nath Singh (supra) wherein the Co-ordinate Bench has relied upon the decision of the Apex Court in the case of Rathinam @ Kuppamuthu v. L. S. Mariappan [(2007) 6 SCC 724], while coming to its conclusion holding that a Will is not a transfer.

26. In this regard, Section 5(6) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 and the explanation appended thereto will be relevant to be noticed and which reads as under:

"[5. Imposition of Ceiling.-(1) [On and from the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972], no tenure-holder shall be entitled to hold in the aggregate through-out Uttar Pradesh, any land in excess of the ceiling area applicable to him.

[Explanation I.-In determining the ceiling area applicable to a tenure-holder, all land held by him in his own right, whether in his own name, or ostensibly in the name of any other person, shall be taken into account.]

Explanation II.-[If on or before January 24, 1971, any land was held by a person who continues to be in its actual cultivatory possession and the name of any other person is entered in the annual register after the said date] either in addition to or to the exclusion of the former and whether on the basis of a deed of transfer or licence or on the basis of a decree, it shall be presumed, unless the contrary is proved to the satisfaction of the prescribed authority, that the first mentioned person continues to hold the land and that it is so held by him ostensibly in the name of the second mentioned person.]

(2) Nothing in sub-section (1), shall apply to land held by the following classes of persons namely-

(a) the Central Government, the State Government or any Local Authority or a Government Company or a Corporation;

(b) a University;

(c) [an intermediate or degree college imparting education in agriculture or a post-graduate college;];

(d) a banking company or a co-operative bank or a co-operative land development bank;

(e) the Bhoodan Yagna Committee constituted under the U.P. Bhoodan Yagna Act, 1952.

(3) [Subject to the provisions of sub-sections (4), (5), (6) and (7)] the ceiling area for purposes of sub-section (1) shall be-

(a) in the case of a tenure-holder having a family of not more than five members, 7.30 hectares of irrigated land (including land held by other members of his family) plus two additional hectares of irrigated land or such additional land which together with the land held by him aggregates to two hectares, for each of his adult sons, who are either not themselves tenure-holders or who hold less than two hectares of irrigated land, subject to a maximum of six hectares of such additional land;

(b) in the case of a tenure-holder having family of more than five members, 7.30 hectares of irrigated land (including land held by other members of his family), besides, each of the members exceeding five and for each of his adult sons who are not themselves tenure-holders or who hold less than two hectares of irrigated land, two additional hectares of irrigated land or such additional land which together with the land held by such adult son aggregates to two hectares, subject to a maximum of six hectares of such additional land;

Explanation.-The expression □adult son□ in clauses (a) and (b) includes an adult son who is dead and has left surviving behind him minor sons or minor daughters (other than married daughters) who are not themselves tenure-holders or who hold land less than two hectares of irrigated land;

(c) [x x x]

(d) [x x x]

(e) in the case of any other tenure-holder, 7.30 hectares of irrigated land;

Explanation.-Any transfer or partition of land which is liable to be ignored under sub-sections (6) and (7) shall be ignored also-

(f) for purposes of determining whether an adult son of a tenure-holder is himself a tenure-holder within the meaning of [clause (a) or clause (b)];

(g) for purposes of service of notice under Section 9.

(4) Where any holding is held by a firm or co-operative society or association of persons (whether incorporated or not, but not including a public company), its members (whether called partners, share-holders or by any other name) shall, for purposes of this Act, be deemed to hold that holding in proportion to their respective shares in that firm, co-operative society or other society or association of persons:

[Provided that where a person immediately before his admission to the firm, co-operative society, or other society or association of persons, held no land or an area of land less than the area proportionate to his aforesaid share then he shall be deemed to hold no share, or as the case may be, only the lesser area in that holding, and the entire or the remaining area of the holding, as the case may be, shall be deemed to be held by the remaining members in proportion to their respective shares in the firm, co-operative society or other society or association of persons.]

(5) In respect of any holding held by any private trust,-

(a) where the shares of its beneficiaries in the income from such trust are known or determinable, the beneficiaries shall, for purposes of this Act, be deemed to have the shares in that holding in the same proportions as their respective shares in the income from such trust,

(b) in any other case, it shall be governed by [clause (e)] of subsection (3).

(6) In determining the ceiling area applicable to a tenure-holder, any transfer of land made after the twenty-fourth day of January, 1971, which but for the transfer would have been declared surplus land under this Act, shall be ignored and not taken into account;

Provided that nothing in this sub-section shall apply to-

(a) a transfer in favour of any person (including Government) referred to in sub-section (2);

(b) a transfer proved to the satisfaction of the prescribed authority to be in good faith and for adequate consideration and under an irrevocable instrument not being a benami transaction or for immediate or deferred benefit of the tenure-holder or other members of his family.

[Explanation I.-For the purposes of this sub-section, the expression transfer of land made after the twenty-fourth day of January, 1971, includes-

[(a) a declaration of a person as a co-tenure-holder made after the twenty-fourth day of January, 1971 in a suit or proceeding irrespective of whether such suit or proceeding was pending on or was instituted after the twenty-fourth day of January, 1971];

(b) any admission, acknowledgment, relinquishment or declaration in favour of a person to the like effect, made in any other deed or instrument or in any other manner.

Explanation II.-The burden of proving that a case falls within clause (b) of the proviso shall rest with the party claiming its benefit."

27. From the above, it would indicate that it uses the terminology to include not mere simplicitor transfer but other deed or instrument or in any other manner. Considering this aspect the Apex Court in (1996) 27 ALR 445 State of U.P. v. Bankey Singh has held as under:

"... The only question in this case is : whether the respondents would get benefit of 1/4th share in the surplus land declared by the competent authority? On September 8, 1982, Krishan Pal Singh filed objection, who claimed land of Khat Nos. 340, 341 and Khata No. 33 of village Nawada and Khata No. 77 of Village Jamla Jot on the basis of a Will executed by Smt. Gajraji. On that basis, the said land is required to be excluded from the surplus land. The primary authority had rejected the claim by proceedings dated July 30, 1983 and on appeal the District Judge allowed the appeal by order dated November 9, 1983 and excluded 1/4th of the land held by Gajraji on the basis of the Will dated September 2, 1978. When it was questioned, the High Court dismissed Writ Petition No. 1731/84. Hence, this appeal by special leave.

Section 5 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (U.P. Act No. 1 of 1961) (for short, □the Act□) in Chapter II imposes ceiling on land holdings. Certain exemption mentioned in the Article gets excluded from surplus land. Section 5 postulates that on and from the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, no tenure-holder shall be entitled to hold in the aggregate throughout Uttar Pradesh, any land in excess of ceiling area applicable to him.

Sub-section (6) postulates determination of the ceiling area applicable to a tenure-holder. It provides that any transfer of land made after the 24th day of January, 1971, which but for the transfer, would have been declared surplus land under this Act, shall be ignored and not taken into account. Explanation-1 provides that for the purpose of this sub-section the expression

transfer of land made after the twenty-fourth day of January, 1971 includes, among other things, an admission, acknowledgment, relinquishment or declaration in favour of a person to the like effect, made in any other deed or instrument or in any other manner, shall be construed to be a transfer for the purpose of sub-section (6).

Admittedly, the Will was executed on February 10, 1978 long after the specified date. By the Will a devise was made by Gajraji, owner of the land bequeathing her 1/4th share in favour of her brother's grand-son, Krishan Pratap Singh. Therefore, it must be construed to be a devise in any other manner within the meaning of Explanation 1(b) of sub-section (6) of the Act. It shall be ignored for the purpose of determination of the surplus land. The High Court and the appellate authority, therefore, were not right in directing to exclude the said land. The appeal is accordingly allowed. No costs."

28. In light of the aforesaid clear authority of the Apex Court which is in context with the provisions of the Ceiling Act, this Court finds that the decision cited by the counsel for the respondent and placing reliance on the Co-ordinate Bench decision of Mulk Nath Singh (supra) would be per incuriam for the reason it does not take note of the decision of the Apex Court in Bankey Singh (supra). Moreover, the decision of the Apex Court which has been relied upon in the case of Mulk Nath Singh (supra) namely that of S. Rathinam @ Kuppamuthu (supra) is not in context with the ceiling proceedings rather the said decision was in context with the general law where Will was held to be not a case of transfer. However, in the instant case since the proceedings arise out of a Special Act where special provisions have been incorporated and the same has been interpreted by the Apex Court in the case of Bankey Singh (supra), accordingly in the humble opinion of this court, the decision of Bankey Singh (supra) would be a binding authority and for the aforesaid reason, the Court is not inclined to accept the contention of the counsel for the respondent and follow the decision of Mulk Nath Singh (supra).

29. It will also be relevant to notice that the finding which has been reversed by the Appellate Court in respect of the sale deed said to have been executed by Dinanath in favour of Sundar Lal, the same is not adequately considered nor supported with reasons. Whether the said sale deed was executed prior to 24.01.1971 or thereafter could only be proved once the said sale deed was on record. In absence of the said sale deed merely relying upon certain entries in the revenue records which do not establish title and are only for fiscal purposes could not give rise to a categorical finding and conclusion that since the name of Sundar Lal was recorded in the revenue records prior to the said date of 24.01.1971 without clear dates being available as to when it was entered in the revenue records and what was the basis and the reason for incorporating such entries. The findings of the Appellate Court on the aforesaid point are not supported by any clear and cogent evidence, hence are unsustainable.

31. How a ceiling area is to be considered while adjudging a transaction and whether it would be hit by Section 5 (6) of the Ceiling Act and the manner in which the Prescribed Authority is to hold an inquiry in this regard has been considered by the Apex Court in (1997) 1 SCC 734 State of U.P. v. Amar Singh, the relevant portion thereof reads as under:"

"5. Thus, on and from the date the Amendment Act came into force, namely, 21-1-1971, the tenure-holder shall not hold, throughout the State of Uttar Pradesh, any land in the aggregate in excess of ceiling area applicable to him. Explanation I adumbrates that in determining ceiling area applicable to a tenure-holder, all lands held by him in his own right, whether in his own name or ostensibly in the name of any other person, shall be taken into account. In other words, as on the date the Amendment Act came into force, the land must be held by the tenure-holder in his own right and the lands ostensibly in the name of any other person shall be taken into account. In this case, admittedly, the alienations came to be made by Kishun Singh in favour of his sons and daughters-in-law. Normally, one would expect that if there is any compelling legal necessity to alienate the land, one would sell the land to third parties and that too, as prudent vendor for valuable consideration not to the sons and daughters-in-law. The object appears to be, as rightly pointed out by the District Judge, that the alienations were made by registered instruments in favour of his sons and daughters-in-law only to see that the provisions of the Act are defeated and the lands do not pass into the hands of strangers. It is true that the evidence was adduced by the respondents as regards proof of mutation. Mutation was effected on the basis that sale deeds came to be executed in favour of sons and daughters-in-law. Therefore, the mutation officer was not concerned at that stage to find out whether the sales were benami or ostensibly intended to defeat the provisions of the Act. It is settled law that mutation entries are only for the purpose of enabling the State to collect the land revenue from the person in possession but it does not confer any title to the land. The title would be derived from an instrument executed by the owner in favour of an alienee as per the Stamp Act and registered under the Registration Act. The alienees being sons and daughters-in-law, the tenure-holder remained to be the owner and holder of the land. The sons and daughters-in-law are only ostensible owners under Explanation I to Section 5(1) of the Act. It is true that Lekh Pal has not categorically stated whether the respondents remained in possession in their own right after the alienation. It is not in dispute that the father and sons remained to be members of the joint family and were cultivating the land. Under these circumstances, one would normally expect that Lekh Pal may not be in a position to categorically assert whether respondents remained in possession in their own right as owners or were cultivating land on their own or on behalf of the coparceners. Under these circumstances, the findings of the High Court are illegal. The case falls under Explanation I of Section 5(1) and the burden is always only on the respondents to establish that they were not ostensibly owning the land but remained in their own right as owners. Accordingly, we hold that Kishun Singh was the holder of the land. He was a tenure-holder as on the date and, therefore, ceiling area has to be computed treating him to be the owner of the land; besides himself, he had eight sons who are entitled to the respective additional ceiling area given to them under the Act. The authorities are, therefore, directed to compute the ceiling area accordingly and take possession of the surplus land.

33. The Apex Court has also considered the aforesaid aspect in 1995 Supp (1) SCC 204 Nawal Singh v. State of U.P. and the relevant portion reads as under:

"2. For a transfer effected after 24-1-1971 to be valid it must be proved to have been made in good faith, for adequate consideration, under an irrevocable instrument, not being a benami transaction, or for immediate or deferred benefit of the tenureholder or other members of his family. Findings have been recorded at one stage or the other that the sale effected by the appellant was for adequate consideration and under an irrevocable instrument, not being a benami

transaction or for immediate or deferred benefit of the tenureholder or other members of his family. These findings have been recorded in the backdrop that the appellant had his holdings in two villages i.e. Sihi and Asawar and that he was residing in Sihi, and had to manage his land at Asawar at a distance of about two and a half miles. Additionally he was an old man of about 65 years of age at the relevant time, had no son to look after him and his only daughter who was married was living elsewhere. In this situation, the appellant thought proper, as is his case, to sell the land at village Asawar for a sum of Rs. 60,000 and he asserts that out of it he transferred a sum of Rs. 35,000 to his daughter by way of gift and paid gift tax thereon. These assertions of the appellant have not been countered at any stage. His complete version has been doubted only on the premise that the sale was effected after the crucial date i.e. 24-1-1971 which was reflective of absence of good faith.

3. We do not at all appreciate the approach of the courts below. If this approach is accepted that no transfer effected after 24-1-1971 can escape, sub-section (6) of Section 5 would be rendered meaningless and a dead letter in the statute. The facts as stated above have been asserted by the appellant clearly and openly. There is nothing on these facts to attract a finding that all what he did was in bad faith. We are satisfied that he has more than ordinarily proved that the transaction of sale was effected in good faith and the approach of the courts below was not in accordance with the spirit of the statute. We thus set aside the impugned orders of the High Court as also that of the courts below and hold that the transaction in question was entered in good faith and the land covered by it is not to be reckoned towards computing his holding for ceiling purposes. The appeal is accordingly allowed. No costs.

34. The Apex Court again in the case of Brijendra Singh v. State of U.P. (1981) 1 SCC 597 has considered the issue and the relevant portion reads as under:

14 .. It will be seen that when sub-section (6) of Section 5 provides that in determining the ceiling area and surplus area, any transfer of land which but for the transfer would have been declared surplus land under the Act, shall be ignored, it proceeds on the presumption that the tenure holders being aware of the resolution or manifesto adopted by the ruling All India Congress Party on January 24, 1971, and of the consensus at the Chief Ministers Conference held in July 1972, to take measures to lower the ceiling on agricultural holdings, might make attempts to defraud, defeat and evade the ceiling law, then in offing, by making fictitious transfers of land in favour of other persons. The presumption which underlies the main provision in Section 5(6) can be displaced, as the legislature has itself indicated, on proof of the conditions set out in proviso (b). Although the strength of the aforesaid presumption and the nature and quantum required to satisfy the conditions of proviso (b) may vary according to the circumstances of the particular case, yet it can be said as a general proposition that in the case of transfers made prior to the decision of the Chief Ministers Conference in July 1972 to lower the ceiling, the burden under Explanation II on the tenure holder to establish the facts bringing his case within clause (b) of the proviso, would be lighter than the one in the case of a transfer made after the aforesaid decision in July 1972.

15. In order to bring his case within the purview of proviso (b), the tenure holder has to show□

(i) that the transfer has been made in □good faith□;

(ii) that it is a transfer for adequate consideration;

(iii) that it has been made under an irrevocable instrument; and

(iv) that it is not a benami transaction or for immediate or deferred benefit of the tenure holder or other members of his family.

16. There is no dispute in regard to the connotation, construction and existence of ingredients (ii), (iii) and (iv) in the instant case. Controversy, however centres round the true meaning and scope of the expression □good faith□ within the contemplation of clause (b) of the proviso. In the instant case, the Appellate Authority appears to have taken the view □ a view which has been upheld by the High Court □ that a transfer cannot be said to have been made in □good faith□ merely because it has been honestly or genuinely made and satisfies the aforesaid Conditions (ii), (iii) and (iv), unless it is proved further that it was made for a valid pressing necessity.

□□□□

18. The expression □good faith□ has not been defined in the Ceiling Act. The expression has several shades of meaning. In the popular sense, the phrase □in good faith□ simply means □honestly, without fraud, collusion, or deceit; really, actually, without pretence and without intent to assist or act in furtherance of a fraudulent or otherwise unlawful scheme□, (see Words and Phrases, Permanent Edn., Vol. 18-A, p. 91). Although the meaning of □good faith□ may vary in the context of different statutes, subjects and situations, honest intent free from taint of fraud or fraudulent design, is a constant element of its connotation. Even so, the quality and quantity of the honesty requisite for constituting □good faith□ is conditioned by the context and object of the statute in which this term is employed. It is a cardinal canon of construction that an expression which has no uniform, precisely fixed meaning, takes its colour, light and content from the context.

19. The meaning and scope of the expression □good faith□ is therefore, to be considered in the light of the scheme and purpose of Section 5, in general, and the context of proviso (b) to sub-section (6), in particular. We have already noticed that the primary object of the Ceiling Act, as adumbrated in the pivotal provision in Section 5(1) is to prohibit and disentitle a tenure holder from holding land in the aggregate in the State of Uttar Pradesh, in excess of the ceiling area, in his own right, whether in his own name, or ostensibly in the name of any other person. The ceiling area and surplus land of a tenure holder under the Ceiling Act, as already mentioned, are to be determined as on June 8, 1973 when the U.P. (Amendment) Act 18 of 1973 came into force. A transfer, therefore, made after January 24, 1971 which is designed to serve as a cloak for retention of a right or interest of the transferor in the ostensibly transferred land in excess of the ceiling area, even on or after June 8, 1973, will be patently not □in good faith□. But the proviso (b) to sub-section (6) of Section 5 extends the negative aspect of the concept □good faith□ a little further by indicating, that even if the transfer is not an ostensible transfer and the transferor divests himself of all interest and rights in present in the transferred land, but reserves some benefit in

futuro for himself or other members of his family, then also, the transfer will be not in □good faith□. A transfer solely for the purpose of converting surplus land into cash without any kind of need (not to be confused with legal necessity) may also lack good faith.

20. Broadly speaking, the benefit of clause (b) of the proviso to subsection (b) is available to a transfer made in good faith, that is, to a bona fide transfer whereby the tenure holder genuinely and irrevocably transfers all right, title and interest in the land in favour of the transferee, in the ordinary course of management of his affairs and which is not a collusive arrangement, or device or subterfuge to enable the tenure holder to continue to hold the surplus land or any reserved interest in presenti or in future, therein, (or merely to convert it into cash), and thus circumvent the ban under Section 5(1) of the Ceiling Act. In order to be entitled to the benefit of proviso (a), a transfer made in good faith, must satisfy the further conditions, (ii) to (iv), enumerated in the proviso (b). The positive conditions laid down in proviso (b) are : that the transfer should be for adequate consideration; that it should have been made under an irrevocable instrument. The negative conditions set out in clause (b) of the proviso are : that it must not be a benami transaction; that it must not be for immediate or deferred benefit of the transferring tenure holder or other members of his family. These tests or Conditions (ii), (iii) and (iv) provided in proviso (b) may not by themselves be conclusive to hold that the transfer was in □good faith□. For instance, another important test for judging the genuineness or otherwise of a sale would be whether or not cultivatory possession and enjoyment of the land has passed under the sale to the vendee. Even so, once it is established by the transferring tenure holder that the transfer in question effected in the course of ordinary management of his affairs, was made for adequate consideration and he has genuinely, absolutely and irrevocably divested himself of all right, title and interest (including cultivatory possession) in the land in favour of the transferee, the onus under Explanation II, in the absence of any circumstances suggestive of collusion, or an intention or design to defraud or circumvent the Ceiling Act, on the tenure holder to show that the transfer was effected in □good faith□, will stand discharged, and it will not be necessary for the tenure holder to prove further that the transfer was made for an impelling need or to raise money for meeting a pressing legal necessity. Although proof of the fact that a transfer was made for a valid pressing necessity may highlight or strengthen the inference in favour of the genuineness of the transfer, it is not an indispensable constituent of □good faith□; nor is the proof of legal necessity requisite, as a matter of law, to enable a tenure holder to avail of the benefit of clause (b) of the proviso. It may be remembered that at the time when such a transfer was made, there was no legal restriction on his power to alienate the whole or any part of his holding. In other words, at the time when such a transfer was made it was not unlawful, even if it were made without any pressing necessity. It became unlawful by the subsequent enactment of a legal fiction introduced in Section 5(6) of the Ceiling Act (U.P. Act 18 of 1973) with retrospective effect from January 24, 1971. Even so, under this statutory fiction, a transfer of land made after January 24, 1971 does not become wholly void for all purposes; it can be ignored and would not be taken into account in determining the ceiling area of the transferring tenure holder for purposes of the Ceiling Act, and that too, if the following two conditions are satisfied□

(a) that the land but for the transfer would have been declared surplus land under the U.P. Act 18 of 1973; and

(b) that the transfer is not of a kind covered by proviso (6) to Section 5(6) of the Act.

35. This being the position, once a transfer is shown to be bona fide and further satisfies all the other positive and negative conditions laid down in the proviso (b) to Section 5(6), there is no justification in law to stretch the legal fiction further and to spell out from the expression □good faith□ an additional requirement of proving pressing necessity for the transfer before the tenure holder is entitled to the benefit of the aforesaid proviso (b).

36. In light of what is culled out from the decisions of the Apex Court noticed above, this Court observes that the Appellate Authority must consider the evidence in a manner aforesaid to find out whether the transactions are bonafide.

37. Now noticing the aforesaid dictum in Amar Singh (supra), Nawal Singh (supra) and Brijendra Singh (supra) and applying the said principles to the instant case, this Court finds that the Appellate Court has not adhered to the principles of law settled and also the manner in which the objections of the tenure holder and the evidence thereon is to be considered. Moreover, categorical findings which have been recorded by the Prescribed Authority have not been considered by the Appellate Court in its correct prespective nor any reason has been incorporated why the conclusion of the Prescribed Authority were erroneous nor the findings of the Prescribed Authority have been reversed."

Anand Kishor Devacharya (Supra)

"13. The Appellate court held that the old Ceiling Act came into force with effect from 03.01.1961 with reference year 1958. As proceedings against Maharaja Pateshwari Prasad Singh and his heir Maharajaa Dharmendra Pratap Singh had been instituted under the old Ceiling Act, they will be governed by the old Ceiling Act.

14. The order dated 27.01.1968 for recording the name of the appellant's husband, had been passed by the Consolidation Officer on the basis of a compromise and this order had been passed 10 years after the reference date. Therefore, the order dated 27.01.1968 passed by the Consolidation Officer is liable to be neglected and no relief can be granted to the appellant on the basis of the aforesaid order.

19. In view of the provisions contained in Section 19(1) of the Amendment Act, 1972, all the proceedings initiated under the unamended Act stood abated on 08.06.1973. The Prescribed Authority could have initiated fresh proceedings by issuing a notice under Section 9(2) of the Act.

20. Therefore, the proceedings instituted on the basis of notice issued to Maharaja Dharmendra Pratap Singh, stood abated in view of the provisions contained in Section 19 of the amendment Act. Fresh proceedings could only be initiated by issuing a fresh notice under Section 9(2) of the Ceiling Act, which was not done in the present case.

21. The order passed by the Appellate Authority stating that the proceedings against Maharaja Pateshwari Prasad Singh and his heir Maharaja Dharmendra Pratap Singh had been

issued under the old Ceiling Act (which is a misnomer, as there was no old Ceiling Act and it was merely the unamended Ceiling Act, as it was originally enacted) and that the same proceedings shall be deemed to be continuing, has been passed in ignorance of the provisions of Section 19 of the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 (U.P. Act 18 of 1973) and the same is unsustainable in law.

22. Accordingly, the writ petition is allowed. The order dated 15.04.2015 passed by Additional Commissioner (Judicial), Devi Patan Division, Gonda dismissing Appeal No. 5/43 under Section 13 of the Ceiling Act is quashed. The matter is remanded to Additional Commissioner (Judicial), Devi Patan Division, Gonda for being decided afresh in accordance with the law, keeping in view the observations made in this judgment."

Mohammad Raza (Supra)

"11. Perusal of the record demonstrates that the petitioner is claiming right on the basis of sale deed executed in his favour on 8.10.1971 in respect to the khasara no. 53 area 2-17-15 from its recorded tenure holder Beni Madhav and the name of the petitioner was ordered to be recorded in case no. 329 passed by the Sub-Divisional Office, Dumeriyaganj. Entry has been made in the remark column of the khatauni of 1378-1380 fasli. Petitioner is claiming that after enforcement of Act No. 18 of 1973 w.e.f. 8.6.1973, the sale deed executed on 8.10.1971 in favour of the petitioner is well protected. The record also demonstrates that the objection under Section 11(2) of the Ceiling Act filed by the petitioner has been dismissed by the prescribed authority and the appeal has also been dismissed holding that transaction of the petitioner is benami and no reliance can be placed upon the same as the same has been executed after 24.1.1971. The reasoning given under the impugned order cannot be sustained as the sale deed has been executed before 8.6.1973, as such, the same is well protected.

12. In the instant matter petitioner is claiming right on the basis of sale deed executed on 8.10.1971 by recorded owner, which is well before the relevant dated 8.6.1973 and notice was issued to respondent nos. 16 to 18 on 14.3.1974 for show cause in C.L.H. Form- 3A, 3B & 3C, as such, the sale deed executed on 8.10.1971 cannot be ignored by ceiling authorities coupled with the fact that name of the petitioner came in remark coloumn of Khatauni of 1378 fasli to 1380 fasli (1970-71 to 1972-73).

16. So far as the execution of the lease in favour of respondent nos. 5 to 15 is concerned, the same is always subject to the right & title of the State. Since, the Court is holding that the khasara no. 53, which was purchased by the petitioner by way of sale deed executed on 8.10.1971 cannot be declared surplus without notice and opportunity of hearing to the petitioner, as such, respondent nos. 5 to 15 cannot claim any right on the basis of lease deed. No useful purpose will be served by remanding the matter again before the prescribed authority or the appellate authority as earlier also the matter has been remanded by this Court to decide the appeal afresh. The litigation cannot be kept pending in Court for unlimited period rather to finalize the same on the basis of evidence on record as well as considering the ratio of law laid down by this Court as quoted above.

17. Considering the entire facts and circumstances of the case, the impugned order dated 6.3.1982 passed by respondent no. 3 as well as order dated 19.1.2012 passed by respondent no. 2 are liable to be set aside and the same are hereby set aside. The impugned order dated 11.12.1974 so far as it relates to Khasara No. 53 is also set aside and Khasara No. 53 is excluded from ceiling proceeding.

18. The writ petition stands allowed."

Rajendra Prasad Singh (Supra)

"15. The prescribed authority, without framing the issues, as directed by the appellate court under Section 5(6) Explanation, proceeded to decide without framing the issues. For ready reference Section 5(6) Explanation proviso to U.P. Imposition of Ceiling on Land Holding Act, 1960 is being quoted under :-

"5(6) In determining the ceiling area applicable to a tenure-holder, any transfer of land made after the twenty-fourth day of January, 1971, which but for the transfer would have been declared surplus land under this Act, shall be ignored and not taken into account:

Provided that nothing in this sub-section shall apply to :

(a) a transfer in favour of any person (including Government) referred to in sub-section (2);

(b) a transfer proved to the satisfaction of the Prescribed Authority to be in good faith and for adequate consideration and under an irrevocable instrument not being a benami transaction or for immediate or deferred benefit of the tenure-holder or other members of his family."

16. A bare perusal of the aforesaid provision clearly demonstrates that before proceeding to decide the claim, issue has to be framed in regard to the possession over the land. On bare perusal of the impugned order passed by the prescribed authority, it is crystal clear that no issues whatsoever were framed nor the petitioners were issued notice to submit their objection in regard to their claim. The appellate authority also proceeded to affirm the order of the prescribed authority without application of mind.

17. In view of the reasons assigned above, the impugned orders dated 31.12.1991 and 14.3.1995, passed by the Chief Revenue Officer, Gonda and Additional Commissioner Faizabad Division, Faizabad (Ayodhya) respectively are hereby quashed. The writ petition succeeds and is allowed."

37. Upon consideration of the rival submissions advanced by learned counsel for the parties and upon perusal of the material brought on record, this Court finds that the principal grievance raised by the petitioners is that their independent claim arising out of the registered Will dated 25.11.1971 executed by the original tenure holder Fateh Bahadur Singh was never

adjudicated upon by the authorities under the U.P. Imposition of Ceiling on Land Holdings Act and that their objections were rejected on technical grounds without examining the substance of their claim.

38. The record demonstrates that Fateh Bahadur Singh admittedly died on 22.05.1973 and prior thereto is stated to have executed a registered Will in favour of Ajay Pratap Singh, Vishnu Pratap Singh, Bhanu Pratap Singh and Vijay Pratap Singh. The petitioners claim rights through Vijay Pratap Singh and assert independent rights over the holding on the basis of the said Will. It further emerges from the record that when the original ceiling proceedings culminated in the order dated 30.09.1975 declaring surplus land, the petitioners were admittedly minors. Their case is that after attaining majority and acquiring knowledge of the proceedings, they promptly approached the authority by filing objections on 01.11.1980.

39. The Prescribed Authority rejected the objections principally on the ground that the application mentioned Section 13-A instead of Section 11(2) of the Act and also on the ground of delay. The appellate authority thereafter mechanically affirmed the order without undertaking any independent consideration of the issues raised. The approach adopted by both the authorities, in the considered opinion of this Court, cannot be sustained in law.

40. The legal position with regard to the scope and maintainability of objections under Section 11(2) of the Act is no longer res integra. In **Dirvijai Singh** (Supra), this Court categorically held that a third party claiming independent rights in the land has a right to file objections under Section 11(2) and such objections cannot be rejected merely because earlier proceedings had been contested by the recorded tenure holder up to higher forums. The Court specifically observed that the right of a third party survives independently and requires adjudication on merits.

41. Similar principles were reiterated in the case of **Shafir** (Supra), wherein it was held that even persons claiming independent tenure-holder rights, though not originally impleaded in the proceedings, are entitled to maintain objections under Section 11(2). The Court further held that such objections are required to be decided on merits after affording adequate opportunity of evidence to the objector. The ratio of the aforesaid judgment clearly applies to the facts of the present case, as the petitioners had asserted an independent claim over the holding on the basis of a Will, and such claim could not have been rejected without proper adjudication.

42. Equally relevant is the judgment in **Abdul Hafiz Khan** (Supra), wherein this Court held that even if an objection is filed under a wrong provision, the authority is under an obligation to treat the same in accordance with its substance and not reject it on mere technical description of the statutory provision. The Court specifically held that wrong mentioning of a section or omission to mention the correct provision does not dis-entitle an objector from substantive relief. In the present case, the authorities have adopted an excessively technical approach in rejecting the petitioners objections merely because Section 13-A was mentioned instead of Section 11(2), despite the fact that the substance of the objection clearly disclosed an independent claim over the land in dispute.

43. The reasoning adopted by the Prescribed Authority thus stands directly contrary to the law laid down in **Abdul Hafiz Khan** (Supra). Procedural law is intended to advance justice and not to defeat substantive rights. Once the petitioners had disclosed the basis of their claim and sought adjudication of their independent rights, the authority ought to have treated the application as one under Section 11(2) and decided the same on merits.

44. The plea of delay raised against the petitioners also does not impress this Court. The petitioners were admittedly minors at the time when the original ceiling proceedings were initiated and finalized. The effect of minority and absence of effective representation could not have been ignored while considering the question of delay.

45. In **Mehfizul Rahman** (Supra), this Court clearly held that even if a son had some vague knowledge of proceedings against his father, the same could not be construed to mean that his independent rights stood represented or adjudicated. The Court further held that objections filed subsequently by persons claiming independent rights could not be rejected merely on technical grounds of delay. The observations made therein squarely support the petitioners case.

46. Likewise, in **Hari Ram** (Supra), this Court held that objections by persons claiming independent rights were required to be heard on merits notwithstanding earlier proceedings conducted against another person. The Court further observed that where the objectors names were reflected in revenue records or they otherwise asserted independent rights, notices ought to have been issued to them and their objections could not be dismissed summarily.

47. The respondents have attempted to justify the proceedings on the ground that the petitioners were represented by their father, who was their natural guardian. However, mere representation by a guardian in proceedings conducted against another tenure holder cannot automatically extinguish or adjudicate independent rights claimed by minors on the basis of a separate legal instrument. The authorities were under a duty to examine whether the rights asserted through the Will had any legal effect and whether such claim required independent adjudication.

48. The impugned orders further reveal complete non-consideration of the Will relied upon by the petitioners. The authorities have neither examined the genuineness of the Will nor recorded any finding regarding its legal effect. The claim has simply been rejected on technical grounds without any discussion of evidence. Such an approach clearly reflects non-application of mind.

49. At the same time, this Court cannot ignore the settled legal position relating to transfers and testamentary dispositions under the Ceiling Act. In **State of U.P. Vs. Kailash Nath** (Supra), this Court, after considering the judgments of the Hon ble Supreme Court in State of U.P. Vs. Bankey Singh, Amar Singh, Nawal Singh and Brijendra Singh, elaborately explained the scope of Section 5(6) of the Act and held that transactions made after 24.01.1971 are liable to scrutiny to determine whether they are bona fide or intended to defeat the provisions of the Ceiling Act.

50. The Court in **Kailash Nath** (Supra) further observed that even though a Will may not constitute a transfer under the general law, for purposes of ceiling proceedings it may still require examination within the framework of Section 5(6) and the explanations appended thereto. The

Court further held that the authority must undertake a detailed inquiry regarding genuineness, bona fides, possession, consideration where applicable, and surrounding circumstances before recording any conclusion.

51. Thus, the petitioners cannot claim automatic exclusion of the land merely on the basis of the alleged Will. However, what is material is that the authorities were legally bound to examine the said claim on merits in accordance with the principles laid down in the aforesaid judgments. That exercise has admittedly not been undertaken in the present case.

52. This Court also finds substance in the submission advanced on behalf of the petitioners that the appellate authority failed to discharge its statutory obligation while deciding the appeal. The appellate order dated 05.03.1998 merely affirms the order of the Prescribed Authority without independent analysis of facts, evidence or legal issues.

53. In **State of U.P. Vs. Kailash Nath** (Supra), relying upon Order XLI Rule 31 CPC and various judgments of the Hon□ble Supreme Court, this Court emphasized that the first appellate authority is required to independently consider the evidence, submissions and findings recorded by the original authority and thereafter assign its own reasons. The appellate order must reflect conscious application of mind and reasoned adjudication.

54. In the present case, the appellate authority has failed to consider the effect of minority of the petitioners, the maintainability of objections under Section 11(2), the effect of incorrect mention of statutory provision, the legal consequences flowing from the alleged Will, and the requirement of adjudicating independent rights claimed by third parties. The order is thus clearly vitiated for want of proper reasoning and independent consideration.

55. The objection raised by the respondents regarding allotment of surplus land to third parties also does not persuade this Court to non-suit the petitioners at this stage. In **Mohammad Raza** (Supra), this Court held that allotments made pursuant to ceiling proceedings remain subject to the validity of the original declaration of surplus land and cannot override lawful claims requiring adjudication. Therefore, subsequent allotments cannot be treated as a complete bar to judicial scrutiny where foundational illegality is demonstrated.

56. Similarly, in **Rajendra Prasad Singh** (Supra), this Court reiterated that failure to frame proper issues, failure to consider objections and absence of adequate adjudication vitiate ceiling proceedings. The Court held that mechanical affirmation by the appellate authority without proper application of mind cannot be sustained.

57. In the facts of the present case, this Court finds that the objections preferred by the petitioners disclosed a substantial and legally triable claim. The authorities below failed to adjudicate the same in accordance with law and rejected the objections on technical and procedural grounds. Such an approach has resulted in manifest failure of justice. The impugned orders therefore cannot be sustained. Consequently, the writ petition deserves to be allowed.

58. Accordingly, the impugned order dated 26.04.1982 passed by the Prescribed Authority as well as the appellate order dated 05.03.1998 are hereby quashed. The matter is remanded to the Prescribed Authority concerned to reconsider the objections of the petitioners afresh in accordance with law after affording adequate opportunity of hearing to all affected parties.

59. While undertaking the aforesaid exercise, the Prescribed Authority shall specifically examine the claim of the petitioners arising out of the alleged Will dated 25.11.1971, the effect of minority of the petitioners at the relevant time, the maintainability of objections under Section 11(2), and the applicability of Section 5(6) of the Act in light of the principles laid down in the judgments referred to hereinabove. The authority shall pass a reasoned and speaking order after considering the evidence and submissions of the parties independently.

60. The writ petition is accordingly **allowed**. No order as to costs

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(2026) 5 ILRA 2352
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 11.05.2026

BEFORE

THE HON'BLE KARUNESH SINGH PAWAR, J.

Writ A No. 12815 of 2025

Deva Nand Srivastava **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue(s) for consideration

(a) Can the State refuse promotion to an employee who served nearly 40 years on the ground that the department failed to issue a formal regularization order prior to his confirmation and initial promotion?
(b) Does the mere usage of the word "officiating" in an initial appointment letter bar regularization/promotion when the appointment was against a substantive/sanctioned vacancy?
(c) What is the effect of the department's own decision (16.01.2024) establishing "deemed regularization" upon confirmation for those appointed on sanctioned posts?
(d) Is it permissible to deny promotion to a senior confirmed employee while promoting junior incumbents whose initial service records bear identical administrative conditions?

Headnotes

A. Service Law – The petitioner was temporarily appointed as a Consolidation Lekhpal on 11.09.1986, against a regular/sanctioned vacancy. Although the appointment letter erroneously used the term "officiating" (sthanapann), he worked continuously and was confirmed u/Rule 16 of the 1978 Lekhpal Rules with effect from 01.03.1990 (order dated 25.04.1991). He was subsequently promoted to the substantive post of Consolidator on 01.10.2008, and confirmed on 14.05.2012. In the final seniority list of Consolidators (issued 31.05.2022), he was placed at Serial No. 48. Promotions from Consolidator to Assistant Consolidation Officer (ACO) were undertaken under the U.P. Revenue Consolidation Service Rules, 1992. On 19.12.2024, multiple junior Consolidators were promoted to ACO, but the petitioner was superseded.

By order dated 09.10.2025 (Annexure-1), Respondent No. 3 rejected the petitioner's representation, claiming he was ineligible for ACO promotion because his initial entry post (Chakbandi Lekhpal) was "officiating" and had never been formally regularized under ad-hoc regularization rules.

B. One cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non performance he has occasioned. (Para 44)

Contrary stand cannot be taken by the departments for regularizing the service of the employee appointed on the post of consolidation Lekhpal merely on account of usage of word officiating basis i.e. 'sthanapann' in the appointment letter where such an employee working on substantive vacancy and similarly situated employees have been regularized. (Para 45)

It is apparent that although the petitioner was initially appointed on an "officiating" basis, the said term, in identical circumstances, has been interpreted by this Court in *Ram Het Tiwari* (*infra*) to mean "ad hoc" rather than "officiating". Ordinarily, officiating implies holding a post temporarily in addition to one's substantive post; however, in the present case, the petitioner was appointed for the first time on the post of Consolidation Lekhpal. Moreover, Opposite Party No. 2, in its communication has admitted that the use of the word "officiating" in the appointment letter was inadvertent. (Para 50, 51)

C. Regularisation of service is preceded by confirmation in service. Once the services are confirmed, without there being any dispute as to its legality order for regularisation is unwarranted. Regularisation is implicit in confirmation. Once an employee's services are confirmed, and such confirmation is not under challenge on grounds of illegality, the same attains finality. (Para 47, 52)

In the present case, the petitioner's services on the posts of Consolidation Lekhpal as well as Consolidator were duly confirmed. (Para 53)

D. Procedural technicalities cannot be invoked to defeat the substantive rights of employees that have accrued over a considerable period through continuous service. Where an employee has rendered long and continuous service for a substantial period of time, and has also been granted promotion, without any indication of the temporary nature of his initial appointment throughout his service tenure, such an employee cannot be denied the rights accrued to him merely on account of the terms of his initial appointment. (Para 49)

Writ petition dismissed. (E-4)

Case Law Cited

1. Kusheshwar Prasad Singh Vs. State of Bihar and others, (2007) 11 SCC 447 (Para 44)
2. Ram Het Tewari Vs. State of U.P. and others, 2005 SCC OnLine All 1514 (Para 45)
3. State of U.P. and others Vs. Pyare Lal, Special Appeal Defective No. 350 of 2025 (Para 47)
4. State of U.P. and 4 others Vs. Gokil Ram, Special Appeal Defective No. 358 of 2025 (Para 47)
5. Syed Mohammed Jaki Vs. State of U.P. and others, Writ-A No. 13084 of 2025 (Para 48)
6. Vinod Kumar and others Vs. Union of India and others, (2024) 9 SCC 327 (Para 49)

List of Acts

The Uttar Pradesh Consolidators Service Rules, 1978; Uttar Pradesh Revenue Consolidation Service Rules, 1992; U.P Promotion by Selection (post outside purview of Public Service Commission) Eligibility List Rules, 1986; Uttar Pradesh Government Servants' Seniority Rules, 1991; U.P. Regularization of Ad hoc Appointments (On Posts within the Purview of the Public Service Commission) Rules, 1979.

List of Keywords

confirmation, regularization, service, procedural, technicalities, ad hoc, substantive, temporary, vacancy, interpretation.

Appearances for Parties

For Petitioner(s): Abhineet Jaiswal, Shreya Jaiswal
For Respondent(s): C.S.C.

(Delivered by Hon'ble Krunesh Singh Pawar, J.)

1. Heard Shri Abhinit Jaiswaal, learned counsel for the petitioner, and Shri Ram Pratap Singh, learned Additional Chief Standing Counsel for the respondent-State.

Reliefs Sought

2. By means of the present writ petition, the petitioner has sought issuance of a writ in the nature of certiorari for quashing the impugned order dated 09.10.2025 issued by respondent no.3, a copy whereof has been brought on record as Annexure No.1 to the writ petition, whereby the representation preferred by the petitioner has been rejected.

3. A further prayer has been made for issuance of a writ in the nature of mandamus commanding respondent no.3 to consider and promote the petitioner to the post of Assistant Consolidation Officer (ACO) with effect from the date on which his juniors were promoted, along with all consequential benefits, including seniority, within such reasonable time as may be fixed by this Court.

Facts of the Case

4. Brief facts of the case are that the Petitioner was initially temporarily appointed on the post of Consolidation Lekhpal vide order dated 11.09.1986 passed by Settlement Officer of Consolidation, Saharanpur, on regular vacancy. The petitioner was appointed on a substantive vacant post, however the term officiating (स्थानापन्न) has been transcribed in the initial appointment letter dated 11.9.1986. The petitioner continued on the post of Consolidation Lekhpal and, upon completion of three years of service, his services were confirmed on the said post with effect from 01.03.1990 under Rule 16 of the 1978 Lekhpal Rules, vide order dated 25.04.1991 passed by the Settlement Officer of Consolidation, Saharanpur. The confirmation order refers to the several letters issued by the Respondent No. 3 pertaining to confirmation of Consolidation Lekhpals appointed prior to 31.12.1986. Petitioner's name finds mention at Serial No. 17 of the list appended to the aforesaid order which is annexed as Annexure- 4 to this Writ Petition. Since the petitioner was discharging his duties on the post of Consolidation Lekhpal without any gap or break he became entitled for the promotional post i.e Consolidator under The Uttar Pradesh Consolidators Service Rules, 1978 (hereinafter referred to as "1978 Consolidators Rules". Rule 5 also provides source of recruitment through promotion from those employees who have worked as Consolidation Lekhpal continuously for not less than 10 years. The procedure for recruitment by promotion and appointment is provided under Rule 15 and 18 of the aforesaid 1978 Consolidator Rules. The procedure for confirmation on the post of Consolidator is prescribed under Rule 20 of 1978

Consolidator Rules. The departmental selection committee was constituted for considering promotion of Consolidation Lekhpals on the promoted post of Consolidator. It examined the case of Petitioner and found him eligible and fulfilling the criteria prescribed for being promoted on the next higher post of Consolidator and consequently recommended him for the same vide order dated 01.10.2008 issued by the District Magistrate/District Deputy Director of Consolidation, Bijnor, the Petitioner was promoted on the post of Consolidator. Thereafter, vide order dated 14.05.2012 passed by District Magistrate/District Deputy Director of Consolidation, Bijnor, the Petitioner was confirmed on the post of Consolidator. Copies of promotion Order dated 01.10.2008 and confirmation order dated 14.05.2012 are collectively annexed as Annexure-6 (colly) to the Writ Petition. While discharging duties on the substantive post of Consolidator, the Petitioner became entitled for next promotional post i.e Assistant Consolidation Officer (hereinafter referred to as "A.C.O"). The promotion to the post of Assistant Consolidation Officer is regulated by Uttar Pradesh Revenue Consolidation Service Rules, 1992 (hereinafter referred to as "1992 Rules").

5. The strength of service for the post of A.C.O as defined under Rule 4 of the 1992 Rules, is 820. The aforesaid strength of service for the post of A.C.O continues to be 820 as on the date. Rule 5 (1) of the 1992 Rules provides source of Recruitment inter alia on the post of Assistant Consolidation Officer (A.C.O). Rule 5 of the 1992 Rules came to be amended vide notification dated 18.8.1997 issued under Article 309 of Constitution of India as per the amended Rule 5(1) of the 1992 Rules the source of recruitment on the post of Assistant Consolidation Officer (A.C.O) has been prescribed to be 50% from direct recruitment and remaining 50% by promotion from amongst the substantively appointed Consolidators.

6. The total appointment on 410 posts of A.C.O are from the direct recruitment and remaining 410 posts are by way of promotion. Rule 17 (1) of 1992 Rules, provides procedure for recruitment by promotion through the Department Selection Committee (DSC), comprising of (i) Consolidation Commissioner, U.P as Chairman; (ii) Additional Consolidation Commissioner, U.P as Member; and (iii) Joint Director, Consolidation (Headquarters), U.P to be nominated by the Consolidation Commissioner as Member. Rule 17 (2) of 1992 Rules, provides that the appointing authority shall prepare eligibility list in accordance with the U.P Promotion by Selection (post outside purview of Public Service Commission) Eligibility List Rules, 1986 and place it before the Selection Committee along with their character rolls and other records of the candidate.

7. Rule 17 (3) of 1992 Rules provides that Departmental Selection Committee (DSC) shall consider the petitioner's case on the basis of the records referred in Rule 17 (2) and if it considers necessary, it may interview the candidates also. Rule 17 (4) provides that DSC shall prepare list of selected candidates, at the time of recruitment and forward the same to the appointing Authority.

8. Rule 22 of 1992 Rules, provides the seniority of persons substantively appointed in any category of posts shall be determined in accordance with the Uttar Pradesh Government Servants' Seniority Rules, 1991 (hereinafter referred to as "1991 Seniority Rules") as amended from time to time.

9. Thus the final seniority list of the Consolidators serving in the Department of Consolidation was issued vide Office memorandum dated 31.05.2022 issued by Respondent No. 3. This seniority

list has been prepared in accordance with the provisions of 1991 Seniority Rules, after disposing of the objections filed by the incumbents against the tentative seniority list. The final seniority list was circulated by the Respondent No. 3 vide letter dated 01.06.2022 which is on record. The name of Petitioner finds place at Serial No. 48 of the seniority list.

10. It appears that the promotion of Consolidators on the post of A.C.O in the Consolidation Department have been delayed for considerable long time despite eligible Consolidators were in the department. Thus Association of Consolidators preferred a Writ-A No. 3309 of 2023 (Pradeshik Chakbandikarta Sangh vs State of U.P and Others) seeking direction to the Respondent No. 3 to hold the meeting of Departmental Selection Committee for promotion from the post of Consolidators to the post of A.C.O.

11. This writ petition was disposed of by this Court vide judgment and order dated 23.05.2023 directing the Respondent No. 2 and 3 to complete the process of promotion of Eligible Consolidator to the post of A.C.O. within a period of two months from the date of judgment and order dated 23.05.2023. Since the directions of the court were not complied by the Respondent No. 2 and 3 within the stipulated time, the Association filed a Contempt Application (Civil) No. 2385 of 2023 (Pradeshik Chakbandikarta Sangh vs Mr. Sudhir Garg and Another). During the pendency of the Contempt Application several promotion of Consolidators were made to the next higher post of A.C.O and for remaining Consolidators, an undertaking was given on 10.10.2023 that appropriate exercise will be taken in respect thereof.

12. In the aforesaid promotion on the post of ACO it is alleged that several employees working on the post of Consolidators and who are Junior to the Petitioner were promoted on the post of A.C.O. and the Petitioner who was working on the substantive post of Consolidator and was initially appointed and confirmed on the post of Consolidation Lekhpal under 1978 Lekhpal Rules was left and superseded.

13. During pendency of the Contempt Application (Supra), the order dated 03.10.2023 was passed by the Respondent No. 3 addressed to the several Settlement Officer of Consolidations, wherein a list of several Consolidators was appended and the Concerned Settlement Officers were directed to examine the service records with respect to regularization of such Consolidators. The name of Petitioner finds mention at Serial No. 58 of the aforesaid list appended with order dated 03.10.2023 which is on record as Annexure-11 to this Writ Petition. Since the petitioner was already confirmed hence he preferred an application dated 30.11.2023 addressed to Respondent No. 3 stating therein his source and nature of appointment. The petitioner has also indicated that there was no occasion for regularization and requested to consider his case for promotion on the post of A.C.O. In response to the aforesaid application dated 03.10.2023 written by Respondent No. 3, the Settlement Officer of Consolidation, Bijnor vide letter dated 08.11.2023 addressed to Respondent No. 3 submitted a reports of Consolidators including that of the Petitioner who was posted at Bijnor. In this regard, it is clearly stated that Petitioner was appointed on regular vacancy and inadvertently the term officiating was transcribed in the appointment order dated 11.09.1986 and also he recommended to regularise the Petitioner from the date of joining i.e from 12.09.1986. The Copy of letter dated 08.11.2023 is annexed as Annexure-13 to this Writ Petition.

14. In the meantime, the matter of promotion of consolidators to the higher post was placed in the meeting dated 16.01.2024 presided by the Respondent No. 2. One of the issues placed for discussion in the meeting was, as to whether services of those Consolidation Lekhpal who were appointed on Officiating basis / ad-hoc basis and have been confirmed on aforesaid post without being regularized and having been promoted on the post of Consolidator would be deemed to be regularized with retrospective effect. The aforesaid meeting presided by the Respondent No. 2 along with other members it was resolved In that meeting to ensure whether with respect of those Consolidators who were appointed on Officiating basis / ad-hoc basis, were appointed on the sanctioned post or not. If they were appointed on the sanctioned post, in such cases they shall be deemed to be regularized from the date of confirmation on their post. However, in respect of those who were not appointed on the substantive post, in their cases it was directed to identify such Officers who had given salary to such excess employees appointed on that post and to initiate proceedings for recovery of salary so paid. Copy of minutes of meeting dated 16.01.2024 is annexed as Annexure-14 to this Writ Petition.

15. The relevant extract of the meeting so far as the case of the petitioner is concerned, is extracted below:-

"3- बिन्दु संख्या (1) यो संबंध में विचार-विमर्श के उपरान्त यह मत स्थिर किया गया कि जिन, चकबन्दीकर्तागण को चकबन्दी लेखपाल के मूल पद के सापेक्ष तदर्थ /स्थानापन्न नियुक्तिः दी गयी है, उनके संबंध में यह सुनिश्चित कर लिया जाए कि विभाग में जितने पद सृजित थे, उनके सापेक्ष तदर्थ / स्थानापन्न रूप से नियुक्त लेखपालों को सम्मिलित करते हुए प्रदों की संख्या बढ़ रही है अथवा नहीं। यदि संख्या बढ़ रही है, तो इसके लिए ऐसे अधिसंख्य पद के सापेक्ष वेतन देने वाले अधिकारियों को चिन्हित कर उनसे वेतन वापस कराने की कार्यवाहीं की जाए।

यदि तदर्थ / स्थानापन्न की गयी नियुक्ति को मिलाकर सृजित पदों से अधिक संख्या नहीं हो रही है, तो ऐसे चकबन्दीकर्तागण को उनके मूल पद पर स्थायी होने की तिथि से Deemed to be regularized मान लिया जाए।"

16. Respondent no.3 vide letter dated 21.02.2024 sought report from several Settlement Officer of Consolidation with respect to Consolidators who were given appointment on post of Consolidation Lekhpal on ad-hoc / officiating basis. In response to this letter the Settlement Officer of Consolidation, Saharanpur, vide letter dated 04.03.2024 had submitted a report with respect to several Consolidators including that of the Petitioner stating therein that the Petitioner was appointed on vacant post of Consolidation Lekhpal through regular appointment and that he was appointed on the sanctioned post. The letters dated 21.02.2024 sent by Respondent No. 3 and reply dated 04.03.2024 by the Settlement Officer of Consolidation, Saharanpur, are collectively annexed as Annexure-15 to the Writ Petition.

17. The petitioner vide letter dated 05.12.2024 issued by Consolidation Directorate, was called upon on 07.12.2024 at 11.00 AM along with service records in the Office of Respondent No. 3 for the purpose of promotion. In compliance thereof, the Petitioner appeared on 07.12.2024 along with

copy of all relevant documents including his appointment order, confirmation order, promotion order on the post of Consolidator etc. and requested Respondent No. 3 to consider him for promotion on the post of A.C.O. However the petitioner was not considered and several Consolidators, who are junior to the Petitioner (placed at Serial No. 48 of Seniority List) have been promoted vide order dated 19.12.2024. Names of few of those Consolidators find mention at serial no. 97, 132, 252, 305, 398, 412, 413, 442, 446, 447, 449, 450, 451, 452, 453, 455, 456, 457, 728, 739, 772 and many more, of the seniority list who are junior to the petitioner have been promoted on the aforesaid promotional post of A.C.O vide order dated 19.12.2024. Copies of several orders dated 19.12.2024 whereby employees working on the post of Consolidators who are Junior to the Petitioner have been promoted as A.C.O superseding the petitioner are collectively annexed as Annexure- 17 to the Writ Petition.

18. Aggrieved by the inaction on part of Respondent No.3 the petitioner filed a Writ Petition which was registered as Writ-A No. 1782 of 2025 (Deva Nand Srivastava and Another Vs State of U.P. & others) which was disposed of vide order dated 14.2.2025 without entering into merits and directions was issued to respondent no.3 to consider and decide the representation of the petitioner within a period of six weeks from the date of receipt of a certified copy of the order was produced. The petitioner served the copy of the order dated 14.2.2025 along with representation dated 30.12.2024.

19. Upon the aforesaid representation, respondent no.3 called for a report from the Settlement Officer of Consolidation, Bijnor, which was duly submitted on 12.03.2025. However, vide the impugned order dated 09.10.2025, brought on record as Annexure No.1 to the writ petition, respondent no.3 has rejected the representation of the petitioner on the ground that he had not been regularized on the post of Chakbandi Lekhpal and, therefore, was not found eligible for promotion to the higher post.

Submissions of the Petitioner

20. The submission of learned counsel for the petitioner is that despite being fully eligible and entitled for promotion to the post of Assistant Consolidation Officer (ACO), the petitioner has not been granted promotion. On the contrary, several persons junior to him, whose names have been mentioned in paragraphs 39 and 40 of the writ petition, have already been promoted, thereby superseding the petitioner.

21. It is further submitted that the said persons were appointed on officiating/ad hoc as well as temporary basis. He submits that no third-party rights would be affected in case the petitioner is considered for promotion to the post of A.C.O.

22. It is further submitted that the petitioner is holding lien over the substantive post of Consolidator upon being confirmed in his services and has been granted one promotion, therefore, at this stage, his promotion to the higher post of A.C.O. cannot be denied on the grounds stated in the impugned order.

23. It is contended that, as per the decision taken in the meeting dated 16.01.2024 presided over by respondent no. 2, the services of the petitioner are deemed to be regularized. The Settlement Officer of Consolidation, Saharanpur vide his report dated 04.03.2024 addressed to respondent no. 3, has clearly stated that the petitioner was appointed against a vacant and sanctioned post of Consolidation Lekhpal through a regular appointment.

24. It is also submitted that several persons junior to the petitioner, as well as similarly situated employees appointed in the same manner, have been granted promotion despite there being no formal order of regularization in their cases.

25. The petitioner has been continuously serving in the Consolidation Department without any break since his initial appointment on 11.09.1986, and his services have been duly confirmed on the post of Consolidator. If, prior to such confirmation, his services were not formally regularised by the department, the petitioner cannot be held responsible for the same. Moreover, in terms of the decision taken in the meeting dated 16.01.2024, his services are deemed to have been regularised.

26. It is thus contended that the petitioner has been treated differently and subjected to hostile discrimination, which is violative of Articles 14 and 16 of the Constitution of India.

27. The petitioner otherwise fulfills the eligibility criteria and are under the zone of consideration and as many as 80 vacancies on the post of ACO, in the Consolidation Department. Despite this, he has been illegally deprived of promotion, resulting in stagnation in his service.

Submissions of the Respondents

28. Per contra learned Standing counsel while opposing the petition submitted that the petitioner was appointed on a substitute basis and cannot be regularized on the said post unless his appointment is first regularised under the U.P. Regularization of Ad hoc Appointments (On Posts within the Purview of the Public Service Commission) Rules, 1979. The four-member committee was constituted vide order dated 19.11.2024 under the joint chairmanship of the Finance Controller and the Joint Director (Consolidation). The committee afforded personal hearing to the incumbents, including the petitioner, who appeared and presented his case. However, the petitioner could not produce any record/document relating to his regularization.

29. Thereafter, the meeting of the Departmental Promotion Committee (DPC) for promotion to the post of Assistant Consolidation Officer (ACO) from the post of Consolidator was held on 16.12.2024. The case of the petitioner was duly considered by the DPC, which, after due deliberation, found him ineligible for promotion on the ground that his appointment on the feeder post of Chakbandi Lekhpal was in a substitute capacity and his services had not been regularized. Consequently, his promotion was not granted.

30. Thus, the petitioner is not entitled to promotion to the higher post of Assistant Consolidation Officer (ACO).

Consideration by the Court

31. Perused the record.

32. Perusal of the record shows that it is not in dispute that the petitioner was initially appointed on a temporary basis to the post of Consolidation Lekhpal on officiating basis vide order dated 11.09.1986. Thereafter, his services came to be confirmed on the said post by the Consolidation Lekhpal vide order dated 25.04.1991.

33. The petitioner was granted promotion to the higher post of Consolidator vide order dated 01.10.2008 issued by the District Magistrate/Deputy Director of Consolidation, Bijnor, wherein his name finds place at Serial No. 6. Subsequently, his services on the promoted post of Consolidator were also confirmed vide order dated 14.05.2012 issued by the District Magistrate, wherein his name appears at Serial No. 30. In the final seniority list of Consolidators, the name of the petitioner finds place at Serial No. 48.

34. Pursuant to the directions issued by this Court in Writ-A No. 3309 of 2023, several persons similarly situated to the petitioner, i.e., those initially appointed on officiating/ad hoc basis, were granted promotion. A letter dated 03.10.2023 contains two lists: the first list pertains to Consolidators whose initial nature of appointment is not recorded in their service books, and the name of the petitioner does not find place therein. The second list, appended to another letter of the same date issued by the competent authority, contains the names of those incumbents whose services have been regularised. The name of the petitioner finds place at Serial No. 58 in the said list.

35. From the second list (at page 161 of the paper book), it is evident that persons at Serial Nos. 5 and 30, who are much junior to the petitioner and whose services are shown as not regularised, have been promoted. Further, persons at Serial Nos. 20, 24, 37, 69 and 126, who are also junior to the petitioner, have been promoted to the higher post. These facts have not been specifically denied in the counter affidavit filed by the State.

36. In response to the letter dated 3.10.2023, Respondent No. 3, vide Annexure-13, has categorically recommended the name of the petitioner. It has also been mentioned therein that the initial appointment of the petitioner dated 11.09.1986 was made against a substantive vacancy, and the word "officiating" was mentioned due to an error.

37. Further, a meeting was convened on 16.01.2024 under the chairmanship of Respondent No. 2 in the presence of various Consolidation Officers and the Under Secretary, Department of Personnel. In the said meeting, a decision was taken that the services of such incumbents who were initially appointed on ad hoc/officiating basis shall be deemed to be regularised from the date of their confirmation on the initial post, subject to the condition that the initial appointment was made against a sanctioned post.

38. Pursuant to the aforesaid decision, Respondent No. 3 sought reports from all Consolidation Officers for identifying incumbents appointed against sanctioned and non-sanctioned posts. The Settlement Officer Consolidation, in response to the letter dated 21.02.2024, submitted a report categorically stating that the petitioner was appointed against a sanctioned regular vacant post. The

letter dated 04.03.2024 issued by the Settlement Officer Consolidation, Saharanpur, is on record at page 174 of the paper book.

39. However, vide order dated 19.12.2024, several persons junior to the petitioner working on the post of Consolidator were promoted to the post of Assistant Consolidation Officer (ACO). Specific pleadings in this regard have been made in the writ petition. Some of such persons include Shri Rajesh Singh, Brijendra Singh, Mukesh Pundeer, Kamlesh Kumar, Vinay Kumar, Ambrish Kumar Shukla, Brijesh Yadav, Sushil Kumar, Santosh Kumar Arya, Hukum Singh, Vijay Veer Singh, Krishna Singh Rana and Jadi Singh.

40. A perusal of Annexure-1, by which the representation of the petitioner has been rejected, shows that the claim of the petitioner has been rejected on the ground that his initial appointment was on officiating basis and his services were not regularised. However, the record reveals that several similarly situated persons, who are junior to the petitioner, have been granted promotion to the post of ACO.

41. Pleadings to this effect have been made in paragraphs 39 and 40 of the writ petition along with a tabular chart. In the counter affidavit, the State in paragraph 38 has stated that such persons were found suitable for promotion as their appointments on the feeder post of Chakbandi Lekhpal were regular. However, in the rejoinder affidavit, the said averments have been specifically denied on the ground that no documentary proof, such as initial appointment orders, has been filed by the State to substantiate how their initial appointments differ from that of the petitioner.

42. It is not disputed that it was the duty of the respondent-department to consider and regularise the services of the petitioner, who was appointed against a substantive vacancy and has continuously discharged his duties for approximately 40 years. The petitioner was even granted promotion to the post of Consolidator on 01.10.2008.

43. The administrative lapse on the part of the respondents in not issuing appropriate regularisation orders cannot be permitted to operate to the prejudice of the petitioner at the fag end of his career. On the one hand, the respondents failed to regularise the services of the petitioner, and on the other hand, they seek to deny him further promotion on the ground that his services were not regularised. The respondents cannot be permitted to take advantage of their own inaction to the detriment of the petitioner.

Legal Position

44. The law in this regard has been laid down by the Hon'ble Supreme Court in ***Kusheshwar Prasad Singh vs. State of Bihar and others, reported in (2007) 11 SCC 447***. It has been held that one cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non performance he has occasioned. The relevant paragraphs 14, 15 and 16 of the said judgment are extracted below:-

"14. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in Mrutunjay Pani v. Narmada Bala Sasmal [AIR 1961 SC 1353] wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim commodum ex injuria sua nemo habere debet (no party can take undue advantage of his own wrong).

15. In Union of India v. Major General Madan Lal Yadav [(1996) 4 SCC 127 : 1996 SCC (Cri) 592] the accused army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were time-barred. This Court (at SCC p. 142, para 28) referred to Broom's Legal Maxims (10th Edn.), p. 191 wherein it was stated:

"It is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."

16. It is settled principle of law that a man cannot be permitted to take undueIt has been held that one cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-he has occasioned. and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong".

45. In the case of **Ram Het Tewari vs State of U.P. and others reported in 2005 SCC OnLine All 1514** it has been held that contrary stand cannot be taken by the departments for regularizing the service of the employee appointed on the post of consolidation Lekhpal merely on account of usage of word officiating basis i.e. 'sthanapann' in the appointment letter where such an employee working on substantive vacancy and similarly situated employees have been regularized. Relevant paragraphs 3-9 of the judgment are extracted below:-

"3. The sole ground for rejecting the claim of the petitioner is that the petitioner was appointed on an officiating basis and therefore, the Rules, namely the U.P. Regularisation of Ad-hoc Appointments (On Posts Outside the Purview of the Public Service Commission) Rules, 1979 (hereinafter referred to as the Rules of 1979) are not applicable to a case of an officiating employee, inasmuch as, the Rules of 1979, as amended from time to time only applies to an ad-hoc appointee.

4. In order to appreciate the submissions made at the Bar, Rule 4 of the Rules of 1979 is quoted hereunder: "4. Regularisation of ad-hoc appointments- (1) Any person who-

(i) was directly appointed on ad-hoc basis on or before June 30, 1998 and is continuing in service as such on the date of commencement of the Uttar Pradesh Regularisation of Ad-hoc Appointments (On Posts Outside the Purview of the Public Service Commission) (Third

Amendment) Rules, 2001. (ii) Possessed requisite qualifications prescribed for regular appointment at the time of such ad-hoc appointment, and (iii) has completed or, as the case may be, after he has completed three years' service shall be considered for regular appointments in permanent or temporary vacancy, as may be available, on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant rules or orders."

5. The aforesaid Rules indicate that any person who was appointed 'on an ad-hoc basis' on or before 30-6-1998, who possessed the requisite qualification for regular appointment and who had completed three years of continuous service, would be considered for a regular appointment in a permanent or temporary vacancy, as may be available. In the present case, there is no dispute with regard to the fact that the petitioner was working on a substantive vacancy, as is clear from the order of appointment itself. The only question, which arises for consideration is whether the petitioner being appointed on an officiating basis could be included in the definition of the word 'Ad-hoc'. The legal glossary defines the word 'officiating' as under? 'Acting in an official capacity, filling a position temporarily'and the word "Ad-hoc" has been defined as "made, established, acting or concerned with a particular end or purpose".

6. Therefore, an ad-hoc appointment is for a particular purpose or for a limited purpose. The word 'officiating' also means to fill up a position temporarily, which means to fill a post for a limited period.

7. Normally, when a person officiates on a post, he does only for a limited period in addition to the post which he holds, that is to say, that an incumbent retains his original post and in addition to it he officiates on another post. In the present case, the petitioner has been appointed afresh for the first time on the post of Consolidation Lekhpal. The petitioner was not officiating on this post in addition to another post. Therefore, the usage of the word 'Sthanapann' n the appointment letter has to be understood in the manner in which the appointment was made. In my view, the word 'Sthanapann' should be read as if it was made for a limited period on an ad-hoc basis.

8. In Arun Kumar Chatterjee v. South Eastern Railway, ((1985) 2 SCC 451 : AIR 1985 SC 482). the Supreme Court explained the meaning of the word 'Officiating' as gen erally used in service parlance. "According to its ordinary connotation, the word 'Officiating' is generally used when a servant having held one post permanently or substantively, is appointed to a post in a higher rank, but not permanently or substantively, while still retaining his lien on his substantive post i.e. officiating in that post till his confirmation. Such officiating appointment may be made when there is a temporary vacancy in a higher post due to the death or retirement of the incumbent or otherwise. In contrast, the word 'temporary' usually denotes a person appointed in the civil service for the first time and the appointment is not permanent but temporary i.e. for the time being, with no right to the post"

9. The learned counsel for the petitioner has invited my attention to Annexures-11 and 12 to the writ petition where, in similar situation, another employee was appointed on an officiating basis and thereafter, the respondents had regularised his services. This fact has not been controverted by the respondents. Consequently, in my view, it is not open to the respondents to take a con trary stand. A uniform policy has to be adopted and it is not open to the respon dents to pick and choose at their own con venience. In view of the aforesaid discussions, the writ petition is allowed and impugned order dated 15-5-2004 is quashed. The pe titioner is entitled to the claim of regularisation. Consequently, a mandamus is is sued directing the respondent No. 3 to con sider

the petitioner on the post of Consoli dation Lekhpal by issuing consequential orders for the regularisation of his service within six weeks from the date a certified copy of this judgment is produced before him. It is made clear that if the petitioner was not found to be working between the period 15-5-2004 till the date of the order of the regularisation, he shall not be paid the salary/wages, for that period but the said period would be included for calculating the length of service and other consequential benefits of service that may be available to the petitioner."

46. In paragraph 7 of the above judgement the Court has already considered an identical controversy and interpreted the word "*sthananpann*" used in the appointment letter. It has been held that the said expression is to be understood as indicating that the appointment was made for a limited period on an ad hoc basis.

47. In ***State of U.P. and others vs. Pyare Lal*** (Special Appeal Defective No. 350 of 2025), as well as in ***State of U.P. and 4 others vs. Gokil Ram (Special Appeal Defective No. 358 of 2025)***, it has been categorically held that regularisation of service is preceded by confirmation in service. Once the services are confirmed, without there being any dispute as to its legality order for regularisation is unwarranted.

48. In ***Syed Mohammed Jaki vs. State of U.P. and others (Writ-A No. 13084 of 2025)***, this Court, while relying upon the aforesaid judgments, has held as follows:

"12. It is not the case of opposite parties that the orders on confirmation and promotion granted to petitioner were ever withdrawn or recalled at any time or that he has not rendered continuous satisfactory service since 1987 till 2025.

13. The aforesaid aspect has been considered by Division Bench of this Court in the cases of Pyare Lal (supra) and Gokil Ram (supra) in which benefits was granted primarily on the ground that such reason for denying pensionary benefits cannot be raised at such a belated stage after superannuation of the employee. The relevant portion of judgment rendered in the case of Pyare Lal (supra) is as follows:

"5. After hearing the parties what comes out is that the respondent herein was appointed on adhoc basis as Consolidation Lekhpal on 08.08.1989. There is an order on record dated 29.09.1998 veracity of which has not been doubted by the appellant, according to which, the services of respondent- Pyare Lal were confirmed on the post of Consolidation Lekhpal w.e.f. 19.08.1991.

6. We asked the learned counsel for parties as to where is the order of regularization which should have preceded the order of confirmation, none could place it before us, but it is not in dispute that by the order dated 29.09.1998, the services of Pyare Lal were confirmed on the aforesaid post w.e.f. 19.08.1991. In fact, from the order dated 20.02.2025 which was impugned before the writ court, it comes out that after the confirmation he was promoted to the post of Consolidator on 01.02.2001 and confirmed on the said promotional post on 14.05.2011. Thereafter, he retired voluntarily as Consolidator on 31.03.2024. The claim of the respondent to pensionary benefits was rejected on the ground that his services had never been regularized, therefore the pensionay benefits were illegally paid to him. However, while passing the said order, the Consolidation Commissioner lost sight of the fact that regularization precedes confirmation and there is no dispute that respondent's services were confirmed by the order dated 29.09.1998

w.e.f 19.08.1991. In the order dated 20.02.2025, we do not find any such finding that the order of confirmation was fraudulent or illegally passed. Moreover, the said order also mentions that the Additional Chief Secretary, on 05.02.2024, had treated the services as deemed to have been regularized accordingly pension of some other officers was paid but respondent was not paid the same.

7. It being so, we fail to understand as to how at such belated stage, such a plea could be raised by the State authorities denying pensionary benefits to the respondent.

9. Learned Single Judge apart from quashing the order dated 20.02.2025 has also granted relief no.2. As regards, the validity of order dated 20.02.2025, for the reasons given hereinabove, we sustain the judgment of writ court in so far as quashing the order dated 20.02.2025 is concerned. However, we find it difficult to sustain the said judgment so far as relief no.2 i.e. for counting the respondent's adhoc services rendered from 19.08.1989 to 19.08.1991 for the purpose of pensionary benefits is concerned, in view of the U. P. Qualifying Service For Pension and Validation Act, 2021, the vires of which has been challenged and is pending before this Court.

11. In view of the above discussions, we modify the judgment of the writ court to the extent it provides for addition of the ad-hoc services of the respondent while calculating the qualifying services for pensionary benefits/post retiral benefits, meaning thereby, the said services shall not be counted. The post retiral dues shall now be paid accordingly as may be permissible in law. The post retiral dues shall be paid within three months, if there is no other legal impediment. The services rendered w.e.f. 19.08.1991 shall be considered for the aforesaid pensionary benefits and not those rendered prior to."

14. The said reasoning has been followed in the case of Gokil Ram (supra).

15. It is admitted that the aforesaid judgments have attained finality with benefit also being accorded to the aforesaid persons.

16. Although, learned State counsel has submitted that the aforesaid judgments would be inapplicable in the present facts and circumstances since aforesaid persons had not been appointed in leave vacancy but in the considered opinion of this Court, the aforesaid factor would be irrelevant once the reason for denying pensionary benefits were the same.

17. In view of discussion made here-in-above particularly the fact that benefits of confirmation and promotion granted to petitioner having not been denied, benefit thereof is required to be granted to petitioner particularly in view of Article 370 of Civil Service Regulations which indicates that continuous temporary or officiating service under the Government of U. P. following without interruption by confirmation shall qualify for pensionary benefits. The provisions of Article 370 of Civil Service Regulations is as follows:-

"370. Continuous temporary or officiating service under the Government of Uttar Pradesh following without interruption by confirmation in the same or any other post shall qualify except- (1) Periods of Temporary or officiating service in non-pensionable establishment; (2) Periods of service in work charged establishment; and (3) Periods of service in the post paid from contingencies."

18. Obviously the exceptions indicated in Article 370 of the Civil Service Regulations would be inapplicable in case of petitioner whose services admittedly stood confirmed with effect from 01.03.1991."

49. The Hon'ble Supreme Court in **Vinod Kumar and others vs. Union of India and others, reported in (2024) 9 SCC 327**, has held that where an employee has rendered long and continuous service for a substantial period of time, and has also been granted promotion, without any indication of the temporary nature of his initial appointment throughout his service tenure, such an employee cannot be denied the rights accrued to him merely on account of the terms of his initial appointment. Procedural technicalities cannot be invoked to defeat the substantive rights of employees that have accrued over a considerable period through continuous service.

Conclusion and Directions

50. In view of the aforesaid settled proposition of law, and considering the undisputed facts of the present writ petition, it is apparent that although the petitioner was initially appointed on an "officiating" basis, the said term, in identical circumstances, has been interpreted by this Court in ***Ram Het Tiwari (supra)*** to mean "ad hoc" rather than "officiating". Ordinarily, officiating implies holding a post temporarily in addition to one's substantive post; however, in the present case, the petitioner was appointed for the first time on the post of Consolidation Lekhpal.

51. Moreover, Opposite Party No. 2, in its communication has admitted that the use of the word "officiating" in the appointment letter was inadvertent. Therefore, in view of such admission as well as the judicial interpretation in *Ram Het Tiwari (supra)*, the term "officiating" is liable to be read as "ad hoc".

52. So far as the contention of the respondents that the petitioner's services were not regularised and, therefore, he cannot be considered for further benefits is concerned, the same is misconceived. In light of the law laid down by this Court in ***Pyare Lal, Gokil, and Syed Mohd. Jakil (supra)***, it is well settled that regularisation is implicit in confirmation. Once an employee's services are confirmed, and such confirmation is not under challenge on grounds of illegality, the same attains finality.

53. In the present case, the petitioner's services on the posts of Consolidation Lekhpal as well as Consolidator were duly confirmed. Therefore, the ground taken in the impugned rejection (Annexure-1), to the effect that the petitioner was appointed on an officiating basis and his services were not regularised, is wholly untenable and liable to be set aside.

54. Accordingly, the writ petition succeeds and is **allowed**.

55. A writ in the nature of **certiorari** is issued quashing the impugned order dated 09.10.2025 contained in Annexure-1 to the writ petition.

56. Further, a writ in the nature of **mandamus** is issued directing the respondents to consider case of the petitioner for promotion to the post of Assistant Consolidation Officer (ACO) with effect from the date his juniors were promoted, along with all consequential benefits, including seniority, within a period of three months from the date of production of a certified copy of this order.

(2026) 5 ILRA 2367
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 18.05.2026

BEFORE

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

Writ-A No. 5849 of 2024

Union of India ...Petitioners
Versus
Jc-380533M Ex Sub Maj Nigam Singh ...Respondent

Issue(s) for consideration

(a) Can the State deny disability pension based on a medical board report that gives a summary non-attributability endorsement without detailing medical history or specific reasons?
(b) Does the onset of a disease during posting at a peace station automatically eliminate causal connection/aggravation by military service?

Headnotes

A. Service Law - Army Rules, 1954: Rule 13(3) Item I(i)(a); Pension regulations for the Army, 1961: Regulation 173; Regulations for Medical Services for Armed - The respondent was enrolled in the Corps of Signals of the Indian Army on 07.10.1988, with no recorded medical defects at the time of entry. After serving for over 32 years, he was discharged on 30.06.2021, in a Low Medical Category u/Rule 13(3) Item I(i)(a) of the Army Rules, 1954.

The Release Medical Board (RMB) held on 05.03.2021, assessed his composite disabilities at 33.5% for life—comprising Primary Hypertension (@30%) and Dyslipidemia (@5%). The RMB declared the conditions neither Attributable to nor Aggravated by service (NANA) on the ground that the onset occurred in December 2012 while posted at a peace station (Jabalpur). The Armed Forces Tribunal (AFT), Regional Bench, Lucknow, allowed the respondent's Original Application (O.A. No. 423 of 2022) by applying the ratio of *Dharamvir Singh v. Union of India (2013)*, holding that peace stations carry their own stress/strain of military training and the disability should be deemed aggravated by service. Union of India challenged the AFT order before the High Court, contending that the medical board's expert opinion is final and must prevail.

B. Even when armed personnel are posted in peace areas then also there is stress and strain arising due to such posting, inasmuch as, even at a peace station there is pressure of rigorous training and stress and strain of military service exist. (Para 8)

Law on attributability - The RMB has denied attributability to the applicant only by endorsing that the disabilities 'PRIMARY HYPERTENSION (I 10)' and 'DYSLIPIDEMIA (E78.5)' are neither attributable to nor aggravated (NANA) by service on the ground of onset of composite disabilities in December 2012 while posted in Peace location (Jabalpur), therefore, applicant is not entitled to disability element of disability pension.

This reasoning of Release Medical Board for denying disability element of disability pension to applicant is not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. The applicant was enrolled in Indian Army on 07.10.1988 and the disabilities have started after more than 24 years of Army service i.e. on December 2013. Therefore, the benefit of doubt in these circumstances should be given to the applicant in

view of *Dharamvir Singh* Vs. *Union of India & Ors.* (*infra*), and the disability of the applicant should be considered as aggravated by military service. (Para 11, 40, 41)

C. The reasons given by the RMB were not in conformity with the relevant regulations and no sufficient reasons were recorded for denying disability pension to the respondent. (Para 37, 38)

Resultantly, while the order of discharge of the respondents from service on the ground of medical invalidity due to Primary Hypertension and Transient Ischemic Attack (RT) MCA Territory has not been disturbed, direction has been issued that the respondent be granted disability pension with immediate effect with all attending benefits, as per rules. (Para 39)

Writ petition dismissed. (E-4)

Case Law Cited:

1. Dharamvir Singh Vs. Union of India and Others, (2013) 7 SCC 316 (Para 8, 40)
2. Union of India Vs. Keshar Singh, (2007) 12 SCC 675 (Para 9)
3. Union of India Vs. Surinder Singh Rathore, (2008) 5 SCC 747 (Para 9)
4. Secretary, Ministry of Defence Vs. A.V. Damodaran (Dead) through Lrs., (2009) 9 SCC 140 (Para 9)
5. Union of India Vs. Jujhar Singh, (2011) 7 SCC 735 (Para 9)
6. Union of India Vs. Talwinder Singh, (2012) 5 SCC 480 (Para 9)
7. No. 14666828M EX CFN Narsingh Yadav Vs. Union of India, (2019) 9 SCC 667 (Para 9)
8. Baby Vs. Union of India, (2003) 3 KLT 362 (FB) (Para 9)
9. Maniben Maganbhai Bhariya Vs. Distt. Development Officer, Dahod, (2022) 16 SCC 343 (Para 27)
10. Rajumon T.M. Vs. Union of India & Ors., 2025 SCC OnLine SC 1064 (Para 40)

List of Acts

Army Rules, 1954; Regulations for Medical Services for Armed Forces 1983; Pension regulations for the Army, 1961.

List of Keywords

service, disability, pension, medical, invalidity, attributability, reason, regulation, discharge.

Appearances for Parties

For Petitioner(s): Gaurav Tripathi
For Respondent(s): Sarvesh Kumar Verma

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

1. The present petition has been preferred against the judgment and final order dated 18.01.2023 passed by the Armed Forces Tribunal, Regional Bench, Lucknow (hereinafter referred to as "the Tribunal") in Original Application No. 423 of 2022.

BRIEF FACTUAL CONSPECTUS

2. The relevant facts in brief for the purpose of deciding this petition are detailed herein below.

3. The respondent was enrolled in the corps of signals of Indian Army on 07.10.1988 and after serving for more than 32 years, he was discharged on 30.06.2021 (AN) in Low Medical Category

under Rule 13 (3) Item I (i) (a) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (hereinafter referred to as "RMB") held at Military Hospital, Ranikhet on 05.03.2021 assessing his disabilities (i) 'PRIMARY HYPERTENSION (I 10)' @30% for life and (ii) 'DYSLIPIDEMIA (E78.5)' @05% for life, composite disabilities @33.5% for life and opined the disabilities were neither attributable to nor aggravated (NANA) by service. Consequently, the respondent□s claim for disability pension was rejected.

4. Being aggrieved by the rejection of his claim for disability pension, the respondent successfully approached the Tribunal in OA No. 423 of 2022 which was heard with other applicants seeking similar reliefs.

SUBMISSIONS OF THE PARTIES

5. Before the Tribunal it was pleaded by the respondent that he had been found medically fit at the time of enrolment and nothing adverse was noted at that point of time and he became afflicted with the said diseases during his service which had nothing to do with the family conditions and since the said diseases developed in course of his service, he was entitled to the disability pension.

6. The petitioners contested the claim of the respondent before the Tribunal by contending that the respondent had been posted at peace station at the time of onset of the diseases and being deployed in peace stations, and it could not have contributed to the said illness nor can the military service be said to have aggravated the diseases, which was confirmed by the Medical Board on examination of the respondent as mentioned above. Further, it was contended that nothing was brought on record to contradict the finding of the Medical Board and as such the claim of the respondent could not be entertained.

7. It has been submitted on behalf of Union of India that the judgment of the Tribunal is contrary to the opinion given by the Medical Board, where it has been opined that the diseases contacted by the opposite party is neither attributable nor aggravated by the military service. It is submitted that preference has to be given to the opinion of the Medical Board and consequently, the order of the Tribunal is arbitrary and deserves to be interfered with.

8. Learned counsel appearing for the opposite party has supported the order passed by the Tribunal and submits that posting of the respondent would indicate that during his service tenure he has been posted in field as well as forward areas. It was submitted that the Tribunal has rightly considered the fact that even when armed personnel are posted in peace areas then also there is stress and strain arising due to such posting, inasmuch as, even at a peace station there is pressure of rigorous training and stress and strain of military service exist. Reliance has been placed by the Tribunal on the judgment of Hon'ble Supreme Court rendered in the case of **Dharamvir Singh Vs. Union of India and Others, (2013) 7 SCC 316**, and accordingly claim of respondent was allowed.

9. In support of the claim, a number of decisions were relied upon namely; *Union of India v. Keshar Singh,(2007) 12 SCC 675;* Union of India v. Surinder Singh Rathore, (2008) 5 SCC 747; Secretary, Ministry of Defence v. A.V. Damodaran (Dead) through Lrs., (2009) 9 SCC 140; Union of India v. Jujhar Singh, (2011) 7 SCC 735; Union of India v. Talwinder Singh, (2012) 5 SCC 480,

No. 14666828M EX CFN Narsingh Yadav v. Union of India, (2019) 9 SCC 667, and the decision of Kerala High Court in Baby v. Union of India, (2003) 3 KLT 362 (FB).

FINDINGS OF THE ARMED FORCE TRIBUNAL

10. The Tribunal, on consideration of the aforesaid decisions and relevant Rules made the following observations in the impugned judgment, which are reproduced herebelow:

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of Dharamvir Singh Versus Union of India & Others, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)].

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

11. By adopting the aforesaid principles derived from the decisions relied upon, the Tribunal allowed the claim as follows :-

7. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that the disabilities 'PRIMARY HYPERTENSION (I 10)' and 'DYSLIPIDEMIA (E78.5)' are neither attributable to nor aggravated

(NANA) by service on the ground of onset of composite disabilities in December 2012 while posted in Peace location (Jabalpur), therefore, applicant is not entitled to disability element of disability pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability element of disability pension to applicant is not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. The applicant was enrolled in Indian Army on 07.10.1988 and the disabilities have started after more than 24 years of Army service i.e. on December 2013. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of Dharamvir Singh vs Union of India & Ors (supra), and the disability of the applicant should be considered as aggravated by military service.

12. We have heard the parties and gone through the records.

LAW IN THIS REGARD

13. This Court in the aforesaid decisions of Keshar Singh (supra); Surinder Singh Rathore (supra); A.V. Damodaran (supra); Jujhar Singh (supra); Talwinder Singh (supra) had examined Regulation 173 of the Pension Regulations for the Army, 1961, which deals with the primary conditions of grant of disability pension which provide, inter alia, that the disability pension would be granted if it is attributable to or aggravated by the military service. The said Regulation 173 is accordingly reproduced herein as below:

"173. Primary conditions for the grant of disability pension. - Unless otherwise specifically provided a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 per cent or above.

14. The question as to whether the disability is attributable to or aggravated by military service is to be determined as per Appendix II to the said Regulations. Relevant portions in Appendix II read as follows:

"2. Disablement or death shall be accepted as due to military service provided it is certified that-

(a) The disablement is due to wound, injury or disease which

(i) is attributable to military service; or

(ii) existed before or arose during military service and has been and remains aggravated thereby;

(b) the death was due to or hastened by

(i) a wound, injury or disease which was attributable to military service, or

(ii) the aggravation by military service of a wound, injury or disease which existed before or arose during military service.

Note.-The rule also covers cases of death after discharge/invaliding from service.

3. There must be a causal connection between disablement or death and military service for attributability or aggravation to be conceded.

4. In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and the benefit or reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field service case."

15. Thus, the aforesaid Regulation 173 read with Appendix II makes it very clear that disability must be attributable to or aggravated by military service for purposes of grant of disability pension and what amounts to disability has been elaborated in Appendix II of the Regulations as quoted above. The Appendix II clarifies that there must be a causal connection between the disablement or death and military service for attributability to be considered. Clause 4 of the aforesaid Appendix II further provides that in deciding on the issue of entitlement, all the evidence, both direct and circumstantial, will be taken into account and the benefit or reasonable doubt will be given to the claimant and this benefit will be given more liberally to the claimant in field service case.

16. As to how a disability can be attributed to service has been further explained clearly in Regulation 423 of the Regulations for Medical Services for Armed Forces 1983, which has been also referred to by the Tribunal and by the Apex Court in the above-mentioned cases, which is reproduced herein below for easy reference:

"423. Attributability to service. - *(a) For the purpose of determining whether the cause of a disability or death is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence, both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt, for the purpose of these instructions, should be of a degree of cogency, which though not reaching certainty, nevertheless carry the high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of doubt could be given more liberally to the individual, in cases occurring in field service/active service areas.*

(b) The cause of a disability or death resulting from wound or injury, will be regarded as attributable to service if the wound/injury was sustained during the actual performance of "duty" in armed forces. In case of injuries which were self-inflicted or due to an individual's own serious negligence or misconduct, the Board will also comment how far the disability resulted from self-infliction, negligence or misconduct.

(c) The cause of a disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and circumstances of duty in the armed forces determined and contributed to the onset of the disease. Cases, in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be

regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for service in the armed forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(d) The question, whether a disability or death is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the death certificate. The Medical Board/medical officer will specify reasons for their/his opinion. The opinion of the Medical Board/medical officer, insofar as it relates to the actual cause of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be attributed to service will, however, be decided by the pension sanctioning authority.

(e) To assist the medical officer who signs the death certificate or the Medical Board in the case of an invalid, the CO unit will furnish a report on:

(i) AFMS F-81 in all cases other than those due to injuries.

(ii) IAFY-2006 in all cases of injuries other than battle injuries.

(f) In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a Medical Board form and countersigned by the ADMS (Army)/DMS (Navy)/DMS (Air).”

17. A careful examination of Regulation 423 of the Regulation for Medical Services for Armed Forces would reveal the following aspects:

(i) It is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions.

(ii) It is, however, essential to establish that the disability or death bore a causal connection with the service conditions.

(iii) All evidence, both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to the individual.

(iv) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for service in the armed forces.

(v) However, if the medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(vi) The question, whether a disability or death is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the certificate. The Medical Board/medical officer will specify reasons for their/his opinion.

(vii) The opinion of the Medical Board/medical officer, insofar as it relates to the actual cause of the disability or death and the circumstances in which it originated will be regarded as final.

(viii) The question whether the cause and the attendant circumstances can be attributed to service will, however, be decided by the pension sanctioning authority.

(ix) To assist the medical officer who signs the death certificate or the Medical Board in the case of an invalid, the CO unit will furnish a report on:

(a) AFMS F-81 : in all cases other than those due to injuries.

(b) IAFY 2006 : in all cases of injuries other than battle injuries.

RECORDS CONCERNING MEDICAL BOARD PROCEEDINGS

18. Having kept the aforesaid aspects in mind, we have examined the records, more particularly the original records of the Medical Board Proceedings produced before us, a copy of which is annexed as Annexure No.2 to the writ petition.

A careful perusal of the aforesaid medical proceedings reveals the following:

(I) The details of the field/operational service have been mentioned in the said proceedings of the Medical Board (as per Form AFMSF-16), a copy of which is also annexed as Annexure No.2 to the writ petition.

(II) It is to be noted that under Regulation 423 (a) referred to above, it is mentioned that for the purpose of determining whether the cause of disability is attributable to the service, it is immaterial that the cause giving rise to the disability occurred in an area declared to be field service/active service area or under normal peace conditions.

(III) In para 3 of Part II of the said Form, the particulars of the disease from which the respondents was suffering from are mentioned as follows :-

PART II			
Illness, wound, injury	**First Started Date & Place**	**Where treated**	**Approximate treated dates and periods treated**
Primary Hypertension	Dec 12 Jabalpur	MH Jabalpur	17 Dec 2012
Dyslipidemia			

(IV) The aforesaid entries are, therefore, a clear acknowledgement of the fact that the respondent was not suffering from the diseases of Primary Hypertension (I 10) and Dyslipidemia (E 78.5) when he entered the service. Thus, it would be deemed that these diseases arose while in service as provided under Regulation 423.

(V) Coming to Opinion of the Medical Board of Form AFMSF-16, the following entries have been made:

PART - VII			
Disability	**Attributable to Service (Y/N)**	**Aggravated by Service (Y/N)**	**Detailed Justification**
Primary Hypertension (I 10)	No	No	The onset of the disability was at Jabalpur (MP) (Peace) in Dec 2012. Hanes conceded NA NA

			as per Para 43 CH-VI GMO-2008 & Initial med board Date- 17 Dec 2012. Primary Hypertension will be considered Aggravated by military service if disease occurs while serving in Field areas, HAA, CIOPS areas.
Dyslipidemia (E78.5)	No	No	The onset of the disability was at Jabalpur (MP) (Peace) in Dec 2012. The disability is a life style disease due to intake of fatty diet etc. Hence it is neither attributable to nor aggravated (NA NA) by military service.

(VI) It may be noted that the aforesaid entries in Part VII are devoid of any details, and clearly shows that the medical history of the respondent is not recorded. Hence, it can be said that the Medical Board had not considered the medical history of the respondent before coming to the conclusion that the diseases of the respondent did not arise during service.

19. Perusal of the aforesaid entries made in the Form AFMSF-16 reveals that no reasons have been assigned at all as regards the nature of disability on which the opinion of the Medical Board is based that the respondent was suffering from Primary Hypertension (I 10) and Dyslipidemia (E 78.5), though it has been specifically mentioned therein that the Medical Board should state fully the reasons with regard to the disability on which the opinion of the Medical Board is based.

20. The reasons given by the Medical Board that the onset of the disease occurred at a peace station have no relevance in determining whether the disease was attributable to military service or whether its aggravation was on account of the military service rendered by him. While rendering a medical opinion, the entire posting profile has to be examined in conjunction with the disease contacted by the soldier/officer. It is not necessary that the moment the person contacts a particular disease, the same is bound to be detected immediately thereafter as its symptoms may take some time before they are aggravated and the disease is detected. Merely because the disease was detected at a peace station is of no consequence while determining the aspect of attributability or aggravation. Accordingly, endorsing in a routine manner that the disease was detected during peace posting is totally illegal, arbitrary and in no manner justifies the denial of disability pension to the respondent.

REQUIREMENT OF REASONED DECISION

21. In our opinion, the requirement to give reasons by the Medical Board is crucial, critical, decisive and necessary for the purpose of granting or denying disability pension and it is not a mere formality, but a necessary material on the basis of which the pension sanctioning authority has to decide about the grant or refusal of disability pension.

22. As noticed above, it has been specifically provided under Clause (d) of Regulation 423 as quoted that the question as to whether the disability is attributable to or aggravated by service or not, will be decided as regards its medical aspects by the Medical Board and the Medical Board will specify reasons for their opinion and the question whether the cause and attendant circumstances can be attributed to service will be decided by the pension sanctioning authority.

23. Thus, this requirement to give reasons by the Medical Board about their opinion is in our view absolutely necessary as also required under Regulation 423(d) for the reason that the fate of the future career of the serviceman is going to be decided by the opinion of the Medical Board, which is to be treated as final as regards the cause of disability and the circumstances in which the disability originated. The continuation of the service of the concerned serviceman and as to whether he will be entitled to disability pension is dependent on the opinion of the Medical Board which is also to be treated as the final one.

24. Hence, the rules mandate giving of reasons by the Medical Board while rendering its opinion. The reasons given by the Medical Board would obviously be the basis for determination by the competent authority whether the serviceman would be discharged from service and whether he would get disability pension.

25. Accordingly, in our opinion, if the serviceman is discharged from service or denied the disability pension on the basis of a medical opinion which is devoid of reasons, it would strike at the root of the action taken by the authority and such action cannot be sustained in law.

26. We, therefore, hold that if any action is taken by the authority for the discharge of a serviceman and the serviceman is denied disability pension on the basis of a report of the Medical Board wherein no reasons have been disclosed for the opinion so given, such an action of the authority will be unsustainable in law.

BENEFICIAL INTERPRETATION

27. We must appreciate the fact that the provisions for grant of disability pension are in the nature of a beneficial scheme intended to provide succour to servicemen in hard times who have been discharged from service after having served the nation with dedication. Accordingly, a liberal approach must be adopted while construing such beneficial provisions. This approach has also been considered by the Apex Court in Maniben Maganbhai Bhariya v. Distt. Development Officer, Dahod, (2022) 16 SCC 343, albeit, in the context of the Payment of Gratuity Act, 1972 as applicable to Anganwadi workers, the principles of which, in our opinion, are equally applicable in the present case dealing with disability pension. In the said case it was observed as follows:

"55. When social security legislations are being interpreted, it always has to be interpreted liberally with a beneficial interpretation and has to be given the widest possible meaning which the language permits, known as beneficial interpretation. When a statute is meant for the benefit of a particular class and if a word in the statute is capable of two meanings i.e. one which would preserve the benefits and one which would not, then the former is to be adopted."

28. Under these circumstances, a much more liberal view ought to be adopted while dealing with the cases of discharge of servicemen from service on account of suffering from Primary Hypertension (I 10) and Dyslipidemia (E 78.5) as they may face several impediments and difficulties in proving the causal connection of the said diseases with the military service.

29. It is also to be noted that this is not a case where the opposite party had applied for discharge of service on account of suffering from Primary Hypertension (I 10.0) and Dyslipidemia (E 78.5). It was the authority themselves who after observing his condition decided to discharge him from service after obtaining the opinion of the Medical Board. In such a situation, where the serviceman himself had not applied for discharge, but has been discharged by the authority, the onus of proving the disability and grounds of denying disability pension would lie heavily on the authority. Since it is the statutory requirement that the opinion of the Medical Board is to be the basis of the discharge, in our view, if the opinion of Medical Board is devoid of reasons, the act of the authority based on mere opinion sans reasons can certainly be questioned.

30. According to this Court, if the decision of the authority to discharge a serviceman is based on a medical report which is devoid of reasons, which are required to be given as also mandated by rules as discussed above, such an act of the authority specially when it denies any post discharge benefit will be rendered invalid in the eyes of law.

31. In such cases, it can be said that the authorities have failed to discharge the burden of establishing that the employee deserved to be discharged from service on account of such illness without any benefit of pension and such action has to be considered arbitrary and liable to be interfered with.

32. Assigning reasons for the opinion of the Medical Board in the present case also becomes imperative and salutary for the reason that while the respondent had pleaded that at the time of entry in the service, these diseases were not detected, but only after about 24 years of service and hence, as per rules also, it will be deemed that it arose while in service, the Medical Board gave the opinion that it was Primary Hypertension (I 10.0) and Dyslipidemia (E 78.5). The opinion of the Medical Board is, thus, inconsistent with the plea of the respondent. Hence, it was incumbent upon the Medical Board to assign reasons as to why the diseases could not be detected at the time of entry in service and as the onset of the diseases was only in December, 2012, which is after about 24 years of entry in service. Without there being any reasons given by the Medical Board for their opinion of Primary Hypertension (I 10.0) and Dyslipidemia (E 78.5), we are afraid, it would be unfair to the respondent that such an opinion of the Medical Board is to be taken as final and binding to deprive any service benefit to the respondent.

33. We further find that there is sufficient medical opinion existing with regard to Living And working in high altitude which may cause hypertension by putting the body in state of low oxygen and it can be a temporary state or a chronic medical condition. It is also well known that poor oxygen diffusion can lead to hypoxia, or low oxygen levels and to compensate the body kicks off a cascade of reactions including increasing heart rate, constructing blood vessels in the lungs and retaining fluids all of which can elevate blood pressure. The medical board ought to have taken all the aforesaid factors while considering the case of the opposite party for grant of disability pension, and onus lay upon them to discuss and consider these factors and give adequate reasons before rejecting his claim for grant of disability pension.

34. Thus, in the facts and circumstances discussed above, we are of the view that while there cannot be any dispute about the correctness of the legal principles enunciated by the Apex Court in the above-mentioned cases of *Keshar Singh (supra), Surinder Singh Rathore (supra), A.V. Damodaran (supra); Jujhar Singh (supra) and Talwinder Singh (supra),* we would hasten to add that the opinion of the Medical Board which is to be treated as final and binding as per aforesaid Regulations, has to be supported by reasons for arriving at the conclusion about the nature of medical disability, before the same can be acted upon for the purpose of discharge of a serviceman and denial of disability pension as otherwise, a valuable right of a serviceman to get retiral benefits who has rendered long years of service for the nation would be unjustly deprived.

35. Accordingly, we hold that the order of discharge of the respondent and denial of disability pension to him based on a medical opinion without providing full reasons to support the opinion cannot be said to be valid.

CONCLUSION

36. In the present case, the respondent was enrolled in the Corps of Signals of Indian Army on 07.10.1988 and was retired on 30.06.2021 (AN) in Low Medical Category Rule 13 (3) Item I (i) (a) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) was held at Military Hospital, Ranikhet on 05.03.2021 assessing his disabilities as Primary Hypertension (I 10) and Dyslipidemia (E78.5) and opining that the disabilities were neither attributable to nor aggravated by service. Consequently, his claim for grant of disability pension was rejected.

37. The Tribunal, after considering the entire record of the RMB as well as the postings of the respondent, observed that the disease was detected during his service. While allowing the claim of the respondent, the Tribunal held that even at peace stations, the stress and stain of military service cannot be ignored, and that rigorous military training and associated stress and stain are inherent even in the peace postings. It was further observed that the reasons given by the RMB were not in conformity with the relevant regulations and no sufficient reasons were recorded for denying disability pension to the respondent.

38. Considering the rival contentions, we find that there is no infirmity in the findings recorded by the Tribunal. We find that there is no reason given by the Medical Board to reject the claim of disability pension to the respondent. Hence, it cannot be said that the diseases are neither

attributable nor aggravated by military service in terms of para 43 of chapter VI of GMO(MP)-2008.

39. Resultantly, while we do not disturb the order of discharge of the respondents from service on the ground of medical invalidity due to Primary Hypertension and Transient Ischemic Attack (RT) MCA Territory, we direct that the respondent be granted disability pension with immediate effect with all attending benefits, as per rules.

40. Considering the case of the respondent in light of the judgments of the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India and Ors. reported in (2013) 7 SCC 316*** as well as in the case of ***Rajumon T.M. vs. Union of India & Ors. reported in 2025 SCC OnLine SC 1064,*** no ground for interference is made out.

41. We are in agreement with the legal propositions emanating out of the decisions of the Hon'ble Supreme Court as culled out by the Tribunal as reproduced above. However, while applying the same in the facts of the present case, we do not find any distinguishing grounds in the present case that would persuade us to arrive at a different conclusion from that of the Tribunal.

42. The petition being devoid of merits is accordingly **dismissed**.

(2026) 5 ILRA 2379
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 26.05.2026

BEFORE

THE HON'BLE PANKAJ BHATIA, J.

Writ B No. 137 of 2026
Connected with Writ B No. 159 of 2026

Dr. Kashmir Singh & Anr. ...Petitioners
Versus
Board of Revenue & Ors. ...Respondents

Issue(s) for consideration

(a) Whether an action to expunge or correct a fraudulent revenue entry (in this case, an unexplained inflation of land area dating back 66 years to 1359–1360 Fasli) is barred by limitation u/Article 137 of the Limitation Act, 1963 r/w Section 214 of the U.P. Revenue Code, 2006.
(b) Whether revenue authorities possess the statutory power u/s 38(5) of the Code (and Rule 191 r/w Appendix I of the U.P. Revenue Code Rules, 2016) to expunge manipulated entries at any stage without time constraints, given that the prescribed limitation period for record correction under the rules is NIL.
(c) Whether a Zamindar had the legal authority on or near 22.04.1952, to execute an agreement altering or expanding plot dimensions to defeat or circumvent the upcoming vesting of estates in the State under the U.P. Zamindari Abolition and Land Reforms (UPZA & LR) Act, 1950 (which took effect on 01.07.1952).
(d) Whether the mere long-standing existence of an unverified or fraudulent entry in the revenue records (*Khatauni*) confers valid legal title upon subsequent purchasers (holding sale deeds) against the State or public bodies like the Lucknow Development Authority (LDA).

Headnotes

A. Land Reform Law - U.P. Revenue Code, 2006: Section 30; Uttar Pradesh Zamindari Abolition and Land Reforms Act: Section 24 - In May and December 2007, the petitioners (Dr. Kashmir Singh and another) purchased 2/3rd share of land bearing Gata No. 315 in Village Ardaunamau, Tehsil Sarojni Nagar, Lucknow, through sale deeds. Their names were subsequently mutated in the revenue records. The petitioners' title relied on a chain of revenue entries originating from an alleged registered agreement dated 22.04.1952, executed by the erstwhile Zamindar in favor of their predecessor-in-interest.
In the 1332 Fasli settlement records, Gata No. 315 was recorded with an area of only 16 Biswa.
By 1359 Fasli, the area changed to 2 Bigha, 12 Biswa, 5 Biswansi.
From 1360 Fasli onwards, the recorded area dramatically increased to 23 Bighas, 8 Biswas, 5 Biswansi via ambiguous Urdu entries in the revenue records, without any supporting order from a competent court or authority on file.

In 2016, a successor of the original tenure holder filed a map correction application u/s 30 of the U.P. Revenue Code, 2006. During the inquiry, revenue authorities discovered the massive discrepancy in plot area and instituted proceedings u/Ss 32/38 of the U.P. Revenue Code, 2006 (Case No. T2017104639057007, *State v. Hasan Ali and Ors.*) to correct the revenue entries. The Lucknow Development Authority (LDA) also intervened, alleging fraudulent entries on public land earmarked for infrastructure/public utility.

On 21.03.2024, the Sub-Divisional Authority dismissed the Section 30 application and allowed the State's Section 32/38 application, ordering the expunging of the inflated revenue entries. Subsequent appeals before the Divisional Commissioner (dismissed 18.09.2025) and revisions before the Board of Revenue (dismissed 19.01.2026) affirmed this order.

B. The U.P. Revenue Code is a special Act and in view of the provisions of Section 29(2), the limitation prescribed in the U.P. Revenue Code and the Rules (Appendix - I to the Rules), the same would prevail over the limitation prescribed under the Limitation Act. (Para 66)

The petitioners argued that altering a revenue entry made in 1952 (1359–1360 Fasli) after 66 years was barred by limitation u/Article 137 of the Limitation Act, 1963 (via Section 214 of the Code). Thus, once the limitation is not prescribed specifically w.r.t. correction of entries in exercise of power u/Ss 32 and 38, the contention of the petitioners that the exercise of powers was beyond limitation cannot be accepted. (Para 67)

C. The Acts can be enacted with retrospective effect also and there being no challenge to the provisions of Ss. 22, 23 and 24, the only conclusion possible is that the restrictions placed by virtue of Ss. 22, 23 and 24 on the rights of the intermediary or a tenant will trigger from 01.07.1948 and not from the date of enactment of the Act. (Para 51)

Section 3(2) of U.P. Land Tenures (Regulation of Transfers) (Re-enactment and validation) Act, 1972 - The petitioners claimed the 1952 agreement fell under the protective umbrella of Act of 1972, and was valid prior to the vesting date under the U.P. Zamindari Abolition and Land Reforms (UPZA & LR) Act, 1950. **The transaction in the present case and agreement to sale executed by the tenant, as claimed by the petitioners, itself have been declared as null and void from the date of its execution**; the mandate of Section 3 would have no avail on the rights claimed by the petitioners. (Para 69)

On both counts, i.e., absence of agreement as well as agreement barred by law, the claim of the petitioners on ownership of land by virtue of agreement dated 22.04.1952 cannot be accepted. (Para 52)

Rights of ownership have been claimed by the petitioners by virtue of registered agreement executed by the tenure holder in favour of the predecessor in interest, based upon which the entries were mutated in the year 1952. The said agreement as claimed to have been executed on 22.04.1952, is not on record and is not available even in the revenue records. No material exists on record to demonstrate that any effort was being

made by the petitioners to obtain a copy of the agreement, either from the registrars office or from the revenue records. (Para 45, 49)

Even if for the sake of arguments it is accepted that the written agreement existed and is said to have been executed on 22.04.1952, the same would be clearly barred by virtue of the statutory enactment contained in Ss. 22, 23 and 24 of the UPZA and LR Act. Contention that the said Act came into effect from 01.07.1952 and the provisions of Ss. 22, 23 and 24 would have no effect as the agreement was executed on 22.04.1952 further merits rejection as **Section 24 provides the bar of the intermediary or a tenant for executing an agreement with effect from 01.07.1948 and not from the date of enactment of the Act.** (Para 50)

D. Mutation entries do not by themselves confer title which has to be established independently in a declaratory suit. The entire claim of the Petitioners on the land is based upon a mutation entry. (Para 56)

No material could be placed by the petitioners as to how even in terms of the agreement dated 22.04.1952, the area of holding of property bearing Gata No.315 could be increased from 2 Bighas to approximately 23 Bighas through insertions made in the revenue records. There was no order of any Court or any material to demonstrate that any other part of the land adjacent was added resulting in increase of area. (Para 53)

Petitioner's contention, that the Government was very well aware of the increase in the holdings which resulted in the consequent increase in the rent and its acceptance thereof by the State Government, in itself would not substantiate the claim of the petitioners of ownership over the increased area without there being any material to suggest that the total area acquired by the predecessor in interest was more than 2 Bighas and odd. (Para 55)

Writ petitions dismissed. (E-4)

Case Law Cited

1. Ram Piari and Ors. Vs. Board of Revenue and Ors., 1983 AWC 330 All (Para 31)
2. Commissioner, Bruhath Bangalore Mahanagra Palike & Anr. Vs. Faraulla Khan, 2021 SCC OnLine SC 3633 (Para 56)
3. Joint Collector Ranga Reddy District and Anr. Vs. D. Narsing Rao and Ors., (2015) 3 SCC 695 (Para 58)
4. Bachan and Anr. Vs. Kankar and Ors., (1972) 2 SCC 555 (Para 61)
5. Bachcha Lal and Ors. v. State of U.P. and Ors., Writ – B No.3987 of 2025, decided on 01.04.2026 (Para 62)

List of Acts

U.P. Revenue Code, 2006; Uttar Pradesh Zamindari Abolition and Land Reforms Act; U.P. Land Tenures (Regulation of Transfers) (Re-enactment and validation) Act, 1972.

List of Keywords

limitation, mutation, retrospective, tenant, agreement, ownership, registered.

Appearances for Parties

For Petitioner(s): Aseem Goswami
For Respondent(s): C.S.C., Bhanu Bajpai, Dhawal Bir Prasad, Namit Sharma, Ratnesh Chandra, Shailendra Singh Chauhan

(Delivered by Hon'ble Pankaj Bhatia, J.)

1. Writ - B No.137 of 2026 has been filed by the petitioners seeking quashing of the order dated 19.01.2026 (Annexure - 1), order dated 18.09.2025 (Annexure - 2) as well as order dated

21.03.2024 (Annexure - 3) whereby revision preferred by the petitioners was dismissed, the appeal preferred by the petitioner was dismissed and an order was passed against the petitioner modifying the revenue entries, respectively.

In Writ - B No.159 of 2026 also the same orders have been challenged.

2. As the facts and the issues raised are same, the facts culled out from Writ - B No.137 of 2026 are being recorded.

3. The petitioners of Writ - B No.137 of 2026 claim title over the property which is subject matter of the issue by virtue of two sale deeds executed in their favour on 30.05.2007 and 11.12.2007 to the extent of 1/3rd of the share each.
4. The facts as narrated in the writ petition and in the written submissions filed on behalf of the petitioners, in brief, are that the petitioners are the owner of 2/3rd share of the land bearing Gata No.315 situate at Village Ardaunamau, Tehsil Sarojni Nagar, Lucknow by virtue of sale deeds executed in their favour. The said sale deeds were executed based upon revenue entries which existed in favour of the sellers of the property. It is also stated that in terms of the sale deeds, names of the petitioners were mutated in the revenue records and they were in possession of the property to the extent of sale deed executed. It is stated that after the execution of the sale deeds some times in the year 2016, respondent no.4 - the successor of the original tenure holder - filed an application under Section 30 of the U.P. Revenue Code, 2006 *(herein after referred to as 'the Code')* seeking correction/rectification of the map of land situate at Gata No.315 M 4. It is stated that in the year 2017 in a meeting held in the office of the District Magistrate certain oral instructions were issued and some inquiry was got conducted in respect of Gata No.315 and thereafter, a case was registered under Section 32/38 bearing Case No.T2017104639057007 (State v. Hasan Ali and Ors.).

5. It has also been pleaded that on 05.09.2000 the State Government had issued a notification under Section 4 of the Land Acquisition Act intending to acquire 4 Bigha of the land comprising Khasra No.315M for construction of Amar Shaheed Path, Gomti Nagar Vistar Yojna. Subsequently, the notification was issued on 16.02.2001 under Section 6 read with Section 17 of the Land Acquisition Act only in respect of part of the proposed acquisition and an award was also passed on 17.05.2006 granting compensation to the recorded owner over 2 Bigha 12 Biswa and 5 Biswansi of land out of the acquired land bearing Khasra No.315.

6. It is also pleaded that on the one hand the application of the recorded owner moved for correction of the map under Section 30 was pending, on the other hand, some inquiry was got conducted and inquiry report dated 31.08.2017 was passed and without giving any opportunity of hearing, in the said report it was held that the entry in the Khatauni of fasli year 1359 regarding the area mentioned for Gata No.315 appears to be suspicious, and recommendation was made for cancellation for which the case was registered under Section 32/38, as recorded above.

7. It is also pleaded that in respect of the case instituted by the erstwhile owners under Section 30 of the Code, spot inspection was directed to be carried out in terms of the order dated 01.08.2018 and to submit a report thereafter. In terms of the spot inspection, a detailed report was submitted on 08.02.2019 (Annexure - 10).

8. It is also pleaded that in the case under Section 32/38, the Lucknow Development Authority (LDA) also intervened and alleged that fraudulent entry in respect of plot bearing Gata No.315 was made in various fasli year and was liable to be set aside. It is stated that the LDA tried to dispossess the petitioners and respondent no.5 (the petitioner of Writ - B No.159 of 2026) and started raising certain constructions.

9. Feeling aggrieved by the said action, respondent no.5 preferred a writ petition being Writ Petition No.2579 (M/B) of 2021 in which directions were issued for maintaining status quo and for deciding the proceedings finally under Section 30 as well as under Section 32/38 vide judgment dated 01.12.2021 (Annexure - 12).

10. It is stated that in defiance of the said interim order constructions were being made for which a contempt application was also filed and the LDA not only raised construction but also earmarked the said land for public purposes, as such, the present petitioners also preferred a writ petition being Writ - C No.9137 of 2023 wherein once again directions were issued that till the disposal of the proceedings under Section 30 and under Section 32/38, no construction shall be raised. The said direction was given in the judgment and order dated 17.10.2023. It is stated that in pursuance to the said direction given the petitioners appeared before respondent no.3/authority. Both the cases were consolidated.

11. It is also pleaded by the petitioners that a civil suit for permanent injunction was also filed which subsequently became infructuous. It is also pleaded that in the proceedings under Section 32/38, three Lekhpals namely Narendra Pathak who had prepared the report dated 31.08.2017, Shri Harswaroop and Shri lekhpal Singh had to appear for personal appearance on 17.11.2023 alongwith the petitioners and the statement of all three Lekhpals were recorded allegedly in the absence of the counsel for the petitioners. It is alleged that the petitioners were compelled to complete the cross-examination of all the three Lekhpals on the said date. Statements of the Lekhpals and the cross-examinations are contained in Annexure - 16.

12. It is stated that subsequently vide order dated 23.11.2023 both the cases were decided (Annexure - 17) wherein it was held that the mutation entries which were erroneous were liable to be corrected and the case instituted under Section 30 was liable to be dismissed, and directions were issued for carrying out the mutation entries in terms of the said order.

13. Feeling aggrieved against the order dated 23.11.2023 the petitioners approached this Court by filing a writ petition being Writ - C No.20419 of 2023 and Writ - C No.21718 of 2023 was preferred by the petitioner of Writ - B No.159 of 2026. Subsequently, both the writ petitions were allowed vide order dated 05.01.2024 and the order dated 23.11.2023 was set aside and all the parties were directed to re-appear before ADM, Finance and Revenue on 16.01.2024. Further, the ADM was directed to pass fresh order after completing the pleading and after giving them opportunity to file documents or pleading and evidence that they may wish to produce. Judgment and order dated 05.01.2024 is on record as Annexure - 21.

14. It is stated that on the date fixed i.e. on 20.01.2024 preliminary objections were filed regarding maintainability of the proceedings under Section 32/38 and certain applications were also

moved by the petitioners which were not disposed off, however, on the preliminary objection, objections were invited and 12.02.2024 was fixed for final disposal.

15. Subsequently, vide order dated 04.03.2024, the parties were directed to submit their evidences and the matter was directed to be listed on 11.03.2024. It is pleaded that as the preliminary objections were not being disposed off the petitioners filed a writ petition under Art. 227 of the Constitution which was finally disposed off on 14.03.2024 giving directions to decide both the pending cases and to submit the order passed before the High Court.

16. In terms of the directions given by the High Court, the matter was fixed for hearing on 16.03.2024 in which the LDA was also permitted to participate; despite them not being a party to the proceedings they were also permitted to file objections also.

17. It is argued that ultimately vide order dated 21.03.2024 the case of the petitioners predecessor filed under Section 30 of the Code was dismissed and the case of the State under Section 32/38 of the Code was allowed with directions to rectify the mutation entries.

18. It is stated that against the order dated 21.03.2024 once again a Writ Petition being Writ - C No.3704 of 2024 was filed, however, the same was dismissed on the ground of alternative remedy against which an order correction application and a review application was also filed which also were dismissed.

19. Challenging the order passed by the High Court, an SLP being Special Leave to Appeal (C) Nos.12519-12520/2024 was also filed which came to be dismissed on 03.06.2024. Thereafter, the petitioners preferred an appeal on 25.06.2024 under Section 38(4) of the Code. It is stated that, subsequently, on account of the nature of the land being changed, an application was filed for grant of interim relief along with an urgency applications on which respondent no.2 vide its order dated 22.07.2025 reserved the judgment on the interim relief application after hearing both parties and after about two months, respondent no.2 dismissed the appeals vide order dated 18.09.2025, despite the fact that respondent no.2 had been transferred from the post of Commissioner, Lucknow Division, Lucknow on 16.09.2025. Aggrieved against the order dated 18.09.2025, the petitioners preferred a revision under Section 210 of the Code

20. Two revisions were also preferred by respondent no.5. It is stated that, in the revision, no orders were passed on the interim relief application preferred by the petitioners, as such, respondent no.5 preferred a petition being Matters Under Article 227 No. 7384 of 2025 (M/s Antilia Organics Pvt. Ltd. v. Board of Revenue & Ors.), wherein directions were issued to move a fresh interim application; further directions were issued to decide the same and parties were directed to maintain status quo over the land in question vide its order dated 18.12.2025. It is argued that respondent no.1, without granting any opportunity and without deciding the interim application, ultimately dismissed the revisions in terms of the order dated 19.01.2026. All the said three orders dated 21.03.24, 18.09.25 and 19.01.26 are under challenge.

21. Sri Vivek Raj Singh, learned Senior Advocate appearing on behalf of the petitioners, argues that the present case is nothing but an abuse of power by the authorities and impugned

orders have been passed under pressure from the State Government as well as LDA and by the Appellate Authority despite she being transferred from the post.

22. It is also argued that the LDA has forcefully taken possession of the land in the garb of an order under Section 32/38 of the Code. It is contended by the petitioners that the entire proceedings initiated under Section 32/38 were initiated in the year 2017 in respect of the entries made in the year 1952 (1359 Fasli) and were changed after lapse of 66 years, which is barred by limitation. It is argued that, by virtue of Section 214 of the Code, the provisions of the Limitation Act are made applicable and the maximum period of limitation specified under Article 137 of the Limitation Act could be exercised within this said period i.e. a period of three years for an application, as such, the proceedings are barred by limitation. It is further argued that it is fairly well settled by the Supreme Court that even if no limitation is prescribed, the action should be taken within a reasonable period, whereas, in the present case action was taken after 66 years

23. The next limb of the argument is that there was violation of the principles of natural justice. It is argued that the authorities have given unnecessary leverage to the LDA to allow them to participate in the proceedings even after the orders were reserved, which is demonstrative of the bias and predetermined intent. It is argued that the authorities have not considered various grounds raised, which are to the following effect:

- *State being the custodian of Revenue Records.*
- *Presumption of correctness of the revenue records.*
- *Correction sought related to the revenue record of 1359 F.*
- *Long standing entries.*
- *Unexplained long delay in initiation of proceedings.*
- *Validity of sale deeds and mutation entries.*
- *Collection and increase of revenue (Lagaan) by the State authorities.*
- *Validity of the survey reports done by LDA prior acquisition.*
- *Reports regarding the land available on spot.*
- *Maps of LDA showing the correct size of the land.*
- *Report stating discrepancies in the maps.*
- *Not performing the statutory duty of up keeping the revenue records. And timely updating by State Authorities.*
- *The land being effected by the alluvial and fluvial action of river being near to river Gomti.*
- *Contradictory reports of case under 32/38 and case under section 30.*
- *Suppression of material evidence forwarded by the lekhpal including the 1952 agreement. Respondent no. 1, 2 and 3 mischievously recorded findings of non-submission of the agreement dated 22.04.1952. In reality, the said agreement was duly perused by Lekhpal Mr. Narendra Pathak and forwarded in the case under Section 32/38. His statement was recorded in examination-in- chief and cross-examination, confirming the existence of the agreement. And no rebuttal is made of the same in the entire order.*
- *Contradictory orders passed under 38(1) and 38(5) calling the entry to be a mistake and calling it fraud.*
- *Title cannot be decided in proceedings u/s 32/38.*

- *Possession cannot be taken in proceedings u/s 32/38.*
- *Non application of section 24 UP ZA & LR Act in the instant case.*
- *Changing of the "appointed date" by the State government by the act 1972.*
- *The agreement (said to be fraud) being dated prior to the appointed date.*
- *The Jamindar/ intermediary having powers to control the affairs of land prior to the enactment/application of U.P ZA & LR Act.*
- *The jamindar/ intermediary was the proprietor of the land and was authorized to enhance the rent of any tenant as well as the area, under certain conditions, as provided in United Provinces Tenancy Act 1939.*
- *Ignoring this material evidence amounts to perversity and deliberate suppression. None of these grounds were considered in any orders passed by any court including the appellate and revisional courts. The orders are therefore vitiated for non-application of mind and failure to adjudicate the specific pleas raised by petitioners.*

24. It is also argued that the exercise of powers was malafide.

25. It is next argued that the property rights of the petitioners have been violated in the garb of exercise of powers under Section 32/38 of the Code and the LDA has been made owner of the property owned by the petitioners without there being any acquisition and the same is also in violation of Art. 300A of the Constitution.

26. In light of this, it is argued that the orders impugned are liable to be set aside.

27. Shri Azhar Ikram and Shri Rishabh Kapoor, learned counsel(s) appearing on behalf of the petitioners of Writ - B No.159/2026 argue that Section 24 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act (*hereinafter referred to as the 'UPZA & LR Act'*) provides that any contract or agreement made between an intermediary and any person on or after the first day of July, 1948, which has the effect, directly or indirectly of contravening the provisions of sub-clauses (a) and (b), shall be null and void.

28. It is argued that respondent no.1 has failed to appreciate that U.P. Land Tenures (Regulation of Transfers) (Re-enactment and validation) Act, 1972 (*herein after referred to as 'the 1972 Act'*) was enacted precisely to validate transfers of land made by tenure holders before 31.05.1952. It is argued that Section 3 of the 1972 Act provides that all such transfers shall be deemed valid notwithstanding any defect in procedure, want of sanction or irregularity, provided consideration was paid and possession was delivered. It is submitted that thus, the agreement dated 22.04.1952 being prior to 31.05.1952 squarely falls within the protective umbrella of the 1972 Act and once validated by statute, such transfer cannot be reopened or nullified by the revenue authorities under Sections 32 or 38 of the Code.

29. It is further argued that respondent no.1 has erred in misconstruing the scope of Section 24 of the UPZA & LR Act. It is argued that Section 19 provides that all the land held by a hereditary tenant shall be deemed to have been settled with *him by the State Government thereby conferring* upon him the status of '*Sirdar*' with entitlement to retain possession.

30. It is also argued that Sections 246 and 247 of the UPZA & LR Act also contemplate the existence of valid leases executed by Zamindars between 01.07.1948 and 30.06.1952, thus, the leases executed in this period are not nullified in toto by Section 24; they are void only for the limited purpose of determining rehabilitation grant payable to the Zamindar.

31. Reliance is placed upon a judgment in the case of ***Ram Piari and Ors. v. Board of Revenue and Ors.; 1983 AWC 330 All*** wherein it was held that the leases executed prior to 30.06.1952 retain validity and cannot be annulled under Section 24 except for rehabilitation grant computation.

32. Contentions of Shri Azhar Ikram and Shri Rishabh Kapoor, learned counsel(s) with regard to limitation are similar to the contentions of Mr. Vivek Raj Singh, learned Senior Advocate. Submissions with regard to other arguments are also similar and are not being reproduced for the sake of brevity.

33. Shri Anuj Kuddesiya, learned Additional Advocate General appearing on behalf of the State as well as Sri Mukund Tiwari, learned Senior Advocate appearing on behalf of the LDA, controverted the submissions of the petitioners by arguing that it is wrong to allege that the Commissioner was not holding the charge on the date when the order was passed. It is admitted that, although the Commissioner was transferred on 16.09.2025, the actual handing over of the charge happened to the successor only on 20.09.2025, and thus no contention on that ground should be accepted.

34. Controverting the allegation with regard to limitation for correction of the revenue records, it is submitted that the U.P. Revenue Code Rules, 2016 specifically provide under Rule 191 read with Appendix I that for an application under Section 38(1) of the Code, for correction of records, the prescribed limitation period is NIL and once the statute itself does not provide for any limitation, the contention on that count is liable to be rejected. It is argued that when a special statute prescribes its own limitation, the same shall prevail over the general provision contained in the Limitation Act by virtue of mandate Section 29(2) of the Limitation Act and the U.P. Revenue Code being a special statute governing the land records would override the prescriptions contained in the Limitation Act, specifically in respect of Section 38 of the U.P. Revenue Code, 2016.

35. It is argued that rules or limitations are not applicable in case of a fraud. It is argued that the fraudulent entry recorded in the revenue record came to the knowledge when the application under Section 30 of the Code was filed sometime in the year 2016, on which the authorities acted swiftly and the proceedings were initiated in the year 2017, thus, there was no delay on the part of the State.

36. It is argued that the entire claim of the petitioners is based upon a fictitious entry which does not confer any right and can be expunged at any stage and can also be expunged, treating the same to be a clerical mistake. It is argued that the entire case of the petitioners is that the predecessor in interest had an agreement in his favor, executed on 22.04.1952, which, according to them, is a registered agreement and is the foundation upon which legal rights are claimed, however,

the said purported agreement has never been provided, nor have the details of registration of the said agreement ever been provided in any of the proceedings, including before this Court.

37. It is further argued that the land bearing Gata No.315 was having an area of 16 Biswa in the settlement records of 1332 Fasli, however, in the records of 1359 Fasli, the area was increased to 2 Bigha, 12 Biswa and 5 Biswansis. Somehow, strangely, from the Fasli year 1360, the area of land was increased to 23 Bighas, 8 Biswas and 5 Biswansi, for which there was no material to indicate how the area of the Zamindar could be increased vide an agreement which is alleged to have been in the possession of the petitioners predecessor in interest. It is, thus, argued that the entry in the revenue record was fraudulent and was rightly expunged by means of the impugned orders.

38. It is further argued that the entry relied upon by the petitioners is forged and fabricated. It is stated that the order in the revenue records is in Hindi, however, where the area is increased on the basis of an agreement, the same is written in Urdu, which does not even disclose the date or authority/Court which passed the order based upon which the amendments were carried out in the revenue records.

39. It also bears from the record that no such order could be found in the record room. It is argued that under the U.P. Tenancy Act or the U.P. Land Revenue Act or any other applicable statute, there is no provision entitling the Zamindar to unilaterally increase the area of the plot recorded in the revenue records. It is argued that the agreement allegedly executed in favour of the predecessor in interest of the petitioners is dated 22.04.1952 - the same could not have been executed by the erstwhile Zamindar - and for the sake of arguments even if the same is treated to be existing, the same would be barred by Section 24(b) of UPZA and LR Act, which came into force from 1st July 1958 and after the enforcement of the said Act, no authority had the jurisdiction to alter the areas of the plot or to create any rights inconsistent with the statutory provisions. Thus, it is argued that the claim of the petitioners based upon the agreement is neither supported by the fact nor is sanctioned by law and is nothing but a void document, even if the same is treated to be existing.

40. In the light of said, it is argued that the writ petitions are liable to be dismissed.

41. In the light of the contentions raised, it is essential to notice the provisions of law as existed prior to the U.P. Revenue Code, 2006 being enacted.

42. U.P. Zamindari Abolition and Land Reforms Act was enacted in the year 1951. In terms of Section 4 of the said Act, the State Government was empowered to declare a date through a notification with effect from which all estates situated in Uttar Pradesh were to vest in the State Government. In the present case, vesting took effect from 1st July 1952. Section 4 of UPZA & LR Act is quoted herein below :

*"**4. Vesting of estates in the State**.-(1) As soon as may be after the commencement of this Act, the State Government may, by notification, declare that, as from a date to be specified, all estates situate in Uttar Pradesh shall vest in the State and as from the beginning of the date so*

specified (hereinafter called the date of vesting), all such estates shall stand transferred to and vest, except as hereinafter provided, in the State free from all encumbrances.

(2) It shall be lawful for the State Government, if it so considers necessary, to issue, from time to time, the notification referred to in sub-section (1) in respect only of such area or areas as may be specified and all the provisions of sub-section (1) shall be applicable to and in the case of every such notification.″

43. It is essential to note the mandate of sections 22, 23 and 24 of UPZA & LR Act, which were restrictions on the rights of the intermediary or a tenant in respect of rent quantified or the transfer or the agreement. Sections 22, 23, and 24 are quoted here in the below:

*"**22. Variation in rent on or after July 1, 1948 not to be recognised**.-Notwithstanding any contract made, or anything done or permitted to be done, on or after the first day of July, 1948, by or on behalf of an intermediary or a tenant, in respect of any land forming part of an estate acquired under this Act, the rent payable therefor by the tenant on the date immediately preceding the date of vesting shall be deemed to be an amount equal to the rent payable by the tenant or his predecessor-in-title on the date aforesaid and any reduction or remission made therein after the said date, otherwise than in pursuance of a decree or order of a court, shall not be taken in account :*

Provided that where the rent reduced in pursuance of any decree or order aforesaid is less than the amount computed at appropriate circle rate the rent payable shall be an amount so computed.

*23**. Transfer by way of sale or gift not to be recognised.**-(1) Notwithstanding anything contained in any law, no transfer, by way of sale or gift, of any estate or part thereof-*

(a) made on or after the first day of July, 1948, shall be recognised for the purpose of assessing the amount of rehabilitation grant payable to the intermediary,

(b) [* *]*

(2) Nothing in sub-section (1) shall apply to-

(a) any sale made under order of a court in execution of any decree or order for payment of money, or

(b) any sale or gift made in favour of a waqf, trust, endowment or society established wholly for charitable purposes, unless the State Government in any particular case directs otherwise.

Explanation.-For the purposes of sub-section (2), 'society′ means a society registered under the Societies Registration Act, 1860 [Act XXI of 1860.]

24. Contract of agreement to defeat provisions of this Act to be void.-Any contract or agreement made between an intermediary and any person on or after the first day of July, 1948, which has the effect, directly or indirectly-

(a) of relieving, whether in whole or part, a bhumidhar or sirdar from the liability for the land revenue, to be paid by him for any land comprised in his holding, or

(b) of entitling an intermediary to receive, on account of rehabilitation grant an amount higher than what he would, but for the contract or agreement, be entitled to under this Act-

shall be and is hereby declared null and void.″

44. The UPZA & LR Act was repealed and its provisions consolidated under the U.P. Revenue Code, 2006. As the proceedings have been initiated under the said Act, it is essential to note the mandates of sections 30, 31, 32, and 38 of the Code, which are relevant in the present case, as well as section 214 and the limitation prescribed in Appendix-I to the U.P. Revenue Code Rules, 2016. The said provisions and Appendix are quoted as under:

*"**30. Maintenance of Map and Field Book**.-(1) The Collector shall maintain, in the manner prescribed, a map and a field book (khasra) for each such village and shall cause to be recorded therein, annually, or at such longer intervals as may be prescribed, all changes in the boundaries of the village or survey numbers, and shall also cause to be corrected, any errors or omissions which are, from time to time, detected in such map or field book (khasra).*

(2) The minjumla number shall be divided physically in the manner prescribed and revenue records including map and khasra shall be corrected accordingly.

***31. Record of Rights**.-(1) The Collector shall maintain, in the form and manner prescribed, a record of rights (Khatauni) for each village, which shall contain the following particulars, namely-*

(a) the names of all tenure holders together with survey numbers or plot numbers held by them and their areas;

(b) the nature or extent of the respective interests including shares of such persons and the conditions or liabilities, if any, attaching thereto;

(c) the rent or revenue, if any, payable by or to any such person;

(d) particulars of all land (other than holdings) belonging to or vested in the State Government, Central Government, Gram Panchayat or a local authority.

(e) such other particulars as may be prescribed.

(2) Shares of the co-tenureholders shall be determined in the manner prescribed.

***32. Correction of records.**-(1) Subject to the control of the Collector, the Sub-Divisional Officer, the Tahsildar, or the Revenue Inspector shall record, in the manner hereinafter provided in this chapter, all changes in the record of rights (Khatauni), the field book (Khasra) and the map that may take place, and all transactions that may affect any of the rights or interests recorded, and correct therein any error proved to have been made in the records previously prepared :*

Provided that order for correction in map shall be passed by the Collector.

(2) No application for correction of error under sub-section (1) where the claim is based solely on possession as well as involving intricate question of title shall be maintainable.

***38. Correction of error and omission**.-(1) An application for correction of any error or omission in the map, field-book (Khasra) or record of rights (Khatauni) shall be made to the Tahsildar in the manner prescribed.*

(2) On receiving an application under sub-section (1) or on any error or omission otherwise coming to his knowledge, the Tahsildar shall make such inquiry as may appear to him to be necessary, and refer the case along with his report to the Collector in the case of map correction and to the Sub-Divisional Officer in matter of other correction.

(3) The case shall be decided by the Collector or the Sub-Divisional Officer, as the case may be, after considering any objection filed and evidence produced before him or before the Tahsildar.

(4) Any person aggrieved by an order of the Collector or the Sub-Divisional Officer, as the case may be, under sub-section (3), may prefer an appeal to the Commissioner within a period

of thirty days from the date of such order, and the decision of the Commissioner shall, subject to the provisions of Section 210, be final.

(5) Any forged or manipulated entry in the map, the khasra or the record of rights (khatauni) may be expunged under this section.

(6) Notwithstanding anything contained in other provisions of this Code, the Revenue Inspector may correct any undisputed error or omission in the record of rights (khatauni) or khasra in such manner and after making such inquiry, as may be prescribed.

Explanation.-The power to correct any error or omission under this section shall not be construed to include the power to decide a dispute involving question of title.

* * *

***214. Applicability of Code of Civil Procedure, 1908 and Limitation Act, 1963**.-Unless otherwise expressly provided by or under this Code, the provisions of the Code of Civil Procedure, 1908 and the Limitation Act, 1963 shall apply to every suit, application or proceedings under this Code.*

* * *

APPENDIX-I
LIMITATION AND COURT FEES
[Rule 119]

Sl. No.	Section	Nature of suit, application and proceedings	Period of limitation	Proper Court Fee
1	2	3	4	5
1.	24(1)	Application for the settlement of boundary dispute	Nil	Rs.5
2.	24(4)	Appeal to Commissioner	As provided in Section 24(4)	Rs.5
3.	32	Application for correction of records.	Nil	As in Court Fees Act, 1870
4.	35(2)	Appeal to Sub-Divisional Officer	As provided in Section 35(2)	Rs.5
5.	38(1)	Application for correction of records	Nil	As in Court Fees Act, 1870
6.	38(4)	Appeal to Commissioner	As provided in Section 38(4)	Rs.5
7.	49(8)	Appeal to Record Officer	As provided in Section 49(8)	Rs.5
8.	57(2)	Application for permission to plant trees	Nil	Rs.5
9.	58(1)	Application for settlement of dispute referred to in the Section	Nil	Rs.5
10.	58(2)	Appeal to Commissioner	As provided in Section 38(2)	Rs.5

11.	66(1)	Application for cancellation of allotment	As provided in Section 66(2)	Rs.5
12.	67(5)	Appeal to Collector	As provide in Section 67(2)	Rs.5
13.	80(1)	Application for declaration	Nil	Amount mentioned as proper Court fee against serial number 14 (regarding Application for cancellation of declaration)
14.	82(1)	Application for cancellation of declaration	Nil	Rs.50
15.	82(2)(c)	Suit for ejectment by bhumidhar	Nil	As in Court Fees Act, 1870
16.	85(1)	Suit for ejectment by Gram Panchayat	Nil	As in Court Fees Act, 1870
17.	85(2)	Suit for ejectment by the land holder	Nil	As in Court Fees Act, 1870
18.	98(1)	Application for permission to transfer of land	Nil	Rs.2
19.	101(1)	Application for exchange of land	Nil	Rs.50
20.	107(2)	Application for permission to make a bequest	Nil	Rs.2
21.	115(3)	Application for restoration of land	As provide in Section 115(3)	Rs.5
22.	116	Suit for division of holding	Nil	As in Court Fees Act, 1870 payable on the plaintiff's share of land revenue
23.	122(3)	Application by person entitled to claim land	As provided in Section 122(3)	Rs.5
24.	131(1)	Suit for ejectment of an asami	Nil	As in Court Fees Act, 1870 on one year's rent
25.	131(4)	Suit for arrears of rent	Three years from the date when rent became due	Rs.5
26.	133	Suit for injunction compensation or repairs	Three years from the accrual of cause of action	As in Court Fees Act, 1870
27.	134	Suit for ejectment and damages	Nil	As in Court Fees Act, 1870 on annual land revenue
28.	137(1)	Suit for possession or compensation	Three years from the date of wrongful dispossession	As in Court Fees Act, 1870139(1)

29.	139(1)	Application for fixation of rent	One year from the date of termination of rights of asami	As in Court Fees Act, 1870
30.	141(1)	Application for computation of rent	-do-	-do-
31.	144	Suit for declaration by bhumidhar or assami	Nil	Rs.10
32.	145	Suit for declaration by the Gram Sabha	Nil	Rs.5
33.	151(1)	Suit for ejectment and damages by Goverment Lessee	Nil	As in Court Fees Act, 1870

45. In the light of the statutory backdrop and the factual averments as recorded above, the first question to be decided by this Court is to determine the rights of ownership claimed by the petitioners by virtue of the registered agreement executed by the tenure holder in favour of the predecessor in interest, based upon which the entries were mutated in the year 1952. The said agreement is claimed by the petitioners to have been executed on 22.04.1952. The admitted facts of the parties are that the agreement is not on record and is not available even in the revenue records.

46. The foundation of the petitioners′ argument with regard to the existence of the said agreement is the report dated 07.09.2017 wherein it was observed that the entries entered in the records increasing the size of Gata No.315 from area 2-12-5 to 23-8-5 was without mention of any orders passed by any competent Court and was in Urdu and appears to be suspect, as indicated in the report. The said report was subjected to examination and cross-examination and reliance is placed upon the statement of the Lekhpal who had stated in his cross-examination that he had given the report based upon the registered agreement dated 22.4.1952 and the connected records which were seen by him. The said document was also annexed and the agreement which was revealed to him during inquiry was translated into Hindi and was annexed along with the report.

47. Based upon the said statement, it is argued that the agreement exists and as the petitioners are the subsequent purchasers, they are not in possession of the said agreement which is in the possession of the Revenue Authorities, thus, the burden should not be shifted on the petitioners to produce the said document.

48. Shri Mukund Tiwari, learned Senior Advocate appearing on behalf of the LDA argues that even if this statement is treated to be correct, the said person was only verifying the report and was giving evidence in support of the said report and anything not supported in the report would not become evidence as is sought to be argued. It is argued that the statements were recorded only in support of the report that is given, which contains no mention of the agreement being seen or being translated, thus, no benefit flows in favor of the petitioners on that count.

49. Contention of learned counsel for the petitioners merits rejection as the agreement is said to be a registered agreement and no material exists on record to demonstrate that any effort was

being made by the petitioners to obtain a copy of the agreement, either from the registrars office or from the revenue records, in respect of their contentions with regard to existence of the registered agreement, as such, this Court has no option but to record that there is no agreement in existence.

50. In the alternative, even if for the sake of arguments it is accepted that the written agreement existed and is said to have been executed on 22.04.1952, the same would be clearly barred by virtue of the statutory enactment contained in Sections 22, 23 and 24 of the UPZA and LR Act. Contention of learned counsel for the petitioners that the said Act came into effect from 1st July 1952 and the provisions of Sections 22, 23 and 24 would have no effect as the agreement was executed on 22.04.1952 further merits rejection as Section 24 provides the bar of the intermediary or a tenant for executing an agreement with effect from 1st July 1948 and not from the date of enactment of the Act.

51. It is well settled that the Acts can be enacted with retrospective effect also and there being no challenge to the provisions of Sections 22, 23 and 24, the only conclusion possible is that the restrictions placed by virtue of Sections 22, 23 and 24 on the rights of the intermediary or a tenant will trigger from 1st July 1948 and not from the date of enactment of the Act.

52. Thus, on both counts, i.e., absence of agreement as well as agreement barred by law, the claim of the petitioners on ownership of land by virtue of agreement dated 22.04.1952 cannot be accepted and is liable to be rejected.

53. With regard to the next contention in respect of the increased area in the mutation entries, no material could be placed by the petitioners as to how even in terms of the agreement dated 22.04.1952, the area of holding of property bearing Gata No.315 could be increased from 2 Bighas to approximately 23 Bighas through insertions made in the revenue records. There was no order of any Court or any material to demonstrate that any other part of the land adjacent was added resulting in increase of area.

54. The argument of counsel for the petitioners is that not only the revenue records were mutated and the names of the persons were mutated, the revenue was also increased, which clearly demonstrates that the Government was very well aware of the increase in the holdings which resulted in the consequent increase in the rent and its acceptance thereof by the State Government.

55. The said contention, even if accepted for the sake of argument, in itself would not substantiate the claim of the petitioners of ownership over the increased area without there being any material to suggest that the total area acquired by the predecessor in interest was more than 2 Bighas and odd. Thus, the said contention, based upon the increased area, would not ipso facto be conclusive of the ownership rights over the increased area as claimed by the petitioners. Thus, the contention on that count also deserves to be rejected.

56. The entire claim of the Petitioners on the land is based upon a mutation entry. It is well settled that mutation entries do not by themselves confer title which has to be established independently in a declaratory suit as also reiterated by Supreme Court in case of ***Commissioner,***

Bruhath Bangalore Mahanagra Palike & Anr. v. Faraulla Khan, 2021 SCC OnLine SC 3633 which in the present case has admittedly not been filed.

57. Question of limitation was seriously argued by both the sides. It is argued by Shri Vivek Raj Singh, learned Senior Advocate appearing on behalf of the petitioners that in terms of the mandate of U.P. Revenue Code, provisions of the Limitation Act have been specifically made applicable, thus, any action beyond the prescribed period of limitation would be barred by law.

58. It is argued, in alternative, that it is well settled that even if no period of limitation is prescribed, the authorities are bound to act in a reasonable time. Extensive reliance is placed upon the judgment of the Supreme Court in the case of ***Joint Collector Ranga Reddy District and Anr. v. D. Narsing Rao and Ors.; (2015) 3 SCC 695***, wherein the Supreme Court was interpreting the scope of powers of revision which can be exercised and the limitation within which the same can be exercised. The Supreme Court, after analyzing the judgments recorded as under:

27. To the same effect is the decision of this Court in Ibrahimpatnam Taluk Vyavasaya Coolie Sangham v. K. Suresh Reddy [(2003) 7 SCC 667] wherein this Court held that even in cases of fraud the revisional power must be exercised within a reasonable period and that several factors need to be kept in mind while deciding whether relief should be denied only on the ground of delay. The Court said : (SCC p. 677, para 9)

"9. .... In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. While exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as the Land Ceiling Act)."

28. To the same effect is the view taken by this Court in Sulochana Chandrakant Galande v. Pune Municipal Transport [(2010) 8 SCC 467 : (2010) 3 SCC (Civ) 415] wherein this Court reiterated the legal position and held that the power to revise orders and proceedings cannot be exercised arbitrarily and interminably. This Court observed : (SCC p. 476, para 28)

28. The legislature in its wisdom did not fix a time-limit for exercising the revisional power nor inserted the words 'at any time' in Section 34 of the 1976 Act. It does not mean that the legislature intended to leave the orders passed under the Act open to variation for an indefinite period inasmuch as it would have the effect of rendering title of the holders/allottee(s) permanently precarious and in a state of perpetual uncertainty. In case it is assumed that the legislature has conferred an everlasting and interminable power in point of time, the title over the declared surplus land, in the hands of the State/allottee, would forever remain virtually insecure. The Court has to construe the statutory provision in a way which makes the provisions workable, advancing the purpose and object of enactment of the statute."

29. In State of H.P. v. Rajkumar Brijender Singh [(2004) 10 SCC 585] this Court held that in the absence of any special circumstances a delay of 15 years in suo motu exercise of revisional power was impermissible as the delay was unduly long and unexplained. This Court observed : (SCC pp. 588-89, para 6)

"6. We are now left with the second question which was raised by the respondents before the High Court, namely, the delayed exercise of the power under sub-section (3) of Section 20. As indicated above, the Financial Commissioner exercised the power after 15 years of the order of the

Collector. It is true that sub-section (3) provides that such a power may be exercised at any time but this expression does not mean there would be no time-limit or it is in infinity. All that is meant is that such powers should be exercised within a reasonable time. No fixed period of limitation may be laid but unreasonable delay in exercise of the power would tend to undo the things which have attained finality. It depends on the facts and circumstances of each case as to what is the reasonable time within which the power of suo motu action could be exercised. For example, in this case, as the appeal had been withdrawn but the Financial Commissioner had taken up the matter in exercise of his suo motu power, it could well be open for the State to submit that the facts and circumstances were such that it would be within reasonable time but as we have already noted that the order of the Collector which has been interfered with was passed in January 1976 and the appeal preferred by the State was also withdrawn sometime in March 1976. The learned counsel for the appellant was not able to point out such other special facts and circumstances by reason of which it could be said that exercise of suo motu power after 15 years of the order interfered with was within a reasonable time. That being the position in our view, the order of the Financial Commissioner stands vitiated having been passed after a long lapse of 15 years of the order which has been interfered with. Therefore, while holding that the Financial Commissioner would have power to proceed suo motu in a suitable case even though an appeal preferred before the lower appellate authority is withdrawn, may be, by the State. Thus, the view taken by the High Court is not sustainable. But the order of the Financial Commissioner suffers from the vice of the exercise of the power after unreasonable lapse of time and such delayed action on his part nullifies the order passed by him in exercise of power under sub-section (3) of Section 20.″

30. We may also refer to the decision of this Court in Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur [(1992) 2 SCC 598 : AIR 1993 SC 802] wherein the Court explained the legal position as under : (SCC pp. 602-03, para 13)

"13. The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not as to physical running of time. Where the circumstances justifying the conduct exist, the illegality which is manifest cannot be sustained on the sole ground of laches. The decision in Tilokchand case [Tilokchand Motichand v. H.B. Munshi, (1969) 1 SCC 110] relied on is distinguishable on the facts of the present case. The levy if based on the net profits of the railway undertaking was beyond the authority and the illegal nature of the same has been questioned though belatedly in the pending proceedings after the pronouncement of the High Court in the matter relating to the subsequent years. That being the case, the claim of the appellant cannot be turned down on the sole ground of delay. We are of the opinion that the High Court was wrong in dismissing the writ petition in limine and refusing to grant the relief sought for. We however agree that the suit has been rightly dismissed.″

31. <u>To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no</u>

period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third-party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority.

32. In the case at hand, while the entry sought to be corrected is described as fraudulent, there is nothing in the notice impugned before the High Court as to when was the alleged fraud discovered by the State. A specific statement in that regard was essential for it was a jurisdictional fact, which ought to be clearly asserted in the notice issued to the respondents. The attempt of the appellant State to demonstrate that the notice was issued within a reasonable period of the discovery of the alleged fraud is, therefore, futile. At any rate, when the Government allowed the land in question for housing sites to be given to government employees in the year 1991, it must be presumed to have known about the record and the revenue entries concerning the parcel of land made in the ordinary course of official business. Inasmuch as, the notice was issued as late as on 31-12-2004, it was delayed by nearly 13 years. No explanation has been offered even for this delay assuming that the same ought to be counted only from the year 1991. Judged from any angle the notice seeking to reverse the entries made half a century ago, was clearly beyond reasonable time and was rightly quashed.

33. Having said that we must make it clear that we have not gone into the correctness of the alleged fraudulent entry nor have we expressed any opinion whether the quashing of the notice dated 21-12-2004 would prevent the State from taking such other steps as may be permissible under any provision of law. The High Court has, as a matter of fact, made it clear that the State Government shall be free to take any other steps or proceedings in accordance with law qua the land in question. That liberty should suffice for we have examined the matter only from the narrow angle whether the khasra pahani entry of 1954-1955 could be corrected at this belated stage in exercise of the revisional powers vested in the competent authority under Section 166-B of the A.P. (Telangana Area) Land Revenue Act. That question having been answered in the negative these appeals must fail and are hereby dismissed leaving the parties to bear their own costs.″

59. On the foundation of the said judgment, it was strenuously argued that even if no limitation is prescribed, the same has to be done within a reasonable time.

60. Controverting the said argument, learned counsel for the respondents argues that the said judgment would be of no avail to the petitioners as in the said judgment itself the Supreme Court had held that the time for limitation would start with effect from discovery of fraud by the State. In the present case, discovery of fraud happened in the year 2016 when the application under Section 30 of the Code was filed by the predecessor in interest of the petitioners.

61. It is further argued that the Supreme Court was called upon to examine limitation on the revisional powers and the same would not apply in cases of fraud in revenue entries for which no limitation is prescribed, as admittedly the fraud vitiates everything. Reliance is placed upon

judgment in the case of ***Bachan and Anr. v. Kankar and Ors.; (1972) 2 SCC 555***, wherein the following was observed in Paras 14 and 17 :

"*14. The High Court fell into the error of treating the entry as irreproachable. A fictitious entry is one which is not genuine. It is an unreal entry.*

17. The rulings of this Court establish that the decision of the learned Single Judge as well as that of the Division Bench of the Allahabad High Court is erroneous. Section 20 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 speaks of a person recorded as occupant to become adhivasi of the land and will be entitled to take or retain possession as mentioned in the section. One of the principal matters mentioned in the section is that the Khasra or Khatauni of 1356 Fasli is to be prepared under Sections 28 and 33 of the U.P. Land Revenue Act, 1901. The U.P. Land Records Manual in Chapter A-V in para A-55 to A-67 lays down the manner in which the Khasra or the field book showing possession is to be prepared by the Patwari in the areas to which Zamindari Abolition and Land Reforms Act, 1950 applies. There are detailed instructions about the manner in which the enquiry should be carried out about actual possession and change in possession and corrections in the map and field book, the form in which the khasra is to be prepared. The form of khasra is given in para A-80. The form shows that the Lekhpal has to prepare a consolidated list of entries after partial or proper investigation. Again, para A-70 to A-73 to the U.P. Zamindari Abolition and Land Reforms Act show how entries have to be made in khataunis every year showing the nature of tenure of each holder. The khatauni is meant to be a record of tenure-holders. The manner of changes to be made there is laid down in para A-82 to A-83. Entries are to be checked. Extract has to be sent to the Chairman, Land Management Committee as contemplated in paragraph A-82 (iii). In this context Section 20(b)(i) of the U.P. Zamindari Abolition and Land Reforms Act which speaks of the record "as occupant" in the khasra or khatauni of 1355 Fasli refers to the khasra or khatauni being prepared in accordance with the provisions of the Land Revenue Act, 1961. Khasra is the field book provided for by Section 28 of the Land Revenue Act. Khatauni is an annual register prepared under Section 32 of the Land Revenue Act 1951. It has to be emphasised that the entry under Section 20 (b)(i) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 in order to enable a person to obtain adhivasi rights must be an entry under the provisions of law."

62. Reliance is also placed upon the coordinate bench judgment of this Court in the case of **Bachcha Lal and Ors. v. State of U.P. and Ors.; Writ - B No.3987 of 2025** decided on 01.04.2026, with emphasis on paragraphs 13, 14, 15 and 19, which read as under :

"13. So far as law in regard to long standing revenue entries is concerned, Court takes note of a judgment of Supreme Court in Vishwa Vijay Bharati v. Fakhrul Hassan, 1976 (3) SCC 642 which was followed by Supreme Court in Dharam Singh (Dead) Through Legal Representatives and others vs. Prem Singh (Dead) Through Legal Representatives, (2019) 3 SCC 530 and its relevant paragraph no. 24 is quoted below :-

24 The High Court has dealt with the above aspect of the matter and has held that continuation of entry after the order of deletion of the name of Amar Singh cannot confer any right. The judgment of this Court in Vishwa Vijay Bharati v. Fakhrul Hassan [Vishwa Vijay Bharati v. Fakhrul Hassan, (1976) 3 SCC 642] , has rightly been referred to and relied on by the High Court. This Court in para 14 of the judgment has laid down the following: (SCC p. 645)

14. It is true that the entries in the revenue record ought, generally, to be accepted at their face value and courts should not embark upon an appellate inquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction may be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry in the revenue record states but the entry is open to the attack that it was made fraudulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title.""

14. Above referred rival submissions and concurrent findings of three Authorities under U.P.C.H. Act has to be dealt with taking note of limited jurisdiction of writ to cause interference in concurrent findings of Authorities except being perverse. In this regard, Court takes note of a judgment pased by Supreme Court in Krishnanand (D) through LRs and others Vs. Deputy Director of Consolidation reported in 2015 (1) SCC 553 and for reference, its paragraph 12 is quoted below :-

"12. The High Court has committed an error in reversing the findings of fact arrived at by the authorities below in coming to the conclusion that there was a partition. No doubt, the High Court did so in exercise of its jurisdiction under Article 226 of the Constitution. It is a settled law that such a jurisdiction cannot be exercised for reappreciating the evidence and arrival of findings of facts unless the authority which passed the impugned order does not have jurisdiction to render the finding or has acted in excess of its jurisdiction or the finding is patently perverse. In the present case, though the High Court reversed the concurrent findings of the authorities below and came to the opposite conclusion on matter of facts, the High Court did not do so on the ground that the authorities below acted in excess of their jurisdiction or without jurisdiction or that the finding is vitiated by perversity."

15. Court takes note of above legal position that long revenue entries can be challenged if made surreptitiously though possibility of any fraud or forgery was neither pleaded nor mentioned in impugned orders. Reason for allowing objections filed by predecessors of respondents by all three Authorities that they failed to show any legal basis or order on which their names could be recorded suddenly after many years, though they claimed common ancestors as to respondents.

19. In aforesaid circumstances, concurrent finding of three Authorities under U.P.C.H Act cannot be interfered being not shown as perverse. An argument of re-settlement being vague was also rightly rejected by Settlement Officer of Consolidation and upheld by Deputy Director of Consolidation. The statement of Kishor was found unsufficient to prove the case of petitioners which was rejected after much deliberations by all three Authorities under U.P.C.H. Act. Nature of entries of petitioners in 1309-F was 'sikmi cultivator' for fixed period, therefore, they cannot be considered as co-tenure holder. All above factor goes against the petitioners and were the basis of all three Authorities to expunge the entries."

63. It is essential to note Section 29(2) of the Limitation Act which reads as under:

*"**29. Savings**.-...*

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of

determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law."

64. On a plain reading of Section 29(2) of the Act it is clear that the Act applies except when a special or a local law prescribes a different period of limitation from the period as prescribed in the schedule to the Limitation Act.

65. In the present case, as per the submission of learned counsel for the State and LDA, a different limitation is prescribed by a statute which is clearly a special statute, thus, the limitation as prescribed in the schedule to the Limitation Act, as argued by learned counsel for the petitioners, would have no application.

66. On the basis of the judgments cited by both parties and recorded above, what can be culled down is that the U.P. Revenue Code is a special Act and in view of the provisions of Section 29(2), the limitation prescribed in the U.P. Revenue Code and the Rules (Appendix - I to the Rules), the same would prevail over the limitation prescribed under the Limitation Act.

67. Thus, once the limitation is not prescribed specifically with regard to correction of entries in exercise of power under Sections 32 and 38, the contention of learned Senior Advocate appearing for the petitioners that the exercise of powers was beyond limitation cannot be accepted and is rejected.

68. Considering the submissions made by Shri Rishabh Kapoor, learned counsel for the petitioners and recorded in Para 28 of this judgment, it is necessary to mention Section 3 of the U.P. Land Tenures (Regulation of Transfers) (Re-enactment and validation) Act, 1972. Section 3 is quoted herein below:

*"**3. Lease and transactions made or registered after the appointed date to be void ab initio. - Notwithstanding anything contained in any law or contract to the contrary-***

(1) a lease of land by an intermediary either granted or registered on or after appointed date shall be and is hereby declared null and void from the date of execution, and the lessee (irrespective of whether he obtained delivery of possession, before or after the appointed date, either in pursuance or in anticipation of such lease) shall for purposes of Section 180 of the U. P. Tenancy Act, 1939 (U. P, Act XVII of 1939) and Section 209 of the Abolition Act, be deemed to be a person in possession of the land otherwise than in accordance with the provisions of the law for the time being in force;

(2) a transaction between an intermediary and a tenant conferring on the tenant a right to transfer by sale his holding or any part thereof either made or entered into or registered on or after the appointed date, shall be and is hereby declared null and void from the date of execution.

Explanation. In this section, registration means registration in accordance with the law for the time being in force relating to registration of documents and includes attestation under Section 57 of the U. P. Tenancy Act, 1939 (U. P. Act XVII of 1939)."

69. In fact, on a plain reading of Section 3(2), the transaction in the present case and agreement to sale executed by the tenant, as claimed by the petitioners, itself have been declared as null and void from the date of its execution; the said mandate of Section 3 would have no avail on the rights claimed by the petitioners, as such, contention of Shri Rishabh Kapoor on that count is liable to be rejected and is rejected.

70. For all the reasons recorded above, both the petitions deserve to be dismissed and are accordingly ***dismissed***.

71. It is made clear that it will be open to the petitioners to initiate appropriate proceedings for declaration of their rights if so deemed fit and as may be advised to the petitioners.

(2026) 5 ILRA 2401
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 18.05.2026

BEFORE

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

Writ-A No. 7484 of 2024

Union of India ...Petitioners
Versus
Sl-04713H Lt. Col. Ashok Kumar Singh ...Respondent

Issue(s) for consideration

(a) Whether a Release Medical Board (RMB) opinion holding a disability to be "Neither Attributable to Nor Aggravated by Service" (NANA) can be sustained in law if it is unreasoned and fails to explain why a condition detected 32 years into service was not present/detectable at entry?
(b) Whether a disease like Primary Hypertension arising during peace station posting can be presumed to be aggravated/caused by military service, considering the stress and strain inherent to military duty?
(c) Who bears the onus of proof when an officer is invalided out/discharged on medical grounds without having applied for it, and how beneficial pensionary regulations should be interpreted?

Headnotes

A. Service Law – Regulations for Medical Services for Armed Forces 1983: Regulation 423; Pension Regulations for the Army, 1961: Regulation 173 - The respondent was enrolled in the Indian Army on 03.01.1985, commissioned on 02.04.2002, and retired on 30.09.2021 after more than 36 years of service. At the time of retirement, the Release Medical Board (RMB) assessed his disability—Primary Hypertension (I 10.0)—at 30% for life. The RMB held that the disability was Neither Attributable to Nor Aggravated by Service (NANA) because its onset was in September 2017 while he was posted at a peace station (Bangalore). The Army authorities rejected his disability pension claim on 26.08.2021, and subsequently rejected his First Appeal (03.03.2022) and Second Appeal (11.01.2023).

The respondent filed O.A. No. 110 of 2023 before the Armed Forces Tribunal (AFT), Regional Bench, Lucknow. The AFT set aside the rejection, holding that even peace stations carry inherent stress, strain, and rigorous military training, and granted benefit of doubt to the respondent per *Dharamvir Singh* Vs. *Union of*

India. The Union of India challenged the AFT order before the Allahabad High Court via Writ - A No. 7484 of 2024.

B. Even when armed personnel are posted in peace areas then also there is stress and strain arising due to such posting, inasmuch as, even at a peace station there is pressure of rigorous training and stress and strain of military service exist. (Para 8)

Law on attributability - The RMB has denied attributability to the applicant only by endorsing that the disabilities 'PRIMARY HYPERTENSION (I 10)' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability on 09.09.2017 while posted in Peace location (Bangalore), therefore, applicant is not entitled to disability element of disability pension.

This reasoning of Release Medical Board for denying disability pension to applicant is not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. The applicant was enrolled in Indian Army on 03.01.1985, commissioned on 02.04.2004 and the disability has started after more than 31 years of Army service i.e. on 09.09.2017. Therefore, the benefit of doubt in these circumstances should be given to the applicant in view of *Dharamvir Singh* Vs. *Union of India & Ors.* (*infra*), and the disability of the applicant should be considered as aggravated by military service. (Para 11, 39, 40)

C. The reasons given by the RMB were not in conformity with the relevant regulations and no sufficient reasons were recorded for denying disability pension to the respondent. (Para 36, 37)

Resultantly, while the order of discharge of the respondents from service on the ground of medical invalidity due to Primary Hypertension and Transient Ischemic Attack (RT) MCA Territory has not been disturbed, direction has been issued that the respondent be granted disability pension with immediate effect with all attending benefits, as per rules. (Para 38)

Writ petition dismissed. (E-4)

Case Law Cited

1. Dharamvir Singh Vs. Union of India and Others, (2013) 7 SCC 316 (Para 8)
2. Union of India Vs. Keshar Singh, (2007) 12 SCC 675 (Para 9)
3. Union of India Vs. Surinder Singh Rathore, (2008) 5 SCC 747 (Para 9)
4. Secretary, Ministry of Defence Vs. A.V. Damodaran (Dead) through Lrs., (2009) 9 SCC 140 (Para 9)
5. Union of India Vs. Jujhar Singh, (2011) 7 SCC 735 (Para 9)
6. Union of India Vs. Talwinder Singh, (2012) 5 SCC 480 (Para 9)
7. No. 14666828M EX CFN Narsingh Yadav Vs. Union of India, (2019) 9 SCC 667 (Para 9)
8. Kerala High Court in Baby Vs. Union of India, (2003) 3 KLT 362 (FB) (Para 9)
9. Maniben Maganbhai Bhariya Vs. Distt. Development Officer, Dahod, (2022) 16 SCC 343 (Para 26)
10. Rajumon T.M. Vs. Union of India & Ors., 2025 SCC OnLine SC 1064 (Para 39)

List of Acts

Regulations for Medical Services for Armed Forces 1983; Pension regulations for the Army, 1961.

List of Keywords

service, disability, pension, medical, invalidity, attributability, reason, regulation, discharge.

Appearances for Parties

For Petitioner(s): Saurabh Misra
For Respondent(s): Ramesh Chandra

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

1. The present petition has been preferred against the judgment and final order dated 31.05.2023 passed by the Armed Forces Tribunal, Regional Bench, Lucknow (hereinafter referred to as -the Tribunal) in OA No.110 of 2023.

BRIEF FACTUAL CONSPECTUS

2. The relevant facts in brief for the purpose of deciding this petition are detailed herein below.

3. The respondent was enrolled in the Indian Army on 03.01.1985, Commissioned on 02.04.2002 and retired on 30.09.2021 (A/N) in Low Medical Category. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital Secunderabad on 27.03.2021 assessed his disability 'PRIMARY HYPERTENSION (I 10.0)' @ 30% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The respondent's claim for grant of disability pension was rejected vide letter dated 26.08.2021. The respondent preferred First Appeal which too was rejected vide letter dated 03.03.2022. The respondent preferred Second Appeal dated 11.05.2022. The respondent filed Original Application No. 500 of 2022 which was disposed off with direction to the respondents to decide the respondent's Second Appeal dated 11.05.2022 vide order dated 12.10 2022. Thereafter, the Second Appeal of the respondent too was rejected vide letter dated 11.01.2023. Consequently, the respondent□s claims for disability pension were rejected.

4. Being aggrieved by the rejection of his claim for disability pension, the respondent successfully approached the Tribunal in OA No. 110 of 2023 which was heard with other applicants seeking similar reliefs.

SUBMISSIONS OF THE PARTIES

5. Before the Tribunal it was pleaded by the respondent that he had been found medically fit at the time of enrolment and nothing adverse was noted at that point of time and he became afflicted with the said disease during his service which had nothing to do with the family conditions and since the said disease developed in course of his service, he was entitled to the disability pension.

6. The petitioners contested the claim of the respondent before the Tribunal by contending that the respondent had been posted at peace station at the time of onset of the disease and being deployed in peace stations, and it could not have contributed to the said illness nor can the military service be said to have aggravated the disease, which was confirmed by the Medical Board on examination of the respondent as mentioned above. Further, it was contended that nothing was brought on record to contradict the finding of the Medical Board and as such the claim of the respondent could not be entertained.

7. It has been submitted on behalf of Union of India that the judgment of the Tribunal is contrary to the opinion given by the Medical Board, where it has been opined that the disease contacted by the opposite party is neither attributable nor aggravated by the military service. It is submitted that preference has to be given to the opinion of the Medical Board and consequently, the order of the Tribunal is arbitrary and deserves to be interfered with.

8. Learned counsel appearing for the opposite party has supported the order passed by the Tribunal and submits that posting of the respondent would indicate that during his service tenure he has been posted in field as well as forward areas. It was submitted that the Tribunal has rightly considered the fact that even when armed personnel are posted in peace areas then also there is stress and strain arising due to such posting, inasmuch as, even at a peace station there is pressure of rigorous training and stress and strain of military service exist. Reliance has been placed by the Tribunal on the judgment of Hon'ble Supreme Court rendered in the case of **Dharamvir Singh Vs. Union of India and Others, (2013) 7 SCC 316**, and accordingly claim of respondent was allowed.

9. In support of the claim, a number of decisions were relied upon namely; Union of India v. Keshar Singh,(2007) 12 SCC 675; Union of India v. Surinder Singh Rathore, (2008) 5 SCC 747; Secretary, Ministry of Defence v. A.V. Damodaran (Dead) through Lrs., (2009) 9 SCC 140; Union of India v. Jujhar Singh, (2011) 7 SCC 735; Union of India v. Talwinder Singh, (2012) 5 SCC 480, No. 14666828M EX CFN Narsingh Yadav v. Union of India, (2019) 9 SCC 667, and the decision of Kerala High Court in Baby v. Union of India, (2003) 3 KLT 362 (FB).

FINDINGS OF THE ARMED FORCE TRIBUNAL

10. The Tribunal, on consideration of the aforesaid decisions and relevant Rules made the following observations in the impugned judgment, which are reproduced herebelow:-

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of Dharamvir Singh Versus Union of India & Others, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)].

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

11. By adopting the aforesaid principles derived from the decisions relied upon, the Tribunal allowed the claim as follows :-

7. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that the disability' PRIMARY HYPERTENSION (I10.0)' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability on 09.09.2017 while posted in Peace location (Bangalore), therefore, applicant is not entitled to disability element of disability pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability pension to applicant is not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. The applicant was enrolled in Indian Army on 03.01.1985, commissioned on 02.04.2004 and the disability has started after more than 31 years of Army service i.e. on 09.09.2017. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of Dharamvir Singh vs Union of India & Ors (supra), and the disability of the applicant should be considered as aggravated by military service.

12. We have heard the parties and gone through the records.

LAW IN THIS REGARD

13. This Court in the aforesaid decisions of Keshar Singh (supra); Surinder Singh Rathore (supra); A.V. Damodaran (supra); Jujhar Singh (supra); Talwinder Singh (supra) had examined Regulation 173 of the Pension Regulations for the Army, 1961, which deals with the primary conditions of grant of disability pension which provide, inter alia, that the disability pension would be granted if it is attributable to or aggravated by the military service. The said Regulation 173 is accordingly reproduced herein as below:

"173. Primary conditions for the grant of disability pension. - Unless otherwise specifically provided a disability pension may be granted to an individual who is invalided from

service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 per cent or above.

14. The question as to whether the disability is attributable to or aggravated by military service is to be determined as per Appendix II to the said Regulations. Relevant portions in Appendix II read as follows:

2. Disablement or death shall be accepted as due to military service provided it is certified that

(a) The disablement is due to wound, injury or disease which

(i) is attributable to military service; or

(ii) existed before or arose during military service and has been and remains aggravated thereby;

(b) the death was due to or hastened by

(i) a wound, injury or disease which was attributable to military service, or

(ii) the aggravation by military service of a wound, injury or disease which existed before or arose during military service.

Note. - The rule also covers cases of death after discharge/invaliding from service.

3. There must be a causal connection between disablement or death and military service for attributability or aggravation to be conceded.

4. In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and the benefit or reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field service case."

15. Thus, the aforesaid Regulation 173 read with Appendix II makes it very clear that disability must be attributable to or aggravated by military service for purposes of grant of disability pension and what amounts to disability has been elaborated in Appendix II of the Regulations as quoted above. The Appendix II clarifies that there must be a causal connection between the disablement or death and military service for attributability to be considered. Clause 4 of the aforesaid Appendix II further provides that in deciding on the issue of entitlement, all the evidence, both direct and circumstantial, will be taken into account and the benefit or reasonable doubt will be given to the claimant and this benefit will be given more liberally to the claimant in field service case.

16. As to how a disability can be attributed to service has been further explained clearly in Regulation 423 of the Regulations for Medical Services for Armed Forces 1983, which has been also referred to by the Tribunal and by the Apex Court in the above-mentioned cases, which is reproduced herein below for easy reference:

*"**423. Attributability to service**.- (a) For the purpose of determining whether the cause of a disability or death is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence, both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to*

the individual. The evidence to be accepted as reasonable doubt, for the purpose of these instructions, should be of a degree of cogency, which though not reaching certainty, nevertheless carry the high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of doubt could be given more liberally to the individual, in cases occurring in field service/active service areas.

(b) The cause of a disability or death resulting from wound or injury, will be regarded as attributable to service if the wound/injury was sustained during the actual performance of "duty" in armed forces. In case of injuries which were self-inflicted or due to an individual's own serious negligence or misconduct, the Board will also comment how far the disability resulted from self-infliction, negligence or misconduct.

(c) The cause of a disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and circumstances of duty in the armed forces determined and contributed to the onset of the disease. Cases, in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for service in the armed forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(d) The question, whether a disability or death is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the death certificate. The Medical Board/medical officer will specify reasons for their/his opinion. The opinion of the Medical Board/medical officer, insofar as it relates to the actual cause of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be attributed to service will, however, be decided by the pension sanctioning authority.

(e) To assist the medical officer who signs the death certificate or the Medical Board in the case of an invalid, the CO unit will furnish a report on:

(i) AFMS F-81 in all cases other than those due to injuries.

(ii) IAFY-2006 in all cases of injuries other than battle injuries.

(f) In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a Medical Board form and countersigned by the ADMS (Army)/DMS (Navy)/DMS (Air)."

17. A careful examination of Regulation 423 of the Regulation for Medical Services for Armed Forces would reveal the following aspects:

(i) It is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions.

(ii) It is, however, essential to establish that the disability or death bore a causal connection with the service conditions.

(iii) All evidence, both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to the individual.

(iv) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for service in the armed forces.

(v) However, if the medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(vi) The question, whether a disability or death is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the certificate. The Medical Board/medical officer will specify reasons for their/his opinion.

(vii) The opinion of the Medical Board/medical officer, insofar as it relates to the actual cause of the disability or death and the circumstances in which it originated will be regarded as final.

(viii) The question whether the cause and the attendant circumstances can be attributed to service will, however, be decided by the pension sanctioning authority.

(ix) To assist the medical officer who signs the death certificate or the Medical Board in the case of an invalid, the CO unit will furnish a report on:

(a) AFMS F-81 : in all cases other than those due to injuries.

(b) IAFY 2006 : in all cases of injuries other than battle injuries.

RECORDS CONCERNING MEDICAL BOARD PROCEEDINGS

18. Having kept the aforesaid aspects in mind, we have examined the records, more particularly the original records of the Medical Board Proceedings produced before us, a copy of which is annexed as Annexure No. 2 to the writ petition.

A careful perusal of the aforesaid medical proceedings reveals the following:

(I) The details of the field/operational service have been mentioned in the said proceedings of the Medical Board (as per Form AFMSF-16), a copy of which is also annexed as Annexure No.2 to the writ petition.

(II) It is to be noted that under Regulation 423 (a) referred to above, it is mentioned that for the purpose of determining whether the cause of disability is attributable to the service, it is immaterial that the cause giving rise to the disability occurred in an area declared to be field service/active service area or under normal peace conditions.

(III) In para 2 of Part II of the said Form, the particulars of the disease from which the respondents was suffering from are mentioned as follows :-

PART II			
Illness, wound,	**First Started Date**	**Where treated**	**Approximate treated dates**

injury	& Place		and periods treated
Primary Hypertension (I 10.0)	09 Sep 17 Bangalore	CH (AF) Bangalore	Sep 2017 to till dt

(IV) The aforesaid entries are, therefore, a clear acknowledgement of the fact that the respondent was not suffering from the disease of Primary Hypertension (I-10) when he entered the service. Thus, it would be deemed that this disease arose while in service as provided under Regulation 423.

(V) Coming to Opinion of the Medical Board of Form AFMSF-16, the following entries have been made:

PART - VII			
Disability	**Attributable to Service (Y/N)**	**Aggravated by Service (Y/N)**	**Detailed Justification**
Primary Hypertension (I-10.0)	No	No	Disability originated in Aug 2017 while serving in peace area (Bangalore). Thereafter, the offr continued service in peace area. As there is no close time association with service in Fd/Cl Ops/HAA. NAHA is conceded as per Para 43, Ch-VI, GMO-2008.

(VI) It may be noted that the aforesaid entries in Part VII are devoid of any details, and clearly shows that the medical history of the respondent is not recorded. Hence, it can be said that the Medical Board had not considered the medical history of the respondent before coming to the conclusion that the disease of the respondent did not arise during service.

19. Perusal of the aforesaid entries made in the Form AFMSF-16 reveals that no reasons have been assigned at all as regards the nature of disability on which the opinion of the Medical Board is based that the respondent was suffering from Primary Hypertension, though it has been specifically mentioned therein that the Medical Board should state fully the reasons with regard to the disability on which the opinion of the Medical Board is based.

REQUIREMENT OF REASONED DECISION

20. In our opinion, the requirement to give reasons by the Medical Board is crucial, critical, decisive and necessary for the purpose of granting or denying disability pension and it is not a mere formality, but a necessary material on the basis of which the pension sanctioning authority has to decide about the grant or refusal of disability pension.

21. As noticed above, it has been specifically provided under Clause (d) of Regulation 423 as quoted that the question as to whether the disability is attributable to or aggravated by service or not, will be decided as regards its medical aspects by the Medical Board and the Medical Board

will specify reasons for their opinion and the question whether the cause and attendant circumstances can be attributed to service will be decided by the pension sanctioning authority.

22. Thus, this requirement to give reasons by the Medical Board about their opinion is in our view absolutely necessary as also required under Regulation 423(d) for the reason that the fate of the future career of the serviceman is going to be decided by the opinion of the Medical Board, which is to be treated as final as regards the cause of disability and the circumstances in which the disability originated. The continuation of the service of the concerned serviceman and as to whether he will be entitled to disability pension is dependent on the opinion of the Medical Board which is also to be treated as the final one.

23. Hence, the rules mandate giving of reasons by the Medical Board while rendering its opinion. The reasons given by the Medical Board would obviously be the basis for determination by the competent authority whether the serviceman would be discharged from service and whether he would get disability pension.

24. Accordingly, in our opinion, if the serviceman is discharged from service or denied the disability pension on the basis of a medical opinion which is devoid of reasons, it would strike at the root of the action taken by the authority and such action cannot be sustained in law.

25. We, therefore, hold that if any action is taken by the authority for the discharge of a serviceman and the serviceman is denied disability pension on the basis of a report of the Medical Board wherein no reasons have been disclosed for the opinion so given, such an action of the authority will be unsustainable in law.

BENEFICIAL INTERPRETATION

26. We must appreciate the fact that the provisions for grant of disability pension are in the nature of a beneficial scheme intended to provide succour to servicemen in hard times who have been discharged from service after having served the nation with dedication. Accordingly, a liberal approach must be adopted while construing such beneficial provisions. This approach has also been considered by the Apex Court in Maniben Maganbhai Bhariya v. Distt. Development Officer, Dahod, (2022) 16 SCC 343, albeit, in the context of the Payment of Gratuity Act, 1972 as applicable to Anganwadi workers, the principles of which, in our opinion, are equally applicable in the present case dealing with disability pension. In the said case it was observed as follows:

"55. When social security legislations are being interpreted, it always has to be interpreted liberally with a beneficial interpretation and has to be given the widest possible meaning which the language permits, known as beneficial interpretation. When a statute is meant for the benefit of a particular class and if a word in the statute is capable of two meanings i.e. one which would preserve the benefits and one which would not, then the former is to be adopted."

27. Under these circumstances, a much more liberal view ought to be adopted while dealing with the cases of discharge of servicemen from service on account of suffering from Primary

Hypertension (I-10) as they may face several impediments and difficulties in proving the causal connection of the said disease with the military service.

28. It is also to be noted that this is not a case where the opposite party had applied for discharge of service on account of suffering from Primary Hypertension (I-10.0). It was the authority themselves who after observing his condition decided to discharge him from service after obtaining the opinion of the Medical Board. In such a situation, where the serviceman himself had not applied for discharge, but has been discharged by the authority, the onus of proving the disability and grounds of denying disability pension would lie heavily on the authority. Since it is the statutory requirement that the opinion of the Medical Board is to be the basis of the discharge, in our view, if the opinion of Medical Board is devoid of reasons, the act of the authority based on mere opinion sans reasons can certainly be questioned.

29. According to this Court, if the decision of the authority to discharge a serviceman is based on a medical report which is devoid of reasons, which are required to be given as also mandated by rules as discussed above, such an act of the authority specially when it denies any post discharge benefit will be rendered invalid in the eyes of law.

30. In such cases, it can be said that the authorities have failed to discharge the burden of establishing that the employee deserved to be discharged from service on account of such illness without any benefit of pension and such action has to be considered arbitrary and liable to be interfered with.

31. Assigning reasons for the opinion of the Medical Board in the present case also becomes imperative and salutary for the reason that while the respondent had pleaded that at the time of entry in the service, this disease was not detected, but only after about 32 years of service and hence, as per rules also, it will be deemed that it arose while in service, the Medical Board gave the opinion that it was Primary Hypertension (I 10.0). The opinion of the Medical Board is, thus, inconsistent with the plea of the respondent. Hence, it was incumbent upon the Medical Board to assign reasons as to why the disease could not be detected at the time of entry in service and as the onset of the disease was only in August 2017 which is after about 32 years of service of entry in service. Without there being any reasons given by the Medical Board for their opinion of Primary Hypertension (I 10.0), we are afraid, it would be unfair to the respondent that such an opinion of the Medical Board is to be taken as final and binding to deprive any service benefit to the respondent.

32. We further find that there is sufficient medical opinion existing with regard to Living And working in high altitude which may cause hypertension by putting the body in state of low oxygen and it can be a temporary state or a chronic medical condition. It is also well known that poor oxygen diffusion can lead to hypoxia, or low oxygen levels and to compensate the body kicks off a cascade of reactions including increasing heart rate, constructing blood vessels in the lungs and retaining fluids all of which can elevate blood pressure. The medical board ought to have taken all the aforesaid factors while considering the case of the opposite party for grant of disability pension, and onus lay upon them to discuss and consider these factors and give adequate reasons before rejecting his claim for grant of disability pension.

33. Thus, in the facts and circumstances discussed above, we are of the view that while there cannot be any dispute about the correctness of the legal principles enunciated by the Apex Court in the above-mentioned cases of Keshar Singh (supra), Surinder Singh Rathore (supra), A.V. Damodaran (supra); Jujhar Singh (supra) and Talwinder Singh (supra), we would hasten to add that the opinion of the Medical Board which is to be treated as final and binding as per aforesaid Regulations, has to be supported by reasons for arriving at the conclusion about the nature of medical disability, before the same can be acted upon for the purpose of discharge of a serviceman and denial of disability pension as otherwise, a valuable right of a serviceman to get retiral benefits who has rendered long years of service for the nation would be unjustly deprived.

34. Accordingly, we hold that the order of discharge of the respondent and denial of disability pension to him based on a medical opinion without providing full reasons to support the opinion cannot be said to be valid.

CONCLUSION

35. In the present case, the respondent was enrolled in the Indian Army on 03.01.1985 and commissioned on 02.04.2002 and retired on 30.09.2021 (A/N) in Low Medical Category. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital Secunderabad on 27.03.2021 assessing his disability 'PRIMARY HYPERTENSION (110.0)' @ 30% for life and opining that the disabilities were neither attributable to nor aggravated by service. Consequently, his claim for grant of disability pension was rejected.

36. The Tribunal, after considering the entire record of the RMB as well as the postings of the respondent, observed that the disease was detected during his service. While allowing the claim of the respondent, the Tribunal held that even at peace stations, the stress and stain of military service cannot be ignored, and that rigorous military training and associated stress and stain are inherent even in the peace postings. It was further observed that the reasons given by the RMB were not in conformity with the relevant regulations and no sufficient reasons were recorded for denying disability pension to the respondent.

37. Considering the rival contentions, we find that there is no infirmity in the findings recorded by the Tribunal. We find that there is no reason given by the Medical Board to reject the claim of disability pension to the respondent. Hence, it cannot be said that the disease is neither attributable nor aggravated by military service in terms of para 43 of chapter VI of GMO(MP)-2008.

38. Resultantly, while we do not disturb the order of discharge of the respondents from service on the ground of medical invalidity due to Primary Hypertension and Transient Ischemic Attack (RT) MCA Territory, we direct that the respondent be granted disability pension with immediate effect with all attending benefits, as per rules.

39. Considering the case of the respondent in light of the judgments of the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India and Ors. reported in (2013) 7 SCC 316***

as well as in the case of ***Rajumon T.M. vs. Union of India & Ors. reported in 2025 SCC OnLine SC 1064,*** no ground for interference is made out.

40. We are in agreement with the legal propositions emanating out of the decisions of the Hon'ble Supreme Court as culled out by the Tribunal as reproduced above. However, while applying the same in the facts of the present case, we do not find any distinguishing grounds in the present case that would persuade us to arrive at a different conclusion from that of the Tribunal.

41. The petition being devoid of merits is accordingly **dismissed**.

(2026) 5 ILRA 2413
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.05.2026

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ-A No. 142 of 2026

Vinit Kumar **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue(s) for consideration

(a) Whether an order declaring an appointment *void ab initio* and cancelling service on allegations of submitting forged/fabricated documents requires a full formal disciplinary inquiry under the U.P. Government Servant (Discipline and Appeal) Rules, 1999 r/w Rule 5(3) of the U.P. Basic Education Staff Rules, 1973, or if a summary show-cause notice procedure suffices?
(b) Whether the principles of natural justice were violated by failing to supply the petitioner with foundational adverse evidence—specifically, the verification report declaring Roll No. 0374070 forged and the record showing that such a mark sheet was ever submitted by the petitioner?

Headnotes

A. Service Law - U.P. Government Servant (Discipline and Appeal) Rules, 1999: Rules 7, 8, 9; U.P. Basic Education Staff Rules, 1973: Rule 5(3) - The petitioner (Vinit Kumar) was selected during the 2014–15 recruitment drive for 15,000 Assistant Teachers in primary schools run by the Board of Basic Education, U.P. Following counseling on 26.10.2015, he was issued an appointment order on 28.06.20216, and joined Primary School, Kertoo, Block-Un, District Shamli, on 04.07.2017. Due to personal family tragedies (demise of his mother and real brother) and illness, the petitioner remained absent from duty starting 01.07.2020. After submitting representations, the District Basic Education Officer (BSA), Shamli, permitted him to rejoin duty on 20.12.2022, following an initial verification process of his credentials.

When the petitioner sought the release of his withheld salary after rejoining, administrative investigations were initiated. The BEO reported that the petitioner had presented two different Intermediate (Class 12) mark sheets from the 2008 U.P. Board examination:
Roll No. 0374070: Found in earlier verification records/DIET admission files, which upon online verification belonged to another candidate. The U.P. Board confirmed this roll number was never validly assigned to the petitioner.

Roll No. 0324070: Produced by the petitioner during 2022 rejoining and 2015 counseling, which the U.P. Board later confirmed was genuine and belonged to the petitioner.
Discrepancies were also flagged regarding the petitioner's B.Tech degree (recorded as "Bachelor of Technology" in Hindi and "Master of Business Administration" in English on the internal portal).

Multiple show-cause notices were issued to the petitioner in mid-2025 alleging submission of fake/forged Intermediate credentials and a doubtful B.Tech degree. On 06.10.2025, the BSA, Shamli, passed an order declaring the petitioner's appointment *void ab initio* and cancelling it with immediate effect on the grounds of fraudulently obtaining employment using forged certificates.

B. It is well settled that fraud vitiates all solemn acts, and an appointment obtained on the basis of forged or fabricated documents is *void ab initio* and confers no enforceable right. It is also a settled principle of law that **where the very foundation of appointment is tainted, the requirement of holding a regular disciplinary inquiry is not mandatory, and the authorities are justified in cancelling such appointment.** (Para 104)

The record reflects that the petitioner, at the time of submitting his online application as well as during counselling and BTC training, consistently disclosed his Intermediate Examination, 2008 Roll Number as 0374070, which formed the very foundation of his eligibility. However, at the stage of rejoining in the year 2022, after a prolonged unauthorized absence, the petitioner introduced a different roll number, i.e., 0324070, and sought to rely upon a different mark sheet. (Para 101)

The record shows that the petitioner has relied upon two different Intermediate roll numbers at different stages. The roll number originally disclosed, i.e., 0374070, has been found to be forged, and the petitioner has failed to furnish any satisfactory explanation for such inconsistency. The B.Tech degree of the petitioner is also *prima facie* doubtful in view of the material discrepancies pointed out by the respondents. Hence, **the appointment of the petitioner is vitiated by fraud and misrepresentation and is *void ab initio*.** In view of the serious nature of discrepancies, this Court deemed it appropriate to direct a comprehensive, multi-level inquiry so as to ascertain the authenticity of the petitioner's educational credentials in their entirety. Hon'ble Court has issued directions and manner in which the: (i) Inquiry regarding Intermediate Examination, 2008 and (ii) Inquiry regarding B.Tech Degree shall be conducted. (Para 102, 103, 105)

The records maintained at DIET, the counselling authority, and the Basic Education Department shall be examined to identify: the documents originally submitted by the petitioner; any alteration or substitution of records, the stage at which such discrepancies arose. (Para 106)

It is an admitted position that the petitioner remained absent for a period of two years and sought to rejoin only in 2022, without any prior intimation to the competent authorities and without any sanctioned leave. There is not even a whisper in the pleadings explaining whether the petitioner was engaged elsewhere during this period or furnishing any justification for such prolonged unauthorized absence. Accordingly, these facts assume significance, as the conduct of the petitioner indicates that the intervening period may have been utilized to manage or manipulate records, particularly for the purpose of substituting the original certificate submitted at the time of appointment with another certificate bearing a different roll number. Therefore, these aspects are also relevant and must necessarily be taken into consideration while conducting the inquiry. (Para 107)

No illegality is found in the impugned order dated 06.10.2025, therefore, no interference is required. However, the directions for comprehensive inquiry, shall be strictly complied with, and the reinstatement of the petitioner shall be subject to the final outcome of the inquiry. (Para 108 to 110)

Writ petition dismissed. (E-4)

Case Law Cited

State of Bihar vs. Kriti Narayan Prasad, (2019) 1 ESC 3 (SC) (Para 90)

List of Acts

U.P. Government Servant (Discipline and Appeal Rules), 1999; U.P. Basic Education Staff Rules, 1973.

List of Keywords

education, discipline, appointment, benefits, salary, arbitrary, due consideration, proper inquiry, unsustainable, fraud, verification report.

Appearances for Parties

For Petitioner(s): Man Bahadur Singh, Saurabh Kumar, Shivendra Pratap Singh

For Respondent(s): C.S.C., Yatindra

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard Mr. Man Bahadur Singh, learned counsel for the petitioner, Mr. Shailendra Singh, learned counsel for the State and Mr. Yatindra, learned counsel for respondent nos.2 & 3.

"(i). The present writ petition has been instituted challenging the order dated 06.10.2025 passed by the District Basic Education Officer, Shamli, whereby the appointment of the petitioner on the post of Assistant Teacher has been declared void ab initio and cancelled with immediate effect.

(ii). A further prayer has been made seeking issuance of a writ, order or direction in the nature of mandamus commanding the respondent no.3 to reinstate the petitioner on the post of Assistant Teacher along with all consequential benefits, including continuity of service and payment of arrears of salary."

2. Placing the brief facts of the case, learned counsel for the petitioner submits that the petitioner passed the High School Examination in the year 2006, bearing Roll No.0612450, and thereafter passed the Intermediate Examination in the year 2008, bearing Roll No.0324070, both in First Division, from the Board of High School and Intermediate Education, Uttar Pradesh.

3. It is further submitted that the petitioner obtained a degree of Bachelor of Technology in the year 2012 in First Division from Sundardeep College of Engineering and Technology, Ghaziabad, affiliated to Uttar Pradesh Technical University, Lucknow.

4. It is further submitted that the petitioner thereafter successfully completed the two-year Basic Training Certificate (BTC) course, Batch 2012, in the year 2015, securing First Division.

5. Learned counsel for the petitioner further submits that the educational certificates and mark sheets of the petitioner, including those pertaining to his graduation, were duly verified during the course of his BTC training by the Principal, DIET, for the session 2012-2015, and that the BTC certificate was issued only upon due verification and satisfaction regarding the authenticity of all his credentials.

6. It is further submitted that the petitioner qualified the Uttar Pradesh Teachers Eligibility Test (UPTET) for the Primary Level held for the session 2013-14, the result whereof was declared in the year 2014.

7. Learned counsel for the petitioner further submits that the State Government initiated a recruitment process for appointment of 15,000 Assistant Teachers during the year 2014-15 in primary schools, run and managed by the Board of Basic Education, Uttar Pradesh, Prayagraj. The petitioner, being fully qualified and otherwise eligible, applied pursuant to the said advertisement and was duly selected.

8. It is further submitted that the counselling of the petitioner was conducted in the office of the District Basic Education Officer, Shamli, on 26.10.2015, wherein the petitioner produced all his original documents, including mark sheets and certificates of the Intermediate Examination, which were duly verified, and a receipt acknowledging submission of such documents was issued to him. It is further submitted that thereafter Respondent No.3 issued an appointment order dated 28.06.2016, pursuant to which the petitioner joined his duties at Primary School, Kertoo, Block-Un, District Shamli, on 04.07.2017. Since then, the petitioner has been discharging his duties to the satisfaction of his superiors and, as contended, no complaint has ever been made against him.

9. It is further submitted that on account of certain compelling personal circumstances, including illness, demise of his mother, death of his real brother, and other attendant difficulties, the petitioner remained absent from duties with effect from 01.07.2020. It is contended that thereafter the petitioner submitted a representation seeking permission to resume his duties, and pursuant thereto, the District Basic Education Officer, Shamli, by order dated 09.12.2022 permitted the petitioner to rejoin the institution.

10. It is further submitted that prior to permitting the petitioner to rejoin his duties, his educational credentials were duly verified by the competent authorities. The High School Certificate of the year 2006, bearing Roll No.0612450, and the Intermediate Certificate of the year 2008, bearing Roll No.0324070, were verified. Further, the petitioner's B.Tech degree of the year 2012, bearing Roll No. 0832810053, was also verified by the office of Dr. A.P.J. Abdul Kalam Technical University, Uttar Pradesh, Lucknow, vide office order dated 11.11.2022, bearing No.20149.

11. It is further submitted that pursuant to the aforesaid office order, the petitioner was permitted to rejoin his duties on 20.12.2022 and continued to discharge the same. However, it is contended that the salary of the petitioner was not released, compelling him to submit an application dated 16.09.2023 before the District Basic Education Officer, Shamli, seeking release of his salary.

12. It is further stated that on the same day, the petitioner also submitted an application before the District Magistrate, Shamli, wherein specific allegations were levelled against one Shri Rishipal, a clerk working in the office of respondent no.3, alleging that he was instrumental in withholding the petitioner's salary for extraneous considerations. The said application was personally submitted by the petitioner before the District Magistrate, Shamli.

13. It is further submitted that pursuant to the aforesaid application moved by the petitioner, the District Basic Education Officer, Shamli, vide letter dated 21.12.2023, sought a report from the Block Education Officer, Block- Un, for withholding the salary.

14. In response thereto, the Block Education Officer, Un, submitted a report stating that at the time of rejoining in December, 2022, the petitioner had produced an Intermediate mark sheet bearing Roll No.0374070, which, upon verification from the official website of the Board, was found to be allotted to one Poonam, daughter of Yadram Singh. On the basis of the said discrepancy, the Block Education Officer sought to justify the withholding of the petitioner's salary.

15. Taking note of the aforesaid report, the District Basic Education Officer, Shamli, vide letter dated 09.02.2024, directed the Block Education Officer, Un, to submit a fresh report along with supporting evidence.

16. It is further contended that along with the earlier report, the Block Education Officer, Un, also placed on record a prior report dated 24.08.2020, wherein the Intermediate mark sheet and certificate of the petitioner bearing Roll No.0324070, and not Roll No.0374070, thereby indicating an apparent inconsistency in the records relied upon for withholding the petitioner's salary.

17. It is further submitted that Respondent No.3 issued a show cause notice dated 17.06.2025 to the petitioner alleging that he had submitted forged and fabricated mark sheet and certificate of the Intermediate Examination, 2008, bearing Roll No.0374070. It was further alleged that the mark sheet and certificate pertaining to the petitioner's B.Tech degree were also found to be forged. The petitioner was accordingly required to submit his reply within a period of one week.

18. In response thereto, the petitioner submitted a detailed reply dated 28.06.2025 before Respondent No.3, categorically stating that his correct roll number in the Intermediate Examination is 0324070 and that all his mark sheets and certificates are genuine. It was further asserted that his B.Tech degree is also genuine and had already been duly verified by the competent authorities. The said reply was duly submitted in the office of Respondent No.3 on 28.06.2025.

19. It is contended that without considering the aforesaid reply, Respondent No.3 issued another notice dated 14.07.2025, which was substantially a reiteration of the earlier notice. The petitioner again submitted a detailed response dated 28.07.2025, reiterating that all his educational documents are genuine and clarifying that he had appeared in the Intermediate Examination with Roll No. 0324070. Thereafter, Respondent No.3 issued yet another notice dated 11.08.2025 stating that the reply submitted by the petitioner was not found satisfactory and granting him a final opportunity to submit a written explanation along with supporting evidence. In compliance thereof, the petitioner submitted a detailed reply dated 27.08.2025.

20. It is the grievance of the petitioner that without properly appreciating or considering the replies submitted by him, and without conducting any fair or proper inquiry as contemplated under the relevant Rules of 1999, Respondent No.3 proceeded to pass the impugned order dated 06.10.2025, whereby the appointment of the petitioner has been cancelled.

21. Learned counsel for the petitioner submits that the impugned order has been passed in a wholly arbitrary manner, without due consideration of the replies submitted by the petitioner in response to each of the notices issued by Respondent No.3. It is further contended that no proper inquiry, as mandatorily required under the U.P. Government Servant (Discipline and Appeal Rules), 1999, has been conducted prior to passing of the impugned order. Consequently, the impugned action stands vitiated for non-compliance with the statutory provisions as well as for being in flagrant violation of the principles of natural justice.

22. It is further submitted that the District Basic Education Officer has, at no point of time, furnished any verification report or letter obtained either from the Board of High School and Intermediate Education, Uttar Pradesh, or from the Technical University, Uttar Pradesh, Lucknow, along with the notices issued to the petitioner. In the absence of such foundational material, the allegations leveled against the petitioner remain unsubstantiated and the impugned action stands vitiated.

23. Learned counsel for the petitioner submits that the petitioner's appointment was made only after due verification of all original documents, including the educational certificates. It is specifically contended that the Intermediate Certificate, bearing Roll No. 0324070, was duly produced and verified at the relevant point of time. It is further submitted that all original educational records of the petitioner have remained in the custody of the respondent authorities since the counselling conducted in the year 2015. Despite this, at no point of time prior to the passing of the impugned order did the respondents raise any allegation that the petitioner had submitted forged or fabricated documents, whether in respect of the Intermediate Certificate or any document purportedly issued by the Technical University.

24. It is further submitted that the original educational records and documents of the petitioner were duly verified by the Principal, DIET concerned at the relevant point of time. No discrepancy or irregularity was ever pointed out during such verification. It is specifically contended that no allegation had ever been made that the petitioner produced any forged document, nor that any Intermediate Certificate bearing Roll No.0374070 was submitted by the petitioner. There is also no material on record to suggest that any other forged or fabricated educational document was ever furnished by the petitioner.

25. Learned counsel for the petitioner submits that the mandatory inquiry, as contemplated under Rule 5(3) of the U.P. Basic Education Staff Rules, 1973, read with Rules 7, 8 and 9 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999, has not been conducted in the present case. It is contended that compliance with the aforesaid provisions is a condition precedent for passing any adverse order. In the absence of such an inquiry, the impugned order stands vitiated for non-compliance of mandatory statutory requirements and is, therefore, patently illegal and unsustainable in the eyes of law.

26. Learned counsel for the petitioner submits that the impugned order has been passed in complete disregard of the petitioner's ten years of satisfactory and unblemished service. It is further contended that the order has been issued without affording any opportunity of hearing and without

conducting a proper inquiry. The impugned action is, therefore, in clear violation of the principles of natural justice and is liable to be set aside as being bad in law.

27. Learned counsel for the petitioner submits that the impugned order is vitiated by a patent error of fact, inasmuch as the respondent authorities have proceeded on an incorrect assumption that the petitioner's Intermediate Examination Roll No. is 0374070, whereas, in fact, the correct Roll No. is 0324070. It is contended that the said fact stands duly verified by the Board of High School and Intermediate Education, Uttar Pradesh, as per report dated 14.11.2022. It is further submitted that the District Basic Education Officer had himself verified the petitioner's educational documents at the time of appointment. In view thereof, the very foundation of the impugned order is erroneous, rendering the same unsustainable in law.

28. It is further submitted that the petitioner's graduation certificate also stands duly verified by the Technical University, as is evident from the report dated 11.11.2022. However, the said material document has not been considered by the respondent authorities while passing the impugned order. The non-consideration of such vital evidence renders the impugned order arbitrary and unsustainable in law.

29. It is further submitted that, pursuant to the directions issued by this Hon'ble Court, the Board of High School and Intermediate Education, U.P., Prayagraj, furnished its instructions, wherein the genuineness of the petitioner's Intermediate mark sheet bearing Roll No.0324070 has been duly affirmed.

30. It is further submitted that the respondents have completely ignored the material fact that the petitioner's absence w.e.f. 01.07.2020 had already been condoned, and thereafter, upon due verification of all educational documents, the petitioner was permitted to rejoin/continue on the post vide order dated 09.12.2022. Once the respondents themselves had regularized the petitioner's position after such verification, it was not open to them to subsequently take a contrary stand without any fresh material or due process, rendering the impugned action arbitrary and unsustainable in law.

31. It is further submitted that even the Basic Shiksha Adhikari, vide letter dated 09.02.2024, has expressed doubt over the report submitted by the Block Education Officer dated 24.08.2020, which appears to have been prepared on an erroneous assumption regarding the petitioner's Intermediate Examination Roll Number as □0374070□. In view thereof, the Basic Shiksha Adhikari sought clarification on the said discrepancy. This itself demonstrates that the very basis of the adverse material relied upon by the respondents is doubtful and unreliable, thereby vitiating the impugned action.

32. It is further submitted that, as specifically pleaded in the grounds of the petition, the petitioner has alleged that a clerk, namely Shri Rishipal (Senior Clerk), had demanded extraneous consideration from him. Upon the petitioner's refusal, it is alleged that the said official manipulated the records and introduced a fabricated mark-sheet reflecting an incorrect Roll Number '0374070'. The petitioner contends that the entire sequence of events indicates a deliberate manipulation of records at the level of the Block Education Office, involving the concerned officials, including the

said clerk. These allegations, though serious in nature, have neither been properly inquired into nor addressed by the respondent authorities while passing the impugned order, thereby vitiating the decision-making process.

33. It is submitted that the impugned order, having been founded upon the report of the Block Education Officer and predicated on verification of an altogether different Roll Number, i.e., 0374070, is manifestly perverse and arbitrary. The reliance on such incorrect and irrelevant material strikes at the very root of the decision-making process, thereby rendering the impugned order unsustainable in law.

34. Learned counsel for the petitioner submits that the impugned order has been passed in complete violation of the principles of natural justice, inasmuch as the documents relied upon by the respondent authorities have never been supplied to the petitioner. It is contended that neither the alleged forged mark-sheet bearing Roll No.0374070, nor the purported verification report of the Board, nor any other material referred to in the impugned order, was ever furnished to the petitioner. In the absence of disclosure of such material, the petitioner was deprived of a fair opportunity to controvert the same, thereby vitiating the entire proceedings.

35. Learned counsel for the petitioner further submits that it is well settled in law that even in cases involving allegations of fraud, forgery, or submission of fake certificates, the delinquent employee must be supplied with all documents relied upon and afforded a full and fair opportunity to rebut the allegations. It is contended that such procedural safeguards are integral to the principles of natural justice. In the present case, the said mandatory requirements have not been complied with, as no relevant material was furnished to the petitioner nor any effective opportunity of hearing was granted. Consequently, the impugned order stands vitiated and is liable to be set aside as being bad in the eyes of law.

36. Learned counsel for the petitioner further submits that the respondent authorities have wrongly placed reliance upon a marksheet bearing Roll No.0374070, whereas the petitioner's actual Roll No. in the Intermediate Examination is 0324070, which was duly submitted at the time of counselling. It is contended that the original educational documents were retained by the respondent authorities and have remained in their custody. The genuineness of the petitioner's Intermediate marksheet bearing Roll No. 0324070 has been duly verified not only at the stage of BTC training but also by the concerned Board, pursuant to the directions issued by this Hon'ble Court. In the said verification, the marksheet bearing Roll No. 0324070 has been confirmed to pertain to the petitioner and to be genuine. In such circumstances, the reliance placed on a marksheet bearing a different Roll No. is wholly misconceived and renders the impugned order unsustainable in law.

37. Learned counsel for the petitioner submits that the impugned order has been passed in a wholly mechanical manner, without due application of mind, inasmuch as the detailed reply submitted by the petitioner has not been considered at all. It is contended that the undisputed fact regarding the petitioner's Intermediate Certificate bearing Roll No. 0324070, duly verified at the time of appointment in the year 2016, at the time of rejoining in the year 2022, and also pursuant to the directions issued by this Hon'ble Court, has been completely ignored.

38. It is further submitted that the respondent authorities have instead placed reliance on undisclosed documents, which were never supplied to the petitioner, thereby depriving him of any effective opportunity to defend himself. The original records, which are admittedly in the custody of the respondents, have also been overlooked. The entire action has been founded upon an incorrect roll number, and no inquiry, as required under law, has been conducted.

39. In view of the aforesaid, it is submitted that the impugned order is arbitrary, violative of the principles of natural justice, and liable to be set aside.

40. Learned counsel for the respondent-BSA, on the other hand, submits that the petitioner was appointed to the post of Assistant Teacher vide appointment order dated 28.06.2016 issued by the then BSA, Shamli. It is further submitted that the said appointment order was conditional in nature, expressly stipulating that in the event the educational, training, degree, or caste certificates furnished by the candidate at the time of counselling were found to be forged, manipulated, or otherwise false, the appointment shall stand cancelled automatically. Thereafter, the verification of academic certificates of the candidates appointed in District Shamli pursuant to the recruitment in question was forwarded vide letter dated 29.07.2016 issued by the office of the District Institute of Education and Training (DIET), Muzaffarnagar. In the said verification list, the name of the petitioner appeared at serial no. 9. It is submitted that on the basis of such verification, the salary of the petitioner came to be released.

41. Learned counsel for the respondent has further pointed out that the petitioner remained unauthorisedly absent from his duties at primary school Kertoo Block, Un, District Shamli, with effect from 13.06.2020, without any prior intimation or sanction of leave.

42. Learned counsel for the respondent further submits that the educational records of teachers, Shiksha Mitras, and part-time instructors in District Shamli were being maintained on the Manav Sampada portal. During the course of updating the said records, it was revealed that in respect of the institution in question, the petitioner had relied upon a Bachelor of Technology (B.Tech) degree in Computer Science and Engineering purportedly issued by U.P. Technical University, Lucknow (as it was then known). However, the authenticity of the said degree appeared doubtful inasmuch as, at one place, the qualification was recorded in Hindi as “Bachelor of Technology,” while at another place, in English, it was reflected as “Master of Business Administration.” Apart from this discrepancy, the degree certificate was also found to contain several spelling errors. The aforesaid discrepancies were duly brought to the notice of the competent authority by the Block Education Officer, Block Un, District Shamli, vide letter dated 24.08.2020.

43. In the aforesaid letter/report dated 24.08.2020, it was further mentioned that the petitioner had relied upon High School and Intermediate certificates purportedly issued by the Madhyamik Shiksha Parishad, U.P., Prayagraj, for the years 2006 and 2008 respectively. Upon verification of the said mark sheets from the official website of the Parishad, it was found that the Intermediate mark sheet of the petitioner pertaining to the examination year 2008, bearing Roll No. 0374070, was forged, inasmuch as the said roll number corresponded to one Poonam, daughter of Shri

Yadram Singh. The Block Education Officer further called upon the petitioner to produce original documents; however, the petitioner failed to do so, whereupon his salary was withheld.

44. Accordingly, in the report dated 24.08.2020, the Block Education Officer recorded that upon district-level verification, the petitioner's Intermediate certificate was found to be forged during online verification, and his B.Tech degree also appeared to be doubtful. In view thereof, it was recommended that appropriate action, in accordance with law, be taken for termination of the petitioner's services.

45. On the basis of the aforesaid report, a letter dated 24.07.2021 was issued by the then Basic Shiksha Adhikari (BSA), Shamli, addressed to the Secretary of the Parishad at Regional Office, Meerut through the Block Education Officer, requesting verification of the petitioner's Intermediate mark sheet/certificate pertaining to the year 2008, bearing Roll No.0374070. As no verification report was received in response, the Block Education Officer, vide letter dated 11.08.2021, informed that he had personally visited the Regional Office of the Parishad at Meerut for the purpose of verification as sought in the letter dated 24.07.2021. It was further stated that upon such visit, the Deputy Secretary of the Parishad directed that the verification report would be sent through post.

46. The then Basic Shiksha Adhikari (BSA) also addressed letters dated 18.06.2021 and 11.02.2022 to Uttar Pradesh Technical University, now known as Dr. A.P.J. Abdul Kalam Technical University, seeking verification of the petitioner's graduation mark sheet and degree; however, no response was received from the University in this regard.

47. Acknowledging the application submitted by the petitioner, requesting for rejoining, the Block Education Officer, vide letters dated 16.07.2022 and 16.08.2022, apprised the then BSA that the petitioner had remained absent from the institution since 01.07.2020 on account of illness. It was further reported that a criminal case had been lodged against him by his wife in relation to alleged demand of dowry, and that he had also suffered the demise of his parents as well as his brother. In view of these circumstances, it was conveyed that the petitioner was unable to attend the institution.

48. Thereafter, the petitioner's High School certificate pertaining to Roll No. 0612450 of the year 2006 and Intermediate certificate pertaining to Roll No. 0324070 of the year 2008 were forwarded for verification to the Parishad and its Regional Office at Meerut. The said authority furnished its verification report vide letter dated 14.11.2022.

49. Learned counsel for the respondent submits that earlier, during the tenure of Smt. Geeta Verma, the then BSA, Shamli, the petitioner had submitted an Intermediate certificate to her at the time of counselling, which was forwarded for verification; however, no report was received in that regard. It is further submitted that subsequently, another mark sheet of Intermediate examination pertaining to Roll No. 0324070 has been relied upon during the verification process initiated in the year 2022, pursuant to letter dated 13.10.2022 issued by the then BSA, Rahul Mishra.

50. He further submits that during the tenure of the then BSA, Shamli, Shri Rahul Mishra, and the then Patal Incharge, Shri Sethpal Singh, Senior Assistant, the B.Tech degree of the petitioner was also forwarded to the Technical University for verification. In response thereto, the Registrar of the Technical University furnished the verification report.

51. Accordingly, during the tenure of the aforesaid officers the petitioner was permitted to rejoin his duties after a prolonged period of unauthorized absence from the institution, on the basis of the aforesaid verifications. Consequently, the petitioner rejoined his post on 20.12.2022.

52. Thereafter, Shri Rahul Mishra, th0e then BSA, was transferred, and the charge of the office of BSA was entrusted to the Assistant Director of Education (Basic), Saharanpur Region, Saharanpur. Subsequently, Kumari Komal assumed charge as BSA on 23.03.2023.

53. After the joining of the new Basic Education Officer, the entire sequence of earlier verification reports, including that of the Block Education Officer dated 24.08.2020, as well as the subsequent verification and rejoining of the petitioner after a prolonged period, was brought to her notice and request for a fresh verification of the petitioner's educational documents was sought by the Block Education Officer vide letter dated 23.06.2023.

54. The Block Education Officer, vide letter dated 18.10.2022, informed the office of the BSA that the petitioner had been permitted to rejoin his post pursuant to the order dated 09.12.2022 issued by the then BSA, wherein certain doubts were also expressed regarding the petitioner's academic certificates. The said letter further records that the Assistant Director of Education (Basic), Saharanpur Region, Saharanpur, had issued directions to consider the petitioner's representation in accordance with law.

55. Again, upon the application of the petitioner seeking payment of salary from the date of his rejoining, the Block Education Officer, vide letter dated 18.10.2023, referred to the entire sequence of events concerning the petitioner's educational documents, including the earlier verification reports, and requested that the said documents be subjected to verification once again.

56. In response to the aforesaid application, the District Basic Education Officer, vide letter dated 10.11.2023 addressed to the Block Education Officer, directed that the petitioner's academic certificates and other documents be duly verified. It was further required that all records and proceedings relating to the petitioner's initial appointment, including the educational and training documents submitted by him at the time of appointment, be thoroughly examined and verified.

57. The Block Education Officer, in his letter dated 18.12.2023, has further stated that the documents submitted by the petitioner at the time of his admission in DIET, Muzaffarnagar, as well as at the time of his initial appointment in the year 2016, included an Intermediate mark sheet and certificate of the year 2008 bearing Roll No. 0374070. However, at the time of rejoining in December, 2022 at BRC, Block- Un, the petitioner submitted an Intermediate mark sheet of the year 2008 bearing Roll No. 0324070.

58. It has further been noted that during the course of online verification, the Intermediate mark sheet bearing Roll No. 0324070 was found to be in the name of the petitioner, whereas the mark sheet bearing Roll No. 0374070 pertains to one Poonam, daughter of Shri Yadram Singh.

59. The Block Education Officer, Block-Un, has also submitted letters dated 06.02.2024 and 06.03.2024, wherein it has been recorded that the petitioner had produced two different Intermediate mark sheets on two separate occasions at BRC, Block-Un. The said letters further point out discrepancies in the petitioner's B.Tech degree, in respect whereof notices have also been issued to the petitioner, to which, no satisfactory reply has been given by him.

60. The Secretary of the Parishad, vide letter dated 20.9.2024, has reported that the mark sheet/certificate of the petitioner pertaining to Roll No. 0374070 is forged and fake. In the aforesaid regard, it has been stated that the said Roll No. 0374070 has not been allotted to any regular or private candidate of any institution falling within the jurisdiction of the Regional Office of the Parishad, Meerut.

61. Upon an inquiry made from the Principal, DIET, Muzaffarnagar, a letter dated 13.11.2024 has been issued stating that the petitioner, while pursuing Special BTC-2012, had submitted photocopies of his educational and training certificates/documents in the office, which were self-attested by him. The said letter further records that the details of such documents have been mentioned therein, including at Page 14, column.

62. On the basis of the information furnished by the Parishad as well as the material received from DIET, the salary of the petitioner was withheld and notices were issued to him. However, no satisfactory reply was submitted by the petitioner. Consequently, the impugned order has been passed, declaring the petitioner's appointment as void ab initio, on the ground that he had produced forged and fake educational certificates at the time of seeking appointment.

63. Learned counsel for the petitioner further submits that while making the application for recruitment in question, initiated for selection against 15,000 vacancies of Assistant Teachers in primary schools, the petitioner had submitted his online application bearing Registration No. 730000760. In the said application, while furnishing his academic details in response to Column 12, the petitioner mentioned that he had passed Intermediate in the year 2008 from the U.P. Board, specifying Roll No. 0374070.

64. It is further submitted that the pre-registration form submitted by the petitioner also contains the same particulars, including the aforesaid roll number of the Intermediate examination. The petitioner thereafter submitted his academic certificates before the Selection Committee at the time of counselling, under a prescribed proforma dated 14.01.2016, which likewise reflects the same Roll No. 0374070 for the Intermediate examination of the year 2008.

65. The said documents have been brought on record along with the short counter affidavit as Annexure No.21, which includes copies of the High School mark sheet and certificate, online application form, Intermediate mark sheet and certificate, Graduation mark sheets and degree, BTC

mark sheet and certificate, domicile certificate, caste certificate, bank details and passbook, Primary Level TET (PAT) certificate, and the notary affidavit of the petitioner.

66. Learned counsel for the respondent-BSA has filed a supplementary counter affidavit in compliance with the order dated 04.09.2026 passed by this Hon'ble Court, whereby it was directed that the original records, as produced before the Court, be brought on record by means of an affidavit.

67. The photocopies/photostat copies of the original documents, duly self-attested by the petitioner and enclosed along with the original set of documents submitted at the time of counselling for the recruitment in question, as well as those submitted with the original application before the DIET in respect of counselling for BTC Training 2012, as provided by the Principal, DIET under letter dated 13.11.2024, have been collectively filed along with the supplementary affidavit.

68. The said documents include: 1. the High School Examination, 2006 mark sheet and certificate, wherein the roll number is shown as 0612450; 2. the mark sheet and certificate of the Intermediate Examination, 2008, bearing roll number 0374070, with the name of the school/examination centre recorded as Janata Inter College, Lisarh. Muzaffarnagar; 3. the mark sheets of Bachelor of Technology (B.Tech.) in Computer Science and Engineering issued by Gautam Buddha Technical University for First Year, Second Year, Third Year and Final Year, bearing roll number 0832810053; and 4. the Bachelor of Technology degree issued by Uttar Pradesh Technical University, Lucknow, certifying that the petitioner has obtained the degree in Computer Science and Engineering with First Division, also bearing roll number 0832810053. However, in English version Master of business administration is mentioned.

69. The other documents placed on record include the certificate issued by Gautam Buddha Technical University in the year 2012, evidencing the award of the degree of Bachelor of Technology (B.Tech.) in Computer Science and Engineering to the petitioner. The documents further placed on record include the mark sheet of the BTC Two-Year Examination (Batch 2013), First Semester (Year 2013); the mark sheets of the BTC Two-Year Examination (Batch 2012), Second Semester (Year 2014), Third Semester (Year 2014), and Fourth Semester; as well as the certificate of completion of the BTC Two-Year प्रशिक्षण Course (Batch 2012), Examination Year 2015, issued by the Pariksha Niyamak Adhikari, Uttar Pradesh.

70. Additionally, the Uttar Pradesh Teacher Eligibility Test (UPTET) 2013-14 certificate issued by the Examination Regulatory Authority, Allahabad, has also been placed on record. The Caste Certificate issued from the office of the Tehsildar, Kairana, District Shamli, and the Domicile Certificate issued from the office of the Sub-Divisional Magistrate (SDM), Kairana, District Shamli, have also been annexed along with the supplementary counter affidavit. These documents formed part of the original record produced before this Hon'ble Court.

71. The petitioner's application submitted pursuant to the advertisement for the post of Assistant Teacher in Parishadiya Primary Schools, for the purpose of counseling, records the educational qualifications at Serial No. 11, wherein it is stated that the petitioner passed the

Intermediate Examination from the U.P. Board, Allahabad, in the year 2008, with the roll number mentioned as 0374070. The online application form likewise reflects the same particulars, indicating the roll number as 0374070 for the Intermediate Examination of the year 2008.

72. The online registration application bearing Registration No. 7300000760 also reflects the same particulars, recording the roll number as 0374070 for the Intermediate Examination, 2008.

73. Learned counsel for the respondents has placed written submissions stating that the petitioner was appointed as an Assistant Teacher in a primary school vide appointment order dated 28.06.2016 and joined his duties at Primary School Kertoo, Block-Un, District Shamli. However, it is submitted that the petitioner remained absent from duty with effect from 13.06.2020 without any prior intimation.

74. It is further submitted that during the process of updating and maintaining service records of teachers, Shiksha Mitras, and Part-Time Instructors on the Manav Sampada portal, certain discrepancies came to light regarding the petitioner's educational qualifications. In particular, doubts were raised concerning the petitioner's B.Tech degree as well as his Intermediate mark sheet bearing Roll No. 0374070, as reflected in the report dated 24.08.2020.

75. At the time of submitting his online application for the post in question, the petitioner had relied upon his B.Tech degree, details whereof have already been brought on record. It is further submitted that a provisional B.Tech certificate was earlier furnished by the petitioner before the District Institute of Education and Training (DIET), Muzaffarnagar (District Shamli), in connection with his admission to the BTC Training Course, 2012. The said certificate was forwarded to the office of the Basic Shiksha Adhikari, Shamli by the Principal, DIET, vide letter dated 13.11.2014.

76. With regard to his Intermediate qualification, the petitioner relied upon a mark sheet and certificate of the year 2008 bearing Roll No. 0374070, which were also submitted before the concerned DIET at the time of counselling for BTC Training, 2012, and were subsequently forwarded by the Principal, DIET, vide letter dated 13.11.2014. The petitioner's online application for the post in question, as well as the self-attested hard copy submitted at the time of counselling in District Shamli, consistently mention the same roll number, i.e., 0374070, for the Intermediate Examination, 2008.

77. It is thus submitted that all documents furnished by the petitioner, both at the time of counselling for the BTC Training Course, 2012 and for the post in question, uniformly reflect that he passed the Intermediate Examination in the year 2008 under Roll No. 0374070.

78. It is further submitted that the petitioner remained absent from duty with effect from 13.06.2020 without any prior intimation to the department and, after a prolonged period of nearly two years, sought to rejoin his duties by moving an application dated 16.07.2022. Pursuant thereto, an office order dated 09.12.2022 was issued for verification of the petitioner's documents, including his Intermediate certificate of the year 2008. However, at this stage, the petitioner disclosed a different roll number, i.e., 0324070, which had never been mentioned earlier.

79. It is significant to note that the said roll number surfaced for the first time only at the stage of rejoining, after an unexplained absence of two years. Prior to this, in all records and documents submitted by the petitioner, including his application forms and documents furnished at the time of counselling, the Intermediate certificate consistently bore Roll No. 0374070. There was, in fact, no occasion for seeking fresh verification of documents at the stage of rejoining.

80. In such circumstances, the conduct of the petitioner in submitting an application for verification along with an Intermediate mark sheet bearing a different roll number, i.e., 0324070, for the first time raises serious doubt and calls for scrutiny.

81. It is further submitted that, without examining the reasons for the petitioner's prolonged absence of nearly two and a half years, and without calling for any explanation in that regard, the petitioner was permitted to rejoin duties, and he accordingly submitted his joining in July, 2022. Since the petitioner had remained absent for a considerable period, no salary was paid to him from July, 2020 onwards. Consequently, the petitioner submitted an application dated 24.08.2020 before the District Basic Education Officer, Shamli, seeking payment of salary.

82. While considering the issue of salary, the Block Education Officer initiated correspondence and sent letters and reminders to the District Basic Education Officer, Shamli, for re-verification of the petitioner's documents and service records, particularly with regard to his academic qualifications and requisite training. In response, the District Basic Education Officer directed the concerned Block Education Officer to submit a detailed report regarding the petitioner's academic certificates and related documents.

83. Pursuant thereto, the Block Education Officer submitted a report dated 18.12.2023, highlighting discrepancies in the petitioner□s Intermediate qualification, specifically noting the existence of two different roll numbers relied upon by the petitioner in respect of his Intermediate mark sheet and certificate. The report further records that while verification of the petitioner□s B.Tech degree was obtained through the concerned clerk of DIET, Muzaffarnagar, no verification could be found with respect to his High School and Intermediate certificates.

84. In light of the aforesaid discrepancies, notices dated 06.02.2024 and 06.03.2024 were issued to the petitioner by the Block Education Officer, calling upon him to furnish an explanation regarding his Intermediate mark sheet and certificate. Meanwhile, the Intermediate mark sheet and certificate bearing Roll No. 0374070, relied upon by the petitioner at the time of online application and counselling, were sent for verification to the U.P. Board of High School and Intermediate Education, Regional Office, Meerut. In response, the office of the Regional Secretary, vide letter dated 20.09.2024, reported that the said mark sheet and certificate were forged and fabricated.

85. Further inquiry into the petitioner□s academic credentials continued, and during the course thereof, a communication dated 12.06.2025 was sent by the Block Education Officer, Block Kairana, District Shamli, to the Basic Shiksha Adhikari, stating that the petitioner had again remained absent from duty for the preceding six to seven months without any prior intimation. Appropriate action was sought against the petitioner, along with necessary directions regarding his status, particularly in the context of the ongoing process of inter-district mutual transfer.

86. Thereafter, notices were issued to the petitioner calling upon him to furnish his explanation with respect to the doubtful certificates pertaining to the Intermediate Examination, 2008 bearing Roll No. 0374070, as well as his B.Tech degree. Although the petitioner claims to have submitted replies to the said notices, the explanations furnished were found to be wholly unsatisfactory, particularly in relation to the discrepancies concerning the Intermediate mark sheet and certificate. Accordingly, the impugned order came to be passed.

87. Learned counsel for the respondents submits that the petitioner has alleged that the impugned order has been passed in violation of the principles of natural justice and the provisions of the Rules, 1999. However, it is contended that such a plea is misconceived. In cases involving fraud, misrepresentation, or concealment of material facts, particularly where the genuineness of the educational certificates forming the basis of appointment is under serious doubt□no prior opportunity of hearing or regular inquiry, as contemplated under the Rules, 1999, is mandatorily required. It is submitted that where the very foundation of appointment is vitiated, the authorities are justified in taking appropriate action without resorting to a full-fledged inquiry.

88. Learned counsel for the respondents submits that it is evident on record that the petitioner has indulged in misrepresentation and fraud. While submitting his online application for the post in question, the petitioner disclosed his Intermediate Examination, 2008 Roll No. as 0374070, which was also consistently relied upon by him at the time of counselling for the BTC Training Course, 2012 before the DIET. However, for the first time, at the stage of rejoining in the year 2022, after a prolonged unauthorized absence, the petitioner produced an Intermediate certificate of the year 2008 bearing a different Roll No., i.e., 0324070.

89. It is submitted that a detailed examination of the records and verification reports obtained from time to time clearly establishes that the petitioner relied upon two different Intermediate mark sheets at different stages, one at the time of seeking appointment and during BTC counselling, and another at the time of rejoining. This material inconsistency, coupled with the absence of any plausible explanation, leads to the inescapable conclusion that the petitioner has committed fraud by furnishing contradictory and unreliable educational credentials.

90. Learned counsel for the respondents has placed reliance upon the judgment of the Hon'ble Supreme Court in **State of Bihar vs. Kriti Narayan Prasad (2019) 1 ESC 3 (SC),** decided on 30.11.2018, wherein it has been categorically held that fraud vitiates all solemn acts. It is submitted that where an appointment is obtained by practicing fraud or misrepresentation, the same stands vitiated at its very inception.

91. In such circumstances, the requirement of holding a regular disciplinary inquiry under the Rules, 1999 read with the U.P. Basic Education Staff Rules, 1973, or any other applicable service rules, does not arise. The protection of statutory provisions governing disciplinary proceedings is available only to those employees who have secured appointment through lawful means and thereafter commit some misconduct during the course of service. However, a person who obtains appointment by fraud cannot claim the benefit of such protections, as his very entry into service is illegal and void ab initio.

92. Learned counsel for the respondents further submitted that the original documents brought on record along with the supplementary affidavit dated 13.03.2026 clearly establish the commission of fraud by the petitioner with respect to his Intermediate academic credentials relied upon by him. It is contended that the material on record unequivocally demonstrates that the petitioner has furnished inconsistent and unreliable documents.

93. It is further submitted that learned counsel for the petitioner is attempting to mislead this Hon'ble Court by repeatedly seeking an inquiry with respect to the Intermediate Examination, 2008 bearing Roll No. 0324070, whereas the controversy in the present case pertains to the mark sheet bearing Roll No. 0374070. It is emphasized that there is no specific pleading in the writ petition raising any issue with regard to Roll No. 0324070, and therefore, such a contention is wholly misplaced and cannot be permitted to be agitated at this stage.

94. Learned counsel for the respondents further submits that there is not even a whisper in the writ petition regarding any inadvertent mistake or human error on the part of the petitioner while filling the online application, wherein he had clearly mentioned Roll No. 0374070 for the Intermediate Examination, 2008. It is only in response to the notices issued by the authorities that the petitioner has sought to introduce such a plea, which is clearly an afterthought and devoid of merit.

95. It is further contended that the Intermediate certificate of the year 2008 bearing Roll No. 0374070, which was relied upon by the petitioner both at the time of seeking appointment and during the BTC Training, has already been found to be forged. It is only for the first time, at the stage of rejoining in the year 2022, that the petitioner sought verification of an Intermediate mark sheet bearing a different Roll No., i.e., 0324070. This subsequent document appears to have been procured by the petitioner during the period of his unauthorized absence, and thereafter sought to be introduced at various stages before the authorities, including the Parishad and other competent forums.

96. The conduct of the petitioner, in repeatedly shifting his stand and relying upon two different roll numbers for the same examination, clearly indicates a deliberate attempt to manipulate records and lends further credence to the allegation of fraud.

97. Learned counsel for the respondents further submits that even the B.Tech degree of the petitioner appears to be forged, as has already been elaborated in the earlier paragraphs while advancing submissions before this Hon□ble Court.

98. In view of the aforesaid, learned counsel for the respondents submits that a comprehensive and detailed inquiry into the petitioner□s educational credentials is warranted at every level, including verification from the institution from which he purportedly appeared in the Intermediate Examination.

99. In view of the aforesaid submissions, the impugned order does not suffer from any illegality or infirmity warranting interference by this Hon□ble Court, accordingly, the writ petition is liable to be dismissed.

100. Heard learned counsel for the parties and perused the records.

101. The record reflects that the petitioner, at the time of submitting his online application as well as during counselling and BTC training, consistently disclosed his Intermediate Examination, 2008 Roll Number as 0374070, which formed the very foundation of his eligibility. However, at the stage of rejoining in the year 2022, after a prolonged unauthorized absence, the petitioner introduced a different roll number, i.e., 0324070, and sought to rely upon a different mark sheet.

102. The material on record clearly establishes that the roll number 0374070 has been found to be forged and not pertaining to the petitioner. The petitioner has thus relied upon two different sets of Intermediate certificates at different stages, without furnishing any plausible explanation.

103. Apart from the aforesaid discrepancy, serious doubts have also been raised by the respondents regarding the petitioner□s B.Tech degree, which cannot be ignored by this Court. The discrepancies, as specifically pointed out, include: (i) inconsistency in the description of the degree, where at one place it is mentioned as Bachelor of Technology, while at another it is reflected as Master of Business Administration; (ii) apparent spelling and typographical errors in the degree certificate; (iii) lack of consistent and reliable verification from the concerned Technical University at earlier stages; and (iv) doubts expressed by the competent authorities during scrutiny of records maintained on the Manav Sampada portal and departmental files. These discrepancies, when read in conjunction with the inconsistency in the Intermediate certificates, prima facie indicate that the petitioner□s educational credentials are not free from suspicion.

104. It is well settled that fraud vitiates all solemn acts, and an appointment obtained on the basis of forged or fabricated documents is void ab initio and confers no enforceable right. It is also a settled principle of law that where the very foundation of appointment is tainted, the requirement of holding a regular disciplinary inquiry is not mandatory, and the authorities are justified in cancelling such appointment.

105. The record shows that the petitioner has relied upon two different Intermediate roll numbers at different stages. The roll number originally disclosed, i.e., 0374070, has been found to be forged, and the petitioner has failed to furnish any satisfactory explanation for such inconsistency. The B.Tech degree of the petitioner is also prima facie doubtful in view of the material discrepancies pointed out by the respondents. Hence, the appointment of the petitioner is vitiated by fraud and misrepresentation and is void ab initio. In view of the serious nature of discrepancies, this Court deems it appropriate to direct a comprehensive, multi-level inquiry so as to ascertain the authenticity of the petitioner's educational credentials in their entirety. Accordingly, the following directions are issued:

(i) Inquiry regarding Intermediate Examination, 2008 has to be conducted in the following manner:-

(a) Verification shall be conducted from the Board of High School and Intermediate Education, Uttar Pradesh, with respect to both roll numbers 0374070 and 0324070.

(b) A detailed inquiry at the school level, i.e., the institution from where the petitioner claims to have appeared, shall be conducted to verify: admission records, scholar register entries, attendance registers, internal assessment records, forwarding of examination forms.

(c) Inquiry shall also be conducted at the examination centre where the petitioner allegedly appeared in the Intermediate Examination, 2008, including: examination attendance sheets, centre records, invigilation records, any preserved documentary evidence.

(d) The authorities shall ascertain conclusively whether the petitioner actually appeared in the said examination and, if so, under which roll number.

(ii) Inquiry regarding B.Tech Degree shall be conducted in following manner:-

(a) A thorough verification shall be conducted from Dr. A.P.J. Abdul Kalam Technical University regarding the authenticity of the petitioner□s B.Tech degree.

(b) The University shall specifically clarify: whether the degree was actually issued to the petitioner, the correct title of the degree (B.Tech or otherwise), the correctness of the roll number and year of passing.

(c) The concerned college/institution shall produce original records relating to admission, attendance, semester-wise examination results, award of degree.

(d) The discrepancies noted, including variation in degree description, spelling errors and format irregularities, shall be specifically examined to determine whether the degree is genuine or fabricated.

106. The records maintained at DIET, the counselling authority, and the Basic Education Department shall be examined to identify: the documents originally submitted by the petitioner; any alteration or substitution of records, the stage at which such discrepancies arose.

107. It is an admitted position that the petitioner remained absent for a period of two years and sought to rejoin only in 2022, without any prior intimation to the competent authorities and without any sanctioned leave. There is not even a whisper in the pleadings explaining whether the petitioner was engaged elsewhere during this period or furnishing any justification for such prolonged unauthorized absence. Accordingly, these facts assume significance, as the conduct of the petitioner indicates that the intervening period may have been utilized to manage or manipulate records, particularly for the purpose of substituting the original certificate submitted at the time of appointment with another certificate bearing a different roll number. Therefore, these aspects are also relevant and must necessarily be taken into consideration while conducting the inquiry.

108. This Court further observes that if any manipulation, collusion or negligence on the part of officials is found, appropriate action shall be taken in accordance with law against such erring officials.

109. The entire inquiry shall be completed within a period of four months from the date of production of a certified copy of this order. A reasoned report shall be placed before the competent authority, who shall thereafter pass appropriate orders in accordance with law.

110. In view of the aforesaid discussion, this Court finds no illegality in the impugned order dated 06.10.2025, therefore, no interference is required. The writ petition stands **dismissed**. However, the directions for comprehensive inquiry, as detailed above, shall be strictly complied with, and the reinstatement of the petitioner shall be subject to the final outcome of the inquiry.

(2026) 5 ILRA 2432
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.05.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Matters Under Article 227 No. 2298 of 2026

Sirajuddin Khan ...Petitioner
Versus
Laxmichand ...Respondent

Issues for Consideration

(i) Whether the release application instituted by the respondent-landlord under Section 21(1)(a) of U.P. Act No. 13 of 1972 was liable to be held premature on account of alleged non-compliance with the requirement of six months' prior notice contemplated under the first proviso to Section 21(1)(a) of the Act;

(ii) Whether, in the facts and circumstances of the present case, the petitioner-tenant, by prolonged participation in the proceedings and by contesting the matter on merits for several years, can be held to have waived the objection relating to non-compliance with the requirement of six months' notice by raising such objection only at a highly belated stage.

Headnotes

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 --- s.21(1)(a), first proviso --- Six months' prior notice --- Mandatory requirement --- Nature of protection --- Benefit of tenant --- Capable of waiver.

HELD: The proviso to Section 21(1)(a) contemplates two distinct conditions where the premises was already under tenancy prior to purchase by the landlord: firstly, elapse of a period of three years from the date of purchase, and secondly, service of a notice of not less than six months before institution of the application. The legislature has consciously employed the expression "no application shall be entertained" in relation to the three-year period, whereas in relation to notice it has provided that the landlord "has given a notice ... not less than six months before such application." The use of different phraseology in the same proviso cannot be regarded as accidental. The requirement of six months' notice, though couched in mandatory language, is intended to secure a protective opportunity to the tenant before initiation of release proceedings; the protection is essentially personal to the tenant and procedural in character, does not affect the inherent competence or jurisdiction of the authority to adjudicate, and does not involve any element of public duty or public interest. It confers a statutory procedural safeguard capable of being availed of or waived by the tenant for whose benefit it has been enacted. [Paras 16-22]

Statutory Interpretation --- Doctrine of waiver --- Mandatory provision enacted for benefit of individual --- Capable of relinquishment --- Distinction between nullity and irregularity.

HELD: A statutory requirement, even if mandatory in form, does not invariably become incapable of waiver. The determinative test is whether the provision has been enacted in public interest or merely for the benefit of an individual; where the condition exists solely for safeguarding the rights of a particular party, such party may relinquish or abandon the benefit either expressly or by conduct, in accordance with the maxim *quilibet potest renunciare juri pro se introducto*. Failure to comply with the requirement of six months' notice under

the proviso to Section 21(1)(a) would ordinarily amount to a procedural irregularity and not a nullity, particularly where waiver is established from the conduct of the tenant; a defect is a nullity only where the provision violated is founded on public policy or goes to the root of inherent jurisdiction in a manner incapable of waiver. The consequence of waiver is not that the statutory requirement ceases to be mandatory, but that the beneficiary of such protection becomes disentitled from impeaching the proceedings on that ground; such waiver does not retrospectively validate the initial procedural defect. [Paras 23-25, 27-32, 34-35]

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 --- s.21(1)(a), first proviso --- Waiver by conduct --- Prolonged participation without timely objection --- Factors relevant for determining waiver.

HELD: The doctrine of waiver in relation to the objection regarding notice or premature institution of proceedings under the proviso to Section 21(1)(a) is founded not merely upon express relinquishment but equally upon conduct inconsistent with an intention to insist upon the right. Where the objection regarding premature institution or want of statutory notice is raised only after prolonged participation in proceedings on merits, the issue of waiver must be examined on the basis of cumulative assessment of the entire conduct of the party and not merely on eventual incorporation of a formal plea in pleadings. Relevant factors include: whether the objection was raised at the threshold stage or withheld despite knowledge of the alleged defect from inception; whether it was thereafter pursued with reasonable diligence; whether the party actively participated for a prolonged duration by filing applications, evidence, cross-examination requests or other pleadings inconsistent with challenging maintainability at the threshold; whether the objection was pressed only after substantial progress of proceedings; and whether the cumulative conduct indicates acquiescence and an election to contest on merits rather than insist upon the procedural protection. These factors are illustrative and not exhaustive, and the question of waiver ultimately depends on the facts and conduct in each case. [Paras 36-42]

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 --- s.21(1)(a), first proviso --- Objection regarding six months' notice raised for first time after more than seven years of participation in proceedings --- Waiver established.

HELD: The petitioner entered appearance on 22.04.2014, actively participated by filing interrogatories under Section 34(1)(d) of the Act on 15.07.2014, sought adjournments on various dates and contested the matter on merits, without raising any objection regarding want of six months' notice at the initial stage; such objection was raised for the first time only in the written statement filed on 23.11.2021, i.e., after lapse of more than seven years from institution of the release proceedings on 15.01.2014. The record demonstrates prolonged participation in the proceedings over several years, including extensive evidentiary proceedings culminating in the judgment dated 21.12.2022. The factual position stands on a stronger footing than in *Martin & Harris Ltd.*, where the objection had at least initially been raised though subsequently not pursued. The cumulative conduct of the petitioner, as concurrently found by the Prescribed Authority and the Appellate Court, was rightly treated as indicative of acquiescence and relinquishment of the procedural protection available under the proviso to Section 21(1)(a). [Paras 43-48]

Constitution of India --- Art.227 --- Supervisory jurisdiction --- Concurrent findings of fact on bona fide requirement, comparative hardship and waiver --- No perversity or jurisdictional error --- Interference declined.

HELD: Jurisdiction under Article 227 of the Constitution is supervisory and not appellate; the Court does not re-appreciate evidence or substitute its own conclusions merely because another view is possible, and interference is warranted only where findings suffer from patent perversity, manifest illegality, jurisdictional error or failure of justice. The findings recorded by the courts below on bona fide requirement and comparative hardship are pure findings of fact based on appreciation of oral and documentary evidence, and no material has been placed to demonstrate perversity, patent illegality or non-consideration of evidence.

Similarly, the concurrent findings on waiver of the notice requirement do not suffer from any manifest error. No ground made out warranting interference under Article 227 of the Constitution. [Paras 49-55]

Petition dismissed. (E-14)

Case Law Cited

Martin & Harris Ltd. v. Additional District Judge, (1998) 1 SCC 732 — relied on; Vellayan Chettiar v. Government of the Province of Madras, AIR 1947 PC 197 — relied on; Dhirendra Nath Gorai v. Sudhir Chandra Ghosh, AIR 1964 SC 1300 — relied on;; S. Raghbir Singh Gill v. S. Gurcharan Singh Tohra, 1980 Supp SCC 53 — relied on; Lachoo Mal v. Radhey Shyam, (1971) 1 SCC 619 — relied on; Indira Bai v. Nand Kishore, (1990) 4 SCC 668 — relied on; Krishan Lal v. State of Jammu & Kashmir, (1994) 4 SCC 422 — relied on; Ashutosh Sikdar v. Behari Lal Kirtania, (1906-07) 11 CWN 1011 — referred to; Holmes v. Russell, (1841) 9 Dowl 487 — referred to; Wells v. Minister of Housing and Local Government — referred to; Anoop Kumar & Ors. v. Doongermal Singodiya & Anr., (2019) 134 ALR 565 — relied on; Smt. Kamla Devi v. Ikram Ali, 2019 SCC OnLine All 4755 — relied on.

List of Acts / Statutes

Constitution of India; U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972); Code of Civil Procedure, 1908.

List of Keywords

Bona fide requirement; Comparative hardship; Six months' notice; Proviso to Section 21(1)(a); Waiver; Acquiescence; Procedural irregularity; Nullity; Prescribed Authority; Rent Control Appeal; Mandatory requirement capable of waiver; Prolonged participation; Supervisory jurisdiction; Article 227.

Case Arising From

Judgment and order dated 21.12.2022 passed by the Prescribed Authority/Civil Judge (Junior Division), Najibabad, District Bijnor in P.A. Case No. 1 of 2014; and appellate judgment and order dated 16.01.2026 passed by the Additional District Judge/F.T.C.-II, Bijnor in Rent Control Appeal No. 02 of 2023

Appearance for Parties

For the Petitioner: Arvind Srivastava, Yawar Mukhtar
For the Respondents: Jitendra Pal Singh Chauhan

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

Heard Sri Bhavesh Singh, holding brief of Sri Arvind Srivastava, learned counsel for the petitioner and Sri Jitendra Pal Singh, learned counsel appearing for the respondent.

2. This petition under Article 227 of the Constitution of India has been filed challenging the judgment and order dated 21.12.2022 passed by the Prescribed Authority/Civil Judge (Junior Division), Najibabad, District Bijnor in P.A. Case No. 1 of 2014, instituted under Section 21(1)(a) of U.P. Act No. 13 of 1972, whereby the release application filed by the respondent-landlord in respect of a shop situated at Bazar Kalluganj, Kasba and Tehsil Najibabad, District Bijnor, was allowed and the requirement of the landlord was held to be bona fide. Challenge has also been made to the appellate judgment and order dated 16.01.2026 passed by the Additional District Judge/F.T.C.-II, Bijnor in Rent Control Appeal No. 02 of 2023, whereby the appeal preferred by the petitioner-tenant was dismissed and the findings recorded by the Prescribed Authority on the

questions of waiver of the requirement of notice under the proviso to Section 21(1)(a), bona fide requirement and comparative hardship were affirmed.

3. The case of the petitioner is that he is a tenant of the shop in dispute at a monthly rent, allegedly inclusive of taxes, and that the tenancy commenced under the erstwhile owner of the premises, from whom the respondent-landlord subsequently purchased the property.

4. After purchase of the property, the respondent-landlord instituted release proceedings, registered as P.A. Case No. 1 of 2014, before the Prescribed Authority, Najibabad, seeking release of the shop in dispute on the ground of bona fide requirement for establishment of his son in business. The petitioner entered appearance and filed written statement denying the allegations made in the release application. The petitioner disputed the rate of rent, questioned the genuineness of the need set up by the respondent-landlord and further contended that the respondent possessed alternative accommodation. It was also pleaded that the shop in dispute was of small dimensions and was not suitable for the purpose for which release was sought.

5. An objection regarding maintainability of the release application was also raised by the petitioner on the ground that the requirement of six months prior notice, as contemplated under the first proviso to Section 21(1)(a) of the Act, had not been complied with before institution of the proceedings on 15.01.2014.

6. The parties led oral as well as documentary evidence in support of their respective cases. Upon consideration of the material brought on record, the Prescribed Authority, by judgment and order dated 21.12.2022, allowed the release application holding the requirement of the respondent-landlord to be bona fide and further deciding the question of comparative hardship in favour of the landlord. The objection relating to non-compliance of six months notice was rejected.

7. Aggrieved by the aforesaid judgment, the petitioner preferred Rent Control Appeal No. 02 of 2023. During pendency of the appeal, an application for inspection was moved by the petitioner, which came to be rejected. Thereafter, the appellate court, by judgment and order dated 16.01.2026, dismissed the appeal and affirmed the findings recorded by the Prescribed Authority on the questions of waiver of the requirement of notice under the proviso to Section 21(1)(a), bona fide requirement and comparative hardship.

8. Challenging the aforesaid judgments and orders passed by the courts below, the present petition has been filed, inter alia, contending that the release proceedings were vitiated on account of non-compliance of the mandatory requirement of six months notice under the proviso to Section 21(1)(a) of the Act and that the findings returned by the courts below on bona fide requirement and comparative hardship are contrary to the material available on record. It was submitted that the notice having been issued on 02.12.2013 and the release application having been instituted on 15.01.2014, the proceedings were clearly premature and, therefore, without jurisdiction.

9. Learned counsel for the petitioner submits that the mandatory requirement of six months prior notice contemplated under the proviso to Section 21(1)(a) of the Act goes to the

very root of maintainability of the proceedings and non-compliance thereof renders the release application liable to be rejected as premature.

10. Placing reliance upon the judgment of the Supreme Court in **Martin & Harris Ltd. v. Additional District Judge1,** it is contended that the requirement of six months notice is mandatory in nature and non-compliance thereof vitiates the entire proceedings. It is further submitted that the courts below erred in holding that the objection stood waived merely on account of participation of the petitioner in the proceedings.

11. Learned counsel for the petitioner has further submitted that the findings recorded on *bona fide* requirement and comparative hardship are contrary to the material available on record. It is argued that the respondent-landlord possessed alternative accommodation and that the shop in dispute, considering its size and location, was not suitable for the purpose for which release was sought. It is also contended that the courts below failed to properly appreciate the evidence led by the petitioner and have returned findings which are perverse and legally unsustainable.

12. Per contra, learned counsel appearing for the respondent-landlord has supported the impugned judgments and has submitted that although the requirement of six months notice under the proviso to Section 21(1)(a) is mandatory, the same is enacted for the benefit of the tenant and is capable of waiver. Relying upon the very same judgment in **Martin & Harris Ltd. v. Additional District Judge**, it is contended that the petitioner, despite having knowledge of the alleged defect, participated in the proceedings for several years, contested the matter on merits and failed to press the objection at the appropriate stage, and therefore the objection stood waived by conduct and acquiescence.

13. It is further submitted that both the courts below have concurrently recorded findings of fact regarding bona fide requirement and comparative hardship after due appreciation of oral and documentary evidence on record, and such concurrent findings do not warrant interference in exercise of writ jurisdiction.

14. Having heard learned counsel for the parties and upon perusal of the material brought on record, the following issues arise for consideration in the present petition:-

14.1 Whether the release application instituted by the respondent-landlord under Section 21(1)(a) of U.P. Act No. 13 of 1972 was liable to be held premature on account of alleged non-compliance with the requirement of six months prior notice contemplated under the first proviso to Section 21(1)(a) of the Act.

14.2 Whether, in the facts and circumstances of the present case, the petitioner-tenant, by prolonged participation in the proceedings and by contesting the matter on merits for several years, can be held to have waived the objection relating to non-compliance with the requirement of six months notice by raising such objection only at a highly belated stage.

15. Since the principal controversy raised in the present petition pertains to the effect of non-compliance of the requirement of six months prior notice contemplated under the first

proviso to Section 21(1)(a) of U.P. Act No. 13 of 1972 and the question as to whether such objection stood waived on account of the conduct of the petitioner-tenant, it would be apposite to notice the relevant statutory provisions governing the field. Section 21(1)(a) of U.P. Act No. 13 of 1972 along with the first proviso, to the extent relevant for the present controversy, reads as under:-

"21- (1) The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists; namely: "

(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust ;

(b) that the building is in a dilapidated condition and is required for purposes of demolition and new construction :

Provided that where the building was in the occupation of a tenant since before its purchase by the landlord, such purchase being made after the commencement of this Act, no application shall be entertained on the grounds mentioned in clause (a), unless a period of three years has elapsed since the date of such purchase and the landlord has given a notice in that behalf to the tenant not less than six months before such application, and such notice may be given even before the expiration of the aforesaid period of three years :"

16. A careful reading of the aforesaid provision indicates that while the substantive part of Section 21(1)(a) confers a right upon the landlord to seek release of the tenanted premises on the ground of bona fide requirement, the proviso engrafts certain restrictions in cases where the premises was already under tenancy prior to its purchase by the landlord.

17. The proviso contemplates two distinct conditions. Firstly, a period of three years must elapse from the date of purchase of the premises by the landlord. Secondly, the tenant must be given a notice of not less than six months before institution of the application.

18. The legislative intent behind incorporation of the proviso appears to be to afford protection to an existing tenant against immediate proceedings for eviction at the instance of a subsequent purchaser and to provide reasonable time to the tenant before such proceedings are initiated.

19. At the same time, the language employed in the proviso assumes significance. The legislature has consciously used the expression □no application shall be entertained□ while prescribing the period of three years, whereas in relation to notice it has provided that the landlord □has given a notice □ not less than six months before such application□. The use of different phraseology in the same proviso cannot be regarded as accidental and must be assigned its due meaning.

20. The expression "entertained" ordinarily refers to consideration or adjudication of a matter by the authority, whereas the latter part of the proviso specifically regulates the stage prior to institution of proceedings by requiring service of notice before filing of the application. The statutory scheme, therefore, distinguishes between the stage of institution of proceedings and the stage of consideration of the application on merits.

21. The requirement of six months' notice, though couched in mandatory language and linked with institution of proceedings, is intended to secure a protective opportunity to the tenant before initiation of release proceedings. The protection contemplated by the proviso is essentially personal to the tenant and procedural in character. The provision does not affect the inherent competence or jurisdiction of the authority to adjudicate the matter, nor does it involve any element of public duty or public interest. Rather, it confers a statutory procedural safeguard capable of being availed of or waived by the tenant for whose benefit it has been enacted.

22. The scheme of the provision thus indicates that while non-compliance of the notice requirement may render the institution of the proceedings premature, the protection nevertheless remains one enacted for the benefit of the tenant and not a condition affecting the inherent competence or jurisdiction of the authority to adjudicate the matter. The proviso does not involve any element of public duty or public interest; rather, it confers a statutory procedural safeguard capable of being availed of, waived or relinquished by the tenant for whose benefit it has been enacted.

23. Since the protection contemplated under the proviso is enacted for the benefit of the sitting tenant, the same is capable of waiver. Consequently, where the tenant, despite knowledge of the alleged defect, does not raise timely objection regarding notice and instead contests the matter on merits, such conduct may amount to acquiescence and relinquishment of the procedural protection available under the proviso.

24. A statutory requirement, even if mandatory in form, does not invariably become incapable of waiver. The determinative test is whether the provision has been enacted in public interest or merely for the benefit of an individual. Where the condition prescribed by the statute exists solely for safeguarding the rights of a particular party, such party may relinquish or abandon the benefit either expressly or by conduct. The doctrine of waiver proceeds on the principle that a person may renounce a right introduced for his own benefit, provided no public interest is affected. Accordingly, objection regarding non-compliance of the notice requirement under the proviso to Section 21(1)(a), if not raised at the appropriate stage, cannot subsequently be permitted to invalidate the proceedings after the tenant has already participated in the adjudication on merits.

25. The failure to comply with the requirement of six months' notice under the proviso to Section 21(1)(a) would ordinarily amount to a procedural irregularity and not a nullity, particularly where waiver is established from the conduct of the tenant. A defect may be treated as a nullity where the provision violated is founded upon considerations of public policy or goes to the root of inherent jurisdiction in a manner incapable of waiver by the affected party. Conversely, where the objection is one capable of waiver and the statutory protection exists solely for the benefit of an individual, breach thereof does not render the proceedings void ab initio. Thus, once the tenant

submits to the jurisdiction of the authority and participates in the proceedings without raising timely objection regarding notice, the release proceedings cannot subsequently be assailed solely on that ground.

26. In **Martin & Harris Ltd.** the Supreme Court held that although the requirement of six months' notice under the proviso to Section 21(1)(a) is mandatory, the same is nevertheless capable of waiver since the protection is intended solely for the benefit of the tenant. The Court observed that where the tenant, despite being aware that the release application had been filed prior to expiry of six months from the date of notice, participated in the proceedings on merits and failed to pursue the objection at the appropriate stage, such conduct would amount to conscious waiver of the statutory protection. The Supreme Court noticed that although the objection regarding the premature institution of the release application had initially been taken in the written statement, the tenant thereafter joined issues on merits before the Prescribed Authority, did not raise the plea in appeal and sought to revive the objection only at a belated stage. In that context, the Court observed as follows:

" 12. However the further question survives for consideration, namely, whether the beneficial provision enacted by the legislature in this connection for the protection of the tenant could be and in fact was waived by the tenant. So far as this question is concerned on the facts of the present case the answer must be in the affirmative. As we have noted earlier after the suit was filed the appellant filed its written statement on 17-9-1986. In the said written statement the appellant, amongst others, did take up the contention that the application as filed by the respondent-landlord under Section 21(1)(a) was not maintainable and was premature as six months' period had not expired since the service of notice dated 20-9-1985 when the suit was filed. But curiously enough thereafter the said contention raised by the appellant in written statement was given a go-by for reasons best known to the appellant. It is easy to visualise that if at that stage the appellant had pressed for rejection of the application on the ground of Section 21(1)(a) as not showing completed cause of action due to non-expiry of six months from the date of service of notice invoking Order VII Rule 11(a) and (d) CPC, alleging that the plaint did not disclose a cause of action or it appeared to be barred by law, respondent-plaintiff could have withdrawn the suit on that ground under Order XXIII Rule 1 sub-rule (3) CPC as the suit based on grounds under Section 21(1)(a) of the Act would have been shown to have suffered from a formal defect and he would have been entitled to claim liberty to file a fresh suit on the same cause of action after the expiry of six months' period from the date of service of notice. That opportunity was lost to the respondent-landlord as the appellant did not pursue this contention any further. On the contrary the appellant joined issues on merits by seeking permission to cross-examine the plaintiff on merits of the case on grounds as pleaded under Section 21(1)(a) of the Act. When the decree was passed against the appellant, even while challenging the said decree in appeal no such ground was taken in the memo of appeal, nor was it argued before the first appellate court. Under these circumstances, the High Court rightly held that the contention, regarding the suit being premature as filed before expiry of six months from the date of the notice, must be treated to have been waived by the appellant .”

27. The principle that even a mandatory statutory requirement may be waived where it is enacted solely for the benefit of an individual has consistently been recognised in judicial precedent. In **Vellayan Chettiar v. Government of the Province of Madras2**, the Privy Council

held that although notice under Section 80 C.P.C. is mandatory, defect or absence thereof would not render the proceedings void since the protection is intended for the benefit of the person concerned and may therefore be waived. The same principle was reiterated in **Dhirendra Nath Gorai v. Sudhir Chandra Ghosh3, S. Raghbir Singh Gill v. S. Gurcharan Singh Tohra4, Lachoo Mal v. Radhey Shyam5** and **Indira Bai v. Nand Kishore6,** and it was consistently held that where a statutory protection is enacted for the benefit of an individual and is not founded upon considerations of public policy, the same is capable of waiver and breach thereof would not render the proceedings void ab initio.

28. The aforesaid principles were comprehensively considered in **Krishan Lal v. State of Jammu & Kashmir7**, wherein the Supreme Court drew a distinction between provisions enacted in public interest and those intended solely for the benefit of an individual. The Court held that where the statutory requirement is personal in nature and capable of waiver, non-compliance thereof would not ipso facto render the proceedings a nullity.

29. The judgment in **Krishan Lal** also took note of the principles stated in leading authorities on statutory interpretation and administrative law including **Maxwell on Interpretation of Statutes8, Craies on Statute Law9, Crawford on Interpretation of Laws10, Francis Bennion11 o**n **Statutory Interpretation and H.W.R. Wade12** on Administrative Law, all of which recognise the principle embodied in the maxim ***quilibet potest renunciare juri pro se introducto***, namely that a person may waive the benefit of a law enacted solely for his private protection, provided no question of public right or public policy is involved. In this regard**, Maxwell on Interpretation of Statutes** states as follows:

"Everyone has a right to waive and to agree to waive the advantage of a law made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy, Cuilibet licet renuntiare juri pro se introducto."

30. The same principle has been reiterated in Craies on **Statute Law** in the following terms:

"If the object of a statue is not one of general policy, or if the thing which is being done will benefit only a particular person or class of persons, then the conditions prescribed by the statute are not considered as being indispensable..."

31. A similar principle has been noticed by **H.W.R. Wade** in Administrative Law, while quoting **Lord Denning in Wells v. Minister of Housing and Local Government,** wherein it was observed that:

"a defect in procedure can be cured, and an irregularity can be waived, even by a public authority, so as to render valid that which would otherwise be invalid."

32. The distinction between a nullity and an irregularity was elaborately explained by a Full Bench of the Calcutta High Court in **Ashutosh Sikdar v. Behari Lal Kirtania13, referring to Macnamara on □Nullities and Irregularities□** and the judgment in **Holmes v. Russell14**. It

was observed that the effect of breach of a statutory provision must be determined having regard to the nature, scope and object of the provision violated. The Court explained that an irregularity is merely a deviation from prescribed procedure which does not destroy the foundation of the proceeding, whereas a nullity is a proceeding wholly without authority. The □workable test□ laid down in ***Holmes v. Russell*** is that where the objection is capable of waiver, the defect amounts to an irregularity; where it is incapable of waiver, the defect may assume the character of a nullity.

33. The legal position with regard to the notice under the proviso to Section 21(1)(a) being mandatory yet subject to the doctrine of waiver has also been recognised by this Court in **Anoop Kumar & Ors. v. Doongermal Singodiya & Anr.15** and also in **Smt. Kamla Devi v. Ikram Ali16**, wherein it was held that failure to raise objection regarding notice at the appropriate stage would amount to waiver and the defect would constitute only an irregularity and not a nullity.

34. The requirement of six months□ notice under the proviso to Section 21(1)(a), though mandatory in nature, having been held in **Martin & Harris Ltd.** to be subject to waiver, non-compliance thereof would not render the proceedings void ab initio. Since the objection is one capable of waiver and does not involve any question of public policy or inherent lack of jurisdiction, breach thereof would ordinarily amount to a procedural irregularity and not a nullity, particularly where waiver is established from the conduct of the tenant. The consequence of waiver is not that the statutory requirement ceases to be mandatory, but that the beneficiary of such protection becomes disentitled from impeaching the proceedings on that ground.

35. The principle of waiver in such cases does not retrospectively validate the initial procedural defect; it merely disentitles the tenant, by reason of conscious acquiescence, from assailing the proceedings on that ground at a belated stage.

36. The doctrine of waiver in relation to an objection regarding notice or the premature institution of proceedings under the proviso to Section 21(1)(a) of U.P. Act No.13 of 1972 may arise in different factual situations. Waiver may readily be inferred where no objection regarding notice or premature institution of proceedings is raised despite participation in the proceedings. Equally, waiver may arise where such objection, though initially raised, is subsequently abandoned, not pressed or consciously given up during the course of proceedings. However, there may also arise cases where the tenant, despite full knowledge of the alleged defect from the inception, participates in the proceedings for a prolonged period, contests the matter extensively on merits and raises the objection only at a highly belated stage after substantial progress of adjudication. In such cases also, the Court may examine whether the cumulative conduct of the tenant demonstrates acquiescence and relinquishment of the procedural protection available under the proviso.

37. A distinction must, however, be maintained between cases where objection is raised with reasonable promptitude at the threshold stage and cases where the party, despite full knowledge of the alleged defect from the inception, permits the proceedings to continue substantially on merits and seeks to invoke the objection only at a highly belated stage after considerable advancement of adjudication. A procedural protection intended for the benefit of a party must ordinarily be invoked with reasonable diligence and promptitude; otherwise, prolonged participation in the proceedings may itself furnish evidence of acquiescence. In the latter category

of cases, the Court is required to examine not merely the formal existence of an objection in pleadings, but the entire conduct of the party throughout the proceedings in order to determine whether the procedural protection stood waived by acquiescence, deliberate inaction or conduct inconsistent with an intention to insist upon such procedural protection at the appropriate stage. Whether belated assertion of such objection amounts to waiver would necessarily depend upon the facts of each case, the stage at which the objection is raised and the overall conduct of the parties.

38. The doctrine of waiver is founded not merely upon express relinquishment of a right but equally upon conduct inconsistent with an intention to insist upon such right. Therefore, where a tenant knowingly participates in proceedings for a prolonged duration, invites adjudication on merits, files applications, evidence, interrogatories or other pleadings and permits the matter to proceed substantially without questioning maintainability at the threshold, the Court may legitimately infer that the tenant elected not to insist upon the procedural protection available under the proviso. Mere eventual incorporation of an objection in pleadings at a belated stage cannot by itself exclude waiver, for otherwise a party could continue participating in proceedings, test the outcome on merits and thereafter revive a procedural objection available from the very inception.

39. The law on the point is that the notice contemplated under the proviso, though mandatory in character, is enacted for the personal benefit of the sitting tenant and is therefore capable of waiver. Such waiver may be express or implied from acquiescence, inaction or prolonged participation in proceedings on merits. The true test is one of cumulative conduct. Thus, where the tenant, despite being aware of the alleged defect from the inception, fails to press the objection at the appropriate stage, permits the proceedings to progress substantially, joins issue on bona fide requirement and comparative hardship, invokes procedural remedies and seeks to revive the objection only at a belated stage after considerable advancement of the proceedings, the Court may legitimately infer conscious relinquishment of the procedural safeguard. Mere delay may not by itself amount to waiver; however, substantial delay coupled with active participation in proceedings on merits may justify such inference. The law does not countenance a course by which a party keeps such objection in reserve, contests the matter on merits and, upon apprehending an adverse outcome, seeks to invalidate the proceedings on a defect which was available from the very beginning. Equally, a landlord who has prosecuted proceedings on the legitimate assumption that no serious objection regarding maintainability survives cannot ordinarily be non-suited at an advanced stage merely because the tenant belatedly invokes a procedural defect already within his knowledge.

40. Accordingly, particularly in cases where objection regarding the premature institution of proceedings or maintainability is raised only after prolonged participation in proceedings on merits, the issue of waiver must be examined on the basis of a cumulative assessment of the entire conduct of the party throughout the proceedings and not merely on the basis of eventual incorporation of a formal plea in pleadings. While adjudicating such issue, the Court may ordinarily consider the following relevant factors:

(i) whether the objection regarding premature institution of proceedings or want of statutory notice was raised at the threshold stage immediately upon appearance in the proceedings or, on the contrary, withheld despite knowledge of the alleged defect from the inception;

(ii) whether, after raising such objection, the party pursued the same with reasonable diligence and sought adjudication thereof at the earliest appropriate stage, or instead permitted the proceedings to continue substantially on merits;

(iii) whether the party actively participated in the proceedings for a prolonged duration by filing applications, affidavits, evidence, cross-examination applications or other pleadings inconsistent with an intention to challenge maintainability at the threshold;

(iv) whether the objection came to be pressed only after substantial progress of the proceedings, particularly after advancement of evidentiary stages or near culmination of adjudication on merits;

(v) whether the cumulative conduct of the party indicates acquiescence in continuation of the proceedings and an election to contest the matter on merits rather than insist upon the procedural protection available under the proviso, or suggests that the objection was retained merely as a technical plea to be invoked at a convenient stage after testing the merits of the case; and

(vi) whether permitting belated invocation of such objection would result in frustrating adjudication on merits despite prolonged participation and prior acquiescence of the objecting party.

41. The aforesaid factors are illustrative and not exhaustive, and the question of waiver must ultimately depend upon the facts and conduct emerging in each individual case.

42. Where these factors cumulatively indicate conscious inaction, prolonged participation in proceedings without timely protest, repeated submission to the adjudicatory process and conduct inconsistent with an intention to insist upon the procedural protection at the appropriate stage, the Court may legitimately infer waiver notwithstanding eventual assertion of such objection at a later stage of the proceedings.

43. Applying the aforesaid principles to the facts of the present case, it is evident that both the courts below have concurrently recorded a categorical finding that the petitioner-tenant did not raise any objection regarding non-compliance of the proviso to Section 21(1)(a) of U.P. Act No. 13 of 1972 at the threshold stage and continued participating in the proceedings for a prolonged period after institution of the release application. The release application was instituted on 15.01.2014. The petitioner entered appearance on 22.04.2014 and thereafter actively participated in the proceedings by filing interrogatories under Section 34(1)(d) of the Act on 15.07.2014, seeking adjournments on various dates and contesting the matter on merits. However, no objection regarding want of six months notice was raised at the initial stage of the proceedings. Both the Prescribed Authority as well as the Appellate Court have specifically recorded that such objection came to be raised for the first time only in the written statement filed on 23.11.2021, i.e. after lapse of more than seven years from institution of the release proceedings.

44. The order-sheet of the proceedings reflects that after appearance on 15.07.2014, the petitioner repeatedly sought adjournments for filing written statement and the proceeding continued at that stage for several years. After disposal of the application Ga-12 on 29.10.2018, the Prescribed Authority specifically directed the petitioner to file written statement forthwith while observing that the controversy had remained pending for nearly four years at the stage of written statement. Despite such direction, the written statement ultimately came to be filed only on 23.11.2021. Thereafter , the proceedings continued extensively on issues relating to evidence, applications for cross-examination, handwriting expert examination, filing of affidavits, rebuttal evidence and final arguments, culminating in judgment dated 21.12.2022. The record thus demonstrates prolonged participation in the proceedings over several years after entering appearance before the Prescribed Authority.

45. The courts below, while considering the conduct of the petitioner throughout the proceedings, have drawn an inference that the petitioner, despite having full knowledge of the proceedings and despite participating therein for several years, consciously chose not to object to the alleged defect relating to notice at the appropriate stage and, therefore, waived such objection.

46. In **Martin & Harris Ltd**., while considering the effect of non-compliance with the six months notice contemplated under the proviso to Section 21(1)(a), the Supreme Court held that although the tenant had initially raised an objection regarding the premature institution of the release application, the same was subsequently abandoned by participating in the proceedings on merits and by failing to pursue the objection either before the Prescribed Authority or in appeal. The Court observed that the requirement of six months notice was enacted solely for the benefit and protection of the tenant and therefore was capable of waiver. Referring to the distinction between a statutory bar going to the root of maintainability and a protection intended for the benefit of a party, the Court held that where the provision merely affords protection to a party, such protection can be waived by the party. He may avail of it or he may not avail of it as he may choose. The Court further held that once the tenant failed to press the objection at the appropriate stage and joined issue on merits, the landlord altered his position irretrievably and it was not open to the tenant to revive such objection at a belated stage after concurrent findings had been recorded on merits.

47. In the present case, the objection regarding non-compliance of the requirement of six months notice was neither raised at the threshold stage nor pursued with reasonable promptitude. On the contrary, the petitioner participated in the release proceedings for several years, contested the matter extensively on merits by disputing the landlord's bona fide requirement, comparative hardship and availability of alternative accommodation, and permitted the proceedings to advance substantially before introducing the objection for the first time in the written statement filed after more than seven years from institution of the release application. The factual position in the present case thus stands on an even stronger footing than in **Martin & Harris Ltd**., where the objection had at least initially been raised though subsequently not pursued. The cumulative conduct of the petitioner, as noticed by both the authorities below, was therefore rightly treated as indicative of acquiescence and relinquishment of the procedural protection available under the proviso to Section 21(1)(a) of the Act.

48. Thus, the inference drawn by the authorities below is that the petitioner, by his prolonged participation in the proceedings without raising timely objection, acquiesced in the continuation of the release proceedings and cannot subsequently seek to invalidate the same on a procedural ground which was available to him from the very inception. The findings recorded by the authorities below proceed on the principle that a procedural objection intended for the tenant□s personal benefit must be asserted with reasonable promptitude and, if not so asserted, may legitimately be treated as waived by conduct.

49. Accordingly, in view of the discussions made hereinabove, this Court finds no illegality, perversity or jurisdictional error in the concurrent findings recorded by the Prescribed Authority as well as the Appellate Court. Both the authorities below have rightly held that although the requirement of six months□ notice under the proviso to Section 21(1)(a) of the U.P. Act No.13 of 1972 is mandatory in nature, the same being a procedural protection intended for the benefit of the tenant was capable of waiver and, in the facts of the present case, stood waived on account of the petitioner□s prolonged participation in the proceedings without raising timely objection.

50. The objection regarding maintainability of the release application on account of alleged non-compliance of six months□ notice having been raised for the first time after more than seven years from institution of the proceedings, the courts below were justified in drawing an inference of waiver from the conduct of the petitioner. The findings so recorded are based on appreciation of pleadings and conduct of the parties and do not suffer from any manifest error warranting interference under Article 227 of the Constitution of India.

51. No other ground has been made out to interfere with the impugned judgments and orders passed by the courts below.

52. It is well settled that jurisdiction under Article 227 of the Constitution is supervisory and not appellate. This Court does not re-appreciate evidence or substitute its own conclusions merely because another view is possible. Interference is warranted only where findings suffer from patent perversity, manifest illegality, jurisdictional error or failure of justice. Concurrent findings of fact, particularly in rent control proceedings, ordinarily do not warrant interference unless shown to be wholly arbitrary or unsupported by evidence.

53. So far as the findings recorded by the courts below on the questions of bona fide requirement and comparative hardship are concerned, the same are pure findings of fact based upon appreciation of oral and documentary evidence on record. Both the Prescribed Authority and the Appellate Court have concurrently held the requirement of the respondent-landlord to be bona fide and have further recorded findings on comparative hardship in favour of the landlord after considering the respective pleadings and evidence relating to availability of alternative accommodation and the nature of hardship likely to be caused to the parties. No material has been placed before this Court so as to demonstrate that the findings recorded suffer from perversity, patent illegality or non-consideration of material evidence warranting interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

54. In view of the aforesaid discussion, this Court does not find any illegality, perversity or jurisdictional error in the impugned judgment and order dated 21.12.2022 passed by the Prescribed Authority/Civil Judge (Junior Division), Najibabad, District Bijnor in P.A. Case No. 1 of 2014, nor in the appellate judgment and order dated 16.01.2026 passed by the Additional District Judge/F.T.C.-II, Bijnor in Rent Control Appeal No. 02 of 2023.

55. The concurrent findings recorded by the courts below on the issues of maintainability, bona fide requirement and comparative hardship call for no interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

56. The petition lacks merit and is, accordingly**, dismissed**. There shall be no order as to costs.

(2026) 5 ILRA 2446
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.05.2026

BEFORE

THE HON'BLE ABDUL SHAHID, J.

First Appeal No. 994 of 2026

M/S Srijan Hospital **...Appellant**
Versus
Bank of Baroda **...Respondent**

Issues for Consideration

Whether the trial court was justified in rejecting the plaintiff/appellant's application under Order XXXIX Rules 1 and 2 CPC for temporary injunction, where the civil suit itself was barred by Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, proceedings under the SARFAESI Act had already culminated in an order for possession of the mortgaged property under Section 14 of the Act, and the plaintiff had approached the court concealing material facts and after materially altering the purpose for which the loan facility was sanctioned.

Headnotes

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 --- ss.14, 34, 35 --- Civil court jurisdiction --- Bar --- Suit in respect of matter falling within jurisdiction of Debts Recovery Tribunal --- Possession of mortgaged property already transferred pursuant to order under s.14 --- Suit not maintainable.

HELD:

Section 34 of the SARFAESI Act, 2002 bars the jurisdiction of the civil court to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under the Act to determine, and no injunction shall be granted by any court in respect of any action taken or to be taken in pursuance of any power conferred under the Act. Section 35 gives the provisions of the Act overriding effect notwithstanding anything inconsistent contained in any other law. Where the property in dispute had already been mortgaged, proceedings under the SARFAESI Act had already been initiated, possession of the mortgaged property had already been transferred pursuant to an order dated 24.12.2025 passed by the

Additional District Magistrate (Finance and Revenue) under Section 14 of the Act, and an appeal against such proceedings was also pending, the original suit filed by the plaintiff/appellant was barred by Section 34 of the SARFAESI Act and the civil court had no jurisdiction to entertain it. [Paras 4, 5, 10, 11, 13, 14]

Contract --- Loan agreement --- LGSCAS Loan Guarantee Scheme for Covid-affected healthcare sector --- Sanctioned for construction, furnishing and purchase of equipment for hospital --- Unilateral conversion of project from hospital to hotel without prior approval --- Fundamental breach.

HELD:
The loan amount and cash credit limit were sanctioned specifically under the LGSCAS Loan Guarantee Scheme for the Covid-affected healthcare sector, for construction of a building, furnishing, and purchase of equipment. The plaintiff/appellant's contention that he received a verbal assurance and, on that basis, converted the project from a hospital to a hotel, without obtaining any prior approval for such change of purpose, amounts to a fundamental breach of the terms on which the facility was sanctioned; the plaintiff had already constructed a G+5 storeyed hotel in place of the sanctioned hospital building. [Paras 7, 8]

Civil Procedure --- Injunction --- Person seeking equitable relief must approach court with clean hands --- Concealment of material facts, including pendency of appeal --- Disentitlement to injunction.

HELD:
A person approaching a court of law for grant of injunction must act bona fide and must approach the court with clean hands. Where the plaintiff/appellant concealed the fact of filing an appeal (Memo of Appeal No. 33 of 2026) in the pleadings before the trial court, and instituted the suit with concealment of material facts including the materially altered purpose of the loan, such conduct disentitled the plaintiff/appellant to the equitable relief of temporary injunction. [Paras 9, 12, 15]

Code of Civil Procedure, 1908 --- O.XXXIX rr.1, 2 --- First Appeal from Order --- Rejection of temporary injunction affirmed --- No illegality or perversity.

HELD:
There being neither illegality nor perversity in the order of the trial court rejecting the application for temporary injunction, in view of the bar of jurisdiction under Section 34 of the SARFAESI Act, 2002, the material change in the purpose of the loan effected unilaterally by the plaintiff, and the suit having been filed with concealment of material facts, the impugned order was affirmed. [Paras 16, 17]

Appeal dismissed. Impugned order dated 21.02.2026 affirmed. (E-14)

Case Law Cited

M/S Gujarat Bottling Co. Ltd. & Ors. v. The Coca Cola Co. & Ors. — relied on.

List of Acts / Statutes

Code of Civil Procedure, 1908; Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

List of Keywords

Temporary injunction; SARFAESI Act; Bar of civil court jurisdiction; Section 34, SARFAESI Act; Overriding effect; LGSCAS Loan Guarantee Scheme; Covid-affected healthcare sector; Change of purpose of loan; Fundamental breach; Clean hands; Concealment of material facts; Possession of mortgaged property; Section 14, SARFAESI Act; First Appeal from Order**.**

Case Arising From

Order dated 21.02.2026 passed by the Civil Judge (Senior Division), Varanasi in Original Suit No. 1758 of 2025, M/s Srijan Hospital v. Bank of Baroda, whereby application No. 6-C for temporary injunction was rejected and objection No. 35-C was disposed of.

Appearance for Parties

For the Appellants: Anil Kumar Rai, Rishi Kant Rai
For the Respondents:

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

1. Heard learned counsel for the appellant/plaintiff.

2. Learned counsel for the appellant has submitted that the entire loan amount was not disbursed and that, even prior to the disbursement of the entire loan amount, recovery proceedings were initiated against the appellant. Hence, he filed the original civil suit before the learned trial court.

3. He has submitted that the sanctioned loan amount was Rs. 2,84,50,000/- (Rupees Two Crores Eighty-Four Lakhs Fifty Thousand only), whereas the disbursed amount was Rs. 1,95,00,000/- (Rupees One Crore Ninety-Five Lakhs only). However, as per Annexure No. 4, being the true photocopy of the terms and conditions relied upon by the appellant, it is mentioned as ?Facility ? Term Loan (Fresh) under LGSCAS? with a limit of Rs. 259.50 lakhs (Rupees Two Crores Fifty-Nine Lakhs and Fifty Thousand only) for the purpose of construction of a building, furnishing, and purchase of equipment. Whereas, in the said agreement, which is a memorandum of entry, the nature of the facility has been mentioned as: (i) Cash Credit (Hypothecation of Stocks and Book Debts) ? Rs. 25.00 lakhs; and (ii) Term Loan (Fresh) under LGSCAS ? Rs. 259.50 lakhs. Hence, it appears that there was a cash credit limit of Rs. 25 lakhs and a term loan of Rs. 259.50 lakhs.

4. Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) is quoted hereinbelow:

***"34. Civil court not to have jurisdiction**. -No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)."*

5. It is also mentioned in Section 35 of the SARFAESI Act, 2002, which is quoted hereinbelow:

***"35. The provisions of this Act to override other laws**.-The provisions of this Act shall have effect, nothwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

6. The learned trial court rejected Application No. 6-C and disposed of Objection No. 35-C. The application for temporary injunction filed by the appellant/plaintiff under Order XXXIX Rules 1 and 2 C.P.C. was rejected by a detailed order dated 21.02.2026, which is under challenge before this Court in the present appeal.

7. The learned trial court specifically held that the purpose and utilization of the loan are required to be considered. The defendant submitted Paper No. 19-C. As per the said document, the bank had sanctioned the LGSCAS loan guarantee scheme for the Covid-affected healthcare sector for construction of the building, furnishing, and purchase of equipment.

8. The loan amount and cash credit limit were accordingly provided. The contention of the appellant/plaintiff is that he received verbal assurance and, therefore, converted the project from a hospital to a hotel. Such conduct amounts to a fundamental breach, as the loan amount and the cash credit limit were sanctioned specifically for construction of a building for the Covid-affected healthcare sector, including furnishing and purchase of equipment. However, without obtaining any prior approval for change of purpose, the appellant himself converted the hospital project into a hotel project. The plaintiff/appellant has already constructed a G+5 storeyed hotel in place of the aforesaid hospital building.

9. The learned trial court has relied upon the law laid down by the Supreme Court in M/S Gujarat Bottling Co. Ltd. & Ors. vs. The Coca Cola Co. & Ors., wherein it has been held that a person approaching a court of law for grant of injunction must act bona fide and must approach the Court with clean hands.

10. The bank placed before the learned trial court a copy of the order passed by the learned Additional District Magistrate (Finance and Revenue), Varanasi Zone, District Varanasi in Case No. 7873 of 2025 dated 24.12.2025, whereby an order for taking possession of the mortgaged property in question was passed.

11. Learned counsel for the bank has also relied upon Section 34 of the SARFAESI Act, 2002, contending that the civil court has no jurisdiction in the matter. An appropriate order under Section 14 of the Act has already been passed by the competent authority with regard to the property in question.

12. The defendant has also brought on record Memo of Appeal No. 33 of 2026 (M/s Srijan Hospital Versus Bank of Baroda). The learned trial court has further held that the plaintiff had concealed the fact of filing the said appeal in the pleadings before the trial court.

13. In view of the aforesaid facts, circumstances, and provisions of law, it clearly appears that the original suit filed by the appellant is barred by Section 34 of the SARFAESI Act, 2002. The civil court has no jurisdiction to entertain the suit. The property in dispute has already been mortgaged, proceedings under the SARFAESI Act, 2002 have already been initiated, and possession of the mortgaged property has already been transferred vide order dated 24.12.2025.

14. The competent authority has already passed an order under Section 14 of the SARFAESI Act, 2002. The original suit has been filed with concealment of material facts. The appellant/plaintiff has materially changed the purpose of the aforesaid loan. He had entered into an agreement with the respondent-bank under the LGSCAS Loan Guarantee Scheme for construction of a building, furnishing, and purchase of equipment for the Covid-affected healthcare sector.

15. The appellant did not approach the learned trial court with clean hands and filed the original suit while concealing material facts.

16. There is neither any illegality nor perversity in the impugned order dated 21.02.2026 passed by the learned Civil Judge (Senior Division), Varanasi in Original Suit No. 1758 of 2025 (M/s Srijan Hospital Versus Bank of Baroda). Accordingly, the impugned order dated 21.02.2026 is hereby affirmed.

17. The present appeal lacks merit and is liable to be dismissed. It is dismissed accordingly.

(2026) 5 ILRA 2450
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 14.05.2026

BEFORE

THE HON'BLE ABDUL SHAHID, J.

First Appeal From Order No. 1018 of 2026

Ramchandra Ji Maharaj Virajman Mandir & Ors. ...Appellants
Versus
Sushil Maheshwari & Ors. ...Respondents

Issues for Consideration

Whether the trial court was justified in rejecting the application filed by the plaintiffs/appellants under Section 92 of the Code of Civil Procedure, 1908 seeking leave to institute a suit for framing a scheme of management for a temple alleged to be a public religious trust, by holding that no express or implied trust for management of the temple had been established, without appreciating that the enquiry at the stage of grant of leave is confined to a prima facie assessment and does not involve adjudication of the rights of the parties.

Headnotes

Code of Civil Procedure, 1908 --- s.92 --- Leave to institute suit --- Scope of enquiry --- Rights of parties not to be adjudicated at leave stage --- Prima facie case alone to be examined.

HELD:

While granting leave under Section 92 CPC, the court does not decide the rights of the parties and no right is adjudicated at that stage; the court has merely to see whether there is a prima facie case for granting leave to file the suit. Such order does not in any way affect the final decision, which will be given on merits after the parties have led evidence in the suit. [Paras 30, 34]

Code of Civil Procedure, 1908 --- s.92 --- Conditions for maintainability of suit --- Trust created for public purposes of charitable or religious nature --- Breach of trust or necessity of direction of court --- Relief claimed falling within reliefs enumerated in the section.

HELD:
To invoke Section 92 CPC, three conditions have to be satisfied, namely, (i) the trust is created for public purposes of a charitable or religious nature, (ii) there is a breach of trust or a direction of the court is necessary in the administration of such trust, and (iii) the relief claimed is one of the reliefs enumerated in the section; if any of these conditions is not satisfied, the suit falls outside the scope of the said section. [Para 27]

Trusts --- Constructive trust --- Meaning and applicability --- Arises by operation of law irrespective of intention of parties --- Public nature of temple --- Prima facie establishment.

HELD:
A constructive trust arises by operation of law, without regard to the intention of the parties to create a trust, and does not require a deed signifying institution of the trust; the function of the court is only to declare that such a trust has arisen in the past. Where the temple was in existence since long, was used by the public at large for worship, and neither party disputed its public nature, while the defendants failed to produce any documentary evidence regarding Sarvarakarship or maintenance of the temple by any predecessor prior to the first recorded Sarvarakar, the contention that the temple was of public purposes carried prima facie legal force. [Paras 31, 32, 33]

Code of Civil Procedure, 1908 --- s.92 --- Suit under Section 92 --- Nature of suit --- Representative capacity --- Public trust of religious/charitable character presupposed.

HELD:
A suit or application under Section 92 CPC has a unique characteristic; it presupposes the existence of a public trust of a religious or charitable character, and the suit can proceed only on the allegation that there is a breach of the trust and that a consequential direction from the court has become imminent. The suit is filed not in the individual capacity of the plaintiff or plaintiffs but as representatives of the public in general for vindication of public rights. [Para 19]

Code of Civil Procedure, 1908 --- s.92 --- Leave application --- Interest of applicant in trust disputed --- Court to apply mind on material on record to reach prima facie conclusion.

HELD:
Where a person claims to have an interest in the trust and the claim is disputed by the opposite party, the court should apply its mind to the question on the basis of the material on record and come to a conclusion, prima facie though it may be, on the question whether the person seeking leave can be treated to be a person having an interest in the trust. [Para 17]

Code of Civil Procedure, 1908 --- s.92 --- Rejection of leave application --- Trial court holding no express or implied trust established --- Finding perverse where public nature of temple and absence of contrary documentary material not properly appreciated --- Impugned order set aside --- Leave granted.

HELD:
The trial court, while rejecting the application for leave, failed to appreciate that the case was one of implied/constructive trust and recorded a perverse finding that the plaintiffs/appellants had failed to establish an express or implied trust for management of the temple, without properly considering the admissions of the defendants regarding appointment of persons for day-to-day management of the temple and worship, and without appreciating the public nature of the temple which was undisputed by both parties. In view of the facts and circumstances, being the public nature of the temple, and since the court at the leave stage does

not decide the rights of the parties and has merely to see whether there is a prima facie case, the impugned order rejecting leave was set aside and leave to file the suit under Section 92 CPC was granted. [Paras 13, 34]

Appeal allowed. Impugned order dated 13.01.2026 rejecting leave under Section 92 CPC set aside; leave to institute the suit granted. (E-14)

Case Law Cited

Ambrish Kumar Singh v. Raja Abhushan Bran Bramhshah and others, AIR 1989 All 194 — relied on; Mahanth Gurmukh Das v. Bhupal Singh, 1987 All LJ 369 — relied on; Operation Asha v. Shelly Batra and others, (2026) 1 SCC 569 — relied on; Gyan Prakash Chaurasia and others v. Bans Narain Rai and another, AIR 1991 Allahabad 266 — relied on; Janardan Dagdu Khomane and another v. Eknath Bhikhu Yadav and others, 2019 Supreme (SC) 1040 — relied on; Bishwanath and another v. Sri Thakur Radha Ballabhji and others, 1967 Supreme (SC) 38 — referred to.

List of Acts / Statutes

Code of Civil Procedure, 1908; Indian Trusts Act, 1882; Uttar Pradesh Land Revenue Act, 1901.

List of Keywords

Leave to institute suit; Public trust; Religious trust; Constructive trust; Implied trust; Sarvarakar; Temple management; Scheme of administration; Prima facie case; Breach of trust; Public purpose.

Case Arising From

Judgment and order dated 13.01.2026 passed by the Additional District Judge/Fast Track Court No. 1, Etawah, in Misc. Case (Under Section 92 of C.P.C.) No. 103 of 2021, Ramchandra Ji Maharaj Virajman Mandir Ramtal and others v. Sushil Maheshwari since deceased and another.

Appearance for Parties

For Appellant: Akash Mishra, Vishal Tandon
For Respondent: Rashid Ali, Dhiraj Srivastava, Mahesh Kumar, Shiv Bahadur Singh

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

1. Heard learned counsel for the plaintiffs/appellants and the learned counsel for the defendant/respondent.

2. The present appeal has been preferred against the judgment and order dated 13.1.2026, passed by the learned Additional District Judge/Fast Track Court No.1, Etawah, in Misc. Case (Under Section 92 of C.P.C.) No. 103 of 2021 (Ramchandra Ji Maharaj Virajman Mandir Ramtal and others Vs. Sushil Maheshwari since deceased and another).

3.The case of the appellants/plaintiffs is that plaintiff no.1 is a temple which is commonly known in the public at large as Shri Ram Chandra Ji Maharaj Mandir Ramtal, situated at village Aheripur, Pargana Bharthana, District Etawah (later referred as Temple). It is stated that it is very ancient temple. There is no information or knowledge of its establishment and by whom. The said temple is established for public uses for around hundred year ago. Normally, the Sarvarakar of the temple were Baba Bairagi. The succession has been transferred on the basis of Guru-chela principle. The plaintiff nos. 2 to 4 are Sadhu Sanyasi of Bairagi person, who does not having any domestic life. The plaintiff nos. 5 and 6 are also residents of village Ahirepur. (later referred to as said village).

4. It is stated that said building of the temple is constructed over a large tract of land, in front of which a very large pond also exists, which pond is the property of the temple, and both the temple and the pond are situated and existing over an area of about 5-6 (five-six) bighas. The temple and pond are situated in the said land and is recorded in the Revenue entry No. 396 , area 71 decimals, 199M, area 1 acres and 12 decimals and 507, area 1 acres and 24 decimals, Gata No. 550 area 62 decimal. All the lands of the aforesaid four gatas is in the name of said temple. The name of plaintiff no.1/temple is continued to be recorded in the Khasra and Khatauni records of the Revenue Department, out of the total land comprised in the said gata numbers, the temple building and pond are constructed over 5-6 bighas of land and the remaining land is lying vacant nearby it. Apart from the lands of these gata numbers, one plot situated in the abadi area of village Aheripur, upon which two shops are constructed, is also the property of the temple.

5. It is stated that Sarvakar of plaintiff no.1/said temple were consistently an unmarried Sadhu Sanyasi Baba Bairagis and they have always remained the Sarvarahkar of Temple/ Plaintiff No. 1, but for the last several years, some persons having an evil intentions over the temple property, hence, one person, namely, Ram Swaroop son of Bhagwandas, who was a resident of Kanpur Nagar and carried on his business there and had no permanent residence in village Aheripur and only used to visit occasionally, developed malafide intentions regarding the temple and its property, and about 40 years ago, after the death of the then Sarvarakar Baba Bairagi, the said Ram Swaroop son of Bhagwandas, in conspiracy with the employees of the Revenue Department, got his name recorded as Sarvarakar of Plaintiff No. 1/temple in the concerned Khasra, Khatauni etc. after the death of Baba Bairagi Sarvarakar, whereas Ram Swaroop son of Bhagwandas was a married householder person, resided in Kanpur, and according to the tradition of the temple, since Ram Swaroop son of Bhagwandas was not a Baba Bairagi of the Bairagi sect, therefore he could not have been the Sarvarakar of Plaintiff No. 1, and factually also, since the said Ram Swaroop was a resident of Kanpur Nagar, it was not possible for him to look after the temple, nor was any actual care ever taken by him, nor in practice was Ram Swaroop ever the Sarvarakar of Plaintiff No. 1/temple, nor was any duty of Sarvarahkari ever performed by Ram Swaroop, and only due to collusion with the employees of the Revenue Department, the name of Ram Swaroop was recorded as Sarvarahkar of Plaintiff No. 1/said temple in the revenue records, although the employees of the Revenue Department neither had nor have any legal authority to make such an entry of Sarvarakari, nor can the same be recognized in law. In so far as the question of appointment as Sarvarakar/Sevayat of the temple is concerned, such appointment can only be made by the Civil Court, and therefore the entry of the name of Ram Swaroop son of Bhagwandas as Sarvarakar in the Khasra and Khatauni was having null and void from abinitio.

6. The defendant/respondent no.1, Sushil Maheshwari, who was the original defendant was not resident of the said village. Even during the pendency of litigation, Sushil Maheshwari had died and he has been substituted by his son 1/1 and 1/2, Amit and Anup Kumar, respectively, who is respondent nos. 1/1 and 1/2 in the present appeal. The original defendant (Sushil Maheshwari) was residing for the last 30-40 years in Chennai/Tamil Nadu alongwith his entire family. He was doing his business there. He used to visit in said village either once or twice in a year and and again returned to Chennai. After death of alleged Sarvarakar, Ram Swaroop son of Bhagwandas, the defendant/respondent had concocted a forged Will dated 21.12.1976 and got his name recorded in Khasra Khatauni and the name of original defendant/ Susheel Maheshwari had been substituted as

Sarvarakar of plaintiff no.1/temple. The application filed by him under Section 34 of the Revenue Act before the Naib Tehsildar, Bharthana, District Etawah was accepted on 26.3.2002 and the name of Ram Swarup has been substituted with the name of Sushil Chandra, the original defendant in the revenue record. An appeal has been filed before the SDM, Bharthana which was allowed on 27.4.2004, whereas said order was set aside by the Additional Commissioner, Kanpur Zone vide order dated 28.2.2007. Hence, the initial order passed by the Naib Tehsildar, Bharthana dated 26.3.2002 is consistently in existence.

7. Learned counsel for the appellants/plaintiffs has submitted that said entries were contrary to the provision of Section 34 of the Land Revenue Act. The original defendant was not having any right towards said temple and he has always having malafide intention to destroy and disturb the moveable and immoveable properties of plaintiff no.1/temple. He has manipulated the properties of plaintiff no.1/said temple. He had not discharged his duty.

8. It is contended by the learned counsel for the plaintiff no.1/temple that the original defendant came to the said village and he is having intention to sold upon land of the said temple as well as shops, hence plaintiffs has filed said suit under Section 92 CPC alongwith an application for leave to file the said suit. The plaintiffs/appellants seeks the relief that management committee shall be framed for the maintenance of plaintiff no.1/temple.

9. The plaintiffs/appellants has preferred the present appeal on the following amongst other grounds.

10. Learned counsel for the plaintiffs/appellants submitted that after registration of the aforesaid suit, the learned trial court issued notices to the respondents for filing a reply/objection to the aforesaid application of the plaintiffs/appellants under section 92 of CPC. Thereafter the respondents initially filed their objection to the aforesaid application and the said objection was numbered as paper no. 26C and 27C. Thereafter it appears from perusal of records that the respondents again filed another objection to the aforesaid application under section 92 of C.P.C. filed by the plaintiffs/appellants and the aforesaid objection was numbered as paper no. 39C.

11. It is further reflected from perusal of records that the respondents again filed another additional objection before the learned trial court i.e. to the aforesaid application under section 92 of C.P.C. filed by the plaintiffs/appellants and the aforesaid objection was numbered as paper no. 42C.

12. Learned counsel for the plaintiffs/appellants has submitted that the learned trial court without considering the specific case of the plaintiffs/appellants and by recording wrong and illegal findings has illegally and arbitrarily and in a clandestine manner passed the impugned order dated 13.01.2026 whereby the application so filed by them under section 92 of C.P.C. for grant of leave to institute the said suit has been rejected. Being aggrieved against the aforesaid order dated 13.01.2026, the present appeal is being preferred by the plaintiffs/appellants.

13. Learned counsel for the plaintiffs/appellants has submitted that the learned trial court while passing the impugned judgement, has miserably failed to appreciate the fact that the present

case is a case of implied trust and has thus recorded a perverse finding that the plaintiffs/appellants have failed to establish that there was either an express or implied trust for management of the daily affairs of the temple. He further submitted that learned trial court has recorded a perverse finding with respect to the fact that from the facts and circumstances of the case, it was not established that there existed any express or implied trust for management of the temple and its properties and it has been further observed illegally that it was not reflected from the records that the Sarvrahkar was not looking after the affairs of the temple personally. However, in that regard it is submitted that the opposite parties/defendants have themselves admitted in their objection 26C and 27C that earlier Ramswaroop had kept a Baba for taking care of the day to day affairs of the temple and thereafter several persons have been assigned the said duty from time to time.

14. Learned counsel for the plaintiffs/appellants has submitted that the learned trial court, while passing the impugned judgement, has miserably failed to appreciate the fact that the defendants are residents of Chennai and very seldom they come to visit the village to take care of the daily affairs of the temple. It is further submitted that learned trial court, while passing the impugned judgement, has miserably failed to appreciate the fact that the said temple is a public temple and large number of public comes every day for worshiping there and in absence of a proper committee of management for managing the affairs of the temple, the defendants have captured the valuable assets of the said temple for their personal use. Learned trial court while passing the impugned judgement, has miserably failed to appreciate the fact that the defendants have themselves admitted in their objection/reply that Late Sushil Maheshwari became Bhumidar with Transferable rights of the properties that were belonging to the temple and his name was allegedly recorded in the revenue records in the said capacity. Thus, it is most respectfully submitted here that from the above mentioned facts it is absolutely established that the defendants are claiming themselves to be the owners of the properties that are belonging to the temple which itself shows their malafide intention of misappropriating such property.

15. Learned counsel for the plaintiffs/appellants has submitted that the learned court below, while passing the impugned judgement, has miserably failed to appreciate the fact that the defendants have no interest in managing the daily affairs of the temple and they only want to sell of the valuable properties that belong to the plaintiff no. 1 temple. It is further submitted that the learned trial court, while passing the impugned judgement, has miserably failed to apply the actual import of Section 92 C.P.C. which clearly lays down that the aim of the said section is to protect the right of the public in such trusts and to stop any such misuse of the property of the said trust whether express or implied. It is stated that the defendants are illegally trying to alienate the movable and immovable properties of the temple and and are also openly saying in the village that they are the owners of the said temple and its properties and as such they can dispose the said the said properties as per their will and as such the lower court ought to have granted permission to the plaintiffs/appellants to file a suit for preservation of such properties of the temple by creating a committee of management.

16. Learned counsel for the plaintiffs/appellants has submitted that the said temple is a public temple and thousands of devotees come to visit the temple for worshiping the deity and if the properties of the temple are not preserved by order of Hon'ble Courts then the public at large shall suffer irreparable loss and injury. It is submitted that the plaintiffs have clearly established

from their pleadings before the trial court that there existed a trust for public purpose of a religious nature for managing the affairs of the temple but the learned trial court has illegally recorded a perverse finding in that regard in the impugned judgement. The learned trial court, while passing the impugned judgement, has miserably failed to consider that a suit under Section 92 C.P.C. is a suit of special nature which pre-supposes the existence of a public trust of a religious or a charitable character and such a suit can proceed on the allegation that there was a breach of such trust or that the direction of the court is necessary for the administration of the trust and the pleadings and evidence adduced by the plaintiffs'/appellants.

17. Learned counsel for the appellants has relied on the law laid by this Court in **Ambrish Kumar Singh Vs. Raja Abhushan Bran Bramhshah and others; AIR 1989 Alld. 194** and relied on paragraph nos. 10 and 15 which read as under:-

"*10 Section 92, Civil Procedure Code was amended by the Civil Procedure Code (Amendment) Act, 1976. Before this amendment suit could be filed either by the Advocate-General or two or more persons having interest in the trust and having obtained consent in writing of the Advocate-General. After the amendment the words "the consent in writing of that Advocate-General" were substituted by the words "leave of the court."*

While granting leave the court does not decide the rights of the parties. No right is adjudicated at this stage. The, Court has merely to see whether there is a prima facie case for granting leave to file a suit. This order does not in any way affect the final decision which will be given on merit after the parties have led evidence in the suit.

15. Sri K.N. Tripathi referred to a decision of this Court reported in ***1987 All LJ 369, Mahanth Gurmukh Das v. Bhupal Singh*** *wherein it has been held:-*

"When a person claims to have an interest in the trust and the claim is disputed by the opposite party, the Court should apply its mind to the question on the basis of the material on record and come to a conclusion, prima facie though it may be, on the question whether the person seeking its leave can be treated to be a person having an interest in the trust."

18. Learned counsel for the plaintiffs/appellants has further relied on the judgment rendered in **Operation Asha Vs. Shelly Batra and others; (2026) 1 SCC 569** and he relied on paragraph nos. 125 and 129 which are as follows:-

"125. Most common law jurisdictions are accepting towards the doctrine of constructive trust as adopted in England i.e. the institutional model rather than a purely remedial one. Therefore, jurisprudentially there would remain no bar for India to also adopt such an approach. We say so also because, the Trusts Act, 1882 (although dealing with private trusts) recognises the concept of an English "constructive trust". Under Chapter IX titled "Obligation in the nature of trusts" delineates several provisions wherein a resulting or a constructive trust, as accepted in common law may be created. Additionally, the Statement of Objects and Reasons of the Act reads as follows:

"With the few exceptions mentioned in this Statement, the rules contained in the Bill are substantially those now administered by English Courts of Equity and (under the name of "justice, equity and good conscience") by the Courts of British India.

The Bill distributes the subject under the following heads: I, Preliminary: II, the creation of trusts: III, the duties and liabilities of trustees: IV, their rights and powers: V, their disabilities: VI, the rights and liabilities of the beneficiary: VII, vacating the office of trustee: VIII, the extinction of trusts; and IX, certain obligations of the nature of trusts.

Where no trust is declared, but for the purposes of justice the law deems one to have been created, the trust is by English lawyers termed "constructive". Benami transactions, where property is transferred to A for a consideration paid by B, and B makes the payment for his own benefit, have for centuries been familiar to the people of India: gains made by one person at the cost of another are an everyday source of litigation; and in no country, owing to the extreme sub-division of immovable property and the partition of Inheritances, are constructive trusts more common. Chapter IX avoids the fiction implied in the term "constructive trusts" by treating such confidences as obligations in the nature of trusts properly so called. It specifies the fourteen principal cases in which such an obligation arises, as follows:

1. Where it does not appear that the transferor of property intended to dispose of the beneficial Interest (Section 80):

2. Where property is transferred to one person for a consideration paid by another (Section 81):

3. Where the trust is incapable of execution or is executed without exhausting the property (Section 82):

4. Where a transfer of property is made for an illegal purpose (Section 83):

5. Where a bequest is made for an illegal purpose, or where the revocation of a bequest is forcibly prevented (Section 84):

6. Where a transfer is made in pursuance of a rescindable contract (Section 85):

7. Where a transfer is made in fraud of the transferor's creditors (Section 86):

8. Where a debtor becomes his creditor's legal representative (Section 87):

9. Where a pecuniary advantage is gained by a person in a fiduciary character (Section 88):

10. Where an advantage is gained by the exercise of undue influence (Section 89):

11. Where an advantage is gained by a tenant for life or other qualified owner in derogation of the rights of other persons interested in the property (Section 90):

12. Where property is acquired with notice of an existing contract affecting it (Section 91):

13. Where a person contracts to buy property to be held on trust (Section 92):

14. Where one of several compounding creditors, by a secret arrangement with the debtor, gains an advantage over his co-creditors (Section 93):

The Bill also contains a general clause (Section 94) providing for cases not so specified. It is believed that this clause will cover that form of constructive trust which the Punjab Courts have held to arise when a co-sharer in a village community absents himself without expressly abandoning his rights".

129. However, it must be noted that an institutional constructive trust would arise the very moment any fiduciary removes or diverts the property from its intended beneficiaries for his exclusive benefit or for the benefit of those who are not the intended beneficiaries. This need not necessarily be due to an intention to defraud but may also arise due to a mistake. In other words, the moment the fiduciary receives money which he cannot conscientiously retain for himself, a constructive trust would be raised in favour of the beneficiaries on whose account the money was originally received. To put it simply, the factum that the fiduciary "withheld" the property from its rightful beneficiaries must be established. This would constitute a breach of his/her fiduciary duty and this benefit which has accrued to him would be held in constructive trust. The breach of his fiduciary duty i.e. his duty towards the society and its intended beneficiaries, must exist."

19. Learned counsel for the appellants/plaintiffs has placed reliance on **Gyan Prakash Chaurasia and others Vs. Bans Narain Rai and another; AIR 1991 Allahabad 266** and he relied on paragraph no.3 which reads as under:-

"3. Having heard the learned counsel for the applicant I am of the view that the revision is devoid of merits. The suit or application under Section 92 of the Code has got a unique characteristic. It pre-supposes the existence of a public trust of a religious or charitable character and the suit can proceed only on the allegation that there is a breach of the trust and a consequential direction from the court has become imminent. The plaintiff has to pray one or more reliefs specified under the section. The suit is filed not in the individual capacity as plaintiff or plaintiffs, but as representatives of the public in general for vindication of public rights. In deciding whether plaintiffs have correctly filed the suit as representatives of the public or as private individuals, apart from looking into the reliefs claimed, the court must consider the capacity in which the plaintiffs are suing and the purpose for which the sujr is brought".

20. On the other hand, learned counsel for the respondent/defendant has submitted that the application filed by the plaintiffs seeking permission to institute the suit under Section 92 of the Code of Civil Procedure is wholly false, incorrect and on concocted facts, and is not maintainable

in law. There is no need for framing of scheme of administration or management committee about plaintiff no.1/said temple. The details of the properties which has been mentioned by the plaintiffs at the end of the plaint are totally false.

21. It is submitted that the land mentioned at Gata Plot No. 396 measuring 0.71 acre mentioned at Serial No. 2 and Plot No. 557 measuring 0.62 acre and Gata No. 394 area 0.275 hectare is only in the name of plaintiff no.1/temple which is entered into the name of Sarvarakar of the temple as Sushil Chandra son of Vishambhar Dayal, whereas the land mentioned at serial no. 3, Gata No. 199 area 1.12 acre and Gata No. 507 measuring 1.24 acre are recorded in the name of Shri Ram Chandra Ji Maharaj Vanshi Wale Mandir, Aheripur through Sarvarakar Ashok Kumar son of Ramswaroop, and Plot No. 550 M. is recorded in the name of Shri Ram Sanskrit Pathshala Farm, Aheripur. The said properties have no concern or connection with the temple in question, nor have they ever had any such connection, and the said plot numbers are not under dispute.

22. He has further submitted that the respondent/defendant has objected that plaintiff no.1/said temple was having its previous Sarvarakar of Shri Maharajadhiraj Shri Ramchandra Ji Maharaj Virajman Temple, Aheripur, Tehsil Bharthana, District Etawah (U.P.), namely Ramswaroop Maheshwari son of Bhagwan Das Maheshwari, resident of 111/330 Ashok Nagar, Kanpur, who, used to visit consistently to Aheripur and perform Pooja Pathshala and manage the all arrangements of the said temple. The temple and pond were constructed and built by the ancestors and elders of the family, and the land is attached to the temple was in the ownership and in Sarvakarship of ancestors of the defendant. The entire property belongs to the Maheshwari family, whereas the temple and pond are always open for publicly worship and use by every person. Here the contention of plaintiff/temple is having prima facie force that said temple is of public purposes because the first name came into Sarvakara of said temple is of Ramswaroop Maheshwari, and there is no name of any Sarvakar in the said temple whereas said temple was in existence since a long time.It is stated by the defendant/respondent that said temple and pond was constructed by their ancestors and elder persons and they were also in possession of the land adjacent to the said temple and the entire properties was of Maheshwari family. Whereas, none of the documentary evidence had been provided nor any document of Sarvakar or of maintenance of said temple by the predecessor of defendant or of any predecessor of first Sarvakar, Ram Swarup Maheshwari, whose name came into existence. Whereas the temple is of public nature it is admitted case of both plaintiffs as well as defendant.

23. The respondent/defendant had not objected that the aforesaid Ram Swarup, Sarvakar of the temple was not having any children. He has attained his old age. He was unable to properly manage the affairs of the temple due to illness and weakness, hence in such circumstances, he considered it appropriate during his lifetime to execute a Will in respect of the temple and its attached properties so that the temple, its lands and properties might remain protected and the worship and rituals of the temple might continue smoothly. Accordingly, he executed a Will dated 21-12-1976 in favour of his grandson Sushil Chandra Maheshwari son of Vishambhar Dayal Maheshwari, resident of village Aheripur, as Sarvarakar of the said temple alongwith all the properties connected with the said temple including agricultural land. The said will was prepared on 21.12.1976. It is also mentioned in the said Will, that during the lifetime of the testator, he himself would remain the Sarvarakar, owner, person in possession and overall manager of the

temple and its attached properties. After his death, the said Sushil Chandra Maheshwari would become the Sarvarakar of Shri Maharajadhiraj Shri Ramchandra Ji Maharaj Virajman Temple, Aheripur, Pargana Bharthana, District Etawah, and would enjoy all rights relating to the said temple. He would look after the temple, maintain its administration and management, arrange for worship, offerings to the deity and cleanliness. In respect of the agricultural lands attached to the temple bearing Plot Nos. 557 measuring 0.62 acre and 396 measuring 0.71 acre, the said Sushil Chandra Maheshwari was given full authority and was entitled to have his name entered in the government records as Sarvarakar and to utilize the said properties for the benefit of the temple. Thereafter, the said Ramswaroop has died and upon his death on the basis of said will, the entire management and right of Sarvakar of said temple alongwith entire properties and management of all affairs of the temple was devolved in favour of Sushil Chandra Maheshwari/ respondent/ defendant, in the capacity of Sarvarakar.

24. On the basis of the aforesaid Will, Sushil Chandra filed an application for transfer of his name in the agricultural, land attached with said temple. He has moved an application for mutation before the Tehsildar being Mutation Case No. 203 of 2002 before the Court of Tehsildar, Bharthana for mutation of his name in respect of the agricultural land attached to the temple, and by order dated 06-03-2002, the name of Sushil Chandra Maheshwari has already been recorded as transferable Bhumidhar in respect of Plot Nos. 197 and 199 in the capacity of Sarvarakar. Whereas, Smt. Kasturi Devi wife of Kanhaiyalal, resident of village Aheripur, Pargana Bharthana, District Etawah, who is having one house, saw mill, flour mill and factory, executed a Will dated 17-07-1972, duly notarized, in favour of her niece Smt. Shanti Devi widow of Vishambhar Dayal, resident of village Aheripur, and given to her all rights. After death of Kasturi Devi, Smt. Shanti Devi through a written Will dated 02-12-2000, authorized her adopted son Arvind Kumar son of Late Vishambhar Dayal that, if the aforesaid property is sold, the amount received therefrom shall be utilized for the renovation and restoration of Ram Janki Temple, Ramtal. Upon the said plot, shops were constructed in the year 2012 under the supervision of Sushil Chandra Maheshwari , and the said property is under the exclusive possession of the beneficiary under the Will. Earlier the aforesaid Ramswaroop had appointed a Baba for the care, maintenance, worship and rituals of the temple, and after the death of the said Baba, Nepali Baba was appointed as the priest. Nepali Baba continuously looked after and performed worship and rituals in the said temple for about 39 years. Thereafter, Irendra Das performed worship and rituals for about 15 years, and thereafter Jeetu Gaur continued the same for about 2 years. In the year 2020, upon the desire/request of Shyamsundar Das for management and worship of the temple, the opposite party/defendant handed over the keys of the temple to the said Shyamsundar Das.

25. The respondent/defendant has further submitted that the family members of respondent/defendant and relatives are fully devoted and faithful belief in the said temple and deity and they are not any malafide intention. They had no intention to sell the property of the said temple. They are even not in the need of it. The respondent/defendant has admitted this fact that family of defendant is settled in Chennai and for business purpose, he used to visit Chennai and the original defendant are seriously ill and also getting his treatment at Chennai. When original defendant had visited to the said village, then it came to his knowledge that the said Shyamsundar has a household life and children, and in the name of saints and ascetics, he gathers anti-social elements and consumes intoxicating substances, thereby turning the temple into a centre of criminal

activities and creating danger to the security of the temple. When the defendant/respondent demanded return of the keys of the temple from the said Baba Shyamsundar, he refused to hand over the same. The original defendant has filed his objection that the aforesaid Baba had sold the green standing trees situated in the compound of the said temple. He has also filed an application before the concerned police station Bakewear, but that was disposed of with saying that civil dispute is pending before the civil court. that the matter was pending before the Civil Court and returned the application.The original defendant/respondent had died and he has been substituted by his son 1/1 and 1/2 and they raises the same objection which has been raised by the original defendant, Sushil Maheshwari. He has also objected that the original defendant Sushil Maheshwari has performed all duties which was provided to him in the Will and thereafter on the basis of Will, the respondent nos. 1/1 and 1/2, Amit and Anup Kumar, are having entire control and managing the affairs of the said temple. They have also raised objection that the plaintiffs are persons of highly dubious character and are acting in collusion with one another. They maintain association with criminal-minded persons. The intention of the plaintiffs is dishonest, and they seek to illegally usurp and ruin the temple and its properties. When the defendant/respondent did not allow them to succeed in their designs, they instituted the present false suit on the basis of false and concocted facts. The defendant/respondent has stated that in view of the aforesaid facts and circumstances, the application of the plaintiffs/appellant seeking permission to institute the suit deserves to be dismissed with cost.

26. Learned counsel for the defendant/respondent has submitted their objection on the basis of law laid down in the **Janardan Dagdu Khomane and another Vs. Eknath Bhikhu Yadav and others; 2019 (0) Supreme (SC) 1040**

and he relied on paragraph nos. 33,34 and 35 which are as follows:-

"33. A constructive trust arises by operation of law, without regard to the intention of the parties to create a trust. It does not require a deed signifying the institution of trust. Under a constructive trust, the trust arises by operation of law as from the date of the circumstances which give rise to it. The function of the court is only to declare that such a trust has arisen in the past.

34. Constructive trust can arise over a wide range of situations. To quote Cardozo, J., " a constructive trust is a formula through which the conscience of equity finds expression."

35. Story on Equity Jurisprudence has explained 'Constructive Trust" as:

"One of the most common cases in which a Court of equity acts upon the ground of implied trusts in invitum, is where a party has received money which he cannot conscientiously withhold from another party. It has been well remarked, that the receiving of money which consistently with conscience cannot be retained is, in equity, sufficient to raise a trust in favour of the party for whom or on whose account it was received. This is the governing principle in all such cases. And therefore, whenever any controversy arises, the true question is, not whether money has been received by a party of which he could not have compelled the payment, but whether he can now, with a safe conscience, ex aequo et bono, retain it. Illustrations of this doctrine are familiar in cases of money paid by accident, or mistake, or fraud. And the difference between the payment of money under a mistake of fact, and a payment under a mistake of law, in its operation upon the

conscience of the party, presents the equitable qualifications of the doctrine in a striking manner. It is true that Courts of Law now entertain jurisdiction in many cases of this sort where formerly the remedy was solely in Equity; as for example, in an action of assumption for money had and received, where the money cannot conscientiously be withheld by the party; following out the rule of the Civil Law; Quod condition in debiti non datur uitra, quam locupletior factus est, qui accepit. But this does not oust the general jurisdiction of Courts of Equity over the subject-matter, which had for many ages before been in full exercise, although it renders a resort to them for relief less common, as well as less necessary, than it formerly was. Still, however, there are many cases of this sort where it is indispensable to resort to Courts of Equity for adequate relief and especially where the transactions are complicated, and a discovery from the defendant is requisite."

27. Learned counsel for the defendant/respondent has also placed reliance on the law laid down by the Supreme court in **Bishwanath and another Vs. Sri Thakur Radha Ballabhli and others; 1967(0) Supreme (SC) 38** and he relied on paragraph no.7 which reads as under:-

"7. It is settled law that to invoke S.92 of the Code of Civil Procedure, 3 conditions have to be satisfied, namely, (i) the trust is created for public purposes of a charitable or religious nature, (ii) there was a breach of trust or a direction of Court is necessary in the administration of such a trust, and (iii) the relief claimed is one or other of the reliefs enumerated therein. If any of the 3 conditions is not satisfied, the suit falls outside the scope of the said section. A suit by an idol for a declaration of its title to property and for possession of the same from the defendant, who is in possession thereof under a void alienation, is not one of the reliefs found in S. 92 of the Code of Civil Procedure. That a suit for declaration that a property belongs to a trust is held to fall outside the scope of S. 92 of the Code of Civil Procedure by the Privy Council in Abdur Rahim v. Abu Mahomed Barkat Ali, 55 Ind App 96 and by this Court in Pragdasli Guru Bhagwandasji v. Ishwarlalbhai Narsibhai, 1932 SCR 513:, on the ground that a relief for declaration is not one of the reliefs enumerated in S. 92 of the Code of Civil Procedure. So too, for the same reason a suit for a declaration that certain properties belong to a trust and for possession thereof from the alienee has also been held to be not covered by the provisions of S. 92 of the Code of Civil Procedure: See Mukhda Mannudas Bairagi v. Chagan Kisan Bhawasar, ILR(1957) Bom 809. Other decisions have reached the same result on a different ground, namely, that such a suit is one for the enforcement of a private right. It was held that a suit by an idol as a juristic person against persons who interfered unlawfully with the property of the idol was a suit for enforcement of its private right and was, therefore, not a suit to which S. 92 of the Code of Civil Procedure applied: See (Darshan Lal v. Shibji Mahraj Birajman, ILR 45 All 215 and Madhavrao Anandrao v. Shri Omkareshvar Ghat, 31 Bom LR 192. The present suit is filed by the idol for possession of its property from the person who is in illegal possession thereof and, therefore, it is a suit by the idol to enforce its private right. The suit also is for a declaration of the plaintiff s title and for possession thereof and is, therefore, not a suit for one of the reliefs mentioned in S. 92 of the Code of Civil Procedure. In either view, this is a suit outside the purview of S. 92 of the said Code and, therefore, the said section is not a bar to its maintainability."

28. Section 92 CPC provides public charities which reads as under:-

*"92.**Public charities**.(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the [leave of the Court,] may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree-*

(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;]

(d) directing accounts and inquiries;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863), [or by any corresponding law in force in [the territories which, immediately before the 1st November, 1956, were comprised in Part B States]], no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

[(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cypres in one or more of the following circumstances, namely:-

(a) where the original purposes of the trust, in whole or in part,-

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since they were laid down,-

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, or

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust."

29. In the aforesaid definition, Section 92 CPC, the words express or constructive trust created for public purposes are used by the wisdom of legislature. As per Section 92(d) directing accounts and inquiries; (g) settling a scheme; and clause (h) granting such further or other relief as the nature of the case may require.

30. In the present case, leave to application for filing suit under Section 92 CPC has been filed alongwith copy of the plaint. It is the contention of the learned counsel for the appellants/plaintiffs that said temple is a public temple and large number of public comes every day for worship there and there is need of proper committee of management for managing the affairs of the temple. Whereas, it is held by this Court in **Ambrish Kumar Singh(supra)** that while granting leave the court does not decide the rights of the parties. No right is adjudicated at this stage. The, court has merely to see whether there is a prima facie case for granting leave to file a suit. This order does not in any way affect the final decision which will be given on merit after the parties have led evidence in the suit.

31. The doctrine of constructive trust has been discussed by the Supreme Court of India in **Operation Asha (supra).** It is also submission of the respondent/defendant that the temple and pond were constructed and built by the ancestors and elders of the family and the land is attached to the temple which was in the ownership and Sarvarakarship of the ancestors of

defendant/respondent. The entire properties belong to Maheshwari family, whereas the temple and pond are always open for public worship and used by every person. Hence, contention and submission of the learned counsel for the appellants/plaintiffs/temple is having, prima facie, legal force that the said temple is of public purposes.

32. The defendant/respondent has mentioned that the first name of Sarvarakar of the said temple is of Sri late Ram Swarup Maheshwari and there is no name of any Sarvarakar prior to him in the said temple. Whereas, it is prima facie clear from the facts that the temple was in existence since long time and used by public at large. Whereas, none of the documentary evidence has been produced about Sarvakarship or of maintenance of said temple by the predecessor of the defendant/respondent or of any predecessor of first Sarvarakar, late Ram Swarup Maheshwari. It is the first name which came into existence, whereas, public nature of the temple is not disputed by the both parties.

33. It is held by the Supreme Court in **Janardan Dagdu Khomane (supra)** that constructive trust arises by operation of law, without regard to the intention of the parties to create a trust.

34. In view of facts and circumstances of the case, being public nature of temple and while granting leave, the court does not decide rights of the parties and no right is adjudicated at this stage. The court has merely to see that there is prima facie case for grant of leave to file the suit. This order does not in any way affect the final decision which will be given on merits after the parties have led evidences in the suit. Hence, the impugned order dated 13.1.2026, passed by the learned Additional District Judge/Fast Track Court No.1, Etawah, in Misc. Case (Under Section 92 of C.P.C.) No. 103 of 2021 (Ramchandra Ji Maharaj Virajman Mandir Ramtal and others Vs. Sushil Maheshwari since deceased and another), is hereby **set aside** and the leave to file original suit under Section 92 CPC is hereby allowed.

35. The present appeal is accordingly, **allowed.**

(2026) 5 ILRA 2465
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.05.2026

BEFORE

THE HON'BLE ABDUL SHAHID, J.

First Appeal No. 1127 of 2026

Indra Bagdiya **...Appellant**
Versus
Balvir Kohli & Ors. **...Respondents**

Issues for Consideration

(i) Whether the judgment of the first appellate court, reversing the decree of the trial court without framing points for determination, complies with the mandatory requirement of Order XLI Rule 31 C.P.C.?
(ii) Whether such non-compliance renders the judgment of the first appellate court unsustainable, warranting it being set aside without examination of the merits?

(iii) Whether the matter is liable to be remanded to the first appellate court for fresh decision in accordance with Order XLI Rules 30 and 31 C.P.C.?

Headnotes

Code of Civil Procedure, 1908 --- O. XLI Rr. 30 and 31 --- First appeal --- Judgment of appellate court --- Mandatory contents.

HELD: The first appellate court, while deciding a first appeal, is bound to follow the procedure prescribed under Order XLI Rules 30 and 31 C.P.C. The judgment of the appellate court must be in writing and state the points for determination, the decision thereon, the reasons for the decision, and, where the decree appealed from is reversed or varied, the relief to which the appellant is entitled. [Paras 9 to 12]

Code of Civil Procedure, 1908 --- O. XLI R. 31 --- Points for determination --- Decision, reasons and relief --- Interdependence.

HELD: The appellate court has jurisdiction to reverse or affirm the findings of the trial court, and the first appeal is a valuable right of the parties in which the whole case is open for re-hearing on facts and law. The judgment of the appellate court must reflect conscious application of mind and record findings supported by reasons on all issues arising, along with the contentions pressed by the parties. Unless the points for determination are framed, it is not possible for the appellate court to record its decision thereon, assign reasons, or grant relief. [Paras 14 to 16]

Code of Civil Procedure, 1908 --- O. XLI R. 31 --- Non-framing of points for determination --- Judgment set aside without examining merits --- Remand.

HELD: The judgment and order of the first appellate court, having failed to comply with the mandatory requirement of framing points for determination under Order XLI Rule 31 C.P.C., suffered from an apparent illegality and could not be sustained. Without entering into the merits of the case, the impugned judgment was set aside on this ground alone, and the first appellate court was directed to frame the points for determination and decide the appeals afresh, recording findings and reasons in accordance with Order XLI Rules 30 and 31 C.P.C. [Paras 17 to 20]

Nomenclature of court --- Additional District Judge --- Additional Sessions Judge --- Correction directed.

HELD: The first appellate court was directed to correct the nomenclature of the court used while signing the judgment, clarifying that, the matter being civil in nature, the correct designation is "Additional District Judge" and not "Additional Sessions Judge," the latter pertaining to criminal proceedings. [Para 22]

Appeals allowed. Impugned judgment and order set aside. Matter remanded to the first appellate court to decide afresh in accordance with Order XLI Rules 30 and 31 C.P.C. (E-14)

Case Law Cited

B.V. Nagesh and another v. Sreenivasa Murthy, (2010) 13 SCC 530 --- relied on

List of Acts / Statutes

Code of Civil Procedure, 1908.

List of Keywords

First appeal; Points for determination; Remand; Appellate judgment; Reasons for decision; Relief**.**

Case Arising From

Judgment and order dated 05.02.2026 passed by the Additional District Judge, Court No. 1, Sonbhadra, in Civil Appeal No. 19 of 2023, *Balvir Kohli v. Smt. Indra Bagdiya and others*, connected with Civil Appeal No. 22

of 2023, *Jitendra Bahadur Singh alias Ramanand Singh and others v. Smt. Indra Bagdiya and others*, arising out of Original Suit No. 264 of 2001, *Indra Bagdiya v. Balvir Kohli and others*, Civil Judge, Senior Division, Robertsganj, District Sonbhadra.

Appearance for Parties

For the Appellants: Sri Ghanshyam Dwivedi, Ms. Maithali Sharan Pipersenia and Sri Utsav.
For the Respondents: -

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

1. Heard learned counsel for the appellant/plaintiff.

2. The present appeal has been filed against the judgment and order dated 05.02.2026 passed by the learned Additional District Judge, Court No. 1, Sonbhadra, in Civil Appeal No. 19 of 2023, *Balvir Kohli Vs. Smt. Indra Bagdiya and others*, whereby the learned Additional District Judge has allowed Civil Appeal No. 19 of 2023, Balvir Kohli Vs. Smt. Indra Bagdiya and others, along with connected Civil Appeal No. 22 of 2023, *Jitendra Bahadur Singh alias Ramanand Singh and others Vs. Smt. Indra Bagdiya and others.*

3. First Appeal From Order No. 1127 of 2026 (Indra Bagdiya Versus Balvir Kohli and others) and First Appeal From Order No. 1128 of 2026 *(Indra Bagdiya Versus Vijendra Bahadur Singh @ Ramanand Singh and others)* have arisen out of the common judgment and order dated 05.02.2026 passed by the learned Additional District Judge, Court No. 1, Sonbhadra, in Civil Appeal No. 19 of 2023, *Balvir Kohli Vs. Smt. Indra Bagdiya and others*, whereby the learned Additional District Judge has allowed Civil Appeal No. 19 of 2023, *Balvir Kohli Vs. Smt. Indra Bagdiya and others*, along with connected Civil Appeal No. 22 of 2023, *Jitendra Bahadur Singh alias Ramanand Singh and others Vs. Smt. Indra Bagdiya and others*, arising out of Original Suit No. 264 of 2001 *(Indra Bagdiya Versus Balvir Kohli and others).*

4. Hence, both these appeals are hereby consolidated to avoid multiplicity of proceedings and are being decided by this common judgment, which reads as follows:

5. The plaintiff/appellant has filed a Original Suit No. 264 of 2001 (Indra Bagdiya Versus Balvir Kohli and others) before the learned Civil Judge, Senior Division, Robertsganj, Distrtict Sonbhadra for permanent injunction that the defendants be restrained to interfere into the peaceful possession or in construction raised by the plaintiff. The suit was filed on 11.11.2001.

6. Learned trial court has decided the said original suit with a detailed judgment after appreciation of all the facts, circumstances and evidences produced by the parties on 20.04.2023. The issue no. 1 which has been framed by the learned trial court is that whether the property in dispute which is shown in the map attached with the plaint as alphabet ?, ?, ?, ? is the ownership and possession of the appellant/plaintiff.

7. The said issue has been decided with great care, caution, and proper appreciation of the evidence and the entire facts of the case, and it has been finally held that the map of the property in question is attached with the plaint, the plaintiff is the owner and in possession of the said property,

and is entitled to a decree of permanent injunction. Accordingly, the suit was decreed in favour of the plaintiff/appellant.

8. Defendant No. 1, Balvir Kohli, preferred Civil Appeal No. 19 of 2023, and Defendant No. 2, Vijendra Bahadur Singh, preferred Civil Appeal No. 22 of 2023 against the said judgment and order dated 20.04.2023. Both the civil appeals were clubbed together and decided by a common judgment and order dated 05.02.2026, which is under challenge before this Court.

9. At the outset, learned counsel for the plaintiff/appellant has submitted that the first appellate court remanded the matter without framing any specific points for determination by the learned trial court. He has further submitted that the procedure prescribed under Order XLI Rules 30 and 31 of the Code of Civil Procedure, 1908 (C.P.C.) has not been followed by the first appellate court.

10. It is contended that the first appellate court, while deciding a civil appeal, is required to follow the procedure prescribed under Order XLI Rules“30 and 31 of the C.P.C., which is as follows:

"30. Judgment when and where pronounced.-2 *[(1)] The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.*

[(2) Where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or their pleaders immediately after the judgment is pronounced.]

31. Contents, date and signature of judgment*.-The judgment of the Appellate Court shall be in writing and shall state-*

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein."

11. The first appellant court is bound to pronounce the judgment on the points framed for determination as mentioned in the Order XLI Rule 31-" (a) the points for determination; (b) the

decision thereon; (c) the reasons for the decision; and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled; and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

12. Learned counsel for the appellant/plaintiff has further relied upon Order XLI Rule 23 of the Code of Civil Procedure, 1908, which provides for remand of a case by the appellate court. It contemplates that where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

High Court Amendments
ALLAHABAD.-In Rule 23:

(i) Insert the following after the words "and the decree is reversed in appeal", namely: "or where the Appellate Court while reversing or setting aside the decree under appeal considers it necessary in the interest of justice to remand the case, it"; and

(ii) Delete the words "the Appellate Court" occurring thereafter and delete also the words "if it thinks fit", occurring after the words "may". "23. Remand of case by Appellate Court. Where the Court from whose decree an appeal is preferred has disposed of the suit on a preliminary point and the decree is reversed in appeal, or where the Appellate Court, while reversing or setting aside the decree under appeal, considers it necessary in the interests of justice to remand the case, it may by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with direction to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit, and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand." (11-3-1965)

13. It is further submitted that the original suit is of the year 2001 and was finally decided in the year 2023 by learned trial court, after detailed appreciation of the evidence and upon framing exhaustive issues involved therein. The basic requirement and essential mandate for the first appellate court was to comply with the provisions of Order XLI Rule 31 of the C.P.C., which has not been adhered to.

14. It is held by the Hon'ble Supreme Court in B**.V. Nagesh and another Versus Sreenivasa Murthy, (2010) 13 SCC 530** that the regular first appeal is to be disposed of by the appellate Court/High Court has been considered by this Court in various decisions. Order XLI of C.P.C. deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate Court shall state: a) the points for determination; b) the decision thereon; c) reasons for the decision; and (d) where the decree appealed from is reversed or varied,

the relief to which the appellant is entitled. (i) The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. (ii) The first appeal is a valuable right of the parties and unless restricted by law, the whole case therein is open for re-hearing both on questions of fact and law. (iii) The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put-forth and pressed by the parties for decision of the appellate Court.

15. It is the first bounden duty of the first appellate court to frame the point for determination; the points for determination; the decision thereon; the reasons for the decision; and where the decree appealed from is reversed or varied, the relief to which the appellant is entitled. However, the judgment and order passed by the first appellate court do not comply with these essential and basic requirements for adjudication of the appeal on merits.

16. Unless the first appellate court frames the points for determination, it is not possible for it to record its decision thereon, assign reasons, or grant the relief, if any, to which the appellant may be entitled.

17. In view of the basic lapses committed by the first appellate court, which are contrary to the settled principles of law, an apparent illegality has occurred that cannot be sustained by this Court at this stage.

18. Accordingly, without entering into the merits of the case, the judgment and order dated 05.02.2026 passed by the first appellate court is liable to be set aside and is hereby set aside on account of non-framing of points for determination, as required under Order XLI Rule 31 of the Code of Civil Procedure, 1908.

19. The first appellate court is directed to frame the points for determination and decide the appeal afresh by recording findings thereon, assigning reasons for its decision, and passing a judgment and order in accordance with the procedure prescribed under Order XLI Rules 30 and 31 of the C.P.C., 1908.

20. With these observations and findings, the impugned judgment and order dated 05.02.2026 passed by the learned Additional District Judge, Court No. 1, Sonbhadra, in Civil Appeal No. 19 of 2023 and Civil Appeal No. 22 of 2023 is hereby set aside.

21. Accordingly, First Appeal From Order No. 1127 of 2026 and First Appeal From Order No. 1128 of 2026 are allowed.

22. The first appellate court is further directed to correct the nomenclature of the court as mentioned at the time of signing the judgment in the civil appeal, wherein it has been described as "Additional Sessions Judge, Court No. 1." It is clarified that, since the matter pertains to civil proceedings, the correct designation is "Additional District Judge." The designation "Additional Sessions Judge" pertains to criminal proceedings.

23. A copy of this order shall also be placed in F.A.F.O. No. 1128 of 2026.

(2026) 5 ILRA 2471
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.05.2026

BEFORE

THE HON'BLE ABDUL SHAHID, J.

First Appeal No. 2364 of 2025

Satya Homes Pvt. Ltd. ...Appellant
Versus
Fundan & Ors. ...Respondent

Issue for Consideration

Whether the trial court was justified in rejecting the plaintiff/appellant's application under Order XXXIX Rules 1 and 2 read with Section 151 CPC for temporary injunction, in a suit for declaration of ownership on the basis of possessory title and permanent injunction, where possession had admittedly been delivered to the plaintiff/appellant pursuant to a registered agreement to sell dated 02.05.2014 after payment of the entire sale consideration, and the defendants/respondents failed to place on record any registered document evidencing retransfer or resumption of such possession

Headnotes

Code of Civil Procedure, 1908 --- O.XXXIX rr.1, 2, s.151 --- Temporary injunction --- Suit pending --- Scope of enquiry at interlocutory stage --- Prima facie case, balance of convenience and irreparable injury alone to be examined --- Disputed questions of fact and law left for trial.

HELD:

Original Suit No. 1183 of 2023 was still pending before the trial court and had to be decided on its merits. The trial court, while deciding application 6C-2 under Order XXXIX Rules 1 and 2 CPC, was required to examine only prima facie case, balance of convenience and irreparable loss and injury. Questions of fact and law raised by the defendants/respondents, including limitation, readiness and willingness, and the validity or effect of the subsequent unregistered agreement/compromise dated 18.07.2022, are mixed questions of fact and law which cannot be decided prima facie at the interlocutory stage and are required to be considered by the trial court during trial. [Paras 38, 39, 44]

Transfer of Property Act, 1882 --- s.53A --- Registered agreement to sell with possession --- Entire sale consideration paid --- Possessory title --- Protection of possession --- Defendants failing to prove retransfer of possession --- Prima facie case in favour of plaintiff.

HELD:

It was undisputed that a registered agreement to sell along with possession, after payment of entire sale consideration, was executed by the defendants/respondents in favour of the plaintiff/appellant on 02.05.2014. The defendants/respondents failed to submit any registered document, or any other mode, by which they had reobtained possession of the property earlier delivered to the plaintiff/appellant. The possession delivered under the registered agreement to sell, being unrebutted by any document of retransfer, appeared prima facie undisturbed and required protection, failing which the plaintiff/appellant would suffer irreparable loss and injury and multiplicity of proceedings would result. [Paras 40, 43, 44, 45]

Transfer of Property Act, 1882 --- s.53A --- Agreement to sell of fixed validity --- Expiry of period --- Subsequent sale deeds executed after expiry, with part-adjustment of earlier consideration --- Effect --- Implicit continuance of possession and terms of original agreement.

HELD:
Though the registered agreement to sell dated 02.05.2014 was contended by the defendants/respondents to have a fixed validity expiring on 10.03.2015, the defendants/respondents themselves executed subsequent sale deeds in favour of the plaintiff/appellant even after the said date, adjusting part of the earlier paid consideration. This conduct amounted to a concession and could be considered as implicit continuance of physical possession and continuation of the terms and conditions settled by the registered agreement to sell dated 02.05.2014, which formed the very basis of the suit. [Para 40]

Evidence --- Unregistered agreement/compromise --- Reliance by defendants to establish surrender or retransfer of possession --- Document undated, authorisation of signatory unproved, and expressly disputed by plaintiff --- Not sufficient at interim stage to displace possessory rights flowing from registered agreement.

HELD:
The alleged compromise or agreement dated 18.07.2022, relied upon by the defendants/respondents to demonstrate change in possession, was an unregistered document, bore no date, did not disclose whether the signatory Sri Arvind Kumar Singh was ever authorised by the plaintiff-company to execute it, and was specifically denied by the plaintiff/appellant. Such an unregistered and disputed document could not, prima facie, be treated as a valid instrument by which possession was retransferred by the plaintiff/appellant to the defendants/respondents. [Paras 6, 25, 39, 43]

Revenue Law --- Mutation/revenue entries continuing in name of transferor --- Effect where possession delivered under registered agreement to sell without execution of sale deed --- Not determinative of possession.

HELD:
The circumstance that revenue entries continued to reflect the name of the transferor, both before and after the registered agreement to sell dated 02.05.2014, could not by itself be treated as conclusive, since it was natural for revenue entries to remain unchanged where possession was delivered under a registered agreement to sell but no sale deed was executed transferring title; such entries did not give any edge to the defendants/respondents on the question of possession at the interim stage. [Para 42]

Code of Civil Procedure, 1908 --- O.XXXIX rr.1, 2 --- First Appeal from Order --- Rejection of temporary injunction application set aside --- Injunction granted restraining interference with possession and change in nature of property pending suit.

HELD:
Prima facie case, balance of convenience and irreparable loss and injury being found in favour of the plaintiff/appellant, the impugned order rejecting the injunction application was set aside and the defendants/respondents were restrained from interfering with the peaceful possession of the plaintiff/appellant over the property in dispute on the basis of the registered agreement to sell dated 02.05.2014, and further restrained from changing the nature of the property during pendency of the suit. [Paras 45, 46]

Code of Civil Procedure, 1908 --- O.I r.10 --- Impleadment application by third party claiming rights under subsequent registered sale deed --- Liberty granted to move trial court.

HELD:
Where a third party claimed to have obtained a registered sale deed and delivery of possession from the defendants/respondents in respect of the land in question and sought impleadment, liberty was granted to

such third party to file the impleadment application before the trial court, to be decided in accordance with law having regard to the right alleged and the facts and circumstances of the case. [Order on Impleadment Application, Paras 1-3]

Appeal allowed. Impugned order dated 5.9.2025 set aside. Impleadment application disposed of with liberty to move the trial court. (E-14)

Case Law Cited

Ghanshyam v. Yogendra Rathi, 2023 INSC 575 — relied on; Ramesh Chand (D) through LRs v. Suresh Chand and another, 2025 INSC 1059 — relied on; Gunwantbhai Mulchand Shah and others v. Anton Elis Farel and others, (2006) 3 SCC 634 — referred to; Janardhanam Prasad v. Ramdas, (2007) 15 SCC 174 — referred to; Shakeel Ahmed v. Syed Akhaq Hussain, 2023 INSC 1016 — referred to; Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana and others, MANU/SC/1222/2011 — referred to; Ahmadsahab Abdul Mulla v. Bibijan and others, (2009) 5 SCC 462 — referred to; Smt. Katta Sujatha Reddy and another v. Siddamsetty Infra Projects Pvt. Ltd. and others, 2022 LiveLaw (SC) 712 — referred to; Usha Devi and others v. Ram Kumar Singh and others, 2024 SCC OnLine SC 1915 — referred to; Atma Ram v. Charanjit Singh, (2020) 3 SCC 311 — referred to; Nikhila Divyang Mehta and another v. Hitesh P. Sanghvi and others, 2025 LiveLaw (SC) 428 — referred to; Padhiyar Prahladji Chenaji (deceased) through LRs v. Maniben Jagmalbhai (deceased) through LRs and others, 2022 LiveLaw (SC) 241 — referred to; Sucha Singh Sodhi v. Baldev Raj Walia and another, (2018) 6 SCC 733 — referred to; Dahiben v. Arvindbhai Kalyanji Bhanusali and others, Civil Appeal No. 9519 of 2019, decided on 09.07.2020 — referred to; T. Arvindandam v. T.V. Satyapal and another, (1977) 4 SCC 467 — referred to; I.T.C. Ltd. v. Debt Recovery Appellate Tribunal, (1998) 2 SCC 170 — referred to; Madanuri Sri Ramachandra Murthy v. Syed Jalal, (2017) 13 SCC 174 — referred to; Ramisetty Venkatanna and another v. Nasyam Jamal Saheb and others, 2023 SCC OnLine SC 521 — referred to; Shri Mukund Bhavan Trust and others v. Shrimant Chhatrapati Udyan Raje Pratapsinh Maharaj Bhonsle and another, 2024 SCC OnLine SC 3844 — referred to; Jharkhand State Housing Board v. Didar Singh and others, MANU/SC/1202/2018 — referred to; Mahendra Singh and others v. Senior Citizen Home Complex Welfare Society and others, MANU/UP/2701/2011 — referred to; Ambalal Sarabhai Enterprise Limited v. KS Infraspace LLP Limited and another, (2020) 5 SCC 410 — referred to; Kishore Kumar Khaitan and others v. Praveen Kumar Singh, MANU/SC/0940/2006 — referred to; D. Albert v. Lalitha and others, MANU/TN/0205/1989 — referred to; The Correspondence, RBANMS Educational Institution v. B. Gunashekar and another, 2025 (5) SCR 94 — referred to.

List of Acts / Statutes

Code of Civil Procedure, 1908; Transfer of Property Act, 1882; Limitation Act, 1963; Registration Act, 1908; Income Tax Act, 1961.

List of Keywords

Temporary injunction; Registered agreement to sell; Possessory title; Section 53A, Transfer of Property Act; Part performance; Unregistered agreement; Prima facie case; Balance of convenience; Irreparable injury; Fixed period of validity; Revenue entries; Impleadment; First Appeal from Order**.**

Case Arising From

Order dated 5.9.2025 passed by the Civil Judge (Senior Division), Gautam Buddh Nagar in Civil Suit No. 1183 of 2023, Satya Homes Pvt. Ltd. v. Fundan and others, whereby application No. 6C-2 of the plaintiff/appellant was rejected, and objection No. 34-C-2 filed by the defendants/respondents was disposed of.

Appearance for Parties

For the Appellant: Nisheeth Yadav
For the Respondents: Anil Kumar Mehrotra, Ashwani Kumar Patel, Mehul Khare, Pragya Pandey

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

1. Heard Sri C.B. Yadav, learned Senior Advocate assisted by Sri Nisheeth Yadav, learned counsel for the plaintiff/appellant and Sri A.K. Mehrotra, learned Senior Advocate assisted by Sri A.K. Patel and Sri Srijan Mehrotra, learned counsel for defendants/respondents.

2. The present First Appeal from Order has been preferred against the impugned order dated 5.9.2025, passed by learned Civil Judge (Senior Division), Gautam Buddh Nagar in Civil Suit No. 1183 of 2023 (Satya Homes Pvt. Ltd. Vs. Fundan and others), whereby the application of the plaintiff/appellant bearing application No. 6C-2 has been rejected and objection (34-C-2) filed by defendants/respondents has been disposed of.

3. Learned Senior Counsel appearing for the plaintiff/appellant has submitted that the learned trial court has not considered the law laid down by the Supreme Court in its judgment dated 02.06.2023 in the case of **Ghanshyam Vs. Yogendra Rathi in Civil Appeal No.7527/7528 of 2012**, wherein the identical issue came that the plaintiff in whose favour an agreement to sale has been executed and he has fulfilled his part of the consideration amount would not be having any right or title to the said dispute, the Supreme Court on the contrary has observed that "Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property, but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53A of the Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transferor or any person claiming under him", as such the impugned order is not sustainable in the eyes of law.

4. Learned counsel for the plaintiff/appellant has further submitted that learned trial court has not considered that in terms of Section 53-A of the Act of 1988, the transferee, who happen to be the Appellant /Plaintiff / company completed his part of the contract and paid total amount of consideration i.e Rs Rs.15,21,37,274/-, the transferor/defendants /respondents or any person claiming under him is debarred from enforcing against the transferee /plaintiff / appellant and persons claiming under him any right in respect of the property which was subject matter of agreement to sale of which the transferee / plaintiff / appellant has taken and continued in possession since 02.05.2014. He has further submitted that the learned trial court has not considered that the appellant / plaintiff has got possession over the entire property measuring an area of 34600 Sq.M. out of Khasra Nos.795 and 793, which was in sole ownership of Maharchand, Fundan, Lekhraj, Mahendra and Dayachand along the execution of agreement to Sale dated 02.05.2014.

5. Learned counsel for the appellant/plaintiff has further submitted that the learned trial court has not considered the fact that as per the judgment **of Ghanshyam Vs. Yogendra Rathi (supra),** the possessory right of the perspective purchaser, who happens to be the plaintiff/appellant herein cannot be invaded by a transferer or any person claiming under him. Learned Senior Counsel appearing for the appellant/plaintiff has further submitted that learned trial court has not taken into consideration that when the possession of the land was given by way of registered agreement to sale, then the plaintiff/appellant is not required to prove his possession rather the

plaintiff /appellant has actual possession of the Property in Dispute. He has further submitted that the learned trial court has not properly adjudicated the validity of the agreement to sale dated 02.05.2014, as even the period as so referred in the agreement to sale i.e. from dated 02.05.2014 till 10.03.2015 came to end, it was mutually agreed / decided between the parties to the agreement to sale that the Land owner / First party to the agreement to sale will continue to execute the sale deed till the sale deed of entire area of total area of 3.4600 hectare (34,600 Sq.M.) which was subject matter of agreement to sale, is not completed, therefore in continuation to the agreement to sale with possession dated 02.05.2014, out of Khasra No.793 (of bearing total area 1.2280 hectare) a sale deed was executed by Fundan, Lekhraj, Mahendra, Dayachand in favour of the company on 20.06.2015 of an area of 0.4215 hectare out of Khasra No. 793 for total consideration of Rs.1,85,33,000/-, out of the said amount of Rs.36,64,700/- was adjusted towards the earnest money and a sum of Rs. 148,78,655/- was paid to Fundan, Lekhraj, Mahendra, Dayachand. Further, Maharchand in continuation to the agreement to sale alongwith possession dated 02.05.2014 of Khasra No.795 (of bearing total area 2.2320 hectare) on 14.12.2015 executed another sale deed in in favour of the company of an area of 3372 Sq. M. out of Khasra No. 795 for total consideration of Rs. 1,95,23,700/-, out of the said amount of Rs. 32,00,000/- was adjusted towards the earnest money and a sum of Rs. 166,00,000/- was paid to Maharchand upon registry, as such, there was no date fixed for performance. Therefore, in terms of Schedule 54 read of with Section 2 (j) and Section 3 of the Limitation Act, 1963, the period of limitation for filling the suit for specific performance would start from the date, on which the performance was refused which was 30.09.2023.

6. Learned counsel for the appellant/plaintiff has further submitted that the learned trial court has not considered that it is relevant to submit herein that the appellant/company had not provided any opportunity to rebut /contradict the alleged unregistered agreement dated 18.07.2022 by the learned trial court. He has further submitted that the learned trial court has failed to consider that by perusal of the unregistered agreement dated 18.07.2022 gives a clear picture that (1) no date is mentioned over the said agreement 18.07.2022 (2) there is no mention that Mr. Arvind Kumar Singh was ever authorized by the company to sign any such agreement dated 18.07.2022. He has further submitted that the learned trial court has not considered that when at par the company never accepted that they entered into any agreement dated 18.07.2022 as so brought on record by the respondents /defendants vide record no 36-C, as such, no such record could be relied upon by the learned trial court without verifying its authenticity and further without asking for objection or even adjudicating whether in absence of any authorization in favour Arvind Kumar Singh, any such unregistered agreement could have been executed or can be enforced in court of law.

7. Learned counsel for the plaintiff/appellant has further submitted that the learned trial court has failed to consider this fact that there is no evidence on record that the defendants-respondents had ever been in possession of the property in suit, as property in suit is part of the Khasra No.793 & 795 after 02.5.2014, the date of execution of agreement to sale and handing over possession to the Plaintiff /Appellant. It is admitted case of the appellant/plaintiff and the respondents/defendants that there was a registered agreement to sale alongwith possession was executed by the defendants/respondents in favour of the plaintiff/appellant/company dated 2.5.2014 after receiving complete amount of sale consideration. When possession was delivered by way of registered agreement to sale, whereas the alleged agreement, if any dated 18.7.2022 is an

unregistered agreement. It is also an unregistered alleged compromise entered into between the parties which is not admitted to the appellant/plaintiff.

8. Learned counsel for the plaintiff/appellant has submitted that there has been no document submitted by the respondents/defendants that when they had executed registered agreement to sale alongwith possession after receiving entire sale consideration dated 2.5.2014, then how and in what mode, they have got further possession of the said property in dispute.

9. Learned counsel for the appellant/plaintiff has relied upon the law laid down by the Supreme Court in **Gunwantbhai Mulchand Shah and others Vs. Anton Elis Farel and others; (2006)3 SCC 634** and he relied on paragraph nos. 9 and 14 of the said judgment which is as follows:-

"9. It is seen that the suit was dismissed by the trial court on the finding that the claim for the relief of specific performance was barred by limitation. The plaint contains not only a prayer for specific performance but also a prayer for perpetual injunction restraining the defendants from interfering with the possession of the plaintiffs and from creating any documents or entering into any transaction in respect of the suit property. Of course, the latter part of that prayer is directly linked to the claim for specific a performance, but the suit as regards the prayer for perpetual injunction to protect the possession of the plaintiff over the suit property on the claim that the predecessor of the plaintiffs was put in possession of the property pursuant to the agreement for sale, on a subsequent date, could not have been held to be not maintainable on any ground. Of course, the grant of the relief of injunction in a sense is discretionary and the court ultimately might or b might not have granted the relief to the plaintiffs. The defendants could have also shown that the relief of injunction claimed is merely consequential to the relief of specific performance and was not an independent relief. But that is different from saying that the suit could be dismissed merely on a finding that the prayer for specific performance of the agreement was barred by limitation. In any event, therefore, the dismissal of the suit as a whole as not c maintainable, could not be justified or said to be correct.

14. We have already indicated that the suit insofar as it relates to the prayer for a perpetual injunction restraining the defendants from interfering b with the possession of the plaintiffs cannot be held to be barred by limitation. Whether the plaintiffs are able to prove that they are in possession of the suit property as on the date of suit and establish that they are entitled to the injunction prayed for, is a different matter. There is also the question whether the relief of injunction can be treated as being only a relief consequential to the relief of specific performance and the denial of one would automatically lead to the denial of the other, or whether it is an independent relief in itself and even if the plaintiffs are not entitled to a decree for specific performance they would still be entitled to a decree for injunction, a relief the grant of which is, of course, in the discretion of the court. It may be noticed that a suit for injunction would be governed by the residuary article, Article 113 of the d Limitation Act and the cause of action for the said relief arises when the right to sue accrues. That would depend upon the court deciding when the right accrued, on the pleadings and the evidence in the case. Therefore, the suit insofar as it relates to the prayer for a decree for perpetual injunction cannot be held to be barred by limitation at this preliminary stage."

10. Learned counsel for the appellant/plaintiff has further relied upon the law laid down by the Supreme Court in **Janardhanam Prasad Vs. Ramdas; (2007) 15 SCC 174** and he relied on paragraph no. 16 which reads as follows:-

"16. But before we advert to the said question, we may consider the effect of refusal on the part of the 2nd defendant to execute the deed of sale within 20 days from the date of entering into the said agreement for sale. We have noticed hereinbefore that father-in-law of Respondent 1 categorically stated that he, at all material times, was aware that the 2nd defendant was refusing to execute the agreement of sale. They had, therefore, the notice, that Defendant 1 had refused to perform his part of contract. The suit should have, in the aforementioned situation, been filed within three years from the said date. We are not oblivious of the fact that performance of a contract may be dependent upon several factors. The conduct of the parties in this behalf is also relevant. The parties by their conduct or otherwise may also extend the time for performance of contract from time to time, as was noticed by this Court in Panchanan Dhara v. Monmatha Nath Maity (2006) 5 SCC 340."

11. Learned counsel for the appellant/plaintiff has submitted that the learned trial court has decided the application under Order 39 Rule 1 and 2 CPC vide impugned order dated 5.9.2025, whereas, the suit is still pending and final adjudication of the suit could be done by the learned trial court after perusing the entire evidences and fact and provisions of law. At this stage, no meticulous examination or final finding could not be adjudicated. The plaintiff/appellant was in possession consistently since execution of registered agreement to sale dated 2.5.2014 in his favour and that has not been taken back or given by the appellant/plaintiff to the defendants/respondents.

12. Learned counsel for the appellant/plaintiff has further relied on the law laid down by the Supreme Court in Ramesh Chand (D) through LRs Vs. Suresh Chand and another; 2025 INSC 1059. He relied on paragraph nos. 30 and 31 of the said judgment which are as follows:-

" 30. According to Section 53A of the TP Act, where there is a contract to transfer any immovable property in writing and the transferee has in part performance of the contract taken the possession of the property or part thereof, then notwithstanding that the transfer has not been completed in the manner prescribed by law, the transferor will be debarred from taking the possession of the property. The essential conditions for invoking the doctrine of part-performance as envisaged u/s 53A of TP Act have been enunciated by this Court in the case of Nathulal v. Phoolchand thus:

"9. The conditions necessary for making out the defence of part performance to an action in ejectment by the owner are:

(1) that the transferor has contracted to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty;

(2) that the transferee, has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession continues in possession in part performance of the contract;

(3) that the transferee has done some act in furtherance of the contract; and

(4) that the transferee has performed or is willing to perform his part of the contract.

If these conditions are fulfilled then notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him is debarred from enforcing against the transferee any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract."

31. A perusal of Section 53A of TP Act, as well as the case law on point, it is forthcoming that one of the main ingredients for taking shelter under Section 53A is the factum of possession. Unless the transferee in the instrument of agreement to sale is able to prove that he has been in possession of the suit property, no benefit u/s 53A will be given. In the instant matter, the very fact that plaintiff has filed the present suit for possession, along with other reliefs, shows that on the date of filing of the suit, plaintiff was not in possession of the entire suit property. Since there was no possession with the plaintiff, he cannot derive any benefit under the doctrine of part-possession."

13. Learned counsel for the appellant/plaintiff has further relied on the law laid down by the Supreme Court in **Ghanshyam Vs. Yogendra Rathi; 2023 INSC 575.** He relied on paragraph nos. 15 and 16 which are as follows:-

"15. Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53A of the Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transferer or any person claiming under him.

16. Notwithstanding the above as the plaintiff-respondent admittedly was settled with possessory title in part performance of the agreement to sell dated 10.04.2002 and that the defendant-appellant has lost his possession over it and had acquired the right of possession under a licence simpliciter, exhausted his right to continue in possession after the licence has been determined. Thus, the defendant-appellant parted with the possession of the suit property by putting the plaintiff-respondent in possession of it under an agreement to sell. The plaintiff-respondent in this way came to acquire possessory title over the same. The defendant-appellant, as such, ceased to be in possession of it as an owner rather occupied it as a licencee for a fixed period which stood determined by valid notice, leaving the defendant-appellant with no subsisting right to remain in possession of the suit premises."

14. On the other hand, learned Senior Counsel, Sri A.K. Mehrotra, learned counsel for the respondents/defendants has submitted that said registered agreement to sale dated 2.5.2014 was for a fixed period and was only valid till 10.3.2015 and since appellant/plaintiff has failed to perform its obligation, hence no reliance could be placed upon the same by the appellant/plaintiff because same ceased to exist after 10.3.2015. He further submitted that the appellant/plaintiff is not entitled for any relief on the basis of registered agreement to sale.

15. It is further submitted that Power of Attorney dated 16.9.2014 was only with regard to 12650 Sq. Mts of land out of 22320 Sq. Mts of land of Khasra No. 795 and the Attorney-Holder was not entitled to take any decision in respect of the land more than or other than 12650 Sq. Mts of land. It is further submitted that the amount of Rs.7,15,00,000/- was only with respect to aforementioned area of 12650 Sq. Mts. of land of Khasra No. 795 for which, the subsequent agreement was also executed.

16. Learned counsel for the defendants/respondents has further submitted that it is evident from the perusal of the aforesaid Power-of-Attorney and the concerned Agreement executed for 12650 Sq. Mts. of land that the actual possession of the land had always been with the Defendants/respondents. He has further submitted that it is evident from the perusal of the aforementioned Power-of-Attorney alongwith subsequent agreement that the same was for an area of 12650 Sq. Mts. of land in lieu of the sum of Rs.7,15,00,000/-, i.e., @Rs.5652.17 per Sq. Mtr. whereas the earlier agreement dated 02.05.2014 was for Rs.15,21,37,274/- in respect of the land to the extent of 34600 Sq. Mtr., i.e., @Rs.4,397.031 per Sq. Mtr. (also mentioned in the agreement dated 02.05.2014 that the same was @ Rs.4400/- per Sq. Mtr), and thus, it is evident that the parties had already departed from the terms and conditions of the agreement dated 02.05.2014 as far back as at the time of the execution of the concerned Power-of-Attorney and the subsequent agreement. He has further submitted that the period of the registered agreement to sale was only till 10.3.2015 and the appellant/plaintiff had failed to perform its obligation/duties in accordance with the said registered agreement to sale dated 2.5.2014. It is further submitted by the learned Senior Counsel that though after 10.03.2015, neither the Defendants/Respondents herein, nor Predecessor-in-Interest of the Defendants/Respondents had been liable to or could be compelled to act in pursuance to the aforesaid Agreement to sale dated 02.05.2014, however, by way of concession, the concerned Sale-Deeds were executed. It is, however, further pointed out that from the perusal of the recitals made in the said Sale-Deeds, the concerned Agreement dated 02.05.2014 could and cannot be treated to be in-operation or being effective after 10.03.2015. It is further submitted that though part of the amount, out of the previously paid amount, was adjusted in the aforementioned Sale-Deeds, however, the Sale Deeds were executed after the fresh oral settlement including with regard to the rate of the land of the concerned Sale-Deeds and not upon the same terms and conditions as agreed in the Agreement dated 02.05.2014.

17. Learned counsel for the defendants/respondents has further submitted that it is also evident from the recitals made in the said Sale-Deeds that the possession of the land demised by the said Sale-Deeds was transferred to the vendee of the Sale-Deed at the time of the execution of the said Sale-Deeds. He further made reference of the judgments of the Supreme Court passed in 'Civil Appeal No. 5200 Of 2025; Correspondence, **RBANMS Educational Institution Vs. B. Gunashekhar & Anr' arising from SLP (C) No. 13679 Of 2022 (decided on 16.047.2025**

reported in: '2025 SCC OnLine SC 793')'. In view of the aforesaid Judgment, the allegations made in the paragraph no. 18 (under reply), cannot be pressed upon as well as cannot be considered. He has further relied on that it is categorically submitted that no reliance can be placed upon the alleged amount allegedly paid in cash, i.e., amount to the tune of Rs.1,91,58,619/- in view of the aforementioned judgment of the Hon'ble Apex Court passed in 'Civil Appeal No. 5200 Of 2025'(supra). It is submitted by the learned counsel for the respondents/defendants that it is absolutely wrong to allege that the sum of Rs.1,91,58,619/- was paid in cash. He further submitted that it is absolutely wrong to allege that Rs.15,21,37,274/- was paid from 14.02.2014 till 02.03.2015. It is wholly misconceived and wrong to allege in the paragraph under reply (paragraph no. 19) that Rs.15,21,37,274/- was the same amount as agreed in the registered agreement to sale dated 02.05.2014.

18. Learned counsel for the defendants/respondents has submitted that it is apparent that so far as the amount of Rs.7.15 Crores is concerned, the same was in respect of the land of Khasra No. 795 Area 1.2650 Hectare, i.e., 12650 Sq. Mtrs. It is further argued that so far as Rs. 3 Crores is concerned, the part/sum of the amount to the extent of Rs.36,54,700/- and Rs.29,23,700/-, i.e., total Rs.65,78,400/- has already been adjusted in the two Sale-Deeds. It is further submitted that so far as with the institution of the said Suit No. 1183 Of 2023 as well as the prayer made in the said Suit No. 1183 Of 2023 are concerned, the reference is craved upon the plaint of the said suit itself. He has further submitted that keeping in view the recitals made in the plaint of the said Suit No. 1183 of 2023, the reliefs sought therein could / cannot be granted particularly in view of the fact that the said suit has been instituted beyond the period of the limitation prescribed for the said purpose as well as there has not been any recital with regard to the alleged readiness and willingness of the Plaintiff of the said Suit No. 1183 of 2023 as well as in view of the lack of the specific pleadings with regard to the dates on which the alleged request was made for execution of Sale-Deed, and further, in view of the non-payment of the proper court-fees, if, the Plaintiff of the said Suit No. 1183 Of 2023 has been claiming the relief as sought in the said Suit No. 1183 of 2023 to be of the specific performance of the contract.

19. Learned Senior Counsel has further relied that the relief as sought in the form of mandatory injunction could/cannot be granted keeping in view the settled position of law. He has submitted that Suit No. 1183 of 2023 was liable to be dismissed. It is further submitted that said order dated 10.10.2023 was an exparte order as well as same was conditional order subject to condition mentioned in the said order dated 10.10.2023 itself. It is further submitted that neither on 10.10.2023 nor till now, name of plaintiff/appellant herein i.e. plaintiff of suit No. 1183 of 2023 was recorded in the concerned revenue records upon the suit property i.e. upon remaining area of 1.4363 hectares of Khasara No. 793 and 795 and thus, the plaintiff/appellant is not entitled for any relief on the basis of order dated 10.10.2023. He further submitted that Civil Suit No. 1183 of 2023 was instituted on 10.10.2023 and the interim injunction was granted on the said date itself i.e. on 10.10.2023. As such, concerned sale deed which were executed on 13.9.2023 was duly executed prior to institution of concerned suit as well as prior to passing of interim order dated 10.10.2023. It is further submitted that it is wholly misconceived to allege that the area of 14363 Sq. Mts was subject matter of the agreement-to-sell dated 02.05.2014, which is basis of Original Suit No. 1183 of 2023 filed by the plaintiff/appellant. He further submitted that said registered agreement to sale dated 2.5.2014 was valid upto 10.03.2015 and thereafter it ceased to having any legal effect. He has

further submitted that aforementioned order dated 10.10.2023 was the conditional one, and since, the name of the plaintiff/appellant of the said Suit was not recorded in the revenue records, as such, even otherwise, there has not been any restriction created by the said order dated 10.10.2023 including upon the execution of the sale-deed by the tenure-holder. He has further submitted that the Contempt Application No. 85 of 2024 is wholly misconceived and is liable to be dismissed. He submitted that neither any Impleadment Application has not been filed for impleading the persons in the concerned Suit No. 1183 Of 2023, in whose favour the concerned Sale-Deeds were executed and the concerned Contempt Application No. 85 Of 2024 has been filed, nor the said persons have been impleaded whereas, certain persons were impleaded as defendants in the subsequent **'Original Suit No. 828 Of 2024 (Nimmi Infratech Private Limited Vs. Fundan (Minor) and Others).** He further submitted that the plaint of the said Suit No. 828 of 2024 was rejected under Order 7 Rule 11 of CPC by order dated 16.08.2024. However, the appeal preferred against the said order dated 16.08.2024 was allowed by the Judgment and Order dated 23.01.2025 passed by this Court.

20. Learned counsel for the defendants/respondents has further submitted that the defendants/respondent of Suit No. 828 of 2024 has approached the Hon'ble Supreme Court of India against the aforementioned Judgment and Order dated 23.01.2025 passed by this Court and the matter is still pending before the Hon'ble Supreme Court of India. He has further submitted that from the reliefs sought in the concerned Contempt Application No. 85 Of 2024, it has been evident that the possession of the vendees upon the subject matter of the concerned Sale-Deeds, has been established beyond doubt. He submitted that the impugned order dated 5.9.2025 is purely legal and the appeal is liable to be dismissed.

21. He further submitted that keeping in view of the entire facts and circumstances of the case, the appellant/plaintiff are not entitled for any relief in view of Section 53A of the Act, 1882. It is further submitted by the learned counsel for the defendants/respondents that the agreement to sale dated 2.5.2014 ceased to exist after 10.3.2015. He has further submitted that though nomenclature of the agreement to sale dated 2.5.2014 was with possession, however, the possession of the land was transferred from time-to-time, which is also evident from the recitals made in the concerned Sale-Deeds. He further submitted that so far as the suit property is concerned, the same has not been in the possession of the Plaintiff/Appellant and the reference of this Court in this regard is respectfully craved upon the subsequent agreement entered into between the tenure-holder and the Plaintiff/Appellant.

22. Learned counsel for the defendants/respondents has further submitted that the Plaintiff/Appellant has not been in possession of the suit property at the time of institution of Suit No. 1183 of 2023 which is also evident from perusal of the recital made in the subsequent agreement. It is further submitted that the sale deeds have been executed of different portion of the said property and the concerned vendee have been in possession of said portion. However, said person have not been impleaded in the concerned suit No. 1183 of 2023, though said person are proper and necessary parties since right of said person could be affected. He has further submitted that since plaintiff/appellant has not been entitled for interim relief as sought in said suit No. 1183 of 2023, as such the appellant/plaintiff is not entitled for any interim relief from this Court. He further submitted that registered agreement to sale dated 2.5.2014 ceased to exist after 10.3.2015 and said agreement to sale dated 2.5.2014 cannot be treated to have revived on account of

execution of concerned sale deeds. The correct facts have been mentioned in the agreement dated 18.7.2022.

23. Learned counsel for the defendants/respondents has been submitted that the allegation with regard to the agreement dated 18.7.2022 has been made for the first time in the aforesaid appeal by the plaintiff/appellant and not before the learned trial court, hence same cannot be considered. He has further submitted that the appellant/plaintiff had the sufficient opportunity to deny the tenability of the agreement dated 18.7.2022, however, since the plaintiff/appellant had obtained the ex-parte interim order dated 10.10.2023, as such, instead of making the submission with regard to the tenability of the said agreement dated 18.7.2022 in the concerned suit, the plaintiff/appellant had opted to remain silent, and since the said agreement dated 18.7.2022 has been the genuine one, as such, the reference has rightly been made of the same in the impugned order.

24. Learned counsel for the plaintiff/appellant has again submitted that he is consistent in actual physical possession of the property in dispute since very inception of the registered agreement to sale dated 2.5.2014 after payment of entire sale consideration which has not been denied. The possession which had been delivered by way of registered agreement to sale after receiving entire sale consideration by the defendants/respondents, it could not be treated as cancelled on the basis of any alleged unregistered agreement. He has further submitted that period of limitation as per Clause 54 of Schedule of the Limitation Act,1963 would start from the date when plaintiff has noticed that the performance has been refused and, therefore, for the reason mentioned herein, the assertion so made in the paragraph under reply that the agreement ceased to exist after 10.3.2015 is contrary to law as well as fact.

25. Learned counsel for the appellant/plaintiff has further submitted that the appellant/plaintiff was given possession over the entire property measuring an area of 34600 sq. M out of Khasra No. 795 and 793 for which entire amount had already been paid. He has further submitted that perusal of unregistered agreement to sale dated 18.7.2022 gives clear picture that (1) no date is mentioned over the said agreement dated 18.7.2022, and (2) there is no mention that Mr. Arvind Kumar Singh was ever authorized by the company to sign any such agreement dated 18.7.2022.

26. Learned counsel for the defendants/respondents has relied on the law laid down by the Supreme Court in **Shakeel Ahmed Vs. Syed Akhaq Hussain; 2023 INSC 1016** where, it is held that having considered the submissions at the outset, it is to be emphasized that irrespective of what was decided in the case of Suraj Lamps and Industries(supra) the fact remains that no title could be transferred with respect to immovable properties on the basis of an unregistered Agreement to Sell or on the basis of an unregistered General Power of Attorney. The Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right, much less a legally enforceable right to approach a Court of Law on its basis. Even if these documents i.e. the Agreement to Sell and the Power of Attorney were registered, still it could not be said that the respondent would have acquired title over the property in question. At best, on the basis of the registered agreement to sell, he could have claimed relief of specific performance in

appropriate proceedings. In this regard, reference may be made to sections 17 and 49 of the Registration Act and section 54 of the Transfer of Property Act, 1882.

27. He further relied on the law laid down by the Supreme Court in **Suraj Lamp and Industries Pvt. Ltd Vs. State of Haryana and others; MANU/SC/1222/2011**, where it is held that a SA/GPA/Will transaction does not convey any title nor create any interest in an immovable property. He also relied on Ahmadsahab Abdul Mulla Vs. Bibijan and others; (2009) 5 SCC 462 that the Supreme Court is held that the expression "date fixed for the performance" is a crystallised notion. This is clear from the fact that the second part "time from which period beings to run" refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on "when the plaintiff has notice that performance is refused". Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates.

28. Learned counsel for the defendants/respondents has also relied on **Smt. Katta Sujatha Reddy and another Vs. Siddamsetty Infra Projects Pvt. Ltd and others; 2022 LiveLaw (SC) 712.** Learned counsel for the respondents/defendants has pressed on paragraph no. 37, where it is observed that "we may note that Article 54 of the Limitation Act provides for two consequences based on the presence of fixed time period of performance. It is only in a case where the time period for performance is not fixed that the purchaser can take recourse to the notices issued and the vendors' reply thereto. In the case at hand, the aforesaid circumstances do not come into play as a fixed time period was clearly mandated by Clause 3 read with Clause 23 of the agreements to sell, as explained above.

29. Learned counsel for the defendants/respondents has relied on the law laid down by the Supreme Court in **Usha Devi and others Vs. Ram Kumar Singh and others; 2024 SCC OnLine SC 1915,** where he has pressed that the validity of the agreement is something different and does not change the date of performance. What was the reason for incorporating this clause of validating the agreement for five years is not spelled out in the agreement, but in any case, it does not change the date fixed for the performance. He further relied on the law laid down by the Supreme Court in **Atma Ram Vs. Charanjit Singh; (2020) 3 SCC 311** and he relied upon that conduct of a plaintiff is very crucial in a suit for specific performance. A person who issues a legal notice on 12.11.1996 claiming readiness and willingness, but who has instituted a suit only on 13.10.1999 and that too only with a prayer for a mandatory injunction carrying a fixed court fee relatable only to the said relief, will not be entitled to the discretionary relief of specific performance. Learned counsel for the defendants/respondents has also relied on law laid down by the Supreme Court in **Nikhila Divyang Mehta and another Vs. Hitesh P. Sanghvi and others; 2025 LiveLaw (SC) 428,** where subject matter was an application under Order 7 Rule 11 CPC. In the said suit, the Will and Codicil was pressed to be null and void. The relief of declaration claimed in the suit does not fall under Article 56 and 57 and, therefore, by necessary implication, Article 58 would stand attracted which provides for a limitation period of three years to obtain any other declaration other than that mentioned under Articles 56 and 57. It provides that for such a declaration, the limitation is three years from the date when the right to sue first accrues. Learned counsel for defendants/respondents has relied on paragraph no. 29 of the said judgement (supra) where it is held that lastly, the first appellate Court has ruled that in the suit, the plaintiff has claimed different reliefs and even if the

plaint is barred by limitation in respect of one of the reliefs, it cannot be rejected in toto. The aforesaid submission is also without substance as upon the plain reading of the prayers made in the plaint, it is apparent that the primary relief claimed therein is to declare the Will and the Codicil to be null and void and also all subsequent proceedings thereto. In addition to it, the plaintiff has claimed permanent injunction. The other reliefs are dependent upon the first relief and cannot be granted until and unless the plaintiff succeeds in the first relief. Therefore, once the plaint or the suit in respect of the main relief stands barred by time, the other ancillary relief claimed therein also falls down.

30. Learned counsel for the respondents/defendants has further relied on the law laid down by the Supreme Court in **Padhiyar Prahladji Chenaji (deceased) through L.Rs. Vs. Maniben Jagmalbhai (deceased) through L.R.s and others; 2022 LiveLaw (SC) 241** and he relied on paragraph no. 11 of the said judgment which reads as under:-

"11. From the impugned judgment and order passed by the High Court, it appears that the High Court has not properly appreciated the distinction between a substantive relief and a consequential relief. The High Court has observed that in the instant case the relief of permanent injunction can be said to be a substantive relief, which is clearly an erroneous view. It is to be noted that the main reliefs sought by the plaintiff in the suit were cancellation of the sale deed and declaration and the prayer of permanent injunction restraining defendant No.1 from disturbing her possession can be said to be a consequential relief. Therefore, the title to the property was the basis of the relief of possession. If that be so, in the present case, the relief for permanent injunction can be said to be a consequential relief and not a substantive relief as observed and held by the High Court. Therefore, once the plaintiff has failed to get any substantive relief of cancellation of the sale deed and failed to get any declaratory relief, and as observed hereinabove, relief of injunction can be said to be a consequential relief. Therefore, the prayer for permanent injunction must fail. In the instant case as the plaintiff cannot be said to be in lawful possession of the suit land, i.e., the possession of the plaintiff is "not legal or authorised by the law", the plaintiff shall not be entitled to any permanent injunction."

31. Learned counsel has also relied on **Sucha Singh Sodhi Vs. Baldev Raj Walia and another; (2018) 6 SCC 733** to contend that the cause of action to claim temporary/permanent injunction against the defendants from interfering in the plaintiff's possession over the suit premises accrues when Defendant 1 threatens the plaintiff to dispossess him from the suit premises or otherwise cause injury to the plaintiff in relation to the suit premises. It is governed by Order 39 Rule 1(c) of the Code which deals with the grant of injunction. The limitation to file such suit is three years from the date of obstruction caused by the defendant to the plaintiff (see Part VII Articles 85, 86 and 87 of the Limitation Act). On the other hand, the cause of action to file a suit for claiming specific performance of agreement arises from the date fixed for the performance or when no such date is fixed, when the plaintiff has noticed that performance is refused by the defendant. The limitation to file such suit is three years from such date (see Part II Article 54 of the Limitation Act).

32. Learned counsel for the respondents/defendants has further placed reliance on the law laid down by Supreme Court in **Dahiben Vs. Arvindbhai Kalyanji Bhanusali and others in Civil**

Appeal No. 9519 of 2019 decided on July 9,2020, where he relied on **T. Arvindandam Vs. T.V. Satyapal and another; (1977) 4 SCC 467**, the Court held that while considering an application under Order VII Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory. He further relied on page 18 of this judgment that subsequently, in **I.T.C. Ltd. Vs. Debt Recovery Appellate Tribunal; (1998) 2 SCC 170** this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint. He further pressed that if, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in **Madanuri Sri Ramachandra Murthy Vs. Syed Jalal; (2017) 13 SCC 174** held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage.

33. Learned counsel for the defendants/respondents further relied on the law laid down by the Supreme Court in **Ramisetty Venkatanna and another Vs. Nasyam Jamal Saheb and others; 2023 SCC OnLine SC 521** which is also based on the aforesaid judgement already referred in **T. Arvindandam (supra). Learned counsel has further relied on Shri Mukund Bhavan Trust and others Vs. Shrimant Chhatrapati Udyan Raje Pratapsinh Maharaj Bhonsle and anothr; 2024 SCC OnLine SC 3844**, where he pressed about mixed question of fact and law and relied that the spirit and intention of Order VII Rule 11(d) CPC is only for the courts to nip at its bud when any litigation ex facie appears to be a clear abuse of process. He further relied on the law laid down by the Supreme Court in **Jharkhand State Housing Board Vs. Didar Singh and others; MANU/SC/1202/2018** that when the defendants disputes the title of the plaintiff, it is not necessary that in all those cases, plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction.

34. Learned counsel has further relied on the law laid down by this Court in **Mahendra Singh and others Vs. Senior citizen Home Complex Welfare society and others; MANU/UP/2701/2011**, where basic ingredient for granting of temporary injunction has been discussed as under:-

(1) Prima facie case of the plaintiff.

(2) Balance of convenience, and

(3) Irreparable loss/injury.

35. Learned counsel for the defendants/respondents has further relied on the law laid down by the Supreme Court in **Ambalal Sarabhai Enterprise Limited Vs. KS Infraspace LLP Limited and another; (2020) 5 SCC 410**, where he has pressed a plaintiff seeking temporary injunction in a suit for specific performance will therefore, have to establish a strong prima facie case on basis of undisputed facts and he has further relied that point of limitation has tobe also seen. He also relied on the law laid down by the Supreme Court in **Kishore Kumar Khaitan and others Vs. Praveen Kumar Singh; MANU/SC/0940/2006** and he relied that an interim mandatory injunction is not a remedy that is easily granted. He further relied that interim mandatory injunction

is passed only in circumstances which are clear and the prima facie materials clearly justify a finding that the status quo has been altered by one of the parties to the litigation and the interest of justice demanded that the status quo ante be restored by way of an interim mandatory injunction.

36. Learned counsel for the defendants/respondents has also placed reliance on **D. Albert Vs. Lalitha and others; MANU/TN/0205/1989** decided by High Court of Madras that where petitioner claimed to be in possession and respondents filed a counter affidavit that he is in possession. In the circumstances, status quo should continue till the disposal of the appeal. It is obvious that such orders should not be passed by any court, high or low. Whenever a Court passes an order directing the preservation of 'status quo' it should by the same order state in unequivocal terms what the 'status quo' is. Otherwise, the court will be failing to do its duty.

37. Learned counsel appearing for the defendants/respondents has also relied on the law laid down by the Supreme Court in **The Correspondence, RBANMS Educational Institution Vs. B. Gunashekar and another; 2025 (5) SCR 94**. He relied on merit of transaction if made in cash and he relied that it is pertinent to recall that Section 269ST of the Income Tex Act, was introduced to curb black money by digitalising the transactions above Rs. 2 lacs and contemplating equal amount of penalty under Section 271DA of the Act.

38. From perusal of the record, it is evident and pertinent to mention over here that Original Suit No. 1183 of 2023 which is still pending before the learned trial court and it has to be decided on its merit. Learned trial court has simply decided an application 6C-2 under Order 39 Rule 1 and 2 CPC, where prima facie case, balance of convenience and irreparable loss and injury has to be seen. It is undisputed that registered agreement to sale alongwith possession after payment of entire sale consideration by the plaintiff/appellant to the defendants/respondents has been executed alongwith possession on 2.5.2014.

39. Learned counsel for the defendants/respondents has very vehemently submitted that said registered agreement to sale dated 2.5.2014 had a fixed validity and that was expired on 10.3.2015, hence the present original suit is barred by time because there is a specific time has been assigned. There has been neither any willingness nor readiness has been shown by the plaintiff/appellant, where cause of action which has been shown and referred will simply does not enforce in law and he has submitted that these kind of plaint shall be rejected in limine under Order VII Rule 11, whereas learned counsel for the appellant/plaintiff has relied that complete possession of the property in dispute had already been delivered to the appellant/plaintiff by way of registered agreement to sale dated 2.5.2014 and the appellant/plaintiff has paid the entire sale consideration and he is in actual physical possession over there. The agreement dated 18.7.2022 is stated to be a compromise between the parties whereas the plaintiff/appellant has denied it specifically. The defendants/respondents, prima facie, failed to prove that such agreement or compromise, if any, has been registered. The said agreement or compromise dated 18.7.2022 is an un-registered agreement which is denied by the appellant/plaintiff. The cause of action as shown by the plaintiff/appellant is a mixed question of fact and law, and it should not be decided prima facie, and the plaint shall not be thrown out at the very initial stage without going into merits of the case. The original suit is still pending.

40. It is evident, prima facie, that defendants/respondents has failed to submit any registered document by which or by any other mode by which he had got back the possession of the property in dispute which was subject matter of registered agreement to sale dated 2.5.2014, whereas the defendants/respondents has also stated that even after expiry of the aforesaid registered agreement to sale dated 2.5.2014, he has executed sale deeds in favour of the plaintiff/appellant. This shows their concession. It may be considered as implicit continuance of physical possession and continuation of terms and condition settled by way of registered agreement to sale dated 2.5.2014 between the parties to the suit which is very basis of the said suit.

41. Learned counsel for the defendants/respondents has submitted that the sale deeds which had been executed after expiry of period of registered agreement to sale dated 2.5.2014, for which possession has also been delivered to the plaintiff/appellant, if they had not in possession, how it could be transferred, whereas, the defendants/respondents failed to submit any document by which he had re-got the possession which he already delivered to the plaintiff/appellant after receiving entire sale consideration and admitted in the said registered agreement to sale dated 2.5.2014. The said delivery of possession in post sale deed could be considered as constructive delivery of possession at this stage.

42. Learned counsel for the respondents/defendants has vehemently relied on that the revenue entries, that they were consistently in the name of the transferor at the time of registered agreement to sale dated 2.5.2014 in his favour and thereafter also in favour of defendants/respondents. At no point of time, neither mutation nor any entries in the revenue record has ever in the name of plaintiff/appellant. When it is the case of the plaintiff/appellant that the defendant/respondents has executed registered agreement to sale alongwith possession after receiving entire sale consideration, but no sale deed has been executed in his favour. Hence, it is very much natural that revenue entries was in the name of defendants/respondents and it could not give any edge to the defendants/respondents.

43. Learned counsel for the plaintiff/appellant has relied that he is claiming the possessory title including possession which he has got in the property in dispute on the basis of said registered agreement to sale dated 2.5.2014 and he is in continuous possession over the said property. On the contrary, learned counsel for the defendants/respondents has failed to submit any registered document which may show that possession had been re-transferred by the plaintiff/appellant to the defendants/respondents or by any other valid document executed between the parties. The alleged compromise or agreement dated 18.7.2022 which is an unregistered document and vehemently denied by the plaintiff/appellant, it could not be considered as valid document by which delivery of possession by the plaintiff/appellant in favour of defendants/respondents was made. The original suit No. 1183 of 2023 has been filed by the plaintiff/appellant/Satya Homes Pvt. Ltd against the defendants/ respondents for permanent injunction and for declaration of ownership on the basis of its possessory title on the basis of registered agreement to sale dated 2.5.2014 and for mandatory injunction.

44. Learned counsel for the defendants/respondents has relied that main relief could not be granted, hence, ancillary relief of permanent injunction could also not be granted.

He further submitted that when permanent relief may not be granted, then temporary injunction relief also may not be granted. It is undisputed that the registered agreement to sale dated 2.5.2014 has been executed by the defendants/respondents in favour of the plaintiff/appellant after receiving the entire sale consideration and also delivered possession of the suit property and said possession has not been taken back or by any other mode has been re-transferred by the plaintiff/appellant to the defendants/respondents or obtained by the defendants/respondents. Whereas, the matter is at the level of application under Order 39 Rule 1 and 2 read with Section 151 CPC and the temporary injunction has been rejected by the learned trial court by the impugned order dated 5.9.2025, whereas, the entire civil suit has to be decided on its own merits. All the questions of fact and law which has been raised by the defendants/respondents at this stage that has to be considered by the learned trial court during trial. At this stage, only prima facie case, balance of convenience and irreparable loss and injury has to be seen. The possession over the property in dispute which had been granted by the defendants/respondents after receipt of entire sale consideration in execution of registered agreement to sale dated 2.5.2014 in favour of the plaintiff/appellant is appeared to be undisturbed, prima facie, till this stage. That has to be protected, failing which the appellants/plaintiff would suffer irreparable loss and injury and also it involves multiplicity of proceedings.

45. In view thereof, prima facie case, balance of convenience and irreparable loss and injury is in favour of the plaintiff/appellant. Hence, the impugned order dated 5.9.2025, passed by the learned Civil Judge (Senior Division), Gautam Buddh Nagar in Civil Suit No. 1183 of 2023 (Satya Homes Pvt. Ltd. Vs. Fundan and others), is, hereby **set aside**. The defendants/respondents are restrained from making any interference into the peaceful possession of the plaintiff/appellant over the property in dispute on the basis of registered agreement to sale dated 2.5.2014 and further, they are also restrained from changing nature of the property in dispute during the pendency of the suit.

46. In view thereof, and for the reasons mentioned herein above, the appeal is entitled to be allowed and it is, accordingly, **allowed**.

Order on Impleadment Application.

1. An impleadment application has been filed by Diksha Nijhawan/applicant/third party. The third party has claimed that the defendants/respondents has executed a registered sale deed and also delivered possession to her of the land in question, hence she is necessary party and her impleadment application be allowed.

2. Considering the facts and circumstances of the case, the third party/applicant is granted liberty to file her impleadment application before the learned trial court that has to be decided by the learned trial court in accordance with law in view of the right alleged by the third party and in view of the facts and circumstances of the case in accordance with law.

3. With these observations and findings, the impleadment application is disposed of.

(2026) 5 ILRA 2489
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 14.05.2026

BEFORE

THE HON'BLE JASPREET SINGH, J.

Civil Misc. Arbitration Application No. 91 of 2024

M/s Transrail Lighting Ltd. ...Appellant
Versus
Madhyanchal Vidyut Vitran Nigam Ltd. ...Respondent

Issues for Consideration

(i) Whether the High Court, in exercise of its powers under Section 11(6) of the Arbitration and Conciliation Act, 1996, can review or recall its own order appointing a nominee arbitrator, so as to terminate the mandate of a lawfully constituted Arbitral Tribunal?

(ii) Whether the ground raised by the applicant — that the arbitration clause in the general conditions of contract stood novated by special conditions of contract providing for a Sole Arbitrator — constituted a serious error warranting exercise of the High Court's inherent power of review under Article 215 of the Constitution?

Headnotes

Arbitration and Conciliation Act, 1996 --- S. 11 --- Constitution of India --- Art. 215 --- Power of High Court to review/recall order passed under Section 11 --- Scope.

HELD: The Act of 1996 does not confer power of review on the "Court" as defined in Section 2(e), nor on the High Court while exercising powers under Section 11. The High Court, being a Court of Record under Article 215 of the Constitution, possesses inherent power to review/recall its order, but such power is extremely narrow and can be exercised only to correct an error apparent on the face of the record or a material fact overlooked, resulting in miscarriage of justice; it cannot be invoked to reopen findings of law or re-agitate a controversy already decided. [Paras 20-28]

Arbitration and Conciliation Act, 1996 --- Ss. 4, 10, 11(4), 16 --- Composition of Arbitral Tribunal --- Alleged novation of arbitration clause by special conditions of contract --- Waiver.

HELD: Where the applicant itself invoked arbitration on the premise of a three-member Tribunal, nominated its own arbitrator, and participated in constitution of the Tribunal without raising any objection under Section 16 before the Arbitral Tribunal, the applicant is deemed, under Section 4 of the Act, to have waived its right to object to the composition of the Tribunal; the plea that special conditions of contract mandated a Sole Arbitrator does not constitute an error apparent on the face of the record, nor a ground on the higher pedestal required for exercise of the inherent power of review. [Paras 29-32]

Applications for recall/review dismissed. No order as to costs. (E-14)

Case Law Cited

Municipal Corporation of Greater Mumbai and others v. Pratibha Industries Ltd., (2019) 3 SCC 203 --- distinguished; *Hindustan Construction Company Ltd. v. Bihar Rajya Pul Nirman Nigam Limited and others*, 2025 INSC 1365 --- followed; *Adani Enterprises Limited v. Antikeros Shipping Corporation*, MANU/MH/0482/2019 --- referred to; *Kapra Mazdoor Ekta Union v. Management of Birla Cotton Spinning and Weaving Mills Ltd. and others*, (2005) 13 SCC 777 --- referred to; *National Sewing Thread Co. Ltd. v. James Chadwick and Bros. Ltd.*, (1953) 1 SCC 794 --- referred to; *Shivdev Singh v. State of Punjab*, AIR 1963 SC 1909 --- referred to; *M.M. Thomas v. State of Kerala*, (2000) 1 SCC 666 --- referred to; *Naresh Shridhar*

Mirajkar v. State of Maharashtra, AIR 1967 SC 1 --- referred to; *Ram Sahu and others v. Vinod Kumar Rawat and others*, 2020 SCC OnLine SC 896 --- referred to; *Sanjay Kumar Agarwal v. Sale Tax Officer (1), and another*, (2024) 2 SCC 362 --- relied on; *Narayan Prasad Lohia v. Nikunj Kumar Lohia*, (2002) 3 SCC 572 --- relied on; *Konkan Rly. Corpn. Ltd. v. Rani Construction (P) Ltd.*, (2002) 2 SCC 388 --- referred to; *BSNL v. Nortel Networks (India) (P) Ltd.*, (2021) 5 SCC 738 --- relied on; *SBP & Co. v. Patel Engg. Ltd.*, (2005) 8 SCC 618 --- referred to; *Mohd. Anwar v. Pushpalata Jain*, (2025) 14 SCC 785 --- referred to.

List of Acts / Statutes

Arbitration and Conciliation Act, 1996; Constitution of India.

List of Keywords

Arbitration; Section 11; Review; Recall; Court of Record; Article 215; Waiver; Composition of Arbitral Tribunal; Sole Arbitrator; Nominee Arbitrator.

Case Arising From

Orders dated 17.07.2025 and 07.08.2025 passed by this Court in Civil Misc. Arbitration Application No. 91 of 2024 under Section 11(6) of the Arbitration and Conciliation Act, 1996, appointing a nominee arbitrator on behalf of the respondents.

Appearance for Parties

For the Applicant(s): Abhinav Kumar Mathur, Siddhartha Kumar.
For the Opposite Party(s): Manish Jauhari.

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

1. The instant application for recall has been moved by the petitioner along with an application seeking condonation of delay, whereby the petitioner prayed that after condoning the delay the order dated 17.07.2025 and 07.08.2025 be recalled and its consequence would be that the mandate of nominee arbitrator appointed by this Court, on behalf of the respondents, in terms of Section 11(4) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') would be terminated.

2. Notices were issued on the aforesaid application on 26.11.2025 and in furtherance thereof the respondents have filed their objections on 12.03.2026.

3. Shri Abhinav Kumar Mathur and Ms. Sushmita Mukharjee, learned counsel for the petitioner submitted that the petitioner had preferred a petition under Section 11(6) of the Act of 1996 and the Court while exercising its power under Section 11(4) of the Act appointed a nominee arbitrator on behalf of the respondents.

4. It was submitted that the parties had entered in a contract which contained an arbitration clause. However, special conditions of contract prescribed appointment of a Sole Arbitrator for all disputes and claims which were valued upto Rs.25.00 Crores. It was further submitted that special conditions of contract could not be referred by the petitioner or by the respondent during the course of submissions and no specific reference was made to it in the pleadings of the petition under Section 11(6) of the Act of 1996. Thus, the said fact could not be brought to the notice of the Court and the appointment of the nominee arbitrator in terms of Section 11(4) of the Act of 1996 was

made in terms of the general conditions of the contract, which stood novated by the special conditions of contract.

5. The Court while hearing the petition under Section 11(6) of the Act of 1996 and considering the submissions of the parties vide order dated 17.07.2025, found that the parties had entered into a contract which contained an arbitration clause. The Court also found that the disputes had occurred and the petitioner had invoked the arbitration clause appropriately and it had also nominated its arbitrator. Since, the respondents did not nominate its arbitrator, hence, the Court after receiving the consent from the proposed arbitrator appointed a nominated arbitrator on behalf of the respondents vide order dated 07.08.2025.

6. It was further submitted that the nomination of the respondents' party arbitrator was against special conditions of contract, which novated and superseded the arbitration clause contained in Clause 39 of the general conditions of contract.

7. It was also submitted that the aforesaid discrepancy could not be noticed and later the said fact came to the notice of the petitioner while undertaking a detailed examination of the contract documents. Immediately thereafter, acting with due diligence, this application for recall was moved and it was prayed that any delay in moving the said application be condoned, as the delay if any, was neither intentional nor deliberate. Thus, the orders dated 17.07.2025 and 07.08.2025 deserves to be recalled and a Sole Arbitrator in terms of Section 11(6) of the Act of 1996 be appointed.

8. Shri Manish Jauhari, learned counsel for the respondents very fairly did not contest the issue of delay but while pressing his objection on merits has urged that the application for review/recall is not maintainable in law.

9. It was urged that since the order was passed on merits after hearing the parties, hence, there can be no occasion for recalling the said orders and if the petitioner was aggrieved by the said orders, it had a remedy available to assail the orders before the Apex Court, but an application for recall was not maintainable.

10. Shri Jauhari further urged that even otherwise the orders impugned cannot be reviewed as they were passed on merits after considering the submissions and material on record. In the garb of review, the petitioner cannot be permitted a second chance and re-hearing to make submissions on merits. For the aforesaid reasons, the application termed as recall is actually a review petition, hence, it deserves to be dismissed.

11. It was further pointed out by the learned counsel for the respondents that after the orders were passed by this Court, the party nominated arbitrator of the petitioner and the party nominated arbitrator of the respondents (which was appointed by this Court by means of the orders impugned) with mutual consultations appointed the Presiding Arbitrator.

12. It was urged that after the Arbitral Tribunal was constituted, the petitioner had moved an application before the Arbitral Tribunal raising the same issue as raised before this Court. The

Arbitral Tribunal has kept the proceedings in abeyance on the request of the petitioner and it also observed that the claimant may also seek extension of time for the Tribunal.

13. It was thus, urged that the petitioner could have raised the aforesaid issue before the Tribunal in terms of Section 16 of the Act of 1996 or could have challenged the orders passed by this Court before the Apex Court, but the ground on which the instant application for recall/review has been moved, the same cannot be entertained. Furthermore, after passing of the orders in exercise of powers under Section 11 of the Act of 1996, the Court becomes functus officio and for all the aforesaid reasons, the applications deserve to be dismissed.

14. Shri Mathur and Ms. Mukharjee, learned counsel for the respondents while responding to the aforesaid objections submitted that even if the application for recall may not be maintainable yet the said application can be treated as an application for review. Since, the orders have been passed by the High Court and even though the Act of 1996 may not have specifically conferred powers of review yet the High Court being a 'Court of Record', it has inherent powers in terms of Article 215 of the Constitution of India to review its orders for meeting ends of justice and to avoid any miscarriage of justice. In support of the submissions, the learned counsel for the petitioner relied upon the decision of the Apex Court in **Municipal Corporation of Greater Mumbai and others v. Pratibha Industries Ltd. : (2019) 3 SCC 203, Hindustan Construction Company Ltd. v. Bihar Rajya Pul Nirman Nigam Limited and others : 2025 INSC 1365** and a decision of the Bombay High Court in **Adani Enterprises Limited v. Antikeros Shipping Corporation : MANU/MH/0482/2019** which is based on the proposition as laid down by the Apex Court in **Kapra Mazdoor Ekta Union v. Management of Birla Cotton Spinning and Weaving Mills Ltd. and others : (2005) 13 SCC 777.**

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

16. Primarily, the issue which requires consideration of this Court is:-

(i) Whether the High Court in exercise of its powers under Section 11(6) of the Act of 1996 can review its order which may have the impact of terminating the mandate of the Arbitral Tribunal.

17. At the outset, it may be noted that the Act of 1996 is a Central Legislation and is a Code in itself. There is no dispute that the Court or the High Court in terms of Section 11 of the Act of 1996 have not been conferred with the powers of review. In this backdrop, where the powers of review has not been conferred on the Court then whether the High Court in exercise of powers under Section 11 of the Act of 1996 can review its orders.

18. Delving into the said question, a little deeper, it would reveal that the Act of 1996 has defined the word 'Court' to mean as under:-

"2(e) "Court" means----

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;]"

19. This would necessarily mean that wherever the word 'Court' occurs in Sections 9, 13, 14, 29-A, 34, 36 and 37 of the Act of 1996 in Part-I of the Act of 1996, it would contextually refer to the definition of Court as noticed above. This word 'Court' used in Section 9 and other sections of the Act of 1996 noticed above, if seen in context with Section 11 of the Act of 1996, would reveal that the powers to appoint an Arbitrator has been conferred on the High Court and the Hon'ble Supreme Court respectively. Here, in Section 11 of the Act of 1996, the word 'Court' has not been used rather it uses the word 'High Court' or the Hon'ble 'Supreme Court', as the case may, which is designated to exercise the powers of appointment of an arbitrator as given under the Scheme of the Act of 1996.

20. From the perusal of the Act of 1996, it would reveal that the said Act does not confer power of review on the Court. Thus, per-se, the Court defined in Section 2(e) cannot exercise the power of review. However, the same may not be true for the High Court or the Hon'ble Supreme Court, which are 'Courts of Record'. It may be correct to say that the High Court while exercising its powers under Section 11 of the Act of 1996 may not review its orders but the inherent powers invested in the High Court or the Supreme Court by virtue of being a Court of Record can be invoked to correct the record or undo a serious error which if remained unaddressed, may occasion failure of justice. To suggest that the High Court or the Hon'ble Supreme Court would be denuded of its powers and may not be in a position to review its order, would be contrary to the ethos of the Constitutional principles enshrined in Article 129 and Article 215 of the Constitution of India, relating to Hon'ble Supreme Court and the High Court, as the case may be.

21. This aspect of the matter was considered by the Apex Court in **Pratibha Industries Ltd.** (supra) where the Apex Court noticed the aforesaid proposition and held that the High Court as the Court of record exercises plenary jurisdiction and has inherent powers to recall its order to prevent miscarriage of justice. The relevant portion of the aforesaid report reads as under:-

"10. Insofar as the High Courts' jurisdiction to recall its own order is concerned, the High Courts are courts of record, set up under Article 215 of the Constitution of India. Article 215 of the Constitution of India reads as under:

"215. High Courts to be courts of record.?Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."

It is clear that these constitutional courts, being courts of record, the jurisdiction to recall their own orders is inherent by virtue of the fact that they are superior courts of record. This has been recognised in several of our judgments.

11. In National Sewing Thread Co. Ltd. v. James Chadwick and Bros. Ltd. [National Sewing Thread Co. Ltd. v. James Chadwick and Bros. Ltd., (1953) 1 SCC 794 : 1953 SCR 1028 : AIR 1953 SC 357] , this Court has held as under: (AIR pp. 359-60, para 7)

-7. - The Trade Marks Act does not provide or lay down any procedure for the future conduct or career of that appeal in the High Court, indeed Section 77 of the Act provides that the High Court can, if it likes, make rules in the matter. Obviously after the appeal had reached the High Court it has to be determined according to the rules of practice and procedure of that Court and in accordance with the provisions of the charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. The rule is well settled that when a statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the practice and procedure of that Court. This rule was very succinctly stated by Viscount Haldane, L.C. in National Telephone Co. Ltd. v. Postmaster General [National Telephone Co. Ltd. v. Postmaster General, 1913 AC 546 (HL)] , in these terms:

"When a question is stated to be referred to an established court without more, it in my opinion, imports that the ordinary incidents of the procedure of that court are to attach, and also that any general right of appeal from its decision likewise attaches."

The same view was expressed by their Lordships of the Privy Council in R.M.A.R.A. Adaikappa Chettiar v. R. Chandrasekhara Thevar [R.M.A.R.A. Adaikappa Chettiar v. R. Chandrasekhara Thevar, 1947 SCC OnLine PC 53 : (1946-47) 74 IA 264] , wherein it was said: (SCC OnLine PC)

"Where a legal right is in dispute and the ordinary courts of the country are seized of such dispute the courts are governed by the ordinary rules of procedure, applicable thereto and an appeal lies if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not, in terms confer a right of appeal."

Again in Secy. of State for India v. Chellikani Rama Rao [Secy. of State for India v. Chellikani Rama Rao, 1916 SCC OnLine PC 42 : (1915-16) 43 IA 192 : ILR (1916) 39 Mad 617] , when dealing with the case under the Madras Forest Act their Lordships observed as follows: (SCC OnLine PC)

"It was contended on behalf of the appellant that all further proceedings in courts in India or by way of appeal were incompetent, these being excluded by the terms of the statute just quoted. In their Lordships' opinion, this objection is not well founded. Their view is that when proceedings of this character reach the District Court, that court is appealed to as one of the ordinary courts of the country, with regard to whose procedure, orders and decrees the ordinary rules of the Civil Procedure Code apply."

Though the facts of the cases laying down the above rule were not exactly similar to the facts of the present case, the principle enunciated therein is one of general application and has an apposite application to the facts and circumstances of the present case. Section 76 of the Trade Marks Act confers a right of appeal to the High Court and says nothing more about it. That being so, the High Court being seized as such of the appellate jurisdiction conferred by Section 76 it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and

when such jurisdiction is exercised by a Single Judge, his judgment becomes subject to appeal under Clause 15 of the Letters Patent there being nothing to the contrary in the Trade Marks Act.?

12. To similar effect is our judgment in Shivdev Singh v. State of Punjab [Shivdev Singh v. State of Punjab, AIR 1963 SC 1909] , wherein this Court has stated as under: (AIR p. 1911, para 8)

-8. - It is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it.?

13. Also, in M.M. Thomas v. State of Kerala [M.M. Thomas v. State of Kerala, (2000) 1 SCC 666] , this Court has held as follows: (SCC pp. 672-73, para 14)

"14. The High Court as a court of record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The High Court, as a court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it, the High Court has not only power, but a duty to correct it. The High Court's power in that regard is plenary. In Naresh Shridhar Mirajkar v. State of Maharashtra [Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1 : (1966) 3 SCR 744] , a nine-Judge Bench of this Court has recognised the aforesaid superior status of the High Court as a court of plenary jurisdiction being a court of record."

22. However, the Apex Court while considering the power of the High Court to review its order passed in exercise of powers under Section 11 of the Act of 1996 in **Bihar Rajya Pul Nirman Nigam Limited** (supra) by referring to the earlier decision in **Pratibha Industries Ltd.** (supra) observed that there is a narrow window available to a Court under Section 11 of the Act of 1996 to review the order only if it is based on procedural lapses and not where there is re-hearing on a question of law nor any findings returned can be revisited after interpretation of the arbitration agreement. The Apex Court also cautioned that once an order passed under Section 11 of the Act of 1996 has attained finality, the only remedy available is to approach the Hon'ble Supreme Court under Article 136 of the Constitution of India or to raise objections under Section 16 of the Act of 1996. The Court must resist an attempt to re-enter the controversy through the backdoor where the statute has already shut the front door. It was also observed that Section 11 of the Act of 1996 is intended to trigger arbitration and not to create multiple stages of judicial reconsideration. The relevant portion of the aforesaid report reads as under:-

"39. Thus, the entire scheme of the Act strongly discourages any mid-way judicial intervention, especially by way of review, as it would run contrary to both the text and the spirit of the statute.

40. Although the power exercised by the High Court under Section 11 is judicial in nature post-SBP & Co. case [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618 : (2005) 128 Comp Cas 465] , its scope remains narrow. Once an arbitrator is appointed, the arbitral process must proceed unhindered. There is no statutory provision for review or appeal from an order under Section 11, which reflects a conscious legislative choice.

41. While the High Courts, as courts of record, do possess a limited power of review, such power is extremely circumscribed in matters governed by the Arbitration Act. It may be exercised only to correct an error apparent on the face of the record or to address a material fact that was overlooked. It cannot be used to revisit findings of law or reappreciate issues already decided.

* * *

45. The decisions such as Municipal Corpn. of Greater Mumbai v. Pratibha Industries Ltd. [Municipal Corpn. of Greater Mumbai v. Pratibha Industries Ltd., (2019) 3 SCC 203 : (2019) 2 SCC (Civ) 28] , and Mohd. Anwar v. Pushpalata Jain [Mohd. Anwar v. Pushpalata Jain, (2025) 14 SCC 785 : 2021 SCC OnLine SC 3760] , illustrate this narrow window, where review was permitted only because the earlier orders had been passed in ignorance of fundamental facts. These cases are confined to procedural lapses, not to re-examining matters of law.

46. By contrast, in the present case, the High Court reopened the issue of interpretation of the arbitration clause based solely on a subsequent judgment. Such an exercise falls squarely outside the scope of review jurisdiction. Even assuming that a review was maintainable, it was filed after an unexplained delay of nearly three years and was not founded on any error apparent on the face of the record or any suppression of material fact.

47. Once the Section 11 order had attained finality, the only remedies available to the respondents were to approach this Court under Article 136 or to raise objections under Section 16 before the Arbitral Tribunal. Having chosen neither route, and having participated in the arbitral proceedings, including joint applications under Section 29-A, they were estopped from reopening the matter through review. A later judgment cannot revive a concluded cause of action.

48. As emphasized in BSNL v. Nortel Networks (India) (P) Ltd. [BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738 : (2021) 3 SCC (Civ) 352] , courts must resist ?attempts to re-enter through the back door what the statute has shut through the front door?. Section 11 is intended to trigger arbitration, not to create multiple stages of judicial reconsideration.

49. For the reasons discussed above, this Court is of the considered view that the High Court did not have the jurisdiction to reopen or review its earlier order passed under Section 11(6) of the A&C Act. Once the appointment was made, the court became functus officio and could not sit in judgment over the very issue it had already settled. The review order cuts against the grain of the Act, undermines the principle of minimal judicial interference, and effectively converts the review into an appeal in disguise. Such an exercise cannot stand. Accordingly, this issue is answered in the negative."

23. Before proceeding any further, at this stage and only for the purpose of reference, assuming if the power of review was conferred under the Act of 1996 then, whether the ground which has been raised by the petitioner would fall within the ambit of a review. A review lies where there is an error apparent on the face of record or new material discovered which could not be known despite due diligence or could not have been in the knowledge of the person seeking review or some other like sufficient reason. The Apex Court in **Ram Sahu and others v. Vinod Kumar Rawat and others, 2020 SCC OnLine SC 896** had the occasion to consider the scope of review. Again in **Sanjay Kumar Agarwal v. Sale Tax Officer (1), and another : (2024) 2 SCC 362,** the Apex Court in Para-16 noticed the scope and grounds upon which a review can be considered which reads as under:-

"16. The gist of the aforestated decisions is that:

16.1. A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

16.2. A judgment pronounced by the court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

16.3. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.

16.4. In exercise of the jurisdiction under Order 47 Rule 1CPC, it is not permissible for an erroneous decision to be "reheard and corrected".

16.5. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

16.6. Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

16.7. An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

16.8. Even the change in law or subsequent decision/judgment of a coordinate or larger Bench by itself cannot be regarded as a ground for review."

24. Now having considered the dictum as made by the Apex Court, it can clearly be stated that even though the High Court under Section 11 of the Act of 1996 may not have powers to review but the High Court being a Court of Record by virtue of Article 215 of the Constitution of India has inherent powers to review/recall an order but the scope thereof is very narrow. Hence, the grounds upon which the High Court may exercise its constitutional powers to review must be on higher and elevated pedestal than the grounds of review as noticed in Para-16 of **Sanjay Kumar Agarwal** (supra).

25. Now, in this context, if the case of **Pratibha Industries Ltd.** (supra) is seen, it would reveal that the Hon'ble Apex Court had made the observations that a High Court being a Court of record has inherent powers in terms of Article 215 of the Constitution of India to prevent the failure of justice, this was due to the fact that in the said case it was found that there was no arbitration clause between the parties. In absence of the arbitration clause, which was a fundamental prerequisite for invoking the powers under Section 11 of the Act of 1996 to appoint an Arbitrator, there could be no appointment of an Arbitrator. Hence, it is in these circumstances the Apex Court made the said observations. Admittedly, in the instant case, the parties agree that there is an arbitration clause, which was invoked and the Arbitrator was appointed. Accordingly, the said decision of Pratibha Industries Ltd. (supra) cannot be invoked by the petitioner to its aid.

26. Similarly, in **Bihar Rajya Pul Nirman Nigam Limited** (supra), though the Apex Court recognized that there is no power of review and further also observed that the High Court being the Court of record cannot be denuded on its inherent powers but the said inherent powers cannot be invoked to enter and reconsider the controversy through the backdoor when the statute has shut the front door.

27. It is now well settled that what cannot be done directly cannot be done indirectly either. Thus tempting the Court to entertain a review/recall as suggested by the learned counsel for the petitioner, on the basis of the decision of the Apex Court **Pratibha Industries Ltd.** (supra) and **Bihar Rajya Pul Nirman Nigam Limited** (supra) cannot be countenanced as the grounds for exercise of this power under Article 215 of the Constitution of India is narrow and the ratio of the aforesaid cases cannot be stretched to fit in the facts of the instant case.

28. Thus, the upshot of the above discussion is that though the High Court may exercise its inherent powers under Article 215 of the Constitution of India to review/recall but that too can only be done in such cases, where a serious error in an order if allowed to stand would result in miscarriage of justice or any such other like ground, which is on a higher pedestal than the established grounds upon which generally a review is entertained.

29. Having held as aforesaid, now lets examine whether the grounds pleaded for review in the instant case can be considered to be a serious error in the order which if allowed to stand will result in miscarriage of justice and is on an elevated pedestal than the grounds upon which a review is generally entertained.

30. At this stage, it will be relevant to notice that the contention of the petitioner was that the general condition of contract was novated by special conditions of contract which provided, that claims upto Rs.25.00 crores would be considered by the Sole Arbitrator and since the valuation of the claims of the petitioner were under the said limit, hence, the Sole Arbitrator should decide the disputes between the parties and this is a serious error as by the order impugned a three Member Arbitral Tribunal has been constituted which is against the terms of the contract.

31. The aforesaid submission of the learned counsel for the petitioner cannot be accepted for more than one reason.

(i) First, in the petition preferred by the petitioner under Section 11(6) of the Act of 1996 in Para-3 it quoted and referred that the disputes were to be resolved by a Tribunal of three Members, one each to be nominated by the contractor and the employee and the third to be appointed by the two party nominated Arbitrators. In para-11 of the petition, the petitioner did refer to the special conditions of the contract, however, what is relevant to notice, is that the petitioner in Para-30 of the petition specifically stated that the petitioner requested for a formation of a panel of Arbitrators vide its notice dated 18.01.2024. The petitioner went on to state that the petitioner had nominated its Arbitrator, a former Judge of this Court and requested the respondents to nominate their Arbitrator. For the sake of reference, Para-31 of the petition is being reproduced hereinafter:-

"31. That when no reply was given within 30 days to the notice dated 18.01.2024, the Applicant vide letter dated 22.02.2024 bearing Ref No.TLL/MVVNL/38356, nominated Mrs. Poonam Srivastava, Former Judge, Allahabad High Court, Lucknow Bench, as an Arbitrator and requested for nomination of Arbitrator by the Respondent as per clause 39.2 of GCC (Vol.1 section IV). A copy of the letter dated 22.02.2024 bearing Ref No.TLL/MVVNL/38356 is annexed herewith as Annexure No.23."

In Para-38, the petitioner pleaded that since the respondents did not nominate its party Arbitrator, hence, the nominee arbitrator of the petitioner may be treated as a Sole Arbitrator. The

prayer made by the petitioner in the petition also specifically stated as such which is reproduced hereinafter:-

"i. Refer the dispute between the parties arising out of an agreement dated 17.05.2018, to the Nominee arbitrator of the Claimant to act as Sole Aribrator, to be appointed by this Hon'ble Court."

(ii) Apparently, in the petition, the petitioner also recognized that the dispute had to be resolved by a panel of Arbitrators. Vide letter dated 20.02.2024, the petitioner nominated its Arbitrator in terms of Clause 39.2 of GCC and required the respondents to appoint its Arbitrator.

Thus, at all given time, the petitioner continued to proceed on the premise that the disputes had to be resolved by a panel of Arbitrators and it had clearly appointed its own nominated Arbitrator and required the respondents to appoint its own.

(iii) Second, when the matter came up before the Court, then in exercise of powers under Section 11(4) of the Act of 1996, this Court nominated an Arbitrator on behalf of the respondents vide order dated 07.08.2025.

(iv) Both the party nominated Arbitrators consulted and mutually appointed the Presiding Arbitrator. This would indicate that both the parties continued to proceed on the premise that the disputes had to be resolved by a panel of Arbitrators. This would further show that the formation of the Tribunal comprising of a three Members was with the consent of the parties (including consent on the number of Arbitrators).

(v) At this stage, it will be relevant to notice Section 10 of the Act of 1996 which clearly states that the parties are free to determine the number of Arbitrators, provided that such number shall not be an even number. Thus, the composition of the Arbitral Tribunal of three Members cannot be said to be in violation of any provisions of law.

(vi) Third, there is another way of looking at this issue and that is that the Act is based on two important principles (i) Party Autonomy and (ii) the Principles of Kompetenz - Kompetenz. Under the Act of 1996, the parties have been given utmost freedom to choose the number of Arbitrators, which finds reflection in Section 10 of the Act of 1996. Simultaneously, if Section 4 of the Act of 1996 is seen, it would reveal that it recognizes the right of a party to waive a right to object. For ready reference, Section 4 of the Act of 1996 is being reproduced hereinafter for better appreciation:-

"4. Waiver of right to object. *- A party who knows that-*

(a) any provision of this Part from which the parties may derogate, or

(b) any requirement under the arbitration agreement,

has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object."

(vii) Applying the provisions of Section 4 of the Act of 1996 to the facts of the instant case, it would reveal that the parties were aware of all the facts when they entered into the contract. All such facts were also in the notice of the parties when the petitioner escalated the disputes for the purposes of resolving the disputes through the mode as prescribed in the said agreement. Even while filing the petition, reference was made to the conditions of contract but the petitioner and the respondents, both proceeded on the premise that the disputes were to be resolved by a panel of three Arbitrators.

(viii) It cannot be disputed that the freedom given to the parties to decide the number of Arbitrators is paramount and this power to choose the number of Arbitrators is not non-derogable.

In other words, if the number of Arbitrators is decided by the parties at a stage then it is not as if the parties by consent cannot change or agree to a different strength of number of Arbitrators. The Apex Court considered this aspect of the matter in **Narayan Prasad Lohia v. Nikunj Kumar Lohia : (2002) 3 SCC 572** and it held as under:-

"14. We have heard the parties at length. We have considered the submissions. Undoubtedly, Section 10 provides that the number of arbitrators shall not be an even number. The question still remains whether Section 10 is a non-derogable provision. In our view the answer to this question would depend on the question as to whether, under the said Act, a party has a right to object to the composition of the Arbitral Tribunal, if such composition is not in accordance with the said Act, and if so, at what stage. It must be remembered that arbitration is a creature of an agreement. There can be no arbitration unless there is an arbitration agreement in writing between the parties.

15. In the said Act, provisions have been made in Sections 12, 13 and 16 for challenging the competence, impartiality and jurisdiction. Such challenge must however be before the Arbitral Tribunal itself.

16. It has been held by a Constitution Bench of this Court, in the case of Konkan Rly. Corpn. Ltd. v. Rani Construction (P) Ltd. [(2002) 2 SCC 388] that Section 16 enables the Arbitral Tribunal to rule on its own jurisdiction. It has been held that under Section 16 the Arbitral Tribunal can rule on any objection with respect to existence or validity of the arbitration agreement. It is held that the Arbitral Tribunal's authority under Section 16, is not confined to the width of its jurisdiction but goes also to the root of its jurisdiction. Not only this decision is binding on this Court, but we are in respectful agreement with the same. Thus it is no longer open to contend that, under Section 16, a party cannot challenge the composition of the Arbitral Tribunal before the Arbitral Tribunal itself. Such a challenge must be taken, under Section 16(2), not later than the submission of the statement of defence. Section 16(2) makes it clear that such a challenge can be taken even though the party may have participated in the appointment of the arbitrator and/or may have himself appointed the arbitrator. Needless to state a party would be free, if it so chooses, not to raise such a challenge. Thus a conjoint reading of Sections 10 and 16 shows that an objection to the composition of the Arbitral Tribunal is a matter which is derogable. It is derogable because a party is free not to object within the time prescribed in Section 16(2). If a party chooses not to so object there will be a deemed waiver under Section 4. Thus, we are unable to accept the submission that Section 10 is a non-derogable provision. In our view Section 10 has to be read along with Section 16 and is, therefore, a derogable provision.

17. We are also unable to accept Mr Venugopal's argument that, as a matter of public policy, Section 10 should be held to be non-derogable. Even though the said Act is now an integrated law on the subject of arbitration, it cannot and does not provide for all contingencies. An arbitration being a creature of agreement between the parties, it would be impossible for the legislature to cover all aspects. Just by way of example Section 10 permits the parties to determine the number of arbitrators, provided that such number is not an even number. Section 11(2) permits parties to agree on a procedure for appointing the arbitrator or arbitrators. Section 11 then provides how arbitrators are to be appointed if the parties do not agree on a procedure or if there is failure of the agreed procedure. A reading of Section 11 would show that it only provides for appointments in cases where there is only one arbitrator or three arbitrators. By agreement parties may provide for appointment of 5 or 7 arbitrators. If they do not provide for a procedure for their appointment or there is failure of the agreed procedure, then Section 11 does not contain any

provision for such a contingency. Can this be taken to mean that the agreement of the parties is invalid? The answer obviously has to be in the negative. Undoubtedly the procedure provided in Section 11 will mutatis mutandis apply for appointment of 5 or 7 or more arbitrators. Similarly, even if parties provide for appointment of only two arbitrators, that does not mean that the agreement becomes invalid. Under Section 11(3) the two arbitrators should then appoint a third arbitrator who shall act as the presiding arbitrator. Such an appointment should preferably be made at the beginning. However, we see no reason, why the two arbitrators cannot appoint a third arbitrator at a later stage i.e. if and when they differ. This would ensure that on a difference of opinion the arbitration proceedings are not frustrated. But if the two arbitrators agree and give a common award there is no frustration of the proceedings. In such a case their common opinion would have prevailed, even if the third arbitrator, presuming there was one, had differed. Thus we do not see how there would be waste of time, money and expense if a party, with open eyes, agrees to go to arbitration of two persons and then participates in the proceedings. On the contrary there would be waste of time, money and energy if such a party is allowed to resile because the award is not to its liking. Allowing such a party to resile would not be in furtherance of any public policy and would be most inequitable."

(ix) Thus, where both the parties proceeded for appointment of their party nominated Arbitrators and the two party nominated Arbitrators consulted and mutually appointed the Presiding Arbitrator. Thus, for all practical purposes upto the formation of the Arbitral Tribunal comprising of three Members, none of the parties had raised the issue regarding appointment of a Sole Arbitrator. The petitioner did not bring on record any material to indicate that the party nominated Arbitrator of the petitioner was ever informed of this issue or that the mandate of the petitioner's nominated Arbitrator was terminated. The petitioner has also not brought on record any material to indicate that the petitioner moved any application under Section 16 of the Act of 1996 before the Arbitral Tribunal, which could have been done but admittedly no such application was moved.

(x) Fourth, the apprehension of the petitioner as expressed herein, is mentioned in the order of the Arbitral Tribunal dated 12.10.2025, which has been brought on record by the respondents along with their objections and the relevant portion thereof reads as under:-

"The learned counsel submitted that in view of subsequent amendment in Special Condition of Contract (SCC) any party may raise objection regarding validity of constitution of Arbitral Tribunal under Section 34(2)(a)(v) of the Act. Her contention is that the present application is to avoid any such situation in future. She argued that in case parties give written consent or court make declaration to Arbitral jurisdiction, any situation in future would be avoided.

There is nothing in application to show that any amendment has been made in GCC, according to which three Members Arbitral Tribunal would have jurisdiction to adjudicate the dispute under contract. The present Arbitral Tribunal is in accordance with GCC.

However, in view of subsequent amendment as alleged in SCC, looking to the claimant's apprehension the proceedings in the arbitration matter are kept in abeyance as prayed.

The claimant may have to seek order regarding extension of time also."

(xi) From the above quoted contention as recorded in the order of the Arbitral Tribunal, it would indicate that the apprehension appears to be more artificial than substantive. Even while filing the objections before this Court, the respondents did not support the aforesaid contention nor ever stated that the respondent did not agree to the nomination of the Arbitrator made by this Court

on behalf of the respondent nor the said order was challenged by the respondent before the Apex Court or raise a challenge before the Arbitral Tribunal in terms of the Kompetenz - Kompetenz principles as incorporated in Section 16 of the Act of 1996.

(xii) Furthermore, at best, the respondents could have raised an objection which it did not either before the Arbitral Tribunal or before this Court, hence, the provisions of Section 4 of the Act of 1996 would equally operate against the respondents. Thus, the apprehension as expressed by the petitioner has no substance.

32. Thus, to sum up, here both parties proceeded on the premise of resolving the disputes by a panel of three Arbitrators and they consented and participated in formation of the Arbitral Tribunal and now when the Tribunal is proceeding with the matter, the petitioner has come up before this Court seeking review of the orders passed by this Court dated 17.07.2025 and 07.08.2025, upon an artificial apprehension, as noticed in above. This Court finds that the grounds upon which the petitioner has moved the instant application do not even fall within the established grounds, upon which a review could be entertained what to say of the requirement that the grounds must be on a higher pedestal than the general grounds of review. The grounds urged for review of the orders dated 17.07.2025 and 07.08.2025 in the instant case falls way short to persuade this Court to exercise its inherent powers to review/recall the orders impugned, moreso when the consequence would be to disband and terminate the mandate of a lawfully constituted Arbitral Tribunal, which is not legally permissible as it would amount to entering into the controversy through the backdoor while the front door remains shut.

33. For all the aforesaid reasons, this Court does not find that it is a fit case to exercise its inherent powers conferred under Article 215 of the Constitution of India to recall/review the orders dated 17.07.2025 and 07.08.2025. Accordingly, the applications are held to be devoid of merits and are **dismissed**. There shall be no order as to costs.

(2026) 5 ILRA 2502
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 18.05.2026

BEFORE

THE HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

Second Appeal No. 308 of 2018

Dr. Brij Bhushan & Ors. **...Appellants**
Versus
Satya Bhudhsn Verma **...Respondent**

Issues for Consideration

(i) Whether the Prohibition of Benami Property Transactions Act, 1988, particularly Section 4 thereof, applies to a suit filed after the Act came into force, even though the sale deed in question was executed prior to the Act's commencement, so as to bar the defence of Benami transaction?

(ii) Whether the occupation of the appellant-defendant no.1 in the suit property was that of a licensee or a co-owner, and whether any partition had taken place between the co-owners?

Headnotes

Prohibition of Benami Property Transactions Act, 1988 --- Ss. 3, 4 --- Retrospective operation --- Suit filed after commencement of the Act, though sale deed executed prior thereto --- Defence of Benami transaction barred.

HELD: While Section 3 of the Act, creating the offence of entering into a Benami transaction, is prospective, Section 4, which bars any suit, claim, defence or action based on a right in property held Benami, applies to all suits filed after the Act came into force, irrespective of when the underlying transaction took place. Since the sale deed was executed in 1977, but the suit was filed in 2000 and the written statement raising the Benami plea filed in 2001, both after the Act came into force, the defendant is not permitted to take the defence of Benami transaction, save to the extent covered by the saving clause of Section 4(3), prior to its deletion by the amending Act of 2016. [Paras 45, 51]

Hindu Law --- Joint family property --- Property purchased by father in the names of two of several sons, from his own funds --- Held to be a gift and not coparcenary property.

HELD: Where the sale consideration for property purchased in the name of two sons was proved to have been paid by the father from his own funds, to the exclusion of other sons who were non-earning members at the time, the transaction is in the nature of a gift in favour of the named purchasers and not joint family/coparcenary property, and the defence of Benami transaction on this ground is not tenable. [Paras 57-58]

Code of Civil Procedure, 1908 --- S. 100 --- Second Appeal --- Concurrent findings of fact --- Status of appellant in suit property --- Licensee, not co-owner --- No partition proved.

HELD: Where both courts below concurrently found, on evidence, that the suit property was purchased by the father and not by the appellant-defendant, that the appellant was permitted to occupy a portion of the house as a licensee and not as a co-owner, and that no partition by metes and bounds had taken place, no perversity warranting interference in second appeal under Section 100 CPC is made out. [Paras 53-61]

Second appeal dismissed. (E-14)

Case Law Cited

R. Rajagopal Reddy (dead) by L.Rs. and others v. Padmini Chandrasekharan (dead) by L.Rs., AIR 1996 SC 238 --- followed; *Marcel Martins v. M. Printer and others*, AIR 2012 SC 1987 --- followed; *Iftkharul Haq and another v. Lala Data Ram and another*, AIR 1975 All 670 --- referred to; *Hira Lal v. Gajjan*, AIR 1990 SC 723 --- referred to; *Narendra Gopal Vidyarthi v. Rajat Vidyarthi*, 2010 (28) LCD 703 --- referred to; *K.N. Nagarajappa & others v. H. Narasimha Reddy*, Civil Appeal Nos. 5033-5034 of 2009, decided on 09.09.2021 --- relied on.

List of Acts / Statutes

Prohibition of Benami Property Transactions Act, 1988; Code of Civil Procedure, 1908; U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972; Indian Easements Act, 1882.

List of Keywords

Benami transaction; Retrospective operation; Second appeal; Substantial question of law; Licensee; Co-owner; Joint family property; Gift.

Case Arising From

Judgment and order dated 27.07.2018 passed by the Additional District Judge/Special Judge EC Act, Lucknow, in Regular Civil Appeal No. 6500026 of 2006, arising out of judgment dated 17.01.2006 and decree dated 31.01.2006 passed by the Additional Civil Judge (Senior Division), Court No. 22, Lucknow, in Original Suit No. 391 of 2000, Satya Bhushan Verma and another v. Dr. Brij Bhushan and others.

Appearance for Parties

For the Appellant(s): Dr. Ramsurat Pande, Ankit Pande, Shashank Bhushan Singh, Virendra Bhatt.

For the Respondent(s): Yogendra Singh, Ashok Kumar Srivastava.

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

1. Heard submissions of Sri R.S. Pandey, learned Senior Advocate, assisted by Sri Ankit Pandey and Sri Shashank Bhushan Singh, learned counsel for the appellants, Shri Yogendra Singh and Sri Ashok Kumar Srivastava appearing on behalf of the respondent and perused the record.

2. By means of instant second appeal preferred under Section 100 Code of Civil Procedure, the defendant-appellants in Original Suit No.391 of 2000, Shukhnandan Satya Bhushan Verma versus Dr. Brij Bhushan and two others, have assailed the concurrent findings of judgments of both courts below. The Additional Civil Judge (Senior Division), Court No.22, Lucknow, had decreed the suit of the plaintiff-respondents in respect of the suit property, which is House No.531/16Ga, situated at Bhindiya Tola, Bara Chaandganj, Lucknow. The learned trial court issued a mandatory injunction to defendant-appellant Dr. Brij Bhushan to vacate one-half of the western portion of the said house under his occupation, which consists of a room and veranda, kitchen, latrine, bathroom, gallery and staircase on the ground floor and construciton raised on the first floor thereof within prescribed period and hand over the possession of the said portion of the house to the plaintiff no.2. The learned trial court decreed the suit of the plaintiff vide judgment and order dated 17/01/2006. This judgment and decree was assailed by the defendant-appellant before the Court of District Judge, Lucknow by preferring a civil appeal i.e. Regular Civil Appeal No.6500026 of 2006, Dr. Brij Bhushan and others versus Satya Bhushan Verma. The civil appeal was decided by Additional District Judge/Special Judge EC Act, Lucknow, vide judgment and order dated 27/07/2018, whereby the civil appeal preferred by the defendant was dismissed and the judgment and decree passed by the learned trial court dated 17/01/2006 and decree dated 31/01/2006 was affirmed.

3. This Court, at the stage of admission of the second appeal, framed the following substantial questions of law, which are extracted below:

(E) Whether the finding recorded by the courts below are tenable in law as it has held that the prohibition of Benami Property Transaction Act 1988 has retrospective operation and the plea of Benami transaction is barred under Section 4 of the said Act without considering the definition of Benami property and Benami Transaction contained in Section 2(8) and (9) of the aforesaid Act.

(F) Whether the judgment and decree passed by the courts below is perverse in law and facts, both.

4. Learned counsel for the defendant appellants submitted that the plaintiff No.2/respondent along with Sukhnandan filed a suit for possession and Mandatory Injunction which was registered

as Regular suit No.331/2000 before the Additional Civil Judge (Senior Division Court No.22 Lucknow with the averments that the suit is being filed for possession and damages as well as for Mandatory Injunction in respect of the house No.531/16Ga, situate in Bhindia Tola Bara Chaandganj, Lucknow towards Western portion of residential part of the house of which portion is in the ownership of defendant /appellant No.2 and 1/2 portion under plaintiff No.2/Respondent. The said land has been purchased in the name of the defendant/appellant No.2 and plaintiff/respondent by his father late Sukhnandan (plaintiff no.1 in Original Suit) in order to settle his sons as Dr. Brij Bhushan Verma had already got employment in the Government job. The said land was purchased through sale deed dated 10.2.1977 in the name of Satya Bhushan and Sabitur Bhushan which was registered in Zild No.2309 at page No.148-154 at serial No.1718 on 18.6.1977 before the Sub Registrar Lucknow. It has further been alleged that Sukhnandan, father of appellant and respondent has provided sufficient money for construction of the house in question over the land purchased through sale deed dated 10.2.1977 in the name of Satya Bhushan Verma (Plaintiff No.2/respondent) and Sabitur Bhushan Defendant/appellant No.2. It has further been alleged that after construction of the house, the same was recorded in the name of the aforesaid transferees in the Nagar Maha palika, Lucknow and the house was assessed at Rs.1800/- per annum. It has further been alleged that Dr. Brij Bhushan Verma was transferred to Lucknow in the year 1980 and under the instructions of Sukhnandan father of the appellant and respondent, the appellant No.1 was allowed to occupy the house in question as a licensee on the basis of license granted by Satya Bhushan Verma plaintiff No.2/respondent. It has further been alleged that the house constructed over the plot No.531/16Ga was divided between the Vendees and 1/2 portion in the Eastern side was given to Defendant/Appellant No.2 and 1/2 Western portion was given to respondent by a mutual understanding. It may be pointed out here that no partition took place between the alleged co-owners by metes and bounds by the competent court of law. It has further been alleged that plaintiff/respondent demanded damages @ Rs.500/-per month from the defendant/appellant No.1 in lieu of license granted to him but the defendant/appellant No.1 failed to pay the damages and as such a legal notice was given to him for vacating the premises in question. The suit was filed on 29 November 2000.

5. He next submitted that it has further been averred in the plaint that during pendency of the suit the defendant/appellant No.1 had raised construction over the first floor of the house in question without any authority of law and as such a decree be passed for demolition of the aforesaid construction.

6. He next submitted that the defendant/appellant No.1 filed written statement on 6.1.2001 denying the plaint allegations and stated therein that the land was purchased in 1977 by providing funds by the defendant/plaintiff No.1 but the sale deed has been executed in the name of plaintiff No.2 and defendant No.2 by showing cleverness by plaintiff/respondent. The money for purchasing the plot was supplied by the defendant/appellant No.1 and thereafter the building along with shops was constructed from the money provided by defendant/appellant No.1. It has further been stated that after construction of the house and shops over the plot in question, a family settlement arrived at between the four brothers i.e. plaintiff and defendants by which 2 shops were given to respondent and 2 shops were given to plaintiff defendant/appellant No.2 and residential area came in the share of appellant No.1. The house assessment was also made in Nagar Nigam Lucknow on the basis of the aforesaid family settlement in 1986. The house property was subsequently mutated

in the name of Defendant/appellant No.1 also and two shops were mutated in the name of plaintiff/respondent and rest two shops were mutated in the name of defendant/appellant No.2 at the request made by the plaintiff/respondent by means of affidavit filed by him and since then their names are continuing over the property in question in the Nagar Nigam, Lucknow. It has further been stated in statement that the the written defendant/appellant No.1 is residing in the house as owner and he is not a licensee as alleged in the plaint and four brothers are equal owners of house in suit.

7. He next submitted that the defendant/appellant No.2 filed separate written statement on 6.4.2001 and admitted therein that the land in question was purchased from the fund provided by defendant/appellant No.1 as the plaintiff No.2/respondent and defendant/appellant No.2 were students at the time of purchase of the land and they had no source of income. It has further been stated that defendant/appellant No.1 was in service, he had provided entire money for purchase of the plot as well as for construction of the house and shops over the land in question. In para 8 of the written statement it has been clearly stated by defendant/appellant No.2 who is also co-A 150 transferee along with plaintiff/respondent that the property in suit was acquired by the defendant/appellant No.1 in 1977 and he built accommodation in question as described in the written statement because at the time of purchase of the property in suit plaintiff/respondent and defendant/appellant No.2 and 3 were school going students and they had no independent source of income. It has further been stated in the written statement by the defendant/appellant No.2 that the plaintiff/respondent is not owner in possession; and he had no right, title or interest in the property in question and as such the suit is liable to be dismissed with costs.

8. He next submitted that the defendant/appellant No.3 Bharat Bhushan filed separate written statement before the trial court on 19.12.2001 denying the plaint allegations and in para 8 of the additional pleas, it has been specifically mentioned that the property in question was purchased in the name of Satya Bhushan and Sabitur Bhushan from the joint Hindu family fund by the Karta of the family as the plaintiff No.2/respondent Satya Bhushan Verma was merely a student of Science Graduation and he had no independent income at that time when the property was purchased. Similarly Sabitur Bhushan defendant/appellant No.2 was a student being youngest brother and he had also no income. The property in question has been subsequently divided amongst the co-parceners on the basis of the family settlement. There was Hindu undivided family of Sukhanandan and his three sons. His two other sons Chandrabhushan and Ravi Bhushan (deceased) had got separated long ago.

9. He next submitted that from the facts stated in the preceding para it is clearly established that all the three brothers namely Brij Bhushan, Sabitur Bhushan and Bharat Bhushan had admitted that the property in question was acquired by joint family fund as Satya Bhushan was a student of Science graduation and Sabitur Bhushan was also a student and they had no independent source of income. Father of the appellants and respondent was Karta of the family and was earning from the agriculture and Dr. Brij Bhushan defendant/appellant No.1 had already Joined medical service in the State Ayurvedic department and he was also an earning member and supporting the family.

10. He also submitted that it is pertinent to mention here that Satya Bhushan plaintiff/respondent himself filed affidavit before the Municipal board stating there in that the

property is a joint family property and all the four brothers have share in it. In the circumstances two shops constructed on the property in question were given to him and two shops constructed over the land in question were given to Sabitur Bhushan defendant/appellant No.2 and the residential house constructed over the plot in question was given in the share of Dr Brij Bhushan Defendant/appellant No.1. Accordingly, names of all the three brothers were recorded in the Municipal records on the application moved by the plaintiff/respondent as is evident from the various documents filed along with the written statement filed by defendant/appellant No.1. The application moved by Satya Bhushan Verma before the Tax Superintendent Nagar Mahapalika Lucknow on 28.1.1982 is on record which is the admission of plaintiff/respondent and plaintiff/respondent is stopped from raising contrary plea and by filing plaint and as such he is stopped from raising such plea of ownership of 1 share on the basis of the sale deed.

11. He next submitted that the other co-owners on the basis of sale deed i.e. defendant/appellant No.2 had filed affidavit before the trial court in the suit in question saying that no partition by metes and bounds has ever taken place as alleged in the plaint but by a family settlement all the brothers have share in it. share as per sale deed is of defendant/appellant No.2 and he has denied claim of plaintiff/respondent with regard to the share under occupation of defendant no.1 and the alleged plea of grant of license to defendant/appellant No.1 which itself shows the false case set up by plaintiff/respondent.

12. He further submitted that both parties lead evidence and plaintiff/respondent examined Sukhnandan plaintiff No.1 as PW-1, and plaintiff No.2/respondent was examined as PW-2. No other independent witness was examined on behalf of the plaintiff No.2/respondent. Plaintiff No.1, father of appellants plaintiff No.2, died during pendency of the suit. The plaintiffs also filed various documents in support of their case. The defendant/appellant examined Brij Bhushan Defendant/appellant No.1 as DW-1 and Sabitur Bhushan Defendant/appellant No.2 as DW-2 and filed various documents such as lease deed executed in favour of tenants, various documents filed before the Nagar Mahapalika Lucknow and the documents issued by the Nagar Mahapalika Lucknow showing that the property is a joint family property and the same is in the joint names of sons of Suknandan, father of appellants and plaintiff/respondent.. It is also pertinent to mention here that the allegations made by the plaintiff/respondent with regard to the partition between Satya Bhushan and Sabitur Bhushan by father of the appellants and respondent have been denied by all the three brothers. It has also been established from the own conduct of the plaintiff/respondent that the property was joint family property and the same has been purchased from the joint family fund though maximum contribution has been made for purchasing the property in question by appellant No.1 which has been admitted by a co-owner of the property as per sale deed executed in favour of the two brothers only and they were students at the time of purchase of the property and construction raised over it and as such the plaintiff/respondent is estopped from raising such a plea of being owner of share of the property.

13. Learned counsel for the appellant submitted that the learned trial court has wrongly and illegally decreed the suit of the plaintiff-respondent on 17/01/2006 without considering the material evidence on record. The plea of the Benami transaction was misread and misconstrued by the trial court. The trial court wrongly and illegally held that there was no joint family and also there was no fiduciary relationship between the plaintiff and the defendants. It has also been incorrectly held that

the Prohibition of Benami Property Transaction Act, 1988, has retrospective operation. The provision contained in Section 2 (8) and (9) have not been taken into consideration while deciding the ownership of the property in question.

14. The trial court has recorded a finding to the effect that the property has been purchased in the name of plaintiff no.2/respondent defendant no.2 by the plaintiff no.1 i.e. father of the plaintiff and defendants and at the same time, a contrary finding has been recorded that the property is owned by the person in whose name said deed was executed, without considering the definition of "Benami property" as provided in Section 2 (8) and (9) of the Act of 1988.

15. He next submitted that the trial court has failed to consider that when another co-owner is denied the plaint allegations with regard to the ownership and grant of a license to other brother for residential purposes and the alleged partition made by the father of the appellant and respondent, then the finding recorded by the trial court is contrary to it and it is based on its assumption and presumption and against the strength of evidence on record.

16. He next submitted that feeling aggrieved by the judgment and decree of the trial court, the defendant-appellant filed a civil appeal before the Court of the District Judge, Lucknow, but it was dismissed by the learned Additional District Judge / Special Judge EC Act, Lucknow on 27/07/2018 without considering the factual and legal issues involved in the case, which were duly raised by the appellant before the lower appellate court.

17. The defendant / appellant no.1 and 2, have stated on oath that the property had been purchased with the funds provided by applicant no.1 i.;e. Dr. Brij Bhushan, and since the family was a joint family and karta of the family is the father of the appellant and respondent, as such, after the death of the father, all brothers have share in it. The appellant no.2 has stated on oath before the trial court that the property was purchased from the money provided by the defendant/appellant no.1 but it was purchased in the name of the two brothers, namely, Satya Bhushan Verma (plaintiff/ respondent) and Sabitur Bhushan Verma (defendant/appellant no.2).

18. Learned lower appellate court failed to consider that the property in question was a joint property and it was purchased in the name of two brothers. Whereas there were four sons of Sukh Nandan, the karta of the family, namely, Satya Bhushan Verma, Sabitur Bhushan, Dr.Brij Bhushan and Bharat Bhushan. The property was purchased in the name of the two brothers, who had no independent income as they were students at the time. Thus, the finding recorded by the trial and lower appellate court is perverse and against the evidence on record. The case taken by the plaintiff that the occupation of a portion of the house in question is in the capacity of licensee and not a co-owner, is not supported by the evidence, and said finding has been recorded without considering the statutory provisions contained in Section 2-(A) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The license could not be granted for more than months without any order of the allotment under Section 16 of the Act. It is the admitted case of the parties that the building in question is within the purview of Act No.13 of 1972.

19. Both the courts below have failed to appreciate the provisions contained in Section 60 of the Indian Easement Act, 1882, which provides that *(the license could not be revoked where the*

licensee, acting upon the license, has executed the work of permanent character and incurred expenses in the execution of the work). It has been alleged in the plaint itself by amending the plaint that the appellant no.1 has raised construction over the first floor of the house, but without any authority. The plaintiff-respondent has failed to prove that the construction on the first floor has been raised during the pendency of the suit. The lower appellate court has framed four points for determination in the appeal in view of the provisions contained in Order 41 rule 31 CPC.

20. He lastly submitted that the first point for determination was raised with regard to the effect of the Prohibition of the Benami Property Transactions Act, 1988 (hereinafter referred to as "the Act") on the sale deed executed at the instance of the father of the appellant in the name of the plaintiff and appellant no.2:-

(i) Whether it is prospective or retrospective?

The second question was with regard to the status of the appellant in the premises in question:

(ii) Whether as a licensee or co-owner?

The third question was :

(iii) Whether the partition has taken place between the co-owners of the property?

21. The lower appellate court decided the point No.1 wrongly contrary to law and held that the Act has retrospective operation and the property is not covered by the said Act, but at the same time it misread and misconstrued the written statements filed by the defendant / appellant no.1 by saying that no such plea of prohibition of Benami Transaction Act was taken in the written statement and as such the trial court has not committed any error in not framing issue on this point. The defendant-appellant no.1 has stated in paragraphs 4, 5, 7, 9 and 11 of the written statements that it was Benami property purchased in the name of the plaintiff and respondent no.2. No issue was framed by the trial court on the question of Benami property, despite the fact that a specific plea in this regard had been taken in the written statement filed by the defendant-applicant no.1 and a contrary finding has been recorded by the lower appellate court, saying that no plea of benami transaction has been taken in the written statement. The findings on the question of partition recorded by the lower appellate court are perverse, as this fact is proved on record that no partition by metes and bounds has taken place between the parties by mutual partition. The share in the house were given to all brothers, being members of the joint Hindu property, and the property was joint Hindu property.

22. Per contra, learned counsel for the plaintiff respondent submitted that there is no infirmity in the findings recorded by the trial court as well as the learned lower appellate court while decreeing the suit of the plaintiff and affirming the same in the civil appeal. The impugned judgments are based on evidence on record and no interference is warranted in the second appeal against concurrent findings of both the courts below. It is trite law that questions of fact which are settled at the stage of the lower appellate court cannot be re-agitated in second appeal before the High Court. The lower appellate court has rightly held that Act of 1988 has retrospective operation and it is applicable on the sale deed executed on 10/02/1977 with regard to the house in question, in the name of the plaintiff and appellant no.2 executed by Smt. Prabhavati, widow of Ganga Prasad. The occupation of defendant appellant no.1 in said house in the western portion of the ground floor

was that of the licensee and not in the capacity of co-owner and after revocation of the license by the owners of the house, the occupation of plaintiff-appellant no.1 has become unauthorized and for that reason, the decree of eviction and restoration of possession was granted in favour of the plaintiff respondent.

23. In the first week of September, 2004, defendant/appellant no.1 started carrying out construction of a room and verandha on the first floor of the western residential part of the House No.531/16 GA, Bhindiya Tola, Bara Chandganj, Lucknow in disregard of and violating the order dated 8th December, 2000, wherein trial court was pleased to direct maintenance of status quo over property during pendency of suit for which plaintiff/respondent moved an application under Order 39 Rule 2A CPC

24. Learned counsel for the plaintiff placed reliance on the judgment of the Supreme Court in **R. Rajagopal Reddy (dead) by L.R.S. and others versus Padmini Chandrasekharan (dead) by L.R.S., reported in AIR 1996 Supreme Court 238,** which held that Section 4(1) of the Benami Transactions (Prohibition) Act cannot be applied to any suit, claim or action to enforce any right in property held benami against a person in whose name such property is held or any other person, if such proceeding is initiated by or on behalf of a person claiming to be real owner thereof, prior to the coming into force of Section 4(1) of the Act. So far as Section 4(2) is concerned, all that is provided is that if a suit is filed by a plaintiff who claims to be the owner of the property under the document in his favour and holds the property in his name , once Section 4(2) applies no defence will be permitted or allowed in any such suit, claim or action by or on behlaf of a person claiming to be the real owner of such property held benami. The disallowing of such a defence which earlier was available, suggests that a new liability or restriction is imposed by Section 4(2) on a pre-existing right and such a provision cannot be said to be retrospective or retroactive by necessary implication. It is obvious that when the statutory provision creates new liability and new offence, it would naturally have prospective operation and would cover only those offences which take place after Section 3(1) come into force. In **Marcel Martins versus M. Printer and others, reported in AIR 2012 Supreme Court 1987,** the Hon'ble Supreme Court held in paragraph 23, which is extracted as under;

" In determining whether a relationship is based on trust or confidence, relevant to determining whether they stand in a fiduciary capacity, the Court shall have to take into consideration the factual context in which the question arises for it is only in the factual backdrop that the existence or otherwise of a fiduciary relationship can be deduced in a given case. Having said that, let us turn to the facts of the present case once more to determine whether the appellant stood in a fiduciary capacity vis-□-vis the plaintiffs-respondents. "

25. In *Iftkharul Haq and another v. Lala Data Ram and another reported in AIR 1975 All 670,* this Court held that Section 60 of the Indian Easements Act embodies two exceptions to the general rule that a licence is revocable. The instant case is covered by clause (b) of Section 60 which is based on the principle of estoppel by acquiescence. When the licensee acting upon a licence has executed a work of permanent character and incurred expenses in the execution of the licence cannot be revoked by the grantor. The man who stands by and allows another person to build on his land, in the belief that he has power or authority to do so, and incurs expenses in such building,

cannot turn around and claim the removal of such building on the ground that the latter had an authority to build. He is estopped by his conduct from adopting that course and the law will presume an authority from him in such cases.

26. Hon'ble Supreme Court in **Hira Lal versus Gajjan, AIR 1990 SC 723** held that where First appellate court discarded the evidence as inadmissible, but High Court is satisfied that evidence was admissible, High Court can arrive at its independent decision. High Court is well within its power in appreciating the evidence and arriving at its own conclusion.

27. In **Narendra Gopal Vidyarthi versus Rajat Vidyarthi, 2010 (28) LCD 703,** Hon'ble Supreme Court held that "substantial question of law" as provided under Section 100 CPC connotes that " the High Court should be satisfied that the case involves a substantial question of law and not a mere question of law. A question of law having a material bearing on the decision of the case i.e. a question, answer to which affects the rights of parties to the suit, will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law. The general rule is that the High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognized exceptions are where: (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to decision based on no evidence, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.

28. **Substantial question of law (E),** A judgement of Hon'ble Supreme Court in Review Petition (Civil) No.359 of 2023 in Civil Appeal No.5783 of 2022 In **Union of India and another versus M/s Ganpati Dealcom Pvt. Ltd.** is relevant for the purposes of second appeal. Paragraphs 2 to 6 of the said judgement are extracted below:

2. The review has been sought in these proceedings of the judgment of a three-Judge Bench of this Court in **Union of India and Another v Ganpati Dealcom Private Ltd, (2023) 3 SCC 315.** The only question which was framed for consideration by this Court was in the following terms:

"3. The short legal question which arises for this Court's consideration is whether the Prohibition of Benami Property Transactions Act, 1988 (for short "the 1988 Act"), as amended by the Benami Transactions (Prohibition) Amendment Act, 2016 (for short "the 2016 Act") has a prospective effect. Although a purely legal question arises in this appeal, it is necessary to have a brief factual background in mind before we advert to the analysis."

3. The conclusion which was arrived at by the Court, was in the following terms: "127.1. Section 3(2) (sic Section 3) of the unamended 1988 Act is declared as unconstitutional for being

manifestly arbitrary. Accordingly, Section 3(2) of the 2016 Act is also unconstitutional as it is violative of Article 20(1) of the Constitution.

127.2. In rem forfeiture provision under Section 5 of the unamended 1988 Act, prior to the 2016 Amendment Act, was unconstitutional for being manifestly arbitrary.

127.3. The 2016 Amendment Act was not merely procedural, rather, prescribed substantive provisions.

127.4. In rem forfeiture provision under Section 5 of the 2016 Act, being punitive in nature, can only be applied prospectively and not retroactively.

127.5. The authorities concerned cannot initiate or continue criminal prosecution or confiscation proceedings for transactions entered into prior to the coming into force of the 2016 Act viz. 25-10-2016. As a consequence of the above declaration, all such prosecutions or confiscation proceedings shall stand quashed.

127.6. As this Court is not concerned with the constitutionality of such independent forfeiture proceedings contemplated under the 2016 Amendment Act on the other grounds, the aforesaid questions are left open to be adjudicated in appropriate proceedings."

4. The Court has declared Section 3(2) of the unamended provisions of the Prohibition of Benami Property Transactions Act 1988 as unconstitutional for being manifestly arbitrary and as violative of Article 20(1) of the Constitution. The provisions of Section 5 of the unamended Act, prior to the Amendment of 2016, have been declared to be unconstitutional on the ground that they are manifestly arbitrary.

5. It is not disputed that there was no challenge to the constitutional validity of the unamended provisions. This is also clear from the formulation of the question which arose for consideration before the Bench in paragraph 3 of the judgment, which has been extracted above. In the submissions of parties which have been recorded in the judgment, the issue of constitutional validity was not squarely addressed.

6. A challenge to the constitutional validity of a statutory provision cannot be adjudicated upon in the absence of a lis and contest between the parties. We accordingly allow the review petition and recall the judgment dated 23 August 2022. Civil Appeal No 5783 of 2022 shall stand restored to file for fresh adjudication before a Bench to be nominated by the Chief Justice of India on the administrative side.

29. The learned court of first instance framed the following issues for the framing of the suit, which may be reproduced as under:

(i) Whether the plaintiff is the owner of room in question, the verandah, kitchen, latrine, bathroom, gallery and staircase and is entitled to recover its possession?

(ii) Whether the plaint is under valued and court fee paid is insufficient?

(iii) Whether the suit is time-barred?

(iv) The relief, if any, to which the plaintiff is entitled?

(v) Whether the plaintiff is entitled to get possession of the construction raised on the first floor of the western portion of the house in question i.e. House No.531/16 Ga after getting it demolished, if yes, its effect.

30. PW-1, Sukh Nandan, the father of the parties, appeared as a witness as PW-1. He is also the original plaintiff no.1, in Original Suit No.391 of 2000. The plaintiff examined as PW-2, and

the plaintiffs also examined PW-2 Satya Bhushan Verma, plaintiff no.2, in support of the plaintiff's case, whereas, the defendant-appellant had examined DW-1, Dr. Brij Bhushan Verma and DW-2 Sabitur Bhushan.

31. Learned Civil Judge, after appreciation of the evidence adduced by both the parties, came to the conclusion that it is an admitted fact that the building in question is built on land purchased by a registered sale deed on 10.02.1977 in the name of Satya Bhushan Verma, plaintiff no.1 and Sabitur Bhushan, Defendant No.2. Initially, the names of Sabitur Bhushan and Satya Bhushan Verma were recorded in the record of the Nagar Nigam on the basis of the sale deed of 1977, but later on, the name of defendant no.1, Dr. Brij Bhushan Verma, and Bharat Bhushan, who is another brother, was also mutated in the record of the Nagar Nigam. The plaintiff has alleged that this act of getting his name mutated in municipal records by the defendant is a fraudulent act and by mutation, no right, title, or interest passed in favor of the defendant.

32. Learned Civil Judge has given a finding that the sale deed of 1977 was executed in favour of plaintiff no.2 and defendant no.2 and they are owners of the said house on the basis of the said sale deed; thus, ownership of plaintiff no.2 is proved on the basis of the evidence and record. Learned Civil Judge decided legal issues in the negative, as these were not pressed by the defendant. Learned Civil Judge also held that the occupation of defendant no.1 in the said house began in the year 1980 when he was transferred to Lucknow and on his request, he entered into the house as a licensee with the consent of plaintiff no.1, the father of the parties. Thus, his status in the said house is that of a licensee under Section 54 of the Indian Easements Act. The defendant has taken inconsistent pleas regarding his title in the said house, sometimes on the strength of benami transactions, sometimes as Hindu Undivided Family properties of the parties and sometimes on the basis of adverse possession. His his occupation in said house is not adverse to the real owners. The learned Civil Judge finally concluded that the defendant no.1 has raised construction on the first floor of the western portion of the house during pendency of the suit. Plaintiff no.2 is found to be the owner of the western portion of the house on which said construction has been raised. Therefore, he is entitled to get possession of the disputed property, but he is not entitled to seek demolition of the construction raised on the first floor.

33. With above findings of fact, the learned Civil Judge (Senior Division) has decreed the suit of the plaintiff and issued a mandatory injunction to defendant no.1 to restore the possession of half portion of the house along with construction raised on its first floor to plaintiff no.2 within stipulated period.

34. Feeling aggrieved by the judgment and order of the learned Civil Judge, the defendant appellant had preferred First Appeal before the Court of District Judge, which was decided in which the learned Additional District Judge framed the following points of determination:

(i) Whether prohibition of Benami Property Transactions Act 1988 has retrospective effect?

(ii) Whether the plaintiff respondent had given the western portion of House No.531/16-C, situated at Bhindiya Tola Bara Chandganj, Lucknow as a licensee to the appellant?

(iii) Whether the property in suit has already been partitioned and the defendant appellant is not co-owner of the same?

(iv) Whether the appeal is liable to be allowed?

35. Learned Appellate Court, placing reliance on the judgment of the Supreme Court in **Mithilesh Kumari & Anr vs Prem Behari Khare, AIR 1989 SUPREME COURT 1247 and Fakhrey Aalam Khan & Ors. v. Smt. Salma Waheed & Ors 2012 (30) LCD 97 Allahabad High Court and Rajagopal Reddy v. Padmini Chandrasekharan (1995) 2 SCC 630,** considered the guidelines issued in said cases in ***Fakhrey Aalam Khan & Ors.*** **(**supra) for examination of benami transaction. It examined the evidence of PW-1 Sukh Nandan, patriarch of the the family of parties, who stated that he was a pensioner. He owned 50-60 bighas of land. And, from the earnings from the said agricultural land, he had purchased the said house. The defendant, Dr. Brij Bhushan, also admitted this fact in his evidence that his father was earning freedom fighter's pension and had 50-60 bighas of land in his name. The said house was purchased in the year 1977 for Rs.12,000/-. D.W.-1 has admitted that he was appointed in the year 1975, and then his basic pay scale was Rs.500-1200. He retired from service on 31/01/2004. He has earned money from private practice also, but he lived separately from his father.

36. The learned appellate court has considered the fact that on one hand, defendant no.1 was residing far away in connection with his employment and his Pay Scale in 1975 was Rs.500-1200. The property was purchased after two years of joining the service and on the other hand, P.W.-1, Sukh Nandan, was earning pension as a freedom fighter and was cultivating 50-60 bighas (10 acres) of agricultural land. Thus, the defendant was not in a position to pay the sale consideration of Rs. 12,000 in the year 1977 that after two years of his service on meager annual income was Rs.6,000. He was not in a position to purchase the said house benami in the name of his brothers, plaintiff no.2 and defendant no.2. The mutation was only due to the fact that the name of defendant appellant no.1 got mutated later on in the record of Nagar Nigam in respect of the house in question. It is not determinative of the title of the parties in suit property on the basis of evidence adduced by the parties before the trial court. The only inference that can be drawn is that the said property was not purchased as benami by defendant appellant. He cannot be held as owner on the basis of the alleged benami transaction for want of pleadings, the learned Civil Judge has not committed any error, for not framing any issue regarding the benami transaction.

37. The learned appellate court has also given a finding on the basis of the evidence of P.W.-1, Sri Sukh Nandan, who subsequently died. Occupation of the defendant appellant in house in question is that of licensee and not co-owner. The father of the parties has categorically stated in his evidence that when the defendant came to Lucknow on transfer, he was in need of accommodation and he was his real son, he gave a portion of the house for his residence, as a licensee. The plaintiffs had canceled the license through notice dated 11/10/2000 issued to the appellant. The learned appellate court has also given a finding on reappraisal of evidence that the property in suit was purchased in the year 1977 by the father of the parties (PW-1) in the name of plaintiff no.2 and defendant no.2 and he got the house partitioned between the vendees of sale deed of 1977, namely Satya Bhushan and Sabitur Bhushan. This partition was accepted by by both sides. Defendant no.1 was never owner or co-owner of the property in suit. Thus, the appeal was dismissed with the above findings.

38. This Court, upon the admission of the second appeal, framed the following substantial question of law, which is extracted below:

(E) Whether the findings recorded by the courts below are tenable in law as it has held that the prohibition of Benami Property Transactions Act, 1988 has retrospective operation and the plea of Benami transaction is barred under Section 4 of the said Act without considering the definitions of Benami property and Benami Transaction contained in Sections 2(8) and (9) of the aforesaid act.

(F) Whether the judgment and decree passed by the courts below is perverse in law and facts, both.

39. Section 2(8)(9) of the Prohibition of Benami Property Transactions Act, 1988 defines Benami transaction as under:

"(8) "benami property" means any property which is the subject matter of a benami transaction and also includes the proceeds from such property;

(9) "benami transaction" means,?

(A) a transaction or an arrangement-

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration,

except when the property is held by-

(i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint-owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

(B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or

(C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;

(D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious; "

40. Section 3 of the Act, as amended by Act No.43 of 2016 (with effect from 1/11/2016), provides that "no person shall enter into any benami transaction and whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with a fine or with both.

Sub-section (3) provides that "whoever enters into any benami transaction on and after the date of commencement of the Benami Transactions (Prohibition) Amendment Act, 2016, shall, notwithstanding anything contained in sub-section (2), be punishable in accordance with the provisions contained in Chapter VII.

41. Section 4 provides as follows:

1. No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property

2. No defense based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

42. Sub-section (3) of Section 4 of the Act was omitted by Act No.43 of 2016 (w.e.f. 01/11/2016); before omission, it stood as:

(3) Nothing in this section shall apply:-

(a) Where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity."

43. From perusal of aforesaid provisions, it appears that after commencement of the Benami Act, 1988 on 05/09/1988, benami transaction was not only prohibited, but it was made punishable also. Neither a person can file a claim or action to enforce any right in respect of any property held benami or any defense based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person shall be allowed. However, prior to the amendment of 2016, there were two exceptions to the prohibitory clause of Section 4:

(a) Where the person in whose name the property is held is a coparcener in a Hindu Undivided Family and the property is held for the benefit of the coparceners in the family; or

(b) whether the person in whose name the property is held is a trustee or other person standing in fiduciary capacity.

44. Hon'ble Supreme Court, a three-judge bench judgment, in R. Rajagopal Reddy (Dead) L.Rs. and Others vs. Padmini Chandrasekharan (Dead) by L.Rs. reported in A.I.R. 1996 S.C. 238 has observed as under:

"1. In this group of matters a common question arises for our consideration. It is to the following effect 'whether Section 4(1) of the Benami Transactions (Prohibition) Act, 1988 (hereinafter referred to 'Act') can be applied to suit, claim or action to enforce any right in property held benami against person in whose name such property is held or any other person, if such proceeding is initiated by or on behalf of a person claiming to be real owner thereof, prior to the coming into force of Section 4(1) of the Act'. Section 4 with its relevant Sub-sections reads as under :-

'Prohibition of the right to recover property held benami - (1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming be the real owner of such property.

(3) Nothing in this section shall apply, -

(a) Where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.

2. In fact the question is answered in the affirmative by a Division Bench of this Court in ***Mithilesh Kumari and Anr. v. Prem Behari Kliare.*** *In that case two learned Judges of this Court constituting the Division Bench have taken the aforesaid affirmative view. The correctness of that view came up for consideration before another Division Bench of this Court. That Division Bench by its order dated 10th March, 1992 directed that these matters be placed for hearing at the bottom of the miscellaneous list for final hearing on 22nd March, 1992 before a three Judge Bench. Ultimately this group of matters came to be placed for final hearing before this Bench.*

3. We have heard learned counsel for the respective parties on this question. Learned advocates were agreeable that though the order of the Division Bench dated 10th March, 1992 has resulted in placing these matters before three-Judge Bench for final hearing, we may after answering the question canvassed before us, sent back the matters to the Bench of two learned Judges who can dispose of the same on merits in accordance with law, in the light of answer given by us on the aforesaid question.

7. Having given our anxious consideration to these rival contentions, we have reached the conclusion that the question has to be answered in the negative and it must be held that the decision of the Division Bench taking a contrary view does not lay down correct law.

8. The reasons are these. Under various legal provisions holding the field, prior to the coming into operation of this Act, benami transactions were a recognised specie of legal transactions pertaining to immovable properties. Under the Indian Trusts Act, 1882 almost 113 years back the then legislature enacting the law laid down in Section 82 as under :- Transfer to one for consideration paid by another - where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration. Nothing in this section shall be

deemed to affect the Code of Civil Procedure, Section 317, or the Act No. XI of 1859 (to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency), Section 36.

10. It is thereafter that the Act came to be passed by both the Houses of Parliament and came into force as stated above. It might be appreciated that though the Law "Commission recommended retrospective applicability of the proposed legislation, the Parliament did not make the Act or any of its Sections expressly retrospective in its wisdom. A bird's eye view of the Act clearly establishes this position. The Act being Act No. 45 of 1988 in its preamble states that it is an act to prohibit benami transactions and the right to recover property held benami, for matters connected therewith or incidental thereto. Section 3 which is the heart of the Act imposes the required prohibition of benami transactions. It reads as under :-

3. Prohibition of benami transactions. –

(1) No person shall enter into any benami transaction.

(2) Nothing in Sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter.

(3) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under this section shall be non-cognizable and bailable.

A mere look at the above provisions shows that the prohibition under Section 3(1) is against persons who are to enter into benami transactions and it has laid down that no person shall enter into any benami transaction which obviously means from the date on which this prohibition comes into operation i.e. with effect from September 5, 1988. That takes care of future benami transactions. We are not concerned with Sub-section (2) but subsection (3) of Section 3 also throws light on this aspect. As seen above, it states that whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both. Therefore, the provision creates a new offence of entering into such benami transactions. It is made non-cognizable and bailable as laid down under Sub-section (4). It is obvious that when a statutory provision creates new liability and new offence, it would naturally have prospective operation and would cover only those offences which take place after Section 3(1) comes into operation. In fact Saikia J. speaking for the Court in Mithilesh Kumari's case (supra) has in terms observed at page 635 of the report that Section 3 obviously cannot have retrospective operation. We respectfully concur with this part of the learned Judge's view. The real problem centers round the effect of Section 4(1) on pending proceedings wherein claim to any property on account of it being held benami by other side is on the anvil and such proceeding had not been finally disposed of by the time Section 4(1) came into operation, namely, on 19th May, 1988. Saikia J. speaking for the Division Bench in the case of Mithilesh Kumari (supra) gave the following reasons for taking the view that though Section 3 is prospective and though Section 4(1) is also not expressly made retrospective, by the legislature, by necessary implication, it appears to be retrospective and would apply to all pending proceedings wherein right to property allegedly held benami is in dispute between parties and that Section 4(1) will apply at whatever stage the litigation might be pending in the hierarchy of the proceedings :-

(1) Section 4 clearly provides that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any

other person shall lie by or on behalf of a person claiming to be real owner of such property. This naturally relates to past transaction as well. The expression 'any property held benami' is not limited to any particular time, date or duration. Once the property is found to have been held benami, no suit, claim, or action to enforce any right in respect thereof shall lie. (2) Similarly Sub-section

(2) of Section 4 nullifies the defences based on any right in respect of any property held benami whether against the person in whose name the property is held or against any other person in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property. It means that once a property is found to have been held benami the real owner is deprived of such a defence against the person in whose name the property is held or any other person. In other words, in its sweep Section 4(2) engulfs past benami transactions also.

(3) When an Act is declaratory in nature, the presumption against retrospectivity is not applicable. A statute declaring the benami transactions to be unenforceable belongs to this type. The presumption against taking away vested right will not apply in this case in as much as under law it is the benamidar in whose name the property stands, and law only enabled the real owner to recover the property from him which right has now been ceased by the Act. In one sense there was a right to recover or resist in the real owner against the benamidar. Ubijus ibi remidium. Where the remedy is barred, the right is rendered unenforceable.

(4) When the law nullifies the defences available to the real owners in recovering the benami property from the benamidar, the law must apply irrespective of the time of the benami transactions. The expression "shall lie" under Section 4(1) and "shall be allowed" in Section 4(2) are prospective and shall apply to present (future stages) and future suits, claims or action only.

(5) The word "suits" would include appeals and further appeals as appeals are in continuation of the suits. This is an aspect of procedural law and, therefore, when procedure is changed for deciding any such proceedings between the parties the provisions of such procedural law can be applied to such pending proceedings by necessary implication.

(6) Repelling the contention that rights of the parties to a suit would be determined on the basis of rights available to them on the date of filing of the suit and distinguishing the judgment of this Court in Nand Kishore Marwah v. Samundri Devi , it was observed that the aforesaid case was for eviction where the rights of the parties on the date of suit were material unlike in this case where subsequent legislation has nullified the defences of benami holders.

13. According to us this difficulty is inbuilt in Section 4(2) and does not provide the rationale to hold that this Section applies retrospectively. The legislature itself thought it fit to do so and there is no challenge to the vires on the ground of violation of Article 14 of the Constitution. It is not open to us to re-write the section also. Even otherwise, in the operation of Section 4(1) and (2), no discrimination can be said to have been made amongst different real owners of property, as tried to be pointed out in the written objections. In fact, those cases in which suits are filed by real owners or defences are allowed prior to corning into operation of Section 4(2), would form a separate class as compared to those cases where a stage for filing such suits or defences has still not reached hy the time Section 4(1) and (2) starts operating. Consequently, latter type of cases would form a distinct category of cases. There is no question of discrimination being meted out while dealing with these two classes of cases differently. A real owner who has already been allowed defence on that ground prior to coming into operation of Section 4(2) cannot be said to have been given a better treatment as compared to the real owner who has still to take up such a defence and in the meantime he is hit by the prohibition of Section 4(2). Equally there cannot be

any comparison between a real owner who has filed such suit earlier and one who does not file such suit till Section 4(1) comes into operation. All real owners who stake their claims regarding benami transactions after Section 4(1) and (2) came into operation are given uniform treatment by these provisions, whether they come as plaintiffs or as defendants. Consequently, the grievances raised in this connection cannot be sustained.

15. In the case of Garikapati v. N. Subbiah Choudhary of the report Chief Justice S.R. Das speaking for this Court has made the following pertinent observations in this connection;-

The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed.

16. We have already discussed earlier that there is nothing in the Act to show that Section 4(1) and 4(2) have to apply retrospectively to all pending proceedings wherein such a right is sought to be exercised by the plaintiff or such a defence has already got allowed to the concerned defendant. As a result of the aforesaid discussion, it must be held that reasons Nos. 1 and 2 which weighed with the Division Bench are not well sustained.

19. Qua reason No. 4, we may refer to our discussion earlier that the words 'no suit shall lie' as found in Section 4(1) and 'no defence based on rights in respect of property shall be allowed' as found in Section 4(2) have limited scope and operation and consequently this consideration also cannot have any effect on the conclusion which can be reached in this case. As to reason No. 5, it is observed that even though suit may include appeal and further appeals in the hierarchy, at different stages of the litigation, Section 4(1) and 4(2) cannot be made applicable to these subsequent stages as already seen by us earlier. Otherwise, they would cut across the very scheme of the Act.

20. As to reason No. 6 relating to nullification of all the, defences of benami holders, we say with respect that according to us, as already discussed future defences of real owners against benamidars holders have been nullified as are covered by the sweep of Section 4(2) and not others.

21. As a result of the aforesaid discussion it must be held, with respect, that the Division Bench erred in taking the view that Section 4(1) of the Act could be pressed in service in connection with suits filed prior to coming into operation of that Section. Similarly the view that under Section 4(2) in all suits filed by persons in whose names properties are held no defence can be allowed at any future stage of the proceedings that the properties are held benami, cannot be sustained. As discussed earlier Section 4(2) will have a limited operation even in cases of pending suits after Section 4(2) came into force if such defences are not already allowed earlier. It must, therefore, be held, with respect, that the decision of this Court in Mithilesh Kumari's case does not lay down correct law so far as the applicability of Section 4(1) and Section 4(2) to the extent hereinabove indicated, to pending proceedings when these Sections came into force, is concerned. Accordingly, the question for consideration is answered in the negative. Registry will now place all these matters before an appropriate Division Bench for disposing them of on merits in the light of the answer given by us."

45. On perusal of three judge Bench of Hon'ble Supreme Court, it is obvious that rigors of Section 4(2) of the Act will have limited operation even in cases of pending suits filed after Section 4(2) came into force. Meaning thereby, no defense vest in any right in respect of any property held benami, whether against the person in whose name the property is held or against any person, shall be allowed in any suit or claim or action, or by or on behalf of a person claiming to be the real

owner of such property, if such suit was filed after coming into force of the Act of 1988. Although the sale deed in question was executed in the name of plaintiff no. 2 and defendant no. 2 was executed way back in the year 1997, long before coming into force of the Act of 1988, i.e. 19.05.1988, but as the suit in which the appellant has taken defense of Benami transaction was filed in the year 2000 and written statement therein was filed by the defendant no. 1 on 06/01/2001, he will not be permitted to take a plea of Benami transaction showing himself as a real owner regarding property in question, safe to the extent the pleas covered under Section 4(3) of the Act which has been deleted by amending Act of 2016 w.e.f 01/11/2016.

46. In another judgement, Hon'ble Supreme Court is relevant on this issue cited as **Marcel Martins versus M. Printer and others,** decided on 27/4/2012. reported in **AIR 2012 SC 1987.** In that case, the suit property comprises a residential house bearing Municipal No. 33 and two blocks A and B, in Bangalore, which was originally owned by the Corporation of the City of Bangalore. The said property was let out by the Corporation to Smt. Stella Martins-mother of the parties before the court. In the year 1978, the Corporation took a decision to sell the said property and presumably similar other properties to those in occupation of the same. The state government also approved the said proposal with a note of caution that care should be taken to correctly identify the occupants of the property being sold. Before effecting the sale in her favour. Stella Martins passed away in November 1982, leaving behind her husband, Shri C.F. Martins, their daughters and the appellant, who happens to be the only son of his parents. The corporation desired the transfer of the tenancy rights held by Smt. Stella Martins should be made to only one individual out of her several legal representatives and for that reason, her husband and daughters consented to the transfer of tenancy rights in favour of the defendant appellant. In due course, on demand of sale consideration, the father of the parties transferred a sum of Rs.35,636/- to an account jointly held by respondent no.1 and her husband for purchasing a bank draft. A demand draft of Rs.48,636/- the agreed sale consideration was paid by respondent no1 and her husband. After payment of sale consideration, the sale deed was executed in favour of the appellant, the son of the deceased tenant. The case of the plaintiff respondent was that C.F. Martins, father of the litigating parties, (plaintiff no.1) executed a registered Will on 16.08.1989, whereby he bequeathed his entire estate, including the suit schedule property equally to all his children.

47. A dispute relating to the suit schedule property had arisen between the parties, including their father and OS No. 3119 of 1990 was filed in City Civil Court by the plaintiff for a declaration to the effect that they were co-owners in the schedule property to the extent of their contribution and they also prayed for an injunction restraining the defendant appellant from interfering with the possession of plaintiff no.1 and 2 over the same.

48. The defendant appellant filed a written statement, inter alia, averment that the entire sale consideration towards purchase of the schedule from his premises was provided by him, which made him the absolute owner of the suit property.

49. The trial court dismissed the suit filed by the plaintiffs. Aggrieved by the judgment of the trial court, the plaintiff respondents filed regular first appeal before the High Court, and the High Court, by the impugned judgment and order, reversed the findings recorded by the trial court and decreed the suit filed by the plaintiffs respondents. The High Court on reappraisal of the evidence

took the view that the appellant had not succeeded in proving that he had paid the entire amount of consideration for the purchase of the suit property.

50. The Hon'ble Supreme Court, in Civil Appeal referred against the judgment of High Court, affirmed the judgment of the High Court with the following observations made is paragraphs 12 and 13, which are extracted as under:

"12. Section 3 forbids benami transaction while sub-section (2) thereof excludes such a transaction enumerated therein from the said provision. Section 4 of the Act, upon which heavy reliance was placed by Mr. Chaudhary, may be extracted in extenso:

Section 4. Prohibition of the right to recover property held benami.- (1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

(3) Nothing in this section shall apply,-- (a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or (b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity."

13. A plain reading of the above will show that no suit, claim or action to enforce a right in respect of any property held benami shall lie against the person in whose name the property is held or against any other person at the instance of a person claiming to be the real owner of such property. It is common ground that although the sale deed by which the property was transferred in the name of the appellant had been executed before the enactment of above legislation yet the suit out of which this appeal arises had been filed after the year 1988. The prohibition contained in Section 4 would, therefore, apply to such a suit, subject to the satisfaction of other conditions stipulated therein. In other words unless the conditions contained in Section 4(1) and (2) are held to be inapplicable by reason of anything contained in sub-section (3) thereof the suit filed by plaintiffs- respondents herein would fall within the mischief of Section 4."

51. Having considered the aforementioned judgment of the Hon'ble Supreme Court in the light of the facts of the case, this Court is of the considered opinion that no retrospective effect can be given to the provisions of the Act 1988 with regard to transactions entered prior to the commencement of the Act, particularly in respect of Section 3 and 4 which came into force on 19/5/1988 and 05/09/1988, respectively. At present the suit was filed in the year 2000 by the plaintiff respondent and the defense of Benami transaction was taken by the appellant in the year 2001 in written statement. He will not be permitted to take defence of Benmai transcation due to the fact that the suit was filed after coming into the force of the Act, save to the extent, the rigors of Section 4, which creates an embargo on right to recover property held benami are excepted in sub-section (3) of the Act. However, defendant/appellant failed to prove the fact that his case comes within the purview of saving clause of (3) of Section 4 prior to amendment in the year 2016.

52. Substantial questions (E) is decided accordingly.

53. **Substantial question of law (F),** insofaras the status and occupation of the appellant (defendant no.1) in suit property, is concerned, he has taken plea in written statement, the land on which the entire accommodation along with the four shops were purchased by the defendant from his fund in 1977 when he was posted as Medical Officer outside Lucknow. The plaintiff no.1 was residing in rural area of District Barabanki in the year 1977, and the plaintiff no.2 and defendant no.2 were students and had no independent income or any source of money to purchase the suit property by all means or by virtue of family settlement, the defendant no.1 is the sole owner and also in possession of the suit property. He provided the funds for purchasing the land on the disputed house on personal request of plaintiff no.2 and defendant no.2, the purchasers of the suit property on record. Thereafter, the said property along with the four shops was constructed by the defendant with his salaried income and there was no partition of the said property from the side of the plaintiff no.1, the father of the parties.

54. Learned Civil Judge has recorded a clear finding that the suit property was purchased in the name of the plaintiff no.2 and defendant no.2 in the year 1977 and at that time, the defendant no.1 had completed two years of service and his salary was at that time so small that he was not in a position to pay the sale consideration of Rs.10,200 at that time to the vendor. Inasmuch as there is no documentary or independent evidence in support of the plea that he had paid the sale consideration substantially.

55. It is difficult to believe that defendant no.1 paid entire sale consideration of the suit property and did not get his name entered therein as at least a co-purchaser along with his two brothers. The learned Civil Judge rightly gave finding that the plaintiff no.1, the father of the parties possessed huge chunk of agricultural land and he was also getting monthly pension as a freedom fighter. Thus, on the facts of the case, it is natural that it was plaintiff no.1, who purchased the suit property in the name of his two sons. Plaintiff no.2 and defendant no.2, who were students at that time and paid the sale consideration. This is admitted fact that the defendant no.1 took entry in the suit property in the year 1980 when he came to Lucknow on transfer and the plaintiff no.1 has stated in his statement that being a real son, he admitted the defendant no.1 in a portion of the house as licensee and the learned trial court has rightly declined to grant money decree @ Rs.500 to the plaintiffs as monthly license fee for the entire period from 1982 to 2000 because there was no evidence in this regard that any license fee was agreed between the plaintiffs, and defendant no.1. Particularly in view of the close relations of the parties. This is also admitted fact that the plaintiff no.1, Sukh Nandan, (the deceased) was blessed with six sons, namely: Chandra Bhushan, Brij Bhushan (defendant no.1), Ravi Bhushan (since deceased), Sabitur Bhushan (defendant no.2), Bharat Bhushan (defendant no.3). The fact is not denied that Ravi Bhushan and Chandra Bhushan had got separated from their father and brothers long before the filing the suit and they are not concerned with suit property and at present, they and their legal representatives are not interested in any manner with the suit property. The real contest is between the defendant no.1 (Dr. Brij Bhushan) and plaintiff no.2 (Satya Bhushan) because it appears from the record that two brothers, Satya Bhushan and Chandra Bhushan, are associated with the defendant no.1. The reason behind that is Chandra Bhushan was never given a share in suit property and he never resided therein. Sabitur Bhushan, is although one of the named purchasers of the suit property in the sale deed of

10-02-1977. He has admitted in his cross-examination that the agricultural land lying in the share of the brother Dr. Brij Bhushan is being cultivated by him at their native village and for that reason, he might have taken the side of defendant no.1. PW-1 Sukh Nandan, the father of the parties, has stated in his evidence before the trial court as P.W-1 in the year 2002 that he is the head of the family, and was blessed with six sons and two daughters. He had purchased the the suit property with his own earnings in the names of his sons Satya Bhushan and Sabitur Bhushan, and constructed house thereon for them.

56. He testified before the trial court that in private partition between the purchaser, half eastern portion was allotted to Sabitur Bhushan, and the half western portion was allotted to Satya Bhushan. Rent of two shops lying eastwards is received by Sabitur Bhushan and that of two shops lying westwards is taken by Satya Bhushan. He permitted his son, Brij Bhushan, to reside in a portion of the house due to his necessity for Rs.500 per month rent, but Brij Bhushan never paid the rent. A notice to vacate the accommodation was issued by Satya Bhushan to Brij Bhushan, but instead of vacating the house, he raised unauthorized construction on the first floor. His son Ravi Bhushan had died, he had purchased land in Lucknow and handed it over to Brij Bhushan. He received Rs.6,000/- monthly pension as a freedom fighter and own sufficient land in his native place, District Barabanki. The property was mutated in 1979 in the name of Sabitur Bhushan and Satya Bhushan. Chandra Bhushan did agricultural work with him, but his dining is separated. Sabitur Bhushan resides with him. He owns 40-45 pakka Bigha land. His age was 95 years when he testified in court. 16 Bigha pakka land was lying in his name and remaining chaks were allotted in the name of his sons. The agricultural land of Brij Bhushan is cultivated by Sabitur Bhushan. He apprehends danger to his life from his sons, namely, Brij Bhushan, Bharat Bhushan and Sabitur Bhushan. He was receiving Rs.5,800 monthly pension. It is wrong to say that the house and four shops were constructed by Brij Bhushan. He had purchased the suit property from a old lady, who was his relative.

57. Both courts below have rightly given a finding that the suit property has not been purchased by defendant nol.1, instead it was purchased by his father, Sukh Nandan, who possessed sufficient monetary means to purchase a suit property in the year 1977.

58. Under facts of law if a father purchases some property in the name of his two sons to the exclusion of other sons for their welfare and pays the sale consideration himself, the transaction is held to be a gift deed in favour of the sons whose names are shown as purchasers unless it was purchased with joint family fund. On the facts of the present case also, this fact is proved that the sale consideration of the transaction of the year 1977, was paid by the Plaintiff no.1, Sukh Nandan, the father of the parties, by his own funds to the exclusion of four other sons, the property cannot be held as coparcenery property, rather in essence, it is a gift deed in favour of the sons whose names are shown in the sale deed as purchasers. The property in question is self acquired property of father. Thus, the plea of benami transaction taken by the defendant in written statement during the pendency of the suit, which was filed after the commencement of the Act of 1988 that he is the real owner of the property and he had paid the sale consideration is not tenable. This defense is not

permitted to be raised by defendant no.1 in view of the rigors of Section 4 of the Act and the defendant no.1 on whom burden of proof lies to prove that the sale transaction of 1977 was a benami transaction could not prove this fact. Section 4(3) (since repealed in the year 2016) although saves coparcenery property rights, but with condition that the said property was purchased by the karta of the family for the benefit of coparceners in the family. In the present case, it is not proved that plaintiff no.1 purchased the suit property in the name of his two sons for the benefit of all coparceners in the family, including himself. He had stated in his evidence that the purchasers were non-earning members and he supplied the sale consideration from his own funds. Thus, the plea of benami transaction is not applicable on the facts of the present case. Even otherwise, ZA&LR Act, a bhumidar with transferable rights, is the absolute owner of the property, which is recorded in his name as bhumidhar, and Mitakshara law of coparcenery rights is not applicable on agricultural land, which is dealt with under provisions of the Act of 1950. Thus, it cannot be presumed that at that time a joint family (father and four sons), the said property was purchased by the father as Hindu Undivided Family property or coparcenery property. It is also not proved that the father, (PW-1) paid the sale consideration from joint family funds. The purchaser sons, (Sabitur Bhushan and Satya Bhushan) have admitted that they were not earning at that time and that they had not contributed to sale consideration. It is also not proved on record that the purpose of the sale transaction entered in the year 1977 was to throw the property purchased in joint family funds in joint family assets. Therefore, I find no perversity in concurrent findings recorded by both the courts below, while decreeing the suit of the plaintiff respondent. The defendant no.1 will not get the benefit of admission of defendant no.2 and defendant no.3 before the court in his favour.

59. Hon'ble Supreme Court reiterated the settled position with regard to second apeal in **K.N. Nagarajappa & others versus H. Narasimha Reddy in Civil Appeal No(s). 5033-5034 of 2009, reportable decided on September 09, 2021** and observed in paragraph 14 as under:

Undoubtedly, the jurisdiction which a High Court derives under Section 100 is based upon its framing of a substantial question of law. As a matter of law, it is axiomatic that the findings of the first appellate court are final. However, the rule that sans a substantial question of law, the High Courts cannot interfere with findings of the lower Court or concurrent findings of fact, is subject to two important caveats. The first is that, if the findings of fact are palpably perverse or outrage the conscience of the court; in other words, it flies on the face of logic that given the facts on the record, interference would be justified. The other is where the findings of fact may call for examination and be upset, in the limited circumstances spelt out in Section 103 CPC.

60. Substantial question of law (F) is decided accordingly against the appellants

61. With the above findings, I find no factual or legal error or perversity in concurrent findings of both courts below and no interference is warranted in second appeal by this Court. Consequently, the second appeal is **dismissed**.

(2026) 5 ILRA 2526
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.05.2026

BEFORE

THE HON'BLE ABDUL SHAHID, J.

First Appeal From Order Defective No. 641 of 2026

Sushil Yadav ...Appellant

Versus

Universal Sompo General Insurance Company Ltd. & Ors. ...Respondents

Issue for Consideration

Whether an inordinate delay of 1619 days in filing an appeal for enhancement of compensation, after the claimant has already received the entire awarded amount, can be condoned in the absence of a sufficient and reasonable explanation covering the whole period of delay?

Headnotes

Limitation Act, 1963 --- S. 5 --- Condonation of delay --- Appeal for enhancement of motor accident compensation --- Delay of 1619 days --- Claimant having received entire awarded amount --- Explanation not covering full period of delay.

HELD: Compensation awarded under the Motor Vehicles Act is neither a windfall nor a bonanza, and once "just compensation" has already been granted and received by the claimant, a plea of financial constraint or lack of awareness for an inordinate delay of 1619 days in preferring an appeal for enhancement is not reasonable; the explanation furnished must cover the whole period of delay, and mere assertions of hardship, unsupported by particulars such as of medical treatment, do not constitute sufficient cause. [Paras 7, 16-19]

Delay condonation application rejected; consequently, the appeal is also rejected. (E-14)

Case Law Cited

National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 --- relied on; *State of Haryana and another v. Jasbir Kaur and others*, (2003) 3 TAC 509 (SC) --- relied on; *New India Assurance Company Limited v. Urmila Shukla and others*, (2021) 20 SCC 800 --- relied on; *Helen C. Rebello v. Maharashtra State Road Transport Corporation*, AIR 1998 SC 3191 --- relied on; *D. Gopinathan Pillai v. State of Kerala*, (2007) 2 SCC 322 --- relied on; *Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another*, (2010) 79 ALL LR 647 --- relied on; *Sitaram Ramcharan Etc. v. M.N. Nagarshana and others*, AIR 1960 SC 260 --- relied on; *Vedabai @ Vaijayanatabai Baburao Patil v. Shantaram Baburao Patil and others*, 2001 (44) ALR 577 --- relied on; *Sita Ram v. Sri Dhar*, 2006 (24) LCD 1239 --- relied on.

List of Acts / Statutes

Limitation Act, 1963; Motor Vehicles Act, 1988.

List of Keywords

Delay condonation; Section 5 Limitation Act; Motor accident compensation; Just compensation; Inordinate delay; Enhancement appeal.

Case Arising From

Award dated 24.08.2021 passed by the Motor Accident Claims Tribunal, Firozabad, in M.A.C.P. No. 14 of 2019, Sushil Yadav v. Universal Sompo General Insurance Company Limited and others.

Appearance for Parties

For the Appellant(s): Mangal Rai, Praveen Kumar Chaubey.
For the Respondent(s): None appeared.

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

(Order on Delay Condonation Application No. 01 of 2026)

1. Heard learned counsel for the claimant/appellant.

2. The present appeal has been filed for the enhancement of the award with the delay of 1619 days. The appellant/Sushil Yadav has filed the enhancement appeal against the impugned award dated 24.08.2021 passed by the Motor Accident Claims Tribunal, Firozabad in M.A.C.P. No. 14 of 2019 (Sushil Yadav Versus Universal Sompo General Insurance Company Limited and others).

3. The claim petition was allowed for an amount of Rs. 7,87,057 alongwith interest at the rate of 6% from the date of petition. After receiving the entire amount of compensation the present appeal has been preferred before this Court with a delay of 1619 days by the claimant himself who is having the every knowledge of his claim petition which was decided on merits on 24.08.2021.

4. The appellant/claimant has filed the supporting affidavit to delay the condonation. In para 3 of the affidavit it is submitted that in the accident in question, the claimant/appellant had suffered a permanent disability of 50% in his lower limb and as such the mobility of the claimant/appellant has been adversely affected for life. Due to the above mentioned permanent disability the claimant-appellant has no permanent source of income and his income potential from dairy and agriculture has also been affected and therefor huge financial loss has been suffered by the claimant-appellant. A huge sum of money has been spent in the treatment of claimant-appellant for the injuries sustained in the accident in question, therefore, the financial condition of the family of claimant-appellant has become worst.

5. Hence, in the above mentioned circumstances, the claimant-appellant could not immediately arrange for necessary expenses for filing the present appeal before this Hon'ble Court. As soon after arranging for necessary expenses and documents for filing the above mentioned appeal before, the claimant immediately came to Allahabad in March, 2026 and handed over the documents to the undersigned counsels who, after perusing the file, asked the claimant-appellant to bring certified copy of the formal order also which is necessary for filing the appeal.

6. On hearing this, the claimant-appellant went back to Firozabad and applied for a certified copy of the formal order on 26.3.2026, which was delivered to him on 4.4.2026 and he sent the same to the undersigned counsel through post, which was received by the undersigned counsels on 20.4.2026. Thereafter, the counsel prepared the appeal and filed before this Court without any delay.

7. The claimant/appellant has received the entire award amount in compliance with the award dated 24.08.2021. Hence, the plea of financial constraint for filing the appeal, or lack of awareness, does not appear to be reasonable. No details of medical treatment during the relevant period have been filed by the claimant/appellant.

8. It is held by the Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680. Para 55** is quoted hereinbelow:

"55. Section 168 of the Act deals with the concept of ?just compensation? and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of ?just compensation? has to be viewed through the prism of fairness, reasonableness and non- violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, ?just compensation..."

9. The Hon'ble Supreme Court in **State of Haryana and another Versus Jasbir Kaur and others, (2003) 3 TAC 509 (SC)** has held that compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation. There can be no golden rule applicable to all cases for measuring the value of human life or a limb.

10. It is also relied upon by the Hon'ble Supreme Court in **New India Assurance Company Limited Versus Urmila Shukla and others, (2021) 20 SCC 800.** It is also held by the Hon'ble Supreme Court in **Helen C. Rebello v. Maharashtra State Road transport Corporation (AIR 1998 SC 3191)** that the compensation be just, equal and not arbitrary and cannot be bonanza.

11. It has been held by the Supreme Court in **D. Gopinathan Pillai versus State of Kerala, (2007) 2 SCC 322,** that in matters relating to arbitration awards, an application for setting aside the award filed with a delay of 3320 days, without any sufficient and satisfactory explanation for such delay, is not sustainable. The delay cannot be condoned in the absence of sufficient and reasonable cause.

12. It has further been held by the Hon’ble Supreme Court of India in **Oriental Aroma Chemical Industries Ltd. vs. Gujarat Industrial Development Corporation and another, (2010) 79 ALL LR 647,** that where there is a delay of more than four years in filing an appeal and an application under Section 5 of the Limitation Act, 1963 is filed for condonation of delay, the same cannot be allowed in the absence of sufficient cause. The Supreme Court held that the High Court had committed a serious error in condoning such inordinate delay by ignoring the judicially accepted parameters governing the exercise of discretion under Section 5 of the Limitation Act, 1963.

13. It is held by the Hon'ble Supreme Court in **Sitaram Ramcharan Etc. vs M.N. Nagarshana And Ors, AIR 1960 SC 260,** that it cannot be disputed that in dealing which the question of condoning delay under s. 5 of the Limitation Act the party has to satisfy the court that he had sufficient cause for not preferring the appeal or making the application within the prescribed time, and this has always been understood to mean that the explanation has to cover the whole of the period of delay.

14. The Hon'ble Supreme Court in **Vedabai @ Vaijayanatabai Baburao Patil Versus Shantaram Baburao Patil and others, 2001 (44) ALR 577,** made a distinction in delay and inordinate delay;- "*In exercising discretion under Section 5 of the Limitation Act the Courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach."*

15. It is held by this Court in paras 5 and 6 of the decision in **Sita Ram Versus Sri Dhar, 2006 (24) LCD 1239,** that:- *"5....the application given for condonation of delay, 15 days after expiry of the period of limitation, it was not mentioned as to what specific work kept the appellant engaged for which reason he could not apply for restoration of appeal. A mere cursory statement that the appellant remained busy in this school work cannot be considered sufficient reason for condonation of delay it cannot, therefore, be said that the Presiding Officer was wrong in dismissing the appellant's application. 6. Previously Courts did show lenience and latitude in dealing with applications for adjournments and condonation of delay. It is high time a changed perspective and attitude is adopted, since the Courts are already overburdened with cases resulting in inordinate delay in disposal of cases. Those days of condonation of dalliance and delay should now be over and in cases where no sufficient and proper reason is assigned for delay. the Court must adopt the stern attitude and refuse relief. That will also help in transmitting a message that the Court will no more be indulgent and parties beware."*

16. Whereas in the said matter, where the claimant/appellant has got all the award and just compensation which has been awarded to him vide award dated 24.08.2021 hence he is having complete knowledge and information as well as money in his hand. The amount in Motor Accident Claim Petition is neither a bonanza nor windfall as held by the Hon'ble Supreme Court in **Urmila Shukla** (supra), **Pranay Sethi** (supra), **Jasbir Kaur** (supra) and **Helen C. Rebello** (supra).

17. The award has to be passed so that just compensation may be granted. The same has already been granted by the Tribunal to the claimant/appellant. The appeal for enhancement has been preferred before this Court after a delay of 1619 days, without showing any due diligence or any reasonable and sufficient cause. This is an inordinate delay.

18. Considering the entire circumstances of the claim petition, the award, and the fact that just compensation, which is the soul of a Motor Accident Claim Petition, has already been awarded, no sufficient ground exists for condonation of delay.

19. The compensation awarded is neither a windfall, nor a bonanza, nor a source of profit for all time to come in the hands of the claimant. There is neither any sufficient nor reasonable cause explaining the huge and inordinate delay of 1619 days. The explanation furnished is neither reasonable nor plausible.

20. Accordingly, the delay condonation application is liable to be rejected and is hereby rejected.

(Order on Appeal)

21. The delay condonation application is rejected. Consequently, the appeal is also hereby rejected.

(2026) 5 ILRA 2530
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 22.05.2026

BEFORE

THE HON'BLE SYED QAMAR HASAN RIZVI, J.

First Appeal From Order No. 871 of 2014

Smt. Sanju Singh & Ors. ...Appellants
Versus
The New India Assurance Co. Ltd. & Anr. ...Respondents

Issues for Consideration

(a) Whether, in a case of head-on collision between two vehicles on a wide road, the Tribunal was justified in fastening sole negligence upon the driver of the offending vehicle, or whether contributory negligence ought to be attributed to the deceased's motorcycle as well?
(b) Whether the benefit of revision of pay pursuant to the recommendations of the VIth Pay Commission, made effective retrospectively from 01.01.2006 but announced/implemented after the death of the deceased, can be taken into account for determining the deceased's income for computing compensation?
(c) Whether the grant of compassionate appointment to the son(s) of the deceased, and the salary earned thereunder, constitutes a "pecuniary advantage" liable to be deducted from the compensation payable by the insurer, and whether it precludes the grant of future prospects?
(d) Whether the Tribunal correctly applied the deduction towards personal and living expenses, the multiplier, and the amount under conventional heads, in determining "just compensation" under Section 168 of the Motor Vehicles Act, 1988?

Headnotes

Motor Vehicles Act, 1988 --- Ss. 166, 168 --- Motor accident claim --- Head-on collision between two vehicles --- Negligence --- Site plan (Naksha Nazri) and testimony of eye-witness examined alongside Tribunal's finding --- Motorcycle found moving on extreme left of the road, while offending vehicle came from opposite direction at high speed in zig-zag manner and swerved to wrong side, causing head-on hit.

HELD: Mere involvement of two vehicles coming from opposite directions does not *ipso facto* establish contributory negligence; where evidence clearly demonstrates that the offending vehicle deviated from its permitted lane and encroached upon the wrong lane, and the driver of the offending vehicle could not discredit this trajectory in cross-examination, the finding of the Tribunal fastening sole negligence upon the driver of the offending vehicle is justified and requires no interference. [Paras 13, 14]

Motor Vehicles Act, 1988 --- Determination of income --- Revision of pay under VIth Pay Commission --- Benefit announced/implemented subsequent to death of deceased but made effective retrospectively prior thereto --- Whether such revised salary can be treated as income of deceased for computing compensation.

HELD: Following *Roshani Devi and Others v. P.S. Malhotra*, 2017 SCC OnLine All 5152, which in turn relied upon *Rajesh & Others v. Rajbir Singh & Others*, (2013) 9 SCC 54, the benefit of revision of pay announced subsequent to the death of the deceased, but made effective retrospectively prior to the death, is liable to be taken into account while granting compensation to the claimants; salary certificates on record indicating the revised salary, unrebutted by the Insurance Company, are liable to be treated as the income of the deceased for computing just compensation. [Paras 16, 17]

Motor Vehicles Act, 1988 --- Compassionate appointment to dependents of deceased --- Whether amounts to "pecuniary advantage" liable to deduction from compensation payable by tortfeasor/insurer.

HELD: Following *National Insurance Company Ltd. v. Rekhaben & Others*, (2017) 13 SCC 547, and *Vimal Kanwar and Others v. Kishore Dan and Others*, (2013) 7 SCC 476, compensation claimed from the owner/insurer of the offending vehicle (the tortfeasor) is distinct from, and has no co-relation with, the employment offered on compassionate grounds by the employer of the deceased; the amount earned by a claimant through his own labour or service by way of compassionate appointment is not liable to be deducted from the compensation receivable under the Motor Vehicles Act. Deductions cannot be allowed from compensation on account of insurance, pensionary benefits, gratuity, or grant of employment to the kin of the deceased, since these accrue on account of contractual relations entered into by the deceased and are not the outcome of the death in the motor accident. [Paras 19-23]

Motor Vehicles Act, 1988 --- Future prospects --- Effect of compassionate appointment to son(s) of deceased(s) on grant of addition towards future prospects --- Distinguished from *National Insurance Co. Ltd. v. Pranay Sethi and Others*, (2017) 16 SCC 680.

HELD: Where the son(s) of the deceased(s) have been given compassionate appointment and have thereby stepped into the shoes of their deceased father(s) to the extent of securing future prospects, and are earning monthly salary on the revised pay scale, no further addition towards future prospects is required to be granted, as such addition would not subserve the principle of "just compensation" and may result in compensation beyond what can be termed fair, reasonable and equitable. The present case, being one where compassionate appointment was granted to the dependents, is distinguishable on facts from *Pranay Sethi* (supra), where the dependants were not given employment under the dying-in-harness scheme. [Paras 18, 31, 32]

Motor Vehicles Act, 1988 --- Deduction towards personal and living expenses --- To be computed with reference to number of dependents in terms of *Sarla Verma and Others v. Delhi Transport Corporation and another*, (2009) 6 SCC 121, and not mechanically at one-third.

HELD: Where the deceased left behind more than six dependents, deduction towards personal and living expenses ought to be one-fifth, and where he left behind four to six dependents, one-fourth, as laid down in *Sarla Verma* (supra) and affirmed by the Constitution Bench in *Pranay Sethi* (supra); Tribunal's deduction of

one-third in both cases held erroneous and corrected to one-fifth (for the deceased leaving 7 dependents) and one-fourth (for the deceased leaving 6 dependents), respectively. [Para 34]

Motor Vehicles Act, 1988, Second Schedule --- Multiplier --- To be applied strictly with reference to the age of the deceased as per the table in *Sarla Verma* (supra), Para 42, as affirmed in *Pranay Sethi* (supra), and not as per the Second Schedule to the Act.

HELD: Tribunal's application of multipliers of sixteen and eight, adopted from the Second Schedule to the Act, held incorrect; correct multipliers, with reference to the age brackets of 36-40 years and 56-60 years of the two deceased, are fifteen and nine respectively, as per the table in *Sarla Verma* (supra). [Paras 38, 39]

Motor Vehicles Act, 1988 --- Conventional heads --- Loss of consortium, loss of estate and funeral expenses --- Quantum to be revisited in terms of *Pranay Sethi* (supra) and *Magma General Insurance Company Ltd. v. Nanu Ram and others*, (2018) 18 SCC 130.

HELD: For ensuring consistency and fairness in compensation, amount under conventional heads enhanced to Rs. 40,000/- to each dependent-claimant for loss of consortium, Rs. 15,000/- for loss of estate, and Rs. 15,000/- for funeral expenses. [Para 37]

Motor Vehicles Act, 1988 --- Rate of interest on compensation.

HELD: Enhanced compensation to carry simple interest at the rate of 7% per annum from the date of institution of the respective claim petitions till realisation, subject to adjustment of any sum already deposited or paid pursuant to the impugned award or interim orders. [Para 42]

Judgment and award dated 13.03.2012 passed by the Additional District Judge/Motor Accident Claims Tribunal, Court No. 5, Pratapgarh, modified; compensation in Claim Petition No. 48 of 2007 enhanced to Rs. 15,75,190/- and in Claim Petition No. 49 of 2007 enhanced to Rs. 11,42,370/-. Appeals of claimants (FAFO No. 871 of 2014 and FAFO No. 24 of 2016) partly allowed; appeals of Insurance Company (FAFO No. 1133 of 2012 and FAFO No. 1135 of 2012) disposed of accordingly**. No order as to costs**. (E-14)

Case Law Cited

National Insurance Co. Ltd. v. Pranay Sethi and Others, (2017) 16 SCC 680 --- followed; New India Assurance Co. Ltd. v. Urmila Shukla and Others, (2021) SCC OnLine SC 822 --- referred to; Sarla Verma and Others v. Delhi Transport Corporation and Another, (2009) 6 SCC 121 --- followed; Roshani Devi and Others v. P.S. Malhotra, 2017 SCC OnLine All 5152 --- followed; Rajesh & Others v. Rajbir Singh & Others, (2013) 9 SCC 54 --- relied on; National Insurance Company Ltd. v. Rekhaben & Others, (2017) 13 SCC 547 --- followed; Vimal Kanwar and Others v. Kishore Dan and Others, (2013) 7 SCC 476 --- followed; Syed Basheer Ahamed & Others v. Mohammed Jameel & Another, (2009) 2 SCC 225 --- referred to; Divisional Controller, KSRTC v. Mahadeva Shetty & Another, (2003) 7 SCC 197 --- referred to; Bhakra Beas Management Board v. Kanta Aggarwal and Others, (2008) 11 SCC 366 --- referred to; Gobald Motor Service Ltd. and Another v. R.M.K. Veluswami and Others, (1962) 1 SCR 929 --- referred to; United India Insurance Co. Ltd. v. Satinder Kaur alias Satwinder Kaur and Others, 2020 SCC OnLine SC 410 : (2021) 11 SCC 780 --- followed; Magma General Insurance Company Ltd. v. Nanu Ram and Others, (2018) 18 SCC 130 --- followed.

List of Acts / Statutes

Motor Vehicles Act, 1988.

List of Keywords

Motor accident compensation; Just compensation; Head-on collision; Contributory negligence; Compassionate appointment; Future prospects; VIth Pay Commission; Multiplier; Loss of consortium; Personal and living expenses.

Case Arising From

Common judgment and award dated 13.03.2012 passed by the Additional District Judge/Motor Accident Claims Tribunal, Court No. 5, Pratapgarh, in Claim Petition No. 48 of 2007 (Smt. Sanju Singh and Others v. Ram Chandra Shukla and Another) and Claim Petition No. 49 of 2007 (Smt. Urmila Singh and Others v. The New India Assurance Company Limited and Another)

Appearance for Parties

First Appeal From Order No. 871 of 2014
For the Appellant(s): Qazi Mohd. Ahmad.
For the Respondent(s): Jay Krishna Shukla, Jitendra Narain Mishra, Zaki Mohammad Ahmad.
First Appeal From Order No. 1133 of 2012
For the Appellant(s): Jitendra Narain Mishra.
For the Respondent(s): Jay Krishna Shukla, S.K. Srivastava, Sumit Kr. Srivastava.
First Appeal From Order No. 1135 of 2012
For the Appellant(s): Jitendra Narain Mishra.
For the Respondent(s): Akash Deep Singh, Jay Krishna Shukla, Qazi Mohd. Ahmad, Sachindra Dwivedi.
First Appeal From Order No. 24 of 2016
For the Appellant(s): Sachindra Dwivedi, Akash Deep Singh, Anurag Singh, Harsh Vardhan Singh.
For the Respondent(s): Jay Krishna Shukla, Jitendra Narain Mishra

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

1. Sri Jitendra Narain Mishra, learned counsel for The New India Assurance Company Ltd and Sri Qazi Mohd. Ahmad, learned counsel appearing for the claimants in FAFO No. 871 of 2014 and in FAFO No. 1133 of 2012 and Sri Akash Deep Singh, learned counsel for the claimants in FAFO No. 24 of 2016 and in FAFO No. 1135 of 2012; and Sri Jay Krishna Shukla, learned counsel for owner of the Vehicle/respondent in the leading and connected appeals, are present.

2. Since, all the four captioned Appeals arise out of the same accident occurring on the same date and time, involving the same offending vehicle and having common issues involved for adjudication; they are being disposed of by this common judgment.

3. By means of the present Appeals filed under Section 173 of the Motor Vehicles Act, 1988, The New India Assurance Co. Ltd. (hereinafter referred to as Insurance Company), as well as the Claimants, have assailed the common judgment and award dated 13.03.2012 passed by the Learned Additional District Judge / Motor Accident Claims Tribunal, Court No. 5, Pratapgarh (hereinafter referred to as the Tribunal) in Claim Petition No. 48 of 2007 (Smt. Sanju Singh and others versus Ram Chandra Shukla and another) and Claim Petition No. 49 of 2007 (Smt. Urmila Singh and others versus The New India Assurance Company Limited and another).

4. The aforesaid impugned judgment dated 13.03.2012 has been assailed by the Insurance Company by means of Appeals having No. FAFO No. 1133 of 2012 and FAFO No.1135 of 2012.

5. The facts of the case as culled out from the pleadings are that a road accident occurred on 02.03.2007 at approximately 10:30 P.M. at the Patti-Pratapgarh Road near Village Devanmau, Police Station Kandhai, District Pratapgarh, wherein two persons namely Nagendra Pratap Singh and Surendra Pratap Singh lost their lives. As per the pleadings the deceased Nagendra Pratap Singh was riding his motorcycle (bearing registration No. UP 54 E 0395) where as Surendra Pratap Singh was the pillion rider moving from Pratapgarh to Patti (West to East), when a Tata Sumo (Jeep) bearing registration number MH 31BB8871 (hereinafter referred to as the offending vehicle), owned by the respondent namely, Ram Chandra Shukla and duly insured by the Insurance Company; coming from the opposite direction i.e., from Patti to Pratapgarh (East to West), caused the accident by hitting the aforementioned motorcycle. As a result thereof, both the rider and the pillion rider of the motorcycle sustained grievous injuries. Consequently, Surendra Pratap Singh succumbed to death at District Hospital, Pratapgarh while Nagendra Pratap Singh was referred to Medical College, Allahabad where he also died.

6. Two separate Claim Petitions, being Claim Petition No. 48 of 2007 and Claim Petition No. 49 of 2007 were filed under Section 166 of the Motor Vehicles Act, 1988, before the Learned Tribunal, inter-alia claiming compensation to the tune of Rs. 27,00,000/- (C.P. 48/2007) and Rs. 32,30,000/- (C.P. 49/2007) respectively. While deciding the aforesaid Claim petitions the Learned Tribunal, framed the following common issues for determination. For ready reference, the issues as framed in both the Claim Petitions are reproduced herein below:

"1. क्या दिनांक 2.3.07 को समय 10.30 बजे रात बहद ग्राम देवनमऊ प्रतापगढ़ पट्टी जाने वाली सड़क पर अन्तर्गत थाना कन्धई जिला प्रतापगढ़ में वाहन स्वामी राम चन्द्र शुक्ला की टाटा सूमो एम.एच.31बी.बी./8871 के ड्राइवर द्वारा वाहन को तेजी व लापरवाही से असावधानीपूर्वक चलाते हुये नागेन्द्र प्रताप सिंह की मोटर साइकिल जिसमें सुरेन्द्र बहादुर सिंह भी पीछे बैठे थे में टक्कर मारी जिससे नागेन्द्र प्रताप सिंह व सुरेन्द्र बहादुर सिंह दोनों को गम्भीर चोटें आयी और उनमें से सुरेन्द्र बहादुर सिंह की मौके पर ही मृत्यु हो गयी?

2. क्या मोटर साइकिल के चालक नागेन्द्र प्रताप सिंह ने तेजी व लापरवाही से मोटर साइकिलि चलाते हुये टाटा सूमो से हुई दुर्घटना में अंशदायी उपेक्षा की ? यदि हाँ तो प्रभाव ?

3. क्या याचीगण ने मोटर साइकिल जिससे मृतक सुरेन्द्र प्रताप सिंह दुर्घटना के समय यात्रा कर रहा था मोटर साइकिल के स्वामी को पक्षकार न बनाने से याचिका में पक्षकारों के असंयोजन का दोष है?

4. क्या उक्त टाटा सूमो नं.एम.एच.31बी.वी./8871 ड्राइवर के पास दुर्घटना के दिनांक को वैध व प्रभावी ड्राइविंग लाइसेंस था ?

5. क्या कथित दुर्घटना करने वाले वाहन के स्वामी के पास दुर्घटना के दिनांक को वाहन का वैध व प्रभावी बीमा था तथा कागजात वैध थे?

6. क्या याचीगण प्रतिकर पाने के अधिकारी है? यदि हाँ तो कितना और किस पक्ष से ?"

7. However, in addition to the above, the following issues were also framed in Claim Petition No. 48 of 2007. For a ready reference, the issues, as framed, are reproduced herein below:

6. क्या कथित दुर्घटना के समय मोटर साइकिल चालक के पास बैध एवं प्रभावी ड्राइविंग लाइसेंस था ?

7. क्या कथित दुर्घटना के समय उक्त मोटर साइकिल का बैध एवं प्रभावी बीमा था ?

8- क्या याचीगण किसी अनुतोष को पाने का अधिकारी है?

8. The Learned Tribunal, vide its judgment dated 13.03.2012, awarded compensation to a tune of Rs. 8,42,224/- to the claimants in Clam Petition No. 48/2007 and Rs. 5,23,312/- to the claimants in Claim Petition No. 49/2007 along with simple interest at the rate of 6% per annum. While deciding the issue of negligence, the Learned Tribunal held the driver of the offending vehicle solely responsible for the accident.

9. Aggrieved by the aforesaid judgment and award dated 13.03.2012, the Insurance Company preferred appeals having FAFO No. 1133 of 2012 and FAFO No. 1135 of 2012. Conversely, the claimants also challenged the same judgment and award by filing appeals having FAFO No. 871 of 2014 and FAFO No. 24 of 2016 respectively; primarily seeking enhancement of the awarded amount of compensation.

10. While assailing the impugned judgment and award dated 13.03.2012 the learned counsel for the Insurance Company pressed the following arguments.

10.1. His first assertion is that the Learned Tribunal has recorded an erroneous finding in the impugned judgment, to the extent that the accident was caused entirely due to the negligence of the driver of the offending vehicle. The contention of the learned counsel for the Insurance Company is that since, it was a case of "head-on collision" between two vehicles on a wide road, common prudence dictates that it is caused due to the negligence of drivers of both the vehicles involved in the accident and had if one of them been cautious, the accident in question could have been avoided. Therefore, the liability could not be fastened upon the driver of the offending vehicle alone.

10.2. His next contention is that the compensation awarded by the Learned Tribunal is not just and proper as, the deceased Nagendra Pratap Singh was working as an employee in the department of Sahkari Ganna Vikas Samiti, Mau and the deceased Surendra Pratap Singh was working in the department of Ganna Vibhag, Faizabad. After their death, their sons were given compassionate appointments in place of their deceased father. Therefore, taking into consideration that the claimants have been given compassionate appointment under dying in harness scheme, they cannot be permitted to profiteer and receive "double benefit" on account of the death of their deceased father, as they have not suffered financial loss to the extent of the compensation already granted by the Learned Tribunal under various other heads, vide the awarded dated 13.03.2012.

10.3. The Learned Counsel also urged that the purpose of awarding compensation is to put the claimants in the same financial position as they would have been if the accident did not have taken place, and the pecuniary advantage gained through these compassionate appointments must be considered to prevent unjust enrichment. To substantiate his argument learned counsel pointed out that during the cross-examination, PW-3 (Accounts Officer) stated that the deceased Nagendra Pratap Singh was earning Rs. 6,533/- per month at the time of his death, while his son Shailendra Pratap after getting compassionate appointment in place of his deceased father earned

Rs. 13,155/- per month. Similarly, PW-2/Gyanendra Pratap Singh son of (late) Surendra Pratap Singh admitted in cross-examination that he was given compassionate appointment on account of death of his father and was earning Rs. 10,500/- per month. That goes to show that by getting higher salary, the claimants can not be said to have suffered any financial loss, rather they were placed in a better financial condition.

10.4. It was further argued on behalf of the Insurance Company that the revision of pay under the recommendations of the VIth Pay Commission was made effective in the year 2010, whereas the accident occurred in 2007, therefore, the benefit of the said revision of pay which came into effect after the date of death of deceased cannot be extended to the claimants for determining the compensation, especially, when the son(s) of the deceased(s) after procuring compassionate appointment got the benefits of the said revised pay scale. It has also been urged by the learned counsel for the Insurance Company that in the instant case, future prospects are not liable to be added while determining the compensation, since, the son(s) of deceased(s) had been given compassionate appointment in place of their (late) father to secure the unprecedented economic crises of the family. The addition of future prospects would be in derogation of the settled law that the compensation should not be a source of profit.

10.5. Lastly, the learned Counsel submitted that the imposition of liability to pay interest from the date of filing of the claim petitions is also unjust, as the Insurance Company, without any delay, filed its written statement. Therefore, any delay in the adjudication of the said claim petitions is not attributable to the Insurance Company. Rather, the same was on account of the delaying tactics on the part of the claimants.

11. Per Contra, confronting the contentions of learned counsel for the Insurance Company; the assertions of the learned counsel for the respective counsel for the claimants, advanced the following arguments:

11.1. The first argument placed by the learned counsel appearing for the claimants is that compassionate appointment cannot be treated as a pecuniary advantage while determining the compensation award payable under the Motor Vehicles Act, 1988. It is urged by the learned counsel that Learned Tribunal has very correctly ignored the aspect relating to the factum of the grant of compassionate appointment to the son(s) of deceased(s) while adjudicating the claim petition filed by the family members of the deceased(s).

11.2. The next argument as advanced by the learned counsel for the claimants is that the amount of compensation as awarded by the Learned Tribunal is on the lower side. He urged that the Learned Tribunal while deciding the claims in question could not have appreciated the fact that the deceased at the time of death were entitled to the revised Pay Scale as per the recommednations of the VIth Pay Commission owing to the fact that the same was implemented with retrospective effect from 01.01.2006. But the Learned Tribunal has erroneously considered the deceaseds unrevised salary as the earning for the purposes of determination of claim, thereby arrived at a wrong determination while making the impugned award.

11.3. Further, it is contended by the learned counsel, that the Learned Tribunal has erred in law by not awarding any amount towards future prospects. His submission is that in the light of the law laid down by the Honble Supreme Court in the cases of **National Insurance Co. Ltd. versus Pranay Sethi and others reported in (2017) 16 SCC 680 and New India Assurance Co. Ltd. Versus Urmila Shukla and Others reported in (2021) SCC OnLine SC 822;** keeping in

view the ages of the deceased, their heirs/family members are entitled for future prospects at the rate of 50% in the case of (Late) Nagendra Pratap Singh and 15% in the case of (Late) Surendra Pratap Singh, respectively.

11.4. It is vehemently argued that the Learned Tribunal has erred in law while deducting one-third (1/3rd) toward the personal and living expenses from the annual income of the deceased in both the aforementioned cases. He submitted that since the deceased Nagendra Pratap Singh left seven (7) dependents while the deceased Surendra Pratap Singh left six (6) dependents at the time of their death therefore, as per the law laid down by the Honble Supreme Court of India, in the case of **Sarla Verma and others versus Delhi Transport Corporation and another, reported in (2009) 6 SCC 121** the said deduction should be one-fifth (1/5th) and one-fourth(1/4th), respectively.

11.5. It is also contended on behalf of the claimants that the Learned Tribunal awarded a sum of Rs. 6,000/- only under conventional heads while the claimants are entitled for an amount to a tune of Rs. 70,000/- in the light of the judgment passed by the Honble Apex Court in the case of **Pranay Sethi** (Supra).

11.6. It is urged by the learned counsel that the Learned Tribunal while passing the award has fixed 6% simple interest per annum which is much less and should have been at least 9% per annum in view of the facts and circumstances of the present case.

12. Heard the learned counsel for the respective parties and perused the material available on record.

13. In view of the above, the foremost question falling for consideration before this Court is whether the Learned Tribunal was justified in holding that the driver of the offending vehicle solely responsible for the accident. The relevant part of the findings recorded by the Learned Tribunal is extracted herein below, for convenience:

"...याचीगण की ओर से कथित दुर्घटना के साक्षी श्री ज्ञानेन्द्र प्रताप सिंह को पी.डबलू 2 के रुप में परीक्षित कराया गया है जिस ने अपने सशपथ बयान में कहा है कि कथित घटना दो मार्च 2007 की है। लगभग 10.30 बजे रात का समय था । घटना ग्राम देवनमर् जो प्रतापगढ से पट्टी सडक पर पडता है, वहीं पर हुई थी। उसके पिता मृतक उसके चचेरे भाई नागेन्द्र सिंह के साथ मोटर साइकिल पर पीछे बैठ कर घर आ रहे थे वह दूसरी मोटर साइकिल पर पीछे बाल मुकुन्द शर्मा को बैठा कर के पिता जी के साथ सब लोग घर जा रहे थे । आगे चचेरे भाई की मोटर साइकिल थी पीछे मेरी मोटर साइकिल थी। हम लोग सडक पर एकदम बायी पटरी से जा रहे थे कि सामने से सोमो जीप जिसका नम्बर एम.एच.31बी.वी./8871 था जिसका ड्राइबर जीप को बहुत तेजी रफतार व लापरवाहीपूर्वक लहराते हुये आया और आगे मेरे भाई के मोटर साइकिल में टक्कर मारां । टक्कर से दोनों लोग सडक पर गिर गये और जीपका दाहिना अगला टायर टक्कर से फट गया । उसके पिता एवं चचेरे भाई को कुचलते हुये उसे भी बगल से टक्कर मारा। वह छिटक कर के दूर बैठे बालमुकुन्द को भी गम्भीर चोट आयी । पिता व भाई को मरणासन्न स्थित में सदर अस्पताल प्रतापगढ ले जाया गया जहाँ पहुँचते पहुँचते उसके पिता जी कहीं मृत्यु हो गयी । चचेरे भाई को इलाहाबाद रिफर कर दिया गया वहाँ पहुँचते पहुँचते उनकी मृत्यु हो गयी । उसके पिता जी गन्ना विभाग में

गन्ना आयुक्त कार्यालय फेजाबाद में लिपिक के पद पर कार्यरत थे। उनकी उम्र 50 वर्ष के आसपास थी। वह लगभग 12000 रुपये तनख्वाह पाते थे। इसके अलावों घर पर खेतीबारी, पशुपालन आदि का काम करते थे, इससे तीन चार हजार रुपये कि उसके पिता जी की जगह पर वह उक्त कार्यालय में लिपिक के पद पर कार्यरत है।

.....

निस्तारण वाद बिन्दु संख्या 2

याचीगण के विद्वान अधिवक्ता का तर्क है कि उपरोक्त कथित दुर्घटना में सम्पूर्ण गल्ती जीप चालक की थी क्योंकि मोटर साइकिल चालक नियमानुसार मोटर साइकिल को अपनी बायी पटरी पर चला रहा था जब कि जीप के चालक ने जीप को तेजी व लापरवाही से चलाते हुये एकदम दाहिने गलत साइड में आकर मोटर साइकिल में टक्कर मारी जिसके फलस्वरुप कथित दुर्घटना घटित हुई। दूसरी ओर विपक्षी के विद्वान अधिवक्ता का तर्क है कि कथित दुर्घटना में मोटर साइकिल चालक की भी गलती है।

उपरोक्त तर्को के सन्दर्भ में पत्रावली पर उपलब्ध प्रमाणित प्रति नक्शा नजरी घटना स्थल कागज संख्या 4012 के अवलोकन से विदित होता है कि कथित दुर्घटना के समय मोटर साइकिल चालक नियमानुसार अपनी बाथी पटरी पर प्रतापगढ से पट्टी की ओर जा रहा था जब कि जीप चालक पट्टी सेप्रतापगढ की ओरन जाते हुये अपनी दायी पटरी पर मुड गया तथा मोटर साइकिल में सामने से टक्कर भारी। अतः स्पष्ट हैकि कथित दुर्घटना जीप चालक की, असावधानी व उतावलेपन के कारण हुई है। फलस्वरुप वाद बिन्दु संख्या 2 नकारात्मक रुप से निर्णीत किया जाता है।...."

(emphasis supplied by this Court)

14. Upon careful appraisal of the above finding and the material available on record, this Court finds that it is necessary to consider the site plan/Naksha Nazri alongside the testimony of the eyewitness PW-2 (Gyanendra Pratap Singh). A close examination of the same reveals that the motorcycle was moving ahead on extreme left side (बायी पटरी) of the road, whereas the offending vehicle was coming from the opposite direction i.e., from Patti to Pratapgarh (East to West), at a high speed in zigzag manner (लहराते हुये), and suddenly swerved to the wrong side (right side) of the road and caused head-on hit to the motorcycle. It is relevant to note that mere involvement of two vehicles coming from opposite directions does not ipso facto establish contributory negligence, where evidence clearly demonstrates that the offending vehicle deviated from its permitted lane i.e. left side of the road and encroached upon the wrong lane. In the present case, the driver of the offending vehicle, DW-2 (Mohd. Farooq), could not discredit this unprecedented trajectory during cross-examination. Therefore, taking into consideration the said facts in its totality, this Court is of the view that the finding returned by the Learned Tribunal fastening sole negligence upon the driver of the offending vehicle, is perfectly justified and requires no interference.

15. The second issue that warrants consideration by this Court is whether the revision of salary pursuant to the recommendations of the VIth Pay Commission, with effect from 01.01.2006, can be taken into account for the purpose of determining compensation.

16. In order to determine this issue, this Court finds it relevant to mention that the Honbe Division Bench of this Court, in the case of **Roshani Devi and Others versus P.S. Malhotra, reported in 2017 SCC OnLine All 5152** while relying upon judgment passed by the Honble Apex Court in the case of **Rajesh & Others versus Rajbir Singh & Others reported in (2013) 9 SCC 54** has held that the benefit of revision of pay announced subsequent to the death of the deceased, but made effective retrospectively prior to the death of the deceased, is be taken into account while granting compensation to the claimants. For a ready reference, paragraphs 10 and 11 of the aforesaid judgment passed in the case of **Roshani Devi and Others** (supra) are extracted herein below:

"10. The appellants have relied upon para 22 of the judgment of Rajesh (Supra) wherein the Apex Court has granted the benefit of Sixth Pay Commission benefits which were announced subsequent to death of deceased making it operative retrospectively from 01.01.2006.

11. Thus, applying the ratio laid down in the case of Rajesh (Supra) that benefit of revision of pay announced subsequent to death of deceased but made it effective retrospectively prior to death of deceased, we set-aside the finding of the Tribunal refusing to grant benefit of revision of pay. From record we find that the appellants has filed salary certificate indicating the salary of deceased fixed at Rs. 11,814/- per month after revision of pay which has not been rebutted by Insurance Company, therefore, we hold that Rs. 11,814/- per month be treated as income of deceased for calculating compensation."

17. Upon perusal of the record, it emerges that the claimants had brought on record the salary certificates (Paper No. 49 Ka-1 and 52 Ga-1) indicating that the revised salaries, after the implementation of the VIth Pay Commission recommendations, in respect of the deceased(s) namely, Nagendra Pratap Singh and Surendra Pratap Singh, stood at Rs. 8,786/- and Rs. 10,770/- per month, respectively. Therefore, in the light of the judgment passed by the Honble Apex Court in the case of Rajesh (Supra) and also the judgment passed by the Honble Division Bench of this Court in Roshani Devi (supra) wherein the Honble Courts granted the benefits of the VIth Pay Commission, even though the same were made operative subsequent to the death of the deceased, but retrospectively with effect from 01.01.2006 in the present case, this Court finds the judgment and award dated 13.03.2012 passed by the Learned Tribunal erroneous in so far as it refused to grant the benefit of revision of pay to the claimants. Therefore, it is imperative in the instant case the aforesaid revised salaries are liable to be treated as the income of the deceased for the purpose of assessing just and equitable compensation.

18. The third issue that requires consideration by this Court is that whether the compassionate appointment of the sons of the deceased(s) affect the determination of compensation especially with regards to the future prospects.

19. On the aforesaid issue the learned Counsel for the Insurance Company has very emphatically asserted that the compassionate appointments granted to the sons of the deceased(s) must be factored in to reduce the compensation granted to the claimants as they have not suffered economic loss to the extent of the compensation granted by the Learned Tribunal and in view of the same, claimants cannot be permitted to profiteer and receive "double benefit" on account of the death of their family members.

20. The above mentioned issue is no longer res integra. As the same, has been settled by the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. versus Rekhaben & Others reported in (2017) 13 SCC 547** wherein the Honble Court while distinguishing between the compensation liable to be paid by the tortfeasor and salary earned by the claimant through compassionate appointment observed that,

"14. What needs to be considered is whether compassionate appointment offered to the dependants of the deceased or the injured, by the employer of the deceased/injured, who is not the tortfeasor, can be deducted from the compensation receivable by him on account of the accident from the tortfeasor. Certainly, it cannot be that the one liable to compensate the claimants for the loss of income due to the accident, can have his liability reduced by the amount which the claimants earn as a result of compassionate appointment offered by another viz. the employer.

...

22. In the present cases, the claimants were offered compassionate employment. The claimants were not offered any sum of money equal to the income of the deceased. In fact, they were not offered any sum of money at all. They were offered employment and the money they receive in the form of their salary, would be earned from such employment. The loss of income in such cases cannot be said to be set off because the claimants would be earning their living. Therefore, we are of the view that the amount earned by the claimants from compassionate appointments cannot be deducted from the quantum of compensation receivable by them under the Act.

23. In the cases before us, compensation is claimed from the owner of the offending vehicle who is different from the employer who has offered employment on compassionate grounds to the dependants of the deceased/injured. The Source from which compensation on account of the accident is claimed and the source from which the compassionate employment is offered, are completely separate and there is no co-relation between these two sources. Since the tort feasor has not offered the compassionate appointment, we are of the view that an amount which a claimant earns by his labour or by offering his services, whether by reason of compassionate appointment or otherwise is not liable to be deducted from the compensation which the claimant is entitled to receive from a tort feasor under the Act. In such a situation, we are of the view that the financial benefit of the compassionate employment is not liable to be deducted at all from the compensation amount which is liable to be paid either by the owner/the driver of the offending vehicle or the insurer. Hence, we find no merit in these appeals and they are dismissed accordingly."

21. As far as the contention of the learned counsel for the Insurance Company regarding pecuniary advantage availed by the claimants through compassionate appointment is concerned, it may be noted that the similar question also came up for consideration before the Honble Supreme Court in the case of **Vimal Kanwar and Others versus Kishore Dan and Others reported in (2013) 7 SCC 476** wherein the Honble Court while answering the question as to whether the salary receivable by the claimant after getting job on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as Pecuniary Advantageliable for deduction; has held that compassionate appointment can be one of the conditions of service of an employee, if a scheme to that effect is framed by the employer. This cannot be stated to be an advantage receivable by the heirs on account of ones death and have no correlation with the amount receivable under a statute occasioned on account of accidental death. Compassionate appointment

may have nexus with the death of an employee while in service, but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependents may be entitled for compassionate appointment but that cannot be termed as Pecuniary Advantage that comes under the periphery of Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act.

22. Further, it is also well settled in law that deductions cannot be allowed from the amount of compensation under the Motor Vehicles Act either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by the deceased with others. It cannot be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependents are entitled to just compensation under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the deceased performedin his lifetime cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death.

23. In view of what has been discussed in the proceeding paragraphs, it is abundantly clear that compassionate appointment or any post retiral dues given to the dependents of the deceased, cannot be counted towards compensation under the Motor Vehicles Act, 1988 on account of accidental death. Accordingly, the argument raised by the learned counsel appearing for the Insurance Company regarding the reduction of compensation on the said ground, stands demolished and thus, turned down.

24. Now coming to the issue of determination of future prospects, in the given facts and circumstances of the present case, this court upon a perusal of the impugned judgment and award, finds that the Learned Tribunal has not made any addition toward future prospects. The said issue has been considered by the Honble Supreme Court in catena of judgments and conveyed that the future prospects would mean advancement in future career, earnings and progression in one's life. The promotional avenues, career progression, grant of selection grades, etc. are some of the features for considering one's future prospects. Harmonizing the said connotation with the objective of the compensation granted under the Motor Vehicles Act, 1988 leads to a possible conclusion that the pecuniary loss can be ascertained by balancing the loss caused to the claimants future pecuniary benefit and the pecuniary advantage coming from whatever source on account of the death, in other words, the balance between the extent of loss caused due to the death and the support by way of compensation to the family members of the deceased.

25. The Hon'ble Supreme Court in the case of **Syed Basheer Ahamed & Others versus Mohammed Jameel & Another reported in (2009) 2 SCC 225** has been pleased to observe that section 168 of the Motor Vehicles Act, 1988; enjoins the Learned Tribunal to make an award determining the amount of compensation which appears to be just. However, the objective factors, which may constitute the basis of compensation appearing as just, have not been indicated in the

Motor Vehicles Act. Thus, the expression which appears to be just bestows a wide discretion upon the Learned Tribunal in the matter of determination of compensation. For a ready reference Section 168 of the Act of 1988 is reproduced herein below:

"168. Award of the Claims Tribunal.(1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be: Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct."

(emphasis supplied by this Court)

26. Section 168 of the Motor Vehicles Act, 1988 provides power to the Learned Tribunal to grant just compensation to the claimants. However, the word just is of a very wide amplitude and requires consideration on the case-to-case basis, in a manner which meets the object of the Motor Vehicles Act.

27. Further, the Learned Tribunal constituted under the Act, while passing an award determines the amount of compensation, which must be just and reasonable. Although, this Court is mindful of the fact that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time, it must be borne in mind that the compensation is not expected to be a windfall for the victim. The object of providing compensation is to financially place the claimant as far as possible in the same position as he was before the accident. Broadly speaking, in the case of death, the basis of compensation is loss of pecuniary benefits to the dependents of the deceased which includes pecuniary loss, expenses etc. The object to award compensation is to mitigate hardship that has been caused to the legal representatives due to the sudden demise of the deceased in the accident. Therefore, compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient.

28. The aforesaid view is further strengthened by the judgment passed by the Hon'ble Supreme Court in the case of **Divisional Controller, KSRTC versus Mahadeva Shetty & Another reported in (2003) 7 SCC 197** wherein the Honble Court while interpreting the meaning of compensation under the Motor Vehicles Act, held that the compensation awarded in the case of

motor vehicle accident should not be inadequate and should neither be unreasonable, excessive, nor deficient. For a ready reference, paragraph 10 and 12 of the said judgment is reproduced hereinbelow,

"10. …….. Compensation is an act which a court orders to be done, or money which a court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss; or be made whole in respect of his injury; something given or obtained as an equivalent; rendering of equivalent in value or amount…….

12. …….. . Justice requires that it should be equal in value, although not alike in kind. The object of providing compensation is to place the claimant as far as possible in the same position financially as he was before the accident. Broadly speaking, in the case of death the basis of compensation is loss of pecuniary benefits to the dependants of the deceased which includes pecuniary loss, expenses etc. and loss to the estate. The object is to mitigate hardship that has been caused to the legal representatives due to the sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient."

(emphasis supplied by this Court)

29. The Honble Supreme Court while deciding the case of **Bhakra Beas Management Board v. Kanta Aggarwal and Others reported in (2008) 11 SCC 366** has observed as under:

13. Learned counsel for the respondent supported the judgment and additionally submitted that appeal of Respondent 1 is pending. In normal course, when two appeals are directed against the common judgment, both the appeals should be heard by the same Bench of the High Court. But we find that the High Court had lost sight of the fact that the benefits which the claimant receives on account of the death or injury have to be duly considered while fixing the compensation. It is pointed out that Respondent 1 was getting Rs 4700 p.m. and a residence has been provided to her and actually the compassionate appointment was given immediately after the accident."

(emphasis supplied by this Court)

30. Similarly, in the case of **Gobald Motor Service Ltd. And another v. R.M.K. Veluswami and others reported in (1962) 1 SCR 929,** the Honble Supreme Court has been pleased to observe as follows:

"7. "The general rule which has always prevailed in regard to the assessment of damages under the Fatal Accidents Acts is well settled, namely, that any benefit accruing to a dependant by reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a dependant by the death must be ascertained, the position of each dependant being considered separately: "

31. As has been discussed in the preceding paragraphs, it is well settled in law that compassionate appointments are given to heir of the deceased so that they may be able to maintain the family of the deceased. It is trite in law that compassionate appointment is an exception to the

general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into account the fact that unless some source of livelihood is provided , the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents who may be eligible for such employment. The whole object of granting compassionate appointments is, thus, to enable the family to tide over the sudden crisis. At the same time, its effect on the determination of compensation also requires consideration. In the present case, the son(s) of the deceased(s) have been given compassionate appointments. In this manner, the deceaseds son(s) have stepped into the shoes of their deceased father(s) to the extent of securing the future prospects. Therefore, the present case where the son(s) of the deceased(s) are given compassionate appointment is distinguishable from the facts and circumstances of the case of **Pranay Sethi** (supra), to this extent. It may be noted that in the case of **Pranay Sethi** (supra), the dependants were not given employment under the dying in harness scheme and were not benefitted by the compassionate appointment.

32. Taking into consideration the law laid down by the Honble Supreme Court on the issue of just compensation and the scope and ambit of Section 168 of the Motor Vehicles Act, 1988, this Court is of the considered opinion that no addition towards future prospects is required to be granted in the peculiar facts and circumstances of the present case. Moreover, since the claimants deceaseds son(s) are earning monthly salary on revised pay scale, this Court is of the considered opinion that Learned Tribunal was right in not taking into consideration the addition toward the future prospects looking to the facts and circumstances of the present case. Therefore, in view of what has been narrated herein above any addition towards future prospects would not subserve the principle of just compensation and may result in awarding compensation beyond what can be termed fair, reasonable and equitable.

33. Now coming the other issue raised by the claimants is with regard to the percentage of the deduction of the deceased's income toward the personal and living expenses. The said issue has been dealt with in detail by the Hon'ble Supreme Court in the case of **Sarla Verma** (supra). The said judgment has been upheld by the Constitution Bench of the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. versus Pranay Sethi and Others, reported in (2017) 16 SCC 680**, and, later on, followed in the case of **United India Insurance Company Ltd. versus Satinder Kaur alias Satwinder Kaur and others, reported in 2020 SCC OnLine SC 410.** Accordingly, it would be apt to quote the relevant portion of the judgment passed by the Honble Supreme Court in the case of **Sarla Verma** (supra), wherein the Hon'ble Apex Court was pleased to hold that:

"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra [(1996) 4 SCC 362], the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent

family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six."

(emphasis supplied by this Court)

34. In the light of the law laid down by the Hon'ble Apex Court in the case of **Sarla Verma** (supra), this Court is of the opinion that in the present case the Learned Tribunal erred in deducting 1/3rd of the annual income of the deceased's income towards personal and living expenses whereas the deceased Nagendra Pratap Singh (Claim Petition No. 48 of 2007) had left behind seven (7) dependents while the deceased Surendra Pratap Singh (Claim Petition No. 49 of 2007) left behind six (6) dependents. Therefore, it would be lawful to hold that the said deduction should have been only 1/5th in the facts of Claim Petition No. 48 of 2007 and 1/4th in the case of Claim Petition No. 49 of 2007.

35. On the issue regrading the calculations of damages, loss of consortium under the conventional heads has been dealt with in detail by the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. versus Pranay Sethi and Others reported in (2017) 16 SCC 680** and subsequently in **Magma General Insurance Company Ltd. versus Nanu Ram and others, reported in (2018) 18 SCC 130**. In the case of Pranay Sethi (supra), the Hon'ble Apex Court has observed that the amount under the conventional head needs to be appositely determined and thereby the Hon'ble Apex Court revisited the practice of awarding compensation under conventional heads. For ready reference, Paragraph 52 of the judgment passed in the case of Pranay Sethi (supra) is reproduced herein-below,

"52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in **Rajesh [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 :** (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] . It has granted Rs 25,000 towards funeral expenses, Rs 1,00,000 towards loss of consortium and Rs 1,00,000 towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] refers to Santosh Devi [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] , it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of

10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."

(emphasis supplied by this Court)

36. Subsequently, the principles governing award of compensation under conventional heads with regard to award for loss of consortium, have been crystallized by the Hon'ble Supreme Court in the case of **Nanu Ram** (supra). For a ready reference, Paragraph 21 of Magma General Insurance Company Ltd. versus Nanu Ram and others: (2018) 18 SCC 130 is reproduced herein below,

"21. In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse: [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149]

21.1. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation". [Black's Law Dictionary (5th Edn., 1979).]

21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".

…

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. ...

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count [Rajasthan High Court in Jagmala Ram v. Sohi Ram, 2017 SCC OnLine Raj 3848 : (2017) 4 RLW 3368; Uttarakhand High Court in Rita Rana v. Pradeep Kumar, 2013 SCC OnLine Utt 2435 : (2014) 3 UC 1687; Karnataka High Court in Lakshman v. Susheela Chand Choudhary, 1996 SCC OnLine Kar 74 : (1996) 3 Kant LJ 570]. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205]."

(emphasis supplied by this Court)

37. Now, as the principles regarding the calculation of damages, loss of consortium and the multiplier under the conventional head of the Second Schedule appended with the Motor Vehicles Act, 1988 are well settled and have been encapsulated above, the same can be applied in the facts of the present case. As far as the conventional heads are concerned, namely loss of consortium, loss of estate, and funeral expenses; this Court is of the opinion that in the light of the principles

enshrined by the Hon'ble Apex Court as discussed hereinabove, for ensuring consistency and fairness in compensation, it is appropriate to enhance the amount falling under the Conventional Heads to Rs. 40,000/- to each claimant for loss of consortium, Rs. 15,000/- for loss of estate, and Rs. 15,000/- for funeral expenses.

38. On the issue of application of multiplier, based on the age bracket of the deceased, the Hon'ble Supreme Court in the case of **Sarla Verma** (supra) has laid down the categorical table. The said table regarding the application of multiplier, based on the age bracket of the deceased, has been affirmed by the Constitution Bench of the Honble Supreme Court in the case of **Pranay Sethi** (supra). Subsequently, the Honble Supreme Court in the case of **United India Insurance Co. Ltd. versus Satinder Kaur alias Satwinder Kaur reported in 2021 11 SCC 780** has been pleased to hold as under:

"(b) Determination of Multiplier

41. With respect to the multiplier, the Court in Sarla Verma (supra), prepared a chart for fixing the applicable multiplier in accordance with the age of the deceased, after considering the judgments in General Manager, Kerala S.R.T.C., Trivandrum v. Susamma Thomas, (1994) 2 SCC 176, U.P.S.R.T.C. v. Trilok Chandra, (1996) 4 SCC 362 and New India Assurance Co. Ltd. v. Charlie, (2005) 10 SCC 720.

42. The relevant extract from the said chart i.e. Column 4 has been set out hereinbelow for ready reference:--

Age of the deceased	**Multiplier (Column 4)**
Upto 15 years	-
15 to 20 years	18
21 to 25 years	18
26 to 30 years	17
31 to 35 years	16
36 to 40 years	15
41 to 45 years	14
46 to 50 years	13
51 to 55 years	11
56 to 60 years	9
61 to 65 years	7
Above 65 years	5

44. In Reshma Kumari (supra), this Court affirmed Column 4 of the chart prepared in Sarla Verma (supra), and held that this would provide uniformity and consistency in determining the multiplier to be applied. The Constitution Bench in Pranay Sethi (supra) affirmed the chart fixing the multiplier as expounded in Sarla Verma (supra), and held:--

"44. At this stage, we must immediately say that insofar as the aforesaid multiplicand/multiplier is concerned, it has to be accepted on the basis of income established by the legal representatives of the deceased. Future prospects are to be added to the sum on the percentage

basis and "income" means actual income less than the tax paid. The multiplier has already been fixed in Sarla Verma which has been approved in Reshma Kumari with which we concur.

...

59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(emphasis supplied)

39. As is evident from the impugned judgment and award dated 13.03.2012 the deceased Nagendra Pratap Singh was of 39 years and Surendra Pratap Singh was of 56 years of age, their cases would fall in the age brackets of 36-40 years and 56-60 years, respectively, for which multipliers of fifteen (15) and nine (9) are prescribed as per the above quoted judgments. However, the Learned Tribunal has fixed the multipliers of sixteen (16) and eight (8) respectively, having adopted the multipliers as per the Schedule-II appended to the Motor Vehicles Act, 1988. However, the Learned Tribunal failed to adhere to the principle laid down by the Honble Supreme Court in the case of **Pranay Sethi** (supra) holding therein that the appropriate multiplier to apply would be by reference to the table in Paragraph No. 42 of the decision in **Sarla Verma** (supra). Therefore, the multipliers applied by the Learned Tribunal are incorrect and the correct multipliers in the present case will be fifteen (15) and nine (9).

40. In view of the findings recorded by this Court and in the light of the law as discussed herein above, the judgment and award dated 13.03.2012 passed by the Learned Tribunal deserves to be modified to ensure the grant of just compensation. From the facts and figures emerged from the records as is available before this court, the compensation is recalculated in the following manner:

A. Calculation for Nagendra Pratap Singh (C.P. No. 48 of 2007 / FAFO No. 871 of 2014)

S. No.	**Head**	**Award by Learned Tribunal**	**Enhanced Award by this Court**	**Remarks**
(i)	Monthly Income	Rs. 6,533/- per month	Rs. 8,786/- per month	After taking into consideration the revised salary admissible to the deceased as per VIth Pay Commission which was made operational with effect from 01.01.2006
(ii)	Annual Income	Rs. 78,396/-	Rs. 1,05,432/- (8,786 × 12)	Based on revised salary
(iii)	Deduction towards Personal Expenses	1/3rd deducted	1/5th deducted	Deceased left behind 7 dependents. Deductions made in the light of the

				judgment of Sarla Verma (supra) and Pranay Sethi (supra).
(iv)	Annual Dependency after deduction for personal and living expense.	Rs. 52,264/-	Rs. 84,346/-	Annual Income minus deduction towards personal expenses 1,05,432 − 21,086 = 84,346
(v)	Multiplier Applied	16	15	Age of deceased: 39 years; applicable multiplier: 15 Pranay Sethi (supra)
(vi)	Loss of Dependency		Rs. 12,65,190/- (84,346 × 15)	Recomputed as per multiplier
(vii)	Conventional Heads	Rs. 6,000/-	Rs. 3,10,000/-	Consortium @ Rs. 40,000 × 7 dependents = Rs. 2,80,000/- + Rs. 15,000/- loss of estate + Rs. 15,000/- funeral expenses. Pranay Sethi (supra); Nanu Ram (supra)
(viii)	Total Compensation	Rs. 8,42,224/-	Rs. 15,75,190/-	Just compensation

B. Calculation for Surendra Pratap Singh (C.P. No. 49 of 2007 / FAFO No. 24 of 2016)

S. No.	**Head**	**Award by Learned Tribunal**	**Enhanced Award by this Court**	**Remarks**
(i)	Monthly Income	Lower unrevised pay scale considered	Rs. 10,770/- per month	After taking into consideration the revised salary admissible to the deceased as per VIth Pay Commission which was made operational with effect from 01.01.2006
(ii)	Annual Income	—	Rs. 1,29,240/- (10,770 × 12)	Based on revised salary.
(iii)	Deduction towards Personal	1/3rd deducted	1/4th deducted	Deceased left behind 6 dependents. Deductions made in

	Expenses			the light of the judgment of Sarla Verma (supra) and Pranay Sethi (supra).
(iv)	Annual Dependency after deduction for personal and living expense.	—	Rs. 96,930/-	Annual Income minus deduction towards Personal Expenses 1,29,240 − 32,310 = 96,930
(v)	Multiplier Applied	8	9	Age of deceased: 56 years; applicable multiplier: 9 Pranay Sethi (supra)
(vi)	Loss of Dependency	—	Rs. 8,72,370/- (96,930 × 9)	Recomputed as per settled multiplier.
(vii)	Conventional Heads	Rs. 6,000/-	Rs. 2,70,000/-	Consortium @ Rs. 40,000 × 6 dependents = Rs. 2,40,000/- + Rs. 15,000/- loss of estate + Rs. 15,000/- funeral expenses. Pranay Sethi (supra); Nanu Ram (supra)
(viii)	Total Compensation	Rs. 5,23,312/-	Rs. 11,42,370/-	Just compensation

41. In light of all that has been discussed herein above, the judgment and award dated 13.03.2012 passed by the Learned Tribunal in Claim Petition No. 48 of 2007 is modified and the compensation awarded is enhanced to a total amount of **Rs. 15,75,190/- (Rupees Fifteen Lacs Seventy Five Thousand One Hundred Ninety only).** Similarly, the judgment and award dated 13.03.2012 passed in Claim Petition No. 49 of 2007 is modified and enhanced to a total amount of **Rs. 11,42,370/- (Rupees Eleven Lacs Forty Two Thousand Three Hundred Seventy only).**

42. The total compensation in both cases shall carry simple interest at the rate of 7% per annum from the date of institution of the respective Claim Petitions until realization of the said amount. However, any sum of money already deposited (paid or invested in terms of the judgment and award dated 13.03.2012 or interim orders of this Court) shall be accordingly adjusted.

43. Therefore, both the appeals preferred by the claimants, being FAFO No. 871 of 2014 and FAFO No. 24 of 2016 are **partly allowed** whereas, the appeals preferred by the Insurance Company, being FAFO No. 1133 of 2012 and FAFO No. 1135 of 2012, are **disposed of** accordingly. The impugned judgment and award dated 13.03.2012 is hereby modified accordingly. There shall be no order as to costs.

44. The original records of the Claim Petitions be transmitted back to the Tribunal concerned at the earliest.

(2026) 5 ILRA 2551
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 15.05.2026

BEFORE

THE HON'BLE DR. AJAY KUMAR-II, J.

Criminal Revision No. 223 of 2024
with Criminal Revision No. 51 of 2024

Smt. Sadhna @ Shakshi & Anr. ...Revisionists
Versus
State of U.P. & Anr. ...Opposite Parties

Issue(s) for Consideration

(a) Whether maintenance awarded under Section 125 Cr.P.C. requires enhancement where the husband's Affidavit of Disclosure of Assets and Liabilities, filed in compliance with the directions in Rajnesh v. Neha, conceals material particulars regarding dependants and income?

(b) Whether mere educational qualification of the wife, without proof that she is actually earning, is sufficient to deny or reduce maintenance to her?

(c) What is the duty of a Family Court in scrutinising an Affidavit of Disclosure of Assets and Liabilities filed in compliance with the directions of the Hon'ble Supreme Court in Rajnesh v. Neha?

Headnotes

A. Code of Criminal Procedure, 1973 — S. 125 — Maintenance — Wife's capability to earn versus actual earning.

HELD: Whether a wife is capable of earning and whether she is actually earning are two different requirements. Mere possession of an educational qualification (M.A. in fashion designing) does not, by itself, establish that the wife is actually earning, and her mere capability to earn is not sufficient to deny or reduce maintenance to her, in the absence of documentary evidence of actual income. (Paras 16-20)

B. Code of Criminal Procedure, 1973 — S. 125 — Affidavit of Disclosure of Assets and Liabilities — Concealment of income and dependants.

HELD: Where the husband, in his affidavit filed in compliance with the directions of the Hon'ble Supreme Court in Rajnesh v. Neha and another, (2021) 2 SCC 324, shows his father and mother as dependent upon him while suppressing the fact that his father is a pensioner of the Indian Army, and fails to disclose the marital status of his sister or to annex the requisite salary certificate, pay slip and bank statements, such conduct amounts to intentional concealment of material documents designed to defeat the wife and child's lawful right to maintenance. It is the bounden duty of the trial court to scrutinise such affidavits carefully, and where an evasive affidavit is detected, to invoke Section 106 of the Evidence Act, 1872 and consider initiating action under Sections 199/191 & 193 or 209 IPC. (Paras 21-26, 35)

C. Code of Criminal Procedure, 1973 — S. 125 — Quantum of maintenance — Application of the Rajnesh guidelines.

HELD: Following the guidance in Rajnesh v. Neha and another, (2021) 2 SCC 324 and Kulbhushan Kumar (Dr) v. Raj Kumari, (1970) 3 SCC 129, that maintenance can be granted up to 25% of the net income of the husband to the wife and 15% of the net income to the child, and taking the husband's admitted net salary of Rs. 1,25,000/- per month (as disclosed in Affidavit 24A) as the basis, monthly maintenance of Rs. 30,000/- to the wife and Rs. 17,500/- to the minor son held just, reasonable and realistic. (Paras 27-30)

D. Code of Criminal Procedure, 1973 — S. 125 — Duty of Family Courts — Vigilance against evasive affidavits.

HELD: Family Courts, presided over by Senior Judicial Officers, are expected to be alive to the object, reasons and spirit of Section 125 Cr.P.C./Section 144 of the BNSS, and must be vigilant to detect calculated devices adopted by a husband to subterfuge the right of maintenance of a wife and child. The approach of the trial court in accepting an incomplete affidavit without scrutiny held casual and lackadaisical. Copy of the judgment directed to be circulated to all Judicial Officers of the State through the Registrar (Compliance) and forwarded to the Director, JTRI, for sensitising judicial officers. (Paras 22-26, 35-37)

Criminal Revision No. 223 of 2024 allowed; the judgment and order dated 01.12.2023 modified to the extent that maintenance of Rs. 47,500/- per month (Rs. 30,000/- for revisionist no. 1 and Rs. 17,500/- for revisionist no. 2) shall be paid from the date of the impugned judgment, and Rs. 34,000/- per month (Rs. 20,000/- and Rs. 14,000/- respectively) from the date of filing of the application to the date of judgment, arrears payable in six monthly instalments commencing 1st July, 2026. **Criminal Revision No. 51 of 2024 dismissed.** (E-14)

Case Law Cited

Badshah v. Urmila Badshah Godse and another, (2014) 1 SCC 188 --- referred to; Rajnesh v. Neha and another, (2021) 2 SCC 324 --- followed; Rina Kumari @ Rina Devi @ Reena v. Dinesh Kumar Mahto @ Dinesh Kumar Mahato and another, (2025) 3 SCC 33 --- followed; Chaturbhuj v. Sita Bai --- referred to; Bhuwan Mohan Singh v. Meena and others --- referred to; Shamima Farooqui v. Shahid Khan --- referred to; Manish Jain v. Akanksha Jain, (2017) 15 SCC 801 --- followed; Shailja and another v. Khobbanna, (2018) 12 SCC 199 --- followed; Aditi @ Mithi v. Jitesh Sharma, 2023 INSC 981 --- referred to; Kulbhushan Kumar (Dr) v. Raj Kumari, (1970) 3 SCC 129 --- followed.

List of Acts/Statutes

Code of Criminal Procedure, 1973 (S. 125); Bharatiya Nagarik Suraksha Sanhita, 2023 (S. 144); Indian Evidence Act, 1872 (S. 106); Indian Penal Code, 1860 (Ss. 191, 193, 199, 209, 498-A, 323, 504); Dowry Prohibition Act, 1961 (Ss. 3/4).

List of Keywords

Maintenance; Section 125 Cr.P.C.; affidavit of disclosure of assets and liabilities; concealment of income; dependants; wife; minor child; Rajnesh v. Neha guidelines.

Case Arising From

Judgment and order dated 01.12.2023 passed by the Additional Principal Judge, Family Court, Court No. 2, Bulandshahar, in Maintenance Case No. 829 of 2019 (Smt. Sadhna @ Sakshi and another v. Jitendra Singh Som), under Section 125 Cr.P.C.

Appearance for Parties

For Revisionist(s) (CRLR No. 223 of 2024): S.P.S. Chauhan, Smt. Meenakshi Chauhan

For Opposite Party(s) (CRLR No. 223 of 2024): Abhinav Singh, G.A., Santosh Kumar Upadhyay, Vinod Kumar Upadhyay

For Revisionist(s) (CRLR No. 51 of 2024): Anish Kumar Singh, Desh Ratan Chaudhary, Mukesh Chandra Gupta, Santosh Kumar Upadhyay, Shubham Prakash Gupta, Vinod Kumar Upadhyay

For Opposite Party(s) (CRLR No. 51 of 2024): G.A., S.P.S. Chauhan, Smt. Meenakshi Chauhan

(Delivered by Hon'ble Dr. Ajay Kumar-II, J.)

1. Heard learned counsel for revisionists, learned counsel for opposite party no. 2, learned Additional Government Advocate for the State and perused the record.

2. Criminal Revision No. 223 of 2024 has been filed by the Smt. Sadhana (wife) against the impugned order dated 01.12.2023 passed by Additional Principal Judge, Family Court, Court No. 2, Bulandshahar in Maintenance Case No. 829 of 2019 (Smt. Sadhna @ Sakshi and another vs. Jitendra Singh Som) under section 125 Cr.P.C., Police Station Pahasu, District Bulandshahar, whereby the learned Court below has allowed the application under Section 125 Cr.P.C. of the revisionists and the opposite party no. 2 has been directed to pay Rs. 8,000/- to the revision no. 1 and Rs. 12,000/- to the revisionist no. 2 from the date of filing of the application till passing of present impugned judgment and order and to pay Rs. 10,000/- per month to revisionist no. 1 and Rs. 15,000/- per month to the revisionist no. 2 as maintenance from the date of impugned judgment and order. The revisionists by means of present revisionist have prayed for enhancement of maintenance amount awarded by the Court below from Rs. 20,000/- to Rs. 75,000/- per month from the date of filing of application.

3. Criminal Revision No. 51 of 2024 has been filed by Jitendra Singh Som (husband) with prayer to set aside the impugned judgment and order dated 01.12.2023 passed by Additional Principal Judge, Family Court, Court No. 2, Bulandshahar in aforesaid Maintenance Case No. 829 of 2019 (Smt. Sadhna @ Sakshi and another vs. Jitendra Singh Som) under section 125 Cr.P.C., Police Station Pahasu, District Bulandshahar.

4. Since both criminal revisions are arising out of same impugned judgment and order dated 1.12.2023, therefore, these criminal revisions are being disposed of by a common order. Criminal Revision No. 223 of 2024 is the leading case for the purpose of judgment.

5. Learned counsel for the revisionists has submitted that marriage of opposite party no. 2 with the revisionist no. 1 is his (opposite party no. 2's) second marriage and on demand of her in-laws, parents of revisionist no. 1 spent Rs. 12 lakhs in the marriage and had given all household items. However, opposite party no. 2 and his family members were not satisfied with the dowry given at the time of marriage and were demanding additional dowry of Rs. 10 lakhs and Swift Car and when the demand of additional dowry was not fulfilled, they started mental and physical harassment of the revisionist no. 1. The revisionist no. 1 was thrown out from her matrimonial house during her pregnancy period, on account of illicit relation of opposite party no. 2 with some other lady and non fulfillment of demand of additional dowry. The revisionist no. 2 was born out of their wedlock at the parental house of revisionist no. 1 on 29.12.2017. In this regard, the revisionist no. 1 has filed Criminal Case No. 481 of 2017, under Section 498A, 323, 504 IPC and D.P. Act, wherein, Judicial

Magistrate, Khurja, District Bulandshahar has summoned the opposite party no. 2 and his parents to face trial and in that case, the opposite party no. 2 and his parents are on bail and facing trial.

6. Opposite party no. 2 has not taken any care of the revisionists and has also not paid any maintenance after birth of their son and had also not taken them back. The revisionist has no source of income for their maintenance and therefore, has filed maintenance petition, wherein, the opposite party no. 2 appeared before the trial Court and submitted his written reply but, he has not disclosed his true income. The revisionist no. 1 although an educated lady but, is unable to work and is jobless, who is totally dependent upon her parents. The opposite party no. 2 has not paid any maintenance, whereas, he is serving as Engineer and is earning Rs. 1,94,860/- per month and fully capable to pay maintenance to both the revisionists. In support of his contention, the revisionist has filed salary slip of the opposite party no. 2 dated 25.6.2022, which shows that he is serving as Engineer in Nokia Solutions and Network India Pvt. Ltd. at Noida and getting Rs. 1,94,860/- per month. It was further argued that the revisionist has no source of income for maintenance of herself and her son. However, learned trial Court on the basis of misleading affidavit of opposite party no. 2 filed in compliance of direction of Hon?ble Supreme Court in Rajnesh vs. Neha has wrongly assessed his monthly income as Rs. 1,20,000/- per month without appreciating the evidence available on record. None of the family members of opposite party no. 2 is dependent upon him. The learned Court below has not correctly appreciated the evidence available on record and as such the impugned order is liable to be modified by directing the opposite party no. 2 to pay maintenance of Rs. 75,000/- per month to the revisionists.

7. It was further submitted that the facts of first marriage of opposite party no. 2 with Bhawana and birth of one daughter Km. Kanak from first marriage as well as divorce from his first wife have been concealed by the opposite party no. 2 from the parents of revisionist. Lastly, it was argued that the amount of maintenance awarded to the revisionist and her minor son are not sufficient to maintain themselves, therefore, learned counsel urged for allowing this revision and for enhancement of monthly maintenance and for dismissal of Criminal Revision No. 51 of 2024.

8. Learned counsel for the opposite party no. 2 and learned AGA for the State have vehemently opposed the present criminal revision and argued that impugned judgment and order has been passed on the facts available on the file that too in accordance with well settled law, therefore, prayed for dismissal of the present criminal revision.

9. Learned counsel for the opposite party no. 2 further submitted that the marriage of the opposite party no. 2 was solemnized with revisionist no. 1 on 2.6.2013 as per Hindu rites and rituals without any demand of dowry. It is the second marriage of the opposite party no. 2 and out of their wedlock, one son namely Lakshya Som was born. They were living happily. The revisionist no. 1 was in a private job. The revisionist is very ambitious and was not comfortable with his (O.P. No.2?s) parents and when his father fell ill and required care and support, she was not ready to do and left his house. He tried to pursue and convince her to live with him. He also filed a suit for restitution of conjugal rights. On account of continuous efforts, she came to the house on two occasions but again went to her parental house and filed an application under Section 125 Cr.P.C. against him on false and frivolous grounds.

10. It was further submitted that the revisionist is a qualified lady and has obtained post graduate degree in a professional course i.e. fashion designing and she is able to maintain herself. He has filed all documentary evidence regarding liabilities in support of his written statement. However, learned Principal Judge, Family Court, has allowed the application filed by the revisionist without appreciating the evidence on record. He was always ready to keep the revisionists with all love, affection and care and he had made such offer in the proceedings of the present case before the learned Principal Judge. The revisionist had herself deserted and left him without any sufficient reason. The impugned order passed by learned Additional Principal Judge, Family Court, Bulandshahar is not in accordance with law and therefore, warrants interference by this Court. Lastly it was urged that Criminal Revision No. 223 of 2024 be dismissed and his Criminal Revision No. 51 of 2024 be allowed and the impugned judgment and order be set aside in entirety.

11. Admittedly, the revisionist no. 1 is legally wedded wife of opposite party no. 2, whereas revisionist no. 2 is son of revisionist no. 1 and opposite party no. 2. It is also admitted fact between the parties that a Criminal Case No. 481 of 2017, under Sections 498A, 323, 504 IPC and of D.P. Act is pending between the parties, which has been lodged by the revisionist no. 1 against the opposite party no. 2 and his parents for dowry harassment. It is also an admitted fact that a suit for restitution of conjugal rights was filed by opposite party no. 2, which was dismissed. Pendency of criminal case that too regarding dowry harassment of revisionist no. 1 at the hands of opposite party no. 2 and his parents gave a reasonable cause to revisionist no. 1 to live apart from her husband. It is a statutory as well as social obligation of a husband to maintain his wife and children.

12. The trial Court has recorded a finding in para no. 16, 17 and 18 of the impugned judgment that the revisionist no. 1 has a reasonable cause to live separately from her husband i.e. opposite party no. 2 and is thus residing in her parental house. Therefore, as far as reasons for the revisionist living separately is concerned, the learned trial Court has recorded a categorical finding on this issue and this Court being a Revisional Court cannot re-appreciate the evidence and also cannot substitute it's own finding, in place of the finding of facts recorded by the trial Court on this issue in question, unless the finding is completely perverse and is against the facts and law, which is not the case in hand.

13. In the present case, revisionist no. 1 filed an application for maintenance under Section 125 Cr.P.C., who is the wife of the opposite party no. 2. Section 125 Cr.P.C. was conceived to ameliorate the agony, anguish and financial suffering of a woman, who left her matrimonial home for the reasons provided in the provision, so that some suitable arrangement can be made by the Court and she can sustain herself and also her children, if they are with her. Apex Court in **Badshah vs. Urmila Badshah Godse and another (2014) 1 SCC 188**, has held that the provision of maintenance aims at empowering the destitute and achieving social justice or equality and dignity of the individual and while dealing with cases thereunder, the drift in the approach from adversarial litigation to social context adjudication is the need of the hour. Apex Court in **Rajnesh vs. Neha and another (2015) 5 SCC 705**, has emphasized that maintenance laws were enacted as a measure of social justice to provide recourse to dependent wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy.

14. Hon?ble Apex Court in **Rina Kumari @ Rina Devi @ Reena vs. Dinesh Kumar Mahto @ Dinesh Kumar Mahato and another (2025) 3 SCC 33** has clarified the law of maintenance under Section 125 Cr.P.C.. The relevant paras 9 to 14 are reproduced herein below:-

"9. In its 41st Report submitted on 24th September, 1969, the Law Commission of India, while adverting to Section 488 of the Code of Criminal Procedure, 1898, observed that the primary justification for placing provisions relating to maintenance of wives and children, which is a civil matter, in the Criminal Procedure Code was that a remedy, speedier and more economical than that available in the Civil Courts, is provided to them. The Law Commission noted that the provision was aimed at preventing starvation and vagrancy, leading to commission of crime.

*10. On the same lines, in **Chaturbhuj vs. Sita Bai**, this Court observed that the object of maintenance proceedings is not to punish a person for his neglect but to prevent the vagrancy and destitution of a deserted wife, by providing her food, clothing and shelter by a speedy remedy. It was held that Section 125 Cr.P.C. is a measure of social justice, especially enacted to protect women and children, falling within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution. Thus, the objective of the provision, then and now, is to alleviate the financial plight of destitute wives, children and now, parents, who are left to fend for themselves.*

*11. In **Bhuwan Mohan Singh vs. Meena and others**, this Court observed that Section 125 Cr.P.C. was conceived to ameliorate the agony, anguish and financial suffering of a woman, who left her matrimonial home for the reasons provided in the provision, so that some suitable arrangement can be made by the Court and she can sustain herself and also her children, if they are with her. It was held that the concept of sustenance did not necessarily mean ?to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else? and the wife would be entitled in law to lead a life in a similar manner as she would have lived in the house of her husband. This Court further cautioned that, in a proceeding of this nature, the husband cannot be permitted to take subterfuge to deprive the wife of the benefits of living with dignity and there could be no escape route, unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on legally permissible grounds.*

*12. Earlier, in **Badshah vs. Urmila Badshah Godse and another**, this Court held that the provision of maintenance aims at empowering the destitute and achieving social justice or equality and dignity of the individual and while dealing with cases thereunder, the drift in the approach from adversarial litigation to social context adjudication is the need of the hour.*

*13. More recently, in **Rajnesh vs. Neha and another**, this Court emphasized that maintenance laws were enacted as a measure of social justice to provide recourse to dependent wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy.*

*14. In **Shamima Farooqui vs. Shahid Khan**, this Court noted that the inherent and fundamental principle behind Section 125 Cr.P.C. is the amelioration of the financial state of affairs as well as the mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. It was further observed that, as per law, she is entitled to lead life in a similar manner as she would have lived in the house of her husband and as long as she is held entitled to grant of maintenance within the parameters of Section 125 Cr.P.C., it has to be adequate so that she can live with dignity. Lastly, it was noted that, a plea is sometimes advanced by the husband that he does not have the means to pay as he does not have a job or his business is*

not doing well, but these are only bald excuses and, in fact, they have no acceptability in law as a husband, who is healthy, able-bodied and in a position to support himself is under a legal obligation to support his wife and her right to receive maintenance under Section 125 Cr.P.C., unless disqualified, is an absolute right."

15. Thus, provision for maintenance is a manifestation of the State's commitment to safeguard weaker sections of society, particularly women and children, from neglect and economic deprivation within the protective ambit of Articles 15(3) and 39 of the Constitution of India. The liability to maintain is continuous, enforceable, and insulated from considerations of proprietary holdings, flowing solely from the existence of the marital or familial relationship. **Courts have consistently reiterated that maintenance is not charity but a right, and its enforcement is essential to uphold equity, justice, and good conscience. Thus, maintenance jurisprudence in India stands as a testament to the judiciary's resolve to ensure that no wife, child, or dependent parent is left to languish in penury due to the neglect of those legally bound to sustain them.**

16. In the light of above principles, a perusal of the impugned judgment and order reveals that none of the party has placed on record any documentary evidence regarding income of revisionist no. 1. Revisionist no. 1 has claimed that the opposite party no. 2 is not maintaining her. Before the trial Court, opposite party no. 2 has stated that revisionist is a highly qualified lady having degree in the form of M.A. in a professional course i.e. fashion designing and is earning on account of teaching and tuitions, but no documentary evidence, regarding income of revisionist no. 1 has been placed on record by the opposite party no. 2. In this background, whether revisionist is capable of earning or whether she is actually earning, are two different requirements. If wife is capable of earning, then her mere capability is not sufficient to deny maintenance to her.

17. The Hon'ble Supreme Court in **Manish Jain v. Akanksha Jain, (2017) 15 SCC 801**, has observed:

"16. An order for maintenance pendente lite or for costs of the proceedings is conditional on the circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife's parents is also immaterial. The court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation; the court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the court."

18. Similarly, in **Shailja and another v. Khobbanna, (2018), 12 SCC 199**, it has been observed:

"5. That apart, we find that the High Court has proceeded on the basis that Appellant I was capable of earning and that is one of the reasons for reducing the maintenance granted to her by the Family Court. Whether Appellant 1 is capable of earning or whether she is actually earning

are two different requirements Merely because Appellant 1 is capable of earning is not, in our opinion, sufficient reason to reduce the maintenance awarded by the Family Court."

19. Therefore, the law on this point is very clear that if wife is educated and well qualified to earn an income, this itself is not sufficient to deny maintenance to her.

20. It is not the case of opposite party no. 2 that revisionist is having any specialized technical / medical qualification like B.Tech. M.B.A., M.C.A., M.B.B.S. etc. In present-day scenario, by merely acquiring M.A. in fashion designing technology, it cannot be presumed that revisionist is actually earning some income, unless proved contrary. Although, it has been claimed by the opposite party no. 2 that his wife is earning Rs. 60,000/- per month from fashion designing. But, no such record was produced, either before this revisional Court or trial Court. Therefore, this plea of husband/opposite party no. 2, that the wife is earning Rs. 60,000/- per month, is not acceptable. However, the opposite party no. 2 has admitted in his affidavit 24A filed in complaince to direction of Apex Court issued in **Rajnesh vs. Neha** that he is getting a salary of Rs. 1,25,000/- in hand per month. However, a finding to this effect has also been recorded by learned trial Court at para 20 of the impugned judgment that he is getting a salary of Rs. 1,20,000/- per month. **Therefore, as per his own admission in affidavit 24A, opposite party no. 2 is earning Rs. 1,25,000/- per month.**

21. The direction issued by Apex Court in **Rajnesh vs. Neha and another (2021) 2 SCC 324** are not mere formalities. A uniform format of affidavit of Disclosure of Assets and Liabilities was directed to be filed by the parties in all maintenance proceedings. It was also directed that the format may be modified by the court concerned if the exengencies of a case require the same (para 72 to 95). It was also directed that the Court may involve Section 106 of Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned. Apex Court in **Aditi @ Mithi vs. Jitesh Sharma 2023 INSC 981** has directed that the guidelines given in Rajnesh?s case (supra) be re-circulated to all the judicial officers through the High Courts concerned.

22. Law of maintenance under Section 125 Cr.P.C. is well settled and proceedings under this section are of summary nature and are intended to enable destitute wives and children to get maintenance in a speedy manner. The object is to prevent vagrancy and destitution by providing a speedy remedy for the supply of food, clothing and shelter to the deserted wife and children. It's primary object is to give social justice to the women, child and infirm parents etc. It is in this light, the affidavits are required to be filed. Inspite of uniform format of Affidavit of Disclosure of Assets and Liabilities, parties may devise ways to defeat the very object of this social litigation and the Court's cannot shut its eyes on the ways so devised by the parties. It is the bounden duty of a trial Court to ensure that a party should not file an evasive affidavit just to avoid his liability to pay maintenance either to his wife/ child or his parents. The courts are required to be vigilant to find out such attempts and when detected, appropriate steps including invoking Section 106 of the Evidence Act as well as initiating action for prosecution under Sections 199/191 & 193 or 209 may also be initiated. It is thus a bounden duty of a trial court to ensure compliance of directions issued by Apex Court in **Rajnesh's case (supra)** in letter and spirit.

23. The purpose of highlighting this aspect is that in the case at hand, the proceedings before the Family Court were concluded without being alive to the objects, reasons and the spirit of the provision under Section 125 Cr.P.C.. Family Judge is expected to be sensitive to the issues such as the plight of the Indian women, who is forced to live separately and take care of young children, who (wife) is running from pillar to post just to receive maintenance for herself and her minor children, therefore, family Courts are dealing with extremely delicate and sensitive issues pertaining to maintenance. The very object of the maintenance proceedings is to prevent vagrancy and destitution of such deserted wife by providing food, clothing and shelter by a speedy remedy for maintenance. The trial Court can ameliorate the agony, anguish and financial suffering of a woman and thereby social justice as well as equality and dignity of a woman can be ensured. Family Courts should not show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. This Court had made the above observations as this Court felt, that the Family Court in the said case had conducted the proceedings without being alive to the objects and reasons, and the spirit of the provision under Section 125 of the Cr.P.C. Such an impression has been gathered by this Court in the case on hand.

24. A perusal of the affidavit filed by Jitendra Singh Som in the light of above well settled principles of law reveals that he has shown three family members to be dependent upon him, his father Rambhool Singh (72 years), his mother Munesh Devi (68 years) and his sister Rajani Som (36 years) in para 'C detail of dependent family members?. However, in its sub para-2, he has mentioned that his father is a pensioner and in his cross examination when he was shown the particulars mentioned by him in his aforesaid affidavit and was asked that as to why he has not mentioned the amount of pension being drawn by his father, then he stated that amount of pension is known to his father. Therefore, it is apparently clear that his father is a pensioner. During the course of argument this Court made an oral query to which, learned counsel for the opposite party no. 2 stated that father of Jitendra is retired Army personnel and is drawing pension from Indian Army. In this background Jitendra has filed a false affidavit showing his father and mother to be dependent upon him, whereas his father is a pensioner and his mother is dependent upon his father. Moreover, he has not explained that whether his sister Rajani aged 36 years is married or not and when their father Rambhool is alive, it cannot be easily presumed that his 38 years old sister is dependent upon him without there being any other necessary particulars in this regard. In his affidavit, he has stated that he is getting salary of Rs. 1,25,000/- per month in hand, however, he has not disclosed other benefits and allowances received by him. The opposite party no. 2 is already paying maintenance of Rs. 5,000/- per month to his daughter Kanak born out of his wedlock from his first wife, therefore, his effective net salary i.e. carry home salary after deducting this amount comes out to be Rs. 1,20,000/-.

25. In his affidavit, opposite party no. 2 has admitted that he is income tax payee, however, he has not filed his income tax return as clearly indicated in the prescribed proforma of the affidavit. The opposite party no. 2 has admitted himself to be a salaried person getting a salary of Rs. 1,25,000/- per month in hand i.e. he himself has admitted that after all deductions he is getting a net salary of Rs. 1,25,000/- which is his net salary. **However, once again opposite party no. 2 has not annexed requisite latest salary certificate, pay slip and bank account statement in which he is receiving his salary, which were required to be filed as per sub para 5, 6, 7 and 9 of para 'F' of Uniform Proforma of Affidavit of Assets and Liabilities.** Meaning thereby, that opposite party

no. 2 has intentionally concealed the material documents showing his actual income, from the trial Court. The opposite party no. 2 has also intentionally concealed his latest salary certificate as well as salary slip with an objective that the trial Court could not find out the amount of actual deductions from his gross salary, because those deductions could have been much higher than the requisite statutory deductions. The approach of trial Court in receiving and placing reliance on opposite party no. 2's affidavit, while writing down the judgment seems to be very casual and lackadaisical in nature. It was the bounden duty of the learned trial Court to examine that affidavit filed by the opposite party no. 2 in compliance of Rajnesh's case (supra) was required to be filled up with all mandatory necessary details as well as all requisite necessary documents. If a simple detailed perusal of affidavit would have been done, these all intentional concealment would have been easily noted by learned trial Court.

26. The opposite party no. 2 with some legal advise has shown his parents and sister as dependent upon him, just to deny the lawful right of the revisionists to receive maintenance from him. It is admitted fact that father of opposite party no. 2, Rambhool, is an ex-serviceman and is receiving pension from the Army. There is no such statement made in the affidavit that his father is physically dependent upon him or economically dependent upon him or both. Clever devise of opposite party no. 2 is apparent, because he is residing with his parents in his house which he states to be in the name of his father but has intentionally concealed the amount of pension received by his father. Indian Army provides full medical facilities to ex-serviceman across the country. Father of opposite party no. 2 is residing at Meerut and it is well known fact that Meerut is a Cantonment Area having Military Hospital where all facilities including reimbursement of expenses, if incurred on purchase of medicines, can also be easily sought and inspite of this fact, the opposite party no. 2 has shown expenses of Rs. 30,000/- per month on his parents. Therefore, in the absence of necessary particulars regarding actual amount of pension being received by the father of opposite party no. 2 as well as health facilities available and utilized in the Defence establishment area, it cannot be presumed that the father and mother are dependent upon him. The opposite party no. 2 has also not shown marital status, if any, of his sister which is another material concealment. If the trial Court would have been a little vigilant regarding it?s duty in maintenance proceedings, such a situation could have been easily averted. Family Courts are presided by Senior Judicial Officers of the cadre of Higher Judicial Services and therefore, it is expected from such officers to be not only alive to the ground realitics but they have a bounden duty to assess and carefully examine any calculative devise of a husband to subterfuge the right of maintenance of a wife and child.

27. The Hon'ble Supreme Court of India in the case of **Rajnesh Vs. Neha (2021) 2 SCC 324** has opined that since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, the husband is required to earn money even by physical labour, if he is able-bodied, and cannot not avoid his obligation.

28. The Hon'ble Supreme Court of India in the cases of **Rajnesh Vs. Neha (supra) and Kulbhushan Kumar (Dr) v. Raj Kumari, (1970) 3 SCC 129**, has observed that the maintenance allowances can be granted up to the extent of 25% of the net income of the husband to the wife and 15% of the net income to their child. The maintenance amount awarded must be reasonable and realistic, and should avoid either of the two extremes i.e. maintenance awarded to the wife should

neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meager that it drives the wife to penury.

29. Thus, this Revisional Court is of the considered opinion that the maintenance allowance, fixed by the Court below, is not as per the law laid down by the Hon'ble Supreme Court in **Rajnesh (supra)** as 25 % of Rs. 1,25,000/- comes out to Rs. 31,250/- per month. As such, Rs. 30,000/-, towards monthly maintenance allowance, in favour of revisionist, is just, reasonable and realistic. Therefore, the judgment and order dated 01.12.2023, passed by the Additional Principal Judge, Family Court, Court No. 2, Bulandshahar in Case No. 829 of 2019 (Smt. Sadhana @ Sakshi vs. Jitendra Singh Soam), under Section 125 of the Code of Criminal Procedure, 1973 is required to be modified to the extent that now the opposite party no. 2 shall pay Rs. 30,000/- per month in favour of revisionist no. 1 from the date of impugned judgment and order i.e. 01.12.2023.

30. However, at the same time, the respondent-husband cannot be absolved from his liability and responsibility to maintain his son till he attains the age of majority. Whatever be the dispute between the husband and the wife, a child should not be made to suffer. The liability and responsibility of the father to maintain the child continues till the child/son attains the age of majority. It also cannot be disputed that the son has a right to be maintained as per the status of his father. It is reported that the mother is not earning anything. She is residing at her parental house. Therefore, a reasonable/sufficient amount is required for the maintenance of her son including his education etc. Admittedly, revisionist no. 2 is a school going boy and at present is about 8 years of age and therefore, keeping in view his living expenses, which includes expenses for food, clothing, residence, medical expenses, education extra coaching class etc., this Court finds an amount of Rs. 17,500/- (which is less than 15% of Rs. 1,25,000/- i.e. Rs. 18,750/-) towards monthly maintenance in favour of the revisionist no. 2 is just, reasonable and realistic and the impugned judgment and order is required to be modified to the extent that now the opposite party no. 2 shall pay Rs. 17,500/- per month in favour of revisionist no. 2 from the date of impugned judgment and order i.e. 01.12.2023.

31. The present maintenance petition was filed by the revisionist in the year 2019 and the aforesaid maintenance amount is calculated keeping in view the salary of opposite party no. 2 allegedly received by him late in the year 2022. Therefore, for deciding the amount of maintenance to be paid from the date of filing of application to the date of judgment is fixed to be Rs. 20,000/- per month for the revisionist No. 1 and Rs. 14,000/- per month is fixed for revisionist no. 2, which amounts shall be paid from the date of filing of the maintenance application.

32. **Consequently, the judgment and order dated 01.12.2023, passed by the Additional Principal Judge, Family Court, Court No. 2, Bulandshahar in Case No. 829 of 2019 (Smt. Sadhana @ Sakshi vs. Jitendra Singh Som), under Section 125 of the Code of Criminal Procedure, 1973 is modified to the extent that now the opposite party no. 2 shall pay Rs. 47,500/- (Rs. 30,000/- for the revisionist no. 1 + Rs. 17,500/- for the revisionist no. 2) per month in favour of revisionist nos. 1 and 2 from the date of impugned judgment and order i.e. 01.12.2023 and Rs. 34,000/- (Rs. 20,000/- for revisionist no. 1 + Rs. 14,000/- for revisionist no. 2) from the date of filing of application to the date of judgment i.e. 01.12.2023.**

33. Taking a humanitarian approach, this Court, also, provides that the arrears of maintenance allowance shall be paid by the revisionist in six monthly equal installments. The first installment shall commence from 1st July, 2026.

34. It is also clarified that the arrears of amount towards maintenance allowance, as awarded by the learned Family Court, shall be calculated on the basis of amount of maintenance allowance as fixed by this Court herein above and after that if it is found that any amount has been paid in excess, the same shall be adjusted from the amount to be paid.

35. In affidavit of Assets and Liabilities for non -agrarian deponents, it was required to disclose any independent source of income of the dependents including interest income, assets, pension, tax liability on such income and any other detail, which were completely missing in the present case. No medical record or disability certificate or summary of previous details of hospitalization/ medical treatment was produced by the opposite party no. 2 regarding medical expenses of his parents. Even salary certificate clearly stating the designation with gross monthly income, Form-16 for relevant period, details of perquisites and other statutory benefits, income tax returns and copies of bank statement of all accounts for last 3 years of opposite party no. 2 were not furnished by him, which were required to be filed alongwith affidavit and only then, it could be said that requisite affidavit in compliance to Rajnesh's case (supra) has been filed. These are the reasons that this Court came to conclusion that the approach of learned trial Court was very casual in nature. **Let a copy of this judgment be circulated amongst all Judicial Officers of State of U.P. through Registrar (compliance) to ensure that the direction of Hon'ble Apex Court in Rajnesh vs. Neha be complied in its letter and spirit, as affidavits to be filed in compliance of Apex Court's direction is not a mere formality. The trial Courts must be alive to be objects and reasons as well as spirit behind law of maintenance as provided under Section 125 Cr.P.C./ 144 of BNSS, as noted in this judgment. The learned trial Courts must make an endevour to ensure filing of all necessary documents, which are clearly indicated in prescribed proforma of Affidavit of Assets and Liabilities by Hon'ble Apex Court in Rajnesh vs. Neha (supra).**

36. The present Criminal Revision No. 223 of 2024 stands **allowed** accordingly and Criminal Revision No. 51 of 2024 stands **dismissed.**

37. A copy of this judgment be sent to Director, JTRI for sensitizing the judicial officer on this issue in the light of direction issued by Hon?ble Apex Court in Rajnesh vs. Neha as well as observation made in this judgment.

(2026) 5 ILRA 2562
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 13.05.2026

BEFORE

THE HON'BLE LAKSHMI KANT SHUKLA, J.

Criminal Revision No. 369 of 2026

Smt. Meena Devi & Anr. ...Revisionists
Versus
State of U.P. & Anr. ...Opposite Parties

Issue(s) for Consideration

(a) Whether an order rejecting a discharge application under Section 250 BNSS (corresponding to Section 227 Cr.P.C.) can be sustained where the trial court fails to consider material contained in an audio recording between the deceased and the informant, and other corroborated statements, casting doubt on the allegation of demand of dowry?

(b) Whether the statutory presumption under Section 113-B of the Indian Evidence Act, 1872 is attracted in the absence of the essential ingredient of demand of dowry?

(c) What is the duty of a court, while considering discharge, in evaluating statements based on hearsay as against statements corroborated by other material on record?

Headnotes

A. Bharatiya Nagarik Suraksha Sanhita, 2023 — S. 250 (corresponding to S. 227 Cr.P.C.) — Discharge — Duty to consider entire material.

HELD: While exercising the power contained in Section 250 BNSS (corresponding to Section 227 Cr.P.C.), the Court must consider the entire material and statements recorded in the case diary in their true and right perspective and reach a conclusion regarding the complicity of the accused. Statements based on hearsay must be discarded, and statements corroborated by other material must be given higher weightage than mere statements lacking corroboration. (Para 9)

B. Indian Evidence Act, 1872 — S. 113-B — Presumption of dowry death — Essential ingredient of demand of dowry.

HELD: Where the audio recording between the deceased and the informant, read with the informant's own affidavit and the statement of the owner of the house where the deceased resided, falsifies the allegation of demand of dowry and reveals a motive for the incident distinct from the dowry demand alleged in the F.I.R., the essential ingredient of demand of dowry is lacking, and consequently the presumption under Section 113-B of the Indian Evidence Act, 1872 is not attracted; no person can be charged merely on the basis of imagination. (Para 8)

C. Bharatiya Nagarik Suraksha Sanhita, 2023 — Discharge — Hearsay statements versus corroborated statements.

HELD: The statement of a witness who has no first-hand knowledge of the incident, and who is merely a witness to a collateral fact such as the marriage, is hearsay in nature qua the incident and has no evidentiary value; such statements must be discarded in favour of statements supported by other material on record, such as recorded conversations and the statements of persons residing in the same house as the deceased. (Paras 5-7)

Criminal Revision allowed. Order dated 06.01.2026 passed by the Sessions Judge, Kanpur Nagar, set aside; trial court directed to pass a fresh order in the light of the observations made, after hearing the parties. (E-14)

Case Law Cited

None.

List of Acts / Statutes

Bharatiya Nyaya Sanhita, 2023 (Ss. 85, 82(2)); Dowry Prohibition Act, 1961 (Ss. 3/4); Bharatiya Nagarik Suraksha Sanhita, 2023 (S. 250, corresponding to S. 227 Cr.P.C.); Indian Evidence Act, 1872 (S. 113-B).

List of Keywords

Discharge; Section 250 BNSS; dowry death; Section 113-B Evidence Act; hearsay; corroboration; audio recording.

Case Arising From

Order dated 06.01.2026 passed by the Sessions Judge, Kanpur Nagar, in Session Case No. 1677 of 2025 (State of U.P. v. Himanshu Dixit and others), arising out of Case Crime No. 75 of 2025, under Sections 85, 82(2) of the Bharatiya Nyaya Sanhita and Sections 3/4 of the Dowry Prohibition Act, 1961, Police Station Govind Nagar, District Kanpur Nagar.

Appearance for Parties

For Revisionist(s): Kalyan Singh, Karma Singh Yadav

For Opposite Party(s): Dheerendra Kumar, G.A., Vikash Krishna Murti

(Delivered by Hon'ble Lakshmi Kant Shukla, J.)

1. Heard Mr. Kalyan Singh, the learned counsel for revisionist, the learned AGA appearing on behalf of State-opposite party no. 1, Mr. Dheerendra Kumar, the learned counsel appearing on behalf of opposite party no. 2 and perused the record.

2. Revisionist Meena Devi and another has approached this Court by means of present Criminal Revision assailing the propriety of impugned order dated 06.01.2026 passed by learned Sessions Judge, Kanpur Nagar (hereinafter referred as trial court) in Session Case No. 1677/2025 (State of U.P. Vs. Himanshu Dixit and others) arising out of Case Crime No. 75 of 2025, under section 85, 82(2) BNS and Section 3/4 D.P. Act, Police Station Govind Nagar, District Kanpur Nagar wherein the trial court rejected the application for discharge under section 250 BNSS filed by revisionist.

3. Feeling aggrieved from that order the present revision has been filed on the ground that the impugned order is illegal, bad in law, perverse and has been passed without application of judicial mind, without considering the material available on record as a whole but the impugned order has been passed by picking and choosing evidence. On the basis of material available on record no offence under section 85, 80(2) BNS and section 3/4 D.P. Act is made out against the revisionist. The Audio recording of the conversation between the deceased and the informant demonstrates the involvement of accused persons namely Himanshu Tiwari, Rahul Tiwari and Sonam in the alleged offence. Learned counsel for revisionists submitted that a perusal of the entire case diary clearly reveals that the revisionists were not present at the date, time and place of occurrence. The revisionists, being the mother-in-law and father-in-law of the deceased were residing in their village, whereas the deceased was residing in rented accommodation in the Kanpur City. It is further submitted that the informant and his family members are not eye witnesses to the incident. Although allegations of demand of dowry have been levelled against the revisionists, the same stands falsified by the call recording between the informant and the deceased, as the conversation between them reveals that the cause of the incident was motivated by reasons entirely different from the alleged demand of dowry. In the present case the statement of informant along with

statement of owner of the house where the deceased was residing along with her husband and co-accused Rahul & Sonam as well as the statement of the sister of the deceased are material and relevant for proper adjudication of the matter. The statement of the sister of the deceased is reproduced herein below:-

"बयान गवाह पंचायतनामा श्रीमती गुंजन दीक्षित पत्नी श्री कृष्णकान्त दीक्षित उम्र करीब 38 वर्ष नि० ग्राम नारखास थाना रसूलाबाद जिला कानपुर देहात मो0न0 9621082051..... पूछने पर अपने बयान में बतायी कि मैं मृतका कल्पना की सगी बडी बहन हू। मेरी बहन कल्पना की शादी राहुल तिवारी पुत्र जयशंकर तिवारी नि० ग्राम जौहर ने हिमांशू से करायी थी राहुल और उसकी पत्नी सोनम दोनो ही हिमांशू के बारे में मेरे घर वालो को बताये थे और राहुल हिमांशू की मांग के अनुसार ही सारा सामान देकर हम लोगो ने अपनी बहन कल्पना की शादी 25/02/2024 को हिमांशू के साथ हिन्दू रीतिरिवाज के की थी शादी में हम लोगो ने अपनी सामथ्य के अनुसार सारा दान दहेज दिया था। मेरी बहन बिदा होकर अपने ससुराल ग्राम तरौदा शेरपुर गयी वहां पर लगभग पांच छः महीने रही लेकिन मेरी बहन के ससुराल वाले उसका पति हिमांशू, उसकी सास श्रीमती मीना उसका ससुर दिनेश कुमार और विचवानी राहुल और उसकी पत्नी सोनम आये दिन मेरी बहन को कम दहेज का तांना मारकर परेशान प्रताडित करने लगे यह सारी बाते मेरी बहन ने घर में बतायी साहब मेरे पिता जी नहीं है भाई अकेला है तब मेरे भाई और चाचा मेरी बहन के घर पर उनके ससुराल बालो को समझाने बुझाने गये कि हम लोगों ने शादी में सब कुछ दिया है कल्पना को परेशान मत करो तब कल्पना का पति उसके सास ससुर और राहुल और उसकी पत्नी सोनम कहने लगे कि हिमांशू को व्यौपार कराना है इसलिये तुम लोगो को पाच लाख रूपया देना पड़ेगा यही सोचकर हम लोगो ने शादी की थी यदि पैसा नहीं मिला तो अपनी बहन को लिवा ले जाना फिर हिमांशू मेरी बहन कल्पना को लेकर कानपुर नौरैयाखेडा आ गया और किराये का कमरा ले लिया उसी कमरे में राहुल और उसकी पत्नी सोनम भी रहते थे ये सभी लोग आये दिन मेरी बहन से पैसे की मांग कर मारपीट करने लगे और पेरशान करने लगे जिस दिन यह घटना हुई उस दिन भी मेरी बहन को मारे पीटे थे जब मुझे पता चला तब मैं और मेरे घर परिवार के लोग कानपुर अस्पताल में आये थे तो मेरी बहन कल्पना की मौत हो चुकी थी साहब मेरी बहन को उसके पति हिमांशू, उसकी सास श्रीमती मीना, उसके ससुर दिनेश कुमार और हिमांशू के दोस्त राहुल और उसकी पत्नी सोनम ने दहेज में पांच लाख रूपये की मांग पूरी न होने पर जहर खिलाकर मार डाला है साहब इन दहेज लोभियो पर कड़ी कार्यवाही की जायें साहब राहुल और सोनम को जल्दी जेल जेल भेजा जाये। मेरे सामने पुलिस ने कल्पना का पंचायतनामा भरा था जिस पर मैंने अपने दस्तखत किये थे जल्दवाजी में गुजन की जगह गुंनज लिख दिया था साहब जो आप दिखा रहे है वह मेरे ही हस्ताक्षर है।"

4. According to post mortem report the death of deceased could not be ascertained, viscera was preserved, the doctor who conducted the autopsy on the dead body of the deceased found one ante mortem wound of laceration measuring 1cmx 1 cm into muscle deep over forehead. As per FSL report the presence of poisonous substance in viscera has been certified.

5. Previously according to the statement of Smt. Gunjan Dixit, the elder sister of deceased, she was only a witness to the marriage and, except for that whatever has been stated by her is hearsay in nature and has not evidentiary value.

6. Further according to the earlier statement of informant he had fully supported the prosecution case. He admitted that on the date of the incident he had some telephonic conversation with his sister. However in his affidavit he clarified that according to the recording of said conversation, there was no involvement of the parents of accused Himanshu i.e. mother-in-law and father-in-law of deceased in the alleged incident. The details of the said recording has also been reproduced herein below and the same form part of case diary:-

"महिला की आवाज (बादी ने बताया कल्पना की है) हमने सल्फास की गोली खा लई है, राहुल और राहुल की दुल्हन के पीछे ये दोनो जने यही टिके है और रोज हमसे लड़त है हमार कोई नहीं है नयी है लल्ला ये दोनों जने हमार पीछे पर गये जब से बयाओ भयो है हओ लल्ला एक मिनट के लिये इनने खल नही लेन दई। लल्ला तुम रिकार्डिंग कर लो।

पुरुष की आवाज (वादी मुकद्दमा ने अपनी बताया.....तुमने यो का करो यो पहले बताओ।

महिला (मृतका वादी के बताये अनुसार). लल्ला बस हमाई जिन्दगी के दिन पूरे हुये गये हमने खाई लई।

पुरुष (वादी मुकदमा ने अपने आप को बताया...तुमने हमें एकउ दिन बताये काये नहीं।

महिला की आवाज (वादी ने बताया कल्पना की है). लल्ला हम नाय बता पाये लल्ला हमने खाय लई। ..

पुरुष की आवाज (वादी मुकदमा ने अंपनी बताया)... तुमने हमाये मम्मी का कुछ नहीं सोचो।

महिला की आवाज (वादी ने बताया कल्पना की है)..... लल्ला बताये देते जिन्दा मर जाती हाओ लल्ला, लल्ला, लल्ला बहुत हरामी है ये सब इन दोनउ ने हमारी जिन्दगी बरबाद कर दी राहुलवा बहुत हरामी है।

पुरुष की आवाज (वादी मुकदमा ने अपनी बताया..... तुम हम अबही आ रहे ठीक है।

महिला की आवाज (वादी ने बताया कल्पना की है)..... तुमने रिकार्डिंग कर लई के नाई करी जा पहले बताओ।

पुरुष की आवाज (वादी मुकदमा ने अपनी बताया).... टोटल रिकार्डिंग है।

महिला की आवाज (वादी ने बताया कल्पना की है.).....इने राहुल ने राहुलवा हमाये पीछे पर गओ लल्ला जिन्दगी से इन्हे हमाई जिन्दगी बरबाद कर दई।

पुरुष की आवाज (वादी मुकदमा ने अपनी बताया..... तुम परेशान न हो।

महिला की आवाज (वादी ने बताया कल्पना की है).. .... लल्ला तुम तुम बस तुम अपाई जिन्दगी देखो इने हमाओ जीवो हराम कर दओ रोज लड़त है।

पुरुष की आवाज (वादी मुकदमा ने अपनी बताया.....तुम्हें मिली काय पहले जो बताओ।

महिला की आवाज (वादी ने बताया कल्पना की है.)..... हम नई कुछ बताय पड़हें बस हमने खाय लई अब तुम शान्ति रखो तुम बस यू राहुलवा और राहुलवा की दुल्हन ने हमें जीवो हराम कद दओ हमें एक पल नाय जियन दओ ये दोनो हमसे रोज लड़त हैं। यही टिके है जबसे हम आये कानपुर

पुरुष की आवाज (वादी मुकदमा ने अपनी बताया)..... का करो पहले यो बताओ।

महिला की आवाज (वादी ने बताया कल्पना की है).....ऐं ये हमसे इत्ता लड़ी कहत मारत रोड पर ले चलवे।

पुरुष की आवाज (वादी मुकदमा ने अपनी बताया). काय नहीं बताई। तुमने या बात हमरो पहले

महिला की आवाज (वादी ने बताया कल्पना की है).....तुम का करते का करते हम तुमाये द्वारे बैठकर अब नाय भोग पउतिन।

पुरुष की आवाज (वादी मुकदमा ने अपनी बताया).....हम जान से मार देते तुम हमें बतउती तो एक दायं।

महिला की आवाज (वादी ने बताया कल्पना की है.).....या हमाए पीछे पर गयी हमाए पीछे पर गयी हिन से हुन तक ये दोनों पीछे पर गये।

पुरुष की आवाज (वादी मुकदमा ने अपनी बताया). बताई ऐं। ..तुमने एकउ दाय बात नही

महिला की आवाज (वादी ने बताया कल्पना की है)... ..इसी पीछे नाय बताई कि का करे का है तो मरे का तो हई मर जइवे तो ठीक रही जिन्दा रहते

पुरुष की आवाज (वादी मुकदमा ने अपनी बताया). खाई सही बताओ। .. सही बताओ खाई की नही

महिला की आवाज (वादी ने बताया कल्पना की है). कसम से खा लई है।

पुरुष की आवाज (वादी मुकदमा ने अपनी बताया). .. कौन बाली खाई।

महिला की आवाज (वादी ने बताया कल्पना की है). .. सल्फास की।

पुरुष की आवाज (वादी मुकदमा ने अपनी बताया).....तुम झूठी न बोलो सही सही बताओ।

महिला की आवाज (वादी ने बताया कल्पना की है).....झूठी नई बोल रहे लल्ला कछु नई झूठी बोल रहे है।

पुरुष की आवाज (वादी मुकदमा ने अपनी बताया) ..तुम बोल कैसे रही सही बताओ झूठी बोल रही हो।

महिला की आवाज (वादी ने बताया कल्पना की है).... नाय झूठी बोल रही।

पुरुष की आवाज (वादी मुकदमा ने अपनी बताया). .. मम्मी मर जइहे समझ लेओ।

महिला की आवाज (वादी ने बताया कल्पना की है)..... तो ठीक है मर जान दो उनहू को मरे का है जान जाती जोन जोन हमाये, संगे इनने सबरनने करो है तो जिन्दा मर जाती लल्ला।

पुरुष की आवाज (वादी मुकदमा ने अपनी बताया).. तुमने एकउ दाय हमें बतायी काय नड्या ये बातें।

महिला की आवाज (वादी ने बताया कल्पना की है)..... काहे दयू बहने और तो है तुनाई हमई अकेलन है का।

पुरुष की आवाज (वादी मुकदमा ने अपनी बताया)..... जिन्दगी नरक कर दई और कुछ नही करो हमाई सबकी कई लोगों की आवाजे आ रही है।

पुरुष की आवाज (वादी मुकदमा ने अपनी जीजा की बताई). खाओ है। हैलो हैलो ये का

पुरुष की आवाज (वादी मुकदमा ने अपनी बताया)..... जीजा यो बताओ का खाओ है क्या कुछ सही बताओ।

पुरुष की आवाज (वादी मुकदमा ने अपने जीजा की बताई) ... हमें नहीं मालूम।

पुरुष की आवाज (वादी मुकदमा ने अपनी बताया).. ..ये कह रही है जहर खा लओ है अब बताओ का करो जाऐ ये राहुल का चाहत है जो बताओ।

पुरुष की आवाज (वादी मुकदमा ने अपने जीजा की बताई). ड्रामा करें है यो महिला की आवाज आ रही है कह रही है कि लल्ला फालतू ड्रामा नई है कौनऊ कमी हत्ती तुमने कुछ न बताई तुमने हमाओ।"

7. Such details of recording falsify the entire allegation regarding demand of dowry, and the motive behind the death appears to be different from motive assigned in FIR as well as earlier statement of informant. In his additional statement, the informant could not reproduce the version as stated in his affidavit, which itself goes against the prosecution story. Apart from this, the statement of owner of the house in which the deceased was residing along with her husband and two other co-accused is also material. According to the statement of Shashi Kant Tiwari, the owner of the house, occurring at page 63 of paper book, there was continuous quarrel between deceased and her husband and two other co-accused namely Rahul and his wife Sonam. The present revisionists were not residing in that house, they used to visit on a few occasions. As per the said statement, the reason for the quarrels between the parties was not on account of demand of dowry but it was on instance of living of two co-accused Rahul and Sonam in the same rented house.

8. In view of above conspectus, it is crystal clear that the death of deceased was unnatural and had occurred within seven years of marriage and she was subject to harassment soon before her death. However the essential ingredient relating to demand of dowry is lacking. Therefore, the presumption under section 113-B of Indian Evidence Act, 1872 is not attracted, and no person can charged merely on the basis of imagination.

9. The Court, while exercising it's power contained in section 227 Cr.P.C. (Corresponding section 250 of BNSS) must consider entire material & statements recorded in case diary in true and right perspective and reach at the conclusion about accomplicity of accused person. The statement

of witnesses based on hearsay must be discarded. The statement of witnesses having corroboration from other material must be given higher weightage than mere statement having no corroborative material. And the Court should proceed further on the basis of statement with corroborative materials disregarding statements having no supportive material.

10. In view of above, in my opinion that the trial court failed to appreciate the evidence available on record in its proper perspective. Consequently, the impugned order has been passed with material irregularities and illegalities and is, therefore liable to be set aside.

11. Accordingly the present criminal revision is **allowed**. The impugned order dated order dated 06.01.2026 passed by learned Sessions Judge, Kanpur Nagar is hereby set aside. The trial court is directed to pass a fresh order in the light of the observations made by this Court and in accordance with law. The parties are directed to appear before the trial court.

(2026) 5 ILRA 2569
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 22.05.2026

BEFORE

THE HON'BLE PRAVEEN KUMAR GIRI, J.

Criminal Revision No. 659 of 2026

Smt Archana & Anr. **...Revisionist**
Versus
State of U.P. & Anr. **...Opposite Parties**

Issue(s) for Consideration

(a) Whether interim maintenance of Rs. 1,000/- per month granted solely to the wife, with nothing awarded to the minor child, under Section 125 Cr.P.C. is sustainable in the exercise of revisional jurisdiction under Section 397 Cr.P.C.?

(b) Whether, and in what manner, the employer of a husband can be directed to deduct maintenance from his salary and remit it directly to the wife's bank account?

Headnotes

A. Code of Criminal Procedure, 1973 — S. 125, S. 397 — Interim maintenance — Adequacy — Revisional scrutiny.

HELD: Interim maintenance of Rs. 1,000/- per month granted to the wife alone, with no amount awarded for the minor child, held too meagre, unjustifiable and insufficient having regard to the expenses of contesting the case, basic subsistence, residence and medical treatment. Section 397 Cr.P.C. empowers the High Court to call for and examine records of an inferior criminal court to verify the legality, correctness and propriety of such an order.

B. Code of Criminal Procedure, 1973 — S. 125 — Quantum of maintenance — One-fourth rule.

HELD: Following Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy, AIR 2017 SC 2383, 1/4th of the gross salary/income of the husband is to be granted to the wife as maintenance.

C. Code of Criminal Procedure, 1973 — S. 125 — Deduction of maintenance directly from salary — Direction to employer.

HELD: Following the direction of the Hon'ble Supreme Court in Dimple v. Nishant Pravinbhai Soni (Transfer Petition (Civil) No. 3147/2024, decided on 27.02.2026), the employer (District Basic Education Officer) directed to deduct 1/4th of the gross salary of the husband and remit the same by way of credit to the bank account of the wife.

Revision disposed of with a direction to the Principal Judge, Family Court, Kanpur Dehat, to pass an order directing the District Basic Education Officer, Kanpur Dehat, to deduct 1/4th of the gross salary of the opposite party no. 2 and credit the same to the bank account of revisionist no. 1, and to decide the pending application under Section 125 Cr.P.C. preferably within six months, determining appropriate maintenance for the wife and minor son in accordance with Rajnesh v. Neha. (E-14)

Case Law Cited

Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy, AIR 2017 SC 2383 --- followed; Rajnesh v. Neha and another, (2021) 2 SCC 324 --- followed; Dimple v. Nishant Pravinbhai Soni, Transfer Petition (Civil) No. 3147/2024, decided on 27.02.2026 --- followed.

List of Acts / Statutes

Code of Criminal Procedure, 1973 (Ss. 125, 397).

List of Keywords

Interim maintenance; Section 125 Cr.P.C.; quantum of maintenance; deduction from salary; minor child; revisional jurisdiction.

Case Arising From

Order dated 07.02.2025 passed by the Additional Principal Judge, Family Court, District Kanpur Dehat, in Case No. 97 of 2024 (Archana and another v. Amardeep), under Section 125 Cr.P.C.

Appearance for Parties

For Revisionist(s): Uttam Singh

For Opposite Party(s): Bhavesh Singh Jadaun, G.A., Satya Dheer Singh Jadaun

(Delivered by Hon’ble Praveen Kumar Giri, J.)

1. Heard Sri Uttam Singh, learned counsel for the revisionist, Sri Bhavesh Singh Jadaun, learned counsel for O.P. No.2 and Sri Pankaj Kumar, learned A.G.A. for the State.

2. Learned counsel for the revisionist submits that the instant criminal revision has been preferred with the relief which has been mentioned in the prayer clause. The relief mentioned in the prayer clause of the revision is delineated below:-

"The relief sought by the present Criminal Revision is that this Hon'ble Court may be pleased to set aside the interim maintenance Order dated 07.02.2025 passed by the Additional Principal Judge, Family Court, District Kanpur Dehat in Case No.97 of 2024 (Archana and another Vs. Amardeep) under Section 125 Cr.P.C. by which Ld. Principal Judge Family Court Kanpur Dehat has granted the interim maintenance Rs.1000/- per month to the only revisionist no.1 and nothing has been granted to the Minor Child Revisionist No.2 so enhance the interim maintenance in favor of the Revisionist No.1 Rs.15000/- in place of the Rs.1000/- per month and also grant the interim maintenance to the minor child revisionist no.2 Rs.5000/- per month from the date of the application during the pendency of the Application Under Section 125 Cr.P.C. or may further pass such other and further orders as this Hon'ble Court may deem fit in the facts and circumstances of the present case, in the interest of justice."

3. Learned counsel for the revisionist submits that O.P. No.2/husband is working as an Assistant Teacher in a government school and getting salary about Rs.1 lakh. He further submits that as per law laid down by the Hon'ble Supreme Court in the case of **Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy, AIR 2017 SC 2383**, 1/4th of the income of the husband has to be granted to the wife as maintenance amount but vide impugned order dated 07.02.2025 only Rs.1000/- as interim maintenance amount has been granted to the wife/revisionist no.1 whereas no amount of interim maintenance for minor son/revisionist no.2 has been granted. He further submits that as per the provisions of Section 125(2) Cr.P.C., amount of maintenance or interim maintenance may be granted by passing order on the application under Section 125 Cr.P.C. either from the date of application or from the date of order. The relevant provision of Section 125(2) is being delineated below :-

"125(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be."

4. Learned counsel for the revisionist further submits that as per paragraphs 89, 91 and 93 of the judgment passed by Hon'ble Supreme Court in the matter of **Rajnesh vs. Neha and another, (2021) 2 Supreme Court Cases 324**, the amount of maintenance shall be granted from the date of application. Paragraphs 89, 91 and 93 of **Rajnesh's case (supra)** are being delineated below :-

"89 . Even though a judicial discretion is conferred upon the Court to grant maintenance either from the date of application or from the date of the order in Section 125(2) Code of Criminal Procedure, it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 Code of Criminal Procedure In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application.

91. The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependant spouse hampers their capacity to be effectively represented before the Court. In order to prevent a

dependant from being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the concerned Court.

93. It has therefore become necessary to issue directions to bring about uniformity and consistency in the Orders passed by all Courts, by directing that maintenance be awarded from the date on which the application was made before the concerned Court. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant."

5. Learned counsel for O.P. No.2 did not dispute that O.P. No.2 works as a teacher in a government school, but he denied that O.P. No.2 is getting Rs.1 lakh salary as O.P. No.2 has not provided his salary slip, so the amount could not be ascertained as to whether he is getting Rs. 1 lakh salary or not. He further submits that the revisional court can only examine legality, propriety or jurisdictional correctness.

6. Having gone through the submissions advanced by learned counsel for the parties and also considering the law laid down by Hon'ble Supreme Court on this aspect, this Court finds that the amount of Rs.1000/- granted as interim maintenance is too meagre, unjustifiable and not sufficient for contesting the case, bread and butter, rent of residence, medical expenses (as revisionist no.1/wife is suffering from neurological problem/Bells's palsy) and other expenses etc. Moreover, Section 397 of the Cr.P.C. grants the High Court and Sessions Judges the power to call for and examine the records of any inferior criminal court. It is a vital legal mechanism used to verify the legality, correctness, and propriety of judicial orders or proceedings.

7. This Court also directs to the District Basic Education Officer, Kanpur Dehat to deduct the 1/4th gross salary of the opposite party No.2 to be paid in the bank account of the revisionist, relying upon the judgment of the Hon'ble Supreme Court in the case of **Dimple vs. Nishant Pravinbhai Soni (Transfer Petition (Civil) No.3147/2024 decided on 27.02.2026)** as the Hon'ble Supreme Court has directed the employer to deduct the amount of maintenance from the salary of the husband and the same should be transferred in the bank account of the wife. The relevant paragraphs are delineated herein below:

"We inquired with the husband whether he is ready and willing to deposit an amount of Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand only) inclusive of Rs.1,38,000/- (Rupees One Lakh Thirty Eight Thousand only) towards arrears of interim maintenance. However, husband has outright declined to pay anything for the maintenance to his wife and minor daughter.

7. In such circumstances, ***we are left with no other option but to direct the employer of the respondent-husband, namely, Rishad Shipping and Clearing Agency Pvt. Ltd., referred to above, that an amount of Rs.25,000/- (Rupees Twenty Five Thousand only) shall be deducted per month from the salary of Nishant Praveenbhai Soni and the said amount shall be transferred by RTGS to the account of his wife, namely, Dimpal Soni.***

(Emphasis supplied)"

8. Accordingly, in the interest of justice and also in the light of law laid down by Hon'ble Supreme Court in the case of **Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy,**

AIR 2017 SC 2383, the 1/4th gross salary/income of the husband has to be granted to the wife as maintenance amount and as per the judgment of the Hon'ble Supreme Court in **Dimple** (supra), this Court directs the Principal Judge, Family Court, Kanpur Dehat to pass an order directing the Basic Education Officer, Kanpur Dehat to deduct 1/4th of the gross salary of O.P. no.2 and get credited the said amount in the bank account of revisionist no.1 namely, Smt. Archana as provided, as expeditiously as possible and decide the pending application filed under Section 125 Cr.P.C. preferably within a period of six months after providing opportunity of hearing and without granting unnecessary adjournment to either party and also determine appropriate maintenance in respect of revisionist (wife) as well as minor son in accordance with law laid down by the Hon'ble Supreme Court in the judgment of **Rajnesh** (supra).

9. With the aforesaid directions, the instant revision stands **disposed of**.

(2026) 5 ILRA 2573
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 15.05.2026

BEFORE

THE HON'BLE LAKSHMI KANT SHUKLA, J.

Criminal Revision No. 2404 of 2025

Ajay Kumar **...Revisionist**
Versus
State of U.P. & Anr. **...Opposite Parties**

Issue(s) for Consideration

(a) Whether a trial court can accept documentary evidence produced by way of an application, after closure of prosecution and defence evidence and recording of the accused's statement under Section 313 Cr.P.C., in the absence of an express procedure under the Code of Criminal Procedure enabling a party to move such an application?

(b) What is the scope of the Court's power under Section 91 Cr.P.C. to summon documents at any stage of an inquiry, trial or other proceeding, and can such power be invoked on an application moved by a party?

Headnotes

A. Code of Criminal Procedure, 1973 — S. 91 — Summons to produce document — Power of Court — Stage of proceedings.

HELD: Section 91 Cr.P.C. empowers the Court to summon the production of any document or other thing at any stage of inquiry, trial or other proceeding, provided the Court considers such production necessary or desirable for the purposes of such proceeding. The language used regarding the power of the Court in Sections 311 and 91 Cr.P.C. is similar; just as an application under Section 311 Cr.P.C. may be moved by either party for the Court's consideration, an application invoking Section 91 Cr.P.C. may likewise be moved by either party, though the Court must independently satisfy itself that the prayer is necessary for the just decision of the case. (Paras 12, 13, 17)

B. Code of Criminal Procedure, 1973 — S. 91 — Acceptance of documents after closure of evidence — Requirement of reasons.

HELD: Where the Trial Court, after recording reasons, accepts an application along with documents filed after the closure of evidence, and exercises its jurisdiction in accordance with law, no jurisdictional error, illegality or material irregularity arises warranting interference in revision. (Para 18)

C. Code of Criminal Procedure, 1973 — S. 311 — Principles governing exercise of discretion — Bearing on power under S. 91.

HELD: The principles governing exercise of the wide discretionary power under Section 311 Cr.P.C. — that the power must be exercised judiciously, not to fill a lacuna, and only where the evidence sought is essential to a just decision of the case — inform the exercise of the Court's power under Section 91 Cr.P.C. to summon documents at any stage, without restricting it. (Paras 6-9, 13-15)

Criminal Revision found devoid of merit and dismissed; order dated 10.03.2025 passed by the Special Judge (D.A.A.), Firozabad, upheld. (E-14)

Case Law Cited

Rajesh Kumar Singh and others v. Lokpal of India, W.P. (C) No. 1264 of 2025, Delhi High Court, decided on 28.11.2025 --- referred to; Mujahat Ali Khan v. Lokpal of India, 2025:DHC:9986-DB --- referred to; Taylor v. Taylor, (1876) 1 Ch D 426 --- referred to; Nazir Ahmad v. Emperor, AIR 1936 PC 253 --- referred to; Dhananjaya Reddy v. State of Karnataka --- referred to; Singhara Singh case, AIR 1964 SC 358 --- referred to; Premanshu v. State of U.P. and another, Application U/S 482 No. 30740 of 2024, decided on 02.01.2025 --- referred to; Neha Begum & Ors. v. The State of Assam & Anr., Petition for Special Leave to Appeal (Crl.) No. 3910 of 2024, decided on 02.09.2024 --- followed; Rajaram Prasad Yadav v. State of Bihar and Anr., (2013) 4 SCC 461 --- referred to.

List of Acts / Statutes

Code of Criminal Procedure, 1973 (Ss. 91, 311, 313); Lokpal and Lokayuktas Act, 2013 (S. 20).

List of Keywords

Documentary evidence; closure of evidence; Section 91 Cr.P.C.; Section 311 Cr.P.C.; summoning of documents; revisional jurisdiction.

Case Arising From

Order dated 10.03.2025 passed by the Special Judge (D.A.A.), Firozabad, in Special Session Case No. 136 of 2009, State v. Ajay and others.

Appearance for Parties

For Revisionist(s): Satyaveer Singh, Yawar Mukhtar

For Opposite Party(s): Santosh Kumar Shukla, G.A.

(Delivered by Hon'ble Lakshmi Kant Shukla, J.)

1. Heard Mr. Mukhtar Alam, learned Senior Advocate assisted by Mr. Yawar Mukhtar, learned counsel for the revisionist, Mr. Satendra Tiwari, learned A.G.A. representing the State opposite party no. 1 and Mr. Santosh Kumar Shukla, learned counsel for opposite party no. 2.

2. Perused the record.

3. Revisionist Ajay Kumar has approached this Court by means of the present Criminal Revision challenging the impugned order dated 10.03.2025 passed by the Special Judge (D.A.A.), Firozabad (hereinafter referred to as "the Trial Court") in Special Session Case No. 136 of 2009, State v. Ajay and others, whereby the applications along with other documents filed by the informant/opposite party no. 2 has been accepted.

4. Feeling aggrieved by the aforesaid order, the present criminal revision has been filed on the ground that the impugned order is illegal, arbitrary and beyond the jurisdiction of the Trial Court. Learned counsel for the revisionist submits that there is no provision in the Code of Criminal Procedure enabling the Court to accept documentary evidence after closure of evidence, particularly when no reason has been assigned by the Trial Court.

5. Elaborating his submission, it is urged that in the concerned matter the evidence of prosecution was over, statement under Section 313 Cr.P.C. of accused persons had already been recorded and even statement of D.W.-1 had also been recorded and the case was fixed for final argument but in the mean time, the application 59 Ba along with few papers through list 60 Ba, an application 55 Ba along with list 56 Ba was presented before the Court without any provision and the same was accepted.

6. To buttress his submission, learned counsel for the revisionist relied upon the judgement of Delhi High Court in **Rajesh Kumar Singh and others v. Lokpal of India in W.P. (C) No. 1264 of 2025, dated 28.11.2025**, where the Delhi High Court relying on its judgement in **Mujahat Ali Khan v. Lokpal of India, 2025:DHC:9986-DB**, in paragraph 23 held as under:

" 23. We are of the considered view that the protections embedded in the Lokpal Act occupy a central and indispensable position, and the statute must be implemented strictly in the manner mandated by Parliament. This principle stands unequivocally affirmed not only by binding judicial precedents but also by the very framework and legislative scheme of the Lokpal Act. The importance of these statutory safeguards, which have a direct bearing on the issues arising in the present case, is clearly examined in the judgement of this Court in ***Mujahat Ali Khan v. Lokpal of India, 2025:DHC:9986-DB****. The relevant excerpts of the said Judgement are reproduced herein below for ready reference:*

"37. The statutory framework of Section 20 leaves no room for doubt that the requirement of affording an opportunity of hearing at the pre-investigation stage as well as at the post-investigation stage is mandatory. Section 20(3) explicitly provides that the learned Lokpal "shall", after giving an opportunity of being heard to the concerned public servant, decide whether a prima facie case exists and thereafter proceed to direct an investigation.

38. The legislative intent in this regard is further evident from the structure of Section 20 itself. Even at the stage of Section 20(1), where the Lokpal decides to direct an investigation, as distinguished from ordering a preliminary inquiry under Section 20(1)(a), the third proviso thereof mandates that before such investigation is ordered, the Lokpal "shall" call for the explanation of the public servant so as to determine whether a prima facie case for investigation exists.

40. It is well-settled principle of law that when a statute prescribes that a particular act must be done in a particular manner, it must be done in that manner or not at all. This principle was first enunciated in Taylor v. Taylor. The said principle was subsequently affirmed by the Privy Council in Nazir Ahmad v. Emperor, and has since been consistently reiterated by the Hon'ble Supreme Court in numerous decisions, including Deewan Singh v. Rajendra Pd. Ardevi and M.P. Wakf Board v. Subhan Shah, thereby making it a well-established doctrine in Indian legal jurisprudence. The Hon'ble Supreme Court, in Dhananjaya Reddy v. State of Karnataka, observed on this doctrine in the following terms:

"26. Relying upon Nazir Ahmad case [AIR 1936 PC 253 (2)] and applying the principles laid down in Taylor v. Taylor [(1876) 1 Ch D 426] this Court in Singhara Singh case [AIR 1964 SC 358] held: (AIR p.361, para 8)

"8. The rule adopted in Taylor v. Taylor [(1876) 1 Ch D 426] is well recognized and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of Section 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. The section, therefore, by conferring on Magistrates the power to record statements or confessions, by necessary implication, prohibited a Magistrate form giving oral evidence of the statements or confessions made to him."

(emphasis supplied)

7. Learned counsel for the revisionist further placed reliance upon the judgement of this Court in **Application U/S 482 No. 30740 of 2024, Premanshu v. State of U.P. and another, dated 02.01.2025.** Paragraph no. 9 of **Premanshu** (supra) is reproduced hereinbelow:

"9. The scope and object of the provision is to enable the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 of Cr.P.C. must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as 'any Court', 'at any stage', or 'or any enquiry,

trial or other proceedings', 'any person' and 'any such person' clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the Court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case."

8. Reliance has also been placed upon the judgement of the Supreme Court in **Neha Begum & Ors. v. The State of Assam & Anr., passed in Petition for Special Leave to Appeal (Crl.) No. 3910 of 2024, dated 02.09.2024**. The Supreme Court in paragraph 7 of **Neha Begum** (supra) has held as under:

*"7. Thus, first part of section gives a discretionary power to the Court to summon any person as a witness or to recall or re-examine the person already examined. Such a course of action is only permissible if the Court is satisfied that the prayer to recall and re-examine the witness is not made to fill in the lacuna and that the non-summoning of the witnesses would cause a serious prejudice to the accused. In this regard, we are benefitted by the judgment of **Rajaram Prasad Yadav vs State of Bihar and Anr. (2013) 4 SCC 461** wherein this Court culled out the principles to be borne in mind while exercising the power under Section 311 CrPC. The relevant extract is reproduced hereinbelow: -*

"17. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 CrPC read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the courts:

"17.1. Whether the court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the court for a just decision of a case?

17.2. The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment should not be rendered on inchoate, Inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.

17.3. If evidence of any witness appears to the court to be essential to the just decision of the case, it is the power of the court to summon and examine or recall and re-examine any such person.

17.4. The exercise of power under Section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

17.5. The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

17.6. The wide discretionary power should be exercised judiciously and not arbitrarily.

17.7. The court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

17.8. The object of Section 311 CrPC simultaneously imposes a duty on the court to determine the truth and to render a just decision.

17.9. The court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

17.10. Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified.

17.11. The court should be conscious of the position that after all the trial is basically for the prisoners and the court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

17.12. The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

17.13. The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

17.14. The power under Section 311 CrPC must therefore, be Invoked by the court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.""

9. It is further submitted by the learned counsel for the revisionist that the language used in Section 91 Cr.P.C. enables the Court to summon certain documents at any stage but does not enable either party to move application and produce document.

10. In view of above, it is thus urged that the impugned order is liable to be set aside by this Court invoking its revisional jurisdiction.

11. Per contra, learned A.G.A. as well as learned counsel for opposite party no. 2 have vehemently opposed the revision. Learned counsel for opposite party no. 2 has drawn the attention of the Court towards Section 311 Cr.P.C., however, the Court is not inclined to accept the said submission because the said provision primarily relates to summoning, recalling or re-examination of any person as a witness. It does not, in terms, deal with summoning or production of any document or other thing, if the Court considers such production necessary or desirable for the purposes of inquiry, trial or other proceeding. Section 91 Cr.P.C. empowers the Court for that which is reproduced hereinbelow:

"Section 91. Summons to produce document or other thing.

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed—

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority."

12. The words regarding power of Court used in Sections 311 and 91 Cr.P.C. are same. Section 311 Cr.P.C. reads as under:

*"**Section 311**- Power to summon material witness, or examine person present.*

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

13. The language employed in Section 311 Cr.P.C. is wide, empowering the Court at any stage of any inquiry, trial or other proceeding to summon any person as a witness or to recall and re-examine any person already examined, if his evidence appears to be essential to the just decision of the case. Similarly, Section 91 Cr.P.C. empowers the Court to issue summons for production of any document or other thing, if the Court considers such production is necessary or desirable for the purposes of inquiry, trial or other proceeding.

14. The finding in **Raja Ram Yadav** (supra) which has been followed in **Neha Begum** (supra), lays down the principles to be kept in mind while exercising power under Section 311 Cr.P.C. Paragraph 7 of **Neha Begum** (supra) does not preclude the Court from entertaining an application moved by either party. Paragraph 8 of **Neha Begum** (supra) is also material and may guide the Court in the present matter. Paragraph 8 of **Neha Begum** (supra) reads as follows:

"8. On a perusal of the subject application filed by the petitioner in the Trial Court by invoking the provisions under Section 231 (2) read with Section 311 Cr.P.C., we find that other than a vague aspersions that the earstwhile lawyer engaged by the petitioners did not conduct proper cross-examination of the witnesses, no such specific ground was alluded on behalf of the accused petitioners which could be considered to be a valid ground to be the Trial Court to invoke the power under Section 311 Cr.P.C."

15. The Hon'ble Supreme Court in **Neha Begum** (*supra*) has held that the Court should not pass an order for summoning a witness for re-examination or further cross examination on an application filed on vague grounds and set aside the order of the Trial Court. It is remarkable that the said order was not set aside

merely because the order was passed on the basis of the application moved but on the ground that the application was filed on vague grounds. The inference which emerges from the finding of the Hon'ble Supreme Court is that an application may be moved by either party, but the Court must independently satisfy itself that the prayer is necessary for the just decision of the case.

16. In view of the above conspectus, it is thus contended by the learned A.G.A. as well as learned counsel appearing on behalf of opposite party no. 2 that the submissions urged by the learned counsel for the revisionist is not sustainable in law and, therefore, the revision is liable to be dismissed.

17. Having heard the rival submissions advanced by learned counsel for the parties and upon perusal of the material available on record, particularly, considering the law laid down by the Supreme Court, this Court is of the view that Section 91 Cr.P.C. enables the Court to summon the production of any document or other thing at any stage of inquiry, trial or other proceeding, provided the Court considers such production necessary or desirable for the purpose of such proceeding. The Supreme Court in **Neha Begum** (*supra*) has impliedly held that an application in this regard may be moved by either party, however, the Court must independently satisfy itself that the prayer so made, is necessary for the just decision of the case.

18. In the case at hand, the Trial Court, after recording reasons for accepting the application 59 Ba along with certain papers filed through list 60 Ba as well as the application 55 Ba along with list 56 Ba, has exercised its jurisdiction in accordance with law and has rightly passed the impugned order. No jurisdictional error, illegality or material irregularity is reflected in the impugned order warranting interference by this Court in exercise of its revisional jurisdiction. In the result, the present revision lacks merit and is, therefore, liable to be dismissed.

19. Accordingly, the present revision is **dismissed**.

20. The Court places on record its appreciation for the hard work put in by Ms. Gargee Misra, Research Associate, whose research inputs proved helpful in the effective disposal of the present matter.

(2026) 5 ILRA 2580
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 21.05.2026

BEFORE

THE HON'BLE JAI KRISHNA UPADHYAY, J.

Criminal Revision No. 2526 of 2026

Krishna Mohan Shukla **...Revisionist**
Versus
State of U.P. & Anr. **...Opposite Parties**

Issue(s) for Consideration

(a) What is the scope of judicial scrutiny at the stage of considering a discharge application, where the prosecution relies on ocular and medical evidence establishing a grievous head injury caused with a sharp-edged weapon?

(b) Whether the existence of "grave suspicion", as distinguished from mere suspicion, against the accused is sufficient ground to reject a discharge application and proceed to frame charge?

Headnotes

A. Code of Criminal Procedure, 1973 — S. 227 — Discharge — Scope of scrutiny — Grave suspicion.

HELD: The Judge, while considering the framing of charge, has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether a prima facie case is made out, and is not a mere post office to frame charge at the behest of the prosecution. Where the material discloses grave suspicion against the accused which has not been properly explained, the Court is fully justified in framing the charge and proceeding with trial; where the evidence gives rise to mere suspicion, and not grave suspicion, discharge is warranted. (Paras 7-8)

B. Code of Criminal Procedure, 1973 — S. 227 — Standard of proof at the stage of discharge.

HELD: At the stage of framing of charge only a prima facie case is to be seen, and not whether the case is established beyond reasonable doubt; strict standard of proof is not required. The Court/Magistrate is not required to analyse the evidence on merits or to determine sufficiency for conviction, but only to scrutinise whether sufficient grounds exist to initiate criminal proceedings. (Paras 9-10)

C. Bharatiya Nyaya Sanhita, 2023 — Ss. 109, 115(2), 351(3), 352, 324(2) — Attack with sharp-edged weapon — Prima facie case.

HELD: Where the F.I.R. names the accused, witnesses including the informant corroborate the allegations, and medical/C.T. Scan evidence establishes a fracture of the frontal bone and intracranial haemorrhage consistent with the alleged attack, a prima facie case for the offences charged is made out, and rejection of the discharge application does not warrant interference in revision. (Para 11)

Criminal Revision found devoid of merit and dismissed. (E-14)

Case Law Cited

P. Vijayan v. State of Kerala, (2010) 2 SCC 398 --- followed; Dilawar Balu Kurane v. The State of Maharashtra, (2002) 2 SCC 135 --- followed; Bhawna Bai v. Ghanshyam, (2020) 2 SCC 217 --- followed; R.P. Kapur v. State of Punjab, AIR 1960 SC 866 --- referred to; State of Haryana v. Bhajan Lal, 1992 SCC (Cr.) 426 --- referred to; State of Bihar v. P.P. Sharma, 1992 SCC (Cr.) 192 --- referred to; Zandu Pharmaceutical Works Ltd. v. Mohd. Saraful Haq and another, 2005 SCC (Cr.) 283 --- referred to.

List of Acts / Statutes

Bharatiya Nyaya Sanhita, 2023 (Ss. 109, 115(2), 352, 351(3), 324(2)); Bharatiya Nagarik Suraksha Sanhita, 2023 (S. 180); Code of Criminal Procedure, 1973 (S. 227).

List of Keywords

Discharge; framing of charge; prima facie case; grave suspicion; attempt to murder; medical evidence.

Case Arising From

Order dated 03.04.2025 passed by the Sessions Judge, Gorakhpur, in Sessions Case No. 1852 of 2025, arising out of Case Crime No. 80 of 2025, under Sections 109, 115(2), 352, 351(3), 324(2) of the Bharatiya Nyaya Sanhita, Police Station Hapur Budahat, District Gorakhpur.

Appearance for Parties

For Revisionist(s): Devendra Kumar Tiwari

For Opposite Party(s): G.A.

(Delivered by Hon'ble Jai Krishna Upadhyay, J.)

1. This criminal revision has been preferred by the revisionist - **Krishna Mohan Shukla** with the prayer to set-aside the impugned order dated 3.4.2025 passed by the Sessions Judge, Gorakhpur whereby discharge application moved by the revisionist has been rejected in Sessions Case No. 1852 of 2025, arising out of case crime no. 80 of 2025, under Sections 109, 115(2), 352, 351(3), 324(2) of BNS, P.S. Hapur Budahat, District Gorakhpur.

2. Heard Shri Devendra Kumar Tiwari, learned counsel for the revisionist as well as the learned A.G.A. for the State and perused the entire record.

3. Admit.

4. It is submitted by the learned counsel for the revisionist that revisionist is innocent and has been falsely implicated in this case. The police has also submitted charge sheet on the basis of insufficient evidence against the revisionist. Essential ingredients to constitute the alleged offences are lacking. The present prosecution has been instituted with a malafide intention. Learned counsel for the revisionist impressed upon certain documents and statements in support of his contention. The revisionist has no concern with the present matter. It is further submitted that the medical evidence nowhere corroborates the prosecution story in this case. The revisionist has played no role in commission of the alleged crime. Offence under Section 109 of BNS is not made out against the revisionist. It is also submitted that the discharge application moved on behalf of the revisionist was rejected in an arbitrary manner. The impugned order suffers from infirmity, illegality and lack of judicial mind warranting interference by this Court.

5. Per contra, the learned AGA opposed the prayer and submitted that at the stage of considering the discharge application, the Magistrate / Court dealing with the matter is required to apply judicial mind only with a view to find-out as to whether prima-facie case has been made out against the accused or not. The Court concerned after applying its judicial mind has passed the impugned order on the basis of sufficient evidence on record. C.T. Scan report of the injured Alok, revealed a lacerated wound in the right frontal region of the brain accompanied by a hemorrhagic contusion and there was intracranial hemorrhage in the right occipital area, and a bone examination detected a fracture of the frontal bone in the right anterior region. There is no infirmity or illegality in the impugned order warranting interference by this Court. Hence, the revision having no force is liable to be dismissed.

6. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned order.

7. The parameters for discharge and framing of charge are well settled by a catena of judicial precedents. The Hon'ble Supreme Court in the case of **P. Vijayan vs. State of Kerala, (2010) 2 SCC 398** held that the Judge is not a mere post office to frame charge at the behest of the prosecution but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts.

8. In the case of **Dilawar Balu Kurane vs. The State of Maharashtra, (2002) 2 SCC 135**, the Hon'ble Apex Court observed that in exercising powers under Section 227 of the Criminal Procedure Code, 1973, the settled position of law is that the Judge while considering the question of framing the charge under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out and whether the materials placed before the Court discloses grave suspicion against the accused which has not been properly explained to the Court, then in such a case the Court will be fully justified in framing the charge and proceed with the trial. On the other hand, if the Judge is satisfied that the evidence produced before the Court gives rise to some suspicion but not grave suspicion then the Judge will be fully justified in discharging the accused.

9. In **Bhawna Bai vs. Ghanshyam, (2020) 2 SCC 217**, it has been observed by the Hon'ble Supreme Court that at the time of framing the charge, only prima facie case is to be seen. Whether case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing the charge, the Court has to see as to whether there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required, and only prima facie case against the accused is to be seen.

10. It is trite law that at the stage of discharge of the accused, the Magistrate / Court dealing with the matter is required to apply judicial mind only with a view to find-out as to whether prima-facie case has been made out against the accused or not. The Court at this stage is not required to analyze the material on record to find-out as to whether the matter may lead to conviction or not. Sufficiency of materials for the purpose of conviction is not required. The Court / Magistrate is not required to analyze the evidence on merits but to scrutinize the evidence only with a view as to whether sufficient grounds exist to initiate criminal proceedings in respect of the offence which is said to have been committed (Vide : **R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192 and Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, 2005 SCC (Cr.) 283).**

11. So far as the case in hand is concerned, the prosecution claims that the accused revisionist on April 20, 2025, at 2:00 PM, near the pond located in Jhakhahi, hurled abuses to the elder brother of the informant due to old grudge and attacked him with a sharp-edged weapon with an intention

to kill him, as a result the brother of the informant sustained severe head injuries and lost consciousness. Revisionist was named in the F.I.R. The witnesses of this case including the informant have affirmed this fact when they were interrogated by the I.O. under Section 180 of BNSS. Medical evidence also corroborates the prosecution case. In the C.T. Scan report fracture of the frontal bone in the right anterior region was found. Further, sufficient and ample evidence had been collected by the I.O. against the revisionist during investigation for his active participation in the commission of the crime which prima facie shows that the offence has been committed by the revisionist. Hence, all the offences for which discharge application of the revisionist was rejected are prima facie made out on the basis of evidence collected by the Investigating Officer. From a perusal of the material available on record and keeping in view the facts of the case and the settled law on the point, at this stage it cannot be said that offences levelled against the revisionist are not made out and the record shows that a cognizable offence is clearly made out against the revisionist. The Court concerned did not err in rejecting the discharge application. There is no force in the submissions made by the learned counsel for the revisionist. The impugned order does not suffer from illegality, infirmity, perversity or lack of judicial mind. The prayer made in the revision is refused. The criminal revision being devoid of merits is liable to be dismissed and the same is accordingly **dismissed**.

(2026) 5 ILRA 2584
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 12.05.2026

BEFORE

THE HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

Criminal Revision No. 494 of 2026

Sandeep & Ors. **...Revisionists**
Versus
State of U.P. & Anr. **...Opposite Parties**

Issue(s) for Consideration

(a) Whether charges under Sections 498-A, 354, 307, 342, 323 and 326-A IPC were rightly framed against the accused-revisionists, despite the victim's subsequent statements before the treating doctor and under Section 164 Cr.P.C. exculpating them, and the absence of a corroborative finding of smell of an inflammable substance in the medical report?

(b) What is the scope of interference by a revisional court with an order framing charge, where the victim's statement to the first treating doctor is at variance with her subsequent statements under Sections 161 and 164 Cr.P.C.?

Headnotes

A. Code of Criminal Procedure, 1973 — Ss. 227, 228 — Framing of charge — Scope of judicial scrutiny.

HELD: While considering the framing of charge, the court has the power to sift and weigh the materials only for the limited purpose of determining whether a prima facie case is made out, and cannot act merely as a post office or mouthpiece of the prosecution. At that stage the court is not to conduct a roving inquiry into the pros and cons of the matter or weigh evidence as at trial; where the material discloses grave suspicion against the accused, not properly explained, the court is justified in framing the charge and proceeding with trial. (Paras 9-12)

B. Indian Penal Code, 1860 — Ss. 307, 326-A — Victim's contradictory statements — Effect on framing of charge.

HELD: Where the first doctor treating the victim recorded an exculpatory statement to the effect that the burn injury was accidental, but the victim subsequently, in her statements under Sections 161 and 164 Cr.P.C., alleged that an inflammable substance was poured on her by the accused persons, the authenticity of the version recorded by the first doctor and the victim's subsequent statements can only be tested on the basis of evidence adduced during trial, and not at the stage of deciding a discharge/framing-of-charge application. Absence of smell of petrol in the medico-legal report, by itself, held not decisive at this stage since the victim's own statements did not allege use of petrol but of "some flammable substance". (Paras 17-18, 21)

C. Indian Penal Code, 1860 — S. 326-A — Ingredients.

HELD (following Maqbool v. State of U.P. and another, AIR 2018 SC 5101): Section 326-A IPC penalises causing permanent or partial damage, deformity, burns, maiming, disfigurement, disability, or grievous hurt by acid or other means; it is not a requirement of the Section that the injury caused be invariably grievous. (Paras 18-20)

Criminal Revision found devoid of merit and dismissed. Court clarified that it expressed no opinion on the merits, the observations being purely prima facie and confined to deciding the legality/validity of the order framing charge; the trial court to take an appropriate decision on the nature of the offence at the conclusion of trial. (E-14)

Case Law Cited

Ghulam Hassan Beigh v. Mohammad Maqool Magrey and others, 2022 LawSuit (SC) 866 --- referred to; Umesh Kumar v. State of Andhra Pradesh, (2013) 10 SCC 591 --- followed; Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 --- followed; Sajjan Kumar v. CBI, (2010) 9 SCC 368 --- followed; Kammari Brahmiah and others v. Public Prosecutor, High Court of Andhra Pradesh, (1999) 2 SCC 522 --- referred to; Maqbool v. State of U.P. and another, AIR 2018 SC 5101 --- followed.

List of Acts / Statutes

Indian Penal Code, 1860 (Ss. 498-A, 354, 307, 342, 323, 326-A, 326-B); Code of Criminal Procedure, 1973 (Ss. 161, 164, 227, 228); Criminal Law (Amendment) Act, 2013.

List of Keywords

Framing of charge; discharge; prima facie case; dowry harassment; Section 326-A IPC; grave suspicion; revisional jurisdiction.

Case Arising From

Order dated 21.02.2026 passed by the Additional Sessions Judge, Court No. V, Sitapur, in S.T. No. 216 of 2026 (State v. Sandeep Soni and others), arising out of Case Crime No. 765 of 2023, under Sections 498-A, 354, 307, 342, 323, 326-A IPC, Police Station Hargaon, District Sitapur.

Appearance for Parties

For Revisionist(s): Vaibhav Gupta

For Opposite Party(s): G.A.

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

1. Heard learned counsel for the revisionists, learned A.G.A. for the State and perused the record.

2. Learned counsel for the revisionist has also filed written submissions.

3. By means of instant criminal revision, the revisionists have prayed to quash/set aside the order dated 21.02.2026 passed in S.T. No. 216 of 2026 (State vs. Sandeep Soni and Ors.) by the Learned Additional Sessions Judge Vth, Sitapur relating to Case Crime No. 765/23, U/s 498- A, 354, 307, 342, 323, 326-A of IPC, relating to P.S. Hargaon, District- Sitapur, so far as it relates to the present revisionists, as well as the entire criminal proceedings pending against the revisionists.

4. At the outset, learned A.G.A. submits that the charges have been framed against accused- revisionists by learned trial court vide order dated 21.02.2026 under Sections 498- A, 354, 307, 342, 323, 326-A IPC. The revision against framing of charges at the instance of accused-revisionists is not maintainable. As such the only course open for the revisionists is to face trial and put fourth their case at the appropriate stage after farming of charges, trial has commenced and the accused-revisionists will have opportunity to set out their defence. He also submits that after framing of charges, the same cannot be be deleted.

5. Per contra, learned counsel for the revisionists submits that the learned trial court has framed charges against the revisionists in cursory manner without looking into the oral evidence and the medical evidence collected during investigation.

6. Learned counsel for the revisionists next submitted that as per the statement of the victim subsequently made before the doctor, she is resiling from the recital made in the FIR lodged by her brother and it is also relevant fact that no smell of petrol etc. was found and that wife of revisionist no.1 got burnt accidentally on her own and there was no foul play . Subsequently, the victim in her statement under Section 164 Cr.P.C. has stated that the doctor forcefully made her to write that she herself poured hot water on her person. She has also stated in her statement under Section 164 Cr.P.C. that she is still residing at her parental place . She has made wrong statement under Section 164 Cr.P.C. that her father-in-law poured some substance on her back and Shiva had lit a matchstick due to which she sustained serious injuries. He also submitted that no case under sections 307 and 326-A IPC is made out on the basis of evidence collected during investigation.

7. Learned counsel for the revisionist further submitted that the revisionists has filed Criminal Misc. Writ Petition No.179 of 2024 (Sandeep and others Vs. State of U.P. and others) before this Court with the prayer to quash the FIR lodged in the case under the aforesaid sections wherein this Court considered the submissions made on behalf of the revisionists that all the family members have been roped in by the brother of the victim whereas, the victim has subsequently resiled from occurrence of any such incident. This Court directed that the petitioners shall not be

arrested in the said case unless there is sufficient and credible evidence available against the them indicating commission of criminal offence as alleged in the impugned FIR.

8. Learned counsel for the revisionists lastly submitted that revision is maintainable as such in the light of the judgment of Hon'ble Supreme Court in the case of **Ghulam Hassan Beigh Vs. Mohammad Maqool Magrey and others**, 2022 LawSuit (SC) 866 and the matter is liable to be remitted to learned trial court for considering the question of framing of charges a fresh only in the light of the evidence collected during investigation,submissions and the grounds taken in the present revision and set aside order of trial court whereby the accused was discharged from charge under Section 302 IPC and instead of charge under Section 304 of the IPC High Court's order affirming the order of the trial court was in turn also set aside.

9. Learned counsel for the revisionists submits that in ***Umesh Kumar v State of Andhra Pradesh,*** (2013) 10 SCC 591, it is held that while framing of charges, the Court has to evaluate as to whether on the basis of materials and documents on record, there is a prima facie case to proceed against the accused. At this stage, the Court is not required to appreciate whether the material produced is sufficient or not for convicting the accused.

10. He also submitted that in Union of India vs. Prafulla Kumar Samal, (1979) 3 SCC 4, the Hon'ble Supreme Court observed that while considering the question of framing a charge, the Court has the undoubted power to sift and weigh the materials for the limited purpose for finding out whether or not a prima-facie case against the accused has been made out. In exercising the power the Court cannot act merely as a post office or a mouthpiece of the prosecution. It was observed further that the test to determine a prima-facie case against the accused would naturally depend on the facts of each case and it is difficult to lay down the rule of universal application.

11. It was held that where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge and proceeding with the trial.

12. Learned counsel for the revisionists further submits that Hon'ble Supreme Court in ***Sajjan Kumar vs. CBI,*** (2010) 9 SCC 368, was pleased to lay down the following principles governing discharge and framing of charges:

"17 On consideration of the authorities about the scope of section 227 and 228 of CrPC, the following principles emerge:-

The Judge while considering the question of framing the charges under section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

At the stage of sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging there from taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

13. He also submitted that the Hon'ble Supreme Court in Kammari Brahmiah and others vs. Public Prosecutor, High Court of Andhra Pradesh, (1999) 2 SCC 522, considered section 464 CrPC and held that if there is failure of justice occasioned by not framing of the charge or in case an error, omission or irregularity in charge re-trial of the case is to be directed as provided under sub-section (2).

14. In the present case, the informant, Krishna Kant, is a brother of the victim. He has stated in the FIR, which was lodged on December 3, 2023, at 2:30 PM. that the marriage of his sister was solemnized with the accused, Sandeep, two years prior to the incident. When her husband was away from home, her brother-in-law (Jeth) used to enter her room and molest her. When his sister opposed this, her husband Sandeep and brother-in-laws Ranjit and Kuldeep, along with their parents and Shiva, made a plan to eliminate his sister. On December 28, 2023, they closed the door of the house and assaulted his sister with a knife. On the exhortation of Shiv Mangal, the father-in-law of the victim, the accused persons poured petrol on her and ignited a matchstick, due to which she was badly burned. When she tried to run away to save herself, her sisters-in-law, Shivani and Priyanka, badly assaulted her and closed the room. The informant rushed to the house when he got information of this incident. His sister was pregnant since 3-4 months. A Medico Legal Examination of the victim was conducted on December 28, 2023, at the

government hospital, in which the doctor recorded her signed statements: that while preparing tea, the flame got out of control, due to which she got burned. She had no complaint against her in-laws, and whatever happened, happened accidentally. She did not intend to get herself medically examined; however, a doctor of District Hospital, Sitapur, prepared her medico-legal examination report on December 28, 2023, at 10:40 AM, in which she stated that the victim was 23 years of age, and was diagnosed with burn injuries of about 35%. She was brought to the hospital by her father and brother. She was hospitalized on December 28, 2023, and discharged at 10 PM. The burn injuries were present on the neck, chest, and breast, partially extending to the left shoulder, back of the left shoulder, scapular region and the lateral surface of the left arm. No burned cloth was present. The patient was initially treated at home and then she was taken to CHC Hargaon.

15. The main grounds taken in the discharge application are that the doctor, who examined the victim at first hand at C.H.C. Hargaon has recorded her statement to the effect that she suffered burn injury accidentally while preparing the tea at her home and there was no foul play. Doctor Ravi Bhargav, who examined the victim at C.H.C. Hargaon stated that during treatment, the victim had given the above statement to him. He had recorded the statement of the victim in the Admission Register during treatment. Her body was not burned by any inflammable substance and there was no smell of any inflammable substance. The injuries were superficial, however, Dr. S. Bharadwaj, who treated the victim at Civil Hospital, Lucknow, between 29/12/2023 to 6/01/2024, has stated in his statement under Section 164 Cr.P.C. that the victim sustained burn injuries.

16. It is also the case of the accused persons that when the police reached the spot after the incident, the police had prepared a video clip of the victim's statement in which she has stated the similar thing and the said video clip is available at the police station concerned. The statement of the victim was recorded under Section 161 Cr.P.C. by the police in which she stated that on 18/12/2023, her husband, Sandeep, brothers Ranjeet, Kuldeep, his parents, younger brother, Shiva and his sister with the intention to kill her, poured some hot substance on her, due to which she badly got burned. The in-laws had taken her to C.H.C. Hargaon, where primary treatment was given to her, and after that, she went home and informed her parents about the incident by mobile phone of her husband. Her family members came to the place of her in-laws and took her to District Hospital, Sitapur from where she was referred to Civil Hospital, Lucknow, and where she is being treated. The victim has stated in her statement under Section 164 CrPC that her brother-in-law (Jeth) used to tease her by closing the room. On 28/12/2023 at about 7:00 AM, her in-laws dragged her to the kitchen, her husband thrashed her, and her in-laws had also beaten her. Thereafter, her in-laws and her father-in-law, Shiv Mangal poured puffy substance behind her, due to which her back got burned. Her in-laws had taken her to the hospital, but instead of hospitalizing her, they got back home after providing her some medicine, and the doctor had made her to write forcefully that she herself poured hot water on her. Her treatment was given by her parental side. She is staying there after the incident. When her father poured some substance on her, Shiva ignited a matchstick. Her back got badly burned in the incident.

17. The victim has explained the circumstances under which she was made to give a statement in favor of the accused persons who are her husband and in-laws at C.H.C. Hargaon. She has made allegations of pouring some inflammable substance on her back in her statement under Section 161 CrPC and 164 Cr.P.C. recorded by the Police as well as the Magistrate respectively.

Thus, at this stage, only due to the fact that the first doctor who treated her and recorded the statement of the victim, which exculpates the accused her statement before the Police as well as the Judicial Magistrate cannot be ignored. The authenticity of the version of the victim recorded by the first doctor, who treated her in the presence of her in-laws and her subsequent statements will only be tested on the basis of evidence adduced by the trial court and not at the stage of deciding the question of discharge raised by the accused. The victim has not stated, although the informant has stated in the FIR, that the accused poured petrol on her, but the victim has not stated it like this. She has stated that some flammable substance was poured on her, due to which she sustained burn injuries and she was treated in District Hospital Sitapur and thereafter Civil Hospital, Lucknow at the instance of her parental side. She has given early treatment at C.H.C. Hargaon at the instance of her in-laws. This fact is also not very significant that doctor has stated in medico legal examination report that no smell of petrol was found from the burn injuries because the victim has tried to explain all these things in her statement before the Police as well as the Magistrate. She has nowhere stated that her husband and in-laws poured petrol on her. In the medical report, it is stated that she sustained 35% burn injuries.

18. In the case of **Maqbool vs. State of U.P. and another** AIR 2018 SC 5101, the Honorable Supreme Court held that Section 326A IPC was introduced by the Criminal Law Amendment Act, 2013 and observed as under:-

"5. Injuries caused or attempted to be caused by use of acid, have been, under the amendment, categorized differently as separate or special offences under Sections 326A and 326B of IPC:

"326A. Voluntarily causing grievous hurt by use of acid, etc.-Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine;

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim;

Provided further that any fine imposed under this section shall be paid to the victim."

"326B. Voluntarily throwing or at- tempting to throw acid.-Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Explanation I.-For the purposes of section 326A and this section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2.- For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible."

6. Section 326A carries title of "voluntarily causing grievous hurt by use of acid" whereas Section 326B does not carry any such indication in the title regarding the nature of injury as grievous. But on closer analysis, it can be seen that both the Sections provide for eight types of injuries - (i) permanent damage, (ii) partial damage, (iii) deformity, (iv) burns, (v) maiming, (vi) disfigurement, (vii) disability or (viii) grievous hurt.

7. The first seven of the injuries referred to in the Sections are classified, based on the normal aftereffect of acid attack whereas the eighth one is on the gravity of the effect. Under Sections 326A and 326B, grievous hurt is only one among the eight injuries. In view of the explanation under Section 326B, the resultant damage or deformity under 326A or 326B is not required to be irreversible. The other seven injuries may be either simple or grievous. The nature of injury being simple or grievous, is irrelevant for distinguishing between Section 323 and Section 326A of IPC or between Section 326A and Section 326B of IPC. If the injury referred to under Section 326A or 326B is one among the specified eight injuries, whether the seven of them be simple or grievous, the special provisions are attracted.

8. The basic difference between Sections 326A and 326B of IPC is the presence of actual injury under Section 326A. The resultant injury has made the offence more serious with a mandatory minimum punishment of ten years which may extend to imprisonment for life and, in either case, with a fine. The fine is mandatory and the quantum should be just and reasonable in the sense that it should be, in any case, sufficient to meet the medical expenses for the treatment of the victim. Therefore, the second proviso under Section 326A requires that the fine imposed should be paid to the litigant. Under Section 326B, the mere act of throwing or attempt to throw or attempt to administer or attempt to use any other means with the intention of causing any of the injuries referred to in the Section, is to be visited with a mandatory minimum imprisonment of five years, which may extend to seven years and fine.

9. Thus, merely because the title to Section 326A of IPC speaks about grievous hurt by use of acid, it is not a requirement under the Section that the injuries caused should be invariably grievous. Even if the seven injuries are simple, Section 326A, and under Section 326B the mere act of throwing or attempt, as indicated in the Section, would attract the offence.

16. As we have already discussed above, it is not the percentage or gravity of injury, which makes the difference. Be it simple or grievous, if the injury falls under the specified types under Section 326A on account of use of acid, the offence under Section 326A is attracted. Section 326B would be attracted in case the requirements specified are met on an attempted acid attack. Therefore, both the High Court of Rajasthan in Laddu Ram (supra) and High Court of Madras in M. Siluvai Murugan @ Murugan (supra)do not lay down the correct position of law and they are overruled."

19. If we go through the provisions of Section 326 A and Section 326 B IPC in toto in the year 2013 , we find that Section 326A IPC provides for punishment for voluntarily causing grievous hurt by use of acid, etc. whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punishable under this Section for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine.

20. Section 326- B IPC provides for punishment for Voluntarily throwing or attempting to throw acid. Its Explanation 1 of Section 326 B provides for the purposes of section 326A and this section, "Acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability. Explanation 2 provides for the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.

21. Similarly, it is stated in the FIR, as well as in the statement of the informant that the accused acted in a concerted manner, with the intention to kill the victim by pouring petrol (inflammable substance) on her body, due to which she sustained burn injuries. At this stage, it is not desirable to appreciate the evidence collected during the investigation in support of the said charges when there is material in support of the charges.

22. For the foregoing discussion, I find that the revision is devoid of merits and deserves to be dismissed.

23. The criminal revision is **dismissed** accordingly.

24. This court clarifies that it has not expressed any opinion on the merits of the case. The observations in this judgment are purely prima facie and are relevant only for the purpose of deciding the legality or validity of the order, whereby the discharge application filed by the revisionist has been dismissed and the charges are framed against them by the learned trial court. It is needless to say that ultimately it is for the trial court to take an appropriate decision as regards the nature of the offense with which the accused are charged at the end of the trial.

(2026) 5 ILRA 2592
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 04.05.2026

BEFORE

THE HON'BLE LAXMI KANT SHUKLA, J.

Criminal Revision No. 2041 of 2025

Neetesh Singh & Anr. **...Revisionists**
Versus
State of U.P. & Anr. **...Opposite Parties**

Issue(s) for Consideration

(a) Whether a Magistrate can reject a final report and summon the accused, on a protest petition, without addressing specific points of enmity and improbability of the prosecution version raised on behalf of the accused, and without any supporting affidavit filed by the informant?

(b) Whether an Investigating Officer is empowered, under Paragraph 109 of the U.P. Police Regulations, to record a supplementary/additional statement ("Majid Bayan") of a witness during the course of investigation?

Headnotes

A. Code of Criminal Procedure, 1973 — Protest petition — Rejection of final report — Summoning order.

HELD: Where two material points raised on behalf of the accused — namely, the inimical relationship between the accused and a third person along with the alleged conspiratorial role of the prosecutrix, and the improbability of the route allegedly taken by the victim — remain unanswered both by the prosecution/opposite party and by the impugned order itself, and the protest petition is silent on these points and is unsupported by any affidavit of the alleged eye-witnesses, an order rejecting the final report and summoning the accused on the basis of such protest petition suffers material irregularity and is liable to be set aside. (Paras 12-17, 21-22)

B. U.P. Police Regulations — Para 109 — Supplementary/additional statement of witness during investigation.

HELD: Paragraph 109 of the U.P. Police Regulations empowers an Investigating Officer to record a supplementary statement of a witness during the course of investigation for the purpose of discovering the truth and clarifying facts material to a fair investigation; the expression "supplementary" is not to be interpreted narrowly. A finding by the Magistrate that the Investigating Officer lacked authority to record such an additional statement is misconceived and contrary to settled principles governing investigation. (Paras 19-21)

Criminal Revision allowed. Order dated 15.02.2025 passed by the Chief Judicial Magistrate, Aligarh, set aside. Trial court directed to pass a fresh order in the light of the observations made, after hearing the parties. (E-14)

Case Law Cited

State of Haryana and others v. Bhajan Lal and others, 1992 Supp (1) SCC 335 --- referred to.

List of Acts / Statutes

Code of Criminal Procedure, 1973 (Ss. 156(3), 161, 164, 173); Indian Penal Code, 1860 (Ss. 376-D, 506); U.P. Police Regulations (Para 109); Constitution of India, Art. 226.

List of Keywords

Final report; protest petition; rejection of final report; summoning order; Section 376-D IPC; supplementary statement; Police Regulations; malicious prosecution.

Case Arising From

Order dated 15.02.2025 passed by the Chief Judicial Magistrate, Aligarh, in Misc. Case No. 4612 of 2025 (Poonam Devi v. Neetesh and others), arising out of Case Crime No. 133 of 2018, under Sections 376-D, 506 IPC, Police Station Lodha, District Aligarh.

Appearance for Parties

For Revisionist(s): Dharmendra Kumar Gupta, Kiran Gupta

For Opposite Party(s): G.A., Shyam Shankar Shukla (Amod Pandey, holding brief)

(Delivered by Hon'ble Laxmi Kant Shukla, J.)

1. Heard Mr. Dharmendra Kumar Gupta, the learned counsel for revisionists, Mr. S.K. Ojha, the learned AGA appearing on behalf of State-opposite party no. 1, Mr. Amod Pandey, Advocate holding brief of Mr. Shyam Shankar Shukla, the learned counsel appearing on behalf of opposite party no. 2 and perused the record.

2. Revisionists Neetesh Singh and another have approached this Court by means of present Criminal Revision assailing the propriety of impugned order dated 15.02.2025 passed by Chief Judicial Magistrate, Aligarh (hereinafter referred to as jurisdictional magistrate) in Misc. Case No. 4612 of 2025 (Poonam Devi Vs. Neetesh and others) arising out of Case Crime No. 133 of 2018, under section 376-D, 506 IPC, Police Station Lodha, District Aligarh whereby the jurisdictional magistrate rejecting the final report in Case Crime No. 133 of 2018, under section 376-D and 506 IPC and summoned the revisionists as accused persons.

3. Feeling aggrieved by the aforesaid order the present criminal revision has been filed on the grounds that while passing the impugned order the jurisdictional magistrate has not considered the earlier material collected during the investigation, the impugned order has been passed without applying judicial mind relying upon averments of protest petition and prayed for setting aside the impugned order.

4. The factual matrix of the case is that an application u/s 156(3) Cr.P.C. was moved by opposite party no. 2 with allegation that informant is the resident of Gandhi Nagar, Police Station Gandhi Park, District Aligarh and at present she has been living with her family in village Dharampur Kheda, Police Station Chhapraula, Ghaziabad for the last one year. On 28.01.2018, from her present address she was going to her permanent address via Noida and was waiting conveyance at Pari Chowk, in the meantime the revisionists came in a car, who were in her husband's acquaintance and asked her that where she was going on her discloser that she was going to Aligarh the revisionists told her that they also were going Aligarh and offered her lift then she accompanying the revisionists. When all of them reached near Parsera Gate at 5:00 pm, these people turned the car towards Parsera village, when the informant objected where they were going, all of them took out their guns and started threatening her not to raise alarm. After going a little distance, they stopped the car on the side of the Kachha Bombay Pari and, showing the guns, forcibly dragged her out of the car and took her to a mustard field and all of them raped her one by one. When the informant tried to raise alarm, the revisionists threatened to kill her showing pistols. On hearing the informant's scream, two persons passing by on a motorcycle came to the spot and on their exhortation the revisionists fled away from the spot in their car, leaving the informant on spot and displaying the pistols. On query of informant the witnesses disclosed their name and address and took her to Police Station, where she informed the incident to police but the police did not pay heed then on 30.01.2018 she sent registered letter to Senior Superintendent of Police,

Aligarh but that also went in vein then she filed application before Jurisdictional Magistrate on 02.02.2018. After completion of statutory investigation the Investigating Officer submitted final report against which the informant filed protest petition and the Jurisdictional Magistrate passed the impugned order.

5. Learned counsel appearing on behalf of revisionists submitted that after lodging the first information report the victim/opposite party no. 2 was examined under section 161 and 164 Cr.P.C. after 46 days to the incident which are noting but a verbatim of the FIR version wherein it was contended that on 28.01.2018, the victim was going to Aligarh via Noida, at about 03:00 pm when she was reached near Pari Chowk and waiting for conveyance then the revisionists are said to have came there in a car posing themselves as friends of victim's husband and they offered lift to victim to leave her Aligarh, on the way the victim is stated to have been raped by them on the pointing of tamancha in Aligarh near Parsera Gate at about 5:00 pm. During the course of investigation, after 46 days to the incident the victim was medically examined at MLG Govt. Women Hospital, Aligarh on 09.03.2018 at 3 PM. In the medical report no corroboration of rape is found.

6. As a matter of fact, no such incident as alleged took place on 28.01.2018. According to prosecution story revisionists who are the relative offered lift to opposite party no. 2 in their car from Pari Chowk at Noida while the offence of rape was committed in Aligarh. A person having intention to commit rape does not take the lady to long place even after the so called incident the victim/opposite party no. 2 did not seek help from the police by dialing emergency number. It is further contended that according to statement of opposite party no. 2 the victim under section 161 Cr.P.C. she never went at police station, which is evident from her statement recorded u/s 161 Cr.P.C. occurring at page 82 of the paper book.

7. The fact that the victim was traveling from Ghaziabad to Aligarh is considered true but the fact of taking lift from Pari Chowk at Noida is not believable as there is no direct or indirect conveyance is available to approach Aligarh from Pari Chowk. In her application u/s 156 (3) Cr.P.C. the victim has not disclosed her address or the place from where she was coming. There is no whisper about the relation of husband of victim with the revisionists. There is only three days gap between the incident and filing of application u/s 156(3) Cr.P.C. It is further contended that the so called eye witness namely Kuldeep and Rinka @ Ram Kumar has denied have seen any such type of incident with the victim. During investigation the statements of mother and wife of revisionist no. 1 & Chhida Singh, Maharaj Singh, Gulveer Singh and Ram Gopal under section 161 Cr.P.C. they all stated that Dina @ Dinesh Kumar and his brother namely Raju @ Raj Kumar had kidnapped the brother of revisionist no. 1 namely Abhishek Singh and killed thereafter in that connection an FIR has been lodged at police station Lodha District Aligarh against said Dina @ Dinesh Kumar. Since the revisionists were witnesses in the aforesaid case so they have been falsely implicated by victim/opposite party no. 2 at the behest of said Dina @ Dinesh Kumar. During investigation, nexus between the victim/opposite party no. 2 and said Dina @ Dinesh Kumar has surfaced in Parcha No. IV-A of case diary. When the Investigating Officer called the victim to make her examination before the Magistrate the call was received by one Khichhu who is the father of Dina @ Dinesh Kumar. Thus it is clear that the victim is under hands of Dina @ Dinesh Kumar and considering the true facts and circumstances the Investigating Officer submitted final report in

the matter and the impugned order has been passed only on the basis of bare averments made in protest petition without any supportive affidavit or any additional affidavit.

8. In his written submission the learned counsel for revisionists has explained the enmity between the revisionist no. 1 and Dina @ Dinesh Kumar by referring to various civil and criminal proceedings pending between them. It has been further contended that the enmity between revisionist no. 1 and Dina @ Dinesh Kumar is fully established from the material available on record. Learned counsel appearing on behalf of revisionists further submitted that the perusal of case diary reveals that when the Investigating Officer dialed the number proposed to be of victim, the call was received by the father of Dina @ Dinesh Kumar which itself is sufficient to establish that opposite party no. 2 is only playing in the hands of Dina @ Dinesh Kumar.

9. Learned counsel appearing on behalf of revisionists placed reliance upon the judgment of Apex Court in the case of ***State of Haryana and others Vs. Bhajan Lal and others reported in 1992 Supp (1) Supreme Court Cases 335*** wherein in Paragraph No. 102(7) of its judgment the Apex Court has held that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding if maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, such proceeding must be quashed exercising extraordinary power under Article 226 of the Constitution or u/s 482 of the code. He further submitted that the false has no ground and every liar left some clue to catch his false hook. It is very clear that the present residence of so called victim/opposite party no. 2 situates besides the main road from Ghaziabad to Aligarh on which public conveyance easily remains available all the government buses ran through that very way but in spite of availability of easy facility why the victim chooses to go Aligarh via Noida while no public conveyance is still available to Aligarh from the so called place of taking lift by victim. So far as the observation made by trial court in the impugned order that the Investigating Officer has no authority to record an additional statement of any witness u/s 161 Cr.P.C. is concerned, learned counsel appearing on behalf of revisionists submitted that paragraph no. 109 of Police Regulations specifically provides as under:-

"*109. The case diary must contain the particulars required by Section 172 of the Code of Criminal Procedure in sufficient detail to enable the supervising officer to appreciate the facts. Variations in the statement of the complainant from the first information report and the substance of supplementary statement. if any, should be recorded.*

The investigating officer is not bound to reduce in writing any statement made to him in the course of an examination under Section 161 of the Code of Criminal Procedure. But if he does so, he shall make a separate record of the statement of each such person whose statement he records. The statement shall be recorded in the first person and shall contain such detail as are likely to be helpful in the prosecution of the case.

The law contemplates that the statement, if recorded, must be recorded separately. It will, therefore, not be sufficient compliance of the law if it is merely recorded that a witness substantiates, corroborates or verifies the statement of the complainant or another witness and as such the use of such phrases should be avoided.

The statement of the accused person must, however, be recorded in full. When investigation is closed for the day, the time and place at which it is closed must be noted, and throughout the investigation the diary must be sent daily to the Superintendent on all days on which any proceedings are taken. If the investigating officer is not himself in charge of station, the diary must be sent through the officer-in-charge except when this will cause delay. All changes of investigating officer must be recorded in it. If more officers than one are investigating the same case independently at the same time each should keep a separate diary. The provisions of Sections 162 and 173 of the Code of Criminal Procedure must be carefully studied. In petty cases a very short case diary will ordinarily be sufficient."

10. It is thus contended that in view of above conspectus the impugned order is liable to be set aside by this court invoking the revisional jurisdiction allowing the present criminal revision.

11. Per contra learned counsel appearing on behalf of opposite party no. 2 vehemently opposed the present revision orally as well as through written submission. Learned counsel appearing on behalf of opposite party no. 2 submitted that after the incident the victim went to police station to lodge the FIR about the incident, the police under the pressure of revisionist do not lodge the FIR then she went to the office of S.S.P. Aligarh for lodging of the First Information Report but it was not done so then she moved an application on 02.02.2018 before the court of ACJM, Aligarh for registration of the FIR against the revisionist. After registration of FIR on 23.02.2018 the police started investigation of the case though the date of incident is 28.01.2018 at 03:00 pm that was too much delay by the act of police in connivance with the revisionists. The Police in connivance with the revisionists investigated the matter and mechanically without examined the real witnesses filed a final report in the present case. The Investigating Officer wrongly recorded the additional statement of victim after recording her statement u/s 164 Cr.P.C.. It is thus contended that the police wrongly filed final report in the matter and the jurisdictional magistrate categorically has criticized the act of Investigating Officer and passed the impugned order. It is thus contended that the present criminal revision has no force at all, it is devoid of merit, therefore, it is liable to be dismissed. Learned AGA appearing on behalf of State-opposite party no. 2 also vehemently opposed the criminal revision and prayed for dismissal of the criminal revision.

12. Having heard the submissions advanced by the learned counsel for revisionists, learned AGA appearing on behalf of State-opposite party no. 1 and learned counsel appearing on behalf of opposite party no. 2 it is evident that two specific points raised by the learned counsel for revisionists have remained unanswered by both the learned AGA as well as the learned counsel appearing on behalf of opposite party no. 2 i.e.:-

1. The inimical relationship between revisionist no. 1 and Dina @ Dinesh Kumar, along with the alleged conspiratorial role of the prosecutrix; and

2. The reason for choosing extraordinary way to go to Aligarh from the alleged place of residence.

13. These two material points are still unanswered by opposite parties. Even the impugned order passed by the court below is also silent on these two points.

14. The purpose of criminal justice administration is to bring the faulty person under the umbrella of legal proceedings and to bound him to face the legal consequences of his acts, and not to permit harassment of any individual on account of ulterior motive or personal vendetta.

15. It has further come on record that when the phone number given by the victim supposing her own contact number is dialed such phone was picked by father of Dina @ Dinesh Kumar. It is very crucial point which must be explained by opposite parties. In the protest petition, no new evidence or new situation has been disclosed. The only allegation made by the victim/opposite party no. 2 is that the Investigating Officer did not genuinely record the statements of alleged eye witnesses Rinka @ Ram Kumar and Kuldeep under section 161 Cr.P.C. but the Investigating Officer recorded their statement arbitrarily on his own behest under section 161 Cr.P.C. and recorded the statement of some such witnesses were not named in the FIR while the statements of the actual eye-witnesses were not properly recorded to support the prosecution version.

16. However, despite making such allegations the victim/opposite party no. 2 did not file affidavits of the said eye- witnesses in support of her claim. In above conspectus no court can rely on her averment made in paragraph 5 of protest petition.

17. Moreover the protest petition is completely silent on points that the present criminal proceeding were allegedly initiated at the behest of Dina @ Dinesh Kumar, that the victim is playing in the hands of such Dina @ Dinesh Kumar and as to why the victim choose to go to Aligarh from her residence via Noida where no public conveyance remains available. These three points not only creates serious doubt regarding the veracity of the prosecution story and without clarification on these points the total story seems to be bundle of false.

18. The law laid down by the Hon'ble Supreme Court in **Bhajan Lal (supra)** case is only to give protection from such proceeding instituted with ulterior motive.

19. So far as the recording of additional statement of victim is concerned, Paragraph 109 of U.P. Police Regulations empowers the Investigating Officer to record supplementary statement during the course of investigation. The expression "*supplementary statement"* used therein cannot be interpreted in a narrow or restrictive manner. The true import of the word "*supplementary"* under Paragraph 109 of U.P. Police Regulations is a statement recorded for the purpose of discovering the real truth and clarifying material of facts necessary for a fair investigation.

20. The additional statement of victim/opposite party no. 2 clearly reveals that the questions put by the Investigating Officer were intended only to ascertain the truth and not to support either side. The expression "Majid Bayan" used by the Investigating Officer in legal and authoritative matters is commonly translated as "supplementary statement" and in ordinary usage, it may also be referred to as an "additional statement" while in judicial proceeding it is often understood as a "further statement". Meaning thereby the Investigating Officer has full right to record "Majid Bayan" of any witness whenever required for a proper and effective investigation.

21. Accordingly, the finding recorded by the Jurisdictional Magistrate on this point appears to be wholly misconceived and contrary to the settled principles governing investigation under criminal law.

22. In view of above, in my opinion the impugned order has been passed causing material irregularity and without considering each and every aspect of the case, therefore, it is liable to be set aside and the present criminal revision deserves to be allowed.

23. Accordingly the present criminal revision is **allowed**. The impugned order dated order dated 15.02.2025 passed by Chief Judicial Magistrate, Aligarh is hereby set aside. The trial court is directed to pass a fresh order in the light of the observations made by this Court and in accordance with law. The parties are directed to appear before the trial court.

(2026) 5 ILRA 2599
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.05.2026

BEFORE

THE HON'BLE DR. AJAY KUMAR-II, J.

Criminal Revision No. 6529 of 2025

Asim Raza Khan **...Revisionist**
Versus
State of U.P. & Anr. **...Opposite Parties**

Issue(s) for Consideration

(a) What is the scope of judicial scrutiny available to a court while deciding an application for discharge and considering the framing of charge, where the allegation is inducement to invest money on a promise of returns, followed by part payment and subsequent default?

(b) Whether a dispute involving inducement to invest, part repayment of profit and subsequent default in returning the entrusted amount is purely civil in nature so as to preclude framing of charge under Sections 406 and 506 IPC?

Headnotes

A. Bharatiya Nagarik Suraksha Sanhita, 2023 — Ss. 438, 442 — Discharge — Framing of charge — Scope of scrutiny.

HELD: At the stage of hearing on charge, the entire evidence produced by the prosecution is to be believed, and only if no offence is made out on that basis can the accused be discharged. Truthfulness, sufficiency and acceptability of the material can be tested only at the stage of trial; at the stage of charge the court must be satisfied that a prima facie case is made out and is not to conduct a mini-trial by weighing and balancing evidence and probabilities. (Paras 9, 12)

B. Indian Penal Code, 1860 — Ss. 406, 506 — Money entrusted for investment — Non-return — Prima facie case.

HELD: Where money was entrusted to the accused for investment in his export business on the assurance of good returns, the accused made a few initial payments of profit and thereafter neither invested the amount nor returned it, and no evidence exists at that stage that the amount was actually invested, a prima facie case under Sections 406 and 506 IPC is made out. The question whether the dispute is essentially civil in nature is a matter for trial, and not a ground for discharge at this stage. (Paras 11-12)

Criminal Revision found devoid of merit and dismissed; orders dated 22.09.2025 (rejecting discharge application) and 13.10.2025 (framing of charge) upheld. (E-14)

Case Law Cited

Dalip Kaur and Others v. Jagnar Singh and Another, (2009) 14 SCC 696 --- distinguished; Vijay Kumar Ghai and Others v. State of West Bengal and Others, (2022) 7 SCC 124 --- distinguished; Captain Manjit Singh Virdi (Retd.) v. Hussain Mohammad Shattaf and others, (2023) 7 SCC 633 --- followed; State of Rajasthan v. Ashok Kumar Kashyap, (2021) 11 SCC 191 --- referred to; P. Vijayan v. State of Kerala, (2010) 2 SCC 398 --- referred to; State of Karnataka v. M.R. Hiremath, (2019) 7 SCC 515 --- referred to; State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709 --- referred to.

List of Acts / Statutes

Bharatiya Nagarik Suraksha Sanhita, 2023 (Ss. 438, 442); Indian Penal Code, 1860 (Ss. 406, 506).

List of Keywords

Discharge; framing of charge; criminal breach of trust; Section 406 IPC; prima facie case; civil dispute; investment fraud.

Case Arising From

Orders dated 22.09.2025 (rejecting discharge application, Criminal Case No. 59452 of 2022) and 13.10.2025 (framing of charge, Case No. 11218 of 2022) passed by the Chief Judicial Magistrate, Moradabad, in State of U.P. v. Asim Raza Khan, arising out of Case Crime No. 738 of 2022, under Sections 406, 506 IPC, Police Station Civil Lines, District Moradabad.

Appearance for Parties

For Revisionist(s): Atul Kumar Srivastava, Ravi Kumar

For Opposite Party(s): Akhilesh Kumar Vishwakarma, G.A., Rakesh Dubey

(Delivered by Hon'ble Dr. Ajay Kumar -II, J.)

1. Heard Learned counsel for the revisionist, learned A.G.A. for the State and perused the record.

2. The instant criminal revision under Section 438/442 of BNSS has been filed with a prayer to set-aside the order dated 22.09.2025 passed by the learned Chief Judicial Magistrate, Moradabad in Criminal Case No. 59452 of 2022, State of U.P. vs. Asim Raza Khan, arising out of Case Crime No. 738 of 2022, under Sections 406 and 506 IPC, Police Station Civil Lines, District Moradabad, rejecting the discharge application filed by the revisionist and order dated 13.10.2025 passed by Chief Judicial Magistrate, Moradabad in Case No. 11218 of 2022, State vs. Asim Raza

Khan, arising out of Case Crime No. 738 of 2022, under Sections 406 and 506 IPC, Police Station Civil Lines, District Moradabad, whereby charge has been framed against the revisionist.

3. Brief facts of the case is that the informant lodged a first information report against the revisionist by presenting written report to S.S.P., Moradabad. As per the FIR, the revisionist was a friend of husband of informant, who called upon her husband in his office and stated that he (revisionist) is in the business of export and he invests people's money and gives them good returns. He further stated that banks are not giving them anything anyway. However, he will give them profit money too. Thereby, he trapped the informant and her daughter and they gave different amounts on different dates, mostly through cheques. A total of Rs.5,00,000/- was taken by the revisionist from informant and her daughter. He gave a profit of Rs.18,000/- for first three months to informant. He did not return even single rupee to the daughter of informant. Thereafter, he not only stopped to give any payment, he even stopped picking up the calls of the informant and is now threatening them. On the aforesaid, written report of the informant, an FIR was lodged vide Case Crime No. 738 of 2022, under Sections 406 and 506 IPC, against the revisionist and his clerk. After completion of the investigation, charge sheet was filed against the revisionist, upon which, the cognizance was taken and the trial commenced. The revisionist filed a discharge application, which was rejected by the learned trial Court vide it's impugned order dated 22.09.2025 and thereafter charge was also framed against the revisionist on 13.10.2025 under Sections 406 and 506 IPC.

4. Learned counsel for the revisionist argued that the revisionist is doing business of Brass Metal Works in the name of M/s. Alpin Export and the firm is duly registered with Export and Import Department since year 2000. The first informant was working as teacher in a private school and had been retrenched from the service while, her daughter was working in some private firm in Noida and during the pandamic of COVID-19, she lost her job. After retrenchment from service, the first informant asked her husband to get her money invested at some safe place, who suggested her to invest money in business of the revisionist. The revisionist told that he invests the people□s money and give them good returns. After taking into good relationship between the revisionist and first informant, the first informant and her daughter invested Rs.5,00,000/- (Rs.2,50,000/- each). From the first three months, the revisionist paid Rs.1,80,000/- and Rs.3,20,000/- are yet to be returned. After that he could not return the remaining amount, because business activities were completely paralyzed during Pandemic of COVID-19. The revisionist assured the first informant to return her money as soon as possible.

5. It is next submitted by learned counsel for the revisionist that the revisionist is innocent and has been falsely implicated in the instant case. Learned counsel for the revisionist has submitted that the dispute between the revisionist and first informant is purely civil in nature, which has illegally been dragged in criminal Court by giving colour to the whole incident. It is further submitted by learned counsel for the revisionist that in the instant case with false allegations, a first information report was registered, in which, after investigation, charge sheet was filed against the revisionist. Thereafter, the revisionist moved a discharge application, since from the facts of the case, no prima facie case is made out against the revisionist. The facts as mentioned in the first information report, were false and frivolous, even though, the learned trial Court has dismissed the discharge application of the revisionist, without going through the material collected during the course of investigation.

6. It is next submitted that the findings recorded by the learned Chief Judicial Magistrate, Moradabad in the impugned orders that 22.09.2025 and 13.10.2025 are perverse and legally unsustainable and dismissal of the discharge application, is wholly erroneous and liable to be set-aside. Lastly, it was submitted that as discharge application has been wrongly rejected, therefore, no charge could have been framed against the revisionist and therefore, order framing charge is also liable to be set-aside. Lastly, it was urged by learned counsel for the revisionist that present criminal revision be allowed and both the impugned orders be set-aside.

7. In support of his contention, learned counsel for the revisionist has relied upon the judgments of the Apex Court in **Dalip Kaur and Others vs. Jagnar Singh and Another, (2009) 14 SCC 696** and **Vijay Kumar Ghai and Others vs. State of West Bengal and Others, (2022) 7 SCC 124.**

8. Per contra, learned A.G.A. has opposed the above submissions of the learned counsel for the revisionist by contending that the impugned orders are well reasoned and have been passed in accordance with law. Learned A.G.A. further submits that the material on record discloses prima facie allegations made under Sections 406 and 506. The trial Court has committed no error in passing the order in question but this revision being devoid of merit, is liable to be dismissed.

9. Hon'ble Supreme Court in Captain Manjit Singh Virdi (Retd.) vs. Hussain Mohammad Shattaf and others, (2023) 7 SCC 633, has clearly observed that at the stage of hearing on the charges, entire evidence produced by the prosecution is to be believed and if no offence is made out, then only an accused can be discharged. The relevant para 11 and 12 of this judgment is reproduced herein below:

11. The law on issue as to what is to be considered at the time of discharge of an accused is well settled. It is a case in which the trial court had not yet framed the charges. Immediately after filing of charge-sheet, application for discharge was filed. The settled proposition of law is that at the stage of hearing on the charges entire evidence produced by the prosecution is to be believed. In case no offence is made out then only an accused can be discharged. Truthfulness, sufficiency and acceptability of the material produced can be done only at the stage of trial. At the stage of charge, the court has to satisfy that a prima facie case is made out against the accused persons. Interference of the Court at that stage is required only if there is strong reasons to hold that in case the trial is allowed to proceed, the same would amount to abuse of process of the court.

12. The law on the point has been summarised in a recent judgment of this Court in ***State of Rajasthan v. Ashok Kumar Kashyap [State of Rajasthan v. Ashok Kumar Kashyap,*** *(2021) 11 SCC 191 : (2022) 1 SCC (Cri) 286] . Relevant paras are extracted below : (SCC pp. 197-98, para 11)*

"11. . 11.1. In P. Vijayan v. State of Kerala [P. Vijayan v. State of Kerala, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488] , this Court had an occasion to consider Section 227CrPC. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not

there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228CrPC, if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

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

'25. The High Court [Hiremath v. State of Karnataka, 2017 SCC OnLine Kar 4970] ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N. v. N. Suresh Rajan [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] , adverting to the earlier decisions on the subject, this Court held : (N. Suresh Rajan case [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] , SCC pp. 721-22, para 29)

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

10. Learned counsel for the revisionist had relied upon the case law, in which, the powers under Section 482 Cr.P.C. of the High Court, were invoked for quashing of the FIRs, whereas in the present case, the revisionist has challenged the discharge order as well as order of framing of the charge by way of filing the instant criminal revision. The facts of the case **of Vijay Kumar Ghai and Others vs. State of West Bengal and Others, (2022) 7 SCC,** relates to multiple complaints by same party against same accused in respect of same incident, which was found to be abuse of process and therefore, is totally different from the facts of the present case. The case law

titled as **Dalip Kaur and Others vs. Jagnar Singh and Another, (2009) 14 SCC 696,** relates to an agreement to sell, therefore, this case law is also not applicable in the present case for the reasons that facts of the present case are totally different.

11. A perusal of the FIR, statement of informant Anjali @ Anjum Hussain, Hussain Ali Khan and Ms. Alisha as recorded in Case Diary clearly reveals that on the assurance of revisionist that if some money is given to him, he will invest the same and will give them good returns with profits, because he runs export business, an amount of Rs.5,00,000/- was given by the informant and her daughter to him. It was revisionist, who lured the informant and her family members to give him certain amount of money. It has clearly come in evidence that most of the payments was made by the informant and her family members through cheques that too on the assurance of giving good returns and profits. However, only a small amount on account of profit/return, was returned to the revisionist that too only for first three months, whereas revisionist received first payment on 9.10.2019 and last payment on 25.3.2020. Thereafter, he stopped to give either payment of returns or profit or original amount to the informant and her family members. This clearly indicates that only for the purpose of getting amount, the revisionist initially returned a small amount as profit. It is thus, prima facie clear that it was the revisionist, who lured the informant and her family members to get the amount and the amount he received was to be invested in export business for giving good returns, but he neither invested the money in export business nor has returned back the amount so received from the informant and her family members. From the evidence recorded by the Investigating Officer, it is clear that the revisionist was entrusted with Rs. 5,00,000/- for the purpose of investing the same in his export business, however he (revisionist) has misappropriated the same dishonestly. There is no evidence at this stage that he actually invested the amount in his export business, which fact he (revisionist) can prove during trial by leading his evidence. Moreover, he has not even returned the amount so received by him. At this stage, the facts and evidence collected by the Investigating Officer, is to believed. Therefore, prima facie, the case is made out against the revisionist under the aforesaid sections.

12. On considering the facts and circumstances of the case, submissions made by the learned counsel for the revisionist as well as learned A.G.A. and perusal of the record, the orders passed by the learned trial Court, there appears to be no illegality or perversity in the orders passed by the learned trial Court and it warrants no interference by this Court in this criminal revision.

13. Accordingly, the instant criminal revision is found to be devoid of merit and is hereby **dismissed.**

(2026) 5 ILRA 2604
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 13.05.2026

BEFORE

THE HON'BLE SUBHASH CHANDRA SHARMA, J.

Criminal Revision No. 7360 of 2025

Arun Sondhi **...Revisionist**
Versus
State of U.P. & Anr. **...Opposite Parties**

Issue(s) for Consideration

(a) Whether a Magistrate can refuse to take cognizance of an offence against an accused named in the charge-sheet, and discharge such accused, without issuing notice to the informant and affording an opportunity of hearing?

(b) Whether, at the stage of considering an application for discharge under Section 239 Cr.P.C., an opportunity of hearing to the prosecution/informant is mandatory before passing an order?

Headnotes

A. Code of Criminal Procedure, 1973 — Cognizance — Refusal to take cognizance — Notice to informant.

HELD: Where the Magistrate decides not to take cognizance of an offence against an accused named in the charge-sheet and drops the proceeding qua that accused, notice to the informant and grant of an opportunity of hearing is mandatory, following Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537, as reiterated in Minu Kumari v. State of Bihar, 2006 Law Suit (SC) 299. Failure to give such notice causes prejudice to the informant and renders the order inappropriate.

B. Code of Criminal Procedure, 1973 — S. 239 — Discharge — Opportunity of hearing to prosecution.

HELD: Section 239 Cr.P.C. mandates that the Magistrate decide an application for discharge only after giving the prosecution and the accused an opportunity of being heard. An order passed without affording such opportunity to the prosecution/informant is illegal and liable to be set aside.

Criminal Revision allowed. Order dated 26.09.2025 set aside to the extent of opposite party no. 2, Smt. Rakhi Garg. Chief Judicial Magistrate directed to decide the application afresh after affording an opportunity of hearing to the informant and the prosecution. (E-14)

Case Law Cited

Minu Kumari v. State of Bihar, 2006 Law Suit (SC) 299 --- followed; Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 --- referred to.

List of Acts / Statutes

Code of Criminal Procedure, 1973 (Ss. 190, 200, 239); Indian Penal Code, 1860 (Ss. 420, 467, 468, 471, 406, 506, 120-B).

List of Keywords

Cognizance; discharge; opportunity of hearing; informant; Section 239 Cr.P.C.; notice.

Case Arising From

Order dated 26.09.2025 passed by the Chief Judicial Magistrate, Agra, in Crime No. 390 of 2024, under Sections 420, 467, 468, 471, 406, 506, 120-B IPC, Police Station Hari Parwat, District Agra.

Appearance for Parties

For Revisionist(s): Kamlesh Kumar Dwivedi, Surendra Nath Mishra

For Opposite Party(s): G.A., Pranshu Dwivedi, Ram Prakash Dwivedi, Ravindra Sharma

(Delivered by Hon'ble Subhash Chandra Sharma, J.)

1.Supplementary affidavit filed by learned counsel for the revisionist today is taken on record.

2.Heard Sri Kamlesh Kumar Dwivedi, learned counsel for the revisionist as well as Sri Ravindra Sharma, learned counsel for the opposite party alongwith learned A.G.A. for the State and perused the material on record.

3.This criminal revision has been filed against the order dated 26.09.2025 in Crime No.390 of 2024, under Sections 420, 467, 468, 471, 406, 506, 120B I.P.C., Police Station Hari Parwat, District Agra passed by learned C.J.M., Agra by which learned court has refused to take cognizance of the offence against the opposite party no.2 on an application filed by her for not taking the cognizance and to discharge.

4.It is submitted by learned counsel for the revisionist that in this case charge sheet was filed before the learned court concerned and at the time of taking cognizance of the offence an application on the part of the opposite party no.2 was filed before the learned court making prayer not to take cognizance of the offence and to discharge her and her husband Prakhar Garg. Learned trial court after hearing the opposite party no.2 took cognizance of the offence against Navdeep Mehta and Prakhar Garg but refused to take cognizance of the offence against the opposite party no.2 Smt. Rakhi Garg and thus allowed the application for not taking of cognizance and discharge. Further submitted that before passing the order in question no opportunity of hearing was provided to the informant/the prosecution but order was passed. He also submits that at the stage of Section 239 Cr.P.C. (discharge) opportunity of hearing to the prosecution is also a must and then order is to be passed but learned trial court has committed error in passing the order without giving the opportunity of hearing to the informant/prosecution. He also submitted that the Hon'ble Supreme Court in the case of **Minu Kumari vs. State of Bihar 2006 Law Suit (SC) 299** in para no.12 & 14 clearly observed that the informant must have been given opportunity of hearing if he decides not to take cognizance and to drop the proceedings. In this way, the order passed by learned trial court being erroneous is liable to be set aside.

5.Learned counsel for the opposite party as well as learned A.G.A. opposed the prayer as aforesaid and contended that in this case learned C.J.M has passed the order in question on the basis of material collected during the course of investigation by the I.O. and no offence was found to be made out against Smt. Rakhi Garg that is the reason the learned court refused to take the cognizance of the offence against Smt. Rakhi but could not dispute the fact that no opportunity of hearing either to the informant or to the prosecution was given by the learned court at the time of passing the order in question as is apparent from the judgment itself.

6.From arguments of both the parties two questions emerge to decide :-

(i) whether the court may decide not to take cognizance of offence without giving an opportunity of hearing to the informant, though charge sheet has been filed by the police? (ii) whether at the stage of considering discharge application, informant is entitled for an opportunity of hearing?

7.**Question No.I** On perusal of record and the order dated 26.09.2025 passed by learned C.J.M., it transpires that in the aforesaid case after investigation charge sheet was filed by the police in the court against Navdeep Mehta, Prakhar Garg & Smt. Rakhi Garg. At the stage of taking cognizance of offence an application for not taking cognizance and discharge from the offence was moved by opposite party no.2 Smt. Rakhi Garg before the learned court on which the impugned order was passed without giving an opportunity of hearing either to the informant or to the prosecution. The learned court concerned has nowhere mentioned in the order either to give notice to the informant or such opportunity given to the prosecution. The Hon'ble Supreme Court in the case of **Minu Kumari vs. State of Bihar 2006 Law Suit (SC) 299** in para no.12 & 14 has clarified when the court decides not to take cognizance of an offence and to drop the proceedings, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory. Para 12 & 14 are as under :-

"12. The informant is not prejudicially affected when the Magistrate decides to take cognizance and to proceed with the case. But where the Magistrate decides that sufficient ground does not subsist for proceeding further and drops the proceeding or takes the view that there is material for proceeding against some and there are insufficient grounds in respect of others, the informant would certainly be prejudiced as the First Information Report lodged becomes wholly or partially ineffective. This Court in Bhagwant Singh v. Commr. of Police, (1985 (2) SCC 537) held that where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory. As indicated above, there is no provision in the Code, for issue of a notice in that regard.

14. As decided by this Court in Bhagwant Singh's case (1985 (2) SCC 537), the Magistrate has to give the notice to the informant and provide an opportunity to be heard at the time of consideration of the report. It was noted as follows:-

"....The Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report..."

8.Thus the court forming opinion for not to take cognizance of offence on the basis of charge sheet was under obligation to give notice to the informant and then to pass order in this regard. Failure on the part of the court caused prejudice to the informant which makes the order inappropriate.

9.**Question No.II** At the stage of discharge u/s 239 Cr.P.C. the prosecution is given an opportunity of hearing. If such opportunity is denied, the order passed in this regard will be illegal. Under Section 239 Cr.P.C., it is clearly provided that the Magistrate will decide the application for discharge after giving the prosecution and accused the opportunity of being heard. Section 239 Cr.P.C. runs as under :-

"If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after

giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

10.Since, the order in question has been passed without giving an opportunity of hearing to the informant and the prosecution, therefore, it being illegal and inappropriate is liable to be set aside.

11.Thus, the order dated 26.09.2025 is, hereby, set aside to the extent of opposite party no.2 Smt. Rakhi Garg. The learned C.J.M. concerned is directed to decide the application moved by opposite party no.2 Smt. Rakhi Garg for not taking cognizance of the offence after giving an opportunity of hearing to the informant as well as the prosecution.

12.Accordingly, this criminal revision is **allowed.**

(2026) 5 ILRA 2608
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.05.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 485 of 2025

Mimansa Nangia & Ors. **...Appellants**
Versus
Shivani Hospital Pvt. Ltd. **...Respondent**

Issues for Consideration

(i) Whether the plaintiff was always ready and willing to fulfil the terms of the registered agreement to sell dated 22.10.2012?
(ii) Whether the defendants or their predecessor Dharam Prakash Nangia failed to comply with the terms of the registered agreement to sell?

(iii) Whether the registered agreement to sell was executed for inadequate consideration under undue influence of the plaintiff's director and his wife?

(iv) Whether the plaintiff had the financial capacity at the relevant time to pay the balance sale consideration?

(v) Whether the plaintiff committed any fraudulent act disentitling it from the relief of specific performance under Section 16(b) of the Specific Relief Act, 1963?

(vi) Whether the presence of the plaintiff's representative was mandatory for getting the sale deed executed and registered in its favour, keeping in view Section 32A of the Registration Act, 1908 as applicable in Uttar Pradesh?

Headnotes

Specific Relief Act, 1963 --- S. 16(c) --- Readiness and willingness --- Continuous readiness and willingness --- Compliance to be in spirit and substance, not letter and form.

HELD: Readiness and willingness are two distinct elements — readiness denotes the capacity of the plaintiff to perform the contract, including financial position, and willingness refers to the plaintiff's intention to perform, inferred from conduct. Compliance with Section 16(c) does not require any specific phraseology; the plaintiff having averred and proved that it always remained ready and willing to perform, by issuing notices calling upon the defendants to execute the sale deed, remaining present before the sub-registrar on the appointed dates, and maintaining sufficient financial capacity throughout, is entitled to the relief of specific performance. [Paras 90-104, 156-159]

Specific Relief Act, 1963 --- S. 20 --- Discretion to decree specific performance --- Factors --- Hardship, conduct of parties, adequacy of consideration.

HELD: The material questions for grant of specific performance are: whether a valid concluded contract exists; whether the plaintiff has been and continues to be ready and willing to perform; whether the plaintiff has, in fact, performed his part of the contract; whether granting the relief would be equitable or cause hardship to the defendant; and whether the plaintiff is entitled to any alternative relief. Since the defendants' predecessor failed, till his death, to obtain the freehold permission from the Development Authority as required under the agreement, and never intimated the plaintiff of such permission, it was the defendants who defaulted in complying with the terms of the agreement. [Paras 105-125, 157-158]

Specific Relief Act, 1963 --- Undue influence --- Adequacy of consideration --- No documentary evidence of doctor-patient relationship --- Consideration not shown to be below market value.

HELD: In the absence of documentary evidence establishing a doctor-patient relationship between the plaintiff's director and the vendor, and where the valuation report relied upon by the defendants to allege inadequate consideration was found unreliable, being based on a rate far in excess of the prevailing circle rate and without inspecting the property from inside, it cannot be held that the agreement was executed for inadequate consideration under undue influence. [Paras 126-134]

Specific Relief Act, 1963 --- S. 16(b) --- Fraud --- Failure to prove a document does not, by itself, amount to fraudulent fabrication.

HELD: Mere failure of the plaintiff to prove execution of a subsequent notarised document extending time for performance does not establish that the plaintiff fraudulently fabricated the document, especially where the document, if anything, was advantageous to the defendants' predecessor and not to the plaintiff; the plaintiff's conduct does not disentitle it from the relief of specific performance under Section 16(b) of the Specific Relief Act, 1963. [Paras 141-147]

Registration Act, 1908 --- S. 32A, as applicable in Uttar Pradesh --- Presence of vendee not mandatory for registration of sale deed.

HELD: Section 32A of the Registration Act, as prevailing in the State of Uttar Pradesh, differs from the Central Act and does not mandate the presence of the buyer at the time of execution and registration of the sale deed, unlike the Central Act, which requires affixing of photograph and fingerprints of both parties; hence, absence of the plaintiff's representative on certain dates before the sub-registrar does not establish that the plaintiff was not ready and willing to perform. [Paras 148-156]

Appeal dismissed with costs; judgment and decree of the trial court dated 21.3.2025 affirmed. Defendants directed to execute the sale deed within one month of receiving the balance sale consideration, failing which the plaintiff would be entitled to get it executed through Court. (E-14)

Case Law Cited

Nathu Lal v. Phool Chand, (1969) 3 SCC 120 --- relied on; *Faquir Chand and another v. Sudesh Kumari*, (2006) 12 SCC 146 --- relied on; *P. Daivasigamani v. S. Sambandan*, (2022) 14 SCC 793 --- relied on; *Krishan Gopal v. Gurmeet Kaur (Dead) thr. Lrs. & ors.*, 2025 SCC OnLine SC 1438 --- relied on; *Aloka Bose v. Parmatma Devi and others*, (2009) 2 SCC 582 --- relied on; *Ramesh Chandra Agrawal (dead) through Lrs. and ors. v. Bitta Devi alias Bitto*, 2015 SCC OnLine Alld 9255 --- referred to; *Sudha Gupta v. Delhi Land and Finance Ltd.*, (2019) 14 SCC 266 --- referred to; *Rattan Singh and others v. Nirmal Gill and others*, (2021) 15 SCC 300 --- relied on; *Sellappa Chetty & ors. v. Marappa Goundar & ors.*, 1963 SCC OnLine Mad 175 --- referred to; *Asset Reconstruction Company (India) Ltd. v. S.P. Velayutham & ors.*, (2022) 8 SCC 210 --- relied on; *Syed Dastagir v. T.R. Gopalakrishna Setty*, (1999) 6 SCC 337 --- relied on; *Kamal Kumar v. Premlata Joshi*, (2019) 3 SCC 704 --- referred to; *Sukhbir Singh v. Brij Pal Singh*, (1997) 2 SCC 200 --- referred to; *K.S. Vidyanadam v. Vairavan*, (1997) 3 SCC 1 --- referred to; *Saradamani Kandappan v. S. Rajalakshmi*, (2011) 12 SCC 18 --- referred to; *Pydi Ramana v. Davarasety Manmadha Rao*, (2024) 7 SCC 515 --- distinguished; *Shenbagam and others v. K.K. Rathinavel*, 2022 (157) RD 374 (SC) --- distinguished; *Basant Ram (D) thr. Lrs and ors. v. Sukhbir Singh and ors.*, CA 4667 of 2025 (SC) --- distinguished; *Darshan Singh (D) by Lrs & ors. v. Brijbhushan Chaudhary (D) by Lrs.*, (2024) 3 SCC 489 --- distinguished; *Muddam Raju Yadav v. B. Raja Shanker (D) through Lrs. and ors.*, 2026 INSC 214 --- distinguished; *S.P. Chengalvaraya Naidu (dead) by Lrs. v. Jagannath (dead) by Lrs. and others*, AIR 1994 SC 853 --- referred to; *U.N. Krishnamurthy (dead) through Lrs. v. A.M. Krishnamurthy*, 2023 (158) RD 150 (SC) --- distinguished; *N.P. Thirugnanam (D) by Lrs. v. Dr. R. Jagan Mohan Rao and ors.*, JT 1995 (5) SC 553 --- relied on.

List of Acts / Statutes

Specific Relief Act, 1963; Registration Act, 1908; Code of Civil Procedure, 1908; Limitation Act, 1963.

List of Keywords

Specific performance; Readiness and willingness; Agreement to sell; Undue influence; Inadequate consideration; Fraud; Registration Act Section 32A; Freehold conversion.

Case Arising From

Judgment and decree dated 21.3.2025 passed by the Court of Civil Judge (Senior Division)/FTC, Kanpur Nagar, in O.S. No. 50 of 2017, Shivani Hospital Private Ltd. v. Mimansa Nangia and others.

Appearance for Parties

For the Appellant(s): Mohammad Ali Ausaf, Rahul Sahai.

For the Respondent(s): Sheshadri Trivedi, Devansh Misra, Vishnu Bihari Tewari.

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

1. The instant appeal has been filed by the defendants under Section 96 CPC against the impugned judgment and decree dated 21.3.2025 passed by the Court of Civil Judge(Senior Division)/FTC, Kanpur Nagar in O.S. no. 50 of 2017 Shivani Hospital Private Ltd. vs. Mimansa Nangia and others, whereby the plaintiffs suit for the relief of specific performance of registered agreement to sell dated 22.10.2012 has been decreed.

Plaint case

2. The plaintiff Shivani Hospital Private Limited filed O.S. No. 50 of 2017 against defendant no.1 Mimansa Nangia, defendant no. 2 Shailja Nangia @ Shalu and defendant no.3 Smt. Shivani @ Shibbu Begum Shahnaz Faisal with the averments that their father Dharam Prakash

Nangia was the owner in possession of plot no. A□10,Block C,Sarvodaya Nagar, Kakadev, Kanpur Nagar admeasuring 1,352 yd□= 1130.41 square metre, the boundaries of which have been mentioned at the end of the plaint, which is hereinafter referred to as the 'disputed property'.

3. It was averred that the defendant's father Dharam Prakash Nangia voluntarily and with free will executed an agreement to sell regarding the disputed property on 22.10.2012 in favour of the plaintiff ,which was registered in Book no.1, Zild no. 7095, at pages 1- 84, serial no. 8557 on 7.11.2012 in the office of sub-registrar, Zone □ 4, Kanpur Nagar. It was further averred that since Dharam Prakash Nangia was in need of money,the disputed property was agreed to be sold for a consideration of ₹ 5.25 crores, which was according to its market value. It was further agreed that Dharam Prakash Nangia would get the disputed property freehold and then the sale deed would be executed in favour of the plaintiff. It was also agreed that at the time of execution of the agreement to sell, a part consideration of ₹ 2 crores will be paid by the plaintiff to Dharam Prakash Nangia. It was further averred that in accordance with the above terms and conditions of the sale, an amount of ₹ 2 crores was paid at the time of execution of agreement to sell on 22.10.2012 through cheques, the details of which were mentioned in the plaint. It was agreed that the remaining consideration of ₹ 3.25 crores would be paid at the time of execution of the sale deed in favour of the plaintiff.

4. It was further averred that besides the above amount of ₹ 2 crores which was paid by the plaintiff to Dharam Prakash Nangia at the time of execution of the agreement to sell, Dharam Prakash Nangia also demanded from the plaintiff an amount of ₹ 41 lakh towards expenses for getting the disputed property freehold, which was paid by plaintiff by cheque no. 68, 69, 96 and 102 issued on 14.3.2014, 14.3.2014, 28.11.2014,05.2.2015, which were of ₹ 7 lakhs, 8 lakhs, 20 lakhs and 6 lakhs respectively. In this manner the plaintiff paid an amount of ₹ 2.41 crores to Dharam Prakash Nangia and only an amount of ₹ 2.84 crores remained to be paid towards consideration of the disputed property.

5. It was further averred that as per the terms and conditions of the agreement to sell dated 22.10.2012, Dharam Prakash Nangia was to get the disputed property freehold at his expenses and thereafter, was required to give its information to the plaintiff. It was also agreed between the parties, that by the month of December, 2014 the disputed property will be converted to freehold and by then, the sale deed would be executed by Dharam Prakash Nangia in favour of the plaintiff. It was also agreed that Dharam Prakash Nangia will inform the date in writing to the plaintiff on which he was going to execute the sale deed of the disputed property in favour of the plaintiff and on that date, the plaintiff will remain present in the office of concerned sub- registrar Kanpur Nagar with the balance consideration for getting the sale deed executed in its favour. It was also agreed that if Dharam Prakash Nangia failed to execute the sale deed of the disputed property in favour of the plaintiff within the prescribed time limit after completing the necessary formalities, then in that situation, the plaintiff will be entitled to get the sale deed executed through court, in which the legal heirs will have no right to object.

6. It was further averred that when Dharam Prakash Nangia failed to get the disputed property freehold within the prescribed period, then he requested the plaintiff to give some more time for getting the disputed property freehold, which was accepted by the plaintiff and consequently, an agreement before notary was executed between the plaintiff and Dharam Prakash

Nangia on 21.12.2014, by which the time limit for getting the property freehold was extended and it was agreed that after getting the disputed property freehold, Dharam Prakash Nangia will inform the plaintiff legally and after getting the information, the plaintiff within a further period of one month will get the sale deed executed in its favour after paying the balance sale consideration and will also get it registered from the office of sub-registrar Kanpur Nagar.

7. It was further averred that Dharam Prakash Nangia failed to get the disputed property freehold because he died suddenly on 04.7.2015 leaving behind the defendants, who are his daughters/legal heirs, who are bound by the above registered agreement to sell dated 22.10.2012, which was executed by their father and are liable to execute the sale deed of the disputed property in favour of the plaintiff.

8. It was further averred that a legal notice was sent by Shri Devendra Dwivedi Advocate on 20.8.2015 to the plaintiff on incorrect facts on behalf of defendants no.1 and 2, which was replied by the plaintiff by notice dated 12.9.2015, which was again replied by Shri Devendra Dwivedi Advocate on 17.9.2015. The defendants alleged that since the defendant no. 3 has embraced Islam religion, she has lost her right in the disputed property.

9. It was further averred that the plaintiff replied to the erroneous notice sent on behalf of the defendants. The plaintiff through notice dated 24.10.2015 again requested the defendants to remain present in the office of sub-registrar for executing the sale deed in its favour after receiving the balance consideration but on the date fixed 3.11.2015 the defendants failed to remain present in the office of sub-registrar, zone no. 4 for executing the sale deed in favour of the plaintiff. The plaintiff again gave legal notice on 30.11.2015 to the defendants to remain present on 5.12.2015 in the office of sub-registrar zone no. 4 Kanpur Nagar for executing the sale deed by receiving the balance sale consideration but the defendants deliberately failed to appear on that date also. The plaintiff has averred that its officials remained present in the above office the whole day, with the balance sale consideration but the defendants failed to appear. Again, the plaintiff by legal notice dated 23.12.2015 requested the defendants to remain present on 5.1.2016 in the office of sub-registrar zone no. 4, Kanpur Nagar for executing the sale deed of the disputed property in favour of the plaintiff after receiving the balance consideration but even on that date, the defendants failed to appear whereas, the plaintiff remained present in that office till 5:30 PM.

10. The plaintiff has specifically averred that it remained always ready and willing and was still ready and willing to get the sale deed executed in its favour after paying the balance sale consideration to the defendants, in accordance with the terms and conditions of the registered agreement to sell dated 22.10.2012 but the intention of the defendants has turned malafide, who are not ready and willing to execute the sale deed in favour of the plaintiff and the defendants have also filed O.S. no. 50 of 2016 Mimansa Nangia @ Surbhi Nangia vs. Shivani Hospital on false and incorrect allegations, hence the plaintiff was compelled to file the suit.

11. In the above backdrop, the plaintiff prayed for the following reliefs:-

(A) A decree of specific performance of registered agreement to sell dated 22.10.2012 be passed in favour of the plaintiff against the defendants, directing the defendants to execute the sale

deed of the disputed property within a time limit fixed by the court after receiving the balance sale consideration from the plaintiff and also to get it registered and also to deliver the physical and vacant possession of the disputed property to the plaintiff and if the defendants failed to do so, then the plaintiff be permitted to get it executed through the Court after depositing the balance sale consideration in the court .

(B)The costs of the suit be also awarded to the plaintiff against the defendants.

(C)Any other relief which the Court deems appropriate be also awarded to the plaintiff against the defendants.

Written statement of defendant no.1

12. It was averred by the defendant that she is the legal guardian of disabled defendant no. 2. She accepted that her father has died. She also accepted that she has filed O.S. no. 50 of 2016 against the plaintiff. The defendant has denied the plaint averments and has averred that the plaintiff has got no cause of action to file the instant suit. She admitted that her father Dharam Prakash Nangia has died on 4.7.2015 but disclosed that, prior to his death he executed a registered Will dated 03.10.2011 according to which defendant no.1 is the owner of 50%,defendant no. 2 is the owner of 20% and defendant no. 3 is the owner of 30% of the entire movable and immovable property of their father. It was also averred that the defendant no. 3 against the wishes of her father,renounced Hinduism and has embraced Islam during the lifetime of her father and has also accordingly, changed her name from Shivani @ Shibbu Nangia to Shahnaz Faisal and has also solemnised marriage with Faisal Junaid. It was further averred that even if any agreement has been executed by her father in favour of the plaintiff, even then she is unable to comply with it because O.S. no. 400 of 2016 Shivani Nangia @ Shahnaz Faisal vs. Mimansa Nangia @ Surabhi and others is pending in the Court of Civil Judge(Senior Division) Kanpur Nagar.

Written statement of defendant no. 2

13. She averred that defendant no.1 has been appointed as her guardian ad litem on 02.8.2022, by the court. She has repeated the averments made by defendant no.1 in her written statement.

Written statement of defendant no. 3

14. The defendant has averred that the disputed agreement to sell dated 22.10.2012 was not executed by her father Dharam Prakash Nangia with his free will, who has died on 4.7.2015. She has denied the plaint averments and has averred that no cause of action has arisen to the plaintiff to file the instant suit.

15. It was further averred that the house of plaintiff Dr. Shiva Kant Mishra and the disputed house are adjacent to each other. Dr. Shiva Kant Mishra and his wife Dr. Neelam Mishra were the family doctor of the father and mother of the answering defendant late Dharam Prakash Nangia and Smt.Meena Nangia, who remained under the treatment of doctor Shiva Kant Misra. Smt.Meena

Nangia died due to heart attack on 12.12.2012. It was further averred that there was a relationship of doctor and patient between the plaintiff and her parents.

16. It was further averred that when the said agreement was executed on 22.10.2012, the market value of the disputed property was not less than ₹ 10 crores. The plaintiff was neither in need of a domestic residential plot nor there was any company resolution to this effect, hence the agreement to sell dated 22.10.2012 is null and void. It was further averred that Dr. Shiva Kant Mishra and his wife Neelam Mishra were in dominating condition being doctors of her parents, who used to frequently visit in their last days and in such circumstances, Dr. Shiva Kant Mishra and his wife Dr. Neelam Mishra exercised their under influence over her parents and got executed the said agreement for sale for a mere amount of ₹ 5.25 crores.

17. It was further averred that the plaintiff and its directors were never having the financial capacity to purchase the disputed property since the cheque amounting to ₹ 38 lakhs was dishonoured due to insufficient funds which shows the financial incapacity of the plaintiff. It was further submitted that on 5.1.2016 the plaintiffs were not having sufficient funds which is exhibited from the balance sheet of the plaintiff. It was submitted that the disputed agreement is a result of undue influence of the plaintiff and his wife, as such it is unenforceable.

18. It was further averred that the defendant has solemnised marriage with Faisal Junaid on 27.11.1993, who is a Muslim. It was further averred that the defendant no. 2 is handicapped and of unsound mind since her birth, as such she has to look after her,till her whole life and in these circumstances, if the suit of the plaintiff is decreed and the disputed property is sold to the plaintiff, then there is no place where the defendant can reside with defendant no. 2 and their whole lives will be ruined. It was further averred that at the time of death of her father Dharam Prakash Nangia, the defendant no.1 was residing with him,who has usurped all his money and immovable properties including the advance money paid by the plaintiff to Dharam Prakash Nangia and she's filing the suit for recovery of money for her share in the amount of sale consideration, which was obtained by her father and which has been usurped by the defendant no.1.

19. It was further averred that at present there is no place where the answering defendant could shift with defendant no. 2 for whole life and she is not in a financial condition to arrange for any other alternative accommodation for her and her ailing handicapped, unsound sister. The defendants no. 2 and 3 will suffer great hardship if the disputed property is sold to the plaintiff, in compliance of the said agreement. It was averred that the defendant is ready to return the money with bank interest to the plaintiff and this direction can only be against defendant no.1 because she has withdrawn the whole amount.

20. It was further averred that the suit is time barred because the plaintiff fraudulently created a notorial agreement dated 21.12.2014 by forging signatures of Dharam Prakash Nangia on it. In view of this, the plaintiff is not entitled to any equitable relief of specific performance. The plaintiffs suit be dismissed with costs.

Replica of the plaintiff

21. The plaintiff has reiterated the plaint averments. The plaintiff has accepted that the house of Dr. Shivakant Mishra is adjoining to the disputed house and it was also accepted that Dr.Neelam Mishra is the wife of Dr. Shiva Kant Mishra, who is also a doctor. It was denied that the plaintiff and Dr. Neelam Mishra were the family doctors of the parents of the defendants. It was further averred that at the time of execution of agreement to sell, the circle rate of the disputed property was only ₹ 2,800/- per square metre whereas, the transaction was done at the rate of ₹ 3,800/- per square metre. It was reiterated that the transaction was made higher than the prevailing market rate. It was denied that the market value of the disputed property was at that time ₹ 10 crore. Since defendant no. 3 has changed her religion, she has got no right in the disputed property. Further, defendant no. 3 is not entitled to any money from the plaintiff. It was denied that the plaintiff no. 2 was handicapped and mentally retarded since birth. It was further averred that defendant no. 3 is residing with her husband in house no. 88/103, Imam building, flat no. 3, 4th floor, Prem Nagar, Kanpur.

22. It was further averred that the cheque of ₹ 38 lakhs which was alleged to have been dishonoured due to insufficient funds in the bank account of the plaintiff was later on encashed on 17.12.2012, which was proved from the bank statement submitted by the plaintiff for the financial year 2012 □ 2013. It was further averred that the defendant no. 3 was also bound by the terms and conditions of the agreement to sell, executed by her father in favour of the plaintiff

Issues framed

23. The following issues were framed by the trial court :-

(i)Whether the defendants executed a registered agreement to sell dated 22.10.2012 in favour of the plaintiff regarding the disputed property described at the end of the plaint?

(ii)Whether plaintiff is ready and willing to get the sale deed executed in his favour?

(iii)Whether the suit is insufficiently valued?

(iv)Whether the court fees paid is insufficient?

(v)Whether plaintiff is entitled to any relief?

(vi)Whether plaintiffs suit is time barred?

(vii)Whether the evidence of PW-2 Ramakant Mishra is admissible? If so, its effect?

(viii)Whether the defendant's father late Dharam Prakash Nangia was entitled to execute the agreement to sell dated 22.10.2012 ?

Documentary evidence of the parties

24. The plaintiff has filed the original agreement to sell dated 22.10.2012, copies of statement of his bank accounts, legal notices issued through advocate, the reply of notices sent to defendants, the resolution of the plaintiff company, original Notorial agreement dated 21.12.2014, certified copy of list of circle rate prevailing in the year 2012, memorandum of article and association of the plaintiff company, the report of the hand writing expert, the information obtained under the RTI Act,etc.

25. The defendants have filed certified copy of the balance sheet of the plaintiff for the financial year 2011 □ 12, 2012 □ 13, 2013 □ 14, 2014 □ 15, 2015 □ 16 and 2021 □22, the original valuation report dated 24.1.2023, the certified copy of the statement of account No. 696710110000131 of Dharam Prakash Nangia from 03.11.2012 □ 01.8.2015 of Bank of India Branch Guru Tegh Bahadur Marg, Kanpur, photocopy of the statement of defendant no.1 's bank account, bank statement of other accounts of defendants, certified copy of the lease deed dated 24.1.1964, 23.4.1966, 30.8.1978, certified copy of the plaint and W.S. in O.S. no. 50 of 2016, the copy of application dated 19.11.2013 given to Kanpur Development Authority for freehold purposes, etc.

Oral evidence of the parties

26. The plaintiff has examined Dr.Shiva Kant Mishra as PW-1, Ramakant Mishra as PW-2, Sanjiv Kumar Tiwari as PW-3 and Ravi Krishna Nigam @ R. Krishna as PW-4.

27. The defendants have examined Mimansa Nangia as DW-1, Shahnaz Faisal as DW-2, Ravindra Tripathi as DW-3, Rohit Handa as DW-4,Mohd. Minaz Jaffery as DW-5 and Pankaj Agarwal as DW-6.

Plaintiffs oral evidence

28. Dr. Shiva Kant Mishra PW-1 in his examination-in-chief has reiterated the plaint averments. In cross-examination he deposed that Shivani hospital was established in the year 1995, which is only having one account in Bank of Baroda, Kabadi market, Kanpur. The plaintiff company does not possess any immovable property. He accepted that the disputed property is adjoining to his house. He also accepted that the disputed property is leasehold, and the responsibility was on the seller to get it freehold. He further disclosed that the accounts of the plaintiff are audited. He further deposed that the company had agreed to purchase the disputed property keeping in view its financial capacity. He admitted that the plaintiff company has obtained an advance of ₹ 1.67 crores against property. He further deposed that the plaintiff company was having sufficient funds when it gave notice to the defendants for getting the sale deed executed in its favour. He denied the suggestion that paper no. 130-C was a forged and fabricated document.

29. He further deposed that as per the terms of the agreement, the seller was required to get the property freehold from the KDA and then inform the plaintiff company. He further deposed that since till December 2014 the seller failed to get the property freehold, hence on the request of the seller Dharam Prakash Nangia, a notary agreement was executed between the parties for extension

of time. He denied the suggestion that the seller Dharam Prakash Nangia was misled into entering an agreement with the plaintiff.

30. He further deposed that he was not aware if after the death of Dharam Prakash Nangia, the disputed property was converted into freehold or not. He disclosed that after the death of Dharam Prakash Nangia he was ready to purchase the disputed property even without getting it freehold. He admitted that he never informed the defendants in writing that the plaintiff company was willing to purchase the disputed property without getting it freehold. He reiterated that between October 2015 and January 2016 he remained present in the sub-registrar office many times, after informing the defendants, to get the sale deed of the disputed property executed after paying the balance consideration. He disclosed that he and Sanjiv Kumar Tiwari went on behalf of the plaintiff company to the sub-registrar office. He disclosed that he was not aware that defendant no. 2 was mentally retarded.

31. He further deposed that in October 2015 he went to the sub-registrar office with a cheque book, without any cash. At that time, the plaintiff company was having sufficient funds in its bank account, some amount was in fixed deposit and some was in the current account. He again went to the sub-registrar office on 5.12.2015 and 5.1.2016, on those occasion also, he was having his cheque book, but no cash. On those occasion also, the plaintiff company was having sufficient amount in its fixed deposit and current account. He denied the suggestion that he and his wife used to treat the parents of the defendants and there was a relationship of doctor and patient between them. He also denied the suggestion that the alleged agreement to sell was executed under undue influence by Dharam Prakash Nangia. He reiterated that defendant no. 3 was residing in her husband's house.

32. Ramakant Mishra PW-2 deposed in his examination-in-chief that as an advocate he was involved in the affairs of the plaintiff company, in getting the agreement to sell prepared and executed and doing other tasks on behalf of it. He deposed that he prepared the draft agreement to sell dated 22.10.2012 which was read to the parties and after obtaining their consent, it was finalised. He further deposed that the agreement was signed in his chamber by all the parties and witnesses and thereafter, it was presented to the sub-registrar for registration, the agreement was obtained on 7.11.2012 after registration. He further deposed that on 21.12.2014 a notarised memorandum was executed between the authorised signatory of the plaintiff and Dharam Prakash Nangia, which was also prepared in his chamber. He also deposed that the notice dated 28.8.2015 which was issued by Devendra Dwivedi to the plaintiff, was also replied by him after obtaining instructions from the plaintiff, which was again replied by Devendra Dwivedi on 17.9.2015, which was addressed to him in the capacity of plaintiffs advocate. He further deposed that on 24.10.2015, 30.11.2015 and 23.12.2015 he gave legal notices on behalf of the plaintiff to the defendants for their failure in not executing the sale deed in plaintiffs favour, a copy of these notices has been filed by the plaintiff in the suit. He further deposed that the plaintiff made all efforts to get the sale deed of the disputed property executed in its favour, but the defendants failed to do so.

33. PW-2 in cross-examination deposed that he was not a mediator in the deal. The draft agreement was prepared by Naveen Mishra. The agreement was signed in his presence. At the time of agreement ₹ 2 crores was paid and ₹ 41 lakhs was also paid through cheques from time to time

for getting the property freehold to Dharam Prakash Nangia. On 3.11.2015, 5.12.2015 and 5.1.2016 he along with Dr. Shivakant Mishra were present with draft sale deed, along with cheques, but the defendants failed to appear in the sub-registrar office, whereas, they were aware that they have to remain present on that date. He further deposed that Dr. Shivakant Mishra remained present on the above dates along with him from morning to evening in the sub-registrar office. A certificate of attendance was also obtained from the sub-registrar office, which has been filed on record. He deposed that the draft sale deed was prepared without stamps because the stamps were to be purchased when the parties arrived for getting the sale deed executed. He further deposed that the plaintiff company was having an amount of ₹ 3.25 crores in its account and the defendants were to be paid through cheques which were to be drawn on the bank account of the plaintiff. He further deposed that in the agreement to sell Sanjiv Tiwari and the brother-in-law of Dharam Prakash Nangia were witnesses. He denied the suggestion that in collusion with the plaintiff he got the agreement executed from Dharam Prakash Nangia. He further disclosed that the unregistered memorandum was got prepared by Dharam Prakash Nangia. He further disclosed that at the time of filing of the suit he had once been filed his vakalatnama on behalf of the plaintiff because at that time he was not aware that he was also be required to give his evidence as a witness in this case, but now he has withdrawn his vakalatnama, and the plaintiff is being represented by another advocate. He is not now appearing for the plaintiff, as an advocate.

34. Sanjiv Kumar Tiwari PW-3 deposed in his examination-in-chief that he is an advocate by profession and is also a witness of the agreement to sell dated 22.10.2012, and is acquainted with the facts of the case. He deposed that the above agreement was signed by the parties in his presence and thereafter, was presented for registration. He further deposed that after the death of the seller, when his legal heirs failed to execute the sale deed inspite of the request of the buyer, then after informing the defendants and fixing a definite date for their appearance before the sub-registrar, he remained present in the sub-registrar office on 5.1.2016 and he also got his attendance marked by receiving acknowledgement, which has been filed by the plaintiff on record.

35. PW-3 in cross-examination deposed that he was present when the draft of the agreement was being prepared. After reading the agreement, it was 1st of all signed by Dharam Prakash Nangia, thereafter it was signed by Dr. S.K. Mishra, he signed as the 2nd witness, the document was signed in the chamber of Rama Kant Mishra and only cheques were given. In the registrar office, the 1st thumb impression affixed was of Dharam Prakash Nangia. He knows Shivakant Mishra, who is the director of plaintiff company since the year 2009.

36. Ravi Krishna Nigam @ R.Krishna PW-4 the handwriting expert ,in his examination-in-chief has deposed that after comparing the admitted signatures of Dharam Prakash Nangia on the registered agreement to sell dated 22.10.2012, he is of the opinion that the unregistered agreement dated 21.12.2014 paper no. 130-C, was also signed by Dharam Prakash Nangia.

Defendants oral evidence

37. Mimansa Nangia DW-1 in her examination-in-chief reiterated the averments of her written statement. She admitted that a registered agreement to sell was executed by her father Dharam Prakash Nangia regarding the disputed property in favour of the plaintiff, and the sale deed

was to be executed after receiving the balance consideration by her father. She also admitted that her father tried his best to comply with the terms of the agreement but due to her father's untimely death, the disputed property could not be converted into freehold. She further deposed that on the basis of a Will executed by her father, she is the 50% owner and her sister defendant no. 2 is the 20% owner of the entire movable and immovable property of their father.

38. She further deposed that when the plaintiff failed to comply with the terms of the agreement by paying the balance consideration then she got issued a legal notice through her advocate on 28.8.2015 by registered post to the plaintiff to remain present in the office of sub-registrar for getting the agreement cancelled by receiving back the earnest money. She further deposed that the above notice was served on the plaintiff but inspite of this, the plaintiff failed to remain present on the date and time fixed in the office of sub-registrar, zone no. 4, Kanpur Nagar who neither got the agreement cancelled nor received the earnest money, but on the contrary, submitted reply of her legal notice, through its advocate. She further deposed that since within the agreed duration the plaintiff failed to pay the balance consideration,hence the plaintiff has got no right to get the agreement specifically enforced and for this reason, the plaintiff 's suit is liable to be dismissed. The plaintiff has filed the suit on incorrect facts. She further deposed that she along with her sister/defendant no. 2 never refused to get the sale deed executed in favour of the plaintiff but on the contrary, she gave a legal notice dated 28.8.2015 in which it was mentioned that since the sale deed was not executed till December 2014 hence, it was apparent that the plaintiff was not ready and willing to get the sale deed executed in its favour. She further deposed that in reply to her notice dated 28.8.2015, the plaintiff simply told her that it is ready to get the sale deed executed by paying the balance consideration of ₹ 3.25 crores but no date was fixed on which the sale deed was supposed to be got executed, which shows that the plaintiff was not ready and willing to get the sale deed executed in its favour after the death of Dharam Prakash Nangia, from his legal heirs. She further deposed that the plaintiff has not given any details in order to prove that it was having sufficient money to pay the defendants, in order to get the sale deed executed.

39. DW-1 in cross-examination deposed that she became aware of the agreement dated 22.10.2012 after the death of her father when she received summons of this case. Her father was not having any other immovable property except the disputed property. She admitted that she has filed suit for the cancellation of the agreement to sell which is pending in the court. She admitted that her father had received the earnest money of the disputed agreement to sell, through cheques, at the time of its execution. She admitted that after the death of her father she gave no notice to the plaintiff. She disclosed that in the suit filed by her 50 of 2016, she and her sister Shalu are the plaintiffs and the defendant is the plaintiff of this suit. She admitted that in suit no. 50 of 2016 her sister Shivani @ Shibbu is not a party. She admitted that the differences between her and her sister Shivani arose after the death of their father.

40. She further disclosed that she was not having any knowledge whether any amount has been deposited with the KDA for getting the property converted to freehold. She also failed to disclose whether in the month of December 2014 her father received any permission regarding the disputed property being converted into freehold.She admitted that the disputed property is still undivided. She failed to disclose that on 11.9.2015 whether she marked her attendance in the office of the sub-registrar along with the bank drafts for returning the earnest money to the plaintiff and

whether she filed the above documents in this suit. She failed to disclose whether any suit for the cancellation of the agreement to sell has been filed by her or not. She also failed to disclose whether in the month of September 2015 she was having sufficient funds to return the earnest money to the plaintiff. She also failed to disclose whether on 5.1.2016 she was present at the office of sub-registrar zone 4 or not. She also failed to disclose whether she ever remained present in the office of sub-registrar on the date fixed by the plaintiff, for executing the sale deed. She denied the suggestion that the plaintiff was always ready and willing to get the sale deed executed in its favour. She also denied the suggestion that the plaintiff remained present with the balance sale consideration for getting the sale deed executed in its favour on the date fixed, which was also in her notice and also marked its attendance before the sub-registrar. She also denied the suggestion that she did not give the information that the disputed property has been converted into freehold to the plaintiff. She also denied the suggestion that the cause of action has arisen to the plaintiff for specifically enforcing the agreement.

41. Shahnaz Faisal @ Shivani Nangia @ Shibbu DW-2 in examination-in-chief reiterated her averments of the written statement. She deposed that her father Dharam Prakash Nangia did not execute the alleged agreement to sell dated 22.10.2012 voluntarily of his free will, which was executed under undue influence of Dr. Shiva Kant Mishra and his wife Dr. Neelam Mishra, and due to this reason, in grief, after about one month on 12.12.2012 her mother Meena Nangia died.

42. She further deposed that her sister Shailja Nangia is about 50 years old, who is from birth mentally retarded,deaf and dumb, who behaves like a child, who is unmarried and has no chance of ever getting married in future. She is 48 years old. She deposed that she was told by her father Dharam Prakash Nangia that a cheque of ₹ 38 lakhs given by the director of plaintiff Dr. Shivakant Mishra bounced due to insufficient funds. Her father between the year 2014 and 2015 informed her many times that the plaintiff was unable to fulfil the terms of the agreement because it could not arrange the requisite funds for getting the sale deed executed in its favour hence, Dr. Shivakant Mishra was making false assurances and was getting the matter stalled again and again, on which, her father gave him time upto July 2015, failing which to get the agreement cancelled after returning the earnest money with interest, but unfortunately, her father died on 4.7.2015. She further deposed that on 1.9.2023 and 18.9.2023 she obtained the balance sheet of the plaintiff for the year 2012 2016, from which it was proved that the plaintiff was not having sufficient funds to fulfil the terms of the agreement. Besides this, from neither the statement of the current account nor the balance sheet, it was proved that the plaintiff was having sufficient funds, hence the plaintiff has got no cause of action to file the suit for the relief of specific performance.

43. She further deposed that her younger sister Km. Mimansa Nangia @ Surabhi was aged about 40 years, was a fraudulent woman, who has usurped the amount existing in the bank accounts of her father at the time of his death, without giving any share to her, who has usurped the entire property of their father. She also disclosed that the above sister has misappropriated the whole amount of ₹ 2 crores, which was given by the plaintiff to her father by getting it transferred to her account, which is proved from the statement of the bank account of her father and the statement of bank accounts of her sister Mimansa Nangia in State Bank of India and Axis Bank. She further deposed that if the Court orders the return of earnest money to the plaintiff, then only the defendant no.1 Mimansa Nangia is liable to return that amount because she alone has usurped it fraudulently

and malafidely by getting it transferred to her bank account. She further deposed that since defendant no.1 was having malafide intention as such, she was not entitled to be appointed as guardian of defendant no. 2.

44. She further deposed that since she is married, she also resides with her husband in her flat in Premnagar, Kanpur but she is also in possession of the disputed property being its co-owner. She further deposed that at the time of the alleged execution of the agreement on 22.10.2012, the official valuation of the property was ₹ 10.91 crores whereas, it was agreed to be sold for a paltry consideration of ₹ 5.25 crores. She further deposed that on 11.12.2012 cheque no. 6 drawn on Bank of Baroda, Branch Kabadi market Kanpur of ₹ 38 lakhs was dishonoured due to insufficient balance in the bank account of the plaintiff,which itself disentitles the plaintiff to get the agreement specifically enforced.

45. She further deposed that her father Dharam Prakash Nangia was not in any need of money so as to sell the disputed property situated in prime location, more so, for inadequate consideration. She further deposed that amount of ₹ 2 crores received by her father as earnest money was never spent by him during his lifetime which proves that he was not in any need of money so as to sell the disputed property. She further deposed that since agreement to sell had become time barred hence on 21.12.2014 a fraudulent document was prepared by forging the signature of her father, on the basis of which the instant suit was not maintainable, because it is an unregistered document. The above document has neither been signed by the notary nor it is entered in the register of notary. It was further deposed that Dr. Shivakant Mishra is a director of the company, who has not been authorised on behalf of the company hence, he could not have executed the above document. She further deposed that since the disputed property was not converted to freehold,hence in the absence of such permission, the sale deed could not have been executed in favour of the plaintiff. The document dated 21.12.2014 has not been signed by any witness, which is a forged and fabricated document. The plaintiff was not having sufficient funds on 3.11.2015, 5.12.2015 and 5.1.2016. She further deposed that she never received any notice from the plaintiff to remain present before the sub-registrar on the above dates and further, on the above dates, the plaintiff was not having the remaining consideration of ₹ 2.84 crores with it, which was proved from the statement of bank account and balance-sheet of the plaintiff.

46. It was further deposed that as per the agreement to sell dated 22.10.2012 the suit for the specific performance of contract could have been filed within 3 years of the above agreement, hence the suit filed by the plaintiff was time barred. It was further deposed that if the plaintiff 's suit was decreed then the defendant Shailja@ Shalu has no place to reside. She is not willing to sell the disputed property and the disputed property has not yet been divided. The plaintiff is a company, which has no requirement of residential property, no resolution of the company in this regard is on record. The plaintiff has not approached the court with clean hands and as such, is not entitled to any relief from the Court.

47. DW-2 deposed in cross-examination that her father got injured due to fall, his hip bone was fractured, who was treated at the house and cared by her and relatives. When her father died, he was having about ₹ 4 □ 5 crores, including ₹ 2 crores, which was given as advance by the plaintiff to him. She deposed that her father informed her about the dishonoured cheque of ₹ 38

lakhs on the same evening but 2 □ 3 days thereafter, she was informed by her parents that the above amount has been credited to their account. She accepted that the cheque was subsequently honoured. She also accepted that the agreement was registered and her father went along with her maternal uncle. She admitted that she has no knowledge about any notice or letter sent by her father for cancelling the agreement with the plaintiff due to plaintiffs inability to pay consideration. She accepted that in the registered Will executed by her father, the share of all the daughters have been specified. She further deposed that the whole amount received by her father as advance, was deposited by him in his bank account, which was never spent by him in his lifetime. She further deposed that the amount of ₹ 2 crores received by her father was transferred by defendant no.1 in her bank account, 20 days after the death of her father, but this amount belonged to all the sisters, being the legal heirs.

48. She further deposed that she was not aware whether the disputed property was freehold or leasehold, an amount of ₹ 2 crores was paid by the doctor Saheb to her father. She was told by her government approved valuer that at the time of the execution of agreement, the property was valued at about ₹ 11 crore. She has filed the report of the valuer on record. She admitted that the agreement was executed by her father before the registrar but she clarified that it was due to her father's simplicity and in discharge of the previous obligations towards doctor Saheb. She accepted that her father neither gave any legal notice to the plaintiff regarding undue influence nor lodged any report with the police. She further deposed that the sale deed was to be executed till the year 2014 after receiving the full consideration. She further deposed that she never received any notice sent by the plaintiff for appearing before the sub-registrar for executing the sale deed.

49. She further admitted that there was a clause in the agreement dated 22.10.2012 which prohibited the legal heirs of the parties from questioning the quantum of consideration of the transaction. She accepted that the last time her father had received in the month of February 2015 an amount of ₹ 6 lakhs through cheque, which was honoured. She accepted that her father always told her orally that the plaintiff was not complying with the terms of the agreement but no complaint was ever made during his lifetime to any competent official regarding the alleged agreement. She further disclosed that the plaintiff was told to get the sale deed executed by paying the balance consideration till July 2015 failing which, the plaintiff was required to cancel the agreement after receiving back the consideration paid by it earlier, otherwise the defendants shall approach the Court for cancellation of the agreement. She accepted that no written notice was ever given to the plaintiff or the doctor Saheb but he was told orally that the sale deed be got executed after paying the full consideration. She further disclosed that doctor Saheb demanded ₹ 7 □ 8 crores for cancelling the agreement. She admitted that when her relations with her sister Mimansa were cordial, then no notice was ever given to the plaintiff. She failed to disclose when her sister Mimansa gave a legal notice to the plaintiff for getting the agreement cancelled after returning the earnest money.

50. She denied the suggestion that her father requested for extension of time after December 2014 to get the plot freehold and in pursuance of that, an unregistered memorandum was executed between the parties. She admitted that she has not filed any evidence on record to prove the steps undertaken by her father to get the property converted to freehold. She also admitted that talks were going on between the plaintiff and her father between the year 2014 □ 2015 that if the

plaintiff paid the full consideration till July 2015 then in the next 2 4 days, they would complete the formalities. She further deposed that her father orally informed the plaintiff that the property has been converted to freehold. She denied the suggestion that she was bound to obey the agreement executed by her father in favour of the plaintiff because, according to her, the terms of the agreement were not complied by doctor Saheb and further, the agreement was the result of undue influence.

51. Ravindra Tripathi DW-3 the handwriting expert, in his examination-in-chief has deposed that after comparing the admitted signatures of Dharam Prakash Nangia on registered agreement to sell dated 22.10.2012, he is of the opinion that the unregistered agreement dated 21.12.2014 has not been signed by Dharam Prakash Nangia.

52. Rohit Handa DW-4 deposed in his examination-in-chief that he is the son of maternal uncle of defendant no. 3 Smt.Shahnaz Faisal @ Shivani Nangia @ Shibbu. He deposed that Dharam Prakash Nangia and his wife were in the influence of Dr. Shivakant Mishra and his wife Neelam Mishra. Dharam Prakash Nangia and his wife told him that a cheque issued by the plaintiff for ₹ 38 lakhs was dishonoured due to sufficient balance. He was also told by Dharam Prakash Nangia in December 2014 that he wants to cancel the agreement because the plaintiff did not have sufficient funds to fulfil the terms of the agreement because Dr.Shivakant Mishra was telling repeated lies and was stalling, who was only given time upto 31.7.2015, failing which, the advance was to be returned with interest. He further deposed that Dharam Prakash Nangia had kept the advance in a bank deposit, from which even a rupee was not spent by him but unfortunately Dharam Prakash Nangia died on 4.7.2015. He further deposed that due to the agreement dated 22.10.2012 Meena Nangia was upset and very sad, who died in grief on 1212.2012. He also deposed that he saw the fraudulent time extension document prepared by notary, which was not at all signed by Dharam Prakash Nangia. He further deposed that since Dharam Prakash Nangia was having handsome income, he was having no need to sell the disputed house. Since defendant no. 2 is deaf and dumb, hence Dharam Prakash Nangia wanted her to remain in the disputed house throughout her life, along with her sisters.

53. He further deposed that the agreement of the disputed house was executed under undue influence of Dr. Shivakant Mishra because the house was valued not less than ₹ 10 crores. He further deposed that there was a relationship of doctor and patient between Dr.Shivakant Mishra and Dharam Prakash Nangia and his wife. He further deposed that Dharam Prakash Nangia and his wife never wanted to sell the disputed property along with defendant no. 3. Dr. Shivakant Mishra resided in a big bungalow,hence he was having no requirement of the disputed property,who was also not having sufficient funds because the cheque issued by him had bounced.

54. DW-4 deposed in cross-examination that Meena Nangia died on 12.12.2012 due to heart attack. Dharam Prakash Nangia executed a registered Will bequeathing his property to his daughters'. Dr. Shivakant Mishra used to treat and prescribe medicines to Dharam Prakash Nangia. Dharam Prakash Nangia was treated in Excel hospital, Chunniganj, Kanpur Nagar. He was not aware that Dr. Shivakant Mishra is a surgeon. After seeing the agreement to sell, he disclosed that as a witness it has been signed by his uncle Somnath Handa. He admitted that his uncle never remained patient of Dr. Shivakant Mishra, who was not having any undue influence on his uncle, who signed willingly on the above document. He further deposed that he was told by Dharam

Prakash Nangia that a cheque of ₹ 38 lakhs has been dishonoured due to insufficient funds in the bank account of doctor Saheb, due to which the agreement has ended. He disclosed that subsequently he was informed by Dharam Prakash Nangia that he has received the amount of ₹ 38 lakhs towards the dishonoured cheque, in his bank account.

55. He further deposed that the disputed property is not freehold. Dharam Prakash Nangia did not submit any application for converting it to freehold, but orally told doctor Saheb that he has completed all the formalities and if full consideration was paid,then in 2 □ 4 days he will get the property converted to freehold. He was not having any personal information regarding the financial capacity of the plaintiff company. He denied the suggestion that he was not having any personal information regarding the dispute between the parties.

56. Mohd.Minaz Jaffrey DW-5 deposed in his examination-in-chief that he is an approved valuer and project consultant and possesses B-Tech,M-Tech and PhD degrees. On the request of Smt.Shahnaz Faisal he has assessed the market value of the disputed property on 24.1.2023. On the basis of rates prevailing in the year 2012 □ 13 ,the market value of the disputed house in the year 2012 and 2013 was about ₹ 10.91 crores whereas, in the year 2023 the disputed house is valued at ₹ 16,52,75,000/-. He further deposed that he has prepared the valuation report as per the prevalent rules.

57. DW-5 in cross-examination disclosed that he inspected the disputed property on 10.1.2023 and thereafter submitted his report on 24.1.2023 to the defendant no. 3. He further disclosed that he has not inspected the property from inside. He further admitted that he has valued the property on the basis of his experience. He disclosed that he has valued the disputed house at the rate of ₹ 72,000/- yd□ whereas, the prevalent circle rate was between ₹ 30,000 to 26,000 m□ at that time .He denied the suggestion that he has given his report in order to give pecuniary benefit to the defendant no. 3.

58. Pankaj Agarwal DW-6, the public notary, in examination-in-chief deposed that he was working since the year 2005 as notary. He produced his original register before the Court. On seeing paper no.130-C he deposed that it has neither been signed by him nor his seal has been affixed on it. In the red ink whatever has been written on that document, has also not been written by him. He disclosed that on 22.12.2014 the name of any party mentioned in paper no. 130-C, is not entered in his register. In cross-examination by plaintiff he denied the suggestion that proper entries are not made in his register promptly.

Reasoning of the trial court

Issue No. 6:-

59. The trial court opined that the registered agreement to sell was executed on 22.10.2012, according to which, the sale deed was to be executed till the month of December 2014, after getting the property converted to freehold and after giving its intimation to the buyer. The trial court opined that the parties had agreed to get the sale deed executed till 31.12.2014 and hence the suit filed within 3 years of this date, as per Article 54 of the Limitation Act 1963, was within the

prescribed period of limitation. The trial court opined that the suit filed by the plaintiff on 17.1.2017 was within the prescribed period of limitation.

60. The trial court further opined that to prove execution of time extension document paper no. 130-C between the parties, handwriting experts were examined by both the parties, who have given contradictory evidence, hence the trial court discarded their evidence. The trial court considered that no attesting witness of this document has been examined and the evidence of public notary PW-6 Pankaj Agarwal was credible, came to the conclusion that the alleged document dated 21.12.2014(paper no. 130-C) was not executed between the parties. But the trial court concluded that even if the plaintiff failed to prove the execution of document 130-C even then, the plaintiff 's suit was not barred by limitation, since it was filed within 3 years from 31.12.2014. In view of the above reasoning, this issue was decided in favour of the plaintiff and against the defendants.

Issue No. 7:-

61. This issue related to the admissibility of evidence of PW-2 Ramakant Mishra which was raised by the defendant no. 3 on the ground that the witness is also an advocate of the plaintiff, hence he cannot give his evidence as a witness. The trial court opined that since 19.11.2018 the proceedings of the suit on behalf of the plaintiff were conducted by another advocate Vivek Nigam and further, PW-2 had withdrawn his vakalatnama, hence the evidence given by him was admissible. In view of the above reasoning, this issue was decided in favour of the plaintiff and against the defendant.

Issue No.1,2 & 8 :-

62. The trial court has believed the evidence of PW-3 Sanjiv Kumar Tiwari, who is the attesting witness of the agreement to sell and has concluded that the agreement to sell was executed between the parties on 22.10.2012, which was registered in the office of sub-registrar on 7.11.2012.

63. The trial court also opined that there was no documentary evidence to prove that there was a relationship of doctor and patient between Dr. Shivakant Mishra and Dharam Prakash Nangia and the agreement to sell was executed under undue influence by Dharam Prakash Nangia in favour of the plaintiff.

64. The trial court also opined that the valuation report of the disputed property which was prepared and proved by DW-5 Mohd.Minaz Jaffrey lacked credibility. The trial court opined that according to the prevailing circle rate of ₹ 30,000/- per square metre of the disputed property in the year 2012, the property was only valued at ₹ 3,39,12,300/- whereas in the agreement to sell dated 20.10.2012 the consideration was fixed at ₹ 5.25 crores, which shows that the property was sold in excess of the circle rate, which proved that the consideration of the transaction was sufficient.

65. The trial court also opined that the plaintiff cannot be denied the relief of specific performance only on account of phenomenal increase in price during the pendency of litigation and subsequent rise in prices, will not be treated as a hardship entailing refusal of the decree for specific

performance. The trial court opined that the defendants failed to prove that the disputed property was valued at about ₹ 10 crores and the agreement was executed for insufficient consideration.

66. The trial court also opined that Dharam Prakash Nangia was entitled to execute an agreement to sell in favour of the plaintiff, since the sale was only to be effected after the disputed property was converted from leasehold to freehold.

67. The trial court after perusing the file of the disputed property maintained by the Kanpur Development Authority, noticed that the application for converting the property from leasehold to freehold was only moved by Dharam Prakash Nangia on 21.8.2014, whereas, as per the terms of the agreement dated 22.10.2012 the time limit for executing the sale deed was till the month of December 2014. The trial court opined that the onus was on Dharam Prakash Nangia to get the disputed property converted from leasehold to freehold, but only on 30.5.2015 the file was forwarded for granting permission by the competent authority, but before the permission could be granted, on 4.7.2015 Dharam Prakash Nangia died. The trial court has recorded a specific finding that in the lifetime of Dharam Prakash Nangia till 4.7.2015, the disputed property could not be converted into freehold whereas it was the duty of the seller to inform the plaintiff regarding the permission granted to it for converting the property from leasehold to freehold, but this information was never given by the seller to the buyer. The trial court opined that the above information was not given within the prescribed time limit to the plaintiff ,which prima-facie casts aspersion on the conduct of the defendants.

68. The trial court also noticed that after the death of Dharam Prakash Nangia, the defendants being his legal heirs, on the basis of the registered Will, moved an mutation application before the Kanpur Development Authority which was allowed on 11.9.2015. It was also noticed by the trial court that prior to the mutation in favour of the defendants, on 28.8.2015 defendants no.1 and 2 gave a legal notice to the plaintiff for cancellation of the disputed agreement to sell, which showed that the defendants were not intending to comply with the terms of the agreement and were having malafide intention, which also showed their improper conduct. The trial court concluded that the plaintiff was always ready and willing to perform the terms of the agreement, who was also having the requisite financial capacity at all the relevant times.

69. The trial court also considered that a cheque of ₹ 38 lakhs issued by plaintiff was dishonoured, but subsequently it was honoured, which was proved from the evidence of DW-2. The trial court also noted that neither any proceedings for cancellation of agreement was initiated by Dharam Prakash Nangia during his lifetime nor any notice was given by him to the plaintiff for not having the financial capacity to fulfil the terms of the agreement. The trial court opined that the above evidence proved that Dharam Prakash Nangia never intended to cancel the agreement. The trial court also opined that after the execution of the agreement on 22.10.2012, in the year 2014 and 2015 through cheques an amount of ₹ 41 lakhs was paid by plaintiff to Dharam Prakash Nangia, which also proved the readiness and willingness of the plaintiff to fulfil the terms of the agreement.

70. The trial court also considered the statement of bank accounts of the plaintiff, balance sheets of the plaintiff submitted by the defendant and after perusing the above evidence, the trial court opined that the plaintiff was having sufficient funds in its bank account, mutual fund, fixed

deposits,etc. to pay the balance sale consideration to the defendants. The trial court opined that the plaintiff was having sufficient financial capacity at all times.

71. In view of the above reasoning, issue no.1,2 and 8 were decided in favour of the plaintiff, against the defendants.

Issue No. 3 and 4:-

72. These issues relate to valuation of the suit and the court fees paid on it. Both these issues were decided by the trial court on 5.9.2022 in favour of the plaintiff, against the defendants.

Issue No. 5:-

73. In view of the above reasoning, the trial court was of the opinion that the plaintiff always remained ready and willing to fulfil the terms of the agreement dated 22.10.2012 by getting the sale deed executed in its favour, hence the plaintiff 's suit was decreed. The plaintiff was directed to pay the balance consideration of ₹ 2.84 crores to the defendants within a period of 2 months for getting the sale deed executed in its favour, failing which the plaintiff was given the right to get it executed through the Court. Aggrieved against which, the defendants have filed the instant appeal under Section 96 CPC.

Submissions of the learned counsel of the parties

74. Shri Rahul Sahai learned senior counsel for the defendant appellants submitted that the suit for specific performance can only be decreed if the plaintiff avers and proves his continuous readiness and willingness that is from the date of the agreement till the filing of the suit and even thereafter. He further submitted that readiness pertains to the financial capacity to perform the contract at the relevant time and willingness relates to the conduct of the plaintiff throughout the currency of the agreement and even during the litigation arising therefrom. He submitted that it is imperative upon the plaintiff to prove his continuous readiness and willingness even in the absence of any plea by the opposite party as the mandate of Section 16(c) of the Specific Relief Act casts an obligation upon the plaintiff as it is he who has come before the Court to seek relief. The plaintiff must also come before the Court with clean hands as the relief of specific performance is a relief rooted in equity and law.

75. He further submitted that the relief of specific performance would not be granted to a plaintiff who has acted fraudulently. He further submitted that there was a relationship of doctor and patient between the director of the plaintiff hospital Dr. Shivakant Mishra and Dharam Prakash Nangia and taking advantage of this relationship, exerting undue influence on Dharam Prakash Nangia, the plaintiff managed to get the agreement of the disputed property executed in its favour, for inadequate consideration, since the property was at that time valued at about ₹ 11 crores, but the plaintiff managed to get it at only ₹ 5.25 crores, which itself proves that the transaction was not fair.

76. He further submitted that the payment of the consideration was made by cheques by the plaintiff, one of which amounting to ₹ 38 lakhs was dishonoured due to insufficient funds in the bank account of the plaintiff, which itself proves the financial incapacity of the plaintiff. It was further submitted that the plaintiff never proved its financial capacity by submitting statement of the bank account and the balance sheet, and the balance sheet was filed by the defendants, which was construed incorrectly by the trial court. He submitted that according to the balance sheet the plaintiff was not having sufficient funds to pay the consideration from the date of the agreement till the filing of the suit, hence the readiness on the part of the plaintiff was not proved but the trial Court has held otherwise.

77. He further submitted that the plaintiff fraudulently prepared a notarised affidavit on 21.12.2014 which is paper no. 130-C, to extend the time within which the agreement was to be performed, which was found to be a forged and fabricated document. Learned counsel submitted that this fraudulent conduct of the plaintiff disentitles it from getting the relief of specific performance.

78. He further submitted that plaintiff was not ready and willing to get the sale deed executed in terms of the agreement to sell dated 22.10.2012 since he never followed up or made up any querry regarding the execution of a freehold deed either during the lifetime of Dharam Prakash Nangia or any time shortly thereafter. Only after the defendants issued a notice dated 20.8.2015 the plaintiff woke up and then allegedly issued certain notices calling upon the defendants to execute the sale deed in favour of the plaintiff. He further submitted that there is no proof of payment of ₹ 41 lakhs towards freehold which was alleged to be paid by the plaintiff to Dharam Prakash Nangia.

79. It was further submitted that the plaintiff never turned up at the office of the sub-registrar as claimed in the notices dated 3.11.2015, 5.12.2015 and 5.1.2016, whereas his presence was mandatory for getting the sale deed executed in its favour, keeping in view provisions of Section 32A of the Registration Act, 1908. With these submissions it was prayed that the appeal be allowed and plaintiff 's suit be dismissed.

80. In support of his contention, he has relied upon the following case law:-

(i)Pydi Ramana vs.Davarasety Manmadha Rao (2024)7 SCC 515.

(ii)Shenbagam and others vs.KK Rathinavel 2022(157)RD374(SC) (by 3 Judges)

(iii)Basant Ram (D) thr Lr's and ors. vs.Sukhbir Singh and ors. CA 4667 of 2025(SC)

(iv)Subhash Aggarwal vs. Mahender Pal Chhabra and ors.2026 INSC 11

(v)Darshan Singh(D) by Lrs & ors.vs.Brijbhushan Chaudhary(D) by Lrs.(2024)3 SCC 489

(vi)Muddam Raju Yadav vs.B.Raja Shanker (D) through Lrs. and ors.2026 INSC 214

(vii)Mst.Jamuni and others vs.Bhagwati and others 2012(116)RD 53(All)

(viii)Singaravelu Kounder vs. Sulaiman and others MANU/KE/0131/ 2007(Kerala)

(ix)S.P.Chengalvaraya Naidu(dead) by Lrs.vs. Jagannath(dead) by Lrs. and others AIR 1994 SC 853

(x)U.N. Krishnamurthy(dead) through Lrs.vs. A.M.Krishnamurthy 2023 (158) RD 150(SC)

(xi)N.P.Thirugnanam(D) by Lrs. vs. Dr. R. Jagan Mohan Rao and ors. JT 1995(5)SC 553

81. Per contra,Shri Manish Goyal learned senior counsel for the paintiff respondent submitted that as per the registered agreement to sell dated 22.10.2012, the vendor Dharam Prakash Nangia was to take permission to convert the lease hold property to freehold from the Kanpur Development Authority and then inform the plaintiff that he has obtained the permission, and then the sale deed was to be executed upto 31.12.2014, after receiving the balance sale consideration, but Dharam Prakash Nangia never took any steps upto 31.12.2014 to get the property converted into freehold. He further submitted that neither the vendor obtained the permission to convert the property into freehold nor communicated this to the plaintiff, hence there was no readiness and willingness on the part of the vendor.

82. He further submitted that property was never valued at ₹ 11 crores, hence there was no question of undervaluation. According to the circle rate, the property was only valued at about ₹ 3.75 crores, but the plaintiff agreed to purchase it for consideration of ₹ 5.25 crores, out of which ₹ 2 crores was paid at the time of the execution of the agreement of sale, and even thereafter, on the demand of the vendor to meet out the expenses of converting the property from leasehold to freehold, an amount of ₹ 41 lakhs was given to the vendor Dharam Prakash Nangia, which was proved by the plaintiff from the bank statement as well as the oral testimony of the witnesses.

83. It was further submitted that the witnesses of the defendants have admitted the execution of the agreement to sell and even the, notice given by the defendants for terminating the agreement to sell in the year 2015, also proves that the agreement was duly executed between the parties. He further submitted that there is no evidence on record to prove that there was a relationship of doctor and patient between Dr. Shivakant Mishra and Dharam Prakash Nangia and the transaction was the result of undue influence exerted by Dr. Shivakant Mishra on Dharam Prakash Nangia.

84. He further submitted that it is true that a cheque of ₹ 38 lakhs issued by the plaintiff towards consideration of the agreement was dishonoured but he submitted that soon thereafter, the cheque was honoured. He further submitted that on the demand of Dharam Prakash Nangia a further sum of ₹ 41 lakhs was paid for getting the property freehold.

85. He further submitted that the trial court has not concluded that the notary agreement dated 21.12.2014 was fraudulently prepared by the plaintiff in order to extend the time. The trial

court has simply concluded that the plaintiff has failed to prove it in accordance with law which does not imply that the document is forged and fabricated.

He further submitted that after the demise of Dharam Prakash Nangia, the plaintiff gave legal notices to the defendants to execute the sale deed in its favour by receiving the balance sale consideration, but the defendants failed to pay heed to it, who never appeared before the sub-registrar on the date fixed, whereas the plaintiff remained present with cheque book, which is proved from the documentary evidence on record. He submitted that the plaintiff was always willing to get the sale deed executed in its favour but it was the defendants who committed default, who neither obtained the permission to get the disputed property converted from leasehold to freehold nor communicated this information to the plaintiff, hence the defendants cannot allege that they were ready and willing to perform their part of the agreement.

86. It was further submitted that the plaintiff was having sufficient funds to pay the balance consideration to the defendants in bank account and fixed deposits, investment in mutual funds,etc. from the time of execution of the agreement till the filing of the suit. He further submitted that on 29.5.2025 the plaintiff has deposited the balance sale consideration of ₹ 2.84 crores in the trial court and the tender receipt has been filed before this Court, as such, the plaintiff has proved his readiness and willingness to fulfil the terms of the agreement.

87. Learned counsel further submitted that the agreement contemplated that the vendor Dharam Prakash Nangia will obtain the freehold provision and thereafter, execute the sale deed in favour of the plaintiff after receiving the balance sale consideration, but the vendor never in his life time obtained the above permission and communicated it to the plaintiff. The vendor died on 4.7.2015 and thereafter, his legal heirs/defendants gave legal notice to the plaintiff terminating the agreement on the ground that the plaintiff was not ready and willing to fulfil the terms of the agreement which was false, because neither the vendor Dharam Prakash Nangia nor his legal heirs/defendants intimated the plaintiff that they have obtained the freehold permission from the Kanpur Development Authority(KDA). He submitted that the plaintiff always remained ready and willing to fulfil the terms of the agreement to get the sale deed executed in its favour by paying the balance sale consideration which is proved from the oral and documentary evidence on record, hence the trial court has not committed any illegality in decreeing the plaintiff 's suit for the relief of specific performance of agreement dated 22.10.2012.

88. It was further submitted that although the presence of plaintiff in the office of sub-registrar was not necessary but the director of the plaintiff Dr. Shivakant Mishra remained present on 5.1.2016. It was further submitted that no fraud has been committed by the plaintiff as such, the provisions of Section 16(b) of the Specific Relief Act are not attracted in the facts of the present case. With these submissions, it was prayed that the appeal is meritless and be dismissed.In support of his contention, learned counsel has relied upon the following case law:-

(i)Nathu Lal vs.Phool Chand (1969) 3 SCC 120

(ii)Faquir Chand and another vs.Sudesh Kumari (2006) 12 SCC 146

(iii)P.Daivasigamani vs.S.Sambandan (2022)14 SCC 793

(iv)Krishan Gopal vs.Gurmeet Kaur(Dead) thr.Lrs.& ors. 2025 SCC OnLine SC 1438

(v)Aloka Bose vs.Parmatma Devi and others (2009)2 SCC 582

(vi)Ramesh Chandra Agrawal(dead) through Lr's and ors. vs.Bitta Devi alias Bitto 2015 SCC OnLine Alld 9255

(vii)Sudha Gupta vs.Delhi Land and Finance Ltd.(2019)14 SCC 266

(viii)Rattan Singh and others vs. Nirmal Gill and others (2021)15 SCC 300

(ix)Sellappa Chetty & ors. vs.Marappa Goundar & ors.1963 SCC OnLine Mad 175

(x)Asset Reconstruction Company (India) Ltd. vs.S.P.Velayutham & ors.(2022) 8 SCC 210

Questions for Determination in this Appeal

89. The following questions arises for determination in this appeal:-

(A)Whether the plaintiff was always ready and willing to fulfil the terms of the registered agreement to sell dated 22.10.2012 ?

(B)Whether the defendants or their predecessor Dharam Prakash Nangia failed to comply with the terms of the registered agreement to sell dated 22.10.2012 ?

(C)Whether the registered agreement to sell was executed for inadequate consideration under undue influence of Dr. Shivakant Mishra and his wife Neelam Mishra by Dharam Prakash Nangia ?

(D)Whether the plaintiff was having the financial capacity at the relevant time to pay the balance sale consideration of ₹ 2.84 crores to the defendants ?

(E)Whether the plaintiff has committed any fraudulent act which disentitles him from claiming the relief of specific performance of the registered agreement to sell dated 22.10.2012 in terms of the provisions of Section 16 (b) of the Specific Relief Act, 1963"

(F)Whether the presence of the representative of the plaintiff was mandatory for getting the sale deed executed and registered in its favour keeping in view the provisions of Section 32A of the Registration Act, 1908"

Analysis of case law submitted by the parties

90. The Apex Court in the case of ***Nathu Lal*** (supra) while considering whether the vendor Nathulal had fulfilled his obligations under the contract, held as under:-

"12. In considering whether a person is willing to perform his part of the contract the sequence in which the obligations under a contract are to be performed must be taken into account. The argument raised by Mr Shroff that Nathulal was bound to perform the two conditions only after the amount of Rs 21,000 was paid is plainly contrary to the terms of the agreement. By virtue of Section 4 of the Transfer of Property Act the chapters and sections of the Transfer of Property Act which relate to contracts are to be taken as part of the Indian Contract Act, 1872. If, therefore, under the terms of the contract the obligations of the parties have to the performed in a certain sequence, one of the parties to the contract cannot require compliance with the obligations by the other party without in the first instance performing his own part of the contract which in the sequence of obligations is performable by him earlier.

13. In view of the arrangement made by Phoolchand it was clear that he had at all relevant times made necessary arrangements for paying the amount due, but so long as Nathulal did not carry out his part of the contract, Phoolchand could not be called upon to pay the balance of the price. It must, therefore, be held that Phoolchand was at all relevant times willing to carry out his part of the contract."

91. The Apex Court in the case of **Faquir Chand** (supra) was considering the issue of readiness and willingness mentioned in Section 16(c) of the Specific Relief Act 1963. It was held as under:-

"3. The learned counsel for the appellant at the time of hearing, placed reliance on Section 16 of the Specific Relief Act. In order to appreciate the rival submissions,Section 16(c) needs to be quoted along with explanation. The same reads as follows:

*"16. Personal bars to relief.□ ****

*(a)-(b)****

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.□For the purposes of clause (c),□

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction."

4. The language under Section 16(c) of the Act, in our view, does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been ready and willing to perform his part of the contract. Therefore, the compliance with the readiness and willingness has to be in spirit and substance and not in letter and form. The continuous readiness and willingness could very well be seen in the instant case from the conduct of the plaintiff as a whole. The first agreement was entered into between the parties on 17-6-1985 and the last date to execute the sale deed was 14-11-1985. The second agreement was executed on 9-4-1987 and the last date to execute the sale deed was 13-6-1987. Again, the time was extended at the instance of the defendant up to 30-10-1987. Since the sale deed was not executed, the respondent herein was compelled to file the suit on 26-11-1987. Thereafter, the appellant herein issued a notice to the plaintiff, the respondent herein, on 7-1-1988 and at Exhibit P-5. It is also not in dispute that the respondent herein has deposited the entire sale consideration into the Court on 18-5-1999. He was also present in the Registrar's office for registration of the document. However, the appellant-defendant was not present at the Registrar's office. A careful perusal of the pleadings, the evidence and the documents filed in this case would only go to show that the respondent-plaintiff was ever ready and willing to perform his part of the obligation under the agreement. The decree passed by the High Court confirming the decree of the lower courts does not suffer from any infirmities. We, therefore, have no hesitation to dismiss the appeal."

92. The Apex Court in the case of **P.Daivasigamani** (supra) was considering whether delay in filing the suit, which was filed within the period of limitation, can be a ground to refuse relief of specific performance to vendee. It was held as under :-

"15. It cannot be gainsaid that even though time is not considered as the essence of the contract in case of immovable property and that the suit could be filed within three years as provided in Article 54 of the Limitation Act, the respondent-plaintiff had to perform his part of the contract within the reasonable time having regard to the term of the agreement prescribing the time-limit. The time-limit prescribed in the agreement cannot be ignored on the ground that time was not made the essence of the agreement or that the suit could be filed within three years from the date fixed for performance or from the date when the performance is refused by the vendor. Nonetheless, as discussed above, the suit having been filed by the respondent well within the prescribed time-limit under Article 54 of the Limitation Act, the respondent could not have been non-suited on the ground of the suit being barred by limitation as sought to be submitted by the learned counsel for the appellant.

16. As regards the delay in filing the suit, it is very pertinent to note that the rule of equity that exists in England, does not apply in India, and so long as a suit for specific performance is filed within the period of limitation, delay cannot be a ground to refuse the relief of specific performance to the plaintiff. In Mademsetty Satyanarayana v. G. Yelloji Rao [1964 SCC OnLine SC 33 : AIR 1965 SC 1405] it has been observed as under : (AIR p. 1409, para 7)

"7. Mr Lakshmaiah cited a long catena of English decisions to define the scope of a court's discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems□English and Indian□qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law.

In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay the time lag depending upon circumstances may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; if it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises."

17. The aforesaid ratio has also been followed recently by this Court in R. Lakshmikantham v. Devaraji [(2019) 8 SCC 62] . We, therefore, have no hesitation in holding that mere delay alone in filing the suit for specific performance, without reference to the conduct of the plaintiff, could not be a ground for refusing the said relief, when the suit was filed within the statutory time-limit by the respondent-plaintiff.

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20. From the bare reading of the aforestated provisions, it clearly emerges that the specific performance of the contract, may in the discretion of the court, be enforced, when the act agreed to be done, was such that compensation in money for its non-performance would not afford adequate relief, and that the breach of a contract to transfer immovable property could not be adequately relieved by compensation in money. It also emerges that specific performance of a contract could not be enforced in favour of a person, ***who failed to aver and prove that he had performed or had always been ready and willing to perform the essential terms of the contract, which were to be performed by him.*** *It could also not be enforced in favour of a person who failed to aver in the plaint the performance of, or readiness and willingness to perform the contract according to its true construction.*

21. Readiness and willingness are not one, but two separate elements. ***Readiness means the capacity of the plaintiff to perform the contract, which would include the financial position to pay the purchase price. Willingness refers to the intention of the plaintiff as a purchaser to perform his part of the contract****. Willingness is inferred by scrutinising the conduct of the plaintiff purchaser, including attending circumstances [See para 2 in Ganesh Dassji v. Sita Ram Thapar, (1996) 4 SCC 526] . Continuous readiness and willingness on the part of the plaintiff purchaser from the date the balance sale consideration was payable in terms of the agreement to sell, till the decision of the suit, is a condition precedent for grant of relief of specific performance [See para 5 in N.P. Thirugnanam v. R. Jagan Mohan Rao, (1995) 5 SCC 115. Also see Ardeshir Mama v. Flora Sassoon, 1928 SCC OnLine PC 43 : (1927-28) 55 IA 360 : AIR 1928 PC 208] .*

22. The expression readiness and willingness used in Section 16(c) of the said Act, has been interpreted in a catena of decisions by this Court, in the light of facts and circumstances of the cases under consideration for the purpose of granting or refusing to grant the relief of specific performance of a contract. The said expression cannot be interpreted in a straitjacket formula. In a very apt decision of this Court in Syed Dastagir v. T.R. Gopalakrishna Setty [(1999) 6 SCC 337] , a three-Judge Bench of this Court, construing a plea of readiness and willingness to perform in view of the requirement of Section 16(c) and its Explanation, observed as under : (SCC p. 341, para 9)

"9. So the whole gamut of the issue raised is, how to construe a plea specially with reference to Section 16(c) and what are the obligations which the plaintiff has to comply with in reference to his plea and whether the plea of the plaintiff could not be construed to conform to the requirement of the aforesaid section, or does this section require specific words to be pleaded that he has performed or has always been ready and is willing to perform his part of the contract. In construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea. In India most of the pleas are drafted by counsel hence the aforesaid difference of pleas which inevitably differ from one to the other. Thus, to gather true spirit behind a plea it should be read as a whole. This does not distract one from performing his obligations as required under a statute. But to test whether he has performed his obligations, one has to see the pith and substance of a plea. Where a statute requires any fact to be pleaded then that has to be pleaded may be in any form. The same plea may be stated by different persons through different words; then how could it be constricted to be only in any particular nomenclature or word. Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) does not require any specific phraseology but only that the ***plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract****. So the compliance of readiness and willingness has to be in spirit and substance and not in letter and form****. So to insist for a mechanical production of the exact words of a statute is to insist for the form rather than the essence. So the absence of form cannot dissolve an essence if already pleaded."***

23. It was further observed therein that : (Syed Dastagir case [Syed Dastagir v. T.R. Gopalakrishna Setty, (1999) 6 SCC 337] , SCC p. 342, para 11)

"11. It is significant that this Explanation carves out a contract which involves payment of money as a separate class from Section 16(c). Explanation (i) uses the words it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court. (emphasis supplied) This speaks in a negative term what is not essential for the plaintiff to do. This is more in support of the plaintiff that he need not tender to the defendant or deposit in court any money but the plaintiff must [as per Explanation (ii)] at least aver his performance or readiness and willingness to perform his part of the contract."

24. In Sukhbir Singh v. Brij Pal Singh [(1997) 2 SCC 200] this Court had laid down that law is not in doubt and it is not a condition that the respondents (plaintiffs) should have ready cash with them. It is sufficient for the respondents to establish that they had the capacity to pay the sale consideration. It is not necessary that they should always carry the money with them from the date of the suit till the date of the decree. The said principle was followed in A. Kanthamani v. Nasreen Ahmed [(2017) 4 SCC 654 : (2017) 2 SCC (Civ) 596] , in C.S. Venkatesh v. A.S.C. Murthy [(2020) 3 SCC 280 : (2020) 2 SCC (Civ) 90] , etc.

25. Section 20 of the Specific Relief Act (pre-amendment), which confers discretion on the court to exercise jurisdiction to decree of specific performance, states that this exercise should not

be arbitrary, but guided by sound and reasonable judicial principles. Interpreting and elucidating on Section 20 of the Specific Relief Act (pre-amendment) and factors to be considered, this Court in Kamal Kumar v. Premlata Joshi [2019) 3 SCC 704 : (2019) 2 SCC (Civ) 405] has also referred to Sections 16(c), 22, 23 and 24 of the Specific Relief Act and Forms 47/48 of Appendix A to C of the Civil Procedure Code, 1908, to summarise : (SCC pp. 705-706, paras 7-8)

"7. It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance are:

7.1. First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property.

7.2. Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract.

7.3. Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract.

7.4. Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff.

7.5. Lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money, etc. and, if so, on what grounds.

8. In our opinion, the aforementioned questions are part of the statutory requirements [see Sections 16(c), 20, 21, 22, 23 of the Specific Relief Act, 1963 and Forms 47/48 of Appendix A to C of the Code of Civil Procedure]. These requirements have to be properly pleaded by the parties in their respective pleadings and proved with the aid of evidence in accordance with law. It is only then the Court is entitled to exercise its discretion and accordingly grant or refuse the relief of specific performance depending upon the case made out by the parties on facts."

26. Sub-section (2) to Section 20 of the Specific Relief Act (pre-amendment) lists some of the principles that the court should take into consideration while exercising discretion. The factors to be considered while exercising discretion include hardship to the defendant seller which he did not foresee, hardship to the plaintiff purchaser in case of non-performance, or whether the contract, even when not void, was entered under the circumstances that make the enforcement of specific performance inequitable, or whether the plaintiff has done substantial acts or suffered losses as a consequence of the contract, and the conduct of the parties, including that of the defendant seller and other circumstances under which the contract was entered are such that they give an unfair advantage over the defendant seller.

27. The court should examine whether the plaintiff purchaser had, in fact, performed his part of the contract, and if so, how and to what extent, and in what manner he has performed, and whether such performance was in conformity with the terms of the contract. The status of the parties, and whether the plaintiff purchaser is a speculator in the property, who buys and sells properties, and whether his conduct reflects an attempt to gain on account of the rise in the price of the property, hoping that the delay in payment of full consideration would go to his advantage, will be a relevant consideration [See K.S. Vidyanadam v. Vairavan, (1997) 3 SCC 1] . Incapacity of the defendant seller and whether the plaintiff purchaser is operating in property trade, or as a financer or middleman and the defendant seller is a typical property owner, may also affect the exercise of discretion.

28. In cases where the defendant seller claims that he was gullible and nescient, who got caught by entering into the agreement to sell, facts like whether ***the sale consideration is lower than the market price and the terms and conditions settled are unfavourable, should be given due weightage.*** *Sometimes the defendant seller, post the agreement to sell, in consultation with elders or family members, wishes to back out because the decision to sell was a folly, unwise, or a result of trickery. In such cases, the conduct of the defendant seller would be of consequence****. The defendant seller would be well advised to immediately and without delay write to the plaintiff purchaser reneging the agreement to sell and enclose a cheque for the amount received. His offer to pay or payment of interest or damages would be an added factor as the intending purchaser would then be entitled to look for another property.***

29. Time, it is stated, is not the essence of the contract in the case of immovable properties, unless there are grounds to hold to the contrary. This doctrine is applied, without being unfair and inequitable to the defendant seller, as the court should not ignore that a person sells the property when he needs money, and, therefore, expects the money in the stipulated or reasonable time, which would meet the purpose of the sale. The purpose of sale can vary from the need for liquid cash to be invested to earn interest, medical, educational, child's marriage or purchasing another property. To save capital gains, the seller has to purchase another immovable property, unless the proceeds are exempt.

30. There has been a steep rise in the prices of land in the last quarter of the 20th Century in India. With the rise in property value, the value of money has fallen. At times, delay in payment would defeat the defendant seller's purpose [See paras 25, 36 & 37 in Saradamani Kandappan v. S. Rajalakshmi, (2011) 12 SCC 18 : (2012) 2 SCC (Civ) 104.] . Therefore, the offer of the plaintiff purchaser in writing and the time and occasion when the offer to pay the balance amount to the defendant seller is an important factor which would matter when the court examines the question of discretion, that is, whether or not to grant a decree of specific performance. While examining these aspects, the quantum of money paid by the plaintiff purchaser to the defendant seller may become a relevant fact that merits due consideration.

31. There is a distinction between limitation and delay and laches. Limitation is a ground for dismissing a suit even if the plaintiff is otherwise entitled to specific performance, while delay operates to determine the discretion and exercise under Section 20 of the Specific Relief Act, even if the suit is not dismissed on account of limitation. However, not one but several aspects have to be

considered when the court, in terms of Section 20 of the Specific Relief Act, exercises discretion, guided by judicial principles, sound and reasonable.

32. Having said that, let us examine the facts of this case. As discussed earlier, the respondent-plaintiff had not only averred in the plaint about his issuing notices within the period of six months of the agreement in question, calling upon the appellant-defendant to perform his part of the contract and conclude the sale transaction, also showing his readiness and willingness to perform his part of the contract, but the respondent had also proved the same by stepping into the witness box.

33. Though much reliance was placed by the learned counsel for the appellant on the decisions of this Court in Ritu Saxena v. J.S. Grover [(2019) 9 SCC 132 : (2019) 4 SCC (Civ) 302] , in Abdullakoya Haji v. Rubis Tharayil [(2019) 17 SCC 216 : (2020) 3 SCC (Civ) 399] , and other cases, to submit that the respondent had failed to establish his financial capacity to pay the balance amount of consideration at the relevant time and had also failed to deposit the said amount in the court at the time of filing of the suit, he was not entitled to the discretionary relief of specific performance as granted by the Court, we do not find any substance in any of the said submissions. As per the ratio of judgment laid down by the three-Judge Bench in Syed Dastagir [Syed Dastagir v. T.R. Gopalakrishna Setty, (1999) 6 SCC 337] , the compliance of □readiness and willingness□ has to be in spirit and substance and not in letter and form, while making averments in the plaint. As per Explanation (i) to Section 16(c), he need not tender to the defendant or deposit the amount in the court, but he must aver performance of, or readiness and willingness to perform the contract according to its true construction."

(emphasis supplied)

93. The Apex Court in the case of ***Krishan Gopal*** (supra) has held as under:-

"13. Well settled is the legal proposition that, to prove his readiness and willingness, a purchaser need not necessarily produce the money or carry it with him or vouch a concluded scheme of finance. [See Nathulal v. Phoolchand(1969) 3 SCC 120; and Sukhbir Singh v. Brij Pal Singh(1997) 2 SCC 200]. It is equally well settled that readiness and willingness is to be inferred from the conduct of the parties. [See His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar(1996) 4 SCC 526; and Bibi Jaibunisha v. Jagdish Pandit (1997) 4 SCC 481].

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18. It appears that the balance sale consideration of Rs. 9,00,000/- was deposited before the Executing Court by the plaintiffs in February, 2012. However, we are informed that there has been an astronomical rise in the prices of lands in the vicinity of the suit land. Even if that be so, mere escalation of land prices would not be a reason, by itself, to deny the equitable relief of specific performance once sufficient grounds are made out for granting such relief [See Kanshi Ram v. Om Prakash Jawal(1996) 4 SCC 593 and Gobind Ram v. Gian Chand (2000) 7 SCC 548]."

94. The Apex Court in the case of ***Aloka Bose*** (supra) has held that the agreement of sale signed only by the vendor was valid and enforceable by the purchaser.

95. The Apex Court in the case of ***Rattan Singh*** (supra) has held that signature of the vendee is not mandatory in a sale deed.

96. The Apex Court in the case of ***Asset Reconstruction Company (India) Ltd.*** (supra) was considering the applicability of the Registration Act, 1908 keeping in view the amendments made by the States in it. It was held as under :-

"13. Before we look at the relevant provisions of the Registration Act, 1908, it is necessary to note that Registration of deeds and documents falls in Entry 6 of List III (Concurrent List) of the Seventh Schedule to the Constitution. Therefore, the Registration Act, 1908, which is a Central Act, can be seen as something which provides only a template upon which the States are entitled to make amendments. This is why amendments by States galore in the Registration Act, 1908. Therefore, any interpretation of the provisions of the Act, should be in consonance with the scheme of the Act as applicable to the State involved in the litigation. For instance, registration of certain documents may be optional in some States but mandatory in some other States. Therefore, the interpretation made by this Court, of a provision as amended in its application to a particular State, cannot be applied blindly while interpreting the same provision as applicable to another State. Keeping this aspect in mind, let us now peep into the statutory provisions."

97. The Apex Court in the case of ***Pydi Ramana*** (supra) and ***Shenbagam*** (supra) in the facts and circumstances of the case, keeping in view the conduct of the parties, the escalation of the price of the suit property, and whether one party will unfairly benefit from the decree,held that the remedy provided must not cause injustice to a party, specifically when they are not at fault. In these cases, the conduct of the plaintiff was found blemished, who was not found willing to perform the contract, hence the remedy of specific performance of the contract was not granted.

98. The Apex Court in the case of ***Basant Ram*** (supra) has held that mere presence at the office of the sub-registrar, unaccompanied by any evidence of financial preparedness such as a demand draft or other supporting documentation cannot suffice. It is not enough to merely state that one is ready and willing to perform his part, but he needs to substantially show that genuine efforts were made in that regard and should have supporting documents such as a demand draft prepared. In the facts of the case, it was held that plaintiffs were not always ready and willing to perform their part of the agreement, which was not supported by their conduct.

99. The Apex Court in the case of ***Subhash Aggarwal*** (supra), held that there is no straitjacket formula with regard to readiness and willingness, the same has to be construed with respect to the facts and circumstances of each case. In this case the plaintiff failed to prove that he had the necessary financial wherewithal to make the balance payment of ₹ 5.21 crores on the due date, who also did not even visit the office of the sub-registrar.The defendants also failed to fulfil their contractual obligations, particularly with respect to obtaining mutation and securing conversion of the suit property from leasehold to freehold. In these circumstances,it was held that

specific performance was not an equitable relief after passage of more than 17 years since the execution of agreement.

100. The Apex Court in the case of ***Darshan Singh*** (supra) has held that the relief of specific performance is discretionary and equitable. In this case considering the plaintiffs conduct of making false and/or incorrect statements in the plaint, which were very material, the plaintiffs were held disentitled to the relief of specific performance.

101. The Apex Court in the case of ***Muddam Raju Yadav*** (supra) has held that in a suit for specific performance, the conduct of the parties is significant as it assists the court in evaluating the evidence to find out the bona fides of the parties at the time of execution of the agreement. Even a slight doubt in the mind of the Court that the plaintiff was not acting bonafidely and that the material facts, having bearing on the agreement, have been withheld in the agreement itself and from the Court also,the discretionary relief has to be denied. It was held that the plaintiffs approaching the Court with unclean hands cannot be granted relief of specific performance.

102. The Apex Court in the case of ***S.P.Chengalvaraya Naidu*** (supra) has held that a litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party. It was reiterated that a judgment or a decree obtained by playing fraud on the Court is a nullity and nonest in the eyes of law, which can be challenged in any Court even in collateral proceedings.

103. The Apex Court in the case of ***U.N. Krishnamurthy*** (supra) where the plaintiffs balance-sheet did not have sufficient funds to discharge his part of contract at the relevant time, who subsequently deposited the balance sale consideration after a lapse of 7 years, in these circumstances, it was held that the plaintiff has failed to prove his readiness to perform his part of the contract from the date of execution of the agreement till date of decree, which is a condition precedent for grant of relief of specific performance. It was further held that where a certain amount has been paid in advance and the balance is required to be paid within a stipulated time, it is for the paintiff to show that he was in a position to pay the balance money. Plaintiff has to prove that he has the money or has alternatively made necessary arrangements to get the money.

104. The Apex Court in the case of N.P. Thirugnanam (supra) has held that continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the Court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the

party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of contract.

Findings of this Court

Execution of the agreement to sell dated 22.10.2012

105. It is the case of the plaintiff that its director Dr. Shivakant Mishra and Dharam Prakash Nangia were neighbours, who were having friendly relations, who entered into an agreement to sell on 22.10.2012 for selling the disputed house of Dharam Prakash Nangia for a consideration of ₹ 5.25 crores to the plaintiff. It is evident from the written statement of the defendants that there is no specific denial of the execution of the above agreement to sell by their father Dharam Prakash Nangia.

106. The defendant no.1 Mimansa Nangia, who also examined herself as DW-1 admitted in her examination-in-chief that a registered agreement to sell was executed by her father Dharam Prakash Nangia regarding the disputed property in favour of the plaintiff, and the sale deed was to be executed after receiving the balance consideration by her father. She also admitted that her father tried his best to comply with the terms of the agreement but due to her father's untimely death, the disputed property could not be converted into freehold. In the cross-examination she admitted that her father had received the earnest money of the disputed agreement to sell, through cheques, at the time of its execution.

107. Shahnaz Faisal @ Shivani Nangia @ Shibbu DW-2 also stated in her examination-in-chief that her sister Mimansa Nangia has misappropriated the whole amount of ₹ 2 crores, which was given by the plaintiff to her father by getting it transferred to her account, which is proved from the statement of the bank account of her father and the statement of bank accounts of her sister Mimansa Nangia in State Bank of India and Axis Bank.

108. The above unequivocal admission of the daughters DW-1 & DW- 2 of deceased Dharam Prakash Nangia, prove beyond doubt, the execution of the agreement to sell dated 22.10.2012 by their father Dharam Prakash Nangia in favour of the plaintiff. It also proves that an earnest money of ₹ 2 crores was paid by the plaintiff at the time of the above execution of the agreement to Dharam Prakash Nangia through cheques and after the death of Dharam Prakash Nangia, that amount has been usurped by the defendant no.1 Mimansa Nangia. The execution of the agreement was also proved by Sanjiv Kumar Tiwari PW-3.

Terms of the agreement

109. The original agreement to sell dated 22.10.2012 has been proved by the plaintiff in the trial court by examining Dr. Shivakant Mishra (director of the plaintiff) as PW-1 and Sanjiv Kumar Tiwari(attesting witness) as PW-3. It is apparent from the agreement that the disputed property, which is a residential house of Dharam Prakash Nangia, was agreed to be sold for a consideration of ₹ 5.25 crores to the plaintiff Shivani Hospital Private Ltd. On behalf of the plaintiff,it's director

Dr. Shivakant Mishra and the defendants predecessor/father Dharam Prakash Nangia, signed the agreement.

110. It was mentioned in the agreement that the disputed property was not yet freehold. An earnest money of ₹ 2 crores was received from the plaintiff by Dharam Prakash Nangia, through cheques, the details of which were mentioned in the agreement and has also been mentioned in the plaint. It was further agreed that the remaining consideration of ₹ 3.25 crores shall be paid by the plaintiff at the time of registration of sale deed before the sub-registrar Kanpur Nagar and the plaintiff shall also bear the expenses of this transaction of getting the sale deed registered.

111. It was also agreed that Dharam Prakash Nangia will get the property converted into freehold at his expenses, shall give its written information to the buyer, but this was to be done in every circumstance till the month of December 2014 and thereafter,execute the sale deed in favour of the buyer, for which the seller will fix a date and time and intimate it in writing to the buyer, so that he may remain present before the sub-registrar Kanpur for getting the sale deed executed in its favour. It was also agreed that if the seller within the prescribed time limit fails to execute the sale deed in favour of the buyer or fails to complete all the aforementioned formalities,in that condition, the buyer will have a right to get the sale deed executed through Court. It was further agreed that the terms of the agreement shall be binding on the legal heirs of the buyer and seller, who shall not be entitled to raise any objection regarding the consideration.

(A)*Whether the plaintiff was always ready and willing to fulfil the terms of the registered agreement to sell dated 22.10.2012 ?*

(B)Whether the defendants or their predecessor Dharam Prakash Nangia failed to comply with the terms of the registered agreement to sell dated 22.10.2012 ?

112. It is apparent from the pleadings of the plaintiff and the defendant no.1, the evidence of PW-1 Shivakant Mishra and DW-1 Mimansa Nangia and the perusal of the agreement to sell, that the disputed property was required to be converted from lease hold to freehold by the seller Dharam Prakash Nangia till the month of December 2014 and then was required to give its written intimation to the plaintiff but Dharam Prakash Nangia in his lifetime failed to complete that formality. The above permission to get the property converted into freehold was to be obtained from the Kanpur Development Authority(KDA). Dharam Prakash Nangia's daughter Mimansa Nangia DW-1 has accepted in her examination-in-chief that her father failed to obtain the above permission in his lifetime, who died on 4.7.2015.

113. DW-1 in cross-examination disclosed that she was not having any knowledge whether any amount has been deposited with the KDA for getting the property converted to freehold. She also failed to disclose whether in the month of December 2014 her father received any permission regarding the disputed property being converted into freehold.

114. During trial, the trial court summoned the relevant file from the office of the KDA, to ascertain what steps were taken by Dharam Prakash Nangia to get the disputed property converted into freehold, then it was disclosed that the application was moved by Dharam Prakash Nangia

before the KDA only on 21.8.2014, whereas, the agreement was executed on 22.10.2012, and as per the terms of the agreement, the sale deed was to be executed after obtaining permission till the month of December 2014. It is apparent that the above application was moved only four months prior to the deadline of December 2014 by Dharam Prakash Nangia on 21.8.2014. It was also disclosed from the perusal of the above file that on 30.5.2015 the file was forwarded to the competent authority for granting of freehold permission, which was not granted till the death of Dharam Prakash Nangia on 4.7.2015.

115. It is thus evident that Dharam Prakash Nangia in his lifetime failed to obtain the freehold permission from the KDA till the month of December 2014 and even till his death on 4.7.2015, the permission was not obtained, which is also accepted by his daughter Mimansa Nangia DW-1 in her examination-in-chief. It is also evident that getting the property converted to freehold was a condition precedent for getting the sale deed executed in favour of the plaintiff, but this condition was never fulfilled by Dharam Prakash Nangia in his lifetime. No documentary evidence is on record which proves that any notice was given by the defendants or their father Dharam Prakash Nangia to the plaintiff that they have obtained the freehold permission from the KDA hence, the plaintiff should get the sale deed executed in its favour by paying the balance sale consideration.

116. On the contrary, the defendant no.1 and 2 gave legal notice through their Advocate Dr. Devendra Dwivedi on 28.8.2015 to the plaintiff to appear before the office of sub-registrar on 11.9.2015 for cancellation of the agreement to sell and receiving back the earnest money of ₹ 2 crores, which was paid earlier by the plaintiff to Dharam Prakash Nangia. The plaintiff replied to the above legal notice, requesting them to fix a date for execution of the sale deed and asserting that the balance consideration will be paid at the time of the execution of sale deed.

117. It is further apparent that the plaintiffs sent a notice to all the legal heirs of the deceased Dharam Prakash Nangia on 24.10.2015 to remain present before the office of concerned sub-registrar Kanpur Nagar on 3.11.2015, again on 30.11.2015 to remain present on 5.12.2015 and again on 23.12.2015 to remain present on 5.1.2016, for execution of the sale deed and for receiving the balance sale consideration of ₹ 2.84 crores, but the defendants failed to remain present. The plaintiffs director Dr. Shivakant Mishra PW-1 along with Sanjiv Kumar Tiwari PW-3 remained present in the office of the concerned sub-registrar on 5.1.2016, but the defendants failed to appear on any of the above dates.

118. Dr. Shivakant Mishra PW-1 deposed that between October 2015 and January 2016 he remained present in the sub-registrar office many times, after informing the defendants, to get the sale deed of the disputed property executed after paying the balance consideration. He disclosed that he and Sanjiv Kumar Tiwari went on behalf of the plaintiff company to the sub-registrar office.He further deposed that in October 2015 he went to the sub-registrar office with a cheque book, without any cash. At that time, the plaintiff company was having sufficient funds in its bank account, some amount was in fixed deposit and some was in the current account. He again went to the sub-registrar office on 5.12.2015 and 5.1.2016, on those occasion also, he was having his cheque book, but no cash. On those occasion also, the plaintiff company was having sufficient amount in its fixed deposit and current account.

119. Ramakant Mishra PW-2 in cross-examination deposed that on 3.11.2015, 5.12.2015 and 5.1.2016 he along with Dr. Shivakant Mishra were present with draft sale deed, along with cheques, but the defendants failed to appear in the sub-registrar office, whereas, they were aware that they have to remain present on that date. He further deposed that Dr. Shivakant Mishra remained present on the above dates along with him from morning to evening in the sub-registrar office. A certificate of attendance was also obtained from the sub-registrar office, which has been filed on record. He deposed that the draft sale deed was prepared without stamps because the stamps were to be purchased when the parties arrived for getting the sale deed executed. He further deposed that the plaintiff company was having an amount of ₹ 3.25 crores in its account and the defendants were to be paid through cheques which were to be drawn on the bank account of the plaintiff.

120. It is also evident that after the execution of the agreement to sell on 22.10.2012, an additional amount of ₹ 41 lakhs was paid by the plaintiff to Dharam Prakash Nangia on 14.3.2014(₹ 15 lakhs), 28.11.2014(₹ 20 lakhs) and 5.2.2015(₹ 6 lakhs), through four cheques, which is also proved from the bank statement of the plaintiff and certificate issued by the bank regarding debit/credit of cheque.

121. It is also apparent that the consideration of ₹ 2 crores for the agreement to sell dated 22.10.2012 was paid by the plaintiff to Dharam Prakash Nangia through following cheques:-

(i)cheque No. 3 dated 2.11.2012 for ₹ 40 lakhs
(ii)cheque No. 4 dated 2.11.2012 for ₹ 40 lakhs
(iii)cheque No. 5 dated 3.11.2012 for ₹ 40 lakhs
(iv)cheque No. 6 dated 3.12.2012 for ₹ 38 lakhs
(v)cheque No. 599847 dated 22.10.12 for ₹ 42 lakhs

122. From the bank statement of the plaintiff it is evident that the above cheques have been debited from its bank account on 5.11.2012, 7.11.2012, 12.11.2012, 17.12.2012 and 3.11.2012 respectively. It is also evident that earlier cheque No. 6 for ₹ 38 lakhs was dishonoured due to insufficient balance on 11.12.2012 but subsequently on 17.12.2012 it was honoured, which has also been accepted by Shahnaz Faisal DW-2, the daughter of Dharam Prakash Nangia, who deposed in cross-examination that her father informed her about the dishonoured cheque of ₹ 38 lakhs on the same evening but 2 □ 3 days thereafter, she was informed by her parents that the above amount has been credited to their account. She accepted that the cheque was subsequently honoured.

123. Rohit Handa DW-4 also deposed that he was told by Dharam Prakash Nangia that a cheque of ₹ 38 lakhs has been dishonoured due to insufficient funds in the bank account of doctor Saheb, due to which the agreement has ended. He disclosed that subsequently, he was informed by Dharam Prakash Nangia that he has received the amount of ₹ 38 lakhs towards the dishonoured cheque, in his bank account.

124. It is evident that neither any legal notice for the above dishonoured cheque of ₹ 38 lakhs has been given by Dharam Prakash Nangia to the plaintiff nor any proceeding for cancellation of agreement to sell has been initiated by him, which itself proves that, Dharam

Prakash Nangia has duly received the entire earnest money of ₹ 2 crores, including the above amount of ₹ 38 lakhs, which is also proved from the evidence of DW-1,DW-2 and DW-4.

125. From the above evidence on record it is evident that the plaintiff was always willing to get the sale deed executed in its favour by paying the balance sale consideration, but Dharam Prakash Nangia till his death on 4.7.2015 and after his death, his daughter's, being his legal heirs, neither obtained the permission from the KDA for getting the property converted into free hold nor intimated in writing to the plaintiff, that they have obtained such permission and now the plaintiff should pay the balance sale consideration and get the sale deed executed in its favour. It is apparent that Dharam Prakash Nangia and after his death,his daughter's, have failed to comply with the terms of the agreement dated 22.10.2012.

(C)Whether the registered agreement to sell was executed for inadequate consideration under undue influence of Dr. Shivakant Mishra and his wife Neelam Mishra by Dharam Prakash Nangia ?

126. It is the case of the defendant no.3 Shahnaz Faisal that the registered agreement to sell dated 22.10.2012 was executed under undue influence of Dr. Shivakant Mishra and his wife Neelam Mishra, since there was a relationship of doctor and patient between them and Dharam Prakash Nangia and his wife Meena Nangia.

127. Rohit Handa DW-4 deposed in cross-examination that Meena Nangia died on 12.12.2012 due to heart attack. Dr. Shivakant Mishra used to treat and prescribe medicines to Dharam Prakash Nangia. Dharam Prakash Nangia was treated in Excel hospital, Chunniganj, Kanpur Nagar. He was not aware that Dr. Shivakant Mishra is a surgeon. After seeing the agreement to sell, he disclosed that as a witness it has been signed by his uncle Somnath Handa. He admitted that his uncle never remained patient of Dr. Shivakant Mishra, who was not having any undue influence on his uncle, who signed willingly on the above document.

128. It is evident that there is no documentary evidence to prove the relationship of doctor and patient between Dr. Shivakant Mishra/Neelam Mishra and Dharam Prakash Nangia/Meena Nangia. It is apparent that Dr. Shivakant Mishra and Dharam Prakash Nangia were neighbours hence they were having friendly relations but there was no professional relationship of doctor and patient between them. 129. It is also evident that Dr. Shivakant Mishra was a surgeon, whereas Meena Nangia died due to heart attack and Dharam Prakash Nangia was treated in Excel Hospital, Kanpur Nagar. It is also evident that the agreement was witnessed by Somnath Handa, the uncle of DW-4, who has admitted that his uncle never remained patient of Dr. Shivakant Mishra,who was not having any undue influence on his uncle, who had willingly signed the agreement. In view of the above evidence on record, it was not proved that Dr. Shivakant Mishra and his wife Neelam Mishra were having any undue influence on Dharam Prakash Nangia.

130. It has been further submitted by defendant no. 3 Shahnaz Faisal that on 22.10.2012, as per the report of the Government valuer Mohd.Minaz Jaffrey DW-5 the disputed property was valued at ₹ 10.91 crores, but it was only agreed to be sold for a consideration of ₹ 5.25 crores by

her father Dharam Prakash Nangia to the plaintiff, this fact also ipso facto proves that her father was under undue influence of Dr. Shivakant Mishra.

131. Mohd.Minaz Jaffrey DW-5 deposed in his examination-in-chief that he is an approved valuer and project consultant .On the request of Smt.Shahnaz Faisal he has assessed the market value of the disputed property on 24.1.2023. On the basis of rates prevailing in the year 2012 □ 13 ,the market value of the disputed house in the year 2012 and 2013 was about ₹ 10.91 crores whereas, in the year 2023 the disputed house is valued at ₹ 16,52,75,000/-.

132. DW-5 in cross-examination disclosed that he inspected the disputed property on 10.1.2023 and thereafter submitted his report on 24.1.2023 to the defendant no. 3. He further disclosed that he has not inspected the property from inside. He further admitted that he has valued the property on the basis of his experience. He disclosed that he has valued the disputed house at the rate of ₹ 72,000/- yd□ whereas, the prevalent circle rate was between ₹ 30,000 to 26,000 m□ at that time .He denied the suggestion that he has given his report in order to give pecuniary benefit to the defendant no. 3.

133. From the above evidence of DW-5 it is apparent that in the year 2012-13 the prevalent circle rate of the property was between ₹ 30,000 to 26,000 per square metre but he has valued the disputed house at the rate of ₹ 72,000 per square yard, which is far in excess of the circle rate, which is fixed by the District Magistrate under Stamp Act. It is also evident that without inspecting the disputed house from inside, without appreciating the quality of construction of the house and without observing the quality of materials used in its construction, he has prepared the valuation report. In view of the above facts, the valuation report disclosing the market value of the property in the year 2012-13 to be about ₹ 10.91 crores is not at all credible, which has rightly been discarded by the trial court also. On the basis of this valuation report, it cannot be inferred that the disputed property was valued at ₹ 10.91 crores in the year 2012-13 when the agreement was executed by Dharam Prakash Nangia in favour of the plaintiff.

134. It is further apparent that the area of the disputed property was 1352 square yards= 1130.41 m□ and if the circle rate of land in the year 2012 □ 13 is taken at ₹ 30,000 per square metre,then the valuation of the land comes to about ₹ 3.40 crores, but the whole property has been agreed to be sold for a consideration of ₹ 5.25 crores, which cannot in any manner be termed as inadequate. Hence, even on the basis of consideration of the agreement, it cannot be held that the disputed property was sold below its market valuation, and the agreement was executed under undue influence.

(D)Whether the plaintiff was having the financial capacity at the relevant time to pay the balance sale consideration of ₹ 2.84 crores to the defendants ?

135. It is apparent from the case law submitted by the parties that where a certain amount has been paid in advance and the balance is required to be paid within a stipulated time, it is for the paintiff to show that he was in a position to pay the balance money. Plaintiff has to prove that he has the money or has alternatively made necessary arrangements to get the money.The amount of consideration which he has to pay to the defendant must of necessity be proved to be available.

Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract.

136. It is further apparent that it is not the condition that the plaintiff should have ready cash with him. It is sufficient for the plaintiff to establish that he had the capacity to pay the sale consideration. It is further not necessary that he should always carry the money with him from the date of the suit till the date of the decree.

137. The plaintiff has filed the statement of his bank account. The defendants have also filed the balance sheet of the plaintiff. From the statement of the plaintiffs bank account in Bank of Baroda, it is evident that it is a current account, in which only the amount which is necessary for running day-to-day affairs is maintained by the plaintiff, because no interest is earned on the money deposited in this account. It is also prudent on the part of the plaintiff not to deposit large amount in this account since it will not bear any interest.

138. But it is evident that whenever a large payment was required to be made by the plaintiff, then funds were transferred to this account, which proves the financial capacity of the plaintiff. It is evident that on 22.10.2012 there was a balance of ₹ 39,59,167.47 in this account. On 01.11.12 an amount of ₹ 1.25 crores was transferred to this account and the balance became ₹ 1,70,59, 167.47 and thereafter, again on 5.12.2012 an amount of ₹ 25,84,729.90 was transferred to this account and the balance became ₹ 34,29,403.37, to honour the cheques issued by the plaintiff to Dharam Prakash Nangia. It is evident that from time to time, money was transferred to this account from other accounts of plaintiff ,for making payments and honouring its commitments.

139. From the balance sheet of the plaintiff, the following information was revealed:-

Financial Year ending	**Total Assets of the plaintiff in Rs.**	**Reserves & Surplus of the plaintiff in Rs**	**Cash & Cash Equivalents of the plaintiff in Rs.**
31/03/12	18982573.06	8707702.06	1126801.02
31/03/13	36877678.94	9131989.94	3410918.09
31/03/14	37216831.08	10135091.08	2336290.77
31/03/15	40317289.8	11825465.22	3311305.13
31/03/16	53331672.83	21502380.25	21124132.46

140. From the above balance sheet of the plaintiff, it is apparent that in the financial year 2012 □ 13, 2013 □ 14, 2014 □ 15 and 2015 □ 16 the plaintiff 's balance sheet was strong and was having assets in excess of ₹ 3.5 crores, whereas, the plaintiff was only required to pay the balance consideration of ₹ 2.84 crores to the defendants. On 31.3.2016 the plaintiff was having assets of ₹ 5.33 crores , which itself proves that the plaintiff was having sufficient financial capacity to pay the balance sale consideration to the defendants .The plaintiff has in fact deposited the amount of ₹ 2.84 crores with the trial court on 29.5.2025, which is proved from the tender receipt filed by it in this appeal. Hence, the plaintiff has nothing to pay to the defendants, as such, the financial capacity of the plaintiff cannot be doubted.

(E)Whether the plaintiff has committed any fraudulent act which disentitles him from claiming the relief of specific performance of the registered agreement to sell dated 22.10.2012 in terms of the provisions of Section 16 (b) of the Specific Relief Act, 1963?

141. The plaintiff claimed that since the duration mentioned in the agreement dated 22.10.2012 was expiring on 31.12.2014 hence Dharam Prakash Nangia approached Dr. Shivakant Mishra for extension of time for obtaining the freehold permission from KDA, which was agreed to and hence a notarised agreement dated 21.12.2014(paper no.130-C), was executed between the parties, the execution of which was not found proved by the trial court. Since the plaintiff failed to prove the above document, it was alleged by the defendants that the plaintiff has fraudulently fabricated the above document, which disentitles it from claiming the relief of specific performance of the agreement to sell.

142. From the perusal of the above document it is evident, that it was executed between the plaintiff and Dharam Prakash Nangia on 21.12.2014, which was a notarised agreement executed on a non-judicial stamp paper of ₹ 10. This agreement mentions that Dharam Prakash Nangia has not yet obtained the freehold permission hence he demanded some more time for obtaining that permission, which was agreed to by the plaintiff. It was agreed that after getting the property freehold and duly informing the buyer, thereafter, the sale deed would be executed within one month after paying balance consideration of ₹ 3.25 crores. It was reiterated that the liability to get the property freehold will be on the seller. In this manner, this time extension agreement was executed between Dharam Prakash Nangia and plaintiff, which was signed on behalf of the plaintiff by Dr. Shivakant Mishra.

143. It is apparent that the execution of the above agreement was denied by the defendants. The handwriting expert of the plaintiff Ravi Krishna Nigam @ R.Krishna PW-4 and handwriting expert of the defendants Ravindra Tripathi DW-3 examined the above document and gave contradictory opinion, regarding its execution by Dharam Prakash Nangia.

144. Pankaj Agarwal DW-6, the public notary, in examination-in-chief produced his original register before the Court. On seeing paper no.130-C he deposed that it has neither been signed by him nor his seal has been affixed on it. In the red ink whatever has been written on that document, has also not been written by him. He disclosed that on 22.12.2014 the name of any party mentioned in paper no. 130-C, is not entered in his register. In cross-examination by plaintiff he denied the suggestion that proper entries are not made in his register promptly.

145. It is apparent that the above document bears three round impressions, one rectangular impression of the rubber seal and signatures of the notary dated 22.12.2014, who has not been cross-examined as to how the above seals came to be affixed on the above document. He was not asked how some other person would have affixed the above seals on the document. The burden was upon the notary to prove how the above seals came into possession of an unauthorised person, so as to use them. It is apparent that the notary has not been cross-examined on this point whether he has lodged an FIR regarding the theft/loss of the above seals with the police. It is apparent that the cross-examination of DW-6 by the learned counsel of the plaintiff was not up to the mark.

146. The trial court considered the above evidence and opined that since the document was not signed by any witness, hence the execution of the above document between the plaintiff and Dharam Prakash Nangia was not proved, since it was also not found recorded in the register of the notary. The trial court has not opined that the plaintiff has fraudulently prepared the above document to claim extension of time because the trial court was of the opinion that even in the absence of the above document, the suit filed by the plaintiff was within the prescribed period of limitation of 3 years from 31.12.2014, which also could not be disputed by the learned counsel for the defendant appellants. Hence, merely because the plaintiff failed to prove the above document, it cannot be inferred that the plaintiff has fraudulently fabricated that document in order to extend the period of limitation.

147. It is apparent that the document was advantageous to only Dharam Prakash Nangia because he had to obtain freehold permission upto 31.12. 2014 and by executing the above document he was going to be benefited. No advantage has been derived by the plaintiff on the basis of that document, hence, the contention of the learned counsel of the appellant that on the basis of this forged and fabricated document, the plaintiff is not entitled to the relief of specific performance, is liable to be rejected. Accordingly, it is held that the plaintiff 's conduct does not disentitle him from getting the relief of specific performance of the agreement to sell dated 22.10.2012 and the provisions of Section 16(b) of the Specific Relief Act, 1963 are not attracted to the facts and circumstances of this case.

(F) Whether the presence of the representative of the plaintiff was mandatory for getting the sale deed executed and registered in its favour keeping in view the provisions of Section 32A of the Registration Act, 1908 ?

148. It was submitted by the learned counsel for the defendant appellants that since the plaintiff is a company, it was mandatory for its authorised representative to remain present in the concerned sub-registrar office, on the dates on which the plaintiff issued legal notice to the defendants to remain present in the sub-registrar office for getting the sale deed executed and registered in its favour. He submitted that on 3.11.2015, 5.12.2015 and 5.1.2016,the authorised representative of the plaintiff was not present in the office of the sub-registrar which shows that the plaintiff was not ready and willing to get the sale deed executed in its favour.

149. It was further submitted that in terms of Section 32 A of the Registration Act, 1908 it was mandatory for both the buyer and seller to remain present at the time of execution and registration of the document, hence the absence of the representative of the plaintiff was fatal because it proved that the plaintiff was not ready and willing to get the sale deed executed in its favour. He submitted that in these circumstances the decree of specific performance cannot be granted in favour of the plaintiff.

150. Per contra, learned Senior Counsel for the plaintiff respondent submitted that Section 32 A of the Registration Act, as applicable in the State of Uttar Pradesh, is different from the Central Act. It was submitted that under the provisions of the UP Act, it was not mandatory for the buyer to remain present at the time of execution and registration of the sale deed, which was also held by the Apex Court in ***Aloka Bose*** (supra) and ***Rattan Singh*** (supra). He further submitted that

on all the relevant dates Dr. Shivakant Mishra and his representative Sanjiv Kumar Tiwari were present in the office of sub-registrar.

151. For appreciating the above controversy it is necessary to peruse Section 32A of the Registration Act, as applicable under the Central Act and the State Act.

152. Section 32A(Central Act) reads as under:-

32A. Compulsory affixing of photograph, etc. - Every person presenting any document at the proper registration office under section 32 shall affix his passport size photograph and fingerprints to the document:

Provided that where such document relates to the transfer of ownership of immovable property, the passport size photograph and fingerprints of each buyer and seller of such property mentioned in the document shall also be affixed to the document.

153. Section 32A, as prevailing in the State of Uttar Pradesh, reads as under:-

32A. Giving of true copies of documents prescribed for registration - Notwithstanding anything contained in this Act every document or any translation of documents referred to in section 19 presented for registration shall be accompanied by such number of true copies thereof, as may be prescribed by rules under section 69.

(2) The copy shall □

(a) be neat and legible, prepared on paper of such specification as may be notified by the State government from time to time;

(b) contain a declaration that the same is a true copy of the document to be registered in such manner as may be prescribed by rules under section 69;

(c)be compared and verified by such official as may be directed by the registering officer.

154. The Apex Court in the case of ***Asset Reconstruction Company (India) Ltd.*** (supra) has held that the provisions of the Registration Act are to be interpreted keeping in view the State amendments introduced in the Act from time to time.It is apparent that there is a vast difference between Section 32 A of the Registration Act as prevailing in the State of Uttar Pradesh and as prevalent in the Central Act. Under the Central Act, at the time of presentation of sale deed for registration, the presence of both the buyer and seller is mandatory for affixing their photograph and finger print on it, but in the Act prevailing in the State, it is not mandatory. However under Section 32, such document is to be presented by a person executing it or by the representative or assign of such a person or by the agent of such a person, duly authorised by power-of-attorney executed and authenticated in the manner specified. Further, under Section 23, such document (except Will) can be presented for registration within 4 months from the date of its execution. It is

apparent that it is not mandatory to present the document for registration soon after its execution, because it can be presented for registration within 4 months of its execution.

155. The Apex Court in the case of ***Aloka Bose*** (supra) has held that the agreement of sale signed only by the vendor was valid and enforceable by the purchaser. Similarly, in the case of ***Rattan Singh*** (supra) it was held that signature of the vendee is not mandatory in a sale deed. It is evident that as per the provisions of Section 32A of the Registration Act, as prevailing in the State of Uttar Pradesh, the presence of vendee was not mandatory at the time of registration of sale deed.The Apex Court in the above referred cases has also held that the signature of the vendee is not mandatory on the sale deed.

156. However, it is pertinent to mention here that as per the evidence of Dr. Shivakant Mishra PW-1 and Sanjiv Kumar Tiwari PW-3, they remained present on behalf of the plaintiff company, for getting the sale deed executed and registered in favour of the plaintiff, whereas the defendants failed to remain present in the office of the concerned sub-registrar. The plaintiff has also filed the documentary evidence of the presence of his representative in the office of the sub-registrar on 5.1.2016. In view of these facts, it cannot be said that the plaintiff was not ready and willing to get the sale deed executed in his favour.

Conclusion of this Court

157. From the aforesaid analysis, it is evident that the plaintiff always remained ready and willing to get the sale deed executed in its favour by paying the balance sale consideration but it was Dharam Prakash Nangia and his heirs/defendants who defaulted in complying with the terms of the registered agreement to sell dated 22.10.2012. It is also proved that the plaintiff was always having the financial capacity to pay balance sale consideration of ₹ 2.84 crores to the defendants, who in fact has already deposited the above amount with the trial court on 29.5.2025, after passing of the decree of specific performance in its favour on 21.3.2025, hence nothing remains to be paid by the plaintiff to the defendants. It is also proved that the disputed property was not sold for inadequate consideration by Dharam Prakash Nangia.

158. It is also apparent that the last date fixed for the execution of sale deed by the defendants in favour of the plaintiff was 5.1.2016, but the defendants failed to appear on that date before the concerned sub-registrar for executing the sale deed and receiving the balance sale consideration, hence as per Article 54 of the Limitation Act 1963, 5.1.2016 will be treated as the date fixed for the due performance of the agreement, when it was refused by the defendants. In view of this, the filing of the suit for the relief of specific performance by the plaintiff on 10.1.2017 cannot be held to be belated.

159. The trial court has duly considered all the above aspects in accordance with law. There is no perversity in the impugned judgment of the trial court warranting interference from this Court in exercise of its appellate jurisdiction. Accordingly, the appeal has no merit and is liable to be dismissed with costs.

160. **For the aforesaid reasons,the instant appeal is dismissed with costs, throughout.** Consequently, the impugned judgment and decree of the trial court dated 21.3.2025 is affirmed.

161. The defendants are directed to execute the sale deed of the disputed property within a period of one month in favour of the plaintiff, by receiving the balance sale consideration of ₹ 2.84 crores from the trial court, failing which, the plaintiff will be at liberty to get it executed from the Court, in accordance with law.
